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

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**FORM S-3**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

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**ANAPTYSBIO, INC.**  
(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**2834**  
(Primary Standard Industrial  
Classification Code Number)

**20-3828755**  
(I.R.S. Employer  
Identification Number)

**10770 Wateridge Circle, Suite 210  
San Diego, CA 92121  
(858) 362-6295**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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**Daniel Faga  
Chief Executive Officer  
AnaptysBio, Inc.  
10770 Wateridge Circle, Suite 210  
San Diego, CA 92121  
(858) 362-6295**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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*Copies to:*

**Effie Toshav, Esq.  
Ryan G. Mitteness, Esq.  
Fenwick & West LLP  
555 California Street  
San Francisco, CA 94104  
(415) 875-2300**

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**Approximate date of commencement of proposed sale to the public:** From time to time after this Registration Statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box:

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earliest effective registration statement for the same offering:

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I. D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

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**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Commission acting pursuant to said Section 8(a), may determine.**

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## EXPLANATORY NOTE

We currently have an existing shelf registration statement on Form S-3, File No. 333-261953, which initially became effective on January 11, 2022, or the prior registration statement. The prior registration statement expires on January 11, 2025 pursuant to Rule 415(a)(5) under the Securities Act of 1933, as amended, or the Securities Act. One of the offerings registered under the prior registration statement is the offering of our common stock under a sales agreement, or the prior sales agreement, we entered into with Cowen and Company, LLC, or Cowen, as sales agent. In accordance with the terms of the prior sales agreement, we may offer and sell our common stock having an aggregate offering price of up to \$150,000,000 from time to time through Cowen, acting as sales agent. As of the date of this prospectus, we have not issued and sold any of our common stock pursuant to the prior sales agreement under the prior registration statement, which results in up to \$150,000,000 of shares of our common stock that may be sold under the prior sales agreement. On or about the date hereof, we are entering into a sales agreement with TD Securities (USA) LLC, or TD Cowen, or the sales agreement. The prior sales agreement will terminate upon the effectiveness of this registration statement.

This registration statement contains two prospectuses:

- a base prospectus, which covers the offering, issuance and sale by us of up to \$500,000,000 of our common stock, preferred stock, debt securities, warrants to purchase our common stock, preferred stock or debt securities, subscription rights to purchase our common stock, preferred stock or debt securities and/or units consisting of some or all of these securities; and
- a sales agreement prospectus supplement covering the offering, issuance and sale by us of up to a maximum aggregate offering price of \$100,000,000 of our common stock that may be issued and sold under the sales agreement.

The base prospectus immediately follows this explanatory note. The specific terms of any securities to be offered pursuant to the base prospectus, other than the shares to be issued and sold under the sales agreement, will be specified in a prospectus supplement to the base prospectus. The specific terms of the securities to be issued and sold under the sales agreement are specified in the sales agreement prospectus supplement immediately following the base prospectus.

The \$100,000,000 of common stock that may be offered, issued and sold by us under the sales agreement prospectus supplement is included in the \$500,000,000 of securities that may be offered, issued and sold by us under the base prospectus. Upon termination of the sales agreement with TD Cowen, any portion of the \$100,000,000 included in the sales agreement prospectus supplement that is not sold pursuant to the sales agreement will be available for sale in other offerings pursuant to the base prospectus and a corresponding prospectus supplement, and if no shares are sold under the sales agreement, the full \$100,000,000 of securities may be sold in other offerings pursuant to the base prospectus and a corresponding prospectus supplement.

**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and it is not soliciting an offer to buy these securities, in any jurisdiction where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED NOVEMBER 5, 2024**

**PROSPECTUS**

**\$500,000,000**

# **AnaptysBio, Inc.**

## **Common Stock, Preferred Stock, Debt Securities, Warrants, Subscription Rights and Units**

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From time to time, we may offer up to \$500,000,000 aggregate dollar amount of shares of our common stock or preferred stock, debt securities, warrants to purchase our common stock, preferred stock or debt securities, subscription rights to purchase our common stock, preferred stock or debt securities and/or units consisting of some or all of these securities, in any combination, together or separately, in one or more offerings, in amounts, at prices and on the terms that we will determine at the time of the offering and which will be set forth in a prospectus supplement and any related free writing prospectus. The prospectus supplement and any related free writing prospectus may also add, update or change information contained in this prospectus. The total amount of these securities will have an initial aggregate offering price of up to \$500,000,000.

You should read this prospectus, the information incorporated, or deemed to be incorporated, by reference in this prospectus, and any applicable prospectus supplement and related free writing prospectus carefully before you invest.

Our common stock is traded on The Nasdaq Global Select Market under the symbol "ANAB." On November 1, 2024, the last reported sales price for our common stock was \$21.68 per share. None of the other securities we may offer are currently traded on any securities exchange. The applicable prospectus supplement and any related free writing prospectus will contain information, where applicable, as to any other listing on The Nasdaq Global Select Market or any securities market or exchange of the securities covered by the prospectus supplement and any related free writing prospectus.

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**An investment in our securities involves a high degree of risk. You should carefully consider the information under the heading "Risk Factors" beginning on page 4 of this prospectus before investing in our securities.**

Common stock, preferred stock, debt securities, warrants, subscription rights and/or units may be sold by us to or through underwriters or dealers, directly to purchasers or through agents designated from time to time. For additional information on the methods of sale, you should refer to the section entitled "Plan of Distribution" in this prospectus. If any underwriters, dealers or agents are involved in the sale of any securities with respect to which this prospectus is being delivered, the names of such underwriters or agents and any applicable fees, discounts or commissions, details regarding over-allotment options, if any, and the net proceeds to us will be set forth in a prospectus supplement. The price to the public of such securities and the net proceeds we expect to receive from such sale will also be set forth in a prospectus supplement.

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**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

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**The date of this prospectus is , 2024**

## TABLE OF CONTENTS

	<u>PAGE</u>
<a href="#"><u>ABOUT THIS PROSPECTUS</u></a>	<u>1</u>
<a href="#"><u>PROSPECTUS SUMMARY</u></a>	<u>2</u>
<a href="#"><u>RISK FACTORS</u></a>	<u>4</u>
<a href="#"><u>SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS</u></a>	<u>5</u>
<a href="#"><u>WHERE YOU CAN FIND MORE INFORMATION</u></a>	<u>6</u>
<a href="#"><u>INCORPORATION OF INFORMATION BY REFERENCE</u></a>	<u>7</u>
<a href="#"><u>USE OF PROCEEDS</u></a>	<u>8</u>
<a href="#"><u>DIVIDEND POLICY</u></a>	<u>9</u>
<a href="#"><u>PLAN OF DISTRIBUTION</u></a>	<u>10</u>
<a href="#"><u>DESCRIPTION OF CAPITAL STOCK</u></a>	<u>12</u>
<a href="#"><u>DESCRIPTION OF DEBT SECURITIES</u></a>	<u>16</u>
<a href="#"><u>DESCRIPTION OF WARRANTS</u></a>	<u>23</u>
<a href="#"><u>DESCRIPTION OF SUBSCRIPTION RIGHTS</u></a>	<u>25</u>
<a href="#"><u>DESCRIPTION OF UNITS</u></a>	<u>26</u>
<a href="#"><u>LEGAL MATTERS</u></a>	<u>27</u>
<a href="#"><u>EXPERTS</u></a>	<u>27</u>

## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement on Form S-3 that we filed with the U.S. Securities and Exchange Commission, or the SEC, using a “shelf” registration process. Under this shelf registration process, from time to time, we may sell any combination of the securities described in this prospectus in one or more offerings, up to a total dollar amount of \$500,000,000.

We have provided to you in this prospectus a general description of the securities we may offer. This prospectus does not contain all of the information included in the registration statement. For a more complete understanding of the offering of the securities, you should refer to the registration statement, including its exhibits. Each time we offer our securities under this prospectus, we will provide a prospectus supplement that will contain more specific information about the terms of the offering. We may also add, update or change in a prospectus supplement any of the information contained in this prospectus or in documents we have incorporated by reference into this prospectus. To the extent there is a conflict between the information contained in this prospectus and the prospectus supplement, you should rely on the information in the prospectus supplement; provided that, if any statement in one of these documents is inconsistent with a statement in another document having a later date—for example, a document incorporated by reference in this prospectus or any prospectus supplement—the statement in the document having the later date modifies or supersedes the earlier statement. This prospectus, together with the applicable prospectus supplements and the documents incorporated by reference into this prospectus, includes all material information relating to the offering of securities under this prospectus. You should carefully read both this prospectus and the applicable prospectus supplement, together with the additional information described under the headings “Incorporation of Information by Reference” and “Where You Can Find More Information” before buying any of our securities in this offering.

You should rely only on the information contained in or incorporated by reference into this prospectus or any applicable prospectus supplement. No dealer, salesperson or any other person is authorized to give any information or to make any representation other than the information and representations contained in or incorporated by reference into this prospectus or any applicable prospectus supplement. If different information is given or different representations are made, you may not rely on that information or those representations as having been authorized by us. You may not imply from the delivery of this prospectus and any applicable prospectus supplement, nor from a sale made under this prospectus and any applicable prospectus supplement, that our affairs are unchanged since the date of this prospectus and any applicable prospectus supplement or that the information contained in any document incorporated by reference is accurate as of any date other than the date of the document incorporated by reference, regardless of the time of delivery of this prospectus and any applicable prospectus supplement or any sale of a security. This prospectus and any applicable prospectus supplement may only be used where it is legal to sell the securities.

***THIS PROSPECTUS MAY NOT BE USED TO OFFER AND SELL SECURITIES UNLESS IT IS ACCOMPANIED BY A PROSPECTUS SUPPLEMENT.***

In this prospectus, unless the context otherwise requires, the terms “AnaptysBio,” the “Company,” “we,” “us,” and “our” refer to AnaptysBio, Inc., a Delaware corporation. This prospectus supplement, the accompanying prospectus and the information incorporated by reference herein and therein may contain additional trade names, trademarks and service marks of other companies, which are the property of their respective owners. We do not intend our use or display of other companies’ trade names, trademarks or service marks to imply a relationship with, or endorsement or sponsorship of us by, these other companies.

## PROSPECTUS SUMMARY

*This summary highlights information contained in other parts of this prospectus or incorporated by reference in this prospectus from our Annual Report on Form 10-K for the year ended December 31, 2023, our Quarterly Report on Form 10-Q for the quarter ended September 30, 2024 and our other filings with the SEC listed below under the heading “Incorporation of Information by Reference.” This summary may not contain all the information that you should consider before investing in securities. You should read the entire prospectus and the information incorporated by reference in this prospectus carefully, including “Risk Factors” and the financial data and related notes and other information incorporated by reference, before making an investment decision.*

### Company Overview

We are a clinical-stage biotechnology company focused on delivering innovative immunology therapeutics for autoimmune and inflammatory diseases. Our pipeline includes two programs targeting co-inhibitory receptors: rosnilimab, our PD-1 agonist in a Phase 2b trial for the treatment of moderate-to-severe rheumatoid arthritis, and a Phase 2 trial for the treatment of moderate-to-severe ulcerative colitis; and ANB032, our BTLA agonist, in a Phase 2b trial for the treatment of moderate-to-severe atopic dermatitis. We also have other antibodies in our portfolio, including ANB033, an anti-CD122 antagonist, in a Phase 1 trial and ANB101, a BDCA2 modulator, soon to enter clinical development. In addition, we have developed two cytokine antagonists that are available for out-licensing: imsidolimab, our anti-IL-36R antagonist, that has completed Phase 3 trials for the treatment of generalized pustular psoriasis, and etokimab, our anti-IL-33 antagonist that is Phase 2/3 ready. We have also discovered multiple therapeutic antibodies licensed to GlaxoSmithKline, Inc. (“GSK”), in a financial collaboration for immuno-oncology, including an anti-PD-1 antagonist (Jemperli (dostarlimab-gxly) or “*Jemperli*”) and an anti-TIM-3 antagonist (cobolimab, GSK4069889). We currently recognize revenue from milestones and royalties achieved under our immuno-oncology collaboration with GSK.

### Corporate Information

We were incorporated under the laws of the State of Delaware in November 2005. Our principal executive offices are located at 10770 Wateridge Circle, Suite 210, San Diego, California 92121, and our telephone number is (858) 362-6295. Our website address is [www.anaptybio.com](http://www.anaptybio.com). The information contained on, or that can be accessed through, our website is not part of, and is not incorporated by reference into, this prospectus.

### The Securities We May Offer

With this prospectus, we may offer common stock, preferred stock, debt securities, warrants to purchase our common stock, preferred stock or debt securities, subscription rights to purchase our common stock, preferred stock or debt securities, and/or units consisting of some or all of these securities in any combination. The aggregate offering price of securities that we offer with this prospectus will not exceed \$500,000,000. Each time we offer securities with this prospectus, we will provide offerees with a prospectus supplement that will contain the specific terms of the securities being offered. The following is a summary of the securities we may offer with this prospectus.

#### *Common Stock*

We may offer shares of our common stock, par value \$0.001 per share.

#### *Preferred Stock*

We may offer shares of our preferred stock, par value \$0.001 per share, in one or more series. Our board of directors or a committee designated by the board will determine the dividend, voting, conversion and other rights of the series of shares of preferred stock being offered. Each series of preferred stock will be more fully described in the particular prospectus supplement that will accompany this prospectus, including redemption provisions, rights in the event of our liquidation, dissolution or the winding up, voting rights and rights to convert into common stock.



### *Debt Securities*

We may offer general obligations, which may be secured or unsecured, senior or subordinated and convertible into shares of our common stock or preferred stock. In this prospectus, we refer to the senior debt securities and the subordinated debt securities together as the “debt securities.” Our board of directors will determine the terms of each series of debt securities being offered.

We will issue the debt securities under an indenture between us and a trustee. In this document, we have summarized general features of the debt securities from the indenture. We encourage you to read the indenture, which is an exhibit to the registration statement of which this prospectus is a part.

### *Warrants*

We may offer warrants for the purchase of debt securities, shares of preferred stock or shares of common stock. We may issue warrants independently or together with other securities. Our board of directors will determine the terms of the warrants.

### *Subscription Rights*

We may offer subscription rights for the purchase of common stock, preferred stock or debt securities. We may issue subscription rights independently or together with other securities. Our board of directors will determine the terms of the subscription rights.

### *Units*

We may offer units consisting of some or all of the securities described above, in any combination, including common stock, preferred stock, warrants and/or debt securities. The terms of these units will be set forth in a prospectus supplement. The description of the terms of these units in the related prospectus supplement will not be complete. You should refer to the applicable form of unit and unit agreement for complete information with respect to these units.

\* \* \*

## **RISK FACTORS**

An investment in our securities involves a high degree of risk. The prospectus supplement applicable to each offering of securities will contain a discussion of the risks applicable to an investment in our securities. Prior to making a decision about investing in our securities, you should carefully consider the specific factors discussed under the heading "Risk Factors" in the applicable prospectus supplement, together with all of the other information contained or incorporated by reference in the prospectus supplement or appearing or incorporated by reference in this prospectus. You should also consider the risks, uncertainties and assumptions discussed in our most recent Annual Report on Form 10-K and Quarterly Reports on Form 10-Q and any other filings we make with the SEC from time to time, which are incorporated herein by reference, and may be amended, supplemented or superseded from time to time by other reports we file with the SEC in the future. The risks and uncertainties we have described are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our operations.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and documents incorporated herein by reference contain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements involve a number of risks and uncertainties. We caution readers that any forward-looking statement is not a guarantee of future performance and that actual results could differ materially from those contained in the forward-looking statement. These statements are based on current expectations of future events. Such statements include, but are not limited to, statements about future financial and operating results, plans, objectives, expectations and intentions, costs and expenses, interest rates, outcome of contingencies, financial condition, results of operations, liquidity, cost savings, objectives of management, business strategies, debt financing, clinical trial timing and plans, the achievement of clinical and commercial milestones, the advancement of our technologies and our proprietary and partnered products and product candidates, and other statements that are not historical facts. You can find many of these statements by looking for words like “believes,” “expects,” “anticipates,” “estimates,” “may,” “might,” “should,” “will,” “could,” “plan,” “intend,” “project,” “seek” or similar expressions in this prospectus or in documents incorporated by reference into this prospectus. We intend that such forward-looking statements be subject to the safe harbors created thereby.

These forward-looking statements are based on the current beliefs and expectations of our management and are subject to significant risks and uncertainties. If underlying assumptions prove inaccurate or unknown risks or uncertainties materialize, actual results may differ materially from current expectations and projections. Factors that might cause such a difference include those discussed in Part II, Item 1A, “Risk Factors” in our most recent Annual Report on Form 10-K and in our Quarterly Reports on Form 10-Q, which are incorporated by reference herein, as well as those discussed in this prospectus and in the documents incorporated by reference into this prospectus. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this prospectus or, in the case of documents referred to or incorporated by reference, the date of those documents.

All subsequent written or oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. We do not undertake any obligation to release publicly any revisions to these forward-looking statements to reflect events or circumstances after the date of this prospectus or to reflect the occurrence of unanticipated events, except as may be required under applicable U.S. securities law. If we do update one or more forward-looking statements, no inference should be drawn that we will make additional updates with respect to those or other forward-looking statements.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-3 under the Securities Act with respect to the securities offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement, the exhibits filed therewith or the documents incorporated by reference therein. For further information about us and the securities offered hereby, reference is made to the registration statement, the exhibits filed therewith and the documents incorporated by reference therein. Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and in each instance, we refer you to the copy of such contract or other document filed as an exhibit to the registration statement.

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and are required to file annual, quarterly and other reports, proxy statements and other information with the SEC. The SEC maintains an Internet site (<http://www.sec.gov>) that contains reports, proxy and information statements, and various other information about us.

Information about us is also available at our website at <http://www.anaptysbio.com>. Upon completion of this offering, you may access these materials at our website free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. However, the information on our website is not a part of this prospectus and is not incorporated by reference into this prospectus.

## INCORPORATION OF INFORMATION BY REFERENCE

The SEC allows us to “incorporate by reference” information that we file with the SEC, which means that we can disclose important information to you by referring you to those publicly available documents. The information incorporated by reference is an important part of this prospectus, and information we file later with the SEC will automatically update and supersede this information. A Current Report (or portion thereof) furnished, but not filed, on Form 8-K shall not be incorporated by reference into this prospectus. You should refer to the registration statement, including the exhibits, for further information about us and the securities we may offer pursuant to this prospectus. We incorporate by reference the documents listed below and any future filings we make with the SEC under Section 13(a), 13(c), 14, or 15(d) of the Exchange Act prior to the termination of any offering of securities made by this prospectus:

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2023 filed with the SEC on [March 11, 2024](#);
- our Quarterly Reports on Form 10-Q for the fiscal quarter ended March 31, 2024 filed with the SEC on [May 9, 2024](#), the fiscal quarter ended June 30, 2024 filed with the SEC on [August 5, 2024](#) and the fiscal quarter ended September 30, 2024 filed with the SEC on [November 5, 2024](#);
- the portions of our definitive proxy statement on Schedule 14A filed with the SEC on [April 24, 2024](#) that are deemed “filed” with the SEC under the Exchange Act;
- our Current Reports on Form 8-K filed on [June 12, 2024](#) and [August 14, 2024](#); and
- the description of our common stock contained in our registration statement on Form 8-A filed with the SEC on [March 2, 2020](#) under Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All reports and other documents we subsequently file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the termination of this offering, including all such documents we may file with the SEC after the date of the initial registration statement and prior to the effectiveness of the registration statement, but excluding any information furnished to, rather than filed with, the SEC, will also be incorporated by reference in this prospectus and deemed to be part of this prospectus from the date of the filing of such reports and documents.

Upon written or oral request, we will provide without charge to each person, including any beneficial owner, to whom this prospectus is delivered, a copy of any or all of such information that has been incorporated herein by reference (other than exhibits to such documents unless such exhibits are specifically incorporated by reference into the documents that this prospectus incorporates). Written or oral requests for copies should be directed to AnaptysBio, Inc., Attn: Investor Relations, 10770 Wateridge Circle, Suite 210, telephone number (858) 362-6295. See the section of this prospectus entitled “Where You Can Find More Information” for information concerning how to read and obtain copies of materials that we file with the SEC.

Any statement contained in this prospectus, or in a document all or a portion of which is incorporated by reference, shall be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus, any prospectus supplement or any document incorporated by reference modifies or supersedes such statement. Any such statement so modified or superseded shall not, except as so modified or superseded, constitute a part of this prospectus.

## **USE OF PROCEEDS**

We will retain broad discretion over the use of the net proceeds to us from the sale of our securities under this prospectus. Unless otherwise provided in the applicable prospectus supplement, we intend to use the net proceeds from the sale of securities under this prospectus for general corporate purposes, which may include funding research and development for our clinical development and ongoing preclinical, discovery and research programs, increasing our working capital, acquisitions or investments in businesses, products or technologies that are complementary to our own and capital expenditures. We will set forth in the prospectus supplement our intended use for the net proceeds received from the sale of any securities. Pending the application of the net proceeds, we intend to invest the net proceeds in short-term or long-term, investment-grade, interest-bearing securities.

## **DIVIDEND POLICY**

We have never declared or paid any cash dividends on our capital stock. We intend to retain future earnings, if any, to finance the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. Any future determination related to our dividend policy will be made at the discretion of our board of directors after considering our financial condition, results of operations, capital requirements, business prospects and other factors the board of directors deems relevant, and subject to the restrictions contained in any future financing instruments.

## PLAN OF DISTRIBUTION

We may sell the securities covered by this prospectus to one or more underwriters for public offering and sale by them, and may also sell the securities to investors directly, including our affiliates, through agents or through a combination of any of these methods. We will name any underwriter or agent involved in the offer and sale of securities in the applicable prospectus supplement. We have reserved the right to sell or exchange securities directly to investors on our own behalf in jurisdictions where we are authorized to do so. We may distribute the securities from time to time in one or more transactions:

- at a fixed price or prices, which may be changed;
- at market prices prevailing at the time of sale;
- at prices related to such prevailing market prices; or
- at negotiated prices.

We may directly solicit offers to purchase the securities being offered by this prospectus. We may also designate agents to solicit offers to purchase the securities from time to time. We will name in a prospectus supplement any agent involved in the offer or sale of our securities. Unless otherwise indicated in a prospectus supplement, an agent will be acting on a best efforts basis, and a dealer will purchase securities as a principal for resale at varying prices to be determined by the dealer.

If we utilize an underwriter in the sale of the securities being offered by this prospectus, we will execute an underwriting agreement with the underwriter at the time of sale and we will provide the name of any underwriter in the prospectus supplement that the underwriter will use to make resales of the securities to the public. In connection with the sale of the securities, we, or the purchasers of securities for whom the underwriter may act as agent, may compensate the underwriter in the form of underwriting discounts or commissions. The underwriter may sell the securities to or through dealers, and those dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters or commissions from the purchasers for whom they may act as agent.

We will provide in the applicable prospectus supplement any compensation we pay to underwriters, dealers, or agents in connection with the offering of the securities, and any discounts, concessions or commissions allowed by underwriters to participating dealers. Underwriters, dealers and agents participating in the distribution of the securities may be deemed to be underwriters within the meaning of the Securities Act and any discounts and commissions received by them and any profit realized by them on resale of the securities may be deemed to be underwriting discounts and commissions. We may enter into agreements to indemnify underwriters, dealers and agents against civil liabilities, including liabilities under the Securities Act, and to reimburse them for certain expenses. We may grant underwriters who participate in the distribution of our securities under this prospectus an option to purchase additional securities to cover any over-allotments in connection with the distribution.

The securities we offer under this prospectus may or may not be listed through The Nasdaq Global Select Market or any other securities exchange. To facilitate the offering of securities, certain persons participating in the offering may engage in transactions that stabilize, maintain or otherwise affect the price of the securities. This may include short sales of the securities, which involves the sale by persons participating in the offering of more securities than we sold to them. In these circumstances, these persons would cover such short positions by making purchases in the open market or by exercising their option to purchase additional securities. In addition, these persons may stabilize or maintain the price of the securities by bidding for or purchasing securities in the open market or by imposing penalty bids, whereby selling concessions allowed to dealers participating in the offering may be reclaimed if securities sold by them are repurchased in connection with stabilization transactions. The effect of these transactions may be to stabilize or maintain the market price of the securities at a level above that which might otherwise prevail in the open market. These transactions may be discontinued at any time.



We will file a prospectus supplement to describe the terms of any offering of our securities covered by this prospectus. The prospectus supplement will disclose:

- the terms of the offer;
- the names of any underwriters, including any managing underwriters, as well as any dealers or agents;
- the purchase price of the securities from us;
- the net proceeds to us from the sale of the securities;
- any delayed delivery arrangements;
- any over-allotment or other options under which underwriters, if any, may purchase additional securities from us;
- any underwriting discounts, commissions or other items constituting underwriters' compensation, and any commissions paid to agents;
- in a subscription rights offering, whether we have engaged dealer-managers to facilitate the offering or subscription, including their name or names and compensation;
- any public offering price; and
- other facts material to the transaction.

We will bear all or substantially all of the costs, expenses and fees in connection with the registration of our securities under this prospectus. The underwriters, dealers and agents may engage in transactions with us, or perform services for us, in the ordinary course of business.

## DESCRIPTION OF CAPITAL STOCK

### **General**

We are authorized to issue 510,000,000 shares of all classes of capital stock, of which 500,000,000 shares are common stock, \$0.001 par value per share, and 10,000,000 shares are preferred stock, \$0.001 par value per share.

The following is a summary description of the material terms of our capital stock. The description of capital stock is intended as a summary and is qualified in its entirety by reference to our amended and restated certificate of incorporation, or restated certificate of incorporation, and our second amended and restated bylaws, or restated bylaws, copies of which are filed as exhibits to our most recent Annual Report on Form 10-K and are incorporated by reference herein. We encourage you to read our restated certificate of incorporation, our restated bylaws and the applicable provisions of the Delaware General Corporation Law, or DGCL, for additional information.

### **Common Stock**

#### **Dividend Rights**

Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of our common stock are entitled to receive dividends out of funds legally available if our board of directors, in its discretion, determines to issue dividends and then only at the times and in the amounts that our board of directors may determine. See “Dividend Policy” above.

#### **Voting Rights**

Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders. We have not provided for cumulative voting for the election of directors in our restated certificate of incorporation. Accordingly, pursuant to our restated certificate of incorporation, holders of a majority of the shares of our common stock can elect all of our directors. Our restated certificate of incorporation establishes a classified board of directors, divided into three classes with staggered three-year terms. Only one class of directors is elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms.

#### **No Preemptive or Similar Rights**

Our common stock is not entitled to preemptive rights, and is not subject to conversion, redemption or sinking fund provisions.

#### **Right to Receive Liquidation Distributions**

Upon our liquidation, dissolution or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our common stock and any participating preferred stock outstanding at that time, subject to prior satisfaction of all outstanding debt and liabilities and the preferential rights of and the payment of liquidation preferences, if any, on any outstanding shares of preferred stock.

### **Preferred Stock**

As of September 30, 2024, no shares of our preferred stock were issued and outstanding and no such shares were subject to outstanding options or other rights to purchase or acquire. However, shares of preferred stock may be issued in one or more series from time to time by our board of directors, and the board of directors is expressly authorized to fix by resolution or resolutions the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, of the shares of each series of preferred stock. Subject to the determination of our board of directors, any shares of our preferred stock that may be issued in the future would

generally have preferences over our common stock with respect to the payment of dividends and the distribution of assets in the event of our liquidation, dissolution or winding up.

### **Anti-Takeover Effect of Unissued Shares of Capital Stock**

*Common Stock.* Our shares of authorized and unissued common stock are available for future issuance without additional stockholder approval. While these additional shares are not designed to deter or prevent a change of control, under some circumstances we could use the additional shares to create voting impediments or to frustrate persons seeking to effect a takeover or otherwise gain control by, for example, issuing those shares in private placements to purchasers who might side with our board of directors in opposing a hostile takeover bid.

*Preferred Stock.* Our certificate of incorporation grants our board of directors the authority, without any further vote or action by our stockholders, to issue preferred stock in one or more series and to fix the number of shares constituting any such series and the preferences, limitations and relative rights, including dividend rights, dividend rate, voting rights, terms of redemption, redemption price or prices, conversion rights and liquidation preferences of the shares constituting any series. The existence of authorized but unissued preferred stock could reduce our attractiveness as a target for an unsolicited takeover bid since we could, for example, issue shares of preferred stock to parties who might oppose such a takeover bid or shares that contain terms the potential acquirer may find unattractive. This may have the effect of delaying or preventing a change in control, may discourage bids for the common stock at a premium over the market price of the common stock, and may adversely affect the market price of, and the voting and other rights of the holders of, common stock.

### **Anti-Takeover Provisions**

The provisions of Delaware law, our restated certificate of incorporation and our restated bylaws could have the effect of delaying, deferring or discouraging another person from acquiring control of our company. These provisions, which are summarized below, may have the effect of discouraging takeover bids. They are also designed, in part, to encourage persons seeking to acquire control of us to negotiate first with our board of directors. We believe that the benefits of increased protection of our potential ability to negotiate with an unfriendly or unsolicited acquirer outweigh the disadvantages of discouraging a proposal to acquire us because negotiation of these proposals could result in an improvement of their terms.

#### ***Delaware Law***

We are subject to the provisions of Section 203 of the DGCL regulating corporate takeovers. This section prevents some Delaware corporations, including us, from engaging, under some circumstances, in a business combination, which includes a merger or sale of at least 10% of the corporation's assets with any interested stockholder, meaning a stockholder who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own 15% or more of the corporation's outstanding voting stock, unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced; or
- at or subsequent to such time that the stockholder became an interested stockholder, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders by at least two-thirds of the outstanding voting stock not owned by the interested stockholder.

A Delaware corporation may "opt out" of these provisions with an express provision in its original certificate of incorporation or an express provision in its certificate of incorporation or bylaws resulting from a stockholders' amendment approved by at least a majority of the outstanding voting shares. We have not and do not plan to "opt

out” of these provisions. The statute could prohibit or delay mergers or other takeover or change in control attempts and, accordingly, may discourage attempts to acquire us.

### ***Restated Certificate of Incorporation and Restated Bylaw Provisions***

Our restated certificate of incorporation and our restated bylaws include a number of provisions that may have the effect of deterring hostile takeovers or delaying or preventing changes in control, including the following:

- *Board of Directors Vacancies.* Our restated certificate of incorporation and restated bylaws authorize only our board of directors to fill vacant directorships, including newly created seats. In addition, the number of directors constituting our board of directors is permitted to be set only by a resolution adopted by a majority vote of our entire board of directors. These provisions would prevent a stockholder from increasing the size of our board of directors and then gaining control of our board of directors by filling the resulting vacancies with its own nominees. This makes it more difficult to change the composition of our board of directors but promotes continuity of management.
- *Classified Board.* Our restated certificate of incorporation and restated bylaws provide that our board is classified into three classes of directors, each with staggered three-year terms. A third party may be discouraged from making a tender offer or otherwise attempting to obtain control of us as it is more difficult and time consuming for stockholders to replace a majority of the directors on a classified board of directors.
- *Stockholder Action; Special Meetings of Stockholders.* Our restated certificate of incorporation provides that our stockholders may not take action by written consent, but may only take action at annual or special meetings of our stockholders. As a result, a holder controlling a majority of our capital stock would not be able to amend our restated bylaws or remove directors without holding a meeting of our stockholders called in accordance with our restated bylaws. Further, our restated bylaws provide that special meetings of our stockholders may be called only by a majority of our board of directors, the chairman of our board of directors, our Chief Executive Officer or our President, thus prohibiting a stockholder from calling a special meeting. These provisions might delay the ability of our stockholders to force consideration of a proposal or for stockholders controlling a majority of our capital stock to take any action, including the removal of directors.
- *Advance Notice Requirements for Stockholder Proposals and Director Nominations.* Our restated bylaws provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders. Our restated bylaws also specify certain requirements regarding the form and content of a stockholder’s notice. These provisions might preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders if the proper procedures are not followed. We expect that these provisions might also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer’s own slate of directors or otherwise attempting to obtain control of our company.
- *No Cumulative Voting.* The DGCL provides that stockholders are not entitled to the right to cumulate votes in the election of directors unless a corporation’s certificate of incorporation provides otherwise. Our restated certificate of incorporation and restated bylaws do not provide for cumulative voting.
- *Directors Removed Only for Cause.* Our restated certificate of incorporation provides that stockholders may remove directors only for cause and only by the affirmative vote of the holders of at least two-thirds of our outstanding common stock.
- *Amendment to Certificate of Incorporation and Bylaws.* Any amendment of the above provisions in our restated certificate of incorporation and restated bylaws requires approval by holders of at least two-thirds of our then-outstanding capital stock entitled to vote in the election of directors.

- *Issuance of Undesignated Preferred Stock.* Our board of directors has the authority, without further action by the stockholders, to issue up to 10,000,000 shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board of directors. The existence of authorized but unissued shares of preferred stock would enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by merger, tender offer, proxy contest or other means.
- *Choice of Forum.* Our restated certificate of incorporation provides that, to the fullest extent permitted by law, the Court of Chancery of the State of Delaware will be the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the DGCL, our restated certificate of incorporation or our restated bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. Our restated bylaws provide that the federal district courts of the United States of America will, to the fullest extent permitted by law, be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act, which we refer to as a Federal Forum Provision. Our decision to adopt a Federal Forum Provision followed a decision by the Supreme Court of the State of Delaware holding that such provisions are facially valid under Delaware law. While there can be no assurance that federal courts or state courts will follow the holding of the Delaware Supreme Court or determine that the Federal Forum Provision should be enforced in a particular case, application of the Federal Forum Provision means that suits brought by our stockholders to enforce any duty or liability created by the Securities Act must be brought in federal court and cannot be brought in state court. While neither the exclusive forum provision nor the Federal Forum Provision applies to suits brought to enforce any duty or liability created by the Exchange Act, Section 27 of the Exchange Act creates exclusive federal jurisdiction over all claims brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. Accordingly, actions by our stockholders to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder also must be brought in federal court. Our stockholders will not be deemed to have waived our compliance with the federal securities laws and the regulations promulgated thereunder. Any person or entity purchasing or otherwise acquiring or holding any interest in any of our securities shall be deemed to have notice of and consented to our exclusive forum provisions, including the Federal Forum Provision. These provisions may limit a stockholder's ability to bring a claim in a judicial forum of their choosing for disputes with us or our directors, executive officers or other employees, which may discourage lawsuits against us and our directors, executive officers, and other employees.

#### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Equiniti Trust Company, LLC.

#### **Listing**

Our common stock is quoted on The Nasdaq Global Select Market under the trading symbol "ANAB."

## DESCRIPTION OF DEBT SECURITIES

### General

We will issue the debt securities offered by this prospectus and any accompanying prospectus supplement under an indenture to be entered into between us and the trustee identified in the applicable prospectus supplement. The terms of the debt securities will include those stated in the indenture and those made part of the indenture by reference to the Trust Indenture Act of 1939, as in effect on the date of the indenture. We have filed a copy of the form of indenture as an exhibit to the registration statement in which this prospectus is included. The indenture will be subject to and governed by the terms of the Trust Indenture Act of 1939. Unless otherwise specified in the applicable prospectus supplement, the debt securities will represent our direct, unsecured obligations and will rank equally with all of our other unsecured indebtedness.

We may offer under this prospectus up to an aggregate principal amount of \$500,000,000 in debt securities, or if debt securities are issued at a discount, or in a foreign currency, foreign currency units or composite currency, the principal amount as may be sold for an aggregate public offering price of up to \$500,000,000. Unless otherwise specified in the applicable prospectus supplement, the debt securities will represent our direct, unsecured obligations and will rank equally with all of our other unsecured indebtedness.

We may issue the debt securities in one or more series with the same or various maturities, at par, at a premium, or at a discount. We will describe the particular terms of each series of debt securities in a prospectus supplement relating to that series, which we will file with the SEC. The prospectus supplement relating to the particular series of debt securities being offered will specify the particular amounts, prices and terms of those debt securities. These terms may include:

- the title of the series;
- the aggregate principal amount, and, if a series, the total amount authorized and the total amount outstanding;
- the issue price or prices, expressed as a percentage of the aggregate principal amount of the debt securities;
- any limit on the aggregate principal amount;
- the date or dates on which principal is payable;
- the interest rate or rates (which may be fixed or variable) or, if applicable, the method used to determine such rate or rates;
- the date or dates from which interest, if any, will be payable and any regular record date for the interest payable;
- the place or places where principal and, if applicable, premium and interest, is payable;
- the terms and conditions upon which we may, or the holders may require us to, redeem or repurchase the debt securities;
- the denominations in which such debt securities may be issuable, if other than denominations of \$1,000 or any integral multiple of that number;
- whether the debt securities are to be issuable in the form of certificated securities (as described below) or global securities (as described below);
- the portion of principal amount that will be payable upon declaration of acceleration of the maturity date if other than the principal amount of the debt securities;
- the currency of denomination;

- the designation of the currency, currencies or currency units in which payment of principal and, if applicable, premium and interest, will be made;
- if payments of principal and, if applicable, premium or interest, on the debt securities are to be made in one or more currencies or currency units other than the currency of denomination, the manner in which the exchange rate with respect to such payments will be determined;
- if amounts of principal and, if applicable, premium and interest may be determined by reference to an index based on a currency or currencies or by reference to a commodity, commodity index, stock exchange index or financial index, then the manner in which such amounts will be determined;
- the provisions, if any, relating to any collateral provided for such debt securities;
- any addition to or change in the covenants and/or the acceleration provisions described in this prospectus or in the indenture;
- any events of default, if not otherwise described below under “Events of Default”;
- the terms and conditions, if any, for conversion into or exchange for shares of our common stock or preferred stock;
- any depositaries, interest rate calculation agents, exchange rate calculation agents or other agents; and
- the terms and conditions, if any, upon which the debt securities shall be subordinated in right of payment to our other indebtedness.

We may issue discount debt securities that provide for an amount less than the stated principal amount to be due and payable upon acceleration of the maturity of such debt securities in accordance with the terms of the indenture. We may also issue debt securities in bearer form, with or without coupons. If we issue discount debt securities or debt securities in bearer form, we will describe material U.S. federal income tax considerations and other material special considerations which apply to these debt securities in the applicable prospectus supplement.

We may issue debt securities denominated in or payable in a foreign currency or currencies or a foreign currency unit or units. If we do, we will describe the restrictions, elections, and general tax considerations relating to the debt securities and the foreign currency or currencies or foreign currency unit or units in the applicable prospectus supplement.

Debt securities offered under this prospectus and any prospectus supplement will be subordinated in right of payment to certain of our outstanding senior indebtedness. In addition, we will seek the consent of the holders of any such senior indebtedness prior to issuing any debt securities under this prospectus to the extent required by the agreements evidencing such senior indebtedness.

#### **Registrar and Paying Agent**

The debt securities may be presented for registration of transfer or for exchange at the corporate trust office of the security registrar or at any other office or agency that we maintain for those purposes. In addition, the debt securities may be presented for payment of principal, interest and any premium at the office of the paying agent or at any office or agency that we maintain for those purposes.

#### **Conversion or Exchange Rights**

Debt securities may be convertible into or exchangeable for shares of our common stock. The terms and conditions of conversion or exchange will be stated in the applicable prospectus supplement. The terms will include, among others, the following:

- the conversion or exchange price;

- the conversion or exchange period;
- provisions regarding the convertibility or exchangeability of the debt securities, including who may convert or exchange;
- events requiring adjustment to the conversion or exchange price;
- provisions affecting conversion or exchange in the event of our redemption of the debt securities; and
- any anti-dilution provisions, if applicable.

### **Registered Global Securities**

If we decide to issue debt securities in the form of one or more global securities, then we will register the global securities in the name of the depositary for the global securities or the nominee of the depositary, and the global securities will be delivered by the trustee to the depositary for credit to the accounts of the holders of beneficial interests in the debt securities.

The prospectus supplement will describe the specific terms of the depositary arrangement for debt securities of a series that are issued in global form. None of us, the trustee, any payment agent or the security registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in a global debt security or for maintaining, supervising or reviewing any records relating to these beneficial ownership interests.

### **No Protection in the Event of Change of Control**

The indenture does not have any covenants or other provisions providing for a put or increased interest or otherwise that would afford holders of our debt securities additional protection in the event of a recapitalization transaction, a change of control or a highly leveraged transaction. If we offer any covenants or provisions of this type with respect to any debt securities covered by this prospectus, we will describe them in the applicable prospectus supplement.

### **Covenants**

Unless otherwise indicated in this prospectus or the applicable prospectus supplement, our debt securities will not have the benefit of any covenants that limit or restrict our business or operations, the pledging of our assets or the incurrence by us of indebtedness. We will describe in the applicable prospectus supplement any material covenants in respect of a series of debt securities.

### **Merger, Consolidation or Sale of Assets**

The form of indenture provides that we will not consolidate with or merge into any other person or convey, transfer, sell or lease our properties and assets substantially as an entirety to any person, unless:

- we are the surviving person of such merger or consolidation, or if we are not the surviving person, the person formed by the consolidation or into or with which we are merged or the person to which our properties and assets are conveyed, transferred, sold or leased, is a corporation organized and existing under the laws of the U.S., any state or the District of Columbia or a corporation or comparable legal entity organized under the laws of a foreign jurisdiction and has expressly assumed all of our obligations, including the payment of the principal of and, premium, if any, and interest on the debt securities and the performance of the other covenants under the indenture; and
- immediately before and immediately after giving effect to the transaction on a pro forma basis, no event of default, and no event which, after notice or lapse of time or both, would become an event of default, has occurred and is continuing under the indenture.



## Events of Default

Unless otherwise specified in the applicable prospectus supplement, the following events will be events of default under the indenture with respect to debt securities of any series:

- we fail to pay any principal or premium, if any, when it becomes due;
- we fail to pay any interest within 30 days after it becomes due;
- we fail to observe or perform any other covenant in the debt securities or the indenture for 60 days after written notice specifying the failure from the trustee or the holders of not less than 25% in aggregate principal amount of the outstanding debt securities of that series; and
- certain events involving bankruptcy, insolvency or reorganization of us or any of our significant subsidiaries.

The trustee may withhold notice to the holders of the debt securities of any series of any default, except in payment of principal or premium, if any, or interest on the debt securities of a series, if the trustee considers it to be in the best interest of the holders of the debt securities of that series to do so.

If an event of default (other than an event of default resulting from certain events of bankruptcy, insolvency or reorganization) occurs, and is continuing, then the trustee or the holders of not less than 25% in aggregate principal amount of the outstanding debt securities of any series may accelerate the maturity of the debt securities. If this happens, the entire principal amount, plus the premium, if any, of all the outstanding debt securities of the affected series plus accrued interest to the date of acceleration will be immediately due and payable. At any time after the acceleration, but before a judgment or decree based on such acceleration is obtained by the trustee, the holders of a majority in aggregate principal amount of outstanding debt securities of such series may rescind and annul such acceleration if:

- all events of default (other than nonpayment of accelerated principal, premium or interest) have been cured or waived;
- all lawful interest on overdue interest and overdue principal has been paid; and
- the rescission would not conflict with any judgment or decree.

In addition, if the acceleration occurs at any time when we have outstanding indebtedness that is senior to the debt securities, the payment of the principal amount of outstanding debt securities may be subordinated in right of payment to the prior payment of any amounts due under the senior indebtedness, in which case the holders of debt securities will be entitled to payment under the terms prescribed in the instruments evidencing the senior indebtedness and the indenture.

If an event of default resulting from certain events of bankruptcy, insolvency or reorganization occurs, the principal, premium and interest amount with respect to all of the debt securities of any series will be due and payable immediately without any declaration or other act on the part of the trustee or the holders of the debt securities of that series.

The holders of a majority in principal amount of the outstanding debt securities of a series will have the right to waive any existing default or compliance with any provision of the indenture or the debt securities of that series and to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, subject to certain limitations specified in the indenture.

No holder of any debt security of a series will have any right to institute any proceeding with respect to the indenture or for any remedy under the indenture, unless:

- the holder gives to the trustee written notice of a continuing event of default;

- the holders of at least 25% in aggregate principal amount of the outstanding debt securities of the affected series make a written request and offer reasonable indemnity to the trustee to institute a proceeding as trustee;
- the trustee fails to institute a proceeding within 60 days after such request; and
- the holders of a majority in aggregate principal amount of the outstanding debt securities of the affected series do not give the trustee a direction inconsistent with such request during such 60-day period.

These limitations do not, however, apply to a suit instituted for payment on debt securities of any series on or after the due dates expressed in the debt securities.

We will periodically deliver certificates to the trustee regarding our compliance with our obligations under the indenture.

### **Modification and Waiver**

From time to time, we and the trustee may, without the consent of holders of the debt securities of one or more series, amend the indenture or the debt securities of one or more series, or supplement the indenture, for certain specified purposes, including:

- to provide that the surviving entity following a change of control permitted under the indenture will assume all of our obligations under the indenture and debt securities;
- to provide for certificated debt securities in addition to uncertificated debt securities;
- to comply with any requirements of the SEC under the Trust Indenture Act of 1939;
- to provide for the issuance of and establish the form and terms and conditions of debt securities of any series as permitted by the indenture;
- to cure any ambiguity, defect or inconsistency, or make any other change that does not materially and adversely affect the rights of any holder; and
- to appoint a successor trustee under the indenture with respect to one or more series.

From time to time we and the trustee may, with the consent of holders of at least a majority in principal amount of an outstanding series of debt securities, amend or supplement the indenture or the debt securities series, or waive compliance in a particular instance by us with any provision of the indenture or the debt securities. We may not, however, without the consent of each holder affected by such action, modify or supplement the indenture or the debt securities or waive compliance with any provision of the indenture or the debt securities in order to:

- reduce the amount of debt securities whose holders must consent to an amendment, supplement, or waiver to the indenture or such debt security;
- reduce the rate of or change the time for payment of interest or reduce the amount of or postpone the date for payment of sinking fund or analogous obligations;
- reduce the principal of or change the stated maturity of the debt securities;
- make any debt security payable in money other than that stated in the debt security;
- change the amount or time of any payment required or reduce the premium payable upon any redemption, or change the time before which no such redemption may be made;
- waive a default in the payment of the principal of, premium, if any, or interest on the debt securities or a redemption payment;

- waive a redemption payment with respect to any debt securities or change any provision with respect to redemption of debt securities; or
- take any other action otherwise prohibited by the indenture to be taken without the consent of each holder affected by the action.

#### **Defeasance of Debt Securities and Certain Covenants in Certain Circumstances**

The indenture permits us, at any time, to elect to discharge our obligations with respect to one or more series of debt securities by following certain procedures described in the indenture. These procedures will allow us either:

- to defease and be discharged from any and all of our obligations with respect to any debt securities except for the following obligations (which discharge is referred to as “legal defeasance”):
  - to register the transfer or exchange of such debt securities;
  - to replace temporary or mutilated, destroyed, lost or stolen debt securities;
  - to compensate and indemnify the trustee;
  - to maintain an office or agency in respect of the debt securities and to hold monies for payment in trust; or
- to be released from our obligations with respect to the debt securities under certain covenants contained in the indenture, as well as any additional covenants which may be contained in the applicable supplemental indenture (which release is referred to as “covenant defeasance”).

In order to exercise either defeasance option, we must irrevocably deposit with the trustee or other qualifying trustee, in trust for that purpose:

- money;
- U.S. Government Obligations (as described below) or Foreign Government Obligations (as described below) that through the scheduled payment of principal and interest in accordance with their terms will provide money; or a combination of money and/or U.S. Government Obligations and/or Foreign Government Obligations sufficient in the written opinion of a nationally-recognized firm of independent accountants to provide money;
- that, in each case specified above, provides a sufficient amount to pay the principal of, premium, if any, and interest, if any, on the debt securities of the series, on the scheduled due dates or on a selected date of redemption in accordance with the terms of the indenture.

In addition, defeasance may be effected only if, among other things:

- in the case of either legal or covenant defeasance, we deliver to the trustee an opinion of counsel, as specified in the indenture, stating that as a result of the defeasance neither the trust nor the trustee will be required to register as an investment company under the Investment Company Act of 1940;
- in the case of legal defeasance, we deliver to the trustee an opinion of counsel stating that we have received from, or there has been published by, the Internal Revenue Service a ruling to the effect that, or there has been a change in any applicable federal income tax law with the effect that (and the opinion shall confirm that), the holders of outstanding debt securities will not recognize income, gain or loss for U.S. federal income tax purposes solely as a result of such legal defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner, including as a result of prepayment, and at the same times as would have been the case if legal defeasance had not occurred;
- in the case of covenant defeasance, we deliver to the trustee an opinion of counsel to the effect that the holders of the outstanding debt securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of covenant defeasance and will be subject to U.S. federal income tax on the same

amounts, in the same manner and at the same times as would have been the case if covenant defeasance had not occurred; and

- certain other conditions described in the indenture are satisfied.

If we fail to comply with our remaining obligations under the indenture and applicable supplemental indenture after a covenant defeasance of the indenture and applicable supplemental indenture, and the debt securities are declared due and payable because of the occurrence of any undefeased event of default, the amount of money and/or U.S. Government Obligations and/or Foreign Government Obligations on deposit with the trustee could be insufficient to pay amounts due under the debt securities of the affected series at the time of acceleration. We will, however, remain liable in respect of these payments.

The term “U.S. Government Obligations” as used in the above discussion means securities that are direct obligations of or non-callable obligations guaranteed by the United States of America for the payment of which obligation or guarantee the full faith and credit of the United States of America is pledged.

The term “Foreign Government Obligations” as used in the above discussion means, with respect to debt securities of any series that are denominated in a currency other than U.S. dollars, (1) direct obligations of the government that issued or caused to be issued such currency for the payment of which obligations its full faith and credit is pledged or (2) obligations of a person controlled or supervised by or acting as an agent or instrumentality of such government the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by that government, which in either case under clauses (1) or (2), are not callable or redeemable at the option of the issuer.

### **Regarding the Trustee**

We will identify the trustee with respect to any series of debt securities in the prospectus supplement relating to the applicable debt securities. You should note that if the trustee becomes a creditor of ours, the indenture and the Trust Indenture Act of 1939 limit the rights of the trustee to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim, as security or otherwise. The trustee and its affiliates may engage in, and will be permitted to continue to engage in, other transactions with us and our affiliates. If, however, the trustee acquires any “conflicting interest” within the meaning of the Trust Indenture Act of 1939, it must eliminate such conflict or resign.

The holders of a majority in principal amount of the then outstanding debt securities of any series may direct the time, method and place of conducting any proceeding for exercising any remedy available to the trustee. If an event of default occurs and is continuing, the trustee, in the exercise of its rights and powers, must use the degree of care and skill of a prudent person in the conduct of his or her own affairs. Subject to that provision, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request of any of the holders of the debt securities, unless they have offered to the trustee reasonable indemnity or security.

### **No Individual Liability of Incorporators, Stockholders, Officers or Directors**

Each indenture provides that no incorporator and no past, present or future stockholder, officer or director of our company or any successor corporation in those capacities will have any individual liability for any of our obligations, covenants or agreements under the debt securities or such indenture.

### **Governing Law**

The indentures and the debt securities will be governed by, and construed in accordance with, the laws of the State of New York.

## DESCRIPTION OF WARRANTS

### General

We may issue warrants for the purchase of our debt securities, preferred stock, common stock, or any combination thereof. Warrants may be issued independently or together with our debt securities, preferred stock or common stock and may be attached to or separate from any offered securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust company, as warrant agent. The warrant agent will act solely as our agent in connection with the warrants. The warrant agent will not have any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants. This summary of certain provisions of the warrants is not complete. For the terms of a particular series of warrants, you should refer to the prospectus supplement for that series of warrants and the warrant agreement for that particular series.

### Debt Warrants

The prospectus supplement relating to a particular issue of warrants to purchase debt securities will describe the terms of the debt warrants, including the following:

- the title of the debt warrants;
- the offering price for the debt warrants, if any;
- the aggregate number of the debt warrants;
- the designation and terms of the debt securities, including any conversion rights, purchasable upon exercise of the debt warrants;
- if applicable, the date from and after which the debt warrants and any debt securities issued with them will be separately transferable;
- the principal amount of debt securities that may be purchased upon exercise of a debt warrant and the exercise price for the warrants, which may be payable in cash, securities or other property;
- the dates on which the right to exercise the debt warrants will commence and expire;
- if applicable, the minimum or maximum amount of the debt warrants that may be exercised at any one time;
- whether the debt warrants represented by the debt warrant certificates or debt securities that may be issued upon exercise of the debt warrants will be issued in registered or bearer form;
- information with respect to book-entry procedures, if any;
- the currency or currency units in which the offering price, if any, and the exercise price are payable;
- if applicable, a discussion of material U.S. federal income tax considerations;
- the antidilution provisions of the debt warrants, if any;
- the redemption or call provisions, if any, applicable to the debt warrants;
- any provisions with respect to the holder's right to require us to repurchase the debt warrants upon a change in control or similar event; and
- any additional terms of the debt warrants, including procedures and limitations relating to the exchange, exercise, and settlement of the debt warrants.

Debt warrant certificates will be exchangeable for new debt warrant certificates of different denominations. Debt warrants may be exercised at the corporate trust office of the warrant agent or any other office indicated in the prospectus supplement. Prior to the exercise of their debt warrants, holders of debt warrants will not have any of the rights of holders of the debt securities purchasable upon exercise and will not be entitled to payment of principal or any premium, if any, or interest on the debt securities purchasable upon exercise.

### **Equity Warrants**

The prospectus supplement relating to a particular series of warrants to purchase our common stock or preferred stock will describe the terms of the warrants, including the following:

- the title of the warrants;
- the offering price for the warrants, if any;
- the aggregate number of warrants;
- the designation and terms of the common stock or preferred stock that may be purchased upon exercise of the warrants;
- if applicable, the designation and terms of the securities with which the warrants are issued and the number of warrants issued with each security;
- if applicable, the date from and after which the warrants and any securities issued with the warrants will be separately transferable;
- the number of shares of common stock or preferred stock that may be purchased upon exercise of a warrant and the exercise price for the warrants;
- the dates on which the right to exercise the warrants shall commence and expire;
- if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;
- the currency or currency units in which the offering price, if any, and the exercise price are payable;
- if applicable, a discussion of material U.S. federal income tax considerations;
- the antidilution provisions of the warrants, if any;
- the redemption or call provisions, if any, applicable to the warrants;
- any provisions with respect to a holder's right to require us to repurchase the warrants upon a change in control or similar event; and
- any additional terms of the warrants, including procedures and limitations relating to the exchange, exercise and settlement of the warrants.

Holders of equity warrants will not be entitled:

- to vote, consent, or receive dividends;
- receive notice as stockholders with respect to any meeting of stockholders for the election of our directors or any other matter; or
- exercise any rights as stockholders.

## DESCRIPTION OF SUBSCRIPTION RIGHTS

We may issue subscription rights to purchase our common stock, preferred stock or debt securities. These subscription rights may be offered independently or together with any other security offered hereby and may or may not be transferable by the stockholder receiving the subscription rights in such offering. In connection with any offering of subscription rights, we may enter into a standby arrangement with one or more underwriters or other purchasers pursuant to which the underwriters or other purchasers may be required to purchase any securities remaining unsubscribed for after such offering.

The prospectus supplement relating to any subscription rights we offer, if any, will, to the extent applicable, include specific terms relating to the offering, including some or all of the following:

- the price, if any, for the subscription rights;
- the exercise price payable for our common stock, preferred stock or debt securities upon the exercise of the subscription rights;
- the number of subscription rights to be issued to each stockholder;
- the number and terms of our common stock, preferred stock or debt securities which may be purchased per each subscription right;
- the extent to which the subscription rights are transferable;
- any other terms of the subscription rights, including the terms, procedures and limitations relating to the exchange and exercise of the subscription rights;
- the date on which the right to exercise the subscription rights shall commence, and the date on which the subscription rights shall expire;
- the extent to which the subscription rights may include an over-subscription privilege with respect to unsubscribed securities or an over-allotment privilege to the extent the securities are fully subscribed; and
- if applicable, the material terms of any standby underwriting or purchase arrangement which may be entered into by us in connection with the offering of subscription rights.

The description in the applicable prospectus supplement of any subscription rights we offer will not necessarily be complete and will be qualified in its entirety by reference to the applicable subscription rights certificate, which will be filed with the SEC if we offer subscription rights. We urge you to read the applicable subscription rights certificate and any applicable prospectus supplement in their entirety.

## **DESCRIPTION OF UNITS**

We may issue units consisting of some or all of the securities described above, in any combination, including common stock, preferred stock, warrants and/or debt securities. The terms of these units will be set forth in a prospectus supplement. The description of the terms of these units in the related prospectus supplement will not be complete. You should refer to the applicable form of unit and unit agreement for complete information with respect to these units.



## **LEGAL MATTERS**

Fenwick & West LLP, Seattle, Washington, will issue an opinion about certain legal matters with respect to the securities. Any underwriters or agents will be advised about legal matters relating to any offering by their own counsel.

## **EXPERTS**

The consolidated financial statements of AnaptysBio, Inc. as of December 31, 2023 and 2022, and for each of the years in the three-year period ended December 31, 2023, have been incorporated by reference herein and in the registration statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

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**\$500,000,000**  
**AnaptysBio, Inc.**

**Common Stock, Preferred Stock,  
Debt Securities, Warrants, Subscription Rights and Units**

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**PROSPECTUS**

**, 2024**

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**The information in this prospectus supplement is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus supplement is not an offer to sell these securities, and it is not soliciting an offer to buy these securities, in any jurisdiction where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED NOVEMBER 5, 2024**

**PROSPECTUS SUPPLEMENT**

**(To Prospectus Dated \_\_\_\_\_, 2024)**

# **AnaptysBio, Inc.**

## **\$100,000,000**

### **Common Stock**

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We have entered into a sales agreement, or the sales agreement, with TD Securities (USA) LLC, or TD Cowen, relating to the sale of shares of our common stock, \$0.001 par value per share, offered by this prospectus supplement and the accompanying base prospectus. In accordance with the terms of the sales agreement, under this prospectus, we may offer and sell shares of our common stock, having an aggregate offering price of up to \$100 million from time to time through TD Cowen, acting as our agent.

Our common stock is traded on The Nasdaq Global Select Market under the symbol “ANAB.” The last reported sales price of our common stock on The Nasdaq Global Select Market on November 1, 2024 was \$21.68 per share.

Sales of our common stock, if any, under this prospectus supplement may be made in sales deemed to be an “at-the-market” offering as defined in Rule 415(a)(4) promulgated under the Securities Act of 1933, as amended, or the Securities Act. TD Cowen is not required to sell any specific number or dollar amount of securities, but will act as a sales agent using commercially reasonable efforts consistent with its normal trading and sales practices, on mutually agreed terms between TD Cowen and us. There is no arrangement for funds to be received in any escrow, trust or similar arrangement.

The compensation to TD Cowen for sales of common stock sold pursuant to the sales agreement will be at a commission rate up to 3.0% of the aggregate gross proceeds of any shares of common stock sold under the sales agreement. In connection with the sale of the common stock on our behalf, TD Cowen will be deemed to be an “underwriter” within the meaning of the Securities Act and the compensation of TD Cowen will be deemed to be underwriting commissions or discounts. We have also agreed to provide indemnification and contribution to TD Cowen with respect to certain liabilities, including liabilities under the Securities Act or the Securities Exchange Act of 1934, as amended, or the Exchange Act. See “Plan of Distribution” beginning on page S-14 of this prospectus supplement regarding the compensation to be paid to TD Cowen.

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**Investing in our securities involves a high degree of risk. You should review carefully the risks and uncertainties referenced under the heading “Risk Factors” on page S-5 of this prospectus supplement and under similar headings in the documents incorporated by reference into this prospectus supplement and the accompanying base prospectus.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus supplement is truthful or complete. Any representation to the contrary is a criminal offense.**

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**TD Cowen**

**The date of this prospectus supplement is , 2024.**

**TABLE OF CONTENTS**  
**Prospectus Supplement**

	<u>PAGE</u>
<a href="#"><u>ABOUT THIS PROSPECTUS SUPPLEMENT</u></a>	S-1
<a href="#"><u>PROSPECTUS SUPPLEMENT SUMMARY</u></a>	S-2
<a href="#"><u>RISK FACTORS</u></a>	S-5
<a href="#"><u>SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS</u></a>	S-7
<a href="#"><u>WHERE YOU CAN FIND MORE INFORMATION</u></a>	S-8
<a href="#"><u>INCORPORATION OF INFORMATION BY REFERENCE</u></a>	S-9
<a href="#"><u>USE OF PROCEEDS</u></a>	S-10
<a href="#"><u>DIVIDEND POLICY</u></a>	S-11
<a href="#"><u>DILUTION</u></a>	S-12
<a href="#"><u>PLAN OF DISTRIBUTION</u></a>	S-14
<a href="#"><u>LEGAL MATTERS</u></a>	S-15
<a href="#"><u>EXPERTS</u></a>	S-16

## ABOUT THIS PROSPECTUS SUPPLEMENT

This prospectus supplement and the accompanying prospectus are part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or the SEC, using a “shelf” registration process. Under this shelf registration process, we may from time to time sell any combination of the securities described in our base prospectus included in the shelf registration statement in one or more offerings up to a total aggregate offering price of \$500 million. The \$100 million of common stock that may be offered, issued and sold under this prospectus supplement is included in the \$500 million of securities that may be offered, issued and sold by us pursuant to our shelf registration statement.

We provide information to you about this offering of shares of our common stock in two separate documents: (1) this prospectus supplement, which describes the specific details regarding this offering; and (2) the base prospectus referred to on the cover page of this prospectus, which provides general information, some of which may not apply to this offering. Generally, when we refer to this prospectus, we are referring to both parts of this document combined. Before you invest, you should carefully read this prospectus supplement, the accompanying base prospectus and the information incorporated by reference herein and therein, as well as the additional information described in this prospectus supplement under “Where You Can Find More Information.” This prospectus supplement may add, update or change information contained in the accompanying base prospectus. To the extent that any statement we make in this prospectus supplement is inconsistent with statements made in the accompanying base prospectus or any documents incorporated by reference therein, the statements made in this prospectus supplement will be deemed to modify or supersede those made in the accompanying base prospectus and such documents incorporated by reference therein.

We have not, and TD Cowen has not, authorized anyone to provide you with any information other than that contained or incorporated by reference in this prospectus supplement, the accompanying base prospectus or any related free writing prospectus to which we have referred you. Neither we nor TD Cowen take any responsibility for, and can provide no assurance as to the reliability of, any other information others may give you. We are not, and TD Cowen is not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted or in which the person making that offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make an offer or solicitation. You should assume that the information appearing in this prospectus supplement, the accompanying base prospectus, the documents incorporated by reference herein and therein and any free writing prospectus that we have authorized for use in connection with this offering, is accurate only as of the date of those respective documents. Our business, financial condition, results of operations and prospects may have changed since those dates. You should read this prospectus supplement, the accompanying base prospectus, the documents incorporated by reference herein and therein and any free writing prospectus that we have authorized for use in connection with this offering, in their entirety before making an investment decision.

In this prospectus supplement, unless the context otherwise requires, the terms “AnaptysBio,” the “Company,” “we,” “us,” and “our” refer to AnaptysBio, Inc., a Delaware corporation. This prospectus supplement, the accompanying base prospectus and the information incorporated by reference herein and therein may contain additional trade names, trademarks and service marks of other companies, which are the property of their respective owners. We do not intend our use or display of other companies’ trade names, trademarks or service marks to imply a relationship with, or endorsement or sponsorship of us by, these other companies.

## PROSPECTUS SUPPLEMENT SUMMARY

*This summary may not contain all the information that you should consider before investing in securities. You should read the entire prospectus supplement, the accompanying base prospectus and the information incorporated by reference herein and therein carefully, including “Risk Factors” and the financial data and related notes and other information incorporated by reference, before making an investment decision.*

### **Company Overview**

We are a clinical-stage biotechnology company focused on delivering innovative immunology therapeutics for autoimmune and inflammatory diseases. Our pipeline includes two programs targeting co-inhibitory receptors: rosnilimab, our PD-1 agonist in a Phase 2b trial for the treatment of moderate-to-severe rheumatoid arthritis, and a Phase 2 trial for the treatment of moderate-to-severe ulcerative colitis; and ANB032, our BTLA agonist, in a Phase 2b trial for the treatment of moderate-to-severe atopic dermatitis. We also have other antibodies in our portfolio, including ANB033, an anti-CD122 antagonist, in a Phase 1 trial and ANB101, a BDCA2 modulator, soon to enter clinical development. In addition, we have developed two cytokine antagonists that are available for out-licensing: imsidolimab, our anti-IL-36R antagonist, that has completed Phase 3 trials for the treatment of generalized pustular psoriasis, and etokimab, our anti-IL-33 antagonist that is Phase 2/3 ready. We have also discovered multiple therapeutic antibodies licensed to GlaxoSmithKline, Inc. (“GSK”), in a financial collaboration for immuno-oncology, including an anti-PD-1 antagonist (Jemperli (dostarlimab-gxly) or “*Jemperli*”) and an anti-TIM-3 antagonist (cobolimab, GSK4069889). We currently recognize revenue from milestones and royalties achieved under our immuno-oncology collaboration with GSK.

### **Corporate Information**

We were incorporated under the laws of the State of Delaware in November 2005. Our principal executive offices are located at 10770 Wateridge Circle, Suite 210, San Diego, California 92121, and our telephone number is (858) 362-6295. Our website address is [www.anaptysbio.com](http://www.anaptysbio.com). The information contained on, or that can be accessed through, our website is not part of, and is not incorporated by reference into, this prospectus supplement or into the accompanying base prospectus.

### **Smaller reporting company**

We are a “smaller reporting company” as defined in Rule 405 of the Securities Act. We will remain a smaller reporting company until the last day of the fiscal year in which the aggregate market value of our common stock that is held by non-affiliates is at least \$250 million or the last day of the fiscal year in which we have at least \$100 million in revenue and the aggregate market value of our common stock that is held by non-affiliates is at least \$700 million (in each case, with respect to the aggregate market value of our common stock held by non-affiliates, as measured as of the last business day of the second quarter of such fiscal year).

## THE OFFERING

<b>Common stock offered by us</b> . . . . .	Shares of our common stock having an aggregate offering price of up to \$100 million.
<b>Common stock to be outstanding immediately after this offering</b> . . . . .	Up to 35,041,228 shares (as more fully described in the notes following this table), assuming sales of 4,612,546 shares of our common stock in this offering at an offering price of \$21.68 per share, which was the last reported sale price of our common stock on The Nasdaq Global Select Market on November 1, 2024. The actual number of shares issued will vary depending on the sales price under this offering.
<b>Plan of Distribution</b> . . . . .	“At-the-market” offering that may be made from time to time through our sales agent, TD Securities (USA) LLC, or TD Cowen. See “Plan of Distribution” on page S-14 of this prospectus supplement.
<b>Use of Proceeds</b> . . . . .	We currently intend to use the net proceeds of this offering primarily for general corporate purposes, which may include funding research, clinical and process development and manufacturing of our product candidates, working capital and capital expenditures. See “Use of Proceeds” on page S-10 of this prospectus supplement.
<b>Risk Factors</b> . . . . .	Investing in our common stock involves significant risks. See the disclosure under the heading “Risk Factors” on page S-5 of this prospectus supplement and under similar headings in other documents incorporated by reference into this prospectus.

### **The Nasdaq Global Select Market Symbol** . . “ANAB”

The number of shares of our common stock shown above to be outstanding after this offering is based on 30,428,682 shares of our common stock outstanding as of September 30, 2024, and excludes:

- 5,957,416 shares of common stock issuable upon exercise of outstanding options as of September 30, 2024, with a weighted-average exercise price of \$25.33 per share;
- 1,180,583 shares of common stock issuable upon vesting of outstanding restricted stock unit grants as of September 30, 2024;
- 511,000 shares of common stock issuable upon the vesting of performance-based stock units grants as of September 30, 2024;
- 32,200 shares of common stock issuable upon the exercise of options granted after September 30, 2024, with a weighted-average exercise price of \$33.27 per share;

- 11,800 shares of common stock issuable upon the vesting of restricted stock units granted after September 30, 2024; and
- 5,014,297 shares of common stock reserved and available for future issuance as of September 30, 2024 under our equity incentive plans, consisting of (1) 3,067,332 shares of common stock reserved and available for issuance under our Amended and Restated 2017 Equity Incentive Plan (which number is prior to the options and restricted stock units granted after September 30, 2024 in the preceding bullets), and (2) 1,946,965 shares of common stock reserved for issuance under our 2017 Employee Stock Purchase Plan as of September 30, 2024.

Except as otherwise indicated, all information in this prospectus supplement assumes no exercise of the outstanding options or vesting of restricted stock units described above and does not assume or give effect to any exercise of outstanding options after September 30, 2024.

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## RISK FACTORS

*An investment in our securities involves a high degree of risk. The prospectus supplement applicable to each offering of securities will contain a discussion of the risks applicable to an investment in our securities. Prior to making a decision about investing in our securities, you should carefully consider the specific factors discussed under the heading "Risk Factors" in this prospectus supplement and the accompanying base prospectus, together with all of the other information contained or incorporated by reference herein or therein. You should also consider the risks, uncertainties and assumptions discussed under Part II, Item 1A, "Risk Factors," in our Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2024, which is incorporated herein by reference, and may be amended, supplemented or superseded from time to time by other reports we file with the SEC in the future. The risks and uncertainties we have described are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our operations.*

### **Risks Relating to this Offering**

***If you purchase shares of our common stock sold in this offering, you may experience immediate and substantial dilution in the net tangible book value of your shares. In addition, we may issue additional equity or convertible debt securities in the future, which may result in additional dilution to you.***

The price per share of our common stock being offered may be higher than the net tangible book value per share of our outstanding common stock prior to this offering. Assuming that an aggregate of 4,612,546 shares of our common stock are sold at a price of \$21.68 per share, the last reported sale price of our common stock on The Nasdaq Global Select Market on November 1, 2024, for aggregate gross proceeds of approximately \$100 million, and after deducting commissions and estimated offering expenses payable by us, new investors in this offering will incur immediate dilution of \$16.49 per share. For a more detailed discussion of the foregoing, see the section entitled "Dilution" below. To the extent outstanding stock options or warrants are exercised, there will be further dilution to new investors. In addition, to the extent we need to raise additional capital in the future and we issue additional shares of common stock or securities convertible or exchangeable for our common stock, our then existing stockholders may experience dilution and the new securities may have rights senior to those of our common stock offered in this offering.

***We have broad discretion in the use of the net proceeds from this offering and our investment of these proceeds may not yield a favorable return.***

Our management will have broad discretion in the application of the net proceeds from this offering, including for any of the purposes described in the section entitled "Use of Proceeds," and you will not have the opportunity as part of your investment decision to assess whether the net proceeds are being used appropriately. Because of the number and variability of factors that will determine our use of the net proceeds from this offering, their ultimate use may vary substantially from their currently intended use. Our management might not apply our net proceeds in ways that ultimately increase the value of your investment. We expect to use the net proceeds from this offering to fund research, clinical and process development and manufacturing of our product candidates, working capital, capital expenditures and other general corporate purposes. Additionally, we may use a portion of the net proceeds from this offering to develop our commercialization infrastructure, expand our manufacturing capabilities and expand our current business by in-licensing or acquiring, as the case may be, commercial products, product candidates, technologies, compounds, other assets or complementary businesses, using cash or shares of our common stock. However, we have no current commitments or obligations to do so. The failure by our management to apply these funds effectively could harm our business. Pending their use, we plan to invest the net proceeds from this offering in short-term or long-term, investment-grade, interest-bearing securities. These investments may not yield a favorable return to our stockholders. If we do not invest or apply the net proceeds from this offering in ways that enhance stockholder value, we may fail to achieve expected financial results, which could cause our stock price to decline.

***The actual number of shares we may issue under the sales agreement, at any one time or in total, is uncertain.***

Subject to certain limitations in the sales agreement and compliance with applicable law, we have the discretion to deliver a placement notice to TD Cowen at any time throughout the term of the sales agreement. The number of shares that are sold by TD Cowen after delivering a placement notice will fluctuate based on the market price of the common stock during the sales period and limits we set with TD Cowen. Because the price per share of each share sold will fluctuate based on the market price of our common stock during the sales period, it is not possible at this stage to predict the number of shares that will be ultimately issued.

***The common stock offered hereby will be sold in “at-the-market” offerings, and investors who buy shares at different times will likely pay different prices.***

Investors who purchase shares in this offering at different times will likely pay different prices, and so may experience different outcomes in their investment results. We will have discretion, subject to market demand, to vary the timing, prices, and numbers of shares sold, and there is no minimum or maximum sales price. Investors may experience a decline in the value of their shares as a result of share sales made at prices lower than the prices they paid.

***We are subject to market price volatility.***

The stock markets in general, and the markets for pharmaceutical, biopharmaceutical and biotechnology stocks in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of the issuer. Furthermore, the trading price of our common stock may be adversely affected by third-parties trying to drive down the market price. Short sellers and others, some of whom post anonymously on social media, may be positioned to profit if our stock declines and their activities can negatively affect our stock price. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus supplement and documents incorporated herein by reference contain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements involve a number of risks and uncertainties. We caution readers that any forward-looking statement is not a guarantee of future performance and that actual results could differ materially from those contained in the forward-looking statement. These statements are based on current expectations of future events. Such statements include, but are not limited to, statements about future financial and operating results, plans, objectives, expectations and intentions, costs and expenses, interest rates, outcome of contingencies, financial condition, results of operations, liquidity, cost savings, objectives of management, business strategies, debt financing, clinical trial timing and plans, the achievement of clinical and commercial milestones, the advancement of our technologies and our proprietary and partnered products and product candidates, and other statements that are not historical facts. You can find many of these statements by looking for words like “believes,” “expects,” “anticipates,” “estimates,” “may,” “might,” “should,” “will,” “could,” “plan,” “intend,” “project,” “seek” or similar expressions in this prospectus supplement or in documents incorporated by reference into this prospectus supplement. We intend that such forward-looking statements be subject to the safe harbors created thereby.

These forward-looking statements are based on the current beliefs and expectations of our management and are subject to significant risks and uncertainties. If underlying assumptions prove inaccurate or unknown risks or uncertainties materialize, actual results may differ materially from current expectations and projections. Factors that might cause such a difference include those discussed in the “Risk Factors” sections of this prospectus supplement, Part II, Item 1A, “Risk Factors” in our most recent Annual Report on Form 10-K and in our Quarterly Reports on Form 10-Q, which are incorporated by reference herein, as well as those discussed in this prospectus supplement, the underlying base prospectus and in the documents incorporated by reference into this prospectus supplement and the underlying base prospectus. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this prospectus supplement or, in the case of documents referred to or incorporated by reference, the date of those documents.

All subsequent written or oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. We do not undertake any obligation to release publicly any revisions to these forward-looking statements to reflect events or circumstances after the date of this prospectus supplement or to reflect the occurrence of unanticipated events, except as may be required under applicable U.S. securities law. If we do update one or more forward-looking statements, no inference should be drawn that we will make additional updates with respect to those or other forward-looking statements.

## **WHERE YOU CAN FIND MORE INFORMATION**

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the Exchange Act) and are required to file annual, quarterly and other reports, proxy statements and other information with the SEC. The SEC maintains an Internet site (<http://www.sec.gov>) that contains reports, proxy and information statements, and various other information about us.

Information about us is also available at our website at <http://www.anaptysbio.com>. However, the information on our website is not a part of this prospectus supplement and is not incorporated by reference into this prospectus supplement.

## INCORPORATION OF INFORMATION BY REFERENCE

The SEC allows us to “incorporate by reference” information that we file with the SEC, which means that we can disclose important information to you by referring you to those other documents. The information incorporated by reference is an important part of this prospectus supplement, and information we file later with the SEC will automatically update and supersede this information. A Current Report (or portion thereof) furnished, but not filed, on Form 8-K shall not be incorporated by reference into this prospectus supplement. You should refer to the registration statement, including the exhibits, for further information about us and the securities we may offer pursuant to this prospectus. We incorporate by reference the documents listed below and any future filings we make with the SEC under Section 13(a), 13(c), 14, or 15(d) of the Exchange Act prior to the termination of any offering of securities made by this prospectus supplement:

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2023 filed with the SEC on [March 11, 2024](#);
- our Quarterly Reports on Form 10-Q for the fiscal quarter ended March 31, 2024 filed with the SEC on [May 9, 2024](#), the fiscal quarter ended June 30, 2024 filed with the SEC on [August 5, 2024](#) and the fiscal quarter ended September 30, 2024 filed with the SEC on [November 5, 2024](#);
- the portions of our definitive proxy statement on Schedule 14A filed with the SEC on [April 24, 2024](#) that are deemed “filed” with the SEC under the Exchange Act;
- our Current Reports on Form 8-K filed on [June 12, 2024](#) and [August 14, 2024](#); and
- the description of our common stock contained in our registration statement on Form 8-A filed with the SEC on [March 2, 2020](#) under Section 12 of the Exchange Act, including any amendment or report filed for the purpose of updating such description.

All reports and other documents we subsequently file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the termination of this offering, including all such documents we may file with the SEC after the date of the initial registration statement and prior to the effectiveness of the registration statement, but excluding any information furnished to, rather than filed with, the SEC, will also be incorporated by reference in this prospectus and deemed to be part of this prospectus from the date of the filing of such reports and documents.

Upon written or oral request, we will provide without charge to each person, including any beneficial owner, to whom this prospectus supplement is delivered, a copy of any or all of such information that has been incorporated herein by reference (other than exhibits to such documents unless such exhibits are specifically incorporated by reference into the documents that this prospectus supplement incorporates). Written or oral requests for copies should be directed to AnaptysBio, Inc., Attn: Investor Relations, 10770 Wateridge Circle, Suite 210, telephone number (858) 362-6295. See the section of this prospectus entitled “Where You Can Find More Information” for information concerning how to read and obtain copies of materials that we file with the SEC.

Any statement contained in this prospectus supplement, or in a document all or a portion of which is incorporated by reference, shall be modified or superseded for purposes of this prospectus supplement to the extent that a statement contained in this prospectus supplement, the accompanying base prospectus or any document incorporated by reference modifies or supersedes such statement. Any such statement so modified or superseded shall not, except as so modified or superseded, constitute a part of this prospectus supplement.

## USE OF PROCEEDS

We may issue and sell shares of our common stock having aggregate sales proceeds of up to \$100 million from time to time. Because there is no minimum offering amount required as a condition to close this offering, the actual total public offering amount, commissions and proceeds to us, if any, are not determinable at this time. There can be no assurance that we will sell any shares under or fully utilize the sales agreement with TD Cowen as a source of financing.

We currently intend to use any net proceeds from the sale of securities under this prospectus supplement primarily to fund research, clinical and process development and manufacturing of our product candidates, working capital, capital expenditures and other general corporate purposes. Additionally, we may use a portion of the net proceeds from this offering to expand our current business by in-licensing or acquiring, as the case may be, commercial products, product candidates, technologies, compounds, other assets or complementary businesses, using cash or shares of our common stock. However, we have no current commitments or obligations to do so.

The amounts and timing of our actual expenditures will depend on numerous factors, including the progress of our clinical trials and other development efforts and other factors described under “Risk Factors” in this prospectus supplement, the accompanying base prospectus and the documents incorporated by reference herein and therein, as well as the amount of cash used in our operations. We may find it necessary or advisable to use the net proceeds for other purposes, and we will have broad discretion in the application of the net proceeds. Pending the uses described above, we plan to invest the net proceeds from this offering in short-term or long-term, investment-grade, interest-bearing securities.

## **DIVIDEND POLICY**

We have never declared or paid any cash dividends on our capital stock. We intend to retain future earnings, if any, to finance the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. Any future determination related to our dividend policy will be made at the discretion of our board of directors after considering our financial condition, results of operations, capital requirements, business prospects and other factors the board of directors deems relevant, and subject to the restrictions contained in any future financing instruments.

## DILUTION

If you invest in our common stock, your ownership interest will be diluted to the extent of the difference between the price per share you pay in this offering and the net tangible book value per share of our common stock immediately after this offering. Our net tangible book value of our common stock as of September 30, 2024 was approximately \$84.4 million, or approximately \$2.77 per share of common stock based upon 30,428,682 shares of common stock outstanding. Net tangible book value per share is equal to our total tangible assets, less our total liabilities, divided by the total number of shares of common stock outstanding as of September 30, 2024.

After giving effect to the sale of our common stock in the aggregate amount of \$100 million at an assumed offering price of \$21.68 per share, the last reported sale price of our common stock on The Nasdaq Global Select Market on November 1, 2024, and after deducting commissions and estimated offering expenses payable by us, our as adjusted net tangible book value as of September 30, 2024 would have been \$181.9 million, or \$5.19 per share of common stock. This represents an immediate increase in net tangible book value of \$2.42 per share to our existing stockholders and an immediate dilution in net tangible book value of \$16.49 per share to new investors in this offering.

The following table illustrates this calculation on a per share basis. The as-adjusted information is illustrative only and will adjust based on the actual price to the public, the actual number of shares sold and other terms of the offering determined at the time shares of our common stock are sold pursuant to this prospectus supplement. The as-adjusted information assumes that all of our common stock in the aggregate amount of \$100 million is sold at the assumed offering price of \$21.68 per share, the last reported sale price of our common stock on The Nasdaq Global Select Market on November 1, 2024. The shares sold in this offering, if any, will be sold from time to time at various prices.

Assumed public offering price per share		\$21.68
Net tangible book value per share as of September 30, 2024	\$2.77	
Increase in net tangible book value per share attributable to the offering	\$2.42	
As adjusted net tangible book value per share after giving effect to the offering		\$5.19
Dilution per share to new investors participating in the offering		\$16.49

The number of shares of our common stock shown above to be outstanding after this offering is based on 30,428,682 shares of our common stock outstanding as of September 30, 2024, and excludes:

- 5,957,416 shares of common stock issuable upon exercise of outstanding options as of September 30, 2024, with a weighted-average exercise price of \$25.33 per share;
- 1,180,583 shares of common stock issuable upon vesting of outstanding restricted stock unit grants as of September 30, 2024;
- 511,000 shares of common stock issuable upon the vesting of performance-based stock units grants as of September 30, 2024;
- 32,200 shares of common stock issuable upon the exercise of options granted after September 30, 2024, with a weighted-average exercise price of \$33.27 per share;
- 11,800 shares of common stock issuable upon the vesting of restricted stock units granted after September 30, 2024; and
- 5,014,297 shares of common stock reserved and available for future issuance as of September 30, 2024, under our equity incentive plans, consisting of (1) 3,067,332 shares of common stock reserved and available



for issuance under our Amended and Restated 2017 Equity Incentive Plan (which number is prior to the options and restricted stock units granted after September 30, 2024 in the preceding bullets), and (2) 1,946,965 shares of common stock reserved for issuance under our 2017 Employee Stock Purchase Plan as of September 30, 2024.

The foregoing table assumes no exercise of the outstanding options or vesting of restricted stock units described above and does not assume or give effect to any exercise of outstanding options after September 30, 2024.

## PLAN OF DISTRIBUTION

We have entered into a sales agreement with TD Cowen under which we may issue and sell from time to time up to \$100 million of our common stock through or to TD Cowen as our sales agent or principal. Sales of our common stock, if any, will be made at market prices by any method that is deemed to be an “at-the-market” offering as defined in Rule 415 under the Securities Act. Sales pursuant to the sales agreement may be made through an affiliate of TD Cowen.

TD Cowen will offer our common stock subject to the terms and conditions of the sales agreement on a daily basis or as otherwise agreed upon by us and TD Cowen. We will designate the maximum amount of common stock to be sold through TD Cowen on a daily basis or otherwise determine such maximum amount together with TD Cowen. Subject to the terms and conditions of the sales agreement, TD Cowen will use its commercially reasonable efforts to sell on our behalf all of the shares of common stock requested to be sold by us. We may instruct TD Cowen not to sell common stock if the sales cannot be effected at or above the price designated by us in any such instruction. TD Cowen or we may suspend the offering of our common stock being made through TD Cowen under the sales agreement upon proper notice to the other party. TD Cowen and we each have the right, by giving written notice as specified in the sales agreement, to terminate the sales agreement in each party’s sole discretion at any time.

The aggregate compensation payable to TD Cowen as sales agent equals up to 3.0% of the gross sales price of the shares sold through it pursuant to the sales agreement. We have also agreed to reimburse TD Cowen up to \$75,000 of TD Cowen’s actual outside legal expenses incurred by TD Cowen in connection with this offering, and for certain other expenses. We estimate that the total expenses of the offering payable by us, excluding commissions payable to TD Cowen under the sales agreement, will be approximately \$350,000.

The remaining sales proceeds, after deducting any expenses payable by us and any transaction fees imposed by any governmental, regulatory or self-regulatory organization in connection with the sales, will equal our net proceeds for the sale of such common stock.

TD Cowen will provide written confirmation to us following the close of trading on The Nasdaq Global Select Market on each day in which common stock is sold through it as sales agent under the sales agreement. Each confirmation will include the number of shares of common stock sold through it as sales agent on that day, the volume weighted average price of the shares sold, the percentage of the daily trading volume and the net proceeds to us.

We will report at least quarterly the number of shares of common stock sold through TD Cowen under the sales agreement, the volume weighted average price of the common stock sold and the gross proceeds to us in connection with the sales of common stock.

Settlement for sales of common stock will occur, unless the parties agree otherwise, on the first business day that is also a trading day following the date on which any sales were made in return for payment of the net proceeds to us. There is no arrangement for funds to be received in an escrow, trust or similar arrangement.

In connection with the sales of our common stock on our behalf, TD Cowen will be deemed to be an “underwriter” within the meaning of the Securities Act, and the compensation paid to TD Cowen will be deemed to be underwriting commissions or discounts. We have agreed in the sales agreement to provide indemnification and contribution to TD Cowen against certain liabilities, including liabilities under the Securities Act. As sales agent, TD Cowen will not engage in any transactions that stabilizes our common stock.

Our common stock is listed on The Nasdaq Global Select Market and trades under the symbol “ANAB”. The transfer agent of our common stock is Equiniti Trust Company, LLC.

TD Cowen and/or its affiliates have provided, and may in the future provide, various investment banking and other financial services for us for which services they have received and, may in the future receive, customary fees.

## **LEGAL MATTERS**

Fenwick & West LLP, Seattle, Washington, will pass on certain legal matters relating to the issuance and sale of the securities offered hereby on behalf of AnaptysBio, Inc. TD Securities (USA) LLC is being represented in connection with this offering by Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Boston, Massachusetts.

## **EXPERTS**

The consolidated financial statements of AnaptysBio, Inc. as of December 31, 2023 and 2022, and for each of the years in the three-year period ended December 31, 2023, have been incorporated by reference herein and in the registration statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

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# **AnaptysBio, Inc.**

**\$100,000,000**

**Common Stock**

**PROSPECTUS SUPPLEMENT**

**TD Cowen**

**, 2024**

S-17

**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution**

The following table sets forth estimated expenses in connection with the issuance and distribution of the securities being registered:

SEC registration fee	\$ 64,495
Printing and engraving*	*
Legal fees and expenses*	*
Accounting fees and expenses*	*
Transfer agent and registrar fees and expenses*	*
Miscellaneous expenses*	*
Total*	<u>\$ *</u>

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\* These fees and expenses depend on the type of securities offered and the number of issuances and accordingly, cannot be estimated at this time.

## **Item 15. Indemnification of Officers and Directors**

Section 145 of the DGCL, authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and executive officers under certain circumstances and subject to certain limitations. The terms of Section 145 of the DGCL are sufficiently broad to permit indemnification under certain circumstances for liabilities, including reimbursement of expenses incurred, arising under the Securities Act.

As permitted by the DGCL, the registrant's restated certificate of incorporation contains provisions that eliminate the personal liability of its directors for monetary damages for any breach of fiduciary duties as a director, except liability for the following:

- any breach of the director's duty of loyalty to the registrant or its stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- under Section 174 of the DGCL (regarding unlawful dividends and stock purchases); or
- any transaction from which the director derived an improper personal benefit.

As permitted by the DGCL, the registrant's amended and restated bylaws provide that:

- the registrant is required to indemnify its directors and executive officers to the fullest extent permitted by the DGCL, subject to limited exceptions;
- the registrant may indemnify its other employees and agents as set forth in the DGCL;
- the registrant is required to advance expenses, as incurred, to its directors and executive officers in connection with a legal proceeding to the fullest extent permitted by the DGCL, subject to limited exceptions; and
- the rights conferred in the amended and restated bylaws are not exclusive.

The registrant entered into indemnification agreements with each of its current directors and executive officers to provide these directors and executive officers additional contractual assurances regarding the scope of the indemnification set forth in the registrant's restated certificate of incorporation and amended and restated bylaws and to provide additional procedural protections. There is no pending litigation or proceeding involving a director or executive officer of the registrant for which indemnification is sought. The indemnification provisions in the registrant's restated certificate of incorporation, amended and restated bylaws and the indemnification agreements entered into or to be entered into between the registrant and each of its directors and executive officers may be sufficiently broad to permit indemnification of the registrant's directors and executive officers for liabilities arising under the Securities Act.

The registrant has directors' and officers' liability insurance for securities matters.

## Item 16. Exhibits

The exhibits listed below are filed (except where otherwise indicated) as part of this Registration Statement.

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
1.1*	Form of Underwriting Agreement.					
1.2	<a href="#">Sales Agreement, dated November 5, 2024, by and between the Registrant and TD Securities (USA) LLC.</a>					X
3.1	<a href="#">Amended and Restated Certificate of Incorporation, as currently in effect.</a>	10-Q	001-37985	10.26	August 7, 2023	
3.2	<a href="#">Second Amended and Restated Bylaws, as currently in effect.</a>	8-K	001-37985	3.1	February 10, 2023	
4.1	<a href="#">Form of Common Stock Certificate.</a>	S-1	333-206849	4.1	December 23, 2015	
4.2	<a href="#">Form of Debt Security.</a>					X
4.3	<a href="#">Form of Indenture.</a>					X
4.4*	Form of Warrant.					
4.5*	Form of Warrant Agreement.					
4.6*	Form of Preferred Stock Certificate.					
4.7*	Form of Subscription Rights Certificate.					
4.8*	Form of Unit.					
4.9*	Form of Unit Agreement.					
5.1	<a href="#">Opinion of Fenwick &amp; West LLP.</a>					X
23.1	<a href="#">Consent of KPMG LLP, independent registered public accounting firm.</a>					X
23.2	<a href="#">Consent of Fenwick &amp; West LLP (included in Exhibit 5.1).</a>					X
24.1	<a href="#">Power of Attorney (included in the signature page to this registration statement).</a>					X
25.1**	Form T-1 Statement of Eligibility of Trustee for Senior Indenture under the Trust Indenture Act of 1939.					
25.2**	Form T-1 Statement of Eligibility of Trustee for Subordinated Indenture under the Trust Indenture Act of 1939.					
107	<a href="#">Filing Fee Table.</a>					X

\* To be filed by amendment or as an exhibit to a report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended and incorporated herein by reference.

\*\* To be filed in accordance with the requirements of Section 305(b)(2) of the Trust Indenture Act of 1939 and Rule 5b-3 thereunder.



## Item 17. Undertakings

The undersigned Registrant hereby undertakes:

(a)(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that subparagraphs (i), (ii), and (iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) Each prospectus filed by the Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following

communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;
- (iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and
- (iv) any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer, or controlling person of the Registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

(d) If and when applicable, the Registrant hereby further undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Securities and Exchange Commission under Section 305(b)(2) of the Trust Indenture Act.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on November 5, 2024.

**ANAPTYSBIO, INC.**

By: /s/ Daniel Faga  
Daniel Faga  
President and Chief Executive Officer

**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below hereby constitutes and appoints Daniel Faga, Dennis Mulroy and Eric Loumeau, and each one of them, as his or her true and lawful attorneys-in-fact, proxies and agents, each with full power of substitution and resubstitution and full power to act without the other, for him or her in any and all capacities, to sign any and all amendments to this registration statement (including post-effective amendments and registration statements filed pursuant to Rule 462 under the Securities Act of 1933, as amended), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact, proxies and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact, proxies and agents, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement on Form S-3 has been signed by the following persons in the capacities and on the dates indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Daniel Faga</u> Daniel Faga	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	November 5, 2024
<u>/s/ Dennis Mulroy</u> Dennis Mulroy	Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	November 5, 2024
<u>/s/ Dennis Fenton</u> Dennis Fenton Ph.D.	Director	November 5, 2024
<u>/s/ Rita Jain</u> Rita Jain, M.D.	Director	November 5, 2024
<u>/s/ Magda Marquet</u> Magda Marquet, Ph.D.	Director	November 5, 2024
<u>/s/ Oleg Nodelman</u> Oleg Nodelman	Director	November 5, 2024
<u>/s/ John Orwin</u> John Orwin	Director	November 5, 2024
<u>/s/ Hollings Renton</u> Hollings Renton	Director	November 5, 2024
<u>/s/ John Schmid</u> John Schmid	Director	November 5, 2024
<u>/s/ J. Anthony Ware</u> J. Anthony Ware, M.D.	Director	November 5, 2024

**Calculation Of Filing Fee Tables**

**Form S-3**  
(Form Type)

**AnaptysBio, Inc.**

(Exact Name of Registrant as Specified in its Charter)

**Table 1: Newly Registered and Carry Forward Securities**

Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee	Carry Forward Form Type	Carry Forward File Number	Carry Forward Initial Effective Date	Filing Fee Previously Paid in Connection with Unsold Securities to be Carried Forward
<b>Newly Registered Securities</b>											
Fees to be Paid	Equity	Common stock, par value \$0.001 per share	457(o)	(2)	(2)						
	Equity	Preferred stock, par value \$0.001 per share	457(o)	(2)	(2)						
	Debt	Debt securities	457(o)	(2)	(2)						
	Other	Warrants	457(o)	(2)	(2)						
	Other	Subscription Rights	457(o)	(2)	(2)						
	Other	Units	457(o)	(2)	(2)						
	Unallocated (Universal) Shelf	(1)	457(o)			\$300,393,177	\$0.00015310	\$45,991			
<b>Carry Forward Securities</b>											
Carry Forward Securities	Equity	Common stock, par value \$0.001 per share	415(a)(6)					Form S-3	333-261953	January 11, 2022	
	Equity	Preferred stock, par value \$0.001 per share	415(a)(6)					Form S-3	333-261953	January 11, 2022	
	Debt	Debt securities	415(a)(6)					Form S-3	333-261953	January 11, 2022	
	Other	Warrants	415(a)(6)					Form S-3	333-261953	January 11, 2022	
	Other	Subscription Rights	415(a)(6)					Form S-3	333-261953	January 11, 2022	
	Other	Units	415(a)(6)					Form S-3	333-261953	January 11, 2022	
	Unallocated (Universal) Shelf	(1)	415(a)(6)	(1)	(2)	\$199,606,823 (3)	\$0.00009270 (3)	Form S-3	333-261953	January 11, 2022	\$18,504
<b>Total Offering Amounts</b>					\$500,000,000		\$45,991				
<b>Total Fees Previously Paid</b>							—				
<b>Total Fee Offsets</b>							—				
<b>Net Fee Due</b>							\$45,991				

- (1) There is being registered hereunder an indeterminate number of shares of (a) common stock, (b) preferred stock, (c) debt securities, (d) warrants to purchase common stock, preferred stock or debt securities of the Registrant, (e) subscription rights to purchase common stock, preferred stock or debt securities of the Registrant, and (f) units, consisting of some or all of these securities in any combination, as may be sold from time to time by the Registrant. Any securities registered hereunder may be sold separately or as units with other securities registered hereunder. The proposed maximum initial offering price per unit will be determined, from time to time, by the registrant in connection with the issuance by the registrant of the securities registered hereunder. The \$500,000,000 of securities registered hereunder includes the shares of common stock that may be offered, issued and sold pursuant to that certain “at-the-market offering” sales agreement by and between the Registrant and TD Securities (USA) LLC. There is also being registered hereunder an indeterminate number of shares of common stock, preferred stock and debt securities as shall be issuable upon conversion, exchange or exercise of any securities that provide for such issuance. In no event will the aggregate offering price of all types of securities issued by the Registrant pursuant to this registration statement exceed \$500,000,000. Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement also covers any additional securities that may be offered or issued in connection with any stock split, stock dividend or similar transaction.
- (2) The proposed maximum offering price per share and proposed maximum aggregate offering price for each type of security will be determined from time to time by the Registrant in connection with the issuance by the Registrant of the securities registered hereunder and is not specified as to each class of security pursuant to Item 16(b) of Form S-3 under the Securities Act.
- (3) The \$500,000,000 of securities registered pursuant to this registration statement includes \$199,606,823 of securities (the “Unsold Securities”) registered pursuant to the Registration Statement on Form S-3 (No. 333-261953), filed on December 30, 2021, as amended (the “Prior Registration Statement”). Pursuant to Rule 415(a)(6) under the Securities Act, the \$18,504 of filing fees previously paid in connection with the Unsold Securities is hereby carried forward to be applied to the Unsold Securities registered hereunder and will continue to be applied to the Unsold Securities registered hereunder. To the extent that, after the filing date hereof and prior to the effectiveness of this registration statement, the registrant sells any Unsold Securities pursuant to the Prior Registration Statement, the Registrant will identify in a pre-effective amendment to this registration statement the updated number of Unsold Securities from the Prior Registration Statement to be included in this registration statement pursuant to Rule 415(a)(6). Pursuant to Rule 415(a)(6), the offering of Unsold Securities registered under the Prior Registration Statement will be deemed terminated as of the date of effectiveness of this registration statement.

**ANAPTYSBIO, INC.**  
**COMMON STOCK**

**SALES AGREEMENT**

November 5, 2024

TD Securities (USA) LLC  
1 Vanderbilt Avenue  
New York, New York 10022

Ladies and Gentlemen:

AnaptysBio, Inc. (the “**Company**”), confirms its agreement (this “**Agreement**”) with TD Securities (USA) LLC (“**TD Cowen**”), as follows:

1. **Issuance and Sale of Shares.** The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through TD Cowen, acting as agent and/or principal, shares (the “**Placement Shares**”) of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**”); *provided, however*, that in no event shall the Company issue or sell through TD Cowen such number or dollar amount of Placement Shares that would (a) exceed the number or dollar amount of shares of Common Stock registered on the effective Registration Statement (as defined below) pursuant to which the offering is being made, (b) exceed the number of authorized but unissued shares of Common Stock (less shares of Common Stock issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company’s authorized capital stock), (c) exceed the number or dollar amount of shares of Common Stock permitted to be sold under Form S-3 (including General Instruction I.B.6 thereof, if applicable) or (d) exceed the number or dollar amount of shares of Common Stock for which the Company has filed a Prospectus Supplement (as defined below) (the lesser of (a), (b), (c) and (d), the “**Maximum Amount**”). Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitation set forth in this **Section 1** on the number of shares of Common Stock issued and sold under this Agreement shall be the sole responsibility of the Company, and TD Cowen shall have no obligation in connection with such compliance. The issuance and sale of Common Stock through TD Cowen will be effected pursuant to the Registration Statement (as defined below) filed by the Company and after such Registration Statement has been declared effective by the Securities and Exchange Commission (the “**Commission**”), although nothing in this Agreement shall be construed as requiring the Company to use the Registration Statement (as defined below) to issue the Common Stock. The Company acknowledges and agrees that sales of Common Stock under this Agreement may be made through affiliates of TD Cowen, and that TD Cowen may otherwise fulfill its obligations pursuant to this Agreement to or through an affiliated broker-dealer.

The Company shall file, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, the “**Securities Act**”), with



the Commission a registration statement on Form S-3, including a base prospectus, relating to certain securities, including the Common Stock, to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively, the “**Exchange Act**”). The Company has prepared a prospectus supplement specifically relating to the Placement Shares (the “**Prospectus Supplement**”) to the base prospectus included as part of such registration statement. The Company shall furnish to TD Cowen, for use by TD Cowen, copies of the prospectus included as part of such registration statement, as supplemented by the Prospectus Supplement, relating to the Placement Shares. Except where the context otherwise requires, such registration statement, and any post-effective amendment thereto, as amended when it becomes effective, including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act or deemed to be a part of such registration statement pursuant to Rule 430B or 462(b) of the Securities Act, or any subsequent registration statement on Form S-3 filed pursuant to Rule 415(a)(6) under the Securities Act by the Company to cover any Placement Shares, is herein called the “**Registration Statement**.” Any registration statement and amendments thereto filed pursuant to Rule 462(b) of the Securities Act and relating to the offering covered by the Registration Statement is herein called a “**Rule 462(b) Registration Statement**” and, after such filing, the “Registration Statement” shall include any Rule 462(b) Registration Statement. The base prospectus, including all documents incorporated therein by reference, included in the Registration Statement, as it may be supplemented by the Prospectus Supplement, in the form in which such prospectus and/or Prospectus Supplement have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act, together with any “issuer free writing prospectus,” as defined in Rule 433 of the Securities Act regulations (“**Rule 433**”), relating to the Placement Shares that (i) is consented to by TD Cowen, hereinafter referred to as a “**Permitted Free Writing Prospectus**,” (ii) is required to be filed with the Commission by the Company or (iii) is exempt from filing pursuant to Rule 433(d)(5)(i), in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g), is herein called the “**Prospectus**.” Any reference herein to the Registration Statement, the Prospectus or any amendment or supplement thereto shall be deemed to refer to and include the documents incorporated by reference therein, and any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein. For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include any copy filed with the Commission pursuant to the Electronic Data Gathering Analysis and Retrieval System (“**EDGAR**”).

2. **Placements.** Each time that the Company wishes to issue and sell the Placement Shares hereunder (each, a “**Placement**”), it will notify TD Cowen by email notice (or other method mutually agreed to in writing by the parties) (a “**Placement Notice**”) containing the parameters in accordance with which it desires the Placement Shares to be sold, which shall at a minimum include the number of Placement Shares to be issued, the time period during which

sales are requested to be made, any limitation on the number of Placement Shares that may be sold in any one Trading Day (as defined in Section 3) and any minimum price below which sales may not be made, a form of which containing such minimum sales parameters necessary is attached hereto as Schedule 1. The Placement Notice shall originate from any of the individuals from the Company set forth on Schedule 2 (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from TD Cowen set forth on Schedule 2, as such Schedule 2 may be amended from time to time. The Placement Notice shall be effective upon receipt by TD Cowen unless and until (i) in accordance with the notice requirements set forth in Section 4, TD Cowen declines to accept the terms contained therein for any reason, in its sole discretion, (ii) the entire amount of the Placement Shares have been sold, (iii) in accordance with the notice requirements set forth in Section 4, the Company suspends or terminates the Placement Notice for any reason in its sole discretion, (iv) the Company issues a subsequent Placement Notice with parameters superseding those on the earlier dated Placement Notice, or (v) this Agreement has been terminated under the provisions of Section 11. The amount of any discount, commission or other compensation to be paid by the Company to TD Cowen in connection with the sale of the Placement Shares shall be calculated in accordance with the terms set forth in Schedule 3. It is expressly acknowledged and agreed that neither the Company nor TD Cowen will have any obligation whatsoever with respect to a Placement or any Placement Shares unless and until the Company delivers a Placement Notice to TD Cowen and TD Cowen does not decline such Placement Notice pursuant to the terms set forth above, and then only upon the terms specified therein and herein. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice, the terms of the Placement Notice will control.

3. Sale of Placement Shares by TD Cowen. Subject to the terms and conditions herein set forth, upon the Company's delivery of a Placement Notice, and unless the sale of the Placement Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, TD Cowen, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of The Nasdaq Stock Market LLC ("Nasdaq") to sell such Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. TD Cowen will provide written confirmation to the Company (including by email correspondence to each of the individuals of the Company set forth on Schedule 2, if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) no later than the opening of the Trading Day (as defined below) immediately following the Trading Day on which it has made sales of Placement Shares hereunder setting forth the number of Placement Shares sold on such day, the volume-weighted average price of the Placement Shares sold, and the Net Proceeds (as defined below) payable to the Company. In the event the Company engages TD Cowen for a sale of Placement Shares that would constitute a "block" within the meaning of Rule 10b-18(a)(5) under the Exchange Act (a "Block Sale"), the Company will provide TD Cowen, at TD Cowen's request and upon reasonable advance notice to the Company, on or prior to the Settlement Date (as defined below), the opinions of counsel, accountant's letter and officers' certificates set forth in Section 8 hereof, each dated the Settlement Date, and such other documents and information as TD Cowen shall reasonably request. TD Cowen may sell Placement Shares by any method permitted by law deemed to be an

“at the market” offering as defined in Rule 415 of the Securities Act, including without limitation sales made through Nasdaq or on any other existing trading market for the Common Stock. TD Cowen shall not purchase Placement Shares for its own account as principal unless expressly authorized to do so by the Company in a Placement Notice. The Company acknowledges and agrees that (i) there can be no assurance that TD Cowen will be successful in selling Placement Shares, and (ii) TD Cowen will incur no liability or obligation to the Company or any other person or entity if it does not sell Placement Shares for any reason other than a failure by TD Cowen to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Placement Shares as required under this Section 3. For the purposes hereof, “**Trading Day**” means any day on which the Company’s Common Stock is purchased and sold on the principal market on which the Common Stock is listed or quoted.

Notwithstanding any other provision of this Agreement, the Company shall not offer, sell or deliver, or request the offer or sale, of any Placement Shares pursuant to this Agreement and, by notice to TD Cowen given by telephone (confirmed promptly by email), shall cancel any instructions for the offer or sale of any Placement Shares, and TD Cowen shall not be obligated to offer or sell any Placement Shares, (i) during any period in which the Company is, or could be deemed to be, in possession of material non-public information, or (ii) at any time from and including the date on which the Company shall issue a press release containing, or shall otherwise publicly announce, its earnings, revenues or other results of operations (an “**Earnings Announcement**”) through and including the time that the Company files a Quarterly Report on Form 10-Q or an Annual Report on Form 10-K that includes consolidated financial statements as of and for the same period or periods, as the case may be, covered by such Earnings Announcement.

#### 4. Suspension of Sales.

(a) The Company or TD Cowen may, upon notice to the other party in writing (including by email correspondence to each of the individuals of the other party set forth on Schedule 2, if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence to each of the individuals of the other party set forth on Schedule 2), suspend any sale of Placement Shares; *provided, however*, that such suspension shall not affect or impair either party’s obligations with respect to any Placement Shares sold hereunder prior to the receipt of such notice. While a suspension is in effect, any obligations under Section 7 hereof with respect to the delivery of certificates, opinions or comfort letters to TD Cowen shall be waived. Each of the parties agrees that no such notice under this Section 4 shall be effective against the other unless it is made to one of the individuals named on Schedule 2 hereto, as such schedule may be amended from time to time.

(b) If either TD Cowen or the Company has reason to believe that the exemptive provisions set forth in Rule 101(c)(1) of Regulation M under the Exchange Act are not satisfied with respect to the Common Stock, it shall promptly notify the other party, and TD Cowen may, at its sole discretion, suspend sales of the Placement Shares under this Agreement.

(c) Notwithstanding any other provision of this Agreement, during any period in which the Registration Statement is no longer effective under the Securities Act, the Company shall promptly notify TD Cowen, the Company shall not request the sale of any Placement Shares, and TD Cowen shall not be obligated to sell or offer to sell any Placement Shares.

## 5. Settlement.

(a) Settlement of Placement Shares. Unless otherwise specified in the applicable Placement Notice, settlement for sales of Placement Shares will occur on the first (1<sup>st</sup>) Trading Day following the date on which such sales are made (each, a “**Settlement Date**” and the first such settlement date, the “**First Delivery Date**”). The amount of proceeds to be delivered to the Company on a Settlement Date against receipt of the Placement Shares sold (the “**Net Proceeds**”) will be equal to the aggregate sales price received by TD Cowen at which such Placement Shares were sold, after deduction for (i) TD Cowen’s commission, discount or other compensation for such sales payable by the Company pursuant to Section 2 hereof, (ii) any other amounts due and payable by the Company to TD Cowen hereunder pursuant to Section 7(g) (Expenses) hereof, and (iii) any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales.

(b) Delivery of Placement Shares. On or before each Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Placement Shares being sold by crediting TD Cowen’s or its designee’s account (provided TD Cowen shall have given the Company written notice of such designee at least 1 Trading Day prior to the Settlement Date) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System or by such other means of delivery as may be mutually agreed upon by the parties hereto which in all cases shall be freely tradeable, transferable, registered shares in good deliverable form. On each Settlement Date, TD Cowen will deliver the related Net Proceeds in same day funds to an account designated by the Company on, or prior to, the Settlement Date. The Company agrees that if the Company, or its transfer agent (if applicable), defaults in its obligation to deliver duly authorized Placement Shares on a Settlement Date (other than as a result of a failure by TD Cowen to timely provide instructions for delivery), the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Section 9(a) (Indemnification and Contribution) hereto, it will (i) hold TD Cowen harmless against any loss, claim, damage, or reasonable and documented expense (including reasonable and documented legal fees and expenses), as incurred, arising out of or in connection with such default by the Company and (ii) pay to TD Cowen (without duplication) any commission, discount, or other compensation to which it would otherwise have been entitled absent such default.

6. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with, TD Cowen that as of (i) the date of this Agreement, (ii) each Time of Sale (as defined below), (iii) each Settlement Date, and (iv) each Bring-Down Date (as defined below) (each date included in (i) through (iv), a “**Representation Date**”):

(a) Registration Statement. The Registration Statement and any Rule 462(b) Registration Statement will be or has 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 knowledge of the Company, contemplated or threatened by the Commission. The Company meets the requirements for use of Form S-3 under the Securities Act. The sale of the Placement Shares hereunder meets the requirements of General Instruction I.B.1 of Form S-3.

(b) No Misstatement or Omission. The Prospectus when filed complied and, as amended or supplemented, if applicable, will comply in all material respects with the Securities Act. Each of the Registration Statement, any Rule 462(b) Registration Statement, the Prospectus and any post-effective amendments or supplements thereto, at the time it becomes or became effective or its date, as applicable, complied and as of each Representation Date, complied and will comply in all material respects with the Securities Act and did not and, as of each Representation Date, 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. The Prospectus, as amended or supplemented, as of its date, did not and, as of each Representation 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 two 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 Agent's Information (as defined 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. As used herein, "**Time of Sale**" means with respect to each offering of Placement Shares pursuant to this Agreement, the time of TD Cowen's initial entry into contracts with purchasers for the sale of such Placement Shares.

(c) Offering Materials Furnished to TD Cowen. The Company has delivered to TD Cowen one complete copy of the Registration Statement and a copy of each consent and certificate of experts filed as a part thereof, and conformed copies of the Registration Statement (without exhibits) and the Prospectus, as amended or supplemented, in such quantities and at such places as TD Cowen has reasonably requested. The Registration Statement, the Prospectus and any Permitted Free Writing Prospectus (to the extent any such Permitted Free Writing Prospectus was required to be filed with the Commission) delivered to TD Cowen for use in connection with the public offering of the Placement Shares contemplated herein have been and will be identical to the versions of such documents transmitted to the Commission for filing via EDGAR, except to the extent permitted by Regulation S-T.

(d) Ineligible Issuer Status. The Company is not an "ineligible issuer" in connection with the offering of the Placement 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 all subsequent times through the completion of the issuance and sale of the Shares did not, 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 TD Cowen before first use, the Company has not prepared, used or referred to, and will not, without TD Cowen's prior consent, prepare, use or refer to, any Free Writing Prospectus.

(e) Due Incorporation; Subsidiary.

- (i) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of its jurisdiction of incorporation. The Company has full corporate power and authority to conduct all the activities conducted by it, to own or lease all the assets owned or leased by it and to conduct its business as described in the Registration Statement and the Prospectus. The Company is duly licensed or qualified to do business in and in good standing as a foreign corporation in all jurisdictions in which the nature of the activities conducted by it or the character of the assets owned or leased by it makes such licensing or qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not (i) have a material adverse effect on the business, properties, assets, business prospects, financial condition, results of operations or capitalization of the Company and its subsidiaries, taken as a whole, or (ii) prevent or materially interfere with the ability of the Company to issue and sell the Placement Shares under this Agreement (any such effect, prevention or interference, a "**Material Adverse Effect**").
- (ii) The only "significant subsidiaries" (as defined in Rule 405 of the rules and regulations of the Commission) of the Company are the significant subsidiaries listed on Exhibit 21.1 to the Company's Annual Report on Form 10-K, as filed with the Commission, for its most recently completed fiscal year, other than (i) those subsidiaries not required to be listed on Exhibit 21.1 by Item 601 of Regulation S-K under the Exchange Act and (ii) those significant subsidiaries formed since the last day of the most recently ended fiscal year. Each such significant subsidiary has been duly organized, is validly existing in good standing (where such concept exists) under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in the Registration Statement and Prospectus and is duly qualified to transact business and is in good standing, if applicable, in each jurisdiction in which such qualification is required, except to the extent that the failure to be so qualified or be in good standing would not have a Material Adverse Effect; all of the issued share capital or other equity

interests of each subsidiary have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly by the Company, free and clear of all liens, charges, encumbrances, equities, security interests, restrictions on voting or transfer or any other claims.

(f) Dividend Restrictions. Except as disclosed in the Prospectus, no subsidiary of the Company is prohibited or restricted, directly or indirectly, from paying dividends to the Company, or from making any other distribution with respect to such subsidiary's equity securities or from repaying to the Company or any other subsidiary of the Company any amounts that may from time to time become due under any loans or advances to such subsidiary from the Company or from transferring any property or assets to the Company or to any other subsidiary.

(g) Capitalization. The authorized, issued and outstanding capital stock of the Company is as set forth in the Registration Statement and the Prospectus (except for subsequent issuances, if any, pursuant to this Agreement, pursuant to reservations, agreements or employee benefit or equity incentive plans referred to in the Registration Statement and the Prospectus or pursuant to the conversion or exercise of convertible securities or options referred to in the Registration Statement and the Prospectus). The Common Stock (including the Placement Shares) conform in all material respects to the description thereof contained in the Prospectus. All of the issued and outstanding Common Stock have been duly authorized and validly issued, are fully paid and non-assessable, have been issued in compliance with all federal and state securities laws and are not subject to any preemptive, first refusal, or similar right. Except as set forth in the Registration Statement and the Prospectus, the Company does not have outstanding, options to purchase, or any rights or warrants to subscribe for, or any securities or obligations convertible into, or any contracts or commitments to issue or sell, any shares of capital stock of the Company or its subsidiaries, or any such warrants, convertible securities or obligations. The descriptions of the Company's stock option, stock bonus and other stock plans or 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.

(h) Authorization of the Placement Shares. The Placement Shares have been duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company against payment therefor pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and the issuance and sale of the Placement Shares is not subject to any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase the Placement Shares.

(i) Financial Statements. The financial statements (including the related notes thereto) and schedules included or incorporated by reference in the Registration Statement and the Prospectus present fairly the financial condition of the Company and its consolidated subsidiary as of the respective dates thereof and their results of operations and cash flows for the respective periods covered thereby, all in conformity with generally accepted accounting principles applied in the United States on a consistent basis throughout the entire period involved except as may be set forth in the related notes thereto and provided, that unaudited interim financial statements, which are subject to normal year-end adjustments, may not contain certain footnotes, as permitted by the rules of the Commission. The summary financial information included in the

Registration Statement and the Prospectus present fairly, in all material respects, the information shown therein and have been compiled on a basis consistent with that of the financial statements included therein and the books and records of the Company and its consolidated subsidiary. The pro forma financial statements, if any, and the other pro forma financial information included in the Registration Statement and the Prospectus present fairly, in all material respects, the information shown therein, have been prepared in accordance with the Commission's rules and guidelines with respect to pro forma financial statements and have been properly computed on the bases described therein. The assumptions used in the preparation of the pro forma financial statements, if any, and other pro forma financial information included in the Registration Statement and the Prospectus are reasonable and the adjustments used therein are appropriate to give effect to the transactions or circumstances referred to therein. No other financial statements, schedules or reconciliations of "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) of the Company are required by the Securities Act and the Exchange Act to be included in the Registration Statement and the Prospectus. The interactive data in eXtensible Business Reporting Language included or included or incorporated by reference in the Registration Statement and the Prospectus fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(j) Independent Accountants. KPMG LLP, who certified the financial statements and supporting schedules of the Company and its consolidated subsidiary included in the Registration Statement and the Prospectus, are (i) independent accountants as required by the Securities Act, the Exchange Act and by the rules of the Public Company Accounting Oversight Board (United States) (the "**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, and (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.

(k) No Material Adverse Changes. Since the respective dates as of which information is given in the Registration Statement and the Prospectus, except as set forth in the Registration Statement and the Prospectus, (i) there has not been a material adverse change, or any development that would be expected to result in a material adverse change, in the business, properties, assets, business prospects, financial condition, results of operations or capitalization of the Company and its subsidiaries, taken as a whole, arising for any reason whatsoever (a "**Material Adverse Change**"), (ii) the Company and its subsidiaries, considered as one entity, have not incurred, nor will it incur, any material liabilities or obligations, indirect, direct or contingent, including without limitation any losses or interference with their business from fire, explosion, flood, earthquakes, accident or other calamity, whether or not covered by insurance, or from any strike, labor dispute or court or governmental action, order or decree, that are material, individually or in the aggregate, to the Company and its subsidiaries, considered as one entity, nor has it entered into any material transactions not in the ordinary course of business, other than pursuant to this Agreement and the transactions referred to herein, and (iii) there has not been any material decrease in the capital stock or any material increase in any short-term or long-term indebtedness of the Company or its subsidiaries and there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other subsidiaries, by any of the Company's subsidiaries on any class of capital



stock, or any repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock.

(l) Investment Company. The Company is not, and, after giving effect to the issuance and sale of the Placement Shares and the use of the proceeds therefrom as described in the and the Prospectus, will not be, an “investment company” or an “affiliated person” of, or “promoter” or “principal underwriter” for, an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission promulgated thereunder (the “**Investment Company Act**”).

(m) Litigation. Except as set forth in the Registration Statement and the Prospectus, there are no actions, suits or proceedings pending, or to the Company’s knowledge, threatened against or affecting, the Company or its subsidiaries or any of its officers in their capacity as such, before or by any federal or state court, commission, regulatory body, including the Financial Industry Regulatory Authority, Inc. (“**FINRA**”) and The Nasdaq Global Select Market or such other national securities exchange on which the Common Stock, including any Placement Shares, are then listed (the “**Principal Market**”), administrative agency or other governmental body, domestic or foreign, wherein an unfavorable ruling, decision or finding would reasonably be expected to have a Material Adverse Effect. The Company has not received any notice of proceedings relating to the revocation or modification of any authorization, approval, order, license, certificate, franchise or permit. There are no pending investigations known to the Company involving the Company by any governmental agency having jurisdiction over the Company or its business or operations.

(n) Compliance with Laws and Regulations and Performance of Obligations and Contracts. The Company and its subsidiaries have (i) complied in all material respects with all laws, regulations and orders applicable to it or its business and (ii) performed in all material respects the obligations required to be performed by it, and is not in default under any indenture, mortgage, deed of trust, voting trust agreement, loan agreement, bond, debenture, note agreement, lease or other agreement or instrument (individually, a “**Contract**” and collectively, “**Contracts**”) to which it is a party or by which its property is bound or affected. To the knowledge of the Company, no other party under any Contract to which it is a party is in default in any respect thereunder or has given written or oral notice to the Company or any of its officers or directors of such other party’s intention to terminate, cancel or refuse to renew any Contract. The Company is not in violation of any provision of its certificate of incorporation or by-laws. The disclosures included in the Registration Statement and the Prospectus concerning the effects of Federal, state, local and foreign laws, rules and regulations on the business of the Company as currently conducted and as proposed to be conducted are correct in all material respects.

(o) No Consent of Governmental Body Needed. No consent, approval, authorization, license, registration, qualification or order of, or any filing or declaration with, any court or arbitrator or governmental or regulatory authority, agency or body is required in connection with the authorization, issuance, transfer, sale or delivery of the Placement Shares by the Company, in connection with the execution, delivery and performance of this Agreement by the Company or in connection with the taking by the Company of any action contemplated hereby, except as have been obtained under the Securities Act and such as may be required under state securities or Blue

Sky laws or the by-laws and rules of FINRA in connection with the purchase and distribution by the underwriters of the Placement Shares to be sold by the Company.

(p) Agreement Duly Authorized. The Company has full corporate power and authority to enter into this Agreement. This Agreement has been duly authorized, executed and delivered by the Company and constitutes a valid and binding agreement of the Company enforceable against the Company in accordance with the terms hereof, except as the enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or general equitable principles.

(q) No Conflicts. The execution and delivery by the Company of this Agreement and the performance of this Agreement, the consummation of the transactions contemplated hereby, and the application of the net proceeds from the offering and sale of the Placement Shares to be sold by the Company in the manner set forth in the Prospectus under "Use of Proceeds" do not and will not (i) violate the certificate of incorporation or by-laws of the Company or (ii) result in the creation or imposition of any lien, charge or encumbrance upon any of the assets of the Company or its subsidiaries pursuant to the terms or provisions of, or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or give any other party a right to terminate any of its obligations under, or result in the acceleration of any obligation under any Contract to which the Company or its subsidiaries is a party or by which the Company or its subsidiaries or any of its properties is bound or affected, or violate or conflict with any judgment, ruling, decree, order, law, statute, rule or regulation of any court or other governmental agency or body applicable to the business or properties of the Company or its subsidiaries, except, in the case of clause (ii) above, as would not reasonably be expected to have a Material Adverse Effect.

(r) Title to Real and Personal Property. The Company and its subsidiaries have good and marketable title to all properties and assets described in the Registration Statement and the Prospectus as being owned respectively by it, free and clear of all liens, charges, encumbrances or restrictions, except as set forth in the Registration Statement and the Prospectus or are not material to the business of the Company or its subsidiaries. The Company and its subsidiaries have valid, subsisting and enforceable leases for the properties described in the Prospectus as leased by them, with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such properties by the Company and its subsidiaries.

(s) Documents Described in Registration Statement. There is no document or Contract required to be described in the Registration Statement and the Prospectus or to be filed as an exhibit to the Registration Statement that is not described or filed as required. All such documents and Contracts described in the Registration Statement and the Prospectus or filed as an exhibit to the Registration Statement were duly authorized, executed and delivered by the Company, constitute valid and binding agreements of the Company and are enforceable against the Company in accordance with the terms thereof.

(t) No Untrue Statement; Statistical and Market Data. No statement, representation, warranty or covenant made by the Company in this Agreement or made in any certificate or document required by this Agreement to be delivered to TD Cowen was or will be, when made, inaccurate, untrue or incorrect. All statistical, demographic and market-related data included in the Registration Statement or the Prospectus are based on or derived from sources that the

Company believes to be reliable and accurate in all material respects, and the Company has obtained the written consent to the use of such data from such sources to the extent required.

(u) No Price Stabilization or Manipulation. Neither the Company nor, to the Company's knowledge, any of its directors, officers or controlling persons has taken, directly or indirectly, any action intended to cause or result in, or which might reasonably be expected to cause or result in, or which has constituted, stabilization or manipulation, under the Securities Act or otherwise, of the price of any security of the Company to facilitate the sale or resale of the Placement Shares.

(v) No Registration Rights. No holder of securities of the Company has rights to register any securities of the Company because of the filing of the Registration Statement, the Prospectus or the offering of the Placement Shares, except for rights that have been duly waived with respect to such holder, have expired or have been fulfilled by registration prior to the date of this Agreement.

(w) Stock Exchange Listing. The Placement Shares are registered pursuant to Section 12(b) 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 Placement Shares under the Exchange Act or delisting the Placement 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.

(x) Labor Matters. Neither the Company nor its subsidiaries is involved in any labor dispute except, where the dispute would not, individually or in the aggregate, have a Material Adverse Effect, nor, to the knowledge of the Company, is any such dispute threatened.

(y) No Unlawful Payments. Neither the Company nor its subsidiaries, nor any director or officer of the Company or its subsidiaries, nor, to the knowledge of the Company, any agent, employee or representative of the Company or its subsidiaries, Affiliate or other person associated with or acting on behalf of the Company or its subsidiaries, has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made or taken an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment of corporate funds or benefit to any foreign or domestic government or regulatory official or employee, including, without limitation, of any government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act 2010, or any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or committed an offense under any other applicable anti-bribery or anti-corruption laws; or (iv) made, offered, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. The Company has instituted, maintained and enforced, and will continue to

maintain and enforce policies and procedures designed to promote and ensure compliance with all applicable anti-bribery and anti-corruption laws.

(z) Compliance with Anti-Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable money laundering statutes of all jurisdictions in which the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental or regulatory 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 or its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(aa) No Conflicts with Sanctions Laws. Neither the Company nor its subsidiaries, nor any director or officer of the Company or its subsidiaries, nor, to the knowledge of the Company, any agent, employee or representative of the Company or its subsidiaries, Affiliate or other person associated with or acting on behalf of the Company or its subsidiaries is currently the subject or target of any sanctions administered or enforced by the U.S. government (including, without limitation, the Office of Foreign Assets Control of the U.S. Treasury Department or the U.S. Department of State and including, without limitation, the designation as a “specially designated national” or “blocked person”), the United Nations Security Council, the European Union, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority (collectively, “**Sanctions**”), nor is the Company or its subsidiaries located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, the Crimea Region of Ukraine, the non-government controlled areas of the Zaporizhzhia and Kherson Regions, Cuba, Iran, North Korea and Syria (each, a “**Sanctioned Country**”); and the Company will not directly or indirectly use the proceeds of the offering of the Placement Shares hereunder, or lend, contribute or otherwise make available such proceeds to its subsidiaries, any joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person that, at the time of such funding or facilitation, is the subject or the target of Sanctions, (ii) to fund or facilitate any activities of or business in any Sanctioned Country or (iii) 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 Sanctions. Since April 2019, the Company and its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

(bb) Taxes. Except as would not reasonably be expected to have a Material Adverse Effect, the Company and its subsidiaries have filed all federal, state and foreign income and franchise tax returns and have paid all taxes required to be filed or paid by them and, if due and

payable, any related or similar assessment, fine or penalty levied against them. The Company has made adequate charges, accruals and reserves in the applicable financial statements referred to in Section 6(i) hereof in respect of all material federal, state and foreign income and franchise taxes for all periods as to which the tax liability of the Company has not been finally determined.

(cc) Insurance. The Company and its subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as the Company believes are adequate for the conduct of their business and the value of their properties and is customary for companies engaged in similar industries, and all such insurance is in full force and effect. The Company has no reason to believe that it and its subsidiaries will not be able to (i) renew their existing insurance coverage as and when such policies expire or (ii) obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct their business as currently conducted or proposed to be conducted and at a cost that would not, individually or in the aggregate, result in a Material Adverse Effect. Neither the Company nor its subsidiaries has been denied any insurance coverage which it has sought or for which it has applied.

(dd) Benefit Plans. The Company has not maintained or contributed to a defined benefit plan as defined in Section 3(35) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”). No plan maintained or contributed to by the Company that is subject to ERISA (an “**ERISA Plan**”) (or any trust created thereunder) has engaged in a “prohibited transaction” within the meaning of Section 406 of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended (the “**Code**”) that could subject the Company to any material tax penalty on prohibited transactions or has not adequately been corrected. Each plan maintained or contributed to by the Company is in compliance in all material respects with all reporting, disclosure and other requirements of the Code and ERISA as they relate to such plan, except for any noncompliance which would not result in the imposition of a material liability or penalty. With respect to each ERISA Plan that is intended to be “qualified” within the meaning of Section 401(a) of the Code, each ERISA Plan has obtained a favorable determination letter or opinion or advisory letter, if applicable as to its qualified status under the Code, each such ERISA Plan has timely adopted all currently effective amendments to the Code to the extent any such amendments are required under the Code, and, to the knowledge of the Company, there are no existing circumstances or any events that have occurred that would affect the qualified status of any such ERISA Plan. The Company has never completely or partially withdrawn from a “multiemployer plan,” as defined in Section 3(37) of ERISA. Each plan maintained or contributed to by the Company that is subject to Section 409A of the Code has been administered in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and the regulations thereunder.

(ee) Title to Intellectual Property. Except as set forth in the Registration Statement and the Prospectus, the Company and its subsidiaries own, have valid and enforceable licenses for or otherwise have adequate rights to use technology (including but not limited to patented, patentable and unpatented inventions and unpatentable proprietary or confidential information, systems or procedures), designs, processes, licenses, patents, patent applications, trademarks, service marks, trade and service mark registrations, trade secrets, trade names, know how, copyrights and other works of authorship, computer programs, technical data and information and other intellectual property (collectively, the “**Intellectual Property**”) that are or would

reasonably be expected to be material to their business as currently conducted or as currently proposed to be conducted (including upon the commercialization of products or services described in the Registration Statement or the Prospectus as under development) or to the development, manufacture, operation and sale of any products and services sold or proposed to be sold by any of the Company or its subsidiaries. The Company's Intellectual Property has not been adjudged by a court of competent jurisdiction invalid or unenforceable in whole or in part. Except as disclosed in the Registration Statement and the Prospectus, (i) to the knowledge of the Company, there are no third parties who have or, or who will be able to establish rights to any Intellectual Property owned by, or licensed to, the Company or its subsidiaries, except for, and to the extent of, the ownership rights of the owners of the Intellectual Property which the Registration Statement and the Prospectus disclose is licensed to the Company; (ii) to the knowledge of the Company, there is no infringement by third parties of any Intellectual Property owned by, or licensed to, the Company or its subsidiaries; (iii) there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others challenging the Company's rights in or to any Intellectual Property owned by, or licensed to, the Company or its subsidiaries, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (iv) there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any Intellectual Property owned by, or licensed to, the Company and its subsidiaries, and the Company is unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (v) there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others that (nor has the Company received any claim from a third party that) the Company or its subsidiaries infringe or otherwise violate, or would, upon the commercialization of any product or service as described in the Registration Statement or the Prospectus, infringe or otherwise violate, any patent, trademark, tradename, service name, copyright, trade secret or other proprietary rights of another, and the Company and its subsidiaries are unaware of any facts which could form a reasonable basis for any such action, suit, proceeding or claim; (vi) to the knowledge of the Company, no employee of the Company is or has been in violation of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, nondisclosure agreement or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee's employment with the Company; (vii) the Company and its subsidiaries have complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company and its subsidiaries, and all such agreements are in full force and effect; (viii) to the knowledge of the Company, there is no prior art that may render any patent within the Intellectual Property invalid or that may render any patent application within the Intellectual Property unpatentable that has not been disclosed to the U.S. Patent and Trademark Office; and (ix) to the knowledge of the Company, there are no material defects in any of the patents or patent applications within the Intellectual Property. Except as set forth in the Registration Statement and the Prospectus, the Company and its subsidiaries are not obligated or under any liability whatsoever to make any material payment by way of royalties, fees or otherwise to any owner or licensee of, or other claimant to, any Intellectual Property, with respect to the use thereof or in connection with the conduct of their respective businesses or otherwise.

(ff) Trademarks. The Company and its subsidiaries own, or are licensed or otherwise have the full exclusive right to use, all material trademarks and trade names that are used in or reasonably necessary for the conduct of their business as described in the Prospectus. The Company has not received any notice of infringement of or conflict with asserted rights of others with respect to any such trademarks or trade names, or challenging or questioning the validity or effectiveness of any such trademark or trade name. The use, in connection with the business and operations of the Company and its subsidiaries of such trademarks and trade names does not, to the Company's knowledge, infringe on the rights of any person. Except as set forth in the Registration Statement and the Prospectus, the Company and its subsidiaries are not obligated or under any liability whatsoever to make any payment by way of royalties, fees or otherwise to any owner or licensee of, or other claimant to, any trademark, service mark or trade name with respect to the use thereof or in connection with the conduct of their business or otherwise.

(gg) Protection of Intellectual Property. The Company and its subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all their Intellectual Property in all material aspects, including, but not limited to complying with all duty of disclosure requirements before the U.S. Patent and Trademark Office and any other non-U.S. Patent Offices as appropriate, and has no reason to believe that such Intellectual Property is not or, if not yet patented or registered, would not be, valid and enforceable against an unauthorized user.

(hh) 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 Prospectus that have not been described. Without limiting the generality of the immediately preceding sentence, no relationship, direct or indirect, exists between or among the Company on the one hand, and the directors, officers, stockholders, customers or suppliers of the Company on the other hand, that is required to be described in the Prospectus and that is not so described. Since inception, the Company has not, directly or indirectly, extended or maintained credit, arranged to extend credit, or renewed any extension of credit, in the form of a personal loan, to or for any director or executive officer of the Company, or to or for any family member or Affiliate of any director or executive officer of the Company in violation of applicable laws, including Section 13(k) of the Exchange Act.

(ii) Environmental Matters. Each of the Company and its subsidiaries (i) is in compliance with any and all applicable federal, state, local and non-U.S. laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "**Environmental Laws**"), (ii) has received all permits, licenses or other approvals required of it under applicable Environmental Laws to conduct its businesses and (iii) is in compliance with all terms and conditions of any such permit, license or approval.

(jj) Controls and Procedures.

- (i) Disclosure Controls and Procedures. The Company has established and maintains disclosure controls and procedures (as such term is defined in Rules 13a-15 and 15d-15 under the Exchange Act) that (A) are designed to ensure that material information relating to the Company and its

subsidiaries is made known to the Company's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared; (B) provide for the periodic evaluation of the effectiveness of such disclosure controls and procedures as of the end of the period covered by the Company's most recent annual or quarterly report filed with the Commission; and (C) are effective in all material respects to perform the functions for which they were established.

- (ii) Internal Control Over Financial Reporting and Internal Accounting Controls. The Company maintains (i) effective "internal control over financial reporting" as defined in, and in compliance with, Rules 13a-15 and 15d-15 under the Exchange Act, and (ii) a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management's general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (C) access to assets is permitted only in accordance with management's general or specific authorization; (D) 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 (E) the interactive data in 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 applicable thereto.
- (iii) No Material Weakness in Internal Controls. Since the end of the Company's most recent audited fiscal year, there has been (A) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (B) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company is not aware of any significant deficiency in the design or operation of its internal control over financial reporting which is reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial data or any material weaknesses in its internal controls, except as disclosed in the Registration Statement and the Prospectus, or in any document incorporated by reference therein, since the end of the Company's most recent audited fiscal year; or any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls.



(kk) Sarbanes-Oxley. The Company is, and after giving effect to the offering and sale of the Placement Shares will be, in compliance in all material respects with all applicable effective provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations of the Commission promulgated thereunder.

(ll) Data Presentation. The preclinical studies and clinical trials conducted by or on behalf of the Company that are described in the Registration Statement and the Prospectus (the “Company Studies”) were and, if still pending, are being conducted in all material respects in accordance with their experimental protocols; the descriptions of the results of the Company Studies contained in the Registration Statement and the Prospectus are accurate in all material respects; the Company has no knowledge of any other preclinical studies or clinical trials not described in the Registration Statement and the Prospectus the results of which are inconsistent with or otherwise call into question the results described or referred to in the Registration Statement and the Prospectus; and the Company has not received any written notices or correspondence from the FDA or any foreign, state or local governmental body exercising comparable authority (the “Regulatory Agencies”) requiring the termination, suspension or material modification of any Company Studies that would reasonably be expected to have a Material Adverse Effect and, to the Company’s knowledge, there are no reasonable grounds for the same. To the Company’s knowledge, none of the Company Studies involved any investigator who has been disqualified as a clinical investigator or has been found by the FDA to have engaged in scientific misconduct.

(mm) Regulatory Filings. The Company has not failed to file with the Regulatory Agencies any required filing, declaration, listing, registration, report or submission with respect to the Company’s product candidates that are described or referred to in the Registration Statement or the Prospectus or any other filing required by any other applicable Regulatory Agency or governmental authority; all such filings, declarations, listings, registrations, reports or submissions were in material compliance with applicable laws when filed; all such filings, declarations, listings, registrations, reports or submissions were timely, complete, accurate and not misleading on the date filed in all material respects (or were corrected or supplemented by subsequent submission); and no deficiencies regarding compliance with applicable law have been asserted by any applicable Regulatory Agency or other governmental authority with respect to any such filings, declarations, listings, registrations, reports or submissions.

(nn) Licenses and Permits. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) the Company and its subsidiaries hold, and are operating in compliance with, such permits, licenses, franchises, registrations, exemptions, approvals, authorizations and clearances of any other governmental authorities (including, without limitation, the FDA) required for the conduct of its business as currently conducted (collectively, the “Permits”), and all such Permits are in full force and effect; and (ii) the Company and its subsidiaries have fulfilled and performed all of their obligations with respect to the Permits, and, to the Company’s knowledge, no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other impairment of the rights of the holder of any Permit. All applications, notifications, submissions, information, claims, reports and statistics, and other data and conclusions derived therefrom, utilized as the basis for any and all requests for a Permit from the FDA or other governmental authority relating

to the Company or its subsidiaries, its business and its products, when submitted to the FDA or other governmental authority by or on behalf of the Company or its subsidiaries, were true, complete and correct in all material respects. Any necessary or required updates, changes, corrections or modification to such applications, notifications, submissions, information, claims, reports and statistics and other data have been submitted to the FDA or other governmental authority, except as would not, individually or in the aggregate, have a Material Adverse Effect. The Company and its subsidiaries have not received any notification, correspondence or any other written communication, including notification of any pending or, to the Company's knowledge, threatened claim, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any governmental authority, including, without limitation, the FDA, of potential or actual material non-compliance by, or material liability of, the Company or its subsidiaries under any Permits. To the Company's knowledge, there are no facts or circumstances that would reasonably be expected to give rise to any material liability of the Company or its subsidiaries under any Permits.

(oo) Compliance with Certain Regulatory Matters. The Company, its subsidiaries, and to the Company's knowledge, its directors, officers, employees and agents have operated and currently are in compliance in all material respects with applicable Health Care Laws. For purposes of this Agreement, "**Health Care Laws**" includes, without limitation: (i) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), the Public Health Service Act (42 U.S.C. Section 201 et seq.), and the regulations promulgated thereunder; (ii) all applicable federal, state, local and foreign health care fraud and abuse laws, including, without limitation, the Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)), the Civil False Claims Act (31 U.S.C. Section 3729 et seq.), the criminal false statements law (42 U.S.C. Section 1320a-7b(a)), 18 U.S.C. Sections 286 and 287, the health care fraud criminal provisions under HIPAA (42 U.S.C. Section 1320d et seq.), the Stark Law (42 U.S.C. Section 1395nn), the civil monetary penalties law (42 U.S.C. Section 1320a-7a), the exclusion law (42 U.S.C. Section 1320a-7), the Physician Payments Sunshine Act (42 U.S.C. Section 1320-7h), and applicable laws governing government funded or sponsored healthcare programs; (iii) HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. Section 17921 et seq.); (iv) the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010; (v) licensure, quality, safety and accreditation requirements under applicable federal, state, local or foreign laws or regulatory bodies; and (vi) all other local, state, federal, national, supranational and foreign laws, relating to the regulation of the Company or its subsidiaries, and (vii) the directives and regulations promulgated pursuant to such statutes and any state or non-U.S. counterpart thereof. Neither the Company, its subsidiaries, nor, to the knowledge of the Company, any of their respective directors, officers, employees or agents has been debarred, excluded or suspended from participation in or receiving payment from any federal, state or local government health care program or is subject to an audit, investigation, proceeding, or other similar action by any governmental authority that could reasonably be expected to result in debarment, suspension or exclusion.

(pp) Absence of Certain Regulatory Actions. Except as described in the Registration Statement and the Prospectus, or as would not, individually or in the aggregate, have a Material Adverse Effect, the Company and its subsidiaries, have not had any product or manufacturing site (whether Company-owned or that of a contract manufacturer for Company product

candidates) subject to a governmental authority (including, without limitation, the FDA) shutdown or import or export prohibition, nor have the Company and its subsidiaries received any FDA Form 483 or other governmental authority notice of inspectional observations, “warning letters,” “untitled letters,” requests to make changes to the Company products, processes or operations, or similar correspondence or notice from the FDA or other governmental authority alleging or asserting material noncompliance with any applicable laws. To the Company’s knowledge, neither the FDA nor any other governmental authority has threatened such action. Neither the Company nor its subsidiaries, has received written notice of any claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any court, arbitrator, Regulatory Agency, or other governmental authority or third party alleging that any product operation or activity is in violation of any Health Care Laws nor, to the Company’s knowledge, is any such claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action threatened.

(qq) No Rating. Neither the Company nor its subsidiaries, has debt securities or preferred stock that is rated by any “nationally recognized statistical rating organization” (as such term is defined in Section 3(a)(62) of the Exchange Act).

(rr) No Broker’s Fees. The Company is not a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder’s fee or like payment in connection with the offering and sale of the Placement Shares.

(ss) Required Filings. The Company has timely made all filings required to be made by it under the Exchange Act.

(tt) FINRA Matters. All of the information provided to TD Cowen or to counsel for TD Cowen by the Company, or to the Company’s knowledge, by its counsel, its 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 Placement Shares is true, complete, correct and compliant with FINRA’s 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. The Company meets the definition of the term “experienced issuer” specified in FINRA Rule 5110(j)(6). Duties, Transfer Taxes, Etc. No stamp or other issuance or transfer taxes or duties and no capital gains, income, withholding or other taxes are payable by TD Cowen 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 Placement Shares.

(uu) Cybersecurity. The Company’s and its subsidiaries’ information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (collectively, “**IT Systems**”) are reasonably adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants. The Company and its subsidiaries have implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect all

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 (i) any information that relates to an identified or identifiable individual or device, including, but not limited to, name, address, telephone number, email address, username and password, photograph, government-issued identifier, online identifier, or any other data used or intended to be used to identify, contact or precisely locate an individual and (ii) any other information which is classified as “personal data,” “personal information,” “personally identifiable information” (or other similar term) under the Privacy Laws or Policies. There have been no material disruptions to or violations or outages of any of the IT Systems nor any occurrence of any unlawful, accidental, or unauthorized destruction, loss, modification or disclosure, use of, or access to, any IT Systems, confidential information, or Personal Data maintained by or on behalf of the Company, nor any incidents under internal review or investigations relating to any of the foregoing. Except as would not reasonably be expected to have a Material Adverse Effect, the Company and its subsidiaries are presently in compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Processing of Personal Data and to the protection of such IT Systems and Personal Data from unlawful, accidental, or unauthorized destruction, loss, disclosure, use, access, misappropriation or modification.

(vv) Data Privacy Laws. Except as would not reasonably be expected to have a Material Adverse Effect, the Company and its subsidiaries are, and at all prior times were, in compliance with all applicable state and federal laws and regulations relating to data privacy and security or the Company’s collection, storage, use, retention, disclosure, transfer, disposal, handling, analysis, or other processing (collectively, “**Processing**”) of data, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, including all rules and regulations promulgated thereunder (“**HIPAA**”), Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, as amended from time to time, and all national laws and regulations implementing it (“**EU GDPR**”) and the European Union General Data Protection Regulation as it forms part of UK law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 (as amended, including by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019) (“**UK GDPR**”) (collectively, the “**Privacy Laws**”). The Company and its subsidiaries have in place, comply with, and take appropriate steps designed to ensure compliance in all material respects with all of their policies and procedures relating to data privacy and security and the Company’s Processing of Personal Data (the “**Policies**”). The Company and its subsidiaries have at all times made all disclosures to users or customers required by Privacy Laws and Policies, and t none of such disclosures made or contained in any Policy have been inaccurate or in violation of any applicable laws and regulatory rules or requirements in any material respect. The Company further certifies that neither it nor any subsidiary: (i) has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws or the Company’s Processing of Personal Data, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any

Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

(ww) Lending Relationship. Except as disclosed in the Prospectus, the Company does not intend to use any of the proceeds from the sale of the Placement Shares to repay any outstanding debt owned to TD Cowen or any affiliate of TD Cowen.

(xx) Other At The Market Sales Agreements. The Company is not a party to any agreement with an agent or underwriter for any other “at the market” offering.

Any certificate signed by an officer of the Company and delivered to TD Cowen or to counsel for TD Cowen pursuant to or in connection with this Agreement shall be deemed to be a representation and warranty by the Company to TD Cowen as to the matters set forth therein.

The Company acknowledges that TD Cowen and, for purposes of the opinions to be delivered pursuant to Section 7 hereof, counsel to the Company and counsel to TD Cowen, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

7. Covenants of the Company. The Company covenants and agrees with TD Cowen that:

(a) Registration Statement Amendments. After the date of this Agreement and during any period in which a Prospectus relating to any Placement Shares is required to be delivered by TD Cowen under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), (i) the Company will notify TD Cowen promptly of the time when any subsequent amendment to the Registration Statement, other than documents incorporated by reference or amendments not related to the Placement Shares, has been filed with the Commission and/or has become effective or any subsequent supplement to the Prospectus related to the Placement Shares has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus related to the Placement Shares or for additional information, (ii) the Company will prepare and file with the Commission, promptly upon TD Cowen’s reasonable request, any amendments or supplements to the Registration Statement or Prospectus that, in TD Cowen’s reasonable opinion, may be necessary or advisable to comply with applicable law in connection with the distribution of the Placement Shares by TD Cowen (*provided, however*, that the failure of TD Cowen to make such request shall not relieve the Company of any obligation or liability hereunder, or affect TD Cowen’s right to rely on the representations and warranties made by the Company in this Agreement and *provided further*, that the only remedy TD Cowen shall have with respect to the failure to make such filing shall be to cease making sales under this Agreement until such amendment or supplement is filed); (iii) the Company will not file any amendment or supplement to the Registration Statement or Prospectus, other than documents incorporated by reference, relating to the Placement Shares or a security convertible into the Placement Shares unless a copy thereof has been submitted to TD Cowen within a reasonable period of time before the filing and TD Cowen has not reasonably objected thereto in writing (*provided, however*, that (A) the failure of TD Cowen to make such objection shall not relieve the Company of any obligation or liability hereunder, or affect TD Cowen’s right to rely on the

representations and warranties made by the Company in this Agreement, (B) the Company has no obligation to provide TD Cowen any advance copy of such filing or to provide TD Cowen an opportunity to object to such filing if the filing does not name TD Cowen or does not relate to the transaction herein provided and, (C) the only remedy TD Cowen shall have with respect to the failure by the Company to provide TD Cowen with such copy or the filing or such amendment or supplement despite TD Cowen's objection shall be to cease making sales under this Agreement) and the Company will furnish to TD Cowen at the time of filing thereof a copy of any document that upon filing is deemed to be incorporated by reference into the Registration Statement or Prospectus, except for those documents available via EDGAR; (iv) the Company will cause each amendment or supplement to the Prospectus, other than documents incorporated by reference, to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Securities Act, and (v) prior to the termination of this Agreement, the Company will notify TD Cowen if at any time the Registration Statement shall no longer be effective as a result of the passage of time pursuant to Rule 415 under the Securities Act or otherwise. The determination to file or not file any amendment or supplement with the Commission under this Section 7(a) shall be made exclusively by the Company. Prior to the initial sale of any Placement Shares, the Company shall file a final Prospectus Supplement pursuant to Rule 424(b) relating to the Placement Shares.

(b) Notice of Commission Stop Orders. The Company will advise TD Cowen, promptly after it receives notice or obtains knowledge thereof, of the issuance or threatened issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, of the suspension of the qualification of the Placement Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any such purpose; and it will promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued.

(c) Delivery of Prospectus; Subsequent Changes. During any period in which a Prospectus relating to the Placement Shares is required to be delivered by TD Cowen under the Securities Act with respect to a pending sale of the Placement Shares, (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), the Company will comply with all requirements imposed upon it by the Securities Act, as from time to time in force, and to file on or before their respective due dates all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, 15(d) or any other provision of or under the Exchange Act. If during such period any event occurs 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 a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify TD Cowen to suspend the offering of Placement Shares during such period and the Company will promptly amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance; *provided, however,* that the Company may delay any such amendment or supplement if, in the judgment of the Company, it is in the best interest of the Company to do so, provided that no Placement Notice is in effect during such time.

(d) Listing of Placement Shares. During any period in which the Prospectus relating to the Placement Shares is required to be delivered by TD Cowen under the Securities Act with respect to a pending sale of the Placement Shares (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), the Company will use its commercially reasonable efforts to cause the Placement Shares to be listed on Nasdaq and to qualify the Placement Shares for sale under the securities laws of such jurisdictions as TD Cowen reasonably designates and to continue such qualifications in effect so long as required for the distribution of the Placement Shares; *provided, however*, that the Company shall not be required in connection therewith to qualify as a foreign corporation or dealer in securities or file a general consent to service of process in any jurisdiction.

(e) Delivery of Registration Statement and Prospectus. The Company will furnish to TD Cowen and its counsel (at the expense of the Company) copies of the Registration Statement, the Prospectus (including all documents incorporated by reference therein) and all amendments and supplements to the Registration Statement or Prospectus that are filed with the Commission during any period in which a Prospectus relating to the Placement Shares is required to be delivered under the Securities Act (including all documents filed with the Commission during such period that are deemed to be incorporated by reference therein), in each case as soon as reasonably practicable and in such quantities as TD Cowen may from time to time reasonably request and, at TD Cowen's request, will also furnish copies of the Prospectus to each exchange or market on which sales of the Placement Shares may be made; *provided, however*, that the Company shall not be required to furnish any document (other than the Prospectus) to TD Cowen to the extent such document is available on EDGAR.

(f) Earnings Statement. The Company will make generally available to its security holders as soon as practicable, but in any event not later than 15 months after the end of the Company's current fiscal quarter, an earnings statement covering a 12-month period that satisfies the provisions of Section 11(a) and Rule 158 of the Securities Act. For the avoidance of doubt, the Company's compliance with the reporting requirements of the Exchange Act shall be deemed to satisfy this Section 7(f).

(g) Expenses. The Company, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, in accordance with the provisions of Section 11 hereunder, will pay the following expenses all incident to the performance of its obligations hereunder, including, but not limited to, expenses relating to (i) the preparation, printing and filing of the Registration Statement and each amendment and supplement thereto, of each Prospectus and of each amendment and supplement thereto, (ii) the preparation, issuance and delivery of the Placement Shares, (iii) the qualification of the Placement Shares under securities laws in accordance with the provisions of Section 7(d) of this Agreement, including filing fees (provided, however, that any fees or disbursements of counsel for TD Cowen in connection therewith shall be paid by TD Cowen except as set forth in (vii) below), (iv) the printing and delivery to TD Cowen of copies of the Prospectus and any amendments or supplements thereto, and of this Agreement, (v) the fees and expenses incurred in connection with the listing or qualification of the Placement Shares for trading on Nasdaq, (vi) the filing fees and expenses, if any, of the Commission, (vii) the filing fees and associated legal expenses of TD Cowen's outside counsel for filings with the FINRA Corporate Financing Department, such legal expense

reimbursement not to exceed \$10,000 and, (viii) the reasonable fees and disbursements of TD Cowen's counsel in an amount not to exceed \$75,000.

(h) Use of Proceeds. The Company will use the Net Proceeds as described in the Prospectus in the section entitled "Use of Proceeds."

(i) Notice of Other Sales. During the pendency of any Placement Notice given hereunder, and for 3 trading days following the termination of any Placement Notice given hereunder, the Company shall provide TD Cowen notice as promptly as reasonably possible before it offers to sell, contracts to sell, sells, grants any option to sell or otherwise disposes of any shares of Common Stock (other than Placement Shares offered pursuant to the provisions of this Agreement) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire Common Stock; *provided*, that such notice shall not be required in connection with the (i) issuance, grant or sale of Common Stock, options to purchase shares of Common Stock or any other equity awards or Common Stock issuable upon the exercise or settlement of options or other equity awards pursuant to any stock option, stock bonus or other stock plan or arrangement described in the Prospectus or any inducement equity awards pursuant to Rule 5634(c)(4) of the Nasdaq Listing Rules, (ii) the issuance of securities in connection with an acquisition, merger or sale or purchase of assets, or joint venture, commercial, strategic or collaborative relationship, or (iii) the issuance or sale of Common Stock pursuant to any dividend reinvestment plan that the Company may adopt from time to time provided the implementation of such is disclosed to TD Cowen in advance or (iv) the issuance of any shares of common stock issuable upon the exchange, conversion or redemption of securities or the exercise of warrants, options or other rights in effect or outstanding.

(j) Change of Circumstances. The Company will, at any time during a fiscal quarter in which the Company intends to tender a Placement Notice or sell Placement Shares, advise TD Cowen promptly after it shall have received notice or obtained knowledge thereof, of any information or fact that would alter or affect in any material respect any opinion, certificate, letter or other document required to be provided to TD Cowen pursuant to this Agreement, *provided*, that the Company may satisfy its obligations under this Section 7(j) by effecting a filing in accordance with the Exchange Act with respect to such information or fact

(k) Due Diligence Cooperation. During the term of the Agreement, the Company will cooperate with any reasonable due diligence review conducted by TD Cowen or its agents in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during regular business hours and at the Company's principal offices, as TD Cowen may reasonably request.

(l) Required Filings Relating to Placement of Placement Shares. The Company agrees that on such dates as the Securities Act shall require, the Company will (i) file a prospectus supplement with the Commission under the applicable paragraph of Rule 424(b) under the Securities Act (each and every filing under Rule 424(b), a "**Filing Date**"), and (ii) if requested in writing by TD Cowen, deliver such number of copies of each such prospectus supplement to each exchange or market on which such sales were effected as may be required by the rules or regulations of such exchange or market. The Company shall disclose in its quarterly reports on Form 10-Q and in its annual report on Form 10-K, the number of the Placement



Shares sold through TD Cowen under this Agreement, the volume weighted average price of the Placement Shares sold, and the gross proceeds to the Company from the sale of the Placement Shares pursuant to this Agreement during the relevant quarter or, in the case of an Annual Report on Form 10-K, during the fiscal year covered by such Annual Report and the fourth quarter of such fiscal year.

(m) **Bring-Down Dates; Certificate.** On or prior to the First Delivery Date, and during the term of this Agreement, and each time (i) the Company files the Prospectus relating to the Placement Shares (other than as part of any filing prior to the time of the initial effectiveness of the Registration Statement) or amends or supplements the Registration Statement or the Prospectus relating to the Placement Shares (other than a prospectus supplement filed in accordance with Section 7(l) of this Agreement) by means of a post-effective amendment, sticker, or supplement but not by means of incorporation of document(s) by reference to the Registration Statement or the Prospectus relating to the Placement Shares; (ii) the Company files an annual report on Form 10-K under the Exchange Act; (iii) the Company files its quarterly reports on Form 10-Q under the Exchange Act; or (iv) the Company files a report on Form 8-K containing amended financial information (other than an earnings release or other information “furnished” pursuant to Item 2.02 or Item 7.01 of Form 8-K) under the Exchange Act (each date of filing of one or more of the documents referred to in clauses (i) through (iv) shall be a “**Bring-Down Date**”); the Company shall furnish TD Cowen with a certificate, in the form attached hereto as Exhibit 7(m), within two (2) Trading Days of any Bring-Down Date if requested by TD Cowen. The requirement to provide a certificate under this Section 7(m) shall be waived for any Bring-Down Date occurring at a time at which no Placement Notice is pending, which waiver shall continue until the earlier to occur of the date the Company delivers a Placement Notice hereunder (which for such calendar quarter shall be considered a Bring-Down Date) and the next occurring Bring-Down Date; *provided, however*, that such waiver shall not apply for any Bring-Down Date on which the Company files its annual report on Form 10-K. Notwithstanding the foregoing, if the Company subsequently decides to sell Placement Shares following a Bring-Down Date when the Company relied on such waiver and did not provide TD Cowen with a certificate under this Section 7(m), then before the Company delivers the Placement Notice or TD Cowen sells any Placement Shares, the Company shall provide TD Cowen with a certificate, in the form attached hereto as Exhibit 7(m), dated the date of the Placement Notice.

(n) **Legal Opinion.** On or prior to the First Delivery Date and within two (2) Trading Days of each Bring-Down Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit 7(m) for which no waiver is applicable, the Company shall cause to be furnished to TD Cowen a written opinion of Fenwick & West LLP (collectively with Company IP Counsel (as defined below), “**Company Counsel**”), or other counsel satisfactory to TD Cowen, in form and substance satisfactory to TD Cowen and its counsel, dated the date that the opinion is required to be delivered; *provided, however*, that in lieu of such opinions for subsequent Bring-Down Dates, counsel may furnish TD Cowen with a letter (a “**Reliance Letter**”) to the effect that TD Cowen may rely on a prior opinion delivered under this Section 7(n) to the same extent as if it were dated the date of such letter (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented at such Bring-Down Date).

(o) Intellectual Property Opinion. On or prior to the First Delivery Date and within two (2) Trading Days of each Bring-Down Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit 7(m) for which no waiver is applicable, the Company shall cause to be furnished to TD Cowen a written opinion of Leydig, Voit & Mayer, Ltd. (“**Company IP Counsel**”), or other counsel satisfactory to TD Cowen, in form and substance satisfactory to TD Cowen and its counsel, dated the date that the opinion is required to be delivered, with respect to intellectual property matters, modified, as necessary, to relate to the Registration Statement and the Prospectus as then amended or supplemented; provided, however, that in lieu of such opinions for subsequent Bring-Down Dates, counsel may furnish TD Cowen with a Reliance Letter to the effect that TD Cowen may rely on a prior opinion delivered under this Section 7(o) to the same extent as if it were dated the date of such letter (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented at such Bring-Down Date).

(p) Comfort Letter. On or prior to the First Delivery Date and within two (2) Trading Days of each Bring-Down Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit 7(m) for which no waiver is applicable, the Company shall cause its independent accountants to furnish TD Cowen letters (the “**Comfort Letters**”), dated the date the Comfort Letter is delivered, in form and substance satisfactory to TD Cowen, (i) confirming that they are an independent registered public accounting firm within the meaning of the Securities Act and the PCAOB, (ii) stating, as of such date, the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants’ “comfort letters” to TD Cowen in connection with registered public offerings (the first such letter, the “**Initial Comfort Letter**”) and (iii) updating the Initial Comfort Letter with any information that would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letter.

(q) Market Activities. The Company will not, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Placement Shares or (ii) sell, bid for, or purchase the Common Stock to be issued and sold pursuant to this Agreement, or pay anyone any compensation for soliciting purchases of the Placement Shares other than TD Cowen; provided, however, that the Company may bid for and purchase shares of its common stock in accordance with Rule 10b-18 under the Exchange Act.

(r) Insurance. The Company and its subsidiaries shall maintain, or cause to be maintained, insurance in such amounts and covering such risks as is reasonable and customary for the business for which it is engaged.

(s) Compliance with Laws. The Company and each of its subsidiaries shall use its commercially reasonable efforts to maintain, or cause to be maintained, all material environmental permits, licenses and other authorizations required by federal, state and local law in order to conduct their businesses as described in the Prospectus, and the Company and each of its subsidiaries shall conduct their businesses, or cause their businesses to be conducted, in substantial compliance with such permits, licenses and authorizations and with applicable

environmental laws, except where the failure to maintain or be in compliance with such permits, licenses and authorizations could not reasonably be expected to result in a Material Adverse Effect.

(t) Investment Company Act. The Company will conduct its affairs in such a manner so as to reasonably ensure that neither it nor its subsidiaries will be or become, at any time prior to the termination of this Agreement, an “investment company,” as such term is defined in the Investment Company Act, assuming no change in the Commission’s current interpretation as to entities that are not considered an investment company.

(u) Securities Act and Exchange Act. The Company will use its best efforts to comply with all requirements imposed upon it by the Securities Act and the Exchange Act as from time to time in force, so far as necessary to permit the continuance of sales of, or dealings in, the Placement Shares as contemplated by the provisions hereof and the Prospectus.

(v) No Offer to Sell. Other than a Permitted Free Writing Prospectus, neither TD Cowen nor the Company (including its agents and representatives, other than TD Cowen in its capacity as such) will make, use, prepare, authorize, approve or refer to any written communication (as defined in Rule 405 under the Securities Act), required to be filed with the Commission, that constitutes an offer to sell or solicitation of an offer to buy Placement Shares hereunder.

(w) Sarbanes-Oxley Act. The Company and its subsidiaries will use their commercially reasonable efforts to comply in all material respects with all effective applicable provisions of the Sarbanes-Oxley Act.

(x) Affirmation. Each Placement Notice delivered by the Company to TD Cowen shall be deemed to be (i) an affirmation that the representations, warranties and agreements of the Company herein contained and contained in any certificate delivered to TD Cowen pursuant hereto are true and correct at the time of delivery of such Placement Notice, and (ii) an undertaking that such representations, warranties and agreements will be true and correct on any applicable Time of Sale and Settlement Date, as though made at and as of each such time (it being understood that such representations, warranties and agreements shall relate to the Registration Statement and the Prospectus as amended and supplemented to the time of such Placement Notice acceptance).

(y) Renewal. If immediately prior to the third anniversary (the “**Renewal Deadline**”) of the initial effective date of the Registration Statement, the aggregate gross sales price of Placement Shares sold by the Company is less than the Maximum Amount and this Agreement has not expired or been terminated, the Company may, prior to the Renewal Deadline, file, if it has not already done so and is eligible to do so, a new shelf registration statement relating to the Placement Shares, in a form reasonably satisfactory to TD Cowen, and, if not automatically effective, will use its best efforts to cause such registration statement to be declared effective within 60 days after the Renewal Deadline. The Company may take any other action necessary or appropriate to permit the issuance and sale of the Placement Shares to continue as contemplated in the expired registration statement relating to the Placement Shares. References herein to the Registration Statement shall include such new shelf registration statement.

8. Conditions to TD Cowen's Obligations. The obligations of TD Cowen hereunder with respect to a Placement Notice will be subject to the continuing accuracy and completeness of the representations and warranties made by the Company herein, to the due performance by the Company of its obligations hereunder and thereunder, to the completion by TD Cowen of a due diligence review satisfactory to TD Cowen in its reasonable judgment, and to the continuing satisfaction (or waiver by TD Cowen in its sole discretion) of the following additional conditions:

(a) Registration Statement Effective. The Registration Statement shall have become effective and shall be available for (i) all sales of Placement Shares issued pursuant to all prior Placement Notices and (ii) the sale of all Placement Shares contemplated to be issued pursuant to any Placement Notice.

(b) No Material Notices. None of the following events shall have occurred and be continuing: (i) receipt by the Company or any of its subsidiaries of any request for additional information from the Commission or any other federal or state governmental authority during the period of effectiveness of the Registration Statement, the response to which would require any post-effective amendments or supplements to the Registration Statement or the Prospectus; (ii) the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Placement Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; or (iv) the occurrence of any event that makes any material statement made in the Registration Statement or the Prospectus or any material document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, related Prospectus or such documents so that, in the case of the Registration Statement, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and, that in the case of the Prospectus, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

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

(d) Material Changes. Except as contemplated in the Prospectus, or disclosed in the Company's reports filed with the Commission, there shall not have been any Material Adverse Change, on a consolidated basis, in the authorized capital stock of the Company or any Material Adverse Change or any development that would reasonably be expected to result in a Material Adverse Change, or any downgrading in or withdrawal of the rating assigned to any of the Company's securities (other than asset backed securities) by any rating organization or a public announcement by any rating organization that it has under surveillance or review its rating of any

of the Company's securities (other than asset backed securities), the effect of which, in the case of any such action by a rating organization described above, in the reasonable judgment of TD Cowen (without relieving the Company of any obligation or liability it may otherwise have), is so material as to make it impracticable or inadvisable to proceed with the offering of the Placement Shares on the terms and in the manner contemplated in the Prospectus.

(e) Company Counsel Legal Opinion. TD Cowen shall have received the opinions of Company Counsel required to be delivered pursuant to Section 7(n) and Section 7(o) on or before the date on which such delivery of such opinion is required pursuant to Section 7(n) and Section 7(o).

(f) TD Cowen Counsel Legal Opinion. TD Cowen shall have received from Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., counsel for TD Cowen, such opinion or opinions, on or before the date on which the delivery of the Company Counsel legal opinion is required pursuant to Section 7(n), with respect to such matters as TD Cowen may reasonably require, and the Company shall have furnished to such counsel such documents as they request for enabling them to pass upon such matters.

(g) Comfort Letter. TD Cowen shall have received the Comfort Letter required to be delivered pursuant to Section 7(p) on or before the date on which such delivery of such Comfort Letter is required pursuant to Section 7(p).

(h) Representation Certificate. TD Cowen shall have received the certificate required to be delivered pursuant to Section 7(m) on or before the date on which delivery of such certificate is required pursuant to Section 7(m).

(i) Secretary's Certificate. On or prior to the First Delivery Date, TD Cowen shall have received a certificate, signed on behalf of the Company by its corporate secretary, in form and substance satisfactory to TD Cowen and its counsel.

(j) No Suspension. Trading in the Common Stock shall not have been suspended on Nasdaq.

(k) Other Materials. On each date on which the Company is required to deliver a certificate pursuant to Section 7(m), the Company shall have furnished to TD Cowen such appropriate further information, certificates and documents as TD Cowen may have reasonably requested. All such opinions, certificates, letters and other documents shall have been in compliance with the provisions hereof. The Company will furnish TD Cowen with such conformed copies of such opinions, certificates, letters and other documents as TD Cowen shall have reasonably requested.

(l) Securities Act Filings Made. All filings with the Commission required by Rule 424 under the Securities Act to have been filed prior to the issuance of any Placement Notice hereunder shall have been made within the applicable time period prescribed for such filing by Rule 424.

(m) Approval for Listing. The Placement Shares shall either have been (i) approved for listing on Nasdaq, subject only to notice of issuance, or (ii) the Company shall have filed an application for listing of the Placement Shares on Nasdaq at, or prior to, the issuance of any Placement Notice.

(n) No Termination Event. There shall not have occurred any event that would permit TD Cowen to terminate this Agreement pursuant to Section 11(a).

9. Indemnification and Contribution.

(a) Company Indemnification. The Company agrees to indemnify and hold harmless TD Cowen, its affiliates and each of their respective directors, officers, partners, employees and agents of TD Cowen and each person, if any, who (i) controls TD Cowen within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, or (ii) is controlled by or is under common control with TD Cowen from and against any and all losses, claims, liabilities, expenses and damages (including, but not limited to, any and all reasonable and documented investigative, legal and other expenses incurred in connection with, and any and all amounts paid in settlement (in accordance with Section 9(c)) of, any action, suit or proceeding between any of the indemnified parties and any indemnifying parties or between any indemnified party and any third party, or otherwise, or any claim asserted), as and when incurred, to which TD Cowen, or any such person, may become subject under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, liabilities, expenses or damages arise out of or are based, directly or indirectly, on (x) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or the Prospectus or any amendment or supplement to the Registration Statement or the Prospectus or in any free writing prospectus or in any application or other document executed by or on behalf of the Company in connection with this Agreement or based on written information furnished by or on behalf of the Company filed in any jurisdiction in order to qualify the Common Stock under the securities laws thereof or filed with the Commission, or (y) the omission or alleged omission to state in any such document a material fact required to be stated in it or necessary to make the statements in it not misleading; *provided, however*, that this indemnity agreement shall not apply to the extent that such loss, claim, liability, expense or damage arises from the sale of the Placement Shares pursuant to this Agreement and is caused directly or indirectly by an untrue statement or omission, or alleged untrue statement or omission, made in reliance upon and in conformity with solely Agent's Information. "**Agent's Information**" means, solely, the following information in the Prospectus: the third sentence of the eighth paragraph under the caption "Plan of Distribution" in the Prospectus. This indemnity agreement will be in addition to any liability that the Company might otherwise have.

(b) TD Cowen Indemnification. TD Cowen agrees to indemnify and hold harmless the Company and its directors and each officer of the Company that signed the Registration Statement, and each person, if any, who (i) controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act or (ii) is controlled by or is under common control with the Company against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 9(a), as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendments thereto) or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with the Agent's Information.

(c) Procedure. Any party that proposes to assert the right to be indemnified under this Section 9 will, promptly after receipt of notice in writing of commencement of any action against such party in respect of which a claim is to be made against an indemnifying party or parties under this Section 9, notify each such indemnifying party of the commencement of such action, enclosing a copy of all papers served, but the omission so to notify such indemnifying party will not relieve the indemnifying party from (i) any liability that it might have to any indemnified party otherwise than under this Section 9 and (ii) any liability that it may have to any indemnified party under the foregoing provision of this Section 9 unless, and only to the extent that, such omission results in the forfeiture of substantive rights or defenses by the indemnifying party. If any such action is brought against any indemnified party and it notifies the indemnifying party of its commencement, the indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel reasonably satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense, the indemnifying party will not be liable to the indemnified party for any legal or other expenses except as provided below and except for the reasonable and documented costs of investigation subsequently incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based on advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable and documented fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable and documented fees, disbursements and other charges of more than one separate firm admitted to practice in such jurisdiction at any one time for all such indemnified party or parties. All such fees, disbursements and other charges will be reimbursed by the indemnifying party promptly as they are incurred. An indemnifying party will not, in any event, be liable for any settlement of any action or claim effected without its written consent. No indemnifying party shall, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated by this Section 9 (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising or that may arise out of such claim, action or proceeding.

(d) Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in the foregoing paragraphs of this

Section 9 is applicable in accordance with its terms but for any reason is held to be unavailable from the Company or TD Cowen, the Company and TD Cowen will contribute to the total losses, claims, liabilities, expenses and damages (including any investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted, but after deducting any contribution received by the Company from persons other than TD Cowen, such as persons who control the Company within the meaning of the Securities Act, officers of the Company who signed the Registration Statement and directors of the Company, who also may be liable for contribution) to which the Company and TD Cowen may be subject in such proportion as shall be appropriate to reflect the relative benefits received by the Company on the one hand and TD Cowen on the other. The relative benefits received by the Company on the one hand and TD Cowen on the other hand shall be deemed to be in the same proportion as the total Net Proceeds from the sale of the Placement Shares (before deducting expenses) received by the Company bear to the total compensation received by TD Cowen from the sale of Placement Shares on behalf of the Company. If, but only if, the allocation provided by the foregoing sentence is not permitted by applicable law, the allocation of contribution shall be made in such proportion as is appropriate to reflect not only the relative benefits referred to in the foregoing sentence but also the relative fault of the Company, on the one hand, and TD Cowen, on the other, with respect to the statements or omission that resulted in such loss, claim, liability, expense or damage, or action in respect thereof, as well as any other relevant equitable considerations with respect to such offering. Such relative fault shall be determined by reference to, among other things, whether the 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 or TD Cowen, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and TD Cowen agree that it would not be just and equitable if contributions pursuant to this Section 9(d) were to be determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, liability, expense, or damage, or action in respect thereof, referred to above in this Section 9(d) shall be deemed to include, for the purpose of this Section 9(d), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim to the extent consistent with Section 9(c) hereof. Notwithstanding the foregoing provisions of this Section 9(d), TD Cowen shall not be required to contribute any amount in excess of the commissions received by it under this Agreement and no person found guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 9(d), any person who controls a party to this Agreement within the meaning of the Securities Act, and any officers, directors, partners, employees or agents of TD Cowen, will have the same rights to contribution as that party, and each officer of the Company who signed the Registration Statement and each director of the Company will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 9(d), will notify any such party or parties from whom contribution may be sought, but the omission to so notify will not relieve that party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 9(d).



except to the extent that the failure to so notify such other party materially prejudiced the substantive rights or defenses of the party from whom contribution is sought. Except for a settlement entered into pursuant to the last sentence of Section 9(c) hereof, no party will be liable for contribution with respect to any action or claim settled without its written consent if such consent is required pursuant to Section 9(c) hereof.

10. Representations and Agreements to Survive Delivery. The indemnity and contribution agreements contained in Section 9 of this Agreement and all representations and warranties of the Company herein or in certificates delivered pursuant hereto shall survive, as of their respective dates, regardless of (i) any investigation made by or on behalf of TD Cowen, any controlling persons, or the Company (or any of their respective officers, directors or controlling persons), (ii) delivery and acceptance of the Placement Shares and payment therefor or (iii) any termination of this Agreement.

11. Termination.

(a) TD Cowen shall have the right by giving written notice as hereinafter specified at any time to terminate this Agreement if (i) any Material Adverse Change, or any development that would reasonably be expected to result in a Material Adverse Change has occurred that, in the reasonable judgment of TD Cowen, would materially impair the ability of TD Cowen to sell the Placement Shares hereunder, (ii) the Company shall have failed, refused or been unable to perform any agreement on its part to be performed hereunder, or (iii) any other condition of TD Cowen's obligations hereunder is not fulfilled, or (iv), any suspension or limitation of trading in the Placement Shares or in securities generally on Nasdaq shall have occurred. Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(g) (Expenses), Section 9 (Indemnification and Contribution), Section 10 (Representations and Agreements to Survive Delivery), Section 16 (Applicable Law; Consent to Jurisdiction) and Section 17 (Waiver of Jury Trial) hereof shall remain in full force and effect notwithstanding such termination. If TD Cowen elects to terminate this Agreement as provided in this Section 11(a), TD Cowen shall provide the required notice as specified in Section 12 (Notices).

(b) The Company shall have the right, by giving ten (10) days' notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(g), Section 9, Section 10, Section 16 and Section 17 hereof shall remain in full force and effect notwithstanding such termination. Upon termination of this Agreement, the Company shall not have any liability to TD Cowen for any discount, commission, or other compensation with respect to any Placement Shares not otherwise sold by TD Cowen under this Agreement, or otherwise, except with respect to reimbursement of expenses pursuant to Section 7(g).

(c) TD Cowen shall have the right, by giving ten (10) days' notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 7(g), Section 9, Section 10, Section 16 and Section 17 hereof shall remain in full force and effect notwithstanding such termination.

(d) Unless earlier terminated pursuant to this Section 11, this Agreement shall automatically terminate upon the issuance and sale of all of the Placement Shares through TD Cowen on the terms and subject to the conditions set forth herein; *provided* that the provisions of Section 7(g), Section 9, Section 10, Section 16 and Section 17 hereof shall remain in full force and effect notwithstanding such termination.

(e) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 11(a), (b), (c), or (d) above or otherwise by mutual agreement of the parties; *provided, however*, that any such termination by mutual agreement shall in all cases be deemed to provide that Section 7(g), Section 9, Section 10, Section 16 and Section 17 shall remain in full force and effect.

(f) Any termination of this Agreement shall be effective on the date specified in such notice of termination; *provided, however*, that such termination shall not be effective until the close of business on the date of receipt of such notice by TD Cowen or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Placement Shares, such Placement Shares shall settle in accordance with the provisions of this Agreement.

12. Notices. All notices or other communications required or permitted to be given by any party to any other party pursuant to the terms of this Agreement shall be in writing, unless otherwise specified in this Agreement, and if sent to TD Cowen, shall be delivered to TD Securities (USA) LLC, 1 Vanderbilt Avenue, New York, New York 10022, fax no. 646-562-1130, Attention: General Counsel, email: CIBLegal@tdsecurities.com; or if sent to the Company, shall be delivered to AnaptysBio, Inc., 10770 Wateridge Circle, Suite 210, San Diego, CA 92121, attention: Eric Loumeau, email: eloumeau@anaptysbio.com, with a copy to Fenwick & West LLP, attention: Effie Toshav, email: etoshav@fenwick.com and Ryan Mitteness, email: rmitteness@fenwick.com. Each party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose. Each such notice or other communication shall be deemed given (i) when delivered personally or by verifiable facsimile transmission (with an original to follow) on or before 4:30 p.m., New York City time, on a Business Day (as defined below), or, if such day is not a Business Day on the next succeeding Business Day, (ii) on the next Business Day after timely delivery to a nationally-recognized overnight courier, (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid), and (iv) when delivered by electronic communication (“**Electronic Notice**”), at the time the party sending Electronic Notice receives verification of receipt by the receiving party, other than via auto reply. For purposes of this Agreement, “**Business Day**” shall mean any day on which the Nasdaq and commercial banks in the City of New York are open for business.

13. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Company and TD Cowen and their respective successors and the affiliates, controlling persons, officers and directors referred to in Section 9 hereof. References to any of the parties contained in this Agreement shall be deemed to include the successors and permitted assigns of such party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign its rights or obligations under

this Agreement without the prior written consent of the other party; *provided, however*, that TD Cowen may assign its rights and obligations hereunder to an affiliate of TD Cowen without obtaining the Company's consent.

14. Adjustments for Share Splits. The parties acknowledge and agree that all share-related numbers contained in this Agreement shall be adjusted to take into account any share split, share dividend or similar event effected with respect to the Common Stock.

15. Entire Agreement; Amendment; Severability. This Agreement (including all schedules and exhibits attached hereto and Placement Notices issued pursuant hereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Agreement nor any term hereof may be amended except pursuant to a written instrument executed by the Company and TD Cowen. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Agreement.

16. Applicable Law; Consent to Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the principles of conflicts of laws. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan, for the adjudication of any dispute hereunder or in connection with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof (certified or registered mail, return receipt requested) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

17. Waiver of Jury Trial. The Company and TD Cowen each hereby irrevocably waives any right it may have to a trial by jury in respect of any claim based upon or arising out of this Agreement or any transaction contemplated hereby.

18. Absence of Fiduciary Relationship. The Company acknowledges and agrees that:

(a) TD Cowen has been retained solely to act as an arm's length contractual counterparty to the Company in connection with the sale of the Placement Shares contemplated hereby and that no fiduciary, advisory or agency relationship between the Company and TD

Cowen has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether TD Cowen has advised or is advising the Company on other matters;

(b) the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) the Company has been advised that TD Cowen and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that TD Cowen has no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; and

(d) the Company waives, to the fullest extent permitted by law, any claims it may have against TD Cowen, for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that TD Cowen shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including stockholders, partners, employees or creditors of the Company.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by facsimile or other electronic transmission (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com) or [www.echosign.com](http://www.echosign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

20. Recognition of the U.S. Special Resolution Regimes.

(a) In the event that TD Cowen is a Covered Entity (as defined below) and becomes subject to a proceeding under a U.S. Special Resolution Regime (as defined below), the transfer from TD Cowen of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that TD Cowen is a Covered Entity and TD Cowen or a BHC Act Affiliate (as defined below) of TD Cowen becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against TD Cowen are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(c) For purposes of this Section 20; (a) "**BHC Act Affiliate**" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k), (b) "**Covered Entity**" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a

“covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b), (c) “**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable, and (d) “**U.S. Special Resolution Regime**” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

**[Remainder of Page Intentionally Blank]**

If the foregoing correctly sets forth the understanding between the Company and TD Cowen, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and TD Cowen.

Very truly yours,

**TD SECURITIES (USA) LLC**

By:     /s/ Adriano Pierroz      
Name: Adriano Pierroz  
Title: Director

**ACCEPTED as of the date  
first-above written:**

**ANAPTYSBIO, INC.**

By:     /s/ Daniel Faga      
Name: Daniel Faga  
Title: Chief Executive Officer

**FORM OF PLACEMENT NOTICE**

From: [ ]  
Cc: [ ]  
To: [ ]  
Subject: TD Cowen At the Market Offering—Placement Notice

Gentlemen:

Pursuant to the terms and subject to the conditions contained in the Sales Agreement between AnaptysBio, Inc. (the “Company”), and TD Securities (USA) LLC (“TD Cowen”) dated November 5, 2024 (the “Agreement”), I hereby request on behalf of the Company that TD Cowen sell up to [ ] shares of the Company’s common stock, par value \$0.001 per share, at a minimum market price of \$[ ] per share. Sales should begin on the date of this Notice and shall continue until [DATE] [all shares are sold].

**Notice Parties**

**Company**

Daniel Faga Chief Executive Officer

Dennis Mulroy Chief Financial Officer

Eric Loumeau Chief Legal Officer

**TD Cowen**

Michael J. Murphy Managing Director

William Follis Managing Director

Adriano Pierroz Director

Megan Sanford Analyst



**Compensation**

TD Cowen shall be paid compensation equal to up to 3% of the gross proceeds from the sales of Common Stock pursuant to the terms of this Agreement.

**Exhibit 7(m)**

**ANAPTYSBIO, INC.**

**Officer’s Certificate**

The undersigned, the duly qualified and elected \_\_\_\_\_ of AnaptysBio, Inc., a Delaware corporation (the “**Company**”), does hereby certify in such capacity and on behalf of the Company, pursuant to Section 7(m) of the Sales Agreement, dated November 5, 2024, between the Company and TD Securities (USA) LLC (the “**Sales Agreement**”), that to the knowledge of the undersigned:

(i) The representations and warranties of the Company in Section 6 of the Sales Agreement are true and correct on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof; provided, however, that such representations and warranties are qualified by the disclosure included or incorporated by reference in the Registration Statement and Prospectus (including any documents incorporated by reference therein and any supplements thereto); and

(ii) The Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied pursuant to the Sales Agreement at or prior to the date hereof.

Fenwick & West LLP and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. are entitled to rely on this certificate in connection with the respective opinions such firms are rendering pursuant to the Sales Agreement. Capitalized terms used herein without definition shall have the meanings given to such terms in the Sales Agreement.

AnaptysBio, Inc.

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

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

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

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

## FORM OF DEBT SECURITY

[Face of Security]

## ANAPTYSBIO, INC.

[If applicable, insert—FOR PURPOSES OF THE ORIGINAL ISSUE DISCOUNT PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986, THE ISSUE PRICE OF THIS SECURITY IS % OF ITS PRINCIPAL AMOUNT AT STATED MATURITY SET FORTH BELOW (ITS “PRINCIPAL AMOUNT”), THE AMOUNT OF ORIGINAL ISSUE DISCOUNT IS % OF ITS PRINCIPAL AMOUNT, THE YIELD TO MATURITY IS % AND THE ISSUE DATE IS ]

[IF THE SECURITY IS A GLOBAL SECURITY, INSERT—THIS NOTE IS A GLOBAL SECURITY. IT IS EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY (AS HEREINAFTER DEFINED) OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES HEREINAFTER DESCRIBED AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY TO A SUCCESSOR OF THE DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.]

No.

\$

CUSIP No.

AnaptysBio, Inc., a Delaware corporation (herein called the “Company”, which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to, or registered assigns, the principal sum of Dollars on [if Security is to bear interest prior to maturity, insert—, and to pay interest thereon from or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on and in each year, commencing, at the rate of % per annum, until the principal hereof is paid or made available for payment [if applicable, insert—, provided that any principal and premium, and any such installment of interest, which is overdue shall bear interest at the rate of % per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand]]. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Record Date for such interest, which shall be the or (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Record Date and may either be paid to the Person this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture. [If the Security is not to bear interest prior to maturity, insert—The principal of this Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the overdue principal and any overdue premium shall bear interest at the rate of % per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment. Interest on any overdue principal or premium shall be payable on demand. [Any such interest on overdue principal or premium which is not paid on demand shall bear interest at the rate of % per annum

(to the extent that the payment of such interest on interest shall be legally enforceable), from the date of such demand until the amount so demanded is paid or made available for payment. Interest on any overdue interest shall be payable on demand.]]].

Payment of the principal of (and premium, if any, on) and [any such] interest on this Security will be made at the office or agency of the Company maintained for that purpose in in such coin or currency of [the United States of America] as at the time of payment is legal tender for payment of public and private debts[; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the register of the Registrar].

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been manually executed by or on behalf of the Trustee under the Indenture referred to on the reverse hereof, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

**AnaptysBio, Inc.**

Dated:

By:

\_\_\_\_\_ [Title]

Attest and Countersign

Secretary

[Reverse of Security.]

### ANAPTYSBIO, INC.

This Security is one of a duly authorized issue of securities of the Company (herein called the “Securities”), issued and to be issued in one or more series under an Indenture dated as of \_\_\_\_\_, (herein called the “Indenture,” which term shall have the meaning assigned to it in such instrument), between the Company and \_\_\_\_\_, as trustee (herein called the “Trustee”, which term includes any successor trustee under the Indenture), to which the Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations or rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof [, limited in aggregate principal amount to \$ \_\_\_\_\_].

[If the Security is to be subordinated, insert—The indebtedness evidenced by this Security is, to the extent and in the manner set forth in the Indenture, expressly subordinated and subject in right of payment to the prior payment in full of all senior Indebtedness (as defined in the Indenture) of the Company. This Security is issued subject to such provisions of the Indenture, and each Holder of this Security, by accepting the same, agrees to and shall be bound by such provisions and authorizes and directs the Trustee on the Holder’s behalf to take such action as may be necessary or appropriate to acknowledge or effectuate such subordination as provided in the Indenture and appoints the Trustee such Holder’s attorney-in-fact for any and all such purposes.]

The Securities of this series are subject to redemption upon not less than 30 days’, and no more than 60 days, notice provided in the manner set forth in the Indenture, [(1) on in any year commencing with the year and ending with the year at the Redemption Price (as indicated below) equal to 100% of the principal amount, and (2)] at any time [on or after], as a whole or in part, at the election of the principal the following Redemption Prices (expressed as percentages of the principal amount, as indicated below): If redeemed [on or before, %, and if redeemed] during the 12-month period beginning of the years indicated,

Year	Redemption Price	Year	Redemption Price
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and thereafter at a Redemption Price equal to \_\_\_\_\_ % of the principal amount together in the case of any such redemption with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities of record at the close of business on the relevant record dates referred to on the face hereof, all as provided in the Indenture.

[If the Security is to be redeemable in part, insert—In the event of redemption of this Security in part only, a new Security or Securities of this series for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.]

[If the Security is to be subject to repayment at the option of the Holder, insert—To be repaid at the option of the Holder, the Company must receive this Security, with the form of “Option to Elect Repayment” hereon duly completed, at an office or agency of the Company maintained for that purpose in (or at such other place of which the Company shall from time to time notify the Holder of this Security) not less than \_\_\_\_\_ nor more than \_\_\_\_\_ days prior to the Repayment Date (as defined therein). The exercise of the repayment option by the Holder shall be irrevocable.]

[If the Security is not to be subject to redemption at the option of the Company, insert—The Securities are not redeemable at the option of the Company prior to Maturity.]

[If the Security is not to be an Original Issue Discount Security, insert—If an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.]

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series under the Indenture to be affected at any time by the Company with the consent of the Holders of not less than a majority in aggregate principal amount of the Securities then outstanding of each series to be affected.

The Indenture also contains provisions permitting the Holders of a majority in principal amount of the Securities of each series then outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past Defaults or Events of Default under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series the outstanding shall have made written request to the trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity satisfactory to it, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 90 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and premium, if any, on) and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

[If the Security is to be in registered form, insert—As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the register of the Registrar, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of (and premium, if any, on) and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and, thereupon one or more new Securities of this series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.]

[The Securities of this series are issuable only in registered form in denominations of \$ [and any integral multiple] [or increments of \$ in excess] thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series of a different authorized denomination, as requested by the Holder surrendering the same.]

[No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.]

[Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.]

[If the Security is a Global Security, insert—“Global Security” and “Global Securities” means a Security or Securities evidencing all or a part of a series of Securities, issued to the Depository (as hereinafter defined) for such Series or its nominee, and registered in the name of such Depository or its nominee. “Depository” means, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more Global Securities, the person designated as the Depository by the Company.

No holder of any beneficial interest in this Security held on its behalf by a Depository or a nominee of such Depository shall have any rights under the Indenture with respect to such Global Security, and such Depository or nominee may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall impair, as between a Depository and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depository as Holder of any Security.

This Security is exchangeable, in whole but not in part, for Securities registered in the names of Persons other than the Depository or its nominee or in the name of a successor to the Depository or a nominee of such successor depository only if (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository for this Note or if at any time such Depository ceases to be a clearing agency registered under the Securities Exchange Act of 1934, as amended, and, in either case, a successor depository is not appointed by the Company within 90 days, (ii) the Company in its discretion at any time determines not to have all of the Securities of this series represented by one or more Global Security or Securities and notifies the Trustee thereof, or (iii) an Event of Default has occurred and is continuing with respect to the Securities of this series. If this Security is exchangeable pursuant to the preceding sentence, it shall be exchangeable for Securities issuable in authorized denominations and registered in such names as the Depository holding this Security shall direct. Subject to the foregoing, this Security is not exchangeable, except for a Security or Securities of the same aggregate denominations to be registered in the name of such Depository or its nominee or in the name of a successor to the Depository or a nominee of such successor depository.]

[The Indenture entitles Holders to receive annual reports with respect to the Trustee’s eligibility and qualifications to serve as Trustee by filing their names and addresses with the Trustee for that purpose within two years preceding and mailing of any such annual report.]

No recourse shall be had for the payment of the principal of (and premium, if any, on) or interest on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture of any indenture supplemental thereto, against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

This Security, including without limitation the obligation of the Company contained herein to pay the principal of (and premium, if any, on) and interest on this Security in accordance with the terms hereof and of the Indenture, shall be construed in accordance with and governed by the laws of the State of Delaware.

[Trustee’s Certificate of Authentication.]

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture.

\_\_\_\_\_, as  
[Authenticating Agent for] the Trustee

By: \_\_\_\_\_  
Authorized Officer

**ANAPTYSBIO, INC.**

And

, as Trustee

**INDENTURE**

Dated as of ,



## TABLE OF CONTENTS

### ARTICLE 1 - DEFINITIONS AND INCORPORATION BY REFERENCE

- 1.1. DEFINITIONS
- 1.2. OTHER DEFINITIONS
- 1.3. INCORPORATION BY REFERENCE OF TRUST INDENTURE ACT
- 1.4. RULES OF CONSTRUCTION

### ARTICLE 2 - THE SECURITIES

- 2.1. ISSUABLE IN SERIES
- 2.2. ESTABLISHMENT OF TERMS OF SERIES OF SECURITIES
- 2.3. EXECUTION AND AUTHENTICATION
- 2.4. REGISTRAR AND PAYING AGENT
- 2.5. PAYING AGENT TO HOLD ASSETS IN TRUST
- 2.6. SECURITYHOLDER LISTS
- 2.7. TRANSFER AND EXCHANGE
- 2.8. REPLACEMENT SECURITIES
- 2.9. OUTSTANDING SECURITIES
- 2.10. WHEN TREASURY SECURITIES DISREGARDED; DETERMINATION OF HOLDERS' ACTION
- 2.11. TEMPORARY SECURITIES
- 2.12. CANCELLATION
- 2.13. PAYMENT OF INTEREST; DEFAULTED INTEREST; COMPUTATION OF INTEREST
- 2.14. CUSIP NUMBER
- 2.15. PROVISIONS FOR GLOBAL SECURITIES
- 2.16. PERSONS DEEMED OWNERS

### ARTICLE 3 - REDEMPTION

- 3.1. NOTICES TO TRUSTEE
- 3.2. SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED
- 3.3. NOTICE OF REDEMPTION
- 3.4. EFFECT OF NOTICE OF REDEMPTION

3.5. DEPOSIT OF REDEMPTION PRICE

3.6. SECURITIES REDEEMED IN PART

ARTICLE 4 - COVENANTS

4.1. PAYMENT OF SECURITIES

4.2. SEC REPORTS

4.3. WAIVER OF STAY, EXTENSION OR USURY LAWS

4.4. COMPLIANCE CERTIFICATE

4.5. CORPORATE EXISTENCE

ARTICLE 5 - SUCCESSOR CORPORATION

5.1. LIMITATION ON CONSOLIDATION, MERGER AND SALE OF ASSETS

5.2. SUCCESSOR PERSON SUBSTITUTED

ARTICLE 6 - DEFAULTS AND REMEDIES

6.1. EVENTS OF DEFAULT

6.2. ACCELERATION

6.3. REMEDIES

6.4. WAIVER OF PAST DEFAULTS AND EVENTS OF DEFAULT

6.5. CONTROL BY MAJORITY

6.6. LIMITATION ON SUITS

6.7. RIGHTS OF HOLDERS TO RECEIVE PAYMENT

6.8. COLLECTION SUIT BY TRUSTEE

6.9. TRUSTEE MAY FILE PROOFS OF CLAIM

6.10. PRIORITIES

6.11. UNDERTAKING FOR COSTS

ARTICLE 7 - TRUSTEE

7.1. DUTIES OF TRUSTEE

7.2. RIGHTS OF TRUSTEE

7.3. INDIVIDUAL RIGHTS OF TRUSTEE

7.4. TRUSTEE'S DISCLAIMER

7.5. NOTICE OF DEFAULT

- 7.6. REPORTS BY TRUSTEE TO HOLDERS
- 7.7. COMPENSATION AND INDEMNITY
- 7.8. REPLACEMENT OF TRUSTEE
- 7.9. SUCCESSOR TRUSTEE BY CONSOLIDATION, MERGER OR CONVERSION
- 7.10. ELIGIBILITY; DISQUALIFICATION
- 7.11. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY
- 7.12. PAYING AGENTS

#### ARTICLE 8 - AMENDMENTS, SUPPLEMENTS AND WAIVERS

- 8.1. WITHOUT CONSENT OF HOLDERS
- 8.2. WITH CONSENT OF HOLDERS
- 8.3. COMPLIANCE WITH TRUST INDENTURE ACT
- 8.4. REVOCATION AND EFFECT OF CONSENTS
- 8.5. NOTATION ON OR EXCHANGE OF SECURITIES
- 8.6. TRUSTEE TO SIGN AMENDMENTS, ETC.

#### ARTICLE 9 - DISCHARGE OF INDENTURE; DEFEASANCE

- 9.1. DISCHARGE OF INDENTURE
- 9.2. LEGAL DEFEASANCE
- 9.3. COVENANT DEFEASANCE
- 9.4. CONDITIONS TO LEGAL DEFEASANCE OR COVENANT DEFEASANCE
- 9.5. DEPOSITED MONEY AND U.S. AND FOREIGN GOVERNMENT OBLIGATIONS TO BE HELD IN TRUST; OTHER MISCELLANEOUS PROVISIONS
- 9.6. REINSTATEMENT
- 9.7. MONEYS HELD BY PAYING AGENT
- 9.8. MONEYS HELD BY TRUSTEE

#### ARTICLE 10 - MISCELLANEOUS

- 10.1. TRUST INDENTURE ACT CONTROLS
- 10.2. NOTICES
- 10.3. COMMUNICATIONS BY HOLDERS WITH OTHER HOLDERS
- 10.4. CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT

- 10.5. STATEMENT REQUIRED IN CERTIFICATE AND OPINION
- 10.6. RULES BY TRUSTEE AND AGENTS
- 10.7. BUSINESS DAYS; LEGAL HOLIDAYS; PLACE OF PAYMENT
- 10.8. GOVERNING LAW
- 10.9. NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS
- 10.10. NO RECOURSE AGAINST OTHERS
- 10.11. SUCCESSORS
- 10.12. MULTIPLE COUNTERPARTS
- 10.13. TABLE OF CONTENTS, HEADINGS, ETC.
- 10.14. SEVERABILITY
- 10.15. SECURITIES IN A FOREIGN CURRENCY OR IN EUROS
- 10.16. JUDGMENT CURRENCY

## CROSS-REFERENCE TABLE

TIA SECTION	INDENTURE SECTION
310(a)(1)(2)(5)	7.10
310(a)(3)(4)	Inapplicable
310(b)	7.8; 7.10
310(c)	Inapplicable
311(a)(b)	7.11
311(c)	Inapplicable
312(a)	2.6
312(b)(c)	10.3
313(a)(b)	7.6
313(c)	7.6; 10.2
313(d)	7.6
314(a)	4.2; 4.4; 10.2
314(b)	N/A
314(c)(1)(2)	10.4; 10.5
314(c)(3)	Inapplicable
314(d)	Inapplicable
314(e)	10.5
314(f)	Inapplicable
315(a)	7.1, 7.2
315(b)	7.5; 10.2
315(c)	7.1
315(d)	7.1; 7.2
315(e)	6.11
316(a)(last sentence)	2.10
316(a)(1)(A)	6.5
316(a)(1)(B)	6.4
316(a)(2)	8.2
316(b)	6.7
316(c)	8.4
317(a)(1)	6.8
317(a)(2)	6.9
317(b)	2.5; 7.12
318(a)	10.1

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be a part of the Indenture.

INDENTURE, dated as of , , by and between AnaptysBio, Inc., a Delaware corporation, as Issuer (the “Company”) and , a organized under the laws of , as Trustee (the “Trustee”).

## **RECITALS OF THE COMPANY**

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its debentures, notes or other evidences of indebtedness to be issued in one or more series (the “Securities”), as herein provided, up to such principal amount as may from time to time be authorized in or pursuant to one or more resolutions of the Board of Directors or by supplemental indenture.

All things necessary to make this Indenture a valid agreement of the Company in accordance with its terms have been done, and the execution and delivery thereof have been in all respects duly authorized by the parties hereto.

### **NOW, THEREFORE, THIS INDENTURE WITNESSETH:**

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities of a Series thereof, as follows:

## **ARTICLE 1 - DEFINITIONS AND INCORPORATION BY REFERENCE**

### **1.1. DEFINITIONS.**

“Affiliate” of any specified Person means any other Person which, directly or indirectly through one or more intermediaries, controls, or is controlled by or is under common control with, such specified Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“Agent” means any Registrar, Paying Agent, co-registrar or agent for service of notices and demands.

“Board of Directors” means the Board of Directors of the Company or any committee duly authorized to act therefor.

“Board Resolution” means a copy of a resolution certified pursuant to an Officers’ Certificate to have been duly adopted by the Board of Directors of the Company and to be in full force and effect on the date of such certification which has been delivered to the Trustee.

“Capital Stock” means, with respect to any Person, any and all shares or other equivalents (however designated) of capital stock, partnership interests or any other participation, right or other interest in the nature of an equity interest in such Person or any option, warrant or other security convertible into any of the foregoing.

“Company” means the party named as such in the first paragraph of this Indenture until a successor replaces such party pursuant to Article 5 of this Indenture, and thereafter means the successor and any other primary obligor on the Securities.

“Company Order” means a written order signed in the name of the Company by two Officers, one of whom must be its Chief Executive Officer or its Chief Financial Officer.

“Company Request” means any written request signed in the name of the Company by its Chief Executive Officer, its President, any Vice President, its Chief Financial Officer or its Treasurer and attested to by its Secretary or any Assistant Secretary.

“Corporate Trust Office” means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered.

“Default” means any event that is, or that with the passing of time or giving of notice or both would be, an Event of Default.

“Depository” means, with respect to the Securities of any Series issuable or issued in whole or in part in the form of one or more Global Securities, the Person designated as Depository for such Series by the Company, which Depository shall be a clearing agency registered under the Exchange Act, until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Depository” shall mean each Person who is then a Depository hereunder, and if at any time there is more than one such Person, such Persons.

“Dollars” means the currency of the United States of America.

“Euro” means the single currency of participating member states of the economic and monetary union as contemplated in the Treaty on European Union.

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

“Foreign Currency” means any currency or currency unit issued by a government other than the government of the United States of America.

“Foreign Government Obligations” means, with respect to Securities that are denominated in a Foreign Currency, (i) direct obligations of the government that issued or caused to be issued such currency for the payment of which obligations its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by, or acting as an agency or instrumentality of, such government, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by such government, which, in either case under clauses (i) and (ii), are not callable or redeemable at the option of the issuer thereof.

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

“Global Security” or “Global Securities” means a Security or Securities, as the case may be, in the form established pursuant to Section 2.2, evidencing all or part of a Series of Securities issued to the Depository for such Series or its nominee, and registered in the name of such Depository or nominee, and bearing the legend set forth in Section 2.15(c) (or such other legend(s) as may be applied to such Securities in accordance with Section 2.2(24)).

“Holder” or “Securityholder” means the Person in whose name a Security is registered on the Registrar’s books.

“Indebtedness” means (without duplication), with respect to any Person, any indebtedness at any time outstanding, secured or unsecured, contingent or otherwise, which is for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof), or evidenced by bonds, notes, debentures or similar instruments, or representing the balance deferred and unpaid of the purchase price of any property (excluding any balances that constitute accounts payable or trade payables, and other accrued liabilities arising in the ordinary course of business), if and to the extent any of the foregoing indebtedness would appear as a liability upon a balance sheet of such Person prepared in accordance with GAAP.

“Indenture” means this Indenture as amended, restated or supplemented from time to time.

“Interest Payment Date,” when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

“Lien” means, with respect to any property or assets of any Person, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, lien, charge, easement, encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such property or assets (including, without limitation, any capitalized lease obligation, conditional sales or other title retention agreement having substantially the same economic effect as any of the foregoing).

“Maturity,” when used with respect to any Security, means the date on which the principal of such Security, or an installment of principal, becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption, notice of option to elect payment or otherwise.

“Officer” means the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Treasurer or the Secretary of the Company, or any other officer designated by the Board of Directors, as the case may be.

“Officers’ Certificate” means, with respect to any Person, a certificate signed by the Chairman, Chief Executive Officer, President or any Senior or Executive Vice President and the Chief Financial Officer or any Treasurer of such Person, that shall comply with applicable provisions of this Indenture.

“Opinion of Counsel” means a written opinion from legal counsel, which counsel is reasonably acceptable to the Trustee. The counsel may be an employee of or outside counsel to the Company.

“Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government (including any agency or political subdivision thereof).

“Redemption Date,” when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to this Indenture.

“Responsible Officer,” when used with respect to the Trustee, means any officer within the corporate trust department or division of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“SEC” means the United States Securities and Exchange Commission as constituted from time to time, or any successor performing substantially the same functions.

“Securities” means the securities that are issued under this Indenture, as amended, restated or supplemented from time to time pursuant to this Indenture.

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

“Series” or “Series of Securities” means each series of debentures, notes or other debt instruments of the Company created pursuant to Sections 2.1 and 2.2.

“Significant Subsidiary” means (i) any direct or indirect Subsidiary of the Company that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date hereof, or (ii) any group of direct or indirect Subsidiaries of the Company that, taken together as a group, would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date hereof.

“Stated Maturity,” when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security and the interest thereon, or such installment of principal or interest, is due and payable, and when used with respect to any other Indebtedness, means the date specified in the instrument governing such Indebtedness as the fixed date on which the principal of such Indebtedness, or any installment of interest thereon, is due and payable.

“Subsidiary” of any specified Person means any corporation, limited liability company, partnership, joint venture, association or other business entity, whether now existing or hereafter organized or acquired, (i) in the case of a corporation, of which more than 50% of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors thereof is held, directly or indirectly, by such Person or any of its Subsidiaries; or (ii) in the case of a partnership, joint venture, association or other business entity, with respect to which such Person or any of its Subsidiaries has the power to direct or cause the direction of the management and



policies of such entity by contract or otherwise, or if in accordance with GAAP such entity is consolidated with such Person for financial statement purposes.

“TIA” means the Trust Indenture Act of 1939 (15 U.S. Code Section 77aaa-77bbbb) as in effect on the date of this Indenture (except as provided in Section 8.3).

“Trustee” means the party named as such in this Indenture until a successor replaces it pursuant to this Indenture, and thereafter means the successor, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any Series shall mean the Trustee with respect to Securities of that Series.

“U.S. Government Obligations” means direct non-callable obligations of, or non-callable obligations guaranteed by, the United States of America for the payment of which obligation or guarantee the full faith and credit of the United States of America is pledged.

## 1.2. OTHER DEFINITIONS.

The definitions of the following terms may be found in the sections indicated as follows:

<b>term</b>	<b>defined in section</b>
“Bankruptcy Law”	6.1
“Business Day”	10.7
“Covenant Defeasance”	9.3
“Custodian”	6.1
“Event of Default”	6.1
“Journal”	10.15
“Judgment Currency”	10.16
“Legal Defeasance”	9.2
“Legal Holiday”	10.7
“Market Exchange Rate”	10.15
“New York Paying Agent”	2.4
“Paying Agent”	2.4
“Place of Payment”	10.7
“Registrar”	2.4
“Required Currency”	10.16
“Service Agent”	2.4

### **1.3. INCORPORATION BY REFERENCE OF TRUST INDENTURE ACT.**

Whenever this Indenture refers to a provision of the TIA, the portion of such provision required to be incorporated herein in order for this Indenture to be qualified under the TIA is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“Commission” means the SEC.

“Indenture securities” means the Securities.

“Indenture securityholder” means a Holder or Securityholder.

“Indenture to be qualified” means this Indenture.

“Indenture trustee” or “institutional trustee” means the Trustee.

“Obligor on the indenture securities” means the Company.

All other terms used in this Indenture that are defined by the TIA, defined in the TIA by reference to another statute or defined by SEC rule have the meanings therein assigned to them.

### **1.4. RULES OF CONSTRUCTION.**

Unless the context otherwise requires:

(1) a term has the meaning assigned to it herein, whether defined expressly or by reference;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) “or” is not exclusive;

(4) words in the singular include the plural, and in the plural include the singular;

(5) words used herein implying any gender shall apply to each gender;

(6) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision; and

(7) “\$,” refers to Dollars, or such other money of the United States that at the time of payment is legal tender for payment of public and private debts.

## **ARTICLE 2 - THE SECURITIES**

### **2.1. ISSUABLE IN SERIES.**

The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is \$ , , . The Securities may be issued in one or more Series. All Securities of a Series shall be identical except as may be set forth in a Board Resolution, a supplemental indenture or an Officers’ Certificate detailing the adoption of the terms thereof pursuant to the authority granted under a Board Resolution. In the case of Securities of a Series to be issued from time to time, the Board Resolution, Officers’ Certificate or supplemental indenture may provide for the method by which specified terms (such as interest rate, Stated Maturity, record date or date from which interest shall accrue) are to be determined. Securities may differ between Series in respect of any matters, PROVIDED, that all Series of Securities shall be equally and ratably entitled to the benefits of the Indenture.

## 2.2. ESTABLISHMENT OF TERMS OF SERIES OF SECURITIES.

At or prior to the issuance of any Securities within a Series, the following shall be established (as to the Series generally, in the case of Subsection 2.2(1) and either as to such Securities within the Series or as to the Series generally in the case of Subsections 2.2(2) through 2.2(24)) by a Board Resolution, a supplemental indenture or an Officers' Certificate, in each case, pursuant to authority granted under a Board Resolution:

- (1) the title of the Series (which shall distinguish the Securities of that particular Series from the Securities of any other Series);
- (2) any limit upon the aggregate principal amount of the Securities of the Series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the Series pursuant to Section 2.7, 2.8, 2.11, 3.6 or 8.5);
- (3) the price or prices (expressed as a percentage of the principal amount thereof) at which the Securities of the Series will be issued;
- (4) the date or dates on which the principal of the Securities of the Series is payable;
- (5) the rate or rates (which may be fixed or variable) per annum or, if applicable, the method used to determine such rate or rates (including, but not limited to, any commodity, commodity index, stock exchange index or financial index) at which the Securities of the Series shall bear interest, if any, the date or dates from which such interest, if any, shall accrue, the date or dates on which such interest, if any, shall commence and be payable and any regular record date for the interest payable on any Interest Payment Date;
- (6) the place or places where the principal of, and interest and premium, if any, on, the Securities of the Series shall be payable, or the method of such payment, if by wire transfer, mail or other means;
- (7) if applicable, the period or periods within which, the price or prices at which and the terms and conditions upon which the Securities of the Series may be redeemed, in whole or in part, at the option of the Company;
- (8) the obligation, if any, of the Company to redeem or purchase the Securities of the Series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof, and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the Series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
- (9) the dates, if any, on which and the price or prices at which the Securities of the Series will be repurchased by the Company at the option of the Holders thereof, and other detailed terms and provisions of such repurchase obligations;
- (10) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which the Securities of the Series shall be issuable;
- (11) the forms of the Securities of the Series in bearer (if to be issued outside of the United States of America) or fully registered form (and, if in fully registered form, whether the Securities will be issuable as Global Securities);
- (12) if other than the principal amount thereof, the portion of the principal amount of the Securities of the Series that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 6.2;
- (13) the currency of denomination of the Securities of the Series, which may be Dollars or any Foreign Currency, including, but not limited to, the Euro, and, if such currency of denomination is a composite currency other than the Euro, the agency or organization, if any, responsible for overseeing such composite currency;
- (14) the designation of the currency, currencies or currency units in which payment of the principal of, and interest and premium, if any, on, the Securities of the Series will be made;

(15) if payments of principal of, or interest or premium, if any, on, the Securities of the Series are to be made in one or more currencies or currency units other than that or those in which such Securities are denominated, the manner in which the exchange rate with respect to such payments will be determined;

(16) the manner in which the amounts of payment of principal of, or interest and premium, if any, on, the Securities of the Series will be determined, if such amounts may be determined by reference to an index based on a currency or currencies or by reference to a commodity, commodity index, stock exchange index or financial index;

(17) the provisions, if any, relating to any collateral provided for the Securities of the Series;

(18) any addition to or change in the covenants set forth in Articles 4 or 5 that applies to Securities of the Series;

(19) any addition to or change in the Events of Default which applies to any Securities of the Series, any provision for the payment of additional interest or liquidated damages in connection with any Event of Default, and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 6.2;

(20) the terms and conditions, if any, for conversion of the Securities into or exchange of the Securities for shares of common stock, preferred stock, other debt securities or warrants, subscription rights or units for common stock, preferred stock or other securities of any kind of the Company that apply to Securities of the Series;

(21) any Trustees, depositories, interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such Series if other than those appointed herein;

(22) the terms and conditions, if any, upon which the Securities shall be subordinated in right of payment to other Indebtedness of the Company;

(23) if applicable, that the Securities of the Series, in whole or any specified part, shall be defeasible pursuant to Article 9; and

(24) any other terms of the Securities of the Series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 8.1, but which may modify or delete any provision of this Indenture insofar as it applies to such Series).

All Securities of any one Series need not be issued at the same time, and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution, supplemental indenture or Officers' Certificate referred to above, however, the authorized principal amount of any Series may not be increased to provide for issuances of additional Securities of such Series, unless otherwise provided in such Board Resolution, supplemental indenture or Officers' Certificate.

### **2.3. EXECUTION AND AUTHENTICATION.**

The Securities shall be executed on behalf of the Company by two Officers of the Company or an Officer and an Assistant Secretary of the Company. Each such signature may be either manual or facsimile. The Company's seal may be impressed, affixed, imprinted or reproduced on the Securities and may be in facsimile form.

If an Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall nevertheless be valid.

A Security shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture. The Trustee shall at any time, and from time to time, authenticate Securities for original issue in the principal amount provided in the Board Resolution, supplemental indenture hereto or Officers' Certificate, upon receipt by the Trustee of a Company Order. Such Company Order may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent or agents, which oral instructions shall be promptly confirmed in writing. Each Security shall be dated the date of its authentication.

The aggregate principal amount of Securities of any Series outstanding at any time may not exceed any limit upon the maximum principal amount for such Series set forth in the Board Resolution, supplemental indenture hereto or Officers' Certificate delivered pursuant to Section 2.2, except as provided in Section 2.8.

Prior to the issuance of Securities of any Series, the Trustee shall have received and (subject to Section 7.1) shall be fully protected in relying on: (a) the Board Resolution, supplemental indenture hereto or Officers' Certificate establishing the form of the Securities of that Series or of Securities within that Series and the terms of the Securities of that Series or of Securities within that Series, (b) an Officers' Certificate complying with Section 10.4, and (c) an Opinion of Counsel complying with Section 10.4.

The Trustee shall have the right to decline to authenticate and deliver any Securities of any Series: (a) if the Trustee, being advised in writing by outside counsel, determines that such action may not lawfully be taken; or (b) if the Trustee in good faith by its board of directors or trustees, executive committee or a trust committee of directors and/or vice-presidents shall reasonably determine that such action would expose the Trustee to personal liability, or cause it to have a conflict of interest with respect to Holders of any then outstanding Series of Securities.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Any appointment shall be evidenced by an instrument signed by an authorized officer of the Trustee, a copy of which shall be furnished to the Company. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.

#### **2.4. REGISTRAR AND PAYING AGENT.**

The Company shall maintain in each Place of Payment for any Series of Securities (i) an office or agency where such Securities may be presented for registration of transfer or for exchange ("Registrar"), (ii) an office or agency where such Securities may be presented for payment ("Paying Agent") (PROVIDED that the Company shall at all times maintain a Paying Agent in the Borough of Manhattan, City of New York, State of New York (the "New York Paying Agent"), and PROVIDED, FURTHER, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the register for the Securities maintained by the Registrar), and (iii) an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served ("Service Agent"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may have one or more co-registrars and Service Agents and one or more additional paying agents. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office, or to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee as set forth in Section 10.2. The Company or any of its Subsidiaries may also act as Paying Agent. If the Company acts as Paying Agent, it shall segregate the money held by it for the payment of principal of, and interest and premium, if any, on, the Securities and hold it as a separate trust fund. The Company may change any Paying Agent, Registrar, co-registrar, Service Agent or any other Agent without notice to any Securityholder.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes, and may from time to time rescind such designations; PROVIDED, HOWEVER, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any Series for such purposes. The Company hereby initially designates the Corporate Trust Office of the Trustee as such office of the Company. The Company shall give prompt written notice to the Trustee of such designation or rescission, and of any change in the location of any such other office or agency.

The Company shall enter into an appropriate agency agreement with any Registrar, Service Agent or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any such Agent. If the Company fails to maintain a Registrar, Service Agent or Paying Agent, or agent for service of notices and demands, or fails to give the foregoing notice, the Trustee shall act as such. The Company hereby appoints the Trustee as the initial Registrar, Paying Agent and Service Agent for each Series unless another Registrar, Paying Agent or Service Agent, as the case may be, is appointed

prior to the time Securities of that Series are first issued. The Company designates , as the New York Paying Agent, with offices at .

## **2.5. PAYING AGENT TO HOLD ASSETS IN TRUST.**

The Trustee as Paying Agent shall, and the Company shall require each Paying Agent other than the Trustee to agree in writing that each Paying Agent shall, hold in trust for the benefit of the Holders of any Series of Securities or the Trustee all assets held by the Paying Agent for the payment of principal of, or interest or premium, if any, on, such Series of Securities (whether such assets have been distributed to it by the Company or any other obligor on such Series of Securities), and the Company and the Paying Agent shall notify the Trustee in writing of any Default by the Company (or any other obligor on such Series of Securities) in making any such payment. The Company at any time may require a Paying Agent to distribute all assets held by it to the Trustee and account for any assets disbursed, and the Trustee may, at any time during the continuance of any payment default with respect to any Series of Securities, upon written request to a Paying Agent, require such Paying Agent to distribute all assets held by it to the Trustee and to account for any assets distributed. Upon distribution to the Trustee of all assets that shall have been delivered by the Company to the Paying Agent, the Paying Agent shall have no further liability for such assets.

## **2.6. SECURITYHOLDER LISTS.**

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders of each Series of Securities. If the Trustee is not the Registrar, the Company shall furnish to the Trustee as of each regular record date for the payment of interest on the Securities of a Series and before each related Interest Payment Date, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders of each Series of Securities.

## **2.7. TRANSFER AND EXCHANGE.**

When Securities of a Series are presented to the Registrar with a request to register the transfer thereof, the Registrar shall register the transfer as requested if the requirements of applicable law are met, and when such Securities of a Series are presented to the Registrar with a request to exchange them for an equal principal amount of other authorized denominations of Securities of the same Series, the Registrar shall make the exchange as requested. To permit transfers and exchanges, upon surrender of any Security for registration of transfer at the office or agency maintained pursuant to Section 2.4, the Company shall execute and the Trustee shall authenticate Securities at the Registrar's request.

If Securities are issued as Global Securities, the provisions of Section 2.15 shall apply.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Registrar or a co-registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar or a co-registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

Any exchange or transfer shall be without charge, except that the Company may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to a transfer or exchange, but this provision shall not apply to any exchange pursuant to Section 2.11, 3.6 or 8.5. The Trustee shall not be required to register transfers of Securities of any Series, or to exchange Securities of any Series, for a period of 15 days before the record date for selection for redemption of such Securities. The Trustee shall not be required to exchange or register transfers of Securities of any Series called or being called for redemption in whole or in part, except the unredeemed portion of such Security being redeemed in part.

## **2.8. REPLACEMENT SECURITIES.**

If a mutilated Security is surrendered to the Trustee, or if the Holder of a Security presents evidence to the satisfaction of the Company and the Trustee that the Security has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall authenticate a replacement Security of the same Series and of like tenor and principal amount and bearing a number not contemporaneously outstanding. An indemnity bond may be required by the Company or the Trustee that is sufficient in the reasonable judgment of the Company or the Trustee, as the case may be, to protect the Company, the Trustee or any Agent from any loss which any of them may suffer if a Security is replaced. The Company may charge such Holder for the Company's out-of-pocket expenses in replacing a Security, including the fees and expenses of the Trustee. Every replacement Security shall constitute an original additional obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that Series duly issued hereunder.

## **2.9. OUTSTANDING SECURITIES.**

Securities outstanding at any time are all Securities authenticated by the Trustee, except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.9 as not outstanding.

If a Security is replaced pursuant to Section 2.8 (other than a mutilated Security surrendered for replacement), it ceases to be outstanding until the Company and the Trustee receive proof satisfactory to each of them that the replaced Security is held by a bona fide purchaser. A mutilated Security ceases to be outstanding upon surrender of such Security and replacement thereof pursuant to Section 2.8.

If a Paying Agent holds on a Redemption Date or the Stated Maturity money sufficient to pay the principal of, premium, if any, and accrued interest on, Securities payable on that date, and is not prohibited from paying such money to the Holders thereof pursuant to the terms of this Indenture (PROVIDED, that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made), then on and after that date such Securities cease to be outstanding and interest on them ceases to accrue.

A Security does not cease to be outstanding solely because the Company or an Affiliate holds the Security.

## **2.10. WHEN TREASURY SECURITIES DISREGARDED; DETERMINATION OF HOLDERS' ACTION.**

In determining whether the Holders of the required aggregate principal amount of the Securities of any Series have concurred in any direction, waiver or consent, the Securities of any Series owned by the Company or any other obligor on such Securities, or by any Affiliate of any of them, shall be disregarded, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities of such Series which the Trustee actually knows are so owned shall be so disregarded. Securities of such Series so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Securities of such Series and that the pledgee is not the Company or any other obligor on the Securities of such Series, or an Affiliate of any of them.

## **2.11. TEMPORARY SECURITIES.**

Until definitive Securities are ready for delivery, the Company may prepare and execute, and the Trustee shall authenticate, temporary Securities. Temporary Securities shall be substantially in the form, and shall carry all rights, of definitive Securities, but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and execute, and the Trustee shall authenticate, definitive Securities in exchange for temporary Securities without charge to the Holder.

## **2.12. CANCELLATION.**

All Securities surrendered for payment, redemption or registration of transfer or exchange, or for credit against any sinking fund payment, shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee for



cancellation. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent, and no one else, shall cancel, and at the written request of the Company shall dispose of, all Securities surrendered for transfer, exchange, payment or cancellation. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the Indebtedness represented by such Securities unless and until the same are surrendered to the Trustee for cancellation pursuant to this Section 2.12. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section 2.12, except as expressly permitted by this Indenture.

### **2.13. PAYMENT OF INTEREST; DEFAULTED INTEREST; COMPUTATION OF INTEREST.**

Except as otherwise provided as contemplated by Section 2.2 with respect to any Series of Securities, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security is registered at the close of business on the regular record date for such interest, as provided in the Board Resolution, supplemental indenture hereto or Officers' Certificate establishing the terms of such Series.

If the Company defaults in a payment of interest on the Securities, it shall pay the defaulted amounts, plus any interest payable on defaulted amounts pursuant to Section 4.1, to the Persons who are Securityholders on a subsequent special record date, which date shall be the 15th day next preceding the date fixed by the Company for the payment of defaulted interest, or the next succeeding Business Day if such date is not a Business Day. At least 15 days before the special record date, the Company shall mail or cause to be mailed to each Securityholder, with a copy to the Trustee, a notice that states the special record date, the payment date and the amount of defaulted interest, and interest payable on such defaulted interest, if any, to be paid.

Except as otherwise specified as contemplated by Section 2.2 for Securities of any Series, interest on the Securities of each Series shall be computed on the basis of a 360-day year of twelve 30-day months.

### **2.14. CUSIP NUMBER.**

The Company in issuing the Securities may use one or more "CUSIP" numbers, and, if the Company does so, the Trustee shall use the CUSIP number(s) in notices of redemption or exchange as a convenience to Holders, PROVIDED, that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP number(s) printed in the notice or on the Securities, and that reliance may be placed only on the other identification numbers printed on the Securities, and that any such redemption or exchange shall not be affected by any defect in or omission of any such numbers.

### **2.15. PROVISIONS FOR GLOBAL SECURITIES.**

(a) A Board Resolution, a supplemental indenture hereto or an Officers' Certificate shall establish whether the Securities of a Series shall be issued in whole or in part in the form of one or more Global Securities, and the Depository for such Global Securities or Securities.

(b) Notwithstanding any provisions to the contrary contained in Section 2.7 and in addition thereto, if, and only if the Depository (i) at any time is unwilling or unable to continue as Depository for such Global Security or ceases to be a clearing agency registered under the Exchange Act and (ii) a successor Depository is not appointed by the Company within 90 days after the date the Company is so informed in writing or becomes aware of the same, the Company promptly will execute and deliver to the Trustee definitive Securities, and the Trustee, upon receipt of a Company Request for the authentication and delivery of such definitive Securities (which the Company will promptly execute and deliver to the Trustee) and an Officers' Certificate to the effect that such Global Security shall be so exchangeable, will authenticate and deliver definitive Securities, without charge, registered in such names and in such authorized denominations as the Depository shall direct in writing (pursuant to instructions from its direct and indirect participants or otherwise) in an



aggregate principal amount equal to the principal amount of the Global Security with like tenor and terms. Upon the exchange of a Global Security for definitive Securities, such Global Security shall be canceled by the Trustee. Unless and until it is exchanged in whole or in part for definitive Securities, as provided in this Section 2.15(b), a Global Security may not be transferred except as a whole by the Depository with respect to such Global Security to a nominee of such Depository, by a nominee of such Depository to such Depository or another nominee of such Depository or by the Depository or any such nominee to a successor Depository or a nominee of such a successor Depository.

(c) Any Global Security issued hereunder shall bear a legend in substantially the following form:

“This Security is a Global Security within the meaning of the Indenture hereinafter referred to, and is registered in the name of the Depository or a nominee of the Depository. This Security is exchangeable for Securities registered in the name of a Person other than the Depository or its nominee only in the limited circumstances described in the Indenture, and may not be transferred except as a whole by the Depository to a nominee of the Depository, by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such a successor Depository.”

(d) The Depository, as a Holder, may appoint agents and otherwise authorize participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under the Indenture.

(e) Notwithstanding the other provisions of this Indenture, unless otherwise specified as contemplated by Section 2.2, payment of the principal of, and interest and premium, if any, on, any Global Security shall be made to the Depository or its nominee in its capacity as the Holder thereof.

(f) Except as provided in Section 2.15(e) above, the Company, the Trustee and any Agent shall treat a Person as the Holder of such principal amount of outstanding Securities of any Series represented by a Global Security as shall be specified in a written statement of the Depository (which may be in the form of a participants' list for such Series) with respect to such Global Security, for purposes of obtaining any consents, declarations, waivers or directions required to be given by the Holders pursuant to this Indenture, PROVIDED, that until the Trustee is so provided with a written statement, it may treat the Depository or any other Person in whose name a Global Security is registered as the owner of such Global Security for the purpose of receiving payment of the principal of, and any premium and (subject to Section 2.13) any interest on, such Global Security and for all other purposes whatsoever, and none of the Company, the Trustee or any agent of the Company or the Trustee shall be affected by notice to the contrary.

## **2.16. PERSONS DEEMED OWNERS.**

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee, the Registrar and any agent of the Company, the Registrar or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of the principal of, and any premium and (subject to Section 2.13) any interest on, such Security and for all other purposes whatsoever, and none of the Company, the Trustee, the Registrar or any agent of the Company, the Trustee or the Registrar shall be affected by notice to the contrary.

## **ARTICLE 3 - REDEMPTION**

### **3.1. NOTICES TO TRUSTEE.**

The Company may, with respect to any Series of Securities, reserve the right to redeem and pay the Series of Securities, or may covenant to redeem and pay the Series of Securities or any part thereof, prior to the Stated Maturity thereof at such time and on such terms as provided for in such Securities or the related Board Resolution, supplemental indenture or Officers' Certificate. If a Series of Securities is redeemable and the Company elects to redeem all or part of such Series of Securities, it shall notify the Trustee of the Redemption Date and the principal amount of Securities to be redeemed at least 45 days (unless a shorter notice shall be satisfactory to the Trustee) before the Redemption Date. Any such notice may be canceled at any time prior to notice of such redemption being mailed to any Holder, and shall thereby be void and of no effect.

### **3.2. SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED.**

Unless otherwise indicated for a particular Series of Securities by a Board Resolution, a supplemental indenture or an Officers' Certificate, if fewer than all of the Securities of a Series are to be redeemed, the Trustee shall select the Securities of a Series to be redeemed pro rata, by lot or by any other method that the Trustee considers fair and appropriate (unless the Company specifically directs the Trustee otherwise) and, if such Securities are listed on any securities exchange, by a method that complies with the requirements of such exchange.

The Trustee shall make the selection from Securities of a Series outstanding and not previously called for redemption, and shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Security selected for partial redemption, the principal amount thereof to be redeemed at least 35 but not more than 60 days before the Redemption Date. Securities of a Series in denominations of \$1,000 may be redeemed only in whole. The Trustee may select for redemption portions of the principal of Securities of a Series that have denominations larger than \$1,000. Securities of a Series and portions of them it selects shall be in amounts of \$1,000 or, with respect to Securities of any Series issuable in other denominations pursuant to Section 2.2(10), the minimum principal denomination for each Series and integral multiples thereof. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption.

### **3.3. NOTICE OF REDEMPTION.**

Unless otherwise indicated for a particular Series by Board Resolution, a supplemental indenture hereto or an Officers' Certificate, at least 30 days, and no more than 60 days, before a Redemption Date, the Company shall mail, or cause to be mailed, a notice of redemption by first-class mail to each Holder of Securities to be redeemed at his or her last address as the same appears on the registry books maintained by the Registrar. The notice shall identify the Securities to be redeemed and shall state:

(1) the Redemption Date;

(2) the redemption price, and that such redemption price shall become due and payable on the Redemption Date;

(3) if any Security of a Series is being redeemed in part, the portion of the principal amount of such Security of a Series to be redeemed and that, after the Redemption Date and upon surrender of such Security of a Series, a new Security or Securities in principal amount equal to the unredeemed portion will be issued;

(4) the name and address of the Paying Agent;

(5) that Securities of a Series called for redemption must be surrendered to the Paying Agent to collect the redemption price, and the place or places where each such Security is to be surrendered for such payment;

(6) that, unless the Company defaults in making the redemption payment, interest on the Securities of a Series called for redemption ceases to accrue on the Redemption Date, and the only remaining right of the Holders of such Securities is to receive payment of the redemption price upon surrender to the Paying Agent of the Securities redeemed;

(7) if fewer than all of the Securities of a Series are to be redeemed, the identification of the particular Securities of a Series (or portion thereof) to be redeemed, as well as the aggregate principal amount of Securities of a Series to be redeemed and the aggregate principal amount of Securities of a Series to be outstanding after such partial redemption.

(8) the CUSIP number, if any, printed on the Securities being redeemed; and

(9) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Securities.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's sole expense.

### **3.4. EFFECT OF NOTICE OF REDEMPTION.**

Once the notice of redemption described in Section 3.3 is mailed, Securities of a Series called for redemption become due and payable on the Redemption Date and at the redemption price, plus interest, if any, accrued to the Redemption Date. Upon surrender to the Trustee or Paying Agent, such Securities of a Series shall be paid at the redemption price, plus accrued interest, if any, to the Redemption Date; PROVIDED, that if the Redemption Date is after a regular interest payment record date and on or prior to the next Interest Payment Date, the accrued interest shall be payable to the Holder of the redeemed Securities registered on the relevant record date, as specified by the Company in the notice to the Trustee pursuant to Section 3.1.

### **3.5. DEPOSIT OF REDEMPTION PRICE.**

On or prior to the Redemption Date (but no later than 11:00 A.M. Eastern Time on such date), the Company shall deposit with the Paying Agent money sufficient to pay the redemption price of and accrued interest, if any, on all Securities to be redeemed on that date other than Securities or portions thereof called for redemption on that date which have been delivered by the Company to the Trustee for cancellation.

On and after any Redemption Date, if money sufficient to pay the redemption price of, and accrued interest on, Securities called for redemption shall have been made available in accordance with the preceding paragraph and the Company and the Paying Agent are not prohibited from paying such moneys to Holders, the Securities called for redemption will cease to accrue interest and the only right of the Holders of such Securities will be to receive payment of the redemption price of and, subject to the proviso in Section 3.4, accrued and unpaid interest on such Securities to the Redemption Date. If any Security called for redemption shall not be so paid, interest will be paid, from the Redemption Date until such redemption payment is made, on the unpaid principal of the Security and any interest or premium, if any, not paid on such unpaid principal, in each case, at the rate and in the manner provided in the Securities.

### **3.6. SECURITIES REDEEMED IN PART.**

Upon surrender of a Security of a Series that is redeemed in part, the Company shall execute, and the Trustee shall authenticate, for a Holder a new Security of the same Series equal in principal amount to the unredeemed portion of the Security surrendered.

## **ARTICLE 4 - COVENANTS**

### **4.1. PAYMENT OF SECURITIES.**

The Company shall pay the principal of, and interest and premium, if any, on, each Series of Securities on the dates and in the manner provided in such Securities and this Indenture.

An installment of principal or interest shall be considered paid on the date it is due if the Trustee or Paying Agent holds on that date money designated for and sufficient to pay such installment and is not prohibited from paying such money to the Holders pursuant to the terms of this Indenture or otherwise.

The Company shall pay interest on overdue principal, and overdue interest, to the extent lawful, at the rate specified in the Series of Securities.

### **4.2. SEC REPORTS.**

The Company will deliver to the Trustee within 15 days after the filing of the same with the SEC, copies of the quarterly and annual reports and of the information, documents and other reports, if any, which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act; PROVIDED, HOWEVER, that each such report or document will be deemed to be so delivered to the Trustee if the Company files such report or document with the SEC through the SEC's EDGAR database no later than the time such report or document is required to be filed with the SEC pursuant to the Exchange Act. Notwithstanding that the Company may not be subject to the reporting requirements of

Section 13 or 15(d) of the Exchange Act, the Company will file with the SEC, to the extent permitted, and provide the Trustee with, such quarterly and annual reports and such information, documents and other reports specified in Sections 13 and 15(d) of the Exchange Act. The Company will also comply with the other provisions of TIA Section 314(a).

#### **4.3. WAIVER OF STAY, EXTENSION OR USURY LAWS.**

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead (as a defense or otherwise) or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension, usury or other law which would prohibit or forgive the Company from paying all or any portion of the principal of, and/or interest and premium, if any, on, the Securities as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and the Company hereby expressly waives (to the extent that they may lawfully do so) all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

#### **4.4. COMPLIANCE CERTIFICATE.**

(a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, an Officers' Certificate which complies with TIA Section 314(a)(4) stating that a review of the activities of the Company and its Subsidiaries during such fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and that there is no default in the performance or observance of any of the terms, provisions and conditions hereof (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of, or interest or premium, if any, on, the Securities is prohibited, or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) (i) If any Default or Event of Default has occurred and is continuing or (ii) if any Holder seeks to exercise any remedy hereunder with respect to a claimed Default under this Indenture or the Securities, within five Business Days after the Company becoming aware of such occurrence the Company shall deliver to the Trustee an Officers' Certificate specifying such event, notice or other action and what action the Company is taking or proposes to take with respect thereto.

#### **4.5. CORPORATE EXISTENCE.**

Subject to Article 5, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, in accordance with the organizational documents (as the same may be amended from time to time) of the Company and the rights (charter and statutory), licenses and franchises of the Company; PROVIDED, HOWEVER, that the Company shall not be required to preserve any such right, license or franchise, or its corporate existence, if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not adverse in any material respect to the Holders.

### **ARTICLE 5 - SUCCESSOR CORPORATION**

#### **5.1. LIMITATION ON CONSOLIDATION, MERGER AND SALE OF ASSETS.**

(a) The Company will not, in any transaction or series of transactions, merge or consolidate with or into, or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets (as an entirety or substantially as an entirety in one transaction or a series of related transactions), to any Person or Persons, unless at the time of and after giving effect thereto (i) either (A) if the transaction or series of transactions is a merger or consolidation, the Company shall be the surviving Person of such merger or consolidation, or (B) the Person formed by such

consolidation or into which the Company is merged or to which the properties and assets of the Company are transferred (any such surviving Person or transferee Person being the “Surviving Entity”) shall be a corporation organized and existing under the laws of the United States of America, any state thereof or the District of Columbia, or a corporation or comparable legal entity organized under the laws of a foreign jurisdiction and shall expressly assume by a supplemental indenture executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all of the obligations of the Company (including, without limitation, the obligation to pay the principal of, and premium and interest, if any, on, the Securities and the performance of the other covenants) under the Securities of each Series and this Indenture, and in each case, this Indenture shall remain in full force and effect; and (ii) immediately before and immediately after giving effect to such transaction or series of transactions on a pro forma basis (including, without limitation, any Indebtedness incurred or anticipated to be incurred in connection with or in respect of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing.

(b) In connection with any consolidation, merger or transfer of assets contemplated by this Section 5.1, the Company shall deliver, or cause to be delivered, to the Trustee, in form and substance reasonably satisfactory to the Trustee, an Officers’ Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer, and the supplemental indenture in respect thereto, comply with this Section 5.1, and that all conditions precedent herein provided for relating to such transaction or transactions have been complied with.

## **5.2. SUCCESSOR PERSON SUBSTITUTED.**

Upon any consolidation, merger or transfer of all or substantially all of the assets of the Company in accordance with Section 5.1 above, the successor corporation formed by such consolidation, or into which the Company is merged or to which such transfer is made, shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation had been named as the Company herein, and thereafter (except with respect to any such transfer which is a lease) the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Securities.

## **ARTICLE 6 - DEFAULTS AND REMEDIES**

### **6.1. EVENTS OF DEFAULT.**

“Events of Default,” wherever used herein with respect to Securities of any Series, means any one of the following events, unless in the establishing Board Resolution, supplemental indenture or Officers’ Certificate, it is provided that such Series shall not have the benefit of said Event of Default:

(1) there is a default in the payment of any principal of, or premium, if any, on, the Securities when the same becomes due and payable at Maturity, upon acceleration, redemption or otherwise;

(2) there is a default in the payment of any interest on any Security of a Series when the same becomes due and payable, and the Default continues for a period of 30 days;

(3) the Company defaults in the observance or performance of any other covenant in the Securities of a Series or in this Indenture for 60 days after written notice from the Trustee or the Holders of not less than 25% in the aggregate principal amount of the Securities of such Series then outstanding, which notice must specify the Default, demand that it be remedied and state that the notice is a “Notice of Default”;

(4) the Company or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property,

(D) makes a general assignment for the benefit of its creditors, or

(E) generally is not paying its debts as they become due;

(5) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any Significant Subsidiary in an involuntary case;

(B) appoints a Custodian of the Company or any Significant Subsidiary, or for all or substantially all of the property of the Company or any Significant Subsidiary; or

(C) orders the liquidation of the Company or any Significant Subsidiary, and the order or decree remains unstayed and in effect for 90 consecutive days; or

(6) any other Event of Default provided with respect to Securities of that Series, which is specified in a Board Resolution, a supplemental indenture hereto or an Officers' Certificate, in accordance with Section 2.2(19).

The term "Bankruptcy Law" means Title 11, U.S. Code, or any similar federal or state law for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

The Trustee may withhold notice of any Default (except in the payment of the principal of, or interest or premium, if any, on, the Securities) to the Holders of the Securities of any Series in accordance with Section 7.5. When a Default is cured, it ceases to exist.

## **6.2. ACCELERATION.**

If an Event of Default with respect to Securities of any Series at the time outstanding (other than an Event of Default arising under Section 6.1(4) or (5)) occurs and is continuing, the Trustee by written notice to the Company, or the Holders of not less than 25% in aggregate principal amount of the Securities of that Series then outstanding by written notice to the Company and the Trustee, may declare that the entire principal amount of all the Securities of that Series then outstanding plus accrued and unpaid interest to the date of acceleration are immediately due and payable, in which case such amounts shall become immediately due and payable; PROVIDED, HOWEVER, that after such acceleration but before a judgment or decree based on such acceleration is obtained by the Trustee, the Holders of a majority in aggregate principal amount of the outstanding Securities of that Series may rescind and annul such acceleration and its consequences if (i) all existing Events of Default, other than the nonpayment of accelerated principal, interest or premium, if any, that has become due solely because of the acceleration, have been cured or waived, (ii) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid and (iii) the rescission would not conflict with any judgment or decree. No such rescission shall affect any subsequent Default or impair any right consequent thereto. In case an Event of Default specified in Section 6.1(4) or (5) with respect to the Company occurs, such principal, premium, if any, and interest amount with respect to all of the Securities of that Series shall be due and payable immediately without any declaration or other act on the part of the Trustee or the Holders of the Securities of that Series.

## **6.3. REMEDIES.**

If an Event of Default with respect to Securities of any Series at the time outstanding occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of the principal of, or interest and premium, if any, on, the Securities of that Series, or to enforce the performance of any provision of the Securities of that Series or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities of that Series or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

#### **6.4. WAIVER OF PAST DEFAULTS AND EVENTS OF DEFAULT.**

Subject to Sections 6.2, 6.7 and 8.2, the Holders of a majority in principal amount of the Securities of any Series then outstanding have the right to waive any existing Default or Event of Default with respect to such Series or compliance with any provision of this Indenture (with respect to such Series) or the Securities of such Series. Upon any such waiver, such Default with respect to such Series shall cease to exist, and any Event of Default with respect to such Series arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereto. This Section 6.4 shall be in lieu of TIA Section 316(a)(1)(B), and TIA Section 316(a)(1)(B) is hereby expressly excluded from this Indenture and Section as permitted by the TIA.

#### **6.5. CONTROL BY MAJORITY.**

Subject to Sections 6.2, 6.7 and 8.2, the Holders of a majority in principal amount of the Securities of any Series then outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee by this Indenture with respect to such Series. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture, or that the Trustee determines may be unduly prejudicial to the rights of another Securityholder, or that may involve the Trustee in personal liability; PROVIDED, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction. This Section 6.5 shall be in lieu of TIA Section 316(a)(1)(A), and TIA Section 316(a)(1)(A) is hereby expressly excluded from this Indenture and Section as permitted by the TIA.

#### **6.6. LIMITATION ON SUITS.**

Subject to Section 6.7, a Securityholder may not institute any proceeding or pursue any remedy with respect to this Indenture or the Securities of a Series unless:

- (1) the Holder gives to the Trustee written notice of a continuing Event of Default with respect to the Securities of that Series;
- (2) the Holders of at least 25% in aggregate principal amount of the Securities of such Series then outstanding make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee indemnity reasonably satisfactory to the Trustee against any loss, liability or expense to be incurred in compliance with such request;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Securities of such Series then outstanding.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder, or to obtain a preference or priority over another Securityholder.

#### **6.7. RIGHTS OF HOLDERS TO RECEIVE PAYMENT.**

Notwithstanding any other provision of this Indenture, the right of any Holder of a Security of a Series to receive payment of the principal of, and interest and premium, if any, on, the Security of such Series on or after the respective due dates expressed in the Security of such Series, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional, and shall not be impaired or affected without the consent of the Holder.

#### **6.8. COLLECTION SUIT BY TRUSTEE.**

If an Event of Default in payment of principal, interest or premium, if any, specified in Section 6.1(1) or (2) with respect to Securities of any Series at the time outstanding occurs and is continuing, the Trustee may recover judgment in



its own name and as trustee of an express trust against the Company (or any other obligor on the Securities of that Series) for the whole amount of unpaid principal and premium, if any, and accrued interest remaining unpaid, together with interest on overdue principal and premium, if any, and, to the extent that payment of such interest is lawful, interest on overdue installments of interest, in each case at the rate then borne by the Securities of that Series, and such further amounts as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, as set forth in Section 7.7.

#### **6.9. TRUSTEE MAY FILE PROOFS OF CLAIM.**

The Trustee may file such proofs of claim and other papers or documents, and take other actions (including sitting on a committee of creditors), as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Securityholders allowed in any judicial proceedings relative to the Company (or any other obligor on the Securities), any of their respective creditors or any of their respective property, and the Trustee shall be entitled and empowered to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after deduction of its charges and expenses to the extent that any such charges and expenses are not paid out of the estate in any such proceedings, and any custodian in any such judicial proceeding is hereby authorized by each Securityholder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to, or accept or adopt on behalf of any Securityholder, any plan of reorganization, arrangement, adjustment or composition affecting the Securities of a Series or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceedings.

#### **6.10. PRIORITIES.**

If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

FIRST: to the Trustee for amounts due under Section 7.7;

SECOND: to Securityholders for amounts then due and unpaid for the principal of, and interest and premium, if any, on, the Securities in respect of which, or for the benefit of which, such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities; for principal and any premium and interest, respectively; and

THIRD: to the Company.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall mail to each Securityholder a notice that states the record date, the payment date and amount to be paid.

#### **6.11. UNDERTAKING FOR COSTS.**

In any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.7 or a suit by Holders of more than 10% in principal amount of the Securities of a Series then outstanding.



**ARTICLE 7 -  
TRUSTEE**

**7.1. DUTIES OF TRUSTEE.**

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent Person would exercise or use under the same circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Default:

(1) The Trustee need perform only those duties that are specifically set forth in this Indenture, and no covenants or obligations shall be implied in this Indenture against the Trustee.

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) This paragraph does not limit the effect of paragraph (b) of this Section 7.1.

(2) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

(3) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Sections 6.2 and 6.5.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds, or otherwise incur any financial liability, in the performance of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

(e) Whether or not therein expressly so provided, paragraphs (a), (b), (c) and (d) of this Section 7.1 shall govern every provision of this Indenture that in any way relates to the Trustee.

(f) The Trustee and Paying Agent shall not be liable for interest on any money received by either of them, except as the Trustee and Paying Agent may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by the law.

(g) The Paying Agent, the Registrar and any authenticating agent shall be entitled to the protections, immunities and standard of care set forth in paragraphs (a), (b), (c), (d) and (f) of this Section 7.1 and in Section 7.2 with respect to the Trustee.

**7.2. RIGHTS OF TRUSTEE.**

(a) Subject to Section 7.1:

(1) The Trustee may rely on, and shall be protected in acting or refraining from acting upon, any document reasonably believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(2) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel, or both, which shall conform to the provisions of Section 10.5. The Trustee shall be protected and shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.

(3) The Trustee may act through agents and attorneys, and shall not be responsible for the misconduct or negligence of any agent appointed by it with due care.

(4) The Trustee shall not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers.

(5) The Trustee may consult with counsel reasonably acceptable to the Trustee, which may be counsel to the Company, and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(6) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby.

(7) The Trustee shall not be deemed to have knowledge of any fact or matter (including, without limitation, a Default or Event of Default) unless such fact or matter is known to a Responsible Officer of the Trustee.

(8) Unless otherwise expressly provided herein or in the Securities of a Series or the related Board Resolution, supplemental indenture or Officers' Certificate, the Trustee shall not have any responsibility with respect to reports, notices, certificates or other documents filed with it hereunder, except to make them available for inspection, at reasonable times, by Securityholders, it being understood that delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (except as set forth in Section 4.4).

### **7.3. INDIVIDUAL RIGHTS OF TRUSTEE.**

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities, and may make loans to, accept deposits from, perform services for or otherwise deal with the Company, or any Affiliate thereof, with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee, however, shall be subject to Sections 7.10 and 7.11.

### **7.4. TRUSTEE'S DISCLAIMER.**

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities (except that the Trustee represents that it is duly authorized to execute and deliver this Indenture and authenticate the Securities and perform its obligations hereunder), and the Trustee shall not be accountable for the Company's use of the proceeds from the sale of Securities or any money paid to the Company pursuant to the terms of this Indenture, and the Trustee shall not be responsible for any statement in the Securities other than its certificates of authentication.

### **7.5. NOTICE OF DEFAULT.**

If a Default or an Event of Default occurs and is continuing with respect to the Securities of any Series, and if it is known to the Trustee, the Trustee shall mail to each Securityholder of the Securities of that Series notice of the Default or the Event of Default, as the case may be, within 90 days after it occurs or, if later, after a Responsible Officer of the Trustee has knowledge of such Default or Event of Default (except if such Default or Event of Default has been validly cured or waived before the giving of such notice). Except in the case of a Default or an Event of Default in payment of the principal of, or interest or premium, if any, on, any Security of any Series, the Trustee may withhold the notice if and so long as the Board of Directors of the Trustee, the executive committee or any trust committee of such board and/or its

Responsible Officers in good faith determine(s) that withholding the notice is in the interests of the Securityholders of that Series.

#### **7.6. REPORTS BY TRUSTEE TO HOLDERS.**

If and to the extent required by the TIA, within 60 days after April 1 of each year, commencing the April 1 following the date of this Indenture, the Trustee shall mail to each Securityholder a brief report dated as of such April 1 that complies with TIA Section 313(a). The Trustee also shall comply with TIA Sections 313(b) and 313(c).

A copy of each report at the time of its mailing to Securityholders shall be filed with the SEC and any stock exchange on which the Securities of that Series are listed. The Company shall promptly notify the Trustee when the Securities of any Series are listed on any stock exchange or any delisting thereof, and the Trustee shall comply with TIA Section 313(d).

#### **7.7. COMPENSATION AND INDEMNITY.**

The Company shall pay to the Trustee from time to time reasonable compensation for its services. The Trustee's compensation shall not be limited by any provision of law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee within 45 days after receipt of request for all reasonable out-of-pocket disbursements and expenses incurred or made by it in connection with its duties under this Indenture, including the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company shall indemnify the Trustee for, and hold it harmless against, any and all loss or liability incurred by it in connection with the acceptance or performance of its duties under this Indenture including the reasonable costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Trustee shall notify the Company promptly of any claim asserted against the Trustee for which it may seek indemnity.

The failure by the Trustee to so notify the Company shall not however relieve the Company of its obligations. Notwithstanding the foregoing, the Company need not reimburse the Trustee for any expense or indemnify it against any loss or liability incurred by the Trustee through its negligence or bad faith. To secure the payment obligations of the Company in this Section 7.7, the Trustee shall have a lien prior to the Securities of any Series on all money or property held or collected by the Trustee except such money or property held in trust to pay the principal of, interest and premium, if any, on particular Securities of that Series.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.1(4) or (5) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

For purposes of this Section 7.7, the term "Trustee" shall include any trustee appointed pursuant to this Article 7.

#### **7.8. REPLACEMENT OF TRUSTEE.**

The Trustee may resign with respect to the Securities of one or more Series by so notifying the Company in writing at least 90 days in advance of such resignation.

The Holders of a majority in principal amount of the outstanding Securities of any Series may remove the Trustee with respect to that Series by notifying the removed Trustee in writing and may appoint a successor Trustee with respect to that Series with the consent of the Company, which consent shall not be unreasonably withheld. The Company may remove the Trustee with respect to that Series at its election if:

(1) the Trustee fails to comply with, or ceases to be eligible under, Section 7.10;

(2) the Trustee is adjudged a bankrupt or an insolvent, or an order for relief is entered with respect to the Trustee, under any Bankruptcy Law;

(3) a Custodian or other public officer takes charge of the Trustee or its property; or

(4) the Trustee otherwise becomes incapable of acting.

(5) If the Trustee resigns or is removed, or if a vacancy exists in the office of Trustee, with respect to any Series of Securities for any reason, the Company shall promptly appoint, by Board Resolution, a successor Trustee.

If a successor Trustee with respect to the Securities of one or more Series does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of at least 10% in principal amount of the outstanding Securities of the applicable Series may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee with respect to the Securities of one or more Series fails to comply with Section 7.10, any Securityholder of the applicable Series may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately following such delivery, (i) the retiring Trustee with respect to one or more Series shall, subject to its rights under Section 7.7, transfer all property held by it as Trustee with respect to such Series to the successor Trustee, (ii) the resignation or removal of the retiring Trustee shall become effective and (iii) the successor Trustee with respect to such Series shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee with respect to the Securities of one or more Series shall mail notice of its succession to each Securityholder of such Series.

#### **7.9. SUCCESSOR TRUSTEE BY CONSOLIDATION, MERGER OR CONVERSION.**

If the Trustee, or any Agent, consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust assets to, another corporation, subject to Section 7.10, the successor corporation without any further act shall be the successor Trustee or Agent, as the case may be.

#### **7.10. ELIGIBILITY; DISQUALIFICATION.**

This Indenture shall always have a Trustee who satisfies the requirements of TIA Sections 310(a)(1), (2) and (5) in every respect. The Trustee (or in the case of a Trustee that is a Person included in a bank holding company system, the related bank holding company) shall have a combined capital and surplus of at least \$100,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA Section 310(b), including the provision in Section 310(b)(1). In addition, if the Trustee is a Person included in a bank holding company system, the Trustee, independently of such bank holding company, shall meet the capital requirements of TIA Section 310(a)(2). If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.10, it shall resign immediately in the manner and with the effect specified in this Article 7.

#### **7.11. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.**

The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

#### **7.12. PAYING AGENTS.**

The Company shall cause each Paying Agent other than the Trustee to execute and deliver to it and the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 7.12:

(1) that it will hold all sums held by it as agent for the payment of the principal of, or interest or premium, if any, on, the Securities (whether such sums have been paid to it by the Company or by any obligor on the Securities) in trust for the benefit of Holders of the Securities or the Trustee;

(2) that it will at any time during the continuance of any Event of Default, upon written request from the Trustee, deliver to the Trustee all sums so held in trust by it together with a full accounting thereof; and

(3) that it will give the Trustee written notice within three Business Days after any failure of the Company (or by any obligor on the Securities) in the payment of any installment of the principal of, or interest or premium, if any, on, the Securities when the same shall be due and payable.

## **ARTICLE 8 - AMENDMENTS, SUPPLEMENTS AND WAIVERS**

### **8.1. WITHOUT CONSENT OF HOLDERS.**

The Company, when authorized by a Board Resolution, and the Trustee may amend, restate or supplement this Indenture or the Securities of one or more Series without notice to or consent of any Securityholder:

(1) to comply with Section 5.1;

(2) to provide for certificated Securities in addition to uncertificated Securities;

(3) to comply with any requirements of the SEC under the TIA;

(4) to cure any ambiguity, defect or inconsistency, or to make any other change herein or in the Securities that does not materially and adversely affect the rights of any Securityholder;

(5) to provide for the issuance of, and establish the form and terms and conditions of, Securities of any Series as permitted by this Indenture; or

(6) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more Series, and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee.

The Trustee is hereby authorized to join with the Company in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture, and to make any further appropriate agreements and stipulations which may be therein contained, but the Trustee shall not be obligated to enter into any such supplemental indenture which adversely affects its own rights, duties or immunities under this Indenture.

### **8.2. WITH CONSENT OF HOLDERS.**

(a) The Company, when authorized by a Board Resolution, and the Trustee may amend, restate or supplement this Indenture or the Securities of one or more Series with the written consent of the Holders of not less than a majority in aggregate principal amount of the outstanding Securities of such Series affected by such amendment or supplement without notice to any Securityholder. The Holders of not less than a majority in aggregate principal amount of the outstanding Securities of each such Series affected by such amendment, restatement or supplement may waive compliance by the Company in a particular instance with any provision of this Indenture or the Securities of such Series without notice to any Securityholder. Subject to Section 8.4, without the consent of each Securityholder affected, however, an amendment, restatement or supplement or waiver may not:

(1) reduce the amount of Securities whose Holders must consent to an amendment, supplement or waiver to this Indenture or the Securities;

(2) reduce the rate of, or change the time for payment of, interest on any Security;

(3) reduce the principal, or change the Stated Maturity, of any Security, or reduce the amount of, or postpone the date fixed for, the payment of any sinking fund or analogous obligation;

(4) make any Security payable in a currency other than that stated in the Security;

(5) change the amount or time of any payment required by the Securities, or reduce the premium payable upon any redemption of the Securities, or change the time before which no such redemption may be made;

(6) waive a Default or Event of Default in the payment of the principal of, or interest or premium, if any, on, any Security (except a rescission of acceleration of the Securities of any Series by the Holders of at least a majority in principal amount of the outstanding Securities of such Series and a waiver of the payment default that resulted from such acceleration);

(7) waive a redemption payment with respect to any Security, or change any of the provisions with respect to the redemption of any Securities;

(8) make any changes in Section 6.6 or this Section 8.2, except to increase any percentage of Securities the Holders of which must consent to any matter; or

(9) take any other action otherwise prohibited by this Indenture to be taken without the consent of each Holder affected thereby.

(b) Upon the request of the Company, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and upon the receipt by the Trustee of evidence reasonably satisfactory to the Trustee of the consent of the Securityholders as aforesaid and of the documents described in Section 8.6, the Trustee shall join with the Company in the execution of such supplemental indenture, unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

(c) It shall not be necessary for the consent of the Holders under this section to approve the particular form of any proposed amendment, restatement, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, restatement or supplement under this Section becomes effective, the Company shall mail to Securityholders a notice briefly describing the amendment, restatement or supplement. Any failure of the Company to mail any such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any supplemental indenture.

### **8.3. COMPLIANCE WITH TRUST INDENTURE ACT.**

Every amendment to, or supplement of, this Indenture or the Securities shall comply with the TIA as then in effect.

### **8.4. REVOCATION AND EFFECT OF CONSENTS.**

Until an amendment, restatement, supplement, waiver or other action becomes effective, a consent to it by a Holder of a Security is a continuing consent conclusive and binding upon such Holder and every subsequent Holder of the same Security or portion thereof, and of any Security issued upon the transfer thereof or in exchange therefor or in place thereof, even if notation of the consent is not made on any such Security. Any such Holder or subsequent Holder, however, may revoke the consent as to his Security or portion of a Security, if the Trustee receives the notice of revocation before the date the amendment, restatement, supplement, waiver or other action becomes effective.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, restatement, supplement or waiver, which record date shall be at least 30 days prior to the first solicitation of such consent. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, restatement, supplement or waiver, or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date.

After an amendment, restatement, supplement, waiver or other action becomes effective, it shall bind every Securityholder, unless it makes a change described in any of clauses (1) through (9) of Section 8.2. In that case, the amendment, restatement, supplement, waiver or other action shall bind each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security; PROVIDED, that any such waiver shall not impair or affect the right of any Holder to receive payment

of the principal of, and interest and premium, if any, on, a Security, on or after the respective due dates expressed in such Security, or to bring suit for the enforcement of any such payment on or after such respective dates without the consent of such Holder.

#### **8.5. NOTATION ON OR EXCHANGE OF SECURITIES.**

If an amendment, restatement, supplement or waiver changes the terms of a Security of any Series, the Trustee may request the Holder of such Security to deliver it to the Trustee. In such case, the Trustee shall place an appropriate notation on such Security about the changed terms and return it to the Holder. Alternatively, the Company, in exchange for such Security, may issue, and the Trustee shall authenticate, a new security that reflects the changed terms. Failure to make the appropriate notation or issue a new Security shall not affect the validity and effect of such amendment, supplement or waiver.

#### **8.6. TRUSTEE TO SIGN AMENDMENTS, ETC.**

The Trustee shall sign any amendment, restatement, supplement or waiver authorized pursuant to this Article 8 if the amendment, restatement, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing or refusing to sign such amendment, restatement, supplement or waiver the Trustee shall be entitled to receive and, subject to Section 7.1, shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating that such amendment, restatement, supplement or waiver is authorized or permitted by this Indenture. The Company may not sign an amendment, restatement or supplement until the Board of Directors of the Company approves it.

### **ARTICLE 9 - DISCHARGE OF INDENTURE; DEFEASANCE**

#### **9.1. DISCHARGE OF INDENTURE.**

The Company may terminate its obligations under the Securities of any Series and this Indenture with respect to such Series, except the obligations referred to in the last paragraph of this Section 9.1, if there shall have been canceled by the Trustee, or delivered to the Trustee for cancellation, all Securities of such Series theretofore authenticated and delivered (other than any Securities of such Series that are asserted to have been destroyed, lost or stolen and that shall have been replaced as provided in Section 2.8) and the Company has paid all sums payable by it hereunder or deposited all required sums with the Trustee.

After such delivery the Trustee upon request shall acknowledge in a writing prepared by or on behalf of the Company the discharge of the Company's obligations under the Securities of such Series and this Indenture, except for those surviving obligations specified below.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company in Sections 7.7, 9.5 and 9.6 shall survive.

#### **9.2. LEGAL DEFEASANCE.**

The Company may at its option, by Board Resolution, be discharged from its obligations with respect to the Securities of any Series on the date upon which the conditions set forth in Section 9.4 below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, such Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Securities of such Series and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall, subject to Section 9.6, execute proper instruments acknowledging the same, as are delivered to it by the Company), except for the following, which shall survive until otherwise terminated or discharged hereunder: (A) the rights of Holders of outstanding Securities of such Series to receive solely from the trust funds described in Section 9.4 and as more fully set forth in such section, payments in respect of the principal of, and interest and premium, if any, on, the Securities of such Series when such payments are due, (B) the Company's obligations with respect to the Securities of such Series under Sections 2.4, 2.5, 2.6, 2.7, 2.8 and 2.9, (C) the rights, powers, trusts, duties



and immunities of the Trustee hereunder (including claims of, or payments to, the Trustee under or pursuant to Section 7.7) and (D) this Article 9. Subject to compliance with this Article 9, the Company may exercise its option under this Section 9.2 with respect to the Securities of any Series notwithstanding the prior exercise of its option under Section 9.3 below with respect to the Securities of such Series.

### **9.3. COVENANT DEFEASANCE.**

At the option of the Company, pursuant to a Board Resolution, the Company shall be released from its obligations with respect to the outstanding Securities of any Series under Sections 4.2 through 4.5, inclusive, and Section 5.1, with respect to the outstanding Securities of such Series, on and after the date the conditions set forth in Section 9.4 are satisfied (hereinafter, "Covenant Defeasance"). For this purpose, such Covenant Defeasance means that the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified section or portion thereof, whether directly or indirectly by reason of any reference elsewhere herein to any such specified Section or portion thereof or by reason of any reference in any such specified section or portion thereof to any other provision herein or in any other document, but the remainder of this Indenture and the Securities of any Series shall be unaffected thereby.

### **9.4. CONDITIONS TO LEGAL DEFEASANCE OR COVENANT DEFEASANCE.**

The following shall be the conditions to application of Section 9.2 or Section 9.3 to the outstanding Securities of a Series:

(1) the Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 7.10 who shall agree to comply with the provisions of this Article 9 applicable to it) as funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities, (A) money in an amount, or (B) U.S. Government Obligations or Foreign Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount, or (C) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, the principal of, and accrued interest and premium, if any, on, the outstanding Securities of such Series at the Stated Maturity of such principal, interest or premium, if any, or on dates for payment and redemption of such principal, interest and premium, if any, selected in accordance with the terms of this Indenture and of the Securities of such Series;

(2) no Event of Default or Default with respect to the Securities of such Series shall have occurred and be continuing on the date of such deposit, or shall have occurred and be continuing at any time during the period ending on the 91st day after the date of such deposit or, if longer, ending on the day following the expiration of the longest preference period under any Bankruptcy Law applicable to the Company in respect of such deposit as specified in the Opinion of Counsel identified in paragraph (8) below (it being understood that this condition shall not be deemed satisfied until the expiration of such period);

(3) such Legal Defeasance or Covenant Defeasance shall not cause the Trustee to have a conflicting interest for purposes of the TIA with respect to any securities of the Company;

(4) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute default under, any other agreement or instrument to which the Company is a party or by which it is bound;

(5) the Company shall have delivered to the Trustee an Opinion of Counsel stating that, as a result of such Legal Defeasance or Covenant Defeasance, neither the trust nor the Trustee will be required to register as an investment company under the Investment Company Act of 1940, as amended;

(6) in the case of an election under Section 9.2, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling to the effect that or (ii) there has been a change in any applicable Federal income tax law with the effect that, and



such opinion shall confirm that, the Holders of the outstanding Securities of such Series or Persons in their positions will not recognize income, gain or loss for Federal income tax purposes solely as a result of such Legal Defeasance and will be subject to Federal income tax on the same amounts, in the same manner, including as a result of prepayment, and at the same times as would have been the case if such Legal Defeasance had not occurred;

(7) in the case of an election under Section 9.3, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of the outstanding Securities of such Series will not recognize income, gain or loss for Federal income tax purposes as a result of such Covenant Defeasance, and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(8) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in this Article 9 relating to either the Legal Defeasance under Section 9.2 or the Covenant Defeasance under Section 9.3 (as the case may be) have been complied with;

(9) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit under clause (1) was not made by the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(10) the Company shall have paid, or duly provided for payment under terms mutually satisfactory to the Company and the Trustee, all amounts then due to the Trustee pursuant to Section 7.7.

#### **9.5. DEPOSITED MONEY AND U.S. AND FOREIGN GOVERNMENT OBLIGATIONS TO BE HELD IN TRUST; OTHER MISCELLANEOUS PROVISIONS.**

All money, U.S. Government Obligations and Foreign Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to Section 9.4 in respect of the outstanding Securities shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent as the Trustee may determine, to the Holders of such Securities, of all sums due and to become due thereon in respect of principal, accrued interest and premium, if any, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations and Foreign Government Obligations deposited pursuant to Section 9.4 or the principal, interest and premium, if any, received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Securities.

Anything in this Article 9 to the contrary notwithstanding, but subject to payment of any of its outstanding fees and expenses, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money, U.S. Government Obligations or Foreign Government Obligations held by the Trustee as provided in Section 9.4 which, in the opinion of a nationally-recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

#### **9.6. REINSTATEMENT.**

If the Trustee or Paying Agent is unable to apply any money, U.S. Government Obligations or Foreign Government Obligations in accordance with Section 9.1, 9.2, 9.3 or 9.4 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article 9 until such time as the Trustee or Paying Agent is permitted to apply all such money, U.S. Government Obligations or Foreign Government Obligations, as the case may be, in accordance with Section 9.1, 9.2, 9.3 or 9.4; PROVIDED, HOWEVER, that if the Company has made any payment of principal of, or accrued interest or premium, if any, on, any Securities because of the reinstatement of its obligations, the Company shall be subrogated to

the rights of the Holders of such Securities to receive such payment from the money, U.S. Government Obligations or Foreign Government Obligations held by the Trustee or Paying Agent.

#### **9.7. MONEYS HELD BY PAYING AGENT.**

In connection with the satisfaction and discharge of this Indenture, all moneys then held by any Paying Agent under the provisions of this Indenture shall, upon demand of the Company, be paid to the Trustee, or, if sufficient moneys have been deposited pursuant to Section 9.1, to the Company, and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

#### **9.8. MONEYS HELD BY TRUSTEE.**

Any moneys deposited with the Trustee or any Paying Agent or then held by the Company in trust for the payment of the principal of, or interest or premium, if any, on, any Security that are not applied but remain unclaimed by the Holder of such Security for two years after the date upon which the principal of, or interest or premium, if any, on, such Security shall have respectively become due and payable shall be repaid to the Company upon Company Request, or if such moneys are then held by the Company in trust, such moneys shall be released from such trust; and the Holder of such Security entitled to receive such payment shall thereafter, as an unsecured general creditor, look only to the Company for the payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money shall thereupon cease; PROVIDED, HOWEVER, that the Trustee or any such Paying Agent, before being required to make any such repayment, may, at the expense of the Company, either mail to each Securityholder affected, at the address shown in the register of the Securities maintained by the Registrar, or cause to be published once a week for two successive weeks, in a newspaper published in the English language, customarily published each Business Day and of general circulation in the City of New York, New York, a notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing or publication, any unclaimed balance of such moneys then remaining will be repaid to the Company. After payment to the Company or the release of any money held in trust by the Company, Securityholders entitled to the money must look only to the Company for payment as general creditors, unless applicable abandoned property law designates another Person.

### **ARTICLE 10 - MISCELLANEOUS**

#### **10.1. TRUST INDENTURE ACT CONTROLS.**

If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control. If any provision of this Indenture modifies or excludes any provision of the TIA which may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

#### **10.2. NOTICES.**

Any notice or communication shall be given in writing and delivered in Person, sent by facsimile (and receipt confirmed by telephone or electronic transmission report), delivered by commercial courier service or mailed by first-class mail, postage prepaid, addressed as follows:

If to the Company:

AnaptysBio, Inc.  
10770 Wateridge Circle, Suite 210  
San Diego, CA 92121  
Attention: Chief Financial Officer

Copy to:

Fenwick & West LLP  
555 California Street, 5<sup>th</sup> Floor  
San Francisco, CA 94104  
Attention: Effie Toshav, Esq.  
Ryan Mitteness, Esq.

If to the Trustee:

The Company or the Trustee by written notice to the other may designate additional or different addresses for subsequent notices or communications. Any notice or communication to the Company or the Trustee shall be deemed to have been given or made as of the date so delivered if personally delivered; when receipt is confirmed by telephone or electronic transmission report, if sent by facsimile; and three Business Days after mailing if sent by registered or certified mail, postage prepaid (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee).

Any notice or communication mailed to a Securityholder shall be mailed to such Securityholder by first-class mail, postage prepaid, at such Securityholder's address shown on the register kept by the Registrar.

Failure to mail, or any defect in, a notice or communication to a Securityholder shall not affect its sufficiency with respect to other Securityholders. If a notice or communication to a Securityholder is mailed in the manner provided above, it shall be deemed duly given, three Business Days after such mailing, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service, or by reason of any other cause, it shall be impossible to mail any notice as required by this Indenture, then such method of notification as shall be made with the approval of the Trustee shall constitute a sufficient mailing of such notice.

In the case of Global Securities, notices or communications to be given to Securityholders shall be given to the Depository, in accordance with its applicable policies as in effect from time to time.

In addition to the manner provided for in the foregoing provisions, notices or communications to Securityholders may be given by the Company by release made to Reuters Economic Services and Bloomberg Business News.

### **10.3. COMMUNICATIONS BY HOLDERS WITH OTHER HOLDERS.**

Securityholders of any Series may communicate pursuant to TIA Section 312(b) with other Securityholders of that Series or any other Series with respect to their rights under this Indenture or the Securities of that Series or any other Series. The Company, the Trustee, the Registrar and any other Person shall have the protection of TIA Section 312(c).

### **10.4. CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT.**

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(1) an Officers' Certificate (which shall include the statements set forth in Section 10.5 below) stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel (which shall include the statements set forth in Section 10.5 below) stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

#### **10.5. STATEMENT REQUIRED IN CERTIFICATE AND OPINION.**

Each certificate and opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than pursuant to Section 4.4) shall include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, it or he has made such examination or investigation as is necessary to enable it or him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such Person, such covenant or condition has been complied with.

#### **10.6. RULES BY TRUSTEE AND AGENTS.**

The Trustee may make reasonable rules for action by or at meetings of Securityholders. The Registrar, Service Agent and Paying Agent may make reasonable rules for their functions.

#### **10.7. BUSINESS DAYS; LEGAL HOLIDAYS; PLACE OF PAYMENT.**

A “Business Day” is a day that is not a Legal Holiday. A “Legal Holiday” is a Saturday, a Sunday, a federally-recognized holiday or a day on which banking institutions are not authorized or required by law, regulation or executive order to be open in the State of New York.

If a payment date is a Legal Holiday at a Place of Payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. “Place of Payment” means the place or places where the principal of, and interest and premium, if any, on, the Securities of a Series are payable as specified as contemplated by Section 2.2. If the regular record date is a Legal Holiday, the record date shall not be affected.

#### **10.8. GOVERNING LAW.**

**THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.**

#### **10.9. NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.**

This Indenture may not be used to interpret another indenture, loan, security or debt agreement of the Company or any Subsidiary thereof. No such indenture, loan, security or debt agreement may be used to interpret this Indenture.

#### **10.10. NO RECOURSE AGAINST OTHERS.**

A director, officer, employee, stockholder or incorporator, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture. Each Securityholder by accepting a Security waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Securities.

#### **10.11. SUCCESSORS.**

All covenants and agreements of the Company in this Indenture and the Securities shall bind the Company's successors and assigns, whether so expressed or not. All agreements of the Trustee, any additional trustee and any Paying Agents in this Indenture shall bind their respective successors and assigns.

#### **10.12. MULTIPLE COUNTERPARTS.**

The parties may sign multiple counterparts of this Indenture. Each signed counterpart shall be deemed an original, but all of them together represent one and the same agreement. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal E-SIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

#### **10.13. TABLE OF CONTENTS, HEADINGS, ETC.**

The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

#### **10.14. SEVERABILITY.**

Each provision of this Indenture shall be considered separable, and if for any reason any provision which is not essential to the effectuation of the basic purpose of this Indenture or the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and a Holder shall have no claim therefor against any party hereto.

#### **10.15. SECURITIES IN A FOREIGN CURRENCY OR IN EUROS.**

Unless otherwise specified in a Board Resolution, a supplemental indenture hereto or an Officers' Certificate delivered pursuant to Section 2.2 with respect to a particular Series of Securities, whenever for purposes of this Indenture any action may be taken by the Holders of a specified percentage in aggregate principal amount of Securities of all Series or all Series affected by a particular action at the time outstanding and, at such time, there are outstanding Securities of any Series which are denominated in a coin or currency other than Dollars (including Euros), then the principal amount of Securities of such Series which shall be deemed to be outstanding for the purpose of taking such action shall be that amount of Dollars that could be obtained for such amount at the Market Exchange Rate at such time. For purposes of this Section 10.15, "Market Exchange Rate" shall mean the noon Dollar buying rate in New York City for cable transfers of that currency as published by the Federal Reserve Bank of New York; PROVIDED, HOWEVER, in the case of Euros, Market Exchange Rate shall mean the rate of exchange determined by the Commission of the European Union (or any successor thereto) as published in the Official Journal of the European Union (such publication or any successor publication, the "Journal"). If such Market Exchange Rate is not available for any reason with respect to such currency, the Trustee shall use, in its sole discretion and without liability on its part, such quotation of the Federal Reserve Bank of New York or, in the case of Euros, the rate of exchange as published in the Journal, as of the most recent available date, or quotations or, in the case of Euros, rates of exchange from one or more major banks in New York City or in the country of issue of the currency in question or, in the case of Euros, in Luxembourg or such other quotations or, in the case of Euros, rates of exchange as the Trustee, upon consultation with the Company, shall deem appropriate. The provisions of this paragraph shall apply in determining the equivalent principal amount in respect of Securities of a Series denominated in currency other than Dollars in connection with any action taken by Holders of Securities pursuant to the terms of this Indenture.

All decisions and determinations of the Trustee regarding the Market Exchange Rate or any alternative determination provided for in the preceding paragraph shall be in the Trustee's sole discretion, and shall, in the absence of manifest error, be conclusive to the extent permitted by law for all purposes and irrevocably binding upon the Company and all Holders.

#### **10.16. JUDGMENT CURRENCY.**

The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of, or interest or premium, if any, or other amount on, the Securities of any Series (the "Required Currency") into a currency in which a judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which, in accordance with normal banking procedures, the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the day on which final unappealable judgment is entered, unless such day is not a Business Day, in which instance, the rate of exchange used shall be the rate at which, in accordance with normal banking procedures, the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the Business Day preceding the day on which final unappealable judgment is entered and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender or any recovery pursuant to any judgment (whether or not entered in accordance with subsection (a)) in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

**ANAPTYSBIO, INC.**

By:

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

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

**[Name of Trustee]**

By:

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

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

By:

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

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

November 5, 2024

AnaptysBio, Inc.  
10770 Wateridge Circle, Suite 210  
San Diego, CA 92121

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

As counsel to AnaptysBio, Inc., a Delaware corporation (the “**Company**”), we have examined the Registration Statement on Form S-3 to be filed by the Company with the Securities and Exchange Commission (the “**Commission**”) on or about November 5, 2024 (the “**Registration Statement**”) in connection with the registration under the Securities Act of 1933, as amended (the “**Securities Act**”), of the offering and sale from time to time of up to \$500,000,000 aggregate offering amount of (i) shares of the Company’s common stock, \$0.001 par value per share (the “**Common Stock**”), (ii) shares of the Company’s preferred stock, \$0.001 par value per share (the “**Preferred Stock**”), (iii) one or more series of debt securities (the “**Debt Securities**”) issuable pursuant to an indenture (the “**Indenture**”) by and between the Company and a financial institution to be identified therein as trustee (the “**Trustee**”), (iv) warrants to purchase Common Stock, Preferred Stock and/or Debt Securities (the “**Warrants**”), (v) subscription rights to purchase Common Stock, Preferred Stock and/or Debt Securities (the “**Subscription Rights**”), and/or (vi) units consisting of any combination of such foregoing securities described in clauses (i) through (v) above (the “**Units**”). The Common Stock, the Preferred Stock, the Debt Securities, the Warrants, the Subscription Rights and the Units are collectively referred to herein as the “**Securities**.” The Securities may be sold from time to time by the Company as set forth in the Registration Statement, the base prospectus contained within the Registration Statement (the “**Prospectus**”) and supplements to the Prospectus. The Company has informed us that the Company intends to issue the Securities from time to time on a delayed or continuous basis pursuant to Rule 415 under the Securities Act.

As to matters of fact relevant to the opinions rendered herein, we have examined such documents, certificates and other instruments which we have deemed necessary or advisable, including a certificate addressed to us and dated the date hereof executed by the Company. We have not undertaken any independent investigation to verify the accuracy of any such information, representations or warranties or to determine the existence or absence of any fact, and no inference as to our knowledge of the existence or absence of any fact should be drawn from our representation of the Company or the rendering of the opinions set forth below. We have not considered parol evidence in connection with any of the agreements or instruments reviewed by us in connection with this letter.



In our examination of documents for purposes of this letter, we have assumed, and express no opinion as to, the genuineness and authenticity of all signatures on original documents, the authenticity and completeness of all documents submitted to us as originals, that each document is what it purports to be, the conformity to originals of all documents submitted to us as copies or facsimile copies, the absence of any termination, modification or waiver of or amendment to any document reviewed by us (other than as has been disclosed to us), the legal competence or capacity of all persons or entities (other than the Company) executing the same and (other than the Company) the due authorization, execution and delivery of all documents by each party thereto. We have also assumed the conformity of the documents filed with the Commission via the Electronic Data Gathering, Analysis and Retrieval System (“**EDGAR**”), except for required EDGAR formatting changes, to physical copies submitted for our examination.

We advise you that we have also examined (i) the sales agreement prospectus supplement contained within the Registration Statement (together with the Prospectus, the “**Sales Agreement Prospectus**”) relating to the sale by the Company through TD Securities (USA) LLC as the sales agent (the “**Sales Agent**”), from time to time of shares of Common Stock (the “**Placement Shares**”) having an aggregate maximum offering price of up to \$100,000,000 pursuant to the Registration Statement and the Sales Agreement Prospectus, and (ii) that certain Sales Agreement dated as of November 5, 2024, by and between the Company and the Sales Agent (the “**Sales Agreement**”).

The opinions in this letter are limited to the existing General Corporation Law of the State of Delaware now in effect and, as to the Debt Securities, Warrants, Subscription Rights and Units constituting valid and binding obligations of the Company, the existing internal laws of the State of New York now in effect (the “**Applicable Laws**”). We express no opinion with respect to any other laws.

In connection with our opinions expressed below, we have assumed that, (i) at or prior to the time of the delivery of any of the Securities, including the Placement Shares, there will not have occurred any change in the law or the facts affecting the validity of the Securities, (ii) the Registration Statement and any amendments (including any necessary post-effective amendments) will have been declared effective under the Securities Act, (iii) at the time of the offer, issuance and sale of any Securities, including the Placement Shares, no stop order suspending the Registration Statement’s effectiveness will have been issued and remain in effect, (iv) no future amendments will be made to the Company’s current certificate of incorporation (as amended from time to time, the “**Certificate of Incorporation**”), or the Company’s Second Amended and Restated Bylaws (the “**Bylaws**” and, together with the Certificate of Incorporation, the “**Charter Documents**”) that would be in conflict with or inconsistent with the Company’s right and ability to issue the Securities, including without limitation the Placement Shares, (v) at the time of the issuance and sale of the Securities, the Company will be validly existing as a corporation and in good standing under the laws of the State of Delaware; and (vi) at the time of

each offer, issuance and sale of any Securities, including without limitation the Placement Shares, the Company will have a sufficient number of authorized and unissued and unreserved shares of the applicable class or series of its capital stock included in (or purchasable upon exercise or conversion of) the Securities, including without limitation the Placement Shares, so issued and sold (after taking into account all other outstanding securities of the Company which may require the Company to issue shares of such applicable class or series) to be able to issue all such shares.

This opinion is qualified by, and is subject to, and we render no opinion with respect to, the following limitations and exceptions to the enforceability of the Debt Securities, the Warrants, the Subscription Rights and the Units:

- (1) The effect of the laws of bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent conveyance, assignment for the benefit of creditors, and other similar laws now or hereinafter in effect relating to or affecting the rights and remedies of creditors, including the effect of statutory or other laws regarding fraudulent transfers or preferential transfers.
- (2) The effect of general principles of equity and similar principles, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, public policy and unconscionability, and the possible unavailability of specific performance, injunctive relief, or other equitable remedies, regardless of whether considered in a proceeding in equity or at law.
- (3) In the case of the Debt Securities, the effect of laws relating to usury or permissible rates of interest for loans, forbearances or the use of money.

We express no opinion regarding the effectiveness of any waiver or stay, extension or of unknown future rights. Further, we express no opinion regarding the effect of provisions relating to indemnification, exculpation or contribution to the extent such provisions may be held unenforceable as contrary to federal or state securities laws or public policy.

Based upon the foregoing, and subject to the qualifications and exceptions contained herein, we are of the following opinion:

1. With respect to the shares of Common Stock registered pursuant to the Registration Statement (other than the Placement Shares), when (a) the issuance of and the terms of the offering of such shares of Common Stock and related matters have been duly authorized by all required corporate action of the Company's Board of Directors, or a duly authorized committee thereof (the "**Board**"), and, if required, of the stockholders of the Company in accordance with the Charter Documents and Applicable Laws and (b) if required, certificates representing the shares of Common Stock have been duly executed, countersigned, registered and delivered in accordance with the applicable definitive purchase, underwriting or similar agreement approved

by the Board, or upon the conversion or exercise of any Security offered under the Registration Statement, and upon payment of the consideration therefor (in an amount not less than the par value of the Common Stock) provided for therein, then such shares of Common Stock will be validly issued, fully paid and nonassessable.

2. With respect to any particular series of shares of Preferred Stock registered pursuant to the Registration Statement, when (a) the issuance and terms of such shares of Preferred Stock, the terms of the offering thereof and related matters, including the adoption of a certificate of designation (a “*Certificate*”) relating to such Preferred Stock conforming to the Charter Documents and the General Corporation Law of the State of Delaware, and the filing of such Certificate with the Secretary of State of the State of Delaware (or the filing of an amendment to the Certificate of Incorporation to similar effect), have been duly authorized by all required corporate action of the Board and, if required, of the stockholders of the Company in accordance with the Charter Documents and Applicable Laws and (b) if required, certificates representing the shares of Preferred Stock have been duly executed, countersigned, registered and delivered in accordance with the applicable definitive purchase, underwriting or similar agreement approved by the Board, or upon conversion or exercise of any other Security offered under the Registration Statement, and upon payment of the consideration therefor (in an amount not less than the par value per share of such Preferred Stock) provided for therein, then such shares of Preferred Stock will be validly issued, fully paid and nonassessable.

3. With respect to any Debt Securities registered pursuant to the Registration Statement, when (a) the issuance of such Debt Securities has been duly authorized by all required corporate action of the Board and, if required, of the stockholders of the Company in accordance with the Charter Documents and Applicable Laws, (b) an Indenture relating to such Debt Securities in the form filed with the Registration Statement as an exhibit has been duly authorized and validly executed and delivered by each of the Company and the Trustee, (c) the specific form and terms of the Debt Securities have been duly established in accordance with the Indenture, duly authorized pursuant to resolutions duly adopted by the Board, and validly executed, authenticated, issued, and delivered in accordance with the Indenture and the applicable definitive purchase, underwriting or similar agreement, in the manner and for the consideration approved by the Board and stated in the prospectus supplement relating thereto (as amended as of the date of such issuance, sale and delivery), or upon the exercise of Warrants to purchase Debt Securities, upon payment of the consideration therefor provided for therein, then such Debt Securities will be validly issued and will constitute valid and binding obligations of the Company.

4. With respect to any Warrants registered pursuant to the Registration Statement, when (a) the issuance and terms of such Warrants, the terms, execution and delivery of any warrant agreement relating to the Warrants (“*Warrant Agreement*”), the terms of the offering thereof and related matters have been duly authorized by all required corporate action of the Board and, if required, of the stockholders of the Company in accordance with the Charter Documents and

Applicable Laws, (b) the Warrant Agreement has been duly authorized and validly executed and delivered by the Company, and (c) such Warrants have been duly executed, issued and delivered by the Company in accordance with the provisions of the Warrant Agreement and the applicable definitive purchase, underwriting or similar agreement approved by the Board, upon payment of the consideration therefor provided for therein, then such Warrants will constitute valid and binding obligations of the Company.

5. With respect to any Subscription Rights registered pursuant to the Registration Statement, when (a) the issuance and terms of such Subscription Rights, the terms, execution and delivery of the subscription rights agreement relating to the Subscription Rights (“**Subscription Rights Agreement**”), the terms of the offering thereof and related matters have been duly authorized by all required corporate action of the Board and, if required, the stockholders of the Company in accordance with the Charter Documents and Applicable Laws, (b) the Subscription Rights Agreement has been duly authorized and validly executed and delivered by the Company, and (c) such Subscription Rights have been duly executed, issued and delivered by the Company in accordance with the provisions of the Subscription Rights Agreement and the applicable definitive purchase, underwriting or similar agreement approved by the Board, upon payment of the consideration therefor provided for therein, then such Subscription Rights will constitute valid and binding obligations of the Company.

6. With respect to any Units registered pursuant to the Registration Statement, when (a) the conditions outlined in the immediately preceding paragraphs (1) through (5) that apply to the Securities that make up such Units are all met, (b) the issuance and terms of such Units, the terms, execution and delivery of the unit purchase agreement relating to such Units (“**Unit Agreement**”), the terms of the offering thereof and related matters have been duly authorized by all required corporate action of the Board and, if required, of the stockholders of the Company in accordance with the Charter Documents and Applicable Laws, (c) the Unit Agreement has been duly authorized and validly executed and delivered by the Company, and (d) such Units have been duly executed, issued and delivered by the Company in accordance with the provisions of the Unit Agreement and the applicable definitive purchase, underwriting or similar agreement approved by the Board, upon payment of the consideration therefor provided for therein, then such Units will constitute valid and binding obligations of the Company.

7. The Placement Shares, to be issued and sold by the Company, have been duly authorized for issuance and, when issued, sold and delivered for consideration (of not less than par value per share of the Common Stock) and in the manner contemplated by the Sales Agreement and the Sales Agreement Prospectus and in accordance with the resolutions duly adopted and to be duly adopted by the Board and to be duly adopted by the placement committee of the Board with respect to the offer, sale and issuance of the Placement Shares, will be validly issued, fully paid and nonassessable.

In connection with the opinions expressed above, we have assumed that each of the Debt Securities and the Indenture, Warrant Agreement, Subscription Rights Agreement and Unit Agreement governing such Securities are legally valid and binding obligations of each party thereto other than the Company.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to all references to us, if any, in the Registration Statement, the Prospectus and Sales Agreement Prospectus constituting parts thereof and any amendments thereto. In giving this consent we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

*[Concluding Paragraph Follows on Next Page]*

This opinion is intended solely for use in connection with the issuance and sale of the Securities subject to the Registration Statement and is not to be relied upon for any other purpose. In providing this letter, we are opining only as to the specific legal issues expressly set forth above, and no opinion shall be inferred as to any other matter or matters. This opinion is rendered on, and speaks only as of, the date of this letter first written above, is based solely on our understanding of facts in existence as of such date after the aforementioned examination and does not address any potential changes in facts, circumstance or law that may occur after the date of this opinion letter. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention, whether or not such occurrence would affect or modify any of the opinions expressed herein.

Very truly yours,

/s/ Fenwick & West LLP

FENWICK & WEST LLP

**Consent of Independent Registered Public Accounting Firm**

We consent to the use of our report dated March 11, 2024, with respect to the consolidated financial statements of AnaptysBio, Inc., incorporated herein by reference, and to the reference to our firm under the heading “Experts” in the prospectus.

/s/ KPMG LLP

San Diego, California  
November 5, 2024