

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

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended **March 31, 2023**

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number **001-40943**

Biofrontera Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

47-3765675
(IRS Employer
Identification No.)

120 Presidential Way, Suite 330, Woburn, Massachusetts
(Address of principal executive offices)

01801
(Zip Code)

(781) 245-1325
(Registrant's telephone number, including area code)

Not Applicable
(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.001 per share	BFRI	The Nasdaq Stock Market LLC
Preferred Stock Purchase Rights		The Nasdaq Stock Market LLC
Warrants, each warrant exercisable for one share of common stock, each at an exercise price of \$5.00 per share	BFRIW	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a 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.

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 checked="" 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 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of May 11, 2023 there were 26,699,002 shares outstanding of the registrant's common stock, par value \$0.001 per share.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

BIOFRONTERA INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except par value and share amounts)

	<u>March 31, 2023</u>	<u>December 31, 2022</u>
	<u>(Unaudited)</u>	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 13,505	\$ 17,208
Investment in equity securities	7,596	10,548
Accounts receivable, net	4,116	3,748
Other receivables, related party	3,750	3,658
Inventories	6,670	7,168
Prepaid expenses and other current assets	1,586	810
Total current assets	37,223	43,140
Other receivables long term, related party	-	2,813
Property and equipment, net	197	204
Operating lease right-of-use assets	1,234	1,375
Intangible asset, net	2,927	3,032
Other assets	384	320
Total assets	\$ 41,965	\$ 50,884
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	887	1,278
Accounts payable, related parties	912	1,312
Acquisition contract liabilities, net	7,032	6,942
Operating lease liabilities	484	498
Accrued expenses and other current liabilities	11,135	10,864
Total current liabilities	20,450	20,894
Long-term liabilities:		
Acquisition contract liabilities, net	2,200	2,400
Warrant liabilities	1,815	2,843
Operating lease liabilities, non-current	725	848
Other liabilities	24	21
Total liabilities	25,214	27,006
Commitments and contingencies (see Note 21)		
Stockholders' equity:		
Preferred Stock, \$0.001 par value, 20,000,000 shares authorized, zero shares issued and outstanding as of March 31, 2023 and December 31, 2022	-	-
Common Stock, \$0.001 par value, 300,000,000 shares authorized; 26,699,002 shares issued and outstanding as of March 31, 2023 and December 31, 2022	27	27
Additional paid-in capital	103,721	103,370
Accumulated deficit	(86,997)	(79,519)
Total stockholders' equity	16,751	23,878
Total liabilities and stockholders' equity	\$ 41,965	\$ 50,884

The accompanying notes are an integral part of these consolidated financial statements.

BIOFRONTERA INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share amounts and number of shares)
(Unaudited)

	Three Months Ended March 31,	
	2023	2022
Products revenues, net	\$ 8,715	\$ 9,736
Revenues, related party	18	15
Total revenues, net	8,733	9,751
Operating expenses		
Cost of revenues, related party	4,547	4,975
Cost of revenues, other	51	175
Selling, general and administrative	9,800	7,616
Selling, general and administrative, related party	27	95
Change in fair value of contingent consideration	(200)	-
Total operating expenses	14,225	12,861
Loss from operations	(5,492)	(3,110)
Other income (expense)		
Change in fair value of warrant liabilities	1,028	8,711
Change in fair value of investments	(2,941)	-
Interest expense, net	(35)	(33)
Other income (expense), net	(33)	23
Total other income (expense)	(1,981)	8,701
Income (loss) before income taxes	(7,473)	5,591
Income tax expense	5	30
Net income (loss)	\$ (7,478)	\$ 5,561
Income (loss) per common share:		
Basic	\$ (0.28)	\$ 0.33
Diluted	\$ (0.28)	\$ 0.32
Weighted-average common shares outstanding:		
Basic	26,699,002	17,104,749
Diluted	26,699,002	17,133,218

The accompanying notes are an integral part of these consolidated financial statements.

BIOFRONTERA INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands, except number of shares)
(Unaudited)

Three Months Ended March 31, 2023 and 2022

	<u>Common Stock</u>		<u>Additional Paid- In Capital</u>	<u>Accumulated Deficit</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>			
Balance, December 31, 2022	26,699,002	\$ 27	\$ 103,370	\$ (79,519)	\$ 23,878
Stock based compensation	-	-	351	-	351
Net loss	-	-	-	(7,478)	(7,478)
Balance, March 31, 2023	<u>26,699,002</u>	<u>\$ 27</u>	<u>\$ 103,721</u>	<u>\$ (86,997)</u>	<u>\$ 16,751</u>
Balance, December 31, 2021	17,104,749	\$ 17	\$ 90,200	\$ (78,879)	\$ 11,338
Stock based compensation	-	-	517	-	517
Net income	-	-	-	5,561	5,561
Balance, March 31, 2022	<u>17,104,749</u>	<u>\$ 17</u>	<u>\$ 90,717</u>	<u>\$ (73,318)</u>	<u>\$ 17,416</u>

The accompanying notes are an integral part of these consolidated financial statements.

BIOFRONTERA INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)
(Unaudited)

	Three Months Ended March 31,	
	2023	2022
Cash flows from operating activities:		
Net income (loss)	\$ (7,478)	\$ 5,561
Adjustments to reconcile net income (loss) to cash flows used in operations		
Depreciation	22	26
Amortization of right-of-use assets	139	-
Amortization of acquired intangible assets	105	105
Change in fair value of investment in equity securities	2,941	-
Change in fair value of contingent consideration	(200)	-
Change in fair value of warrant liabilities	(1,028)	(8,711)
Stock-based compensation	351	517
Provision for doubtful accounts	14	42
Non-cash interest expense	89	89
Changes in operating assets and liabilities:		
Accounts receivable	(381)	(1,430)
Other receivables, related party	2,720	(38)
Prepaid expenses and other assets	(830)	3,614
Inventories	499	(414)
Accounts payable and related party payables	(792)	(366)
Operating lease liabilities	(134)	-
Accrued expenses and other liabilities	274	(1,107)
Cash flows used in operating activities	(3,689)	(2,112)
Cash flows from investing activities		
Purchases of property and equipment	(14)	(5)
Cash flows used in investing activities	(14)	(5)
Net decrease in cash and cash equivalents	(3,703)	(2,117)
Cash, cash equivalents and restricted cash, at the beginning of the period	17,408	24,742
Cash, cash equivalents and restricted cash, at the end of the period	\$ 13,705	\$ 22,625
Supplemental disclosure of cash flow information		
Interest paid	\$ -	\$ 4
Income taxes paid, net	\$ 22	\$ 30

The accompanying notes are an integral part of these consolidated financial statements.

Biofrontera Inc.
Notes to Consolidated Financial Statements
(Unaudited)

1. Business Overview

Biofrontera Inc (the “Company”) is a U.S.-based biopharmaceutical company commercializing a portfolio of pharmaceutical products for the treatment of dermatological conditions with a focus on photodynamic therapy (“PDT”) and topical antibiotics. The Company’s licensed products are used for the treatment of actinic keratoses, which are pre-cancerous skin lesions as well as impetigo, a bacterial skin infection.

Biofrontera Inc. includes its wholly owned subsidiary Bio-FRI GmbH, a limited liability company organized under the laws of Germany. Our subsidiary, Bio-FRI was formed on February 9, 2022, as a German presence to facilitate our relationship with the Ameluz Licensor.

Our principal licensed product is Ameluz[®], which is a prescription drug approved for use in combination with the RhodoLED[®] lamp series, for PDT (when used together, “Ameluz[®] PDT”). In the United States, the PDT treatment is used for the lesion-directed and field-directed treatment of actinic keratoses (“AK”) of mild-to-moderate severity on the face and scalp. We are currently selling Ameluz[®] for this indication in the U.S. under an exclusive license and supply agreement (“Ameluz LSA”) between Biofrontera, Inc. and the Ameluz Licensors.

Our second prescription drug licensed product in our portfolio is Xepi[®] (ozenoxacin cream, 1%), a topical non-fluorinated quinolone that inhibits bacterial growth. Currently, no antibiotic resistance against Xepi[®] is known and it has been specifically approved by the FDA for the treatment of impetigo, a common skin infection, due to *Staphylococcus aureus* or *Streptococcus pyogenes*. It is approved for use in the United States in adults and children 2 months and older. We are currently selling Xepi[®] for this indication in the United States, under an exclusive license and supply agreement, as amended (“Xepi LSA”) with Ferrer Internacional S.A. (“Ferrer”) that was assumed by Biofrontera on March 25, 2019 through our acquisition of Cutanea Life Sciences, Inc. (“Cutanea”).

Liquidity and Going Concern

The Company’s primary sources of liquidity are its existing cash balances, cash collected from the sales of its products, and cash flows from equity financing transactions received in 2022. As of March 31, 2023, we had cash and cash equivalents of \$13.5 million, compared to \$17.2 million as of December 31, 2022.

Since we commenced operations in 2015, we have generated significant losses. For the three months ended March 31, 2023 and 2022, we incurred loss from operations of \$5.5 million and \$3.1 million, respectively. We incurred net cash outflows from operations of \$3.7 million and \$2.1 million, for the same periods, respectively. We had an accumulated deficit as of March 31, 2023 of \$87.0 million.

The Company’s short-term material cash requirements include working capital needs and satisfaction of contractual commitments including facility and auto leases (see *Note 21. Commitments and Contingencies*), Maruho start-up cost financing repayments of \$7.3 million (see *Note 3. Acquisition Contract Liabilities*), and legal settlement expenses after reimbursement from Biofrontera AG of \$2.5 million. Long-term material cash requirements include potential milestone payments to Ferrer Internacional S.A, and contingent consideration payments to Maruho connected with Xepi sales (see *Note 21. Commitments and Contingencies*).

Additionally, we expect to continue to incur operating losses due to significant discretionary sales and marketing, medical affairs, and dermatology community outreach efforts as we seek to expand the commercialization of our licensed products in the United States. We also expect to incur additional expenses to add and improve operational, financial and information systems and personnel, including personnel to support our product commercialization efforts. In addition, we expect to incur costs to continue to comply with corporate governance, regulatory reporting and other requirements applicable to us as a public company in the U.S.

These factors raise doubt about our ability to continue as a going concern, which we have determined are mitigated by the following plans. Based on current operating plans and financial forecasts, we expect that our revolving line of credit and expected proceeds from the sale of our investment in equity securities in addition to our current cash and cash equivalents will be sufficient to fund our operations for at least the next twelve months from the date of issuance of our financial statements. However, we expect to have to obtain either equity or additional debt financing to support our future long-term growth and to mitigate the risk of our operating costs significantly exceeding the amounts currently estimated. If our current operating plans or financial forecasts change, or we are unable to obtain additional financing, we may need to reduce the discretionary spend on promotional expenses, branding, marketing consulting and defer some hiring. While we expect to continue being flexible in our spending over the next twelve months, we do not consider there to be a need to significantly revise our operations currently.

2. Summary of Significant Accounting Policies

Basis for Preparation of the Financial Statements

The accompanying unaudited interim consolidated financial statements of the Company have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) for interim financial reporting. Certain information and footnote disclosures normally included in the annual financial statements prepared in accordance with U.S. generally accepted accounting principles (“U.S. GAAP”) have been condensed or omitted pursuant to such rules and regulations. In the Company’s opinion, the unaudited consolidated financial statements include all material adjustments, all of which are of a normal and recurring nature, necessary to present fairly the Company’s financial position as of March 31, 2023, the Company’s operating results for the three months ended March 31, 2023 and 2022, and the Company’s cash flows for the three months ended March 31, 2023 and 2022. The accompanying financial information as of December 31, 2022 is derived from audited financial statements. Interim results are not necessarily indicative of results for a full year. The information included in this Quarterly Report on Form 10-Q should be read in conjunction with the Company’s Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on March 13, 2023.

All amounts shown in these financial statements and tables are in thousands and amounts in the notes are in millions, except percentages and per share and share amounts.

The Company’s significant accounting policies are discussed in *Note 2—Summary of Significant Accounting Policies* within the notes to financial statements for the year ended December 31, 2022, included in the Company’s Annual Report on Form 10-K. There have been no significant changes to these policies during the three months ended March 31, 2023.

Use of Estimates

The preparation of the financial statements in accordance with U.S. GAAP requires the use of estimates and assumptions by management that affect the reported amounts of assets and liabilities, as well as disclosure of contingent assets and liabilities, as reported on the balance sheet date, and the reported amounts of revenues and expenses arising during the reporting period. The main areas in which assumptions, estimates and the exercising of judgment are appropriate relate to, valuation allowances for receivables and inventory, valuation of contingent consideration and warrant liabilities, realization of intangible and other long-lived assets, product sales allowances and reserves, share-based payments and income taxes including deferred tax assets and liabilities. Estimates are based on historical experience and other assumptions that are considered appropriate in the circumstances. They are continuously reviewed but may vary from the actual values.

Recently Adopted Accounting Pronouncements

In September 2016, the FASB issued ASU 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which requires entities to record expected credit losses for certain financial instruments, including trade receivables, as an allowance that reflects the entity’s current estimate of credit losses expected to be incurred. The new standard was effective for us on January 1, 2023, and did not have a material effect on our consolidated financial statements.

3. Acquisition Contract Liabilities

On March 25, 2019, we entered into an agreement (as amended, the “Share Purchase Agreement”) with Maruho Co, Ltd. (“Maruho”) to acquire 100% of the shares of Cutanea Life Sciences, Inc. (“Cutanea”). As of the date of the acquisition, Maruho Co, Ltd. owned approximately 29.9% of Biofrontera AG through its fully owned subsidiary Maruho Deutschland GmbH. Biofrontera AG is our former parent, and currently a significant shareholder.

Pursuant to the Share Purchase Agreement, Maruho agreed to provide \$7.3 million in start-up cost financing for Cutanea’s redesigned business activities (“start-up costs”). These start-up costs are to be paid back to Maruho by the end of 2023 in accordance with contractual obligations related to an earn-out arrangement. In addition, as part of the earn-out arrangement with Maruho, the product profit amount from the sale of Cutanea products as defined in the share purchase agreement will be shared equally between Maruho and Biofrontera until 2030 (“contingent consideration”).

In connection with this acquisition in 2019, we recorded the \$7.3 million in start-up cost financing, a \$1.7 million contract asset related to the benefit associated with the non-interest-bearing start-up cost financing and \$6.5 million of contingent consideration related to the estimated profits from the sale of Cutanea products to be shared equally with Maruho (see *Note 21. Commitment and contingencies – Cutanea payments*).

The contract asset related to the start-up cost financing is amortized on a straight-line basis using a 6.0% interest rate over the 57-month term of the financing arrangement, which ends on December 31, 2023. The contract asset is shown net of the related start-up cost financing within acquisition contract liabilities, net.

The contingent consideration was recorded at acquisition-date fair value using a Monte Carlo simulation with an assumed discount rate of approximately 6.0% over the applicable term. The contingent consideration is recorded within acquisition contract liabilities, net. The amount of contingent consideration that could be payable is not subject to a cap under the agreement. The Company re-measures contingent consideration and re-assesses the underlying assumptions and estimates at each reporting period utilizing a scenario-based method.

Acquisition contract liabilities, net consist of the following:

(in thousands)	<u>March 31, 2023</u>	<u>December 31, 2022</u>
<i>Short-term acquisition contract liabilities:</i>		
Start-up cost financing	7,300	7,300
Contract asset	(268)	(358)
Acquisition contract liabilities, net	\$ 7,032	\$ 6,942
<i>Long-term acquisition contract liabilities:</i>		
Contingent consideration	\$ 2,200	\$ 2,400
<i>Total acquisition contract liabilities:</i>		
Contingent consideration	\$ 2,200	\$ 2,400
Start-up cost financing	7,300	7,300
Contract asset	(268)	(358)
Total acquisition contract liabilities, net	\$ 9,232	\$ 9,342

4. Fair Value Measurements

The following table presents information about the Company’s assets that are measured at fair value on a recurring basis at March 31, 2023 and December 31, 2022 and indicates the fair value hierarchy of the valuation inputs the Company utilized to determine such fair value:

(in thousands)	<u>Level</u>	<u>March 31, 2023</u>	<u>December 31, 2022</u>
<i>Assets:</i>			
Investment in equity securities	1	\$ 7,596	\$ 10,548
<i>Liabilities:</i>			
Contingent Consideration	3	\$ 2,200	\$ 2,400
Warrant liability – 2022 Purchase Warrants	3	\$ 786	\$ 1,129
Warrant liability - 2022 Inducement Warrants	3	\$ 1,029	\$ 1,714

Investment in equity securities

As of March 31, 2023, the Company had an investment in shares of Biofrontera AG. The fair value of this investment was determined with Level 1 inputs through references to quoted market prices.

Contingent Consideration

Contingent consideration, which relates to the estimated profits from the sale of Cutanea products to be shared equally with Maruho, is reflected at fair value within acquisition contract liabilities, net on the consolidated balance sheets. The fair value is based on significant inputs not observable in the market, which represent a Level 3 measurement within the fair value hierarchy. The valuation of the contingent consideration utilizes a scenario-based method under which a set of payoffs are calculated using the term of the earnout, projections, and an appropriate metric risk premium. These payoffs are then discounted back from the payment date to the valuation date using a payment discount rate. Finally, the discounted payments are summed together to arrive at the value of the contingent consideration. The scenario-based method incorporates the following key assumptions: (i) the forecasted product profit amounts, (ii) the remaining contractual term, (iii) a metric risk premium, and (iv) a payment discount rate. The Company re-measures contingent consideration and re-assesses the underlying assumptions and estimates at each reporting period.

The following table provides a roll forward of the fair value of the contingent consideration:

(in thousands)

Balance at December 31, 2021	\$	6,200
Change in fair value of contingent consideration		-
Balance at March 31, 2022	\$	6,200
Balance at December 31, 2022	\$	2,400
Change in fair value of contingent consideration		(200)
Balance at March 31, 2023	\$	2,200

Warrant Liabilities

The warrant liabilities, comprised of warrants to purchase one share of common stock issued in a private placement on May 16, 2022, expiring five and one-half years after the issue date and with an exercise price of \$2.77 per share (the "Purchase Warrants") and warrants to purchase one share of common stock issued on July 26, 2022, expiring on December 1, 2026 with an exercise price of \$1.66 per share (the "Inducement Warrants"), were accounted for as liabilities in accordance with ASC 815-40 and are presented within warrant liabilities in the accompanying consolidated balance sheets. The warrant liabilities are measured at fair value at inception and on a recurring basis, with changes in fair value presented within the consolidated statements of operations.

The Company utilizes a Black-Scholes option pricing model to estimate the fair value of the Purchase Warrants and Inducement Warrants which is considered a Level 3 fair value measurement. Certain inputs utilized in our Black-Scholes pricing model may fluctuate in future periods based upon factors which are outside of the Company's control. A significant change in one or more of these inputs used in the calculation of fair value may cause a significant change to the fair value of our warrant liabilities which could also result in material non-cash gain or loss being reported in our consolidated statements of operations.

The fair value at March 31, 2023 was estimated using a Black-Scholes pricing model based on the following assumptions:

	<u>Purchase</u>	<u>Inducement</u>
Stock price	\$ 0.61	\$ 0.61
Expiration term (in years)	4.63	3.67
Volatility	85.0%	85.0%
Risk-free Rate	3.61%	3.71%
Dividend yield	0.0%	0.0%

The following table presents the changes in the warrant liabilities measured at fair value (in thousands):

	<u>Three Months Ended March 31,</u>	
	<u>2023</u>	<u>2022</u>
Fair value at beginning of period	\$ 2,843	\$ 12,854
Change in fair value of warrant liability	(1,028)	(8,711)
Fair value at end of period	\$ 1,815	\$ 4,143

5. Revenue

We generate revenue primarily through the sales of our licensed products Ameluz®, BF-RhodoLED® lamps and Xepi®. Revenue from the sales of our BF-RhodoLED® lamp and Xepi® are relatively insignificant compared with the revenues generated through our sales of Ameluz®.

Related party revenue relates to an agreement with Biofrontera Bioscience GmbH (“Bioscience”) for BF-RhodoLED® leasing and installation service. Refer to *Note 15, Related Party Transactions*.

An analysis of the changes in product revenue allowances and reserves is summarized as follows:

(in thousands):	Returns	Co-pay assistance program	Prompt pay discounts	Government and payor rebates	Total
Balance at December 31, 2021	\$ 43	\$ 101	\$ 48	\$ 54	\$ 246
Provision related to current period sales	3	165	5	45	218
Credit or payments made during the period	(5)	(150)	(17)	(52)	(224)
Balance at March 31, 2022	\$ 41	\$ 116	\$ 36	\$ 47	\$ 240
Balance at December 31, 2022	\$ 48	\$ 9	\$ 5	\$ 20	\$ 82
Provision related to current period sales	1	62	3	33	99
Credit or payments made during the period	-	(71)	(2)	(39)	(112)
Balance at March 31, 2023	\$ 49	-	6	14	69

6. Accounts Receivable, net

Accounts receivables are mainly attributable to the sale of Ameluz®, the BF-RhodoLED® and Xepi®. It is expected that all trade receivables will be settled within twelve months of the balance sheet date. Trade accounts receivable are stated at their net realizable value. The allowance for credit losses reflects our best estimate of expected credit losses of the receivables determined on the basis of historical experience and current information. In developing the estimate for expected credit losses, trade accounts receivables are segmented into pools of assets depending primarily on delinquency status, and fixed reserve percentages are established for each pool of trade accounts receivables.

The allowance for credit losses was \$0.1 million as of March 31, 2023 and December 31, 2022.

7. Other Receivables, Related Party

As of March 31, 2023 the Company has a receivable of \$3.8 million due from the Biofrontera Group of which \$3.7 million is due from Biofrontera AG for its 50% share of the balance of a legal settlement (see *Note 21. Commitments and Contingencies – Legal proceedings*) for which both parties are jointly and severally liable. The Company has a contractual right to repayment of its share of the settlement payments, plus interest and other miscellaneous settlement costs, from Biofrontera AG under the Settlement Allocation Agreement (“Allocation Agreement”) entered into on December 9, 2021 and as amended on March 31, 2022, which provides that the settlement payments would first be made by the Company and then reimbursed by Biofrontera AG for its share. The Allocation Agreement, as amended, provides certain remedies to the Company, if Biofrontera AG fails to make timely reimbursements, which the Company may implement in its sole discretion, including the ability to charge interest at a rate of 6.0% per annum for each day that any reimbursement is past due and the ability to offset any overdue reimbursement amounts against payments owed to Biofrontera AG by the Company (including amounts owed under the Company’s license and supply agreement for Ameluz®). As such, no reserve for the receivable has been recorded as of March 31, 2023 or December 31, 2022.

8. Inventories

Inventories are comprised of Ameluz[®], Xepi[®] and the BF-RhodoLED[®] finished products.

In assessing the consumption of inventories, the sequence of consumption is assumed to be based on the first-in-first-out (FIFO) method. There was no provision for obsolescence recorded for the three months ended March 31, 2023 and 2022.

9. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consist of the following:

(in thousands)	March 31, 2023	December 31, 2022
Prepaid expenses	\$ 593	\$ 240
Prepaid insurance	512	15
Prepaid licenses	423	317
Security deposits	-	85
Other	58	153
Total	<u>\$ 1,586</u>	<u>\$ 810</u>

10. Property and Equipment, Net

Property and equipment, net consists of the following:

(in thousands)	March 31, 2023	December 31, 2022
Computer equipment	\$ 94	\$ 89
Computer software	27	27
Furniture & fixtures	81	81
Leasehold improvement	368	368
Machinery & equipment	155	145
Property and equipment, gross	725	710
Less: Accumulated depreciation	(528)	(506)
Property and equipment, net	<u>\$ 197</u>	<u>\$ 204</u>

Depreciation expense for the three months ended March 31, 2023 and 2022 was negligible and was included in selling, general and administrative expense in the consolidated statements of operations.

11. Intangible Asset, Net

Intangible asset, net consists of the following:

(in thousands)	March 31, 2023	December 31, 2022
Xepi [®] license	\$ 4,600	\$ 4,600
Less: Accumulated amortization	(1,673)	(1,568)
Intangible asset, net	<u>\$ 2,927</u>	<u>\$ 3,032</u>

The Xepi® license intangible asset was recorded at acquisition-date fair value of \$4.6 million and is amortized on a straight-line basis over the useful life of 11 years. Amortization expense for the three months ended March 31, 2023 and 2022 was \$0.1 million.

We review the Xepi® license intangible asset for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be fully recoverable.

The Company did not recognize any impairment charges during the three months ended March 31, 2023 or 2022.

12. Statement of Cash Flows Reconciliation

The following table provides a reconciliation of cash, cash equivalents, and restricted cash that sum to the total shown in the consolidated statements of cash flows:

(in thousands)	March 31, 2023	December 31, 2022
Cash and cash equivalents	\$ 13,505	\$ 17,208
Long-term restricted cash	200	200
Total cash, cash equivalent, and restricted cash shown on the consolidated statements of cash flows	<u>\$ 13,705</u>	<u>\$ 17,408</u>

13. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consist of the following:

(in thousands)	March 31, 2023	December 31, 2022
Legal settlement (See note 21)	\$ 6,094	\$ 6,207
Employee compensation and benefits	3,155	2,850
Professional fees	1,303	1,353
Product revenue allowances and reserves	69	82
Other	514	372
Total	<u>\$ 11,135</u>	<u>\$ 10,864</u>

14. Income Taxes

As a result of the net losses, we have incurred in each fiscal year since inception, we have recorded no provision for federal income taxes for the three-month periods ended March 31, 2023 and 2022. Income tax expense incurred for the three months ended March 31, 2023 and 2022 relates to state income taxes. At March 31, 2023 and December 31, 2022, the Company had no unrecognized tax benefits.

The Company continues to be in a cumulative loss position and as such, is maintaining a full valuation allowance.

Interest and penalty charges, if any, related to unrecognized tax benefits would be classified as income tax expense in the accompanying consolidated statements of operations. As of March 31, 2023, and December 31, 2022, the Company has no accrued interest related to uncertain tax positions. Since the Company is in a loss carryforward position, it is generally subject to examination by the U.S. federal, state, and local income tax authorities for all tax years in which a loss carryforward is available.

15. Related Party Transactions

License and Supply Agreement

On October 1, 2016, the Company executed an exclusive license and supply agreement with Biofrontera Pharma GmbH (“Pharma”), which was amended in July 2019 to increase the Ameluz[®] transfer price per unit from 35.0% to 50.0% of the anticipated net selling price per unit as defined in the agreement. It was further amended on October 8, 2021 so that the price we pay per unit will be based upon our sales history, although the minimum number of units to purchase per year remains unchanged. As a result of this amendment, the purchase price we pay Biofrontera Pharma for Ameluz[®] will range from 30% to 50% of the anticipated net price per unit based on our level of annual revenue. Under the agreement, the Company obtained an exclusive, non-transferable license to use Pharma’s technology to market and sell the licensed products, Ameluz[®] and BF-RhodoLED[®] and must purchase the licensed products exclusively from Pharma. There was no consideration paid for the transfer of the license.

Purchases of the licensed products during the three months ended March 31, 2023 and 2022 were \$4.6 million and \$5.2 million, respectively and recorded in inventories in the consolidated balance sheets, and, when sold, in cost of revenues, related party in the consolidated statements of operations. Amounts due and payable to Pharma as of March 31, 2023 and December 31, 2022 were \$0.9 million and \$1.3 million, respectively, which were recorded in accounts payable, related parties in the consolidated balance sheets.

Service Agreements

In December 2021, we entered into an Amended and Restated Master Contract Services Agreement, or “Services Agreement”, which provides for the execution of statements of work that will replace the applicable provisions of our previous intercompany services agreement dated January 1, 2016, or 2016 Services Agreement, by and among us, Biofrontera AG, Biofrontera Pharma and Biofrontera Bioscience, enabling us to continue to use the IT resources of Biofrontera AG and its wholly owned subsidiaries (the “Biofrontera Group”) as well as providing access to the Biofrontera Group’s resources with respect to quality management, regulatory affairs and medical affairs. We currently have statements of work in place regarding IT, regulatory affairs, medical affairs, and pharmacovigilance, and are continuously assessing the other services historically provided to us by Biofrontera AG to determine 1) if they will be needed, and 2) whether they can or should be obtained from other third-party providers. As of March 31, 2023, we have migrated away from Biofrontera AG to third party providers for most of our significant IT services. Expenses related to the service agreement were negligible for the three months ended March 31, 2023 and \$0.1 million for the three months ended March 31, 2022, which were recorded in selling, general and administrative, related party. Amounts due to Biofrontera AG related to the service agreement as of March 31, 2023 and December 31, 2022 were \$0.2 million and \$0.2 million, respectively, which were offset against other receivables, related party in the consolidated balance sheet.

Clinical Lamp Lease Agreement

On August 1, 2018, the Company executed a clinical lamp lease agreement with Biofrontera Bioscience GmbH (“Bioscience”) to provide lamps and associated services.

Total revenue related to the clinical lamp lease agreement was minimal for the three months ended March 31, 2023 and 2022, respectively and was recorded as revenues, related party. Amounts due from Bioscience for clinical lamp and other reimbursements were approximately \$0.2 million and \$0.1 as of March 31, 2023 and December 31, 2022, respectively, which were recorded as other receivables, related party in the consolidated balance sheets.

Others

The Company has recorded a receivable of \$3.7 million and \$6.4 million as of March 31, 2023 and December 31, 2022, respectively, due from Biofrontera AG for its 50% share of the balance of a legal settlement for which both parties are jointly and severally liable. Refer to Note 7, *Other Receivables, Related Party*. There was no interest income recognized for the three months ended March 31, 2023 and \$0.1 million of interest income for the three months ended March 31, 2022, in connection with this receivable.

As of March 31, 2023, our investment in equity securities is valued at \$7.6 million and consists of 6,466,946 common shares of Biofrontera AG, a significant shareholder of the Company.

16. Stockholders' Equity

Under the Company's amended and restated certificate of incorporation, dated December 21, 2020, the Company is authorized to issue 300,000,000 shares of common stock, par value \$0.001 per share and 20,000,000 shares of preferred stock, par value \$.001 per share.

The holders of common stock are entitled to one vote for each share held. Common stockholders are not entitled to receive dividends, unless declared by the Board of Directors. The Company has not declared dividends since inception. In the event of liquidation of the Company, dissolution or winding up, the holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities. The common stock has no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the common stock. The outstanding shares of common stock are fully paid and non-assessable.

17. Equity Incentive Plans and Share-Based Payments

2021 Omnibus Incentive Plan

In 2021, our Board of Directors adopted and our shareholders approved, the 2021 Omnibus Incentive Plan (“2021 Plan”). Under the original 2021 Plan, 2,750,000 shares are reserved and authorized for awards and the maximum contractual term is 10 years for stock options issued under the 2021 Plan. On December 12, 2022, the 2021 Plan was amended by our stockholders and the number of shares authorized for awards under the 2021 Plan was increased by 2,589,800 to 5,339,800. As of March 31, 2023, there were 2,946,988 shares available for future awards under the amended 2021 Plan.

Non-qualified stock options

We maintain the 2021 Plan for the benefit of our officers, directors and employees. Employee stock options granted under the 2021 Plan generally vest in equal annual installments over three years and are exercisable for a period of up to ten years from the grant date. Non-employee director options vest in equal monthly installments following the date of grant and will be fully vested on the one-year anniversary of the date of grant. All stock options are exercisable at a price as set by the Company at the time of the grant but shall not be less than the market value of the common shares underlying the option on the grant date.

The Company recognizes the grant-date fair value of share-based awards granted as compensation expense on a straight-line basis over the requisite service period. The fair value of stock options is estimated at the time of grant using the Black-Scholes option pricing model, which requires the use of inputs and assumptions such as the fair value of the underlying stock, exercise price of the option, expected term, risk-free interest rate, expected volatility and dividend yield. The Company elects to account for forfeitures as they occur.

The fair value of each option was estimated on the date of the grant using the BSM option pricing model with the following assumptions:

	Three Months Ended March 31,	
	2023	2022
Expected volatility	70%	55%
Expected term (in years)	6.0	6.0
Risk-free interest rate	3.5% - 3.7%	1.79%
Expected dividend yield	0.0%	0.0%

Share-based compensation expense of approximately \$0.3 million and \$0.1 million was recorded in selling, general and administrative expenses on the accompanying consolidated statement of operations for the three months ended March 31, 2023 and March 31, 2022, respectively.

Options outstanding and exercisable under the employee share option plan as of March 31, 2023 and a summary of option activity during the three months then ended is presented below.

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value (1)
Outstanding at December 31, 2022	1,737,344	\$ 3.11		
Granted	200,692	\$ 0.99		
Exercised	-	\$ -		
Canceled or forfeited	(58,804)	\$ 2.42		
Outstanding at March 31, 2023	1,879,232	\$ 2.90	9.09	\$ -
Exercisable at March 31, 2023	251,496	\$ 4.07	8.73	\$ -

(1) The aggregate intrinsic value is calculated as the difference between the exercise price of the underlying options and the fair value of the common stock for the options that were in the money at March 31, 2023.

As of March 31, 2023, there was \$2.0 million of unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a weighted-average period of approximately 2.1 years.

Share-Based Compensation (RSUs)

Restricted Stock Units (“RSUs”) will vest annually over two years, subject to the recipient’s continued service with the Company through the applicable vesting dates. The fair value of each RSU is estimated based on the closing market price of the Company’s common stock on the grant date.

Share-based compensation expense of \$0.1 million and \$0.4 million for the RSUs was recorded in selling, general and administrative expenses in the accompanying consolidated statements of operations for the three months ended March 31, 2023 and March 31, 2022, respectively.

As of March 31, 2023, there was \$0.5 million of unrecognized compensation cost related to unvested RSUs, which is expected to be recognized over a weighted-average period of approximately 1.1 years.

	Shares	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value	Weighted Average Grant Date Fair Value
Outstanding at December 31, 2022	343,512		\$	\$ 2.61
Awarded	-		\$	\$ -
Vested	-		\$	\$ -
Canceled or forfeited	-		\$	\$ -
Outstanding at March 31, 2023	343,512	0.63	\$ 210	\$ 2.61
Expected to vest at March 31, 2023	343,512	0.63	\$ 210	\$ 2.61

18. Interest Expense, net

Interest expense, net consists of the following:

(in thousands)	Three Months Ended March 31,	
	2023	2022
Interest expense	(2)	(4)
Contract asset interest expense	(89)	(89)
Interest income	56	60
Interest expense, net	\$ (35)	\$ (33)

Contract asset interest expense relates to the \$1.7 million contract asset in connection with the \$7.3 million start-up cost financing received from Maruho under the Cutanea acquisition share purchase agreement. The contract asset is amortized on a straight-line basis using a 6% interest rate over the financing arrangement contract term, which ends on December 31, 2023.

19. Other Income (expense), net

Other income (expense), net primarily includes (i) gain (loss) on sale of leased assets and (ii) gain (loss) on foreign currency transactions.

20. Net Earnings (Loss) per Share

Basic net earnings per common share are calculated by dividing net income by the weighted average number of common shares outstanding during the period. Diluted net earnings per common share are calculated by dividing net income by the diluted weighted average number of common shares outstanding during the period. The diluted shares include the dilutive effect of stock-based awards based on the treasury stock method. In periods where a net loss is recorded, no effect is given to potentially dilutive securities, since the effect would be anti-dilutive.

The following table sets forth the computation of the Company's basic and diluted net loss per share attributable to common stockholders. (in thousands, except share and per share data):

	Three Months Ended March 31,	
	2023	2022
Net income (loss)	\$ (7,478)	\$ 5,561
Shares		
Basic weighted average common shares outstanding	26,699,002	17,104,749
Add: Effect of dilutive securities		
Stock options and restricted stock units	-	28,469
Diluted weighted average common shares outstanding	26,699,002	17,133,218
Net earnings (loss) per share:		
Basic	\$ (0.28)	\$ 0.33
Diluted	\$ (0.28)	\$ 0.32

The following table sets forth securities that were anti-dilutive for diluted EPS for the periods presented but which could potentially dilute EPS in the future:

March 31,	2023	2022
Common stock warrants	9,197,109	4,349,537
Common stock options and RSUs	2,198,745	575,518
Unit Purchase Options	403,628	403,628

Common stock warrants include Purchase Warrants, Inducement Warrants and warrants issued in the Initial Public Offering.

21. Commitments and Contingencies

Leases

The Company leases its corporate headquarters under an operating lease that expires in August 2025. The Company has the option to extend the term of the lease for one five (5) year period upon written notice to the landlord. The extension period has not been included in the determination of the ROU asset or the lease liability as the Company concluded that it is not reasonably certain that it would exercise this option. The Company provided the landlord with a security deposit in the amount of \$0.1 million, which was recorded as other assets in the consolidated balance sheets.

The Company has also entered into a master lease agreement for its vehicles. After an initial non-cancelable twelve-month period, each vehicle is leased on a month to month basis. Based on historical retention experience of approximately three years, the vehicles have expiration dates ranging from February 2023 through September 2025.

The components of lease expense for the three months ended March 31, 2023 were as follows (in thousands except lease term and discount rate):

Lease expense	Operating Leases
Amortization of ROU assets (operating lease cost)	\$ 139
Interest on lease liabilities	20
Total lease expense	\$ 159

Other Information

Operational cash flow used for operating leases	\$ 154
ROU assets obtained in exchange for lease liabilities	-
Weighted -average remaining lease term (in years)	2.33
Weighted -average discount rate	6.31%

Future lease payments under non-cancelable leases as of March 31, 2023 were as follows (in thousands):

Years ending December 31,	Future lease commitments
2023	\$ 409
2024	541
2025	349
Thereafter	-
Total future minimum lease payments	1,299
Less imputed interest	(90)
Total lease liability	\$ 1,209

Reported as:

Operating lease liability, current	\$ 484
Operating lease liability, non-current	725
Total	\$ 1,209

Cutanea payments

We have a contract in which we agreed to repay to Maruho \$3.6 million on December 31, 2022 and \$3.7 million on December 31, 2023 in start-up cost financing paid to us in connection with the Cutanea acquisition.

We have filed for arbitration against Maruho with the International Chamber of Commerce (“ICC”) regarding issues with Maruho’s contract manufacturer that were not disclosed at the time of the Agreement and therefore are withholding the repayment of the start-up cost financing until a decision is reached through the arbitration process. The arbitration notes that Maruho breached the agreement with Cutanea due to the undisclosed manufacturing issues and seeks damages as well as a declaration that we are not obligated to repay Maruho.

We are also obligated to share product profits with Maruho equally from January 1, 2020 through October 30, 2030. Refer to *Note 3, Acquisition Contract Liabilities*.

Milestone payments with Ferrer Internacional S.A.

Under the Xepi LSA, we are obligated to make payments to Ferrer upon the occurrence of certain milestones. Specifically, we must pay Ferrer i) \$2,000,000 upon the first occasion when annual net sales of Xepi[®] under the Xepi LSA exceed \$25,000,000, and ii) \$4,000,000 upon the first occasion annual net sales of Xepi[®] under the Xepi LSA exceed \$50,000,000. No payments have been made related to Xepi[®] milestones.

Contingent liability related to shares of Biofrontera AG acquired from Maruho through subscription rights

Dependent on the outcome of the arbitration process between Biofrontera AG and Maruho, the Company may be liable for an additional payout of \$0.9 million in relation to the shares of Biofrontera AG acquired from Maruho through a subscription rights agreement. In accordance with ASC 450-20-50-3, *Contingencies*, we have not accrued any liability associated with the subscription rights purchase, as the liability is not considered probable.

Legal proceedings

At each reporting date, the Company evaluates whether or not a potential loss amount or a potential range of loss is probable and reasonably estimable under the provisions of FASB ASC Topic 450, *Contingencies*. The Company expenses as incurred the legal costs related to such legal proceedings.

On November 29, 2021, the Company entered into a settlement and release agreement with respect to a lawsuit filed March 23, 2018 in the United States District Court for the District of Massachusetts in which we were alleged to have infringed on certain patents and misappropriated certain trade secrets. In the settlement, the Company and Biofrontera AG together agreed to make an aggregate payment of \$22.5 million and engage a forensic expert to destroy data at issue in the litigation to settle the claims in the litigation.

While Biofrontera AG has agreed to pay fifty percent of the settlement costs, we remain jointly and severally liable to DUSA for the full cash settlement amount, meaning that in the event Biofrontera AG does not pay all or a portion of the amount it owes under the Agreement, DUSA could compel us to pay Biofrontera AG's share. If either we or Biofrontera AG violates the terms of the settlement agreement, we or Biofrontera AG may be liable for a greater amount. If we become liable for more than our agreed share of the aggregate settlement amount, either of these events could have a material adverse effect on our business, prospects, financial condition and/or results of operations. As of March 31, 2023, we have reflected a legal settlement liability in the amount of \$6.1 million for the remaining payments due under the settlement, including the estimated remaining cost of the forensic expert and a related receivable from related party of \$3.7 million for the remaining legal settlement costs to be reimbursed in accordance with the Settlement Allocation Agreement, which provided that the settlement payments, including the cost of the forensic expert, would first be made by the Company and then reimbursed by Biofrontera AG for its share.

22. Retirement Plan

The Company has a defined-contribution plan under Section 401(k) of Internal Revenue Code (the "401(k) Plan"). The 401(k) Plan covers all employees who meet defined minimum age and service requirements and allows participants to defer a portion of their annual compensation on a pre-tax basis. The Company matches 50% of employee contributions up to a maximum of 6% of employees' salary.

For the three months ended March 31, 2023 and 2022, matching contribution costs paid by the Company were \$0.1 million.

23. Subsequent Events

We have completed an evaluation of subsequent events after the balance sheet date of March 31, 2023 through the date this Quarterly Report on Form 10-Q was submitted to the SEC.

Settlement Agreement

On April 11, 2023, Biofrontera Inc. and each member of its Board of Directors, in their individual capacities, entered into a settlement agreement (the "Settlement Agreement") with Biofrontera AG, a significant stockholder of the Company.

Pursuant to the terms of the Settlement Agreement, the major provisions are as follows:

- the Company and a member of its Board of Directors withdrew their challenges to the resolutions passed at the Biofrontera AG stockholder meeting on January 9, 2023
- the Company will increase the Board of Directors from five to six members and appoint as a Class I Director a director nominated by Biofrontera AG to fill the vacancy, subject to certain restrictions as described in the Settlement Agreement;
- the Company will begin a search for an additional director candidate, who is fully independent, to be nominated for election as a Class II Director at the Company's 2023 annual meeting of stockholders; at which point the Company will increase the size of the Board of Directors to seven members;
- the Board established a Related Party Transactions Committee to approve all contracts and transactions between the Company and Biofrontera AG, including any of its affiliates;
- the Company amended on April 26, 2023 that certain Stockholder Rights Agreement dated October 13, 2022, between the Company and Computershare Trust Company, N.A., as Rights Agent to increase the threshold of beneficial ownership before being deemed an Acquiring Person, solely with respect to Biofrontera AG, from 20% to 29.96%.

Loan and Security Agreement

On May 8, 2023, the Company entered into a Loan and Security Agreement (the "Loan Agreement") with MidCap Business Credit LLC, providing us with a revolving line of credit in the aggregate principal amount of up to \$6.5 million, subject to a borrowing base. The Loan Agreement allows the Company to request advances thereunder and to use the proceeds of such advances for working capital

purposes until the maturity date of May 8, 2026. The Loan Agreement is secured by a lien on substantially all of the assets of the Company, subject to customary exceptions.

Advances under the Loan Agreement shall bear interest at the 30-Day Adjusted Term SOFR Rate, set monthly on the first day of the month based on 30-Day Term SOFR plus a spread adjustment of 15 basis points and subject to a floor of 2.25%, plus 4.00% calculated and charged monthly in arrears. In the event of a called event of default, a default interest rate of 3.00% percent shall be added to the aforementioned rate. Under the terms of the Loan Agreement, amounts available for advances would be subject to a borrowing base, which is a formula based on certain eligible receivables and inventory. The Loan Agreement also includes an Unused Line Fee Rate of 0.375% of the Credit Limit less all outstanding advances, which shall be paid on a monthly basis. Currently, our borrowing capacity is limited to our eligible receivables, pending consent from Biofrontera AG to allow Midcap to obtain title to Biofrontera Inc.'s inventory in the event of bankruptcy.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Forward-Looking Statements

The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for forward-looking statements. Certain statements in this Form 10-Q constitute "forward-looking statements". Such statements include estimates of our expenses, future revenue, capital requirements, our need for additional financing, statements regarding the efficacy and intended use of our technologies under development, the timelines and strategy for bringing licensed products to market, the timeline for regulatory review and approval of our licensed products, and other statements that are not historical facts, including statements which may be preceded by the words "intends," "may," "will," "plans," "expects," "anticipates," "projects," "predicts," "estimates," "aims," "believes," "hopes," "potential" or similar words. Forward-looking statements are not guaranties of future performance, are based on certain assumptions and are subject to various known and unknown risks and uncertainties, many of which are beyond our control. Actual results may differ materially from the expectations contained in the forward-looking statements.

Factors that may cause such differences include, but are not limited to:

- our reliance on sales of products we license from other companies as our sole source of revenue;
- the success of our competitors in developing generic topical dermatological products that successfully compete with our licensed products;
- the success of our principal licensed product Ameluz®;
- the ability of Biofrontera Pharma, Biofrontera Bioscience and Ferrer Internacional S.A. ("Ferrer"), referred to collectively as our ("licensors") to establish and maintain relationships with contract manufacturers that are able to supply us with enough of the licensed products to meet our demand;
- the ability of our licensors or our licensors' manufacturing partners, as applicable, to supply Ameluz®, BF-RhodoLED® lamps, Xepi® or other licensed products that we market in sufficient quantities and at acceptable quality and cost levels, and to fully comply with current good manufacturing practice or other applicable manufacturing regulations;
- the ability of our licensors to successfully defend or enforce patents related to our licensed products;
- the availability of insurance coverage and medical expense reimbursement for our licensed products;
- the impact of legislative and regulatory changes;
- competition from other pharmaceutical and medical device companies and existing treatments, such as simple curettage and cryotherapy;
- our success in achieving profitability;
- our ability to obtain additional financing as needed to implement our growth strategy;
- the effect of the COVID-19 global pandemic, including mitigation efforts and economic effects;
- our ability to retain and recruit key personnel;
- such other risks identified in *Item 1A. Risk Factors* in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 and any other filings with the SEC.

More detailed information about us and the risk factors that may affect the realization of forward-looking statements, including the forward-looking statements in this Quarterly Report on Form 10-Q, is set forth in our filings with the SEC, including our Annual Report on Form 10-K for the fiscal year ended December 31, 2022. We urge investors and security holders to read those documents free of charge at the SEC's web site at www.sec.gov. We do not undertake to publicly update or revise our forward-looking statements as a result of new information, future events or otherwise, except as required by law.

Overview

Biofrontera Inc (the "Company") is a U.S.-based biopharmaceutical company commercializing a portfolio of pharmaceutical products for the treatment of dermatological conditions with a focus on photodynamic therapy ("PDT") and topical antibiotics. The Company's licensed products are used for the treatment of actinic keratoses, which are pre-cancerous skin lesions as well as impetigo, a bacterial skin infection.

Biofrontera Inc. includes its wholly owned subsidiary Bio-FRI GmbH, a limited liability company organized under the laws of Germany. Our subsidiary, Bio-FRI was formed on February 9, 2022, as a German presence to facilitate our relationship with the Ameluz Licensor.

Our principal licensed product is Ameluz[®], which is a prescription drug approved for use in combination with the RhodoLED[®] lamp series, for PDT (when used together, "Ameluz[®] PDT"). In the United States, the PDT treatment is used for the lesion-directed and field-directed treatment of actinic keratoses ("AK") of mild-to-moderate severity on the face and scalp. AKs are premalignant lesions of the skin that can potentially develop into skin cancer (squamous cell carcinoma) if left untreated.¹ International treatment guidelines list photodynamic therapy as the "gold standard" for treating AK, especially multiple AKs and the surrounding photodamaged skin.² We are currently selling Ameluz[®] for this indication in the U.S. under an exclusive license and supply agreement ("Ameluz LSA") between Biofrontera, Inc. and the Ameluz Licensors.

Our second prescription drug licensed product in our portfolio is Xepi[®] (ozenoxacin cream, 1%), a topical non-fluorinated quinolone that inhibits bacterial growth. Currently, no antibiotic resistance against Xepi[®] is known and it has been specifically approved by the FDA for the treatment of impetigo, a common skin infection, due to *Staphylococcus aureus* or *Streptococcus pyogenes*. It is approved for use in the United States in adults and children 2 months and older. We are currently selling Xepi[®] for this indication in the United States. under an exclusive license and supply agreement, as amended ("Xepi LSA") with Ferrer Internacional S.A. ("Ferrer") that was assumed by Biofrontera on March 25, 2019 through our acquisition of Cutanea Life Sciences, Inc. ("Cutanea").

Our principal objective is to increase the sales of our licensed products in the United States. The key elements of our strategy include the following:

- expanding our sales in the United States of Ameluz[®] in combination with the BF-RhodoLED[®] lamp for the treatment of minimally to moderately thick actinic keratoses of the face and scalp and positioning Ameluz[®] to be the standard of care in the United States by growing our dedicated sales and marketing infrastructure in the United States;
- expanding sales of Xepi[®] for treatment of impetigo by improving the market positioning of the licensed product;
- leveraging the potential for future approvals and label extensions of our portfolio products that are in the pipeline for the U.S. market through the LSAs with our Licensors; and
- opportunistically adding complementary products or services to our portfolio by acquiring or licensing IP to further leverage our commercial infrastructure and customer relationships.

We devote a substantial portion of our cash resources to the commercialization of our licensed products, Ameluz[®] and the BF-RhodoLED[®] lamp series. We have financed our operating and capital expenditures through cash proceeds generated from our product sales and proceeds received in equity financings.

We believe that important measures of our results of operations include product revenue, operating income (loss) and adjusted EBITDA (a non-U.S. GAAP measure as defined below). Our sole source of product revenue is sales of products that we license from certain related and unrelated companies. Our long-term financial objectives include consistent revenue growth and expanding operating margins. Accordingly, we are focused on licensed product sales expansion to drive revenue growth and improve operating efficiencies, including effective resource utilization, information technology leverage, and overhead cost management.

Key factors affecting our performance

As a result of a number of factors, our historical results of operations may not be comparable to our results of operations in future periods, and our results of operations may not be directly comparable from period to period. Set forth below is a brief discussion of the key factors impacting our results of operations.

Seasonality

Because traditional photodynamic therapy treatments using a lamp are performed more frequently during the winter, our revenue is subject to some seasonality and has historically been higher during the first and fourth quarters than during the second and third quarters.

COVID-19

The COVID-19 global pandemic still affects our business and presents challenges. However, we are optimistic that our business will continue to thrive throughout 2023 as a result of the COVID-19 Public Health Emergency (PHE) sunseting on May 11, 2023. However, the ultimate extent of the impact of any epidemic, pandemic, outbreak, or other public health crisis on our business, financial condition and results of operations will depend on future developments, which are highly uncertain and cannot be predicted, including new information that may emerge concerning the severity of such epidemic, pandemic, outbreak, or other public health crisis and actions taken to contain or prevent the further spread, including the effectiveness of vaccination and booster vaccination campaigns, among others. Accordingly, we cannot predict the extent to which our business, financial condition and results of operations will continue to be affected. We remain focused on maintaining a strong balance sheet, liquidity and financial flexibility and continue to monitor developments as we deal with the disruptions and uncertainties from a business and financial perspective relating to COVID-19 and variants thereof.

Supply Chain

While our Licensors take reasonable precautions to ensure the successful production of our commercially licensed products, their contract manufacturers may experience a myriad of business difficulties (i.e., workforce instability, supply chain issues, erosion of customer base, etc.) that could impact their financial solvency. In December 2021, we were notified by Ferrer of third-party manufacturing delays for the Xepi[®] product. Although we have inventory of Xepi[®] on hand, we expect a delay in further shipments of Xepi[®] for the next 8 to 12 months. Despite these delays, our total revenues will not be significantly impacted since the majority of our revenues are from sales of Ameluz[®]. We continue to monitor the impacts of the supply chain on our business and are focused on ensuring the stability of the supply chains for Ameluz[®] and BF-RhodoLED[®].

Components of Our Results of Operations

Product Revenue, net

We generate product revenues through the third-party sales of our licensed products Ameluz[®], BF-RhodoLED[®] lamps and Xepi[®]. Revenues from product sales are recorded net of discounts, rebates and other incentives, including trade discounts and allowances, product returns, government rebates, and other incentives such as patient co-pay assistance. Revenue from the sales of our BF-RhodoLED[®] lamp and Xepi[®] are relatively insignificant compared with revenues generated through our sales of Ameluz[®].

The primary factors that determine our revenue derived from our licensed products are:

- the level of orders generated by our sales force;
- the level of prescriptions and institutional demand for our licensed products; and
- unit sales prices.

Related Party Revenues

We also generate insignificant related party revenue in connection with an agreement with Biofrontera Bioscience to provide RhodoLED[®] lamps and associated services for the clinical trials performed by Biofrontera Bioscience.

Cost of Revenues, Related Party

Cost of revenues, related party, is comprised of purchase costs of our licensed products, Ameluz[®] and BF-RhodoLED[®] lamps from Biofrontera Pharma GmbH and insignificant inventory adjustments due to scrapped, expiring and excess products.

On October 8, 2021, we entered into an amendment to the Ameluz LSA under which the price we pay per unit will be based upon our sales history. As a result of this amendment, the purchase price we pay the Ameluz Licensor for Ameluz[®] will be determined in the following manner:

- fifty percent of the anticipated net price per unit until we generate \$30 million in revenue from sales of the products we license from the Ameluz Licensor during a given Commercial Year (as defined in the Ameluz LSA);
- forty percent of the anticipated net price per unit for all revenues we generate between \$30 million and \$50 million from sales of the products we license from the Ameluz Licensor; and
- thirty percent of the anticipated net price per unit for all revenues we generate above \$50 million from sales of the products we license from the Ameluz Licensor.

Cost of Revenues, Other

Cost of revenues, other, is comprised of purchase costs of our licensed product, Xepi[®], third-party logistics and distribution costs including packaging, freight, transportation, shipping and handling costs, inventory adjustment due to expiring Xepi[®] products, as well as sales-based Xepi[®] royalties.

Selling, General and Administrative Expense

Selling, general and administrative expenses consist principally of costs associated with our sales force, commercial support personnel, personnel in executive and other administrative functions, as well as medical affairs professionals. Other selling, general and administrative expenses include marketing, trade, and other commercial costs necessary to support the commercial operation of our licensed products and professional fees for legal, consulting and accounting services. Selling, general and administrative expenses also include the amortization of our intangible asset and our legal settlement expenses.

Selling, General and Administrative Expenses, Related Party

Selling, general and administrative expenses, related party, primarily relate to the services provided by our significant stockholder, Biofrontera AG, for IT support, and pharmacovigilance. In December 2021, we entered into an Amended and Restated Master Contract Services Agreement, or “Services Agreement”, which provides for the execution of statements of work that supersede the applicable provisions of the 2016 Services Agreement. The Services Agreement enables us to continue relying on Biofrontera AG and its subsidiaries for various services it has historically provided to us, including IT and pharmacovigilance support for as long as we deem necessary. We currently have statements of work in place regarding IT, regulatory affairs, medical affairs, pharmacovigilance, and Investor Relations services, and are continuously assessing the other services historically provided to us by Biofrontera AG to determine 1) if they will be needed, and 2) whether they can or should be obtained from other third-party providers. As of March 31, 2023, we have migrated most of our significant IT services from Biofrontera AG to third party providers.

Change in Fair Value of Contingent Consideration

In connection with the Cutanea acquisition, we recorded contingent consideration related to the estimated profits from the sale of Cutanea products to be shared equally with Maruho. The fair value of such contingent consideration was determined to be \$6.5 million on the acquisition date of March 25, 2019 and is re-measured at each reporting date, with changes in fair value presented in the consolidated statement of operations, until the contingency is resolved.

Change in Fair Value of Warrant Liabilities

Common stock warrants issued in conjunction with private placement financing transactions are accounted for as liabilities in accordance with ASC 815-40.

The warrant liability is measured at fair value at inception and on a recurring basis, with changes in fair value presented within the consolidated statements of operations.

Change in Fair Value of Investment in Equity Securities

Our investments are comprised of equity securities in shares of Biofrontera AG, which are initially recorded at cost, plus transaction costs, and subsequently measured at fair value, based on quoted market prices, with the gains and losses reported in the Company’s consolidated statement of operations. For the investments held in foreign currencies, the change in fair value attributable to changes in foreign exchange rates is included in gains and losses in the consolidated statement of operations.

The Company may sell its equity securities in response to changes in interest rates, risk/reward characteristics, liquidity needs or other factors.

Interest Expense, net

Interest expense, net, primarily consists of amortization of the contract asset related to the start-up cost financing from Maruho under the Share Purchase and Transfer Agreement dated March 25, 2019 (as amended, the “Share Purchase Agreement”) offset by interest income of 6% per annum for each day that any reimbursement is past due related to the Amended Settlement Allocation Agreement with Biofrontera AG, and immaterial amounts of interest income earned on our financing of customer purchases of BF-RhodoLED[®] lamps.

Other Income (Expense), net

Other income (expense), net primarily includes (i) gain (loss) on sale of leased assets and (ii) gain (loss) on foreign currency transactions.

Income Taxes

As a result of the net losses, we have incurred in each fiscal year since inception, we have recorded no provision for federal income taxes during such periods. Income tax expense incurred relates to state income taxes.

Results of Operations

Comparison of the Three Months ended March 31, 2023 and 2022

The following table summarizes our results of operations for the three months ended March 31, 2023 and 2022:

<i>(in thousands)</i>	<u>2023</u>	<u>2022</u>	<u>Change</u>
Product revenues, net	\$ 8,715	\$ 9,736	\$ (1,021)
Related party revenues	18	15	3
Revenues, net	<u>8,733</u>	<u>\$ 9,751</u>	<u>(1,018)</u>
Operating expenses:			
Cost of revenues, related party	4,547	4,975	(428)
Cost of revenues, other	51	175	(124)
Selling, general and administrative	9,800	7,616	2,184
Selling, general and administrative, related party	27	95	(68)
Change in fair value of contingent consideration	(200)	-	(200)
Total operating expenses	<u>14,225</u>	<u>12,861</u>	<u>1,364</u>
Loss from operations	<u>(5,492)</u>	<u>(3,110)</u>	<u>(2,382)</u>
Change in fair value of warrant liabilities	1,028	8,711	(7,683)
Change in fair value of investments	(2,941)	-	(2,941)
Interest expense, net	(35)	(33)	(2)
Other income (expense), net	(33)	23	(56)
Loss before income taxes	<u>(7,473)</u>	<u>5,591</u>	<u>(13,064)</u>
Income tax expenses	5	30	(25)
Net income (loss)	<u>\$ (7,478)</u>	<u>\$ 5,561</u>	<u>\$ (13,039)</u>

Product Revenue, net

Net product revenue was \$8.7 million and \$9.8 million for the three months ended March 31, 2023 and 2022, respectively, a decrease of \$1.02 million, or 10.5%. This decrease is driven by a higher volume of Ameluz revenue in Q1 2022 caused by customer buy-in prior to a price increase on April 1, 2022. Unlike 2022, the Company did not increase the price of Ameluz in 2023, and therefore did not see a similar buy-in effect from customers anticipating a price increase.

Operating Expenses

Cost of Revenues, Related Party

Cost of revenues, related party was \$4.5 million and \$5.0 million for the three months ended March 31, 2023 and 2022, respectively, a decrease of \$0.4 million, or 8.6%, which was driven by the decrease in Ameluz product revenue. Cost of revenues, related party, is directly correlated to the selling price of Ameluz under the Ameluz LSA.

Selling, General and Administrative Expenses

Selling, general and administrative expenses were \$9.8 million and \$7.6 million for the three months ended March 31, 2023 and 2022, respectively, an increase of \$2.2 million, or 28.7%. The increase was primarily driven by \$1.2 million of increased personnel cost due to increased headcount primarily in the sales team as well as \$1.0 million of increased legal expenses resulting primarily from a legal settlement.

Change in Fair Value of Contingent Consideration

The change in fair value of contingent consideration was a decrease of \$0.2 million for the three months ended March 31, 2023 compared to the three months ended March 31, 2022. The change in fair value of contingent consideration is driven by the estimated profit share the Company is required to pay under the Share Purchase Agreement.

Change in Fair Value of Warrant Liabilities

The change in fair value of warrant liabilities was a decrease of \$7.7 million for three months ended March 31, 2023. The change in fair value of warrant liabilities was driven by changes in the underlying value of the common stock.

Change in fair value of investments in equity securities

The change in fair value of investments in equity securities was a decrease of \$2.9 million, driven by changes in the quoted market price of the common stock of Biofrontera AG.

Net Income (Loss) to Adjusted EBITDA Reconciliation for the Three Months Ended March 31, 2023 and 2022

We define adjusted EBITDA as net income or loss before interest income and expense, income taxes, depreciation and amortization, and other non-operating items from our consolidated statements of operations as well as certain other items considered outside the normal course of our operations specifically described below. Adjusted EBITDA is not a presentation made in accordance with U.S. generally accepted accounting principles (“U.S. GAAP”). Our definition of adjusted EBITDA may vary from the use of similarly-titled measures by others in our industry due to the potential inconsistencies in the method of calculation and differences due to items subject to interpretation. Adjusted EBITDA should not be considered as an alternative to net income or loss, operating income/(loss), cash flows from operating activities or any other performance measures derived in accordance with U.S. GAAP as measures of operating performance or liquidity. Adjusted EBITDA has limitations as an analytical tool and should not be considered in isolation or as a substitute for analysis of our results as reported under U.S. GAAP.

Change in fair value of contingent consideration: Pursuant to the Share Purchase Agreement, the profits from the sale of Cutanea products will be shared equally between Maruho and Biofrontera until 2030. The fair value of the contingent consideration was determined to be \$6.5 million on the acquisition date and is re-measured at each reporting date, with changes in fair value presented within the consolidated statements of operations. We exclude the impact of the change in fair value of contingent consideration as this is non-cash.

Change in fair value of warrant liabilities: The Warrants issued in conjunction with our private placement offerings were accounted for as liabilities in accordance with ASC 815-40. The warrant liabilities are measured at fair value at inception and on a recurring basis, with changes in fair value presented within the consolidated statements of operations. We exclude the impact of the change in fair value of warrant liabilities as this is non-cash.

Change in fair value of investment in equity securities: The Company accounts for its investments in equity securities in accordance with ASC 321, *Investments — Equity Securities* (“ASC 321”). Equity securities, which are comprised of investments in common stock, are initially recorded at cost, plus transaction costs, and subsequently measured at fair value, based on quoted market prices, with the gains and losses reported in the Company’s consolidated statement of operations. For the investments held in foreign currencies, the change in fair value attributable to changes in foreign exchange rates is included in gains and losses in the consolidated statements of operations. We exclude the impact of the change in fair value of investments as this is non-cash.

Legal settlement expenses: To measure operating performance, we exclude legal settlement expenses. We do not expect to incur these types of legal expenses on a recurring basis and believe the exclusion of such amounts allows management and the users of the financial statements to better understand our financial results.

Stock Based Compensation: To measure operating performance, we exclude the impact of costs relating to share-based compensation. Due to the subjective assumptions and a variety of award types, we believe that the exclusion of share-based compensation expense, which is typically non-cash, allows for more meaningful comparisons of our operating results to peer companies. Share-based compensation expense can vary significantly based on the timing, size and nature of awards granted.

Adjusted EBITDA margin is adjusted EBITDA for a particular period expressed as a percentage of revenues for that period.

We use adjusted EBITDA to measure our performance from period to period and to compare our results to those of our competitors. In addition to adjusted EBITDA being a significant measure of performance for management purposes, we also believe that this presentation provides useful information to investors regarding financial and business trends related to our results of operations and that when non-U.S. GAAP financial information is viewed with U.S. GAAP financial information, investors are provided with a more meaningful understanding of our ongoing operating performance.

The below table presents a reconciliation from net income (loss) to Adjusted EBITDA for the three months ended March 31, 2023 and 2022:

	Three Months Ended March 31,	
	2023	2022
Net income (loss)	\$ (7,478)	\$ 5,561
Interest expense, net	35	33
Income tax expenses	5	30
Depreciation and amortization	266	131
EBITDA	(7,172)	5,755
Change in fair value of contingent consideration	(200)	-
Change in fair value of warrant liabilities	(1,028)	(8,711)
Change in fair value of investments	2,941	-
Legal settlement expenses	1,118	-
Stock based compensation	351	517
Adjusted EBITDA	\$ (3,990)	\$ (2,439)
Adjusted EBITDA margin	-45.7%	-25.0%

Adjusted EBITDA

Adjusted EBITDA decreased from (\$2.4) million during the three months ended March 31, 2022 to (\$4.0) million for the three months ended March 31, 2023 driven by an increase in personnel costs and lower revenues. Our adjusted EBITDA margin decreased from (25%) to (45.7%) during the same periods.

Liquidity and Capital Resources

The Company's primary sources of liquidity are its existing cash balances, cash collected from the sales of its products, and cash flows from equity financing transactions received in 2022. As of March 31, 2023, we had cash and cash equivalents of \$13.5 million, compared to \$17.2 million as of December 31, 2022.

Since we commenced operations in 2015, we have generated significant losses. For the three months ended March 31, 2023 and 2022, we incurred loss from operations of \$5.5 million and \$3.1 million, respectively. We incurred net cash outflows from operations of \$3.7 million and \$2.1 million, for the same periods, respectively. We had an accumulated deficit as of March 31, 2023 of \$87.0 million.

The Company's short-term material cash requirements include working capital needs and satisfaction of contractual commitments including facility and auto leases (see *Note 21, Commitments and Contingencies*), Maruho start-up cost financing repayments of \$7.3 million (see *Note 3. Acquisition Contract Liabilities*), and legal settlement expenses after reimbursement from Biofrontera AG of \$2.5 million. Long-term material cash requirements include potential milestone payments to Ferrer Internacional S.A, and contingent consideration payments to Maruho connected with Xepi sales (See *Note 21. Commitments and Contingencies*).

Additionally, we expect to continue to incur operating losses due to significant discretionary sales and marketing, medical affairs, and dermatology community outreach efforts as we seek to expand the commercialization of our licensed products in the United States. We also expect to incur additional expenses to add and improve operational, financial and information systems and personnel, including personnel to support our product commercialization efforts. In addition, we expect to incur costs to continue to comply with corporate governance, regulatory reporting and other requirements applicable to us as a public company in the U.S.

These factors raise doubt about our ability to continue as a going concern, which we have determined are mitigated by the following plans. Based on current operating plans and financial forecasts, we expect that our revolving line of credit and expected proceeds from the sale of our investment in Biofrontera AG in addition to our current cash and cash equivalents will be sufficient to fund our operations for at least the next twelve months from the date of issuance of our financial statements. However, we expect to have to obtain either equity or additional debt financing to support our future long-term growth and to mitigate the risk of our operating costs significantly exceeding the amounts currently estimated. If our current operating plans or financial forecasts change, or we are unable to obtain additional financing or the proceeds from the sale of our holdings in Biofrontera AG is lower than expected or we are not able to complete the sale within our planned timeline, we may need to reduce the discretionary spend on promotional expenses, branding, marketing consulting and defer some hiring. While we expect to continue being flexible in our spending over the next twelve months, we do not consider there to be a need to significantly revise our operations currently.

Our future use of operating cash and capital requirements will depend on many forward-looking factors, including the following:

- the costs of our commercialization activities for Ameluz[®];
- the extent to which we acquire or invest in licensed products, businesses and technologies;
- the extent to which we choose to establish collaboration, co-promotion, distribution or other similar agreements for our licensed products;
- the cost to fulfill our contractual obligations for various operating leases on vehicles and office space;
- the requirement to pay back \$7.3 million of start-up cost financing to Maruho and make any contingent profit-sharing payments to Maruho in connection with the Cutanea acquisition; and
- the ability to collect a receivable of \$3.7 million from Biofrontera AG (in accordance with the Settlement Allocation Agreement) for reimbursement of legal settlement payments to be made on their behalf for which both parties are jointly and severally liable.

We will continue to assess our operating costs and expenses and our cash and cash equivalents and, if circumstances warrant, we will make appropriate adjustments to our operating plan.

Cash Flows

The following table summarizes our cash provided by and (used in) operating, investing and financing activities:

<i>(in thousands)</i>	Three Months Ended March 31,	
	2023	2022
Net cash used in operating activities	\$ (3,689)	\$ (2,112)
Net cash used in investing activities	(14)	(5)
Net decrease in cash and restricted cash	\$ (3,703)	\$ (2,117)

Operating Activities

During the three months ended March 31, 2023, operating activities used \$3.7 million of cash, primarily resulting from our loss from operations of \$5.5 million, adjusted for non-cash expense of stock-based compensation of \$0.4 million, non-cash interest expense of \$0.1 million, and depreciation and amortization in the aggregate of \$0.3 million, and net cash used by changes in our operating assets and liabilities of \$1.4 million, offset by change in fair value of contingent consideration of \$0.2 million.

During the three months ended March 31, 2022, operating activities used \$2.1 million of cash, primarily resulting from our loss from operations of \$3.1 million, adjusted for non-cash expense of stock-based compensation of \$0.5 million, non-cash interest expense of \$0.1 million, and depreciation and amortization in the aggregate of \$0.1 million and net cash used by changes in our operating assets and liabilities of \$0.3 million.

Investing Activities

During the three months ended March 31, 2023 net cash used in investing activities consisted of the purchase of machinery & computer equipment.

During the three months ended March 31, 2022, net cash used in investing activities consisted of the purchase of computer equipment.

Financing Activities

During the three months ended March 31, 2023 and 2022, there was no net cash provided by or used in financing activities.

Accounting Policies and Significant Judgments and Estimates

Our management’s discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles of the United States, or U.S. GAAP. The preparation of the financial statements in accordance with U.S. GAAP requires the use of estimates and assumptions by management that affect the value of assets and liabilities, as well as contingent assets and liabilities, as reported on the balance sheet date, and revenues and expenses arising during the reporting period. The main areas in which assumptions, estimates and the exercising of a degree of judgment are appropriate relate to fair value measurements of contingent consideration, warrant liabilities, and stock compensation. Estimates are based on historical experience and other assumptions that are considered appropriate in the circumstances. They are continuously reviewed but may vary from the actual values.

Our significant accounting policies are described in more detail in *Note 2 – Summary of Significant Accounting Policies*, to our consolidated financial statements included in *Item 8, “Financial Statements and Supplementary Data,”* our Annual Report on Form 10-K.

Critical Accounting Estimates

A summary of our critical accounting estimates is included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2022. There were no material changes to our critical accounting estimates for the three months ended March 31, 2023.

Off-balance Sheet Arrangements

Besides the contractual obligations and commitments as discussed in the section titled *Liquidity and Capital Resources*, we did not have during the periods presented, and we do not currently have, any other off-balance sheet arrangements, as defined in the rules and regulations of the SEC.

Emerging Growth Company Status

The Jumpstart Our Business Startups Act of 2012 permits an “emerging growth company” such as us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies until those standards would otherwise apply to private companies. We have elected to take advantage of such extended transition period, which means that when an accounting standard is issued or revised and it has different application dates for public or private companies, we will adopt the new or revised standard at the time private companies adopt the new or revised standard and will do so until such time that we either (i) irrevocably elect to “opt out” of such extended transition period or (ii) no longer qualify as an emerging growth company.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

As a “smaller reporting company,” we are not required to provide the information required by this Item.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated, as of the end of the period covered by this Form 10-Q, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of March 31, 2023, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting during the most recent fiscal quarter ended March 31, 2023 that materially affected, or is reasonably likely to materially affect, our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act).

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

For information regarding legal proceedings in which we are involved, see Note 21 - Commitments and Contingencies under the subsection titled “Legal Proceedings” in our Notes to Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Item 1A. Risk Factors

As a smaller reporting company, we are not required to provide disclosure pursuant to this item in this Form 10-Q. However, you should carefully consider the “Risk Factors” included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, for a discussion of important factors that could materially affect our business, financial condition and/or operating results.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not Applicable.

Item 5. Other Information

Pursuant to the Commitment Letter with MidCap Business Credit LLC (“MidCap”) previously disclosed in Item 9B of our Annual Report on Form 10-K, on May 8, 2023, we entered into a Loan and Security Agreement (the “Loan Agreement”) with MidCap, providing us with a revolving line of credit in the aggregate principal amount of up to \$6.5 million, subject to a borrowing base and an availability block. The Loan Agreement allows us to request advances thereunder and to use the proceeds of such advances for working capital purposes until the maturity date of May 8, 2026. The Loan Agreement is secured by a lien on substantially all of the assets of the Company, subject to customary exceptions.

Advances under the Loan Agreement shall bear interest at the 30-Day Adjusted Term SOFR Rate, set monthly on the first day of the month based on 30-Day Term SOFR plus a spread adjustment of 15 basis points and subject to a floor of 2.25%, plus 4.00% calculated and charged monthly in arrears. In the event of a called event of default, a default interest rate of 3.00% percent shall be added to the aforementioned rate. Under the terms of the Loan Agreement, amounts available for advances would be subject to a borrowing base, which is a formula based on certain eligible receivables and inventory, and a block on such availability in the amount of \$650,000 (the “Availability Block”). The Loan Agreement also includes an Unused Line Fee Rate of 0.375% of the Credit Limit (as defined in the Loan Agreement) less all outstanding advances, which shall be paid on a monthly basis.

The Loan Agreement also provides for the issuance of letters of credit with a \$250,000 sublimit. We do not currently have any letters of credit outstanding.

The Loan Agreement includes customary covenants, including limitations on liens, indebtedness, restricted payments and a financial maintenance covenant requiring maintenance of minimum revenue from our licensed product Ameluz® tested on a quarterly basis. In addition, at our election, we may remove the Availability Block by electing to become subject to a minimum EBITDA (as defined in the Loan Agreement) maintenance financial test, to be tested quarterly following such election. The Loan Agreement also contains customary events of default provisions.

The Loan Agreement may be terminated prior to its maturity date, (i) by MidCap as a result of the occurrence of an Event of Default (as defined in the Loan Agreement) or (ii) by us at any time upon thirty days written notice, subject to an early termination fee in certain circumstances. If the Loan Agreement is terminated by the Lender following the occurrence of an Event of Default or if we terminate the Loan Agreement more than sixty days before the third anniversary of the Loan Agreement, we are required to pay an early termination fee of up to \$150,000 according to the formula for the early termination fee set forth in the Loan Agreement.

The foregoing description of the Loan Agreement does not purport to be complete and is qualified in its entirety by reference to the Loan Agreement, a copy of which is filed herewith as Exhibit 10.3 and incorporated herein by reference.

Item 6. Exhibits

The following exhibits are filed herewith or are incorporated by reference to exhibits previously filed with the SEC.

Exhibit No.

4.1	Amendment No. 1 to the Stockholder Rights Agreement, dated as of April 26, 2023, between Biofrontera Inc. and Computershare Trust Company, N.A., as Rights Agent (incorporated by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K, filed on April 28, 2023).
10.1*#†	Settlement Agreement dated April 11, 2023 between Biofrontera Inc., Hermann Luebbert, John J. Borer, Loretta M. Wedge, Beth J. Hoffman, Kevin D. Weber and Biofrontera AG
10.2*	Commitment Letter dated as of March 9, 2023 between the Company and MidCap Business Credit LLC.
10.3*#	Loan and Security Agreement, dated as of May 8, 2023, between the Company, as Borrower, and MidCap Business Credit LLC, as Lender.
31.1*	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes Oxley Act of 2002
31.2*	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes Oxley Act of 2002
32.1*	Certification of Principal Executive Officer pursuant to Section 906 of the Sarbanes Oxley Act of 2002
32.2*	Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes Oxley Act of 2002
101.INS*	Inline XBRL Instance Document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document and included in Exhibit 101)

* Filed herewith.

† Certain confidential portions of this Exhibit were omitted by means of marking such portions with brackets (“[**]”) because the identified confidential portions (i) are not material and (ii) would be competitively harmful if publicly disclosed.

The schedules (and similar attachments) to this exhibit have been omitted from this filing pursuant to Item 601(a)(5) of Regulation S-K. The registrant agrees to furnish a supplemental copy of any omitted schedule (or similar attachment) to the SEC upon request

SIGNATURES

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

BIOFRONTERA INC.

Date: May 12, 2023

By: /s/ Erica L. Monaco

Name: Erica L. Monaco

Title: Chief Executive Officer

(Principal Executive Officer)

Date: May 12, 2023

By: /s/ E. Fred Leffler

Name: E. Fred Leffler, III

Title: Chief Financial Officer

(Principal Financial Officer)

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (the “Agreement”), dated as of April 11, 2023 (the “Effective Date”) is entered into by and among Biofrontera Inc. (“BFRI”), Hermann Lübbert, John J. Borer, Loretta M. Wedge, Beth J. Hoffman, Kevin D. Weber (collectively, the “BFRI Parties”), and Biofrontera AG (together with the “BFRI Parties,” the “Parties” and individually, each a “Party”). Subject to the provisions of Section III.A. below, unless otherwise stated, all of the provisions of the Agreement are effective as of the Effective Date.

II. RECITALS

WHEREAS, on December 21, 2022, Biofrontera AG filed a Verified Complaint Pursuant to 8 *Del. C.* § 225 in the Court of Chancery of the State of Delaware in an action captioned *Biofrontera AG v. Biofrontera Inc., et al.*, C.A. No. 2022-1184-PAF (the “Action”);

WHEREAS, in the Action, Biofrontera AG asserted claims against the BFRI Parties relating to the rejection of a proposed director nomination and stockholder proposal submitted by Biofrontera AG for consideration at the 2022 annual stockholder meeting of BFRI;

WHEREAS, on January 24, 2023, the BFRI Parties filed an answer denying the allegations in the complaint and asserting certain affirmative defenses against Biofrontera AG; and

WHEREAS, to avoid the expense, burden, and uncertainty inherent in any litigation, and without admissions or concessions of any kind (other than those expressly set forth in this Agreement), the Parties have agreed to settle and compromise all claims asserted in the Action.

NOW, THEREFORE, the Parties agree as follows:

III. SETTLEMENT TERMS

A. Condition Precedent: Except for Section III.E below, the provisions of Sections III.B through III.I (inclusive) shall become effective the day the Condition Precedent (as defined in Section III.E.2) is satisfied (the “Conditional Effective Date”).

B. Dismissal of Action: Within five (5) business days of the Conditional Effective Date, Biofrontera AG and the BFRI Parties shall authorize the signing and filing of a joint stipulation of dismissal with prejudice (the “Stipulation”) of the Action. The Stipulation shall be substantially in the form attached hereto as Exhibit A.

C. Board Representation:

1. Within five (5) business days following the Conditional Effective Date, the BFRI Board of Directors (the “Board”) shall take all necessary actions to increase the size of the Board to six directors.
-

2. Through December 31, 2025, for so long as Biofrontera AG owns at least 20% of the BFRI common stock outstanding, BFRI shall appoint one director nominated by Biofrontera AG to the Board (the “Biofrontera AG Non-Independent Director”). The Biofrontera AG Non-Independent Director (i) shall not be an officer or non-officer employee of Biofrontera AG, Deutsche Balaton Aktiengesellschaft (“DB”) or any company under common control with Biofrontera AG or DB, but may be a member of the Supervisory Board of Biofrontera AG, DB or a company affiliated with Biofrontera AG or DB; and (ii) shall have the relevant financial and business experience to be a director of BFRI as determined in good faith by the Nominating and Corporate Governance Committee of the Board (the “NGC”). For the avoidance of doubt, the Parties acknowledge that any member of the Supervisory Board of Biofrontera AG that may be selected as the Biofrontera AG Non-Independent Director satisfies the requirement in clause (ii) above that such person has the relevant financial and business experience to be a director of BFRI. Such Biofrontera AG Non-Independent Director shall be considered a “Class I Director,” as such term is defined in BFRI’s Amended and Restated Certificate of Incorporation, as amended.

3. In addition, within five (5) business days following the Conditional Effective Date, Biofrontera AG and BFRI shall engage a third-party board search firm (the “Search Firm”) to assist in the search for an additional independent director candidate, who shall be mutually selected by BFRI and Biofrontera AG, and nominated for election as an additional “Class II Director,” as such term is defined in BFRI’s Amended and Restated Certificate of Incorporation, as amended (the “Additional Class II Director”), effective at BFRI’s 2023 annual meeting of stockholders (the “2023 Annual Meeting”), pursuant to the following process. To select the Additional Class II Director, Biofrontera AG and BFRI shall engage the Search Firm to identify no fewer than three and no more than five candidates (the “Board Candidates” and each a “Board Candidate”), each of whom (i) is fully independent of BFRI, Biofrontera AG, and DB (and each of their respective affiliates); (ii) meets the independence qualifications under the NASDAQ listing standards and the rules of the U.S. Securities and Exchange Commission (the “SEC”) and any exchange on which the securities of BFRI are listed, including for purposes of Rule 10A-3 promulgated under the Securities Exchange Act of 1934, as amended (or any successor rule thereto); and (iii) has the relevant financial and business experience to be a director of BFRI. The Biofrontera AG Non-Independent Director shall be given the opportunity to participate in any NGC interview of the Board Candidates and shall have the right, but not the obligation, to strike one Board Candidate. The NGC shall select one individual from the Board Candidates, subject to the Biofrontera AG Non-Independent Director’s strike right, to be nominated for election to serve as the Additional Class II Director, effective no later than the date of BFRI’s 2023 Annual Meeting (the “Independent Nominee”). After the Independent Nominee has been selected, the Board shall take all necessary action to increase the size of the Board to seven directors, effective as of the date of the 2023 Annual Meeting, and to nominate the Independent Nominee for election to fill the newly-created directorship. For the avoidance of doubt, Biofrontera AG agrees that it shall vote all shares of BFRI stock owned by Biofrontera AG in favor of the election of the Independent Nominee selected and nominated pursuant to this process.

4. Through December 31, 2025, subject to Biofrontera AG continuing to own at least 20% of the BFRI common stock outstanding, Biofrontera AG shall have the ability to nominate the Biofrontera AG Non-Independent Director for election at each BFRI annual meeting of stockholders at which the Biofrontera AG Non-Independent Director is eligible for election. In the event that the Biofrontera AG Non-Independent Director retires, resigns or otherwise ceases to be a director of BFRI or does not stand for election at a BFRI annual meeting of stockholders, Biofrontera AG shall have the right, through December 31, 2025, subject to Biofrontera AG continuing to own at least 20% of the BFRI common stock outstanding, to nominate any replacement for the Biofrontera AG Non-Independent Director.

5. Except as set forth in Section III.F.6 below, Biofrontera AG agrees that if, at any point, it ceases to own at least 20% of the BFRI common stock outstanding, and under any circumstances after December 31, 2025, Biofrontera AG shall cause the Biofrontera AG Non-Independent Director to resign his or her position as director, provided however that the Related Party Transactions Committee (defined below) may waive this requirement.

6. Until December 31, 2025, subject to Biofrontera AG continuing to own at least 20% of the BFRI common stock outstanding, BFRI agrees that it shall not increase the size of the Board, except as provided in Sections III.C.1, III.C.2 and III.C.3 above, without the consent of the Biofrontera AG Non-Independent Director, which shall not be unreasonably withheld.

7. Biofrontera AG understands and agrees that so long as the Biofrontera AG Non-Independent Director is a member of the Board, the Biofrontera AG Non-Independent Director owes fiduciary duties to BFRI and all BFRI stockholders, and that the Biofrontera AG Non-Independent Director shall be subject to all confidentiality, trading, blackout and other restrictions placed on directors of BFRI with respect to their purchase or sale of shares in BFRI.

D. Approval of Certain Related Party Transactions: The Board shall establish and maintain a Related Party Transactions Committee (the "Related Party Transactions Committee"), which shall at all times consist of at least three (3) members and be comprised solely of Independent Directors (as defined below). The Related Party Transactions Committee shall be governed by the terms of the Related Party Transactions Committee Charter, substantially in the form attached hereto as Exhibit B. The Related Party Transactions Committee shall be vested with full authority over any contract or transaction between BFRI, on one hand, and Biofrontera AG, including any of its affiliates, on the other hand (each, a "Related Party Approval Transaction"). All Related Party Approval Transactions must be approved by the Related Party Transactions Committee prior to consummation of such transaction. For purposes of this Section III.D, "Independent Directors" shall mean any directors considered "independent" under the NASDAQ listing standards, and the rules of the SEC and any exchange on which the securities of BFRI are listed, including for purposes of Rule 10A-3 promulgated under the Securities Exchange Act of 1934, as amended (or any successor rule thereto), and who would also be independent of BFRI and Biofrontera AG and their respective affiliates under Delaware case law considering the independence of directors in related party transactions.

E. Withdrawal of Challenge to Biofrontera AG's Stockholder Meeting:

1. Within five (5) business days following the Effective Date, BFRI and its affiliates, which shall include all officers and other members of management of BFRI, directors of BFRI and Hermann Lübbert, shall withdraw (and shall not reassert) their challenges to the resolutions of Biofrontera AG's stockholder meeting held on January 9, 2023. The Parties agree that neither of them will file a petition to reimburse their costs of the proceedings related to the challenges to Biofrontera AG's stockholder meeting held on January 9, 2023. In accordance with this Section III.E.1, within five (5) business days following the Effective Date, BFRI (including, as applicable, the aforementioned affiliates) and Mr. Lübbert shall each declare a withdrawal of their challenges to the Biofrontera AG stockholder meeting held on January 9, 2023 which are pending at the District Court of Cologne (*Landgericht Köln*) case no. 82 O 9/23, by executing and filing the withdrawal in the form attached hereto as Exhibit C with a court having competent jurisdiction regarding such matter.

2. In accordance with Section 248a of the German Stock Corporation Act ("AktG"), and without undue delay following the effective withdrawal of BFRI's and Mr. Lübbert's challenges to the Biofrontera AG stockholder meeting held on January 9, 2023, Biofrontera AG shall publish notice of the settlement of such challenges, which notice shall be in the form attached hereto as Exhibit D (the "Condition Precedent").

3. Biofrontera AG has irrevocably appointed and authorized Mr. Michael Schwartzkopff, attorney-at-law, to publish the announcement attached hereto as Exhibit D.

F. Mutual Standstill/Voting Agreement:

1. Biofrontera AG: Except as stated in Sections III.F.4 and III.F.6 below, for so long as Biofrontera AG owns at least 20% of the BFRI common stock outstanding, Biofrontera AG and its affiliates (including all officers, other members of management and members of the Biofrontera AG management or supervisory boards) shall not acquire any shares of BFRI, except as may be approved by the Related Party Transactions Committee. For the avoidance of doubt, DB and the other Reporting Persons as reported on the Amendment No. 1 to the Schedule 13D filed with the SEC on September 19, 2022, other than Reporting Persons who are also officers, other members of management and members of the Biofrontera AG management or supervisory boards (which includes Wilhelm Zours), are not subject to this Section III F.1.
2. Biofrontera Inc.: For so long as Biofrontera AG owns at least 20% of the BFRI common stock outstanding, BFRI and its affiliates (including all officers, other members of management and directors of BFRI, but excluding Biofrontera AG and its affiliates) shall not acquire any shares of Biofrontera AG, except as may be approved by a majority of the Supervisory Board of Biofrontera AG.

3. Through December 31, 2025, for so long as Biofrontera AG owns at least 20% of the BFRI common stock outstanding, Biofrontera AG and any entities controlled by or under common control with Biofrontera AG (a) shall appear at each annual or special meeting of stockholders of BFRI called by the Board, (b) shall vote in favor of the slate of directors recommended by the Board and against any other nominations, (c) shall vote in favor of any other proposals or business recommended by the Board and against any proposals or business not recommended by the Board (provided, however, that Biofrontera AG shall not be required to vote in favor of any proposal or business recommended by the Board only if (i) the Biofrontera AG Non-Independent Director voted against the proposal or business, and (ii) Biofrontera AG is advised by counsel that such vote in favor would be a breach of Biofrontera AG's fiduciary duties under applicable law), and (d) shall not (i) engage in any solicitation of proxies or consents with respect to BFRI, form, join in, or participate in any ownership group within the meaning of SEC Rules 13D and 13G (including without limitation any group that includes Wilhelm Zours or DB), (ii) solicit or encourage any person to submit nominations in furtherance of a contested solicitation with respect to BFRI, (iii) call or seek to call a special meeting of stockholders of BFRI, (iv) make any proposal for consideration by stockholders at an annual or special meeting of stockholders of BFRI, (v) solicit or participate in any consent solicitation with respect to BFRI not initiated by the Board, or solicit any third party to do any of the foregoing; (vi) propose to any person (other than to a member of the Board or senior management of BFRI by means that would not cause public dissemination thereof) or effect, seek to effect or enter into, whether alone or in concert with others, any tender offer, exchange offer, merger, consolidation, acquisition, scheme, business combination, recapitalization, restructuring, liquidation, dissolution or extraordinary transaction in which BFRI or any of its subsidiaries is a constituent corporation or party (a "Business Combination").
4. Within five (5) business days following the Conditional Effective Date, the Board shall take all action necessary to amend the BFRI Stockholder Rights Agreement dated as of October 13, 2022 (the "Stockholder Rights Plan") to provide, *inter alia*, that Biofrontera AG is not prohibited from acquiring shares of BFRI common stock to maintain its ownership percentage of BFRI's outstanding shares of common stock measured by Biofrontera AG's ownership percentage as of the Effective Date, provided that Biofrontera AG otherwise remains in compliance with the terms of the standstill provisions in Section III.F of this Agreement. Provided that the amendment to the Stockholder Rights Plan adopted by the Board is substantially in the form attached hereto as Exhibit E (the "Amended Rights Plan"), Biofrontera AG and any entities controlled by or under common control with Biofrontera AG shall appear at any annual or special meeting of stockholders of BFRI called by the Board at which the Amended Rights Plan (materially in the form attached hereto) is presented to BFRI stockholders for ratification, and shall vote in favor of ratifying the Amended Rights Plan, and shall not otherwise take any action to challenge the adoption and maintenance of the Amended Rights Plan. For so long as Biofrontera AG (i) complies with the terms of this Agreement and (ii) continues to own at least 20% of the BFRI common stock, BFRI shall not further amend the Amended Rights Plan, or adopt any other stockholder rights plan, to prohibit Biofrontera AG from acquiring shares of BFRI common stock up to its ownership percentage of BFRI's outstanding shares of common stock as of the Effective Date.
5. Through December 31, 2025, for so long as BFRI owns at least 7% of the Biofrontera AG common stock outstanding, BFRI and any entities controlled by or under common control with BFRI shall not propose to any person (other than to a member of the Biofrontera AG Supervisory Board or senior management of Biofrontera AG by means that would not constitute public dissemination) or effect, seek to effect or enter into, whether alone or in concert with others, any Business Combination in which Biofrontera AG or any of its subsidiaries is a constituent corporation or party.
6. The Board representation provisions in Section III.C.2 and Sections III.C.4 – III.C.6, and the standstill/voting provisions in Sections III.F.1 – III.F.4 shall remain in effect until December 31, 2025, provided that Biofrontera AG continues to own at least 20% of the BFRI common stock outstanding. Notwithstanding the foregoing, the Board representation provisions in Section III.C.2 and Sections III.C.4 – III.C.6, and the standstill/voting provisions in Sections III.F.1 – III.F.4 shall not expire if Biofrontera AG's percentage ownership of BFRI common stock falls below 20% of the BFRI common stock outstanding, if, within 30 days after BFRI provides written notice to Biofrontera AG that Biofrontera AG ceases to own 20% of the BFRI common stock outstanding, Biofrontera AG acquires sufficient shares of BFRI common stock to own at least 20% of the BFRI common stock outstanding. Written notice required in the event that Biofrontera AG ceases to own 20% of the BFRI common stock outstanding shall be deemed given for purposes of this Section III.F.6 if information that is (i) provided to the Board, to the extent that such information is provided to the Biofrontera AG Non-Independent Director, or (ii) disclosed in a document publicly filed by BFRI with the SEC pursuant to § 13, § 14 or § 15(d) (15 U.S.C. § 78m, § 77n or § 78o(d)) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, or the corresponding provisions of any subsequent United States federal securities laws, rules or regulations, indicates that Biofrontera AG's percentage ownership of BFRI common stock is less than 20%, or indicates that a number of shares of common stock has been issued that would result in Biofrontera AG owing less than 20% of BFRI common stock.

Financing/Participation: Biofrontera AG agrees that BFRI may proceed with a registered public offering of BFRI common stock and warrants exercisable into common stock [***]. BFRI agrees that Biofrontera AG shall have the right to participate as an investor in any such registered public offering of shares of BFRI (including any associated warrants or other securities convertible into BFRI shares issued in such offering) by purchasing up to such number of shares (or other securities) necessary to maintain Biofrontera AG's ownership percentage of the outstanding shares of BFRI as of the Effective Date, at such price and other terms offered to such other unaffiliated investors, provided however, that if Biofrontera AG is unable or unwilling to fund the purchase of any or all such shares or other securities allocated to it pursuant to this provision, BFRI may offer those shares to other investors.

1. For the avoidance of doubt, nothing herein shall be interpreted as any commitment by BFRI to extend any participation right to Biofrontera AG beyond the terms identified in Section III.G above, including but not limited to BFRI's commitment to extend the right to Biofrontera AG to participate in any future financing transaction. Any future financing transaction shall be considered and approved by the Board and any participation right offered to Biofrontera AG shall be required to be approved by the Related Party Transactions Committee.

G. Releases:

1. **Biofrontera AG's Released Claims**: For and in consideration of the terms and provisions of this Agreement, Biofrontera AG, and all of Biofrontera AG's predecessors, successors, executors, representatives, trustees, beneficiaries, officers, directors, members, partners, general partners, limited partners, parents, subsidiaries, and assigns (all the foregoing being, collectively, the "Biofrontera AG Releasers"), in their capacities as such, shall and hereby do release and forever discharge the BFRI Parties and each of their present or former parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, successors and assigns (collectively, the "BFRI Released Parties"), from any and all claims, causes of action, proceedings, obligations, suits, debts, damages, expenses, costs, demands, agreements, promises, controversies or liabilities whatsoever, arising out of, or related to: (i) any of the facts and circumstances asserted in the Action, or any claims asserted or that could have been asserted by Biofrontera AG in the Action, (ii) any claims asserted or that could have been asserted by Biofrontera AG relating to the January 9, 2023 Biofrontera AG stockholder meeting, or (iii) any claims asserted or that could have been asserted relating to the December 12, 2022 BFRI stockholder meeting, whether based on federal, state, local, statutory or common law, of the United States, Germany, or any other country, state, county, city, municipality or jurisdiction, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, and whether personal, direct or derivative in nature (including any claim for breach of any fiduciary duty), which the Biofrontera AG Releasers ever had, now have, claim to have, or may in the future claim to have, including both known and Unknown Claims (defined below) (collectively, the "Biofrontera AG Released Claims"); provided, however, that the Biofrontera AG Releasers shall not be construed to release any of the Parties from any obligation under this Agreement.

2. **BFRI Parties' Released Claims:** For and in consideration of the terms and provisions of this Agreement, the BFRI Parties, and all of the BFRI Parties' predecessors, successors, executors, representatives, trustees, beneficiaries, officers, directors, members, partners, general partners, limited partners, parents, subsidiaries, and assigns (all the foregoing being, collectively, the "BFRI Parties Releasers"), in their capacities as such, shall and hereby do release and forever discharge Biofrontera AG and each of its present or former parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, successors and assigns (collectively, the "Biofrontera AG Released Parties"), from any and all claims, causes of action, proceedings, obligations, suits, debts, damages, expenses, costs, demands, agreements, promises, controversies or liabilities whatsoever, arising out of, or related to (i) any of the facts and circumstances asserted in the Action, or any claims (including any counter-claims) that could have been asserted by the BFRI Parties in the Action, (ii) any claims asserted or that could have been asserted relating to the January 9, 2023 Biofrontera AG stockholder meeting, or (iii) any claims asserted or that could have been asserted relating to the December 12, 2022 BFRI stockholder meeting, whether based on federal, state, local, statutory or common law, of the United States, Germany, or any other country, state, county, city, municipality or jurisdiction, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, and whether personal, direct or derivative in nature, which the BFRI Parties Releasers ever had, now have, claim to have, or may in the future claim to have, including both known and Unknown Claims (defined below) (collectively, the "BFRI Parties Released Claims" and, together with the Biofrontera AG Released Claims, the "Released Claims"); provided, however, that the BFRI Parties Releasers shall not be construed to release any of the Parties from any obligation under this Agreement.

H. Release of Unknown Claims: "Unknown Claims" means (i) any Biofrontera AG Released Claims that have accrued at the time of the signing of this Agreement and that any Biofrontera AG Releaser does not know or suspect to exist in its favor at the time of the release of such claims; and (ii) any BFRI Parties Released Claims that have accrued at the time of the signing of this Agreement and that any BFRI Parties Releaser does not know or suspect to exist in its favor at the time of the release of such claims, which if known by the releasing party, might have affected its decision(s) with respect to the releases given herein. With respect to any and all Released Claims, each of the Parties acknowledges and agrees that it waives, relinquishes, surrenders, releases, and otherwise gives up any rights conferred by Section 1542 of the California Civil Code and any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each of the Parties acknowledges that it may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of each Party to completely, fully, finally, and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Each Party acknowledges that the release of Unknown Claims was separately bargained for and was a material element of this Agreement and was relied on by the Parties in entering into this Agreement.

I. Each of the Parties hereby represents and warrants that it has entered into this Agreement voluntarily and of its own volition. Each Party acknowledges that no other Party, nor any agent or attorney of any other Party, has made any promise, representation, or warranty whatsoever, express or implied, not expressly contained in this Agreement concerning the subject matter hereof, or any other matter whatsoever, to induce said Party to execute or authorize the execution of this Agreement. Each Party acknowledges that it has not executed or authorized the execution of this Agreement in reliance upon any promise, representation, or warranty not expressly contained herein.

J. The Parties are entering into this Agreement to avoid, or minimize the scope of, the continued risks and costs associated with complex litigation. The Parties acknowledge that the settlement contemplated herein is a compromise of disputed claims and that nothing herein shall be construed as an admission of any liability, wrongdoing, error, or omission on the part of any of the Parties. By entering into this Agreement, none of the Parties makes any admission that it has engaged, or is now engaging, in any improper, unlawful, or inequitable conduct. The fact of the settlement contemplated hereunder, and/or the existence of this Agreement, shall not be used in any judicial, administrative, or other proceeding for any purpose, except as may be necessary for enforcement of the terms of this Agreement.

K. Each individual executing this Agreement directly and expressly represents and warrants that he or she has been given, and has received and accepted, authority to execute this Agreement on behalf of the Party for whom it is indicated that he or she has signed, and further has been expressly given and received and accepted authority to enter into a binding agreement on behalf of such Party with respect to the matters contained herein and as stated herein, and that the consent of no other party is required to bind such Party.

L. Each Party hereby covenants not to bring any action or other proceeding, and represents and warrants that neither such Party nor any of its representatives or agents has commenced any action or other proceeding (other than the Action), with respect to any of the Released Claims.

M. Except as otherwise provided in this Agreement, each Party separately agrees to keep the terms and conditions of this Agreement confidential and agrees not to disclose (except as required by applicable law, regulation, or legal process) the terms of this Agreement to third parties, unless such Party (i) reasonably believes that such disclosure is required by applicable law; (ii) is compelled to disclose by judicial or administrative process; or (iii) makes such disclosure in any action or proceeding brought by a Party in pursuit of its rights or in the exercise of its remedies under this Agreement; provided, however, in the case of disclosure pursuant to (i) or (ii) above, the disclosing Party shall only disclose such information that it believes it is required to disclose and shall use reasonable efforts to give every other Party advance written notice of such intended disclosure so that such other Party may seek a protective order; provided that the Parties agree that their and their affiliates' directors, officers, partners, members, managers, employees, affiliates, parents, subsidiaries, investors or other representatives (including financial advisors, attorneys, accountants and actuaries) may be permitted to know the existence and the terms and conditions of this Agreement on a confidential, need-to-know basis in the course of normal business. Notwithstanding the foregoing, a Party may make required reports regarding the financial effect of such settlement so long as it does not disclose the terms of this Agreement.

N. Each Party covenants and agrees not to engage, directly or indirectly, in any form of media or otherwise, whether in such Party's own name or in any alias or pseudonym, in any act or, directly or indirectly, make any statement that is intended, or may reasonably be expected, to harm the reputation, goodwill, business, business relationships, prospects or operations of any other Party or its affiliates, subsidiaries, officers, directors, stockholders or employees.

O. This Agreement has been in all respects voluntarily and knowingly executed by the Parties, with each of them having had the opportunity to obtain advice from legal counsel. Each of the Parties agrees that the rule of construction providing that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement and that each of the Parties is deemed to have participated in the drafting of this Agreement.

P. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, inducements, or conditions, oral or written, express or implied.

Q. This Agreement may not be amended nor any of its provisions waived except by a writing signed by all of the Parties.

R. This Agreement shall be binding upon and shall inure to the benefit of each of the Biofrontera AG Releasors, Biofrontera AG Released Parties, BFRI Parties Releasors, and BFRI Released Parties. Any person or entity released hereunder may assert such release as a defense. The Biofrontera AG Released Parties and BFRI Released Parties who are not signatories hereto shall be third-party beneficiaries of this Agreement and entitled to enforce this Agreement in accordance with its terms.

S. The failure of any Party at any time to require performance of any provision of this Agreement shall not affect, diminish, obviate, or void in any way such Party's full right or ability to require performance of the same at any time thereafter.

T. This Agreement, and any dispute arising out of or relating in any way to this Agreement, shall be governed by the laws of the State of Delaware, without regard to conflicts of law principles. Any action relating to this Agreement shall be brought, heard, and determined exclusively in the Court of Chancery of the State of Delaware (the "Court") (provided that, in the event that subject matter jurisdiction is unavailable in the Court, then all such claims shall be brought, heard and determined exclusively in any other state or federal court sitting in Delaware). Subject to the preceding sentence, each Party (i) irrevocably submits to the sole and exclusive personal jurisdiction of any state or federal court sitting in Delaware, as well as to the sole and exclusive jurisdiction of all courts to which an appeal may be taken from such courts, in any such action arising out of or relating to this Agreement (but no other action); (ii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from such court; (iii) consents to service of process by registered mail on such Party and/or such Party's attorney in the Action; (iv) waives any objection to venue in such court and any claim that the Court (or, in the event that subject matter jurisdiction is unavailable in the Court, any other state or federal court sitting in Delaware) is an inconvenient forum; and (v) expressly waives, and agrees not to plead or to make any claim that any such action is subject (in whole or in part) to a jury trial.

U. This Agreement may be executed in one or more original, facsimile, or PDF counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

V. All representations, warranties, covenants and agreements set forth in this Agreement shall be deemed continuing and shall survive the date as of which this Agreement has been executed.

W. The Parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement.

X. Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction, the invalidation of any part or portion of this Agreement shall not invalidate the remaining portions hereof, and those portions shall remain in full force and effect so long as that invalidation does not deprive a Party of a material component of its bargained-for consideration.

/s/ Pilar de la Huerta Martinez

Biofrontera AG

Title: CFO

Name:Pilar de la Huerta Martinez

/s/ John J. Borer

John J. Borer

/s/ Daniel Hakansson

Biofrontera Inc.

Title: Daniel Hakansson

Name:Corporate Counsel

/s/ Loretta M. Wedge

Loretta M. Wedge

/s/ Beth J. Hoffman

Beth J. Hoffman

/s/ Hermann Lübbert

Hermann Lübbert

/s/ Kevin D. Weber

Kevin D. Weber



MIDCAP BUSINESS CREDIT LLC

433 South Main Street, West Hartford, CT 06110
Tel: 800-970-9997 • Fax: 800-217-0500

March 8, 2023

Mr. Fred Leffler
Chief Financial Officer
Biofrontera, Inc.
120 Presidential Way, Suite 330
Woburn, MA 01801

RE: Application for secured commercial financing Biofrontera, Inc.

Dear Fred,

MidCap Business Credit LLC or its affiliates (“MidCap” or “Lender”) is pleased to commit up to \$6,500,000 in commercial financing to provide for ongoing working capital, subject to the terms and conditions described herein and subject to satisfactory legal review and documentation.

Borrower:	Biofrontera, Inc.
Loan:	\$6,500,000 Senior Secured Asset Based Revolving Line of Credit (“Revolver”)
Availability:	Revolving advances, not to exceed \$6,500,000, may be made up to the sum of (i) 85% of eligible accounts receivable less than 91 days from invoice date, plus (ii) the least of (a) \$3,250,000, (b) 50% of eligible Ameluz inventory, and (c) the Inventory advance sublimit will be subject to a cap of 100% of the Accounts Receivable availability, less reserves as reasonably determined by Lender. Lender shall give Borrower notice advance notice of the imposition of such reserve.
Use of Proceeds:	The Loan will be utilized to provide for working capital needs of the Borrower.
Security:	The Loan will be secured by the following a first lien on substantially all of the assets of the Borrower, both tangible and intangible, including without limitation all accounts, chattel paper, documents, general intangibles, instruments, deposit accounts, letter of credit rights, supporting obligations, commercial torts, inventory, equipment and other goods (as those terms are defined in the Uniform Commercial Code), subject to customary excluded collateral exceptions to exclude the following assets of the Borrower from such lien, among others: (i) motor vehicles, (ii) real property (owned or leased, (iii) payroll accounts (iv) any other asset for which the time and expense required to create and perfect a lien there in would be excessive relative to the value afforded by such lien. No liens, other than liens solely on specific assets and other liens subject to an intercreditor or subordination agreement, are permitted on the Collateral.
Interest Rate:	The interest rate charged on the Revolver will be the 30-Day Adj. Term SOFR (30-Day Term SOFR (currently 4.56391%) plus 0.15%), set monthly on the first day of the month and subject to a floor of 2.25%, plus 4.00% (“Rate Spread”), calculated and charged monthly in arrears on the basis of a 360-day year and actual days elapsed. In the event of a called event of default, if so specific in any such default notice, a default interest rate of 3.00% will be added to the aforementioned rate.
Unused Line Fee:	An unused line fee equal to 0.375% per annum times the average undrawn portion on the Revolver will accrue from closing date and will be paid monthly in arrears.
Collateral Monitoring Fee:	A monthly collateral monitoring fee equal to \$2,000 will accrue from the closing date and shall be payable monthly in arrears.

Facility Fee: A facility fee equal to 2.00% of the Revolver commitments will be required at closing. On each subsequent anniversary date, a facility fee of 1.00% of the then Revolver commitments. Such fees will be fully earned and payable at closing and on each anniversary date thereof.

Termination and Prepayment: The loan agreement may be terminated by Borrower at any time upon thirty (30) days written notice to Lender and the payment of (a) the outstanding principal balance of the Loan (b) accrued interest and fees through the termination date. A prepayment fee according to the schedule below will apply to any such total commitment termination (with a pro rata portion of such fee applicable to any partial termination of the commitments:

Months	Prepayment Amount
1-12	\$ 150,000
13-24	\$ 100,000
25-36	\$ 50,000

Cash Management: Lender shall have viewing rights to all bank accounts maintained by Borrower. All proceeds of the Collateral shall be directly remitted to a collection account maintained in Lender’s name for the benefit of the Borrowers. The Borrowers may maintain its operating account at a bank of its choosing.

Collection Days: Lender will immediately apply collections received from proceeds of the Collateral to the Loan, however, for interest calculation, such collections will be delayed for three (3) business days.

Audit Fee: We reserve the right to examine Borrower’s books and records up to four times per year or more frequently if a default is called. The cost of the examination is based on a standard daily rate which, as of the date of this letter, is equal to \$1,000 per 7 ½ hour man day, plus out-of-pocket expenses.

Provided no event of default exists and excluding the initial due diligence, Lender agrees to limit examination fees at \$10,000 per year plus out-of-pocket expenses.

Conditions Precedent: Each of the following conditions must be satisfied (to Lender’s satisfaction) prior to closing:

- (i) Minimum excess availability at closing of \$1,000,000 with accounts payable paid to within terms acceptable to Lender;
- (ii) Customary legal documentation of the Loan;
- (iii) Subordination of all shareholder debt, officer loans, and seller notes whether now existing or arising in the future.
- (iv) “Downstream” expense payments to the wholly owned subsidiary, Bio-FRI GmbH, capped at \$250M annually.
- (v) MidCap receipt and satisfactory review of Property Insurance and Product Liability/Recall Insurance policies.
- (vi) Satisfactory tri-party agreements (access waivers) with Cardinal Health for the 3PL/inventory locations.

Insurance: Property and casualty insurance will be required in an amount sufficient to protect the Collateral. Lender must be maintained as Lender Loss Payee on the aforementioned policies.

Financial Reporting: Borrower will be required to furnish us within one hundred and twenty (120) days from its fiscal year end, an annual audited level statement by an independent certified public accountant selected by Borrower and acceptable to Lender. Monthly internally prepared financial statements will be due within thirty (30) days of each month end. Annual budget will be due 30 days prior to the commencement of each fiscal year.

Minimum Quarterly Ameluz Revenue for each quarter ended as follows:

Financial Covenants:	●	6/30/23	\$4,500,000	
	●	9/30/23	\$6,650,000	
	●	12/31/23	\$11,750,000	
	●	3/31/24	\$8,800,000	
	●	6/30/24	\$6,375,000	
	●	9/30/24	\$10,800,000	
	●	12/31/24	\$12,500,000	
	●	3/31/25	\$12,500,000	
	●	6/30/25	\$8,400,000	
	●	9/30/25 and quarterly thereafter	\$12,500,000	

A \$650,000 availability block will remain in place until such time the Borrower chooses to be subject to the following quarterly Minimum EBITDA test:

- T3M: \$250,000
- T6M: \$500,000
- T9M: \$750,000
- TTM and quarterly TTM thereafter: \$1,000,000

Compliance Certificate required quarterly.

Collateral Reporting:

Accounts Receivable: Daily, Borrower will be required to provide sales, cash receipts, and adjustment journals. At initialization and monthly thereafter, Borrower will be required to provide an open accounts receivable aging. Accounts receivable agings must have unique customer account numbers. At initialization and upon request thereafter, Borrower will be required to provide a detailed master customer list. Within ten (10) days of each month end, Borrower shall provide a reconciliation of accounts receivable aging to its general ledger and our collateral statement of account.

Inventory: At initialization and minimum of monthly thereafter, Borrower will be required to provide a detailed stock status report. Within ten (10) days of each month end, Borrower shall provide a reconciliation of the stock status report to its general ledger account.

Accounts Payable: At initialization and monthly thereafter within (10) days of each month end, a summary accounts payable aging.

Electronic Reporting: Pricing confirmed herein implies the Borrower will transmit electronically readable files (files with extensions *.prn *.pdf *.txt *.xls and other electronically readable formats acceptable to us; never a scanned document). Electronic editions of your sales and cash receipts journals and monthly accounts receivable and payable agings and other reporting are sent to us through an online portal. If Borrower chooses not to transmit the aforementioned information in electronic format, additional charges will apply for our manual input.

Legal Fees, Closing and Other Costs and Expenses – These costs are the Borrower’s responsibility, whether or not the proposed Loan closes. A legal fee deposit of \$50,000 is required when you accept this letter. It will be applied to the actual legal and closing costs when they are known, usually at the time of closing. If you or your counsel requires customization of any of our form documents, then be advised that your legal and closing costs will be greater than they otherwise might be.

Either of us may terminate these discussions at any time and for any reason without liability of any kind to the other party other than described in the preceding paragraph.

Assignment – This letter is not assignable by operation of law or otherwise without our prior written consent.

Material Adverse Change – Any material adverse change in the financial position or otherwise of any parties to this transaction, may alter or terminate this commitment.

Additional Information – One week prior to closing, we will need to be brought current with the following: a.) latest available financial statements; b.) accounts payable for the most recent month-end; c.) payment proof indicating that all payroll taxes are current and in accordance with taxing authority’s requirements; d.) a roll forward of your accounts receivable along with appropriate source journals; and e.) a stock status report of your inventory.

Closing – Your loan must close within (30) days of the date of your acceptance of this commitment. By the execution of this commitment letter, you hereby authorize us, at our option, to pre-file (prior to loan closing) a Uniform Commercial Code Financing Statement (s) evidencing the security interest to be granted to us in connection with the establishment of the commercial financing package described herein. Such Financing Statement (s) will be filed with the appropriate venues so as to perfect a security interest in Borrower’s assets which will be collateral for the loan made by us to Borrower. In the event the loan does not close, we will promptly terminate any Financing Statement of record filed by us.

By signing below and returning one copy, you acknowledge that you have accepted this commitment and furthermore you are directing us to engage counsel for its documentation. Please be sure to wire your \$50,000 legal fee deposit fee according to the following instructions. Failure to do so will delay your closing.

BANK NAME: [***]

ACCOUNT NAME: [***]

ACCOUNT NUMBER: [***]

ROUTING NUMBER: [***]

Please reference Biofrontera Inc. and MidCap Business Credit in the detail of the wire transfer. This will ensure timely notification to us by [***] that the wire has been received.

This commitment will terminate if not accepted on or before March 15, 2023.

Very truly yours,

MIDCAP BUSINESS CREDIT LLC

/s/ Peter F. Rutigliano

Peter F. Rutigliano
EVP, CRO

Accepted on this 8th day of March 2023

BORROWER:

BIOFRONTERA INC.

By /s/ E. Fred Leffer III

Title Chief Financial Officer

LOAN AND SECURITY AGREEMENT

between

MIDCAP BUSINESS CREDIT LLC, as Lender,

and

BIOFRONTERA INC., as Borrower

May 8, 2023

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LOAN AND SECURITY AGREEMENT

May 8, 2023

THIS LOAN AND SECURITY AGREEMENT (as amended or modified from time to time, this “**Agreement**”), is entered into as of the date set forth above by and between **MIDCAP BUSINESS CREDIT LLC**, a Texas limited liability company, the secured party hereunder (together with its successors and assigns, hereinafter called the “**Lender**”), **BIOFRONTERA INC.**, a Delaware corporation (“**Borrower**”).

The parties agree as follows:

1. LOANS AND OTHER FINANCIAL ACCOMMODATIONS.

(a) Revolving Line of Credit.

(i) **Revolving Loans.** Subject to the terms and provisions of this Agreement, Lender hereby establishes a revolving line of credit in Borrower’s favor in the amount of the Credit Limit (as defined below). Subject to the terms and provisions of this Agreement, Lender shall make such requested loan, provided that there has not occurred and been continuing an Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default. Borrower agrees that the aggregate unpaid principal of all Revolving Loans outstanding at any one time, plus the sum of the aggregate amount undrawn on all Letters of Credit and acceptances and any reimbursement obligations outstanding under any Letters of Credit (the “**L/C Amount**”), shall not exceed the lesser of (I) the Credit Limit, and (II) the Borrowing Base less, until such time following the first month when the Borrower elects in accordance with **Section 9(m)(i)** to permanently be subject to the minimum EBITDA covenant, an availability block equal to \$650,000 (the “**Availability Block**”). In the event that the unpaid Revolving Loans plus the L/C Amount does exceed such limit, Borrower will immediately (and in any case, not later than two (2) Business Days after the Lender delivers notice thereof to Borrower) make the necessary reduction in the unpaid principal amount of said Revolving Loans, and/or if permitted by the Lender in its sole discretion cash collateralize the Letters of Credit, to eliminate such excess.

(ii) **Revolving Note.** All revolving loans made by Lender pursuant to this **Section 1** (each a “**Revolving Loan**” and collectively, the “**Revolving Loans**”) shall bear interest pursuant to **Section 3(a)(i)** and, at the option of Lender, shall be evidenced by and repayable in accordance with a revolving note drawn to the order of Lender substantially in the form of **Exhibit 2** hereto (as amended, modified, replaced, substituted, superseded or restated from time to time, the “**Revolving Note**”), as the same may hereafter be amended, supplemented or restated from time to time and any note or notes issued in substitution therefor, but in all events shall be conclusively evidenced by Lender’s records of loans and repayments (absent manifest error) and shall be payable as described herein.

(iii) Borrowing Base. The Borrowing Base is intended solely for monitoring purposes. The making of revolving loans, advances, and credits by Lender to Borrower in excess of the above described Borrowing Base formula is for the benefit of Borrower and does not affect the obligations of Borrower hereunder; all such loans constitute Obligations and must be repaid by Borrower in accordance with the terms of this Agreement.

(iv) Protective Advances. Notwithstanding anything to the contrary contained herein, at its option, and without limiting any other rights or remedies, Lender may at any time make a Revolving Loan or other advances hereunder to pay or discharge any taxes, liens, rent, security interests or other encumbrances at any time levied against, impacting in any manner or placed on any of the Collateral, and may procure and make a Revolving Loan or other advance hereunder to pay any premiums on any insurance required to be carried by Borrower, and provide for the maintenance and preservation of any of the Collateral, and otherwise take any action reasonably deemed necessary by Lender to protect its security, and all amounts expended by Lender in connection with any of the foregoing matters, including reasonable attorneys' fees, shall be considered Obligations of Borrower and outstanding Revolving Loans (and shall be added to Borrower's balance of Revolving Loans pursuant to this Agreement), and shall be secured by the Collateral. Lender shall use commercially reasonable efforts to give Borrower notice of any such protective advance and application thereof promptly following the same.

(v) Advance Procedures. Unless otherwise approved by the Lender in its sole discretion, all requests for Revolving Loans shall be submitted through the Lender's electronic client portal, and subject to the terms and conditions hereof, will be processed in accordance with the guidelines set forth in such electronic client portal. The Lender may rely, in determining which Accounts are Qualified Accounts, which Inventory is Eligible Inventory and which Equipment is Eligible Equipment, on all statements, certifications and representations made by the Loan Parties with respect to Accounts, Inventory and Equipment, including without limitation as to any submissions through the Lender's electronic client portal.

(vi) Payment Direction. Borrower hereby authorizes and directs Lender, in Lender's sole discretion (provided, however, Lender shall have no obligation to do so): (A) to make, or treat as being made, a Revolving Loan to Borrowers, and add the same to Borrower's balance of Revolving Loans pursuant to this Agreement, in order to pay accrued interest, fees, charges and expenses and other Obligations, as the same become due and payable pursuant to this Agreement, or any note or other agreement between Borrower and Lender; (B) to charge any of Borrower's accounts under the control of Lender for the payment of any such Obligations; and/or (C) apply the proceeds of Collateral and any other funds of Borrower or other Loan Parties received by the Lender, including, without limitation, payments on accounts and other payments from sales or lease of inventory to the payment of any such Obligations. Lender shall use commercially reasonable efforts to give Borrower notice of any such payments or charges under clause (A) and (B) respectively promptly following the same.

(b) Letters of Credit. At the request of the Borrower and upon the execution of letter of credit documentation satisfactory to Lender, within the limits set forth in **Section 1(a)** as then computed, the Lender shall cause the issuing bank to issue letters of credit from time to time for the account of Borrower (each a “**Letter of Credit**”, and collectively, “**Letters of Credit**”), provided that the L/C Amount shall not exceed the L/C Sublimit at any time. The Letters of Credit shall be on terms mutually and reasonably acceptable to Lender and Borrower, and no Letter of Credit shall have an expiration date later than the sooner to occur of (i) twelve (12) months from the date of issuance of the subject Letter of Credit, or (ii) the Maturity Date. In connection with the issuance of any Letter of Credit, Borrower shall pay to Lender a percentage of the face amount of such Letter of Credit pursuant to **Section 3(c)(vii)** plus all normal and customary handling and issuance fees according to the fee schedule then in effect at Lender (or Lender’s issuing bank). Borrower hereby authorizes and directs Lender, in Lender’s sole discretion (provided, however, Lender shall have no obligation to do so) to pay all such fees and costs as the same become due and payable and to treat the same as a Revolving Loan to Borrower, which shall be added to Borrower’s loan balance pursuant to this Agreement. For purposes of computing compliance with the limitations in **Section 1(a)**, all Letters of Credit and acceptances shall be deemed to be Revolving Loans.

2. CONDITIONS OF LENDING.

(a) Initial Loans and Letters of Credit. The willingness of Lender to consider making the initial loan and if applicable, issuance of a Letter of Credit at such time, hereunder shall be subject to the condition precedent that Lender shall have received all of the following, each in form and substance satisfactory to Lender, except as otherwise required to be provided on a post-closing basis in accordance with a post-closing agreement executed by the Borrower in connection herewith:

(i) This Agreement and each applicable Loan Document, properly executed on behalf of the Loan Parties or other applicable party.

(ii) The Revolving Note drawn to the order of Lender.

(iii) Reserved.

(iv) Warehouse letters in form and substance acceptable to Lender from each warehouse holding Inventory with a value in excess of \$250,000, including La Vergne, Tennessee.

(v) Current searches of appropriate filing offices showing that (A) no state or federal tax liens have been filed and remain in effect against any Loan Party, (B) no financing statements have been filed and remain in effect against any Loan Party, except the financing statements relating to the Obligations, and (C) Lender has duly filed all financing statements necessary to perfect the security interests granted hereunder, to the extent the security interests are capable of being perfected by filing.

(vi) A certificate of the Clerk, Secretary or an Assistant Secretary, or other manager or officer approved by the Lender, of each Loan Party certifying as to (A) the resolutions of the directors/managers and, if required, the shareholders/members of such Loan Party, authorizing the execution, delivery and performance of this Agreement and related Loan Documents, as applicable, (B) the certified Articles/Certificate of Incorporation/Organization/Formation and Bylaws/Operating Agreement (or other similar constituting documents) of such Loan Party, and (C) the signatures of the officers or agents of such Loan Party authorized to execute and deliver this Agreement and other instruments, agreements and certificates, including loan requests, on behalf of such Loan Party.

(vii) A current certificate issued by the Secretary of State of the state of such Loan Party's formation, certifying that such Loan Party is legally existing and in good standing under the laws of such jurisdiction to the extent such jurisdiction issues such or similar certifications.

(viii) Evidence that each Loan Party is duly licensed or qualified to transact business in all jurisdictions where the character of the property owned or leased or the nature of the business transacted by it makes such licensing or qualification necessary.

(ix) Certificates of the insurance required hereunder, and related assignments as applicable, with all hazard insurance containing a lender's loss payable endorsement in favor of Lender and naming the Lender as an additional insured (including as to foreign credit insurance).

(x) Payment of the fees due through the date of the initial loan and expenses incurred by Lender through such date required to be paid by Borrower pursuant to this Agreement.

(xi) A Borrowing Base Certificate which indicates that Borrower has adequate loan availability.

(xii) Evidence that after making the initial loans hereunder, satisfying past due obligations of the Borrower (including book overdrafts and delinquent payroll taxes), and having accounts payable paid to within terms acceptable to Lender, the amount, by which (a) the lesser of (1) the Credit Limit or (2) the Borrowing Base, exceeds (b) the principal balance of the Revolving Note, shall not be less than \$1,000,000.

(xiii) Deposit Account Control Agreements properly executed by Bank of America as well as the Borrower, in form and substance satisfactory to Lender.

(xiv) Establishment of the Collection Account.

(xv) A Customer Identification Information form and such other forms and verification as the Lender may need to comply with the Patriot Act.

(xvi) An opinion of counsel to the Borrower, addressed to Lender.

(xvii) A Pledge and Security Agreement as to the Borrower's equity interests in Bio-FRI GmbH, a German entity ("German Subsidiary"), executed by the Borrower in favor of the Lender.

(xviii) Such other documents, instruments and agreements as Lender in its discretion may reasonably require.

(b) **All Loans and Letters of Credit.** Lender shall have no obligation to make any loan or issue or cause to be issued any Letter of Credit unless on the date thereof and any request therefor:

(i) the representations and warranties contained in **Section 6** hereof are correct in all material respects (except to the extent such representations and warranties are qualified by materiality, in which case they shall be correct in all respects) on and as of the date of such loan or issuance of any Letter of Credit, as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date in which case they shall be true and correct in all material respects as of such earlier date; and

(ii) no event has occurred and is continuing, or would result from such loan or issuance of any Letter of Credit which constitutes an Event of Default or which, with notice or the passage of time or both, would constitute an Event of Default.

(c) **Effect of Requests.** Each request by Borrower for the making of any loan or issuance of any Letter of Credit shall be deemed to constitute a representation and warranty by Borrower that the conditions precedent set forth in clauses (b)(i) and (b)(ii) above of this **Section 2** will be satisfied at the time of the making of such loan or issuance of any Letter of Credit.

3. INTEREST; FEES; EXPENSES; INDEMNIFICATION; TAXES.

(a) **Interest Rates.**

(i) **Revolving Loans; Other Obligations.** Interest on the amounts outstanding hereunder, including, without limitation, under the Revolving Note, will be charged to Borrower at a fluctuating rate which is the daily equivalent to a rate equal to the aggregate of: (x) Adjusted Term SOFR, or in the event that such rate is no longer available or determinable etc. as provided in **Section 3(a)(vi)** below, the Alternative Rate, plus (y) a per annum rate equal to the Applicable Margin – Revolving Loans.

(ii) **Reserved.**

(iii) Adjustment. The rate of interest payable by Borrower shall be adjusted as of the first day of each Interest Period using the rates set in accordance herewith and the applicable definitions of Term SOFR (or Alternative Rate if applicable) computed for the applicable Interest Period as provided herein. Interest shall be computed on the basis of the actual number of days elapsed over a year of three hundred sixty (360) days. Lender's determination of such interest rate shall be binding and conclusive absent manifest error. The interest rate need not and may not necessarily be the lowest or most favorable rate offered by Lender.

(iv) Maximum Rate. It is the intention of the parties hereto to comply strictly with applicable usury laws, if any; accordingly, notwithstanding any provisions to the contrary in this Agreement or any other documents or instruments executed in connection herewith, in no event shall this Agreement or such documents or instruments require or permit the payment, taking, reserving, receiving, collecting or charging of any sums constituting interest under applicable laws which exceed the maximum amount permitted by such laws. If any such excess interest is called for, contracted for, charged, paid, taken, reserved, collected or received in connection with the Obligations or in any communication by Lender or any other Person to Borrower or any other Person, or in the event all or part of the principal of the Obligations or interest thereon shall be prepaid or accelerated, so that under any of such circumstances or under any other circumstance whatsoever the amount of interest contracted for, charged, taken, collected, reserved, or received on the amount of principal actually outstanding from time to time under this Agreement shall exceed the maximum amount of interest permitted by applicable usury laws, if any, then in any such event it is agreed as follows: (i) the provisions of this paragraph shall govern and control, (ii) neither Borrower nor any other Person now or hereafter liable for the payment of the Obligations shall be obligated to pay the amount of such interest to the extent such interest is in excess of the maximum amount of interest permitted by applicable usury laws, if any, (iii) any such excess which is or has been received notwithstanding this paragraph shall be credited against the then unpaid principal balance hereof or, if the Obligations have been or would be paid in full by such credit, refunded to Borrower, and (iv) the provisions of this Agreement and the other documents or instruments executed in connection herewith, and any communication to Borrower, shall immediately be deemed reformed and such excess interest reduced, without the necessity of executing any other document, to the maximum lawful rate allowed under applicable laws as now or hereafter construed by courts having jurisdiction hereof or thereof. Without limiting the foregoing, all calculations of the rate of interest contracted for, charged, taken, collected, reserved, or received in connection herewith which are made for the purpose of determining whether such rate exceeds the maximum lawful rate shall be made to the extent permitted by applicable laws by amortizing, prorating, allocating and spreading during the period of the full term of the Obligations, including all prior and subsequent renewals and extensions, all interest at any time contracted for, charged, taken, collected, reserved or received. The terms of this paragraph shall be deemed to be incorporated in every Loan Document and communication relating to the Obligations.

(v) Conforming Changes. In connection with the use or administration of Term SOFR or any Alternative Rate (if applicable as provided herein), the Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Lender will promptly notify Borrower of the Conforming Changes implemented and the effectiveness thereof in connection with the use or administration of Term SOFR or any Alternative Rate (if applicable as provided herein).

(vi) Additional Interest Rate Provisions.

(A) Term SOFR, and the Alternative Rate (if applicable), may be adjusted by Lender on a prospective basis to take into account any additional or increased costs to Lender, in each case, due to changes in applicable law occurring subsequent to the commencement of the then applicable interest period, or pursuant to any Change in Law or change in the reserve requirements imposed by the Board of Governors, which additional or increased costs would increase the cost of funding or maintaining Loans bearing interest by reference to Term SOFR or the Alternative Rate (if applicable).

(B) In the event that any change in market conditions or any Change in Law shall at any time after the date hereof, in the reasonable opinion of Lender, make it unlawful or impractical for Lender to fund or maintain SOFR Loans, or to continue such funding or maintaining, or to determine or charge interest rates by reference to Term SOFR, Lender shall give notice of such changed circumstances to Borrower, and in the case of any SOFR Loans that are outstanding, such SOFR Loans will be deemed to have been converted to Alternative Rate Loans on the last day of the Interest Period of such SOFR Loans, if Lender may lawfully continue to maintain such SOFR Loans, or immediately, if Lender may not lawfully continue to maintain such SOFR Loans, and thereafter interest upon the SOFR Loans thereafter shall accrue interest at the rate then applicable to Alternative Rate Loans, until Lender determines that it would no longer be unlawful or impractical to do so.

(C) No Requirement of Matched Funding. Anything to the contrary contained herein notwithstanding, Lender is not required to actually match fund any Obligation as to which interest accrues at Term SOFR or the Term SOFR Reference Rate.

(vii) Default Rate. Upon the occurrence of, and during the continuance of, an Event of Default, Borrower, as additional compensation to Lender for its increased credit risk, promises to pay interest on all Obligations (including, without limitation, principal, whether or not past due, past due interest, any reimbursement obligations outstanding under any Letters of Credit and any other amounts past due under this Agreement) at a per annum rate equal to the sum of the rate of interest then specified in this **Section 3(a)** plus the Default Rate Margin (the **“Default Rate”**).

(b) Interest Payments. Interest shall be payable in lawful money of the United States of America to Lender, or as Lender shall direct, without set-off, deduction or counterclaim monthly, in arrears, on the first Business Day of each month, commencing on the first Business Day of the month next succeeding the date hereof.

(c) Fees and Charges.

(i) Facility Fee. Borrower shall pay to the Lender a non-refundable closing facility fee in an amount equal to the Closing Facility Fee Rate times the Credit Limit. Such closing facility fee shall be due and payable upon the execution of this Agreement. Borrower shall pay to the Lender a non-refundable annual facility fee in an amount equal to the Annual Facility Fee Rate times the Credit Limit. Such annual facility fee shall be due and payable upon each anniversary of the date of this Agreement.

(ii) Field Examination Fees. Borrower hereby agrees to pay the Lender, on demand, reasonable audit fees in connection with any audits or inspections conducted by the Lender or its agents of any Collateral or Borrower's operations or business at the rates established from time to time by the Lender as its audit fees (which fees are currently \$1,000 per person, per 7½ hour day), together with all reasonable actual out-of-pocket costs and expenses incurred in conducting any such audit or inspection; provided, however, that absent an Event of Default, the Borrower will not have to reimburse the Lender for (i) such fees, costs and expenses more than four (4) times in any twelve (12) month period, and (ii) excluding fees, costs and expenses pertaining to the initial due diligence in connection with the execution of this Agreement, such fees, costs and expenses in excess of \$10,000 plus any out-of-pocket costs and expenses in any calendar year.

(iii) Collateral Monitoring Charge. Borrower hereby agrees to pay the Lender the Collateral Monitoring Charge on a monthly basis for services rendered by the Lender in connection with the maintenance of the Obligations under this Agreement. Such Collateral Monitoring Charge shall accrue from the date hereof and shall be payable in arrears on the first Business Day of each month and on the termination of this Agreement.

(iv) Unused Fee. A fee, as calculated on a monthly basis by Lender, equal to the Unused Line Fee Rate times the daily average of the Credit Limit reduced by outstanding advances and the L/C Amount (the "**Unused Line Fee**"), will be due and payable in arrears on the first Business Day of each month and on the termination of this Agreement.

(v) Appraisals. Borrower hereby agrees to pay the Lender, on demand, the Lender's reasonable fees, costs and expenses (including any reasonable fees, costs and expenses incurred by any appraiser) in connection with any appraisals of all or any part of the Collateral conducted at the request of Lender; provided, however, that absent an Event of Default, the Borrower will not have to reimburse the Lender for such fees, costs and expenses.

(vi) Late Fee. If any amount due under this Agreement is not received by the Lender within five (5) days of the date such amount is due, Borrower shall pay to the Lender a late fee of five percent (5%) of such amount not paid, such late fee to be immediately due and payable by Borrower without demand by the Lender.

(vii) Letter of Credit Fee. A fee, calculated on the LC Amount multiplied by a fluctuating rate which is the daily equivalent to a rate equal to the aggregate of: (x) Adjusted Term SOFR, or in the event that such rate is no longer available or determinable etc. as provided in **Section 3(a)(vi)** above, the Alternative Rate, plus (y) a per annum rate equal to the Applicable Margin – Revolving Loans.

(d) Expenses. Borrower shall pay to Lender on demand any and all reasonable, documented out-of-pocket counsel fees and other expenses incurred by Lender in connection with the preparation, interpretation, enforcement, administration or amendment of this Agreement, or of any documents relating thereto, and any and all reasonable, documented out-of-pocket expenses, including, but not limited to, a collection charge on all accounts collected, and all other expenses of like or unlike nature which may be expended by Lender to obtain or enforce payment of any account either as against the account debtor, Borrower, or any guarantor or surety of Borrower or in the prosecution or defense of any action or concerning any matter growing out of or connected with the subject matter of this Agreement, the Obligations or the Collateral or any of Lender's rights or interests therein or thereto, including, without limiting the generality of the foregoing, any reasonable, documented out-of-pocket counsel fees or expenses incurred in any bankruptcy or insolvency proceedings and all reasonable, documented out-of-pocket costs and expenses (including search fees) incurred or paid by Lender in connection with the administration, supervision, protection or realization on any security held by Lender for the debt secured hereby, whether such security was granted by Borrower or by any other Person primarily or secondarily liable (with or without recourse) with respect to such debt, and all reasonable, documented out-of-pocket costs and expenses incurred by Lender in connection with the defense, settlement or satisfaction of any action, claim or demand asserted against Lender in connection therewith, which amounts shall be considered advances to protect Lender's security, and shall be secured hereby.

(e) Indemnification. Except to the extent directly caused by Lender's gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction, each Loan Party will indemnify and save Lender harmless from all loss, costs, damage, liability or expenses (including, without limitation, court costs and reasonable, documented out-of-pocket attorneys' fees) that Lender may sustain or incur by reason of defending or protecting this security interest or the priority thereof or enforcing the Obligations, or in the prosecution or defense of any action or proceeding concerning any matter growing out of or in connection with this Agreement and/or any other documents now or hereafter executed in connection with this Agreement and/or the Obligations and/or the Collateral. This indemnity shall survive the repayment of the Obligations and the termination of Lender's agreement to make loans available to Borrower and the termination of this Agreement.

(f) Taxes. At the option of Lender, Borrower will furnish to Lender, from time to time, within five (5) days after the accrual in accordance with applicable law of Borrower's obligation to make deposits for F.I.C.A. and withholding taxes and/or sales taxes, proof satisfactory to Lender that such deposits or payments have been made as required. Should Borrower fail to make any of such deposits or furnish such proof then Lender may, in its sole and absolute discretion, (i) make any of such deposits or any part thereof, (ii) pay such taxes, or any part thereof, or (iii) set-up such reserves as Lender, in its judgment, shall deem necessary to satisfy the liability for such taxes. Each amount so deposited or paid shall constitute an advance under the terms hereof, repayable on demand with interest, as provided herein, and secured by all Collateral and any other property at any time pledged by Borrower with Lender. Nothing herein shall be deemed to obligate Lender to make any such deposit or payment or set-up such reserve and the making of one or more of such deposits or payments or the setting-up of such reserve shall not constitute (i) an agreement on Lender's part to take any further or similar action, or (ii) a waiver of any default by Borrower under the terms hereof.

4. SECURITY.

(a) Security Interest. To secure the full payment and performance of all of the Obligations, each Loan Party, for valuable consideration, receipt whereof is hereby acknowledged, hereby grants to the Lender a continuing security interest in and to, and assigns to Lender, all assets of such Loan Party, wherever located and whether now owned or hereafter owned, existing, acquired or arising, whether tangible or intangible, wherever now or hereafter located, and whether or not eligible or qualified for lending purposes, including, without limitation, the following: all accounts, chattel paper, documents, software, general intangibles (including without limitation all patents, patent applications, trademarks, trademark applications, trade names, trade secrets, goodwill, copyrights, copyright applications, registrations, licenses, software, franchises, customer lists, tax refund claims, claims against carriers and shippers, guarantee claims, contracts rights, payment intangibles, security interests, security deposits and rights to indemnification), intellectual property, payment intangibles, instruments, deposit accounts, bank accounts, deposits, money, letters of credit and letter of credit rights, supporting obligations, commercial tort claims, investment property (including, without limitation, any equity interests in its subsidiaries (including the German Subsidiary), and all economic rights, all control rights, authority and powers), inventory, equipment, farm products, health-care-insurance receivables, vehicles, fixtures, books and records, and other goods (as those terms are defined in the Code), any other property of Borrower now or hereafter in the possession, custody or control of Lender or any agent or any parent, Affiliate or Subsidiary of Lender or any Participant with Lender in the Loans, for any purpose (whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise), and all additions, accessions, replacements, substitutions, proceeds and products of all of the foregoing in any form, including, without limitation, all proceeds of credit, fire or other insurance, and also including, without limitation, rents and profits resulting from the temporary use of any of the foregoing (hereinafter called the "Collateral").

(b) Government Contracts. If any of a Loan Party's accounts arise out of contracts with the United States or any department, agency, or instrumentality thereof, such Loan Party will promptly notify Lender thereof in writing and execute any instruments and take any steps reasonably required by Lender in order that all monies due and to become due under such contracts shall be assigned to and enforceable by Lender and notice thereof given to and an acknowledgment given by the government under the Federal Assignment of Claims Act.

(c) **Instruments**. If any of a Loan Party's accounts should be evidenced by promissory notes, trade acceptances, or other instruments for the payment of money, such Loan Party will promptly deliver same to Lender, appropriately endorsed to Lender's order and, regardless of the form of such endorsement, such Loan Party hereby waives presentment, demand, notice of dishonor, protest and notice of protest and all other notices with respect thereto.

(d) **Possessory Collateral**. If Loan Party's receives any Collateral and any investment property (as defined in the Code) consisting of certificated securities, such Loan Party shall deliver the original thereof to Lender together with an appropriate endorsement or other specific evidence of assignment thereof to Lender (in form and substance reasonably acceptable to Lender). If an endorsement or assignment of any such items shall not be made for any reason, Lender is hereby irrevocably authorized, as attorney and agent-in-fact (coupled with an interest) for the Loan Party, to endorse or assign the same on the Loan Party's behalf.

(e) **Bailee**. If any goods are at any time in the possession of a bailee, Borrower shall promptly notify Lender thereof and, if requested by Lender, shall promptly obtain an acknowledgment from the bailee, in form and substance satisfactory to Lender, that the bailee holds such Collateral for the benefit of the Borrower and Lender and shall act upon the instructions of Lender, without the further consent of Borrower. Lender agrees with Borrower that Lender shall not give any such instructions unless an Event of Default has occurred and is continuing or would occur after taking into account any action by Borrower with respect to the bailee.

(f) **Letters of Credit**. If Borrower is at any time a beneficiary under a letter of credit now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall, pursuant to an agreement in form and substance reasonably satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit, or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be applied in the same manner as any other payment on an account.

(g) **Commercial Tort Claims**. If Borrower shall at any time hold or acquire a commercial tort claim, Borrower shall promptly notify Lender in a writing signed by Borrower of the brief details thereof and grant to Lender in such writing a security interest therein, and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Lender.

(h) Financing Statements. Each Loan Party hereby irrevocably authorizes Lender at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of such Loan Party or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment, including whether such Loan Party is an organization, the type of organization and any organization identification number issued to such Loan Party. Each Loan Party agrees to furnish any such information to Lender promptly upon request. Each Loan Party also ratifies its authorization for Lender to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof.

(i) Access. Each Loan Party hereby grants to Lender for a term to commence on the date of this Agreement and continuing thereafter until all debts and Obligations (other than inchoate indemnification or reimbursement obligations or other obligations which, by their terms, survive termination of this Agreement) of any kind or character owing from Borrower to Lender are fully paid and discharged, the right to use all premises or places of business which any Loan Party presently has or may hereafter have and where any of the Collateral may be located, at a total rental for the entire period of \$1.00. Lender agrees not to exercise the rights granted in this paragraph unless and until an Event of Default has occurred and Lender determines to exercise its rights against the Collateral.

(j) License. Each Loan Party hereby grants to Lender for a term to commence on the date of this Agreement and continuing thereafter until all debts and Obligations (other than inchoate indemnification or reimbursement obligations or other obligations which, by their terms, survive termination of this Agreement) of any kind or character owed to Lender are fully paid and discharged, a non-exclusive irrevocable royalty-free license in connection with Lender's exercise of its rights hereunder, to use, apply or affix any trademark, trade name logo or the like and to use any patents, in which a Loan Party now or hereafter has rights, which license may be used by Lender upon and after the occurrence of any one or more of the Events of Default, provided, however, that such use by Lender shall be suspended if such Events of Default are waived. This license shall be in addition to, and not in lieu of, the inclusion of all of Borrower's trademarks, servicemarks, tradenames, logos, goodwill, patents, franchises and licenses in the Collateral; in addition to the right to use said Collateral as provided in this paragraph, Lender shall have full right to exercise any and all of its other rights regarding Collateral with respect to such trademarks, servicemarks, tradenames, logos, goodwill, patents, franchises and licenses.

5. COLLECTIONS; SET OFF; DEPOSIT ACCOUNTS; NOTICE OF ASSIGNMENT; POWER OF ATTORNEY; LENDER REPORTS.

(a) Collections. Borrower will immediately, upon receipt of all checks, drafts, cash and other remittances in payment of any inventory sold or in payment or on account of Borrower's accounts, contracts, contract rights, notes, bills, drafts, acceptances, general intangibles, choses in action and all other forms of obligations, deliver the same to Lender or deposit to the Collection Account accompanied by a remittance report in form specified by Lender. Said proceeds shall be delivered to Lender in the same form received except for the endorsement of Borrower where necessary to permit collection of items, which endorsement Borrower agrees to make.

(b) Application and Collection Days. Lender will credit (conditional upon final collection and receipt of the remittance report and identification by the Loan Parties of such collections in the lender's electronic portal) all such payments against the Obligations; provided, however, for the purpose of computing interest and the Unused Line Fee, and any items or payments received by the Lender shall not be considered to have been credited against any loans secured hereby until three (3) Business Days after receipt by Lender of any such items. The order and method of such application to the Obligations shall be in the sole discretion of Lender and any portion of such funds which Lender elects not to so apply shall be paid over from time to time by Lender to Borrower.

(c) Set Off. Borrower hereby grants to Lender a lien, security interest and right of setoff as security for all liabilities and Obligations to Lender, whether now existing or hereafter arising, upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Lender. At any time, without demand or notice, Lender may set off the same or any part thereof and apply the same to any liability or Obligation of Borrower and any guarantor even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE LENDER TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER OR ANY GUARANTOR, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

(d) Deposit Accounts. Borrower shall maintain all of its bank accounts, including without limitation, its operating and depository accounts, as described on **Schedule B** (the "**Bank Schedule**"). Upon fulfillment of the applicable conditions set forth in this Agreement and Lender's determination to make a loan to Borrower, Lender shall disburse the proceeds of the requested loan by crediting the same to an operating account of Borrower designated by the Borrower to receive proceeds of loan advances on the Bank Schedule (the "**Designated Account**"). Borrower hereby agrees to maintain the accounts as set forth on the Bank Schedule except for changes consented to in advance by Lender, which any such consent by Lender may be conditioned, among other things, upon receipt of an updated Bank Schedule. Upon the request of the Lender, Borrower shall, and shall cause the respective bank to, enter into and thereafter maintain a control or blocked account agreement with respect to the accounts of Borrower set forth on the Bank Schedule, such agreement to be in form and substance satisfactory to the Lender; provided, that, the provisions of this **Section 5(d)** shall not apply to deposit accounts specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's salaried employees (so long as each such account does not contain amounts in excess of amounts necessary to pay such payroll and related expenses).

(e) Account Verification. Lender may in its own name or in the name of others communicate with account debtors in order to verify with them to Lender's reasonable satisfaction the existence, amount and terms of any accounts.

(f) Notice of Assignment. Upon request of Lender at any time during the continuance of an Event of Default, Borrower will so notify such account debtors and will indicate on all billings to such account debtors that their accounts must be paid to Lender. Lender shall have full power to collect, compromise, endorse, sell or otherwise deal with the Collateral or proceeds thereof in its own name or in the name of Borrower.

(g) Power of Attorney. Borrower hereby grants to Lender an irrevocable power of attorney, coupled with an interest, authorizing and permitting Lender (acting through any of its officers, employees, attorneys or agents), at Lender's option, but without obligation, with or without notice to Borrower, and at Borrower's expense, to do any or all of the following, in Borrower's name or otherwise:

(i) (I) execute on behalf of Borrower any documents that Lender may, in its sole discretion, deem advisable in order to perfect, protect and maintain Lender's security interests, and priority thereof, in the Collateral (including such financing statements and continuation financing statements, and amendments or other modifications thereto, as Lender shall deem necessary or appropriate); (II) to endorse the name of Borrower or any of Borrower's officers or agents upon any notes, checks, drafts, money orders, or other instruments of payment or remittances (including payments payable under any policy of insurance on the Collateral) or Collateral that may come into possession of Lender in full or part payment of any amounts owing to Lender; (III) to sign and endorse the name of Borrower or any of Borrower's officers or agents upon any invoice, freight or express bill, bill of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices (provided that collection notifications shall be subject to **Section 5(f)**) in connection with accounts, and any instrument or documents relating thereto or to Borrower's rights therein, (IV) receive and otherwise take control in any manner of any cash or non-cash items of payment or proceeds of Collateral; and (V) endorse or assign to Lender on Loan party's behalf any portion of Collateral evidenced by an agreement, Instrument or document if an endorsement or assignment of any such items is not made by Borrower pursuant to **Section 5(a)**; and

(ii) after the occurrence and during the continuance of an Event of Default; (I) notify account debtors that Collateral has been assigned to Lender and that payments shall be made directly to Lender, (II) to give written notice to such office and officials of the United States Post Office to effect such change or changes of address so that all mail addressed to Borrower may be delivered directly to Lender, (III) instruct any third party having custody or control of any Collateral or books or records belonging to, or relating to, Borrower to give Lender the same rights of access and other rights with respect thereto as Lender has under this Agreement or any other Loan Document; (IV) execute on behalf of Borrower any document exercising, transferring or assigning any option to purchase, sell or otherwise dispose of or lease (as lessor or lessee) any real or personal property which is part of the Collateral or in which Lender has an interest; (V) execute on behalf of Borrower any invoices relating to any accounts, any draft against any account debtor, any proof of claim in bankruptcy, any notice of Lien or claim, and any assignment or satisfaction of mechanic's, materialman's or other Lien; (VI) execute on behalf of Borrower any notice to any account debtor; (VII) pay, contest or settle any Lien, charge, encumbrance, security interest and adverse claim in or to any of the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (VIII) grant extensions of time to pay, compromise claims relating to, and settle accounts, chattel paper and general intangibles for less than face value and execute all releases and other documents in connection therewith; (IX) settle and adjust, and give releases of, any insurance claim that relates to any of the Collateral and obtain payment therefor; and (X) vote any right or interest with respect to any investment property.

This power of attorney shall be irrevocable as long as Borrower may be indebted to Lender and does hereby grant upon Borrower's said attorney full power to do any and all things necessary to be done in and about the premises as fully and effectually as Borrower might or could do, and hereby ratifying all that said attorney shall lawfully do or cause to be done by virtue hereof. Neither Lender nor the attorney shall be liable for any acts or omissions nor for any error of judgment or mistake, except for their gross negligence or willful misconduct

(h) Viewing Rights. Lender shall be provided and thereafter have viewing rights with respect to any bank account maintained by Borrower.

(i) Lender Reports. After the end of each month, Lender will render to Borrower a statement of Borrower's loan account with Lender hereunder, showing all applicable credits and debits, which the Lender may distribute by electronic mail, its electronic portal or other electronic means. Each statement shall be considered correct and to have been accepted by Borrower and shall be conclusively binding upon Borrower in respect of all charges, debits and credits of whatsoever nature contained therein under or pursuant to this Agreement, and the closing balance shown therein, unless Borrower notifies Lender in writing of any discrepancy within twenty (20) days from the delivery by Lender to Borrower of any such monthly statement.

6. REPRESENTATIONS AND WARRANTIES.

Any request for a loan hereunder will be deemed a representation by the Loan Parties that all representations and warranties in this **Section 6** are true, correct and complete in all material respects as of the time of the request, unless they relate exclusively to an earlier date in which case they shall be true and correct in all material respects as of such earlier date, and unless they are qualified by materiality in which case they shall be true and correct in all respects. Each Loan Party represents and warrants that:

(a) Places of Business; Principal Executive Office; Inventory Locations.

(i) Such Loan Party has no places of business other than the places of business listed on **Schedule A**, as such **Schedule A** may be updated in accordance with this **Section 6(a)**;

(ii) Such Loan Party's principal executive office and the office where such Loan Party keeps its records concerning its accounts, contract rights and other property, is that shown on **Schedule A**;

(iii) All inventory presently owned by a Loan Party is stored at the locations set forth on **Schedule A**, as updated in accordance with this **Section 6**; and

(iv) Each Loan Party will notify Lender promptly, and in no event later than thirty days after of any such change, in writing, and provide an updated **Schedule A** reflecting the same, of any change in the location of any place of business or the location at which inventory or equipment is stored or the establishment of any new place of business or location at which inventory or equipment is stored or office where its records are kept which would be shown in this Agreement if it were executed after such change.

(b) **Existence; Qualification.** Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and shall hereafter remain in good standing as a corporation in such jurisdiction. Each Loan Party is duly qualified and in good standing in every state in which it is doing business, and shall hereafter remain duly qualified and in good standing in every state, in each case, in which the failure to qualify or become licensed could have a material adverse effect on the financial condition, business or operations of such Loan Party or the value of any material Collateral.

(c) **Name; Organizational Identification Number.** Each Loan Party's exact legal name is as set forth in **Schedule A** annexed to this Agreement. The organizational identification number of each Loan Party is as set forth on **Schedule A** annexed hereto.

(d) **Authority; Conflict.** The execution, delivery and performance of this Agreement, and any other document executed in connection herewith, are within each Loan Party's corporate or company powers, have been duly authorized, are not in contravention of law or the terms of such Loan Party's charter, by-laws, operating agreement, or other incorporation or company papers, or of any indenture, agreement or undertaking to which a Loan Party is a party or by which it or any of its properties may be bound. This Agreement constitutes, and each of the other Loan Documents upon execution and delivery will constitute, the legal, valid and binding obligation of the Borrower, enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, by general equitable principles or by principles of good faith and fair dealing (regardless of whether enforcement is sought in equity or at law).

(e) **Capitalization.** All capital stock, membership interests or other equity interests issued by the Borrower and each subsidiary of the Borrower and outstanding were and are properly issued and all books and records of each Loan Party, including but not limited to its minute books, by-laws, operating agreements and books of account, are accurate and up to date and will be so maintained in all material respects.

(f) Title; Liens. Each Loan Party owns all of the assets reflected in the most recent of such Loan Party's financial statements provided to Lender, except assets sold or otherwise disposed of in the ordinary course of business since the date thereof or as permitted hereunder, and such assets together with any assets acquired since such date, including without limitation the Collateral, are free and clear of any lien, pledge, security interest, charge, adverse right or claim or trust (statutory or otherwise), mortgage or encumbrance of any nature whatsoever, except for Permitted Liens. The Real Property owned by each Loan Party and each subsidiary thereof is as set forth on **Schedule A** annexed hereto. Each Loan Party's leases of personal property are as set forth on **Schedule C** annexed hereto. Loan Party is in full compliance with all of the terms of each of its capital, operating and real property leases, except where the failure to so comply could not reasonably be expected to have a material adverse effect on its financial condition, business or operations.

(g) Taxes. Each Loan Party has made or filed all tax returns, reports and declarations relating to any material tax liability required by any jurisdiction to which it is subject (any tax liability which may result in a Lien on any Collateral being hereby deemed material); has paid all taxes shown or determined to be due thereon except those being contested in good faith and which a Loan Party has identified in writing to Lender as being contested (which shall be prior to the date of such contest as to contests being initiated after the date hereof) and has made adequate provision for the payment of all taxes so contested, so that no Lien resulting from unpaid Taxes will encumber any Collateral.

(h) Compliance. Each Loan Party (i) is subject to no charter, corporate or other legal restriction, or any judgment, award, decree, order, governmental rule or regulation or contractual restriction which would reasonably be expected to have a material adverse effect on its financial condition, business or operations, and (ii) is in compliance with its charter documents, by-laws or operating agreement, all material contractual requirements by which it or any of its properties may be bound (including without limitation the Material Contracts) and all applicable laws, rules and regulations (including without limitation those relating to environmental protection) other than laws, rules or regulations the validity or applicability of which it is contesting in good faith or provisions of any of the foregoing the failure to comply with which cannot reasonably be expected to materially adversely affect its financial condition, business or operations or the value of any Collateral.

(i) Litigation. Except as separately disclosed to the Lender by email dated May 1, 2023, there is no action, suit, proceeding, or to any Loan Party's knowledge, investigation pending or, threatened against or affecting it or any of its assets before or by any court or other governmental authority which, if determined adversely to it, would have a material adverse effect on its financial condition, business or operations or the value of any Collateral.

(j) ERISA. Each Loan Party is in compliance with ERISA in all material respects; no Reportable Event has occurred and is continuing with respect to any Plan; and no Loan Party has an unfunded vested liability under any Plan. The word "**Plan**" as used in this Agreement means "employee benefit plan" (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("**ERISA**")) as to which any Loan Party or any ERISA Affiliate (a) is (currently or hereafter), or at any time during the immediately preceding six (6) years has, sponsored, maintained or contributed to on behalf of any of its employees or (b) has (currently or hereafter), or has had at any time within the preceding six (6) years, any liability (contingent or otherwise).

(k) OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws; Anti-Terrorism Laws.

(i) No Loan Party nor any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries nor, to the knowledge of such Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance with Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any loan made or Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law or Anti-Money Laundering Law by any Person (including Lender or other individual or entity participating in any transaction).

(ii) To the extent applicable, each Loan Party and each of its Subsidiaries are in compliance with applicable Anti-Terrorism Laws.

(l) **Debt.** Except for the Debt to the Lender to be outstanding following the date hereof, the Debt of the Loan Parties that will be outstanding immediately following the payoffs being done in connection with the initial advances hereunder, is as set forth on **Schedule D** annexed hereto.

(m) **Intellectual Property.** For purposes of this Agreement, “**Intellectual Property Rights**” means all actual or prospective rights and goodwill associated therewith arising in connection with any intellectual property or other proprietary rights, including all rights arising in connection with copyrights, patents, industrial designs, service marks, trade dress, trade secrets, trademarks, trade names or mask works.

(i) Set forth on **Schedule E** annexed hereto is a complete list of all patents, industrial designs, applications for patents, trademarks, applications to register trademarks, service marks, applications to register service marks, mask works, trade dress and copyrights for which each Loan Party is the owner of record (the “**Owned Intellectual Property**”).

(ii) Except as set forth on **Schedule E** annexed hereto, (A) the Loan Parties own the Owned Intellectual Property free and clear of all restrictions (including covenants not to sue any Person), court orders, injunctions, decrees, writs or Liens (other than Permitted Liens), whether by agreement memorialized in a record authenticated by Borrower or otherwise, (B) no Person other than the Loan Parties owns or has been granted any right in the Owned Intellectual Property (other than rights that have been subordinated to Lender on terms acceptable to the Lender in its reasonable discretion), (C) all Owned Intellectual Property is valid, subsisting and enforceable, and (D) the Loan Parties have taken all commercially reasonable action necessary to maintain and protect the Owned Intellectual Property.

(iii) Set forth on **Schedule E** annexed hereto is a complete list of all agreements under which a Loan Party has licensed Intellectual Property Rights from another Person ("**Licensed Intellectual Property**") other than readily available, non-negotiated licenses of computer software and other intellectual property used solely for performing accounting, word processing and similar administrative tasks ("**Off-the-shelf Software**") and a summary of any ongoing payments any Loan Party is obligated to make with respect thereto. Except as set forth on **Schedule E** annexed hereto, the Loan Parties' licenses to use the Licensed Intellectual Property, copies of which have been given to Lender, are free and clear of all restrictions, Liens, court orders, injunctions, decrees, or writs. Except as disclosed in **Schedule E** annexed hereto, no Loan Party is contractually obligated to make royalty payments of a material nature, or pay fees to any owner of, licensor of, or other claimant to, any Intellectual Property Rights.

(iv) Except for Off-the-shelf Software and as disclosed on **Schedule E** annexed hereto, the Owned Intellectual Property and the Licensed Intellectual Property constitute all Intellectual Property Rights used or necessary to conduct Borrower's business as it is presently conducted or as the Loan Parties reasonably foresee conducting it.

(v) Except as disclosed on **Schedule E** annexed hereto, no Loan Party has knowledge of, and has not received notice either orally or in writing alleging, any infringement of another Person's Intellectual Property Rights (including any claim set forth in writing that a Loan Party must license or refrain from using the Intellectual Property Rights of any Person) nor, to any Loan Party's knowledge, is there any threatened claim or any reasonable basis for any such claim.

(n) **Solvency**. Each Loan Party is Solvent. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

(o) Environmental Condition. (a) to each Loan Party's knowledge, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been used by a Loan Party, its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Substances, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to each Loan Party's knowledge, after due inquiry, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Substances disposal site, (c) no Loan Party nor any of its Subsidiaries has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any real property and improvements owned or operated by a Loan Party or its Subsidiaries, and (d) Loan Party has not nor has its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or environmental related liabilities that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(p) Affiliates of Borrower. No Affiliate of the Borrower is currently engaged in any business activities competitive to the business activities or prospects of the Borrower as currently conducted or contemplated, or otherwise is engaged in activities similar to the business of the Borrower as currently conducted or contemplated.

(q) Subsidiary. The German Subsidiary has not incurred any Debt or liabilities other than as listed on **Schedule D**.

(r) Submissions to Lender. All financial and other information submitted to the Lender by or on behalf of the Loan Parties, including without limitation submissions and advance requests made through the Lender's electronic client portal, was true and correct in all material respects when submitted or requested, except with respect to projections, valuations and pro forma financial statements; and, as to projections, valuations or proforma financial statements, present a good faith opinion as to such projections, valuations and proforma condition and results.

(s) Accounts.

(i) As of the date of each Revolving Loan is requested by any Loan Party, all Accounts which the Loan Party has submitted to Lender for inclusion in the Borrowing Base as being Qualified Accounts comply in all respects with the criteria for eligibility set forth in the definition of Qualified Accounts.

(ii) With respect to all Accounts, whether or not such Account is a Qualified Account, all such Accounts are genuine and in all respects what they purport to be, arise out of a completed, bona fide and unconditional and non-contingent sale and delivery of goods or rendition of services by the applicable Loan Party in the ordinary course of its business and in accordance with the terms and conditions of all purchase orders, contracts or other documents relating thereto, each Account debtor thereunder had the capacity to contract at the time any contract or other document giving rise to such Accounts were executed, and the transactions giving rise to such Accounts comply with all applicable laws and governmental rules and regulations.

7. AFFIRMATIVE COVENANTS.

(a) **Insurance.** Borrower agrees to keep all the Collateral insured with coverage and in amounts not less than that usually carried by one engaged in a like business and in any event not less than that reasonably required by Lender (including, without limitation, credit insurance with respect to foreign accounts included in the Borrowing Base) with loss payable to Lender (including as a lenders loss payee as to any and all property coverages) and Borrower, as their interests may appear, hereby appointing Lender as attorney for Borrower in obtaining, adjusting, settling and canceling such insurance and endorsing any drafts. As further assurance for the payment and performance of the Obligations, Borrower hereby assigns to Lender all sums, including returns of unearned premiums, which may become payable under any policy of insurance on the Collateral and Borrower hereby directs each insurance company issuing any such policy to make payment of such sums directly to Lender. Without limiting the generality of the foregoing, to the extent Borrower maintains any credit insurance policies in respect of any accounts or account debtors, Borrower shall cause such policies to be collaterally assigned to Lender, as security for the Obligations, pursuant to assignments in form and substance reasonably satisfactory to Lender.

(b) **Books and Records.** Each Loan Party will at all times keep accurate and complete records of such Loan Party's inventory, accounts and other material Collateral.

(c) **Field Examinations.** Lender, or any of its agents, shall have the right to call at Borrower's or any other Loan Parties' place or places of business at intervals to be determined by Lender, following reasonable prior notice (which such prior notice is not required to the extent an Event of Default shall have occurred and be continuing), and without hindrance or delay, to inspect, audit, check, and make extracts from any copies of the books, records, journals, orders, receipts, correspondence which relate to Borrower's accounts, and other Collateral or other transactions, between the parties thereto and the general financial condition of Borrower and the other Loan Parties and Lender may remove any of such records temporarily for the purpose of having copies made thereof; provided, however, that unless an Event of Default shall have occurred and be continuing, Lender shall not conduct more than four (4) such inspections or audits in any twelve (12) month period.

(d) **Existence and Good Standing.** Each Loan Party will maintain its corporate/company existence in good standing and comply in all material respects with all laws and regulations of the United States or of any state or states thereof or of any political subdivision thereof, or of any governmental authority which may be applicable to it or to its business, except as to any state other than its state of incorporation, where the failure to so comply could not reasonably be expected to have a material adverse effect on its financial condition, business or operations.

(e) Taxes. Borrower will pay, at such times and in such manner as to prevent any penalty from accruing or any Lien arising (other than Permitted Liens) or charge from attaching to its property, all real and personal property taxes, assessments and charges and all franchises, income, unemployment, old age benefits, withholding, sales, goods and services, harmonized sales and other taxes assessed (i) against it or upon the Collateral, or (ii) for its use or operation (unless Borrower is challenging such tax or assessment pursuant to a Permitted Protest pursuant to **Section 9(b)** hereof), or (iii) upon this Agreement, or upon any note or notes evidencing the Obligations, and will, at the request of Lender, promptly furnish Lender the receipted bills therefor. At its option, Lender may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, may pay for insurance on the Collateral and may pay for the maintenance and preservation of the Collateral. Each Loan Party agrees to reimburse Lender on demand for any payments made, or any expenses incurred by Lender pursuant to the foregoing authorization, and upon failure of any Loan Party so to reimburse Lender, any such sums paid or advanced by Lender shall be deemed secured by the Collateral and constitute part of the Obligations.

(f) Hazardous Substances. Each Loan Party will immediately notify Lender upon receipt of notification of any potential or known release or threat of release of any Hazardous Substances under any Environmental Law.

(g) OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws; Anti-Terrorism Laws.

(i) Each Loan Party will, and will cause each of its Subsidiaries to, comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries shall implement and maintain in effect policies and procedures reasonably designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

(ii) Each Loan Party will, and will cause each of its Subsidiaries to, to the extent the same are applicable to such Person, comply with any Anti-Terrorism Laws.

(h) Use of Proceeds. Borrower shall use the proceeds of the loans and each Letter of Credit made by Lender hereunder (i) to pay fees and expenses incurred in connection with the transaction contemplated hereby and (ii) for ordinary working capital and general corporate/company purposes, including to finance the transactions by the Borrower permitted under Section 9. No part of the proceeds of any loan or Letter of Credit will be used, directly or indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, Anti-Money Laundering Laws or Anti-Terrorism Laws.

(i) Material Contracts. The Borrower will at all times maintain compliance with all of the terms of each Material Contract, and will at all times pay rent on or before the due date thereof under its leases that are Material Contracts.

(j) Additional Assurances. Each Loan Party will, at its expense, upon request of Lender promptly and duly take, execute, acknowledge and deliver (and/or cause such other applicable Person to take, execute, acknowledge and deliver) all such further acts, documents, agreements and instruments as may from time to time be necessary or desirable or as Lender may from time to time reasonably require in order to (i) correct any defect, error or omission which may at any time be discovered, (ii) carry out the intent and purposes of the Loan Documents and the transactions contemplated thereby, (iii) establish, create, preserve, protect and perfect a first priority lien (subject only to Permitted Liens) in favor of Lender in all personal property (wherever located) from time to time owned by the Loan Party and in all capital stock and other equity from time to time owned by any Loan Party, (iv) cause each subsidiary of a Loan Party organized under the laws of the United States or a jurisdiction thereof to guarantee all of the Obligations, all pursuant to documentation that is in form and substance reasonably satisfactory to Lender, and (v) facilitate the collection of the Collateral. Without limiting the foregoing, each Loan Party shall, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver (and/or cause such other applicable Person to take, execute, acknowledge and deliver) to Lender all promissory notes, security agreements, agreements with landlords, mortgagees and processors and other bailees, subordination and intercreditor agreements and other agreements, instruments and documents, in each case in form and substance reasonably acceptable to Lender, as Lender may request from time to time to perfect, protect, and maintain Lender's security interests in the Collateral, including the required priority thereof, and to fully carry out the transactions contemplated by the Loan Documents.

8. REPORTING.

(a) Financial Reporting. The Loan Parties shall deliver or cause to be delivered to Lender, each to be in form, scope and substance satisfactory to Lender:

(i) within thirty (30) days after the close of each fiscal month of the Loan Parties, commencing with the month ended April 30, 2023, internally prepared consolidated financial statements of the Loan Parties including consolidated balance sheets as of the close of each month and consolidated statements of income and retained earnings for such month and for that portion of the fiscal year-to-date then ended, which shall be prepared on a basis consistent with that of the preceding period or containing disclosure of the effect on financial condition or results of operations of any change in such preparation, and which shall be certified by the chief financial officer of the Loan Parties as being accurate and fairly presenting the financial condition of the Loan Parties;

(ii) within thirty (30) days of the end of each month, a copy of the general ledger trial balance of the Loan Parties;

(iii) within one-hundred twenty days (120) days after the close of each fiscal year of the Loan Parties, audited financial statements, including a consolidated balance sheet as of the close of such fiscal year and consolidated statements of income, stockholders' capital and cash flow for the year then ended, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year or containing disclosure of the effect on financial condition or results of operations of any change in the application of accounting principles during the year, and accompanied by an audit report thereon of a recognized certified public accounting firm selected by the Loan Parties and reasonably satisfactory to Lender, which opinion shall state that such financial statements fairly present the financial condition and results of operations of the Loan Parties in accordance with generally accepted accounting principles, and which shall be certified by the chief financial officer of the Loan Parties as being accurate and fairly presenting the financial condition of the Loan Parties;

(iv) annually, on or before thirty (30) days prior to the beginning of each fiscal year of the Loan Parties, an annual budget of the Loan Parties for the next succeeding fiscal year, and projections of the Loan Parties' balance sheet, statement of profit and loss and cash flow for the next succeeding fiscal year broken down on a month to month basis;

(v) contemporaneously with the furnishing of a copy of each set of annual financial statements pursuant to **Section 8(a)(iii)** and each set of monthly financial statements pursuant to **Section 8(a)(i)** that pertain to the last month in a fiscal quarter, a duly completed Compliance Certificate in the form of **Exhibit 5**, with appropriate insertions, dated the date of such statements and signed by a chief financial officer of the Borrower, containing a certification by such chief financial officer as to the statements being accurate and fairly presenting the financial condition of the Loan Parties, a computation of the applicable financial calculation set forth in **Sections 9(m)(i)**, if then in effect pursuant to such Section, and **9(m)(ii)** for the applicable date as set forth therein and a certification to the effect that such officer has not become aware of any Event of Default that has occurred and is continuing or, if there is any such event, describing it and the steps, if any, being taken in response thereto or to otherwise remediate it.

(b) Collateral Reporting. The Loan Parties shall deliver or cause to be delivered to Lender, each to be in form, scope and substance satisfactory to Lender:

(i) as of the date of this Agreement and thereafter within ten (10) days of the close of each month thereafter, detailed aging of Borrower's open accounts receivable (which must contain unique customer account numbers);

(ii) within ten (10) days of the close of each month, a (a) reconciliation of Borrower's accounts receivable aging to its general ledger, a reconciliation of Borrower's unbilled accounts receivable, and Lender's collateral statement of accounts, (b) a reconciliation of accounts payable aging to its general ledger, and (c) in each case a roll forward from the previous report, in form, scope and substance satisfactory to Lender;

(iii) daily, loan and collateral descriptions, including without limitation, Borrower's sales, cash receipts, adjustments, in the form supplied by Lender to Borrower; and

(iv) as of the date of this Agreement and within ten (10) days of the close of each month thereafter or more frequently as may be requested by Lender, Borrower's detailed inventory stock status report and a reconciliation of such stock status report to its general ledger in form, scope and substance satisfactory to Lender;

(c) Other Reporting and Notifications. The Loan Parties shall deliver or cause to be delivered to Lender, each to be in form, scope and substance satisfactory to Lender:

(i) within ten (10) days after any Loan Party's receipt, any management letter prepared by the Loan Parties' independent auditors;

(ii) contemporaneously with the delivery to shareholders or governmental agencies, copies of all reports and information delivered to shareholders or filed with governmental agencies;

(iii) within ten (10) days following the end of each fiscal month, copies of all bank account statements and reconciliations for all bank accounts maintained by any Loan Parties and a schedule of all bank accounts of any Loan Parties;

(iv) promptly upon Lender's written request, a schedule of Debt of the Loan Parties outstanding as of such fiscal quarter end in a form consistent with **Schedule D**;

(v) as of the date of this Agreement and thereafter upon the request by Lender, a detailed master customer list;

(vi) promptly upon Lender's written request, such other information about the financial condition and operations of Borrower or any Guarantor, as Lender may, from time to time, reasonably request;

(vii) promptly upon becoming aware such change in circumstance, written notification to the Lender of any change in circumstance that would affect the accuracy of any representation or warranty in **Section 6** hereof in any material respect, unless the representation and warranty specifically relates to an earlier date;

(viii) promptly upon becoming aware such event or circumstance, written notification to the Lender of any breach or non-performance of, or any default under (A) any Material Contract or (B) any contractual obligation of any Loan Party, or any violation of, or non-compliance with, any applicable law, which, in the case of this clause (B) would reasonably be expected to result, either individually or in the aggregate, in a material adverse effect, and including, in the case of clauses (A) and (B), a description of such breach, non-performance, default, violation or non-compliance and the steps, if any, such Loan Party has taken, is taking or proposes to take in respect thereof;

(ix) promptly upon becoming aware such event or circumstance, written notification to the Lender of any cancellation or material change in any insurance maintained by any Loan Party;

(x) promptly upon becoming aware such event or circumstance, written notification to the Lender. any "default" or "event of default" under any Debt of a Loan Party from any lender other than Lender in an amount in excess of \$250,000; and

(xi) promptly of: (A) any delay in any Loan Party's performance of any of its material obligations to any account debtor with an account in excess of \$50,000 or the assertion of any claims, offsets, defenses or counterclaims by any such account debtor, or any disputes with any such account debtor, or any settlement, adjustment or compromise thereof, (B) all material adverse information relating to the financial condition of any such account debtor and (C) any event or circumstance which, to the best of any Loan Party's knowledge would cause the Lender to consider any then existing Accounts as no longer constituting Qualified Accounts.

(xii) promptly upon becoming aware of any Event of Default, or the occurrence or existence of an event which, with the passage of time or the giving of notice or both, would constitute an Event of Default hereunder, notice thereof in writing.

(d) All information regarding sales, cash receipts, accounts and inventory shall be transmitted to Lender electronically, in acceptable formats (files with extensions *.prn, *.pdf, *.txt, *.xls, *.xlsx, and other electronic readable formats are acceptable; and unless otherwise agreed by Lender, scanned copies in other formats are not acceptable), either transmitted to Lender via internet or e-mail. In the event that Borrower fails to report such information to Lender electronically, Lender reserves the right, in its sole discretion, to charge Borrower a monthly fee in an amount reasonably necessary to cover the costs of the manual input of such data by Lender.

9. NEGATIVE COVENANTS.

No Loan Party will at any time:

(a) **Disposition of Collateral.** sell, assign, exchange or otherwise dispose of any of the Collateral, other than (I) inventory consisting of (i) scrap, waste, defective goods and the like; (ii) obsolete goods; (iii) finished goods sold in the ordinary course of business or any interest therein to any individual, partnership, trust or other corporation, provided that such sale in the ordinary course of business shall not include a transfer in total or partial satisfaction of a debt; (II) equipment which is no longer required or deemed necessary for the conduct of such Loan Party's business, so long as such Loan Party receives therefor a sum substantially equal to such equipment's fair value, and remits such sum to Lender in accordance with the terms of this Agreement or replaces such equipment with other equipment of similar value which is subject to a first security interest in Lender's favor, (III) the license, on a non-exclusive basis, by such Loan Party of its Intellectual Property Rights in the ordinary course of business; (IV) the lapse of registered Intellectual Property Rights of any Loan Party or the abandonment of Intellectual Property Rights in the ordinary course of business so long as, in each case (i) such Intellectual Property Rights are not material to the conduct of its or any other Loan Party's business, (ii) with respect to copyrights, such copyrights are not material revenue generating copyrights, and (iii) such lapse is not materially adverse to the interest of the Loan Parties; (V) Restricted Payments to the extent expressly permitted hereunder; and (VI) so long as no Event of Default is continuing hereunder, the sale of the equity in Biofrontera AG;

(b) **Liens.** create, permit to be created or suffer to exist any lien, encumbrance, adverse right or claim or deemed trust, or security interest of any kind ("Lien") upon any of the Collateral or any other property of such Loan Party, now owned or hereafter acquired, except:

(i) landlords', carriers', warehousemen's, mechanics' and other similar liens arising by operation of law in the ordinary course of such Loan Party's business;

(ii) Liens arising out of pledge or deposits under worker's compensation, unemployment insurance, old age pension, social security, retirement benefits or other similar legislation;

(iii) purchase money Liens arising in the ordinary course of business for the purchase of equipment so long as the Debt secured thereby does not exceed the lesser of the cost or fair market value of the property subject thereto, and such Lien extends to no other property, and the amount of the Debt secured thereby does not exceed \$50,000 in the aggregate outstanding at any time;

(iv) Liens for unpaid taxes that are either (x) not yet due and payable, or (y) are subject of Permitted Protests;

(v) Liens which are the subject of Permitted Protests;

(vi) Liens which have been subordinated to the Liens of the Lender on terms and conditions satisfactory to the Lender;

(vii) rights of setoff or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business; and

(viii) Liens in favor of Lender.

the term "**Permitted Protests**" as used herein means the right of a Loan Party to protest any Lien (other than a Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a federal tax lien) or rental payment, provided that (x) the Borrower has disclosed the related Lien to the Lender, (y) any such protest is instituted and diligently prosecuted by such Loan Party in good faith, and (z) Lender is satisfied that, while such protest is pending, there will be no impairment of the enforceability, validity or priority of any of the Liens of Lender in and to the Collateral.

(c) **Loans.** make any loans or advances to any individual, partnership, trust or other corporation, including without limitation a Loan Party's directors, officers and employees, except advances to officers or employees with respect to expenses incurred by them in the ordinary course of their duties which are properly reimbursable to such Loan Party and other such loans and advances in an aggregate amount not to exceed \$100,000;

(d) **Guarantees.** assume, guaranty, endorse or otherwise become directly or contingently liable in respect of (including without limitation by way of agreement, contingent or otherwise, to purchase, provide funds to or otherwise invest in a debtor or otherwise to assure a creditor against loss), any Debt (except (i) guarantees by endorsement of instruments for deposit or collection in the ordinary course of business, (ii) guarantees in favor of Lender, and (iii) guarantees relating to Liens permitted under **Section 9(b) (iii)**) of any individual, partnership, trust or other corporation;

(e) Debt. issue evidence of Debt or suffer to exist Debt in addition to Debt to the Lender except (i) Debt of a Loan Party other than for money borrowed, incurred or arising in the ordinary course of business, (ii) Debt of a Loan Party for money borrowed which is on terms satisfactory to the Lender and has been subordinated on terms and conditions satisfactory to the Lender, (iii) Debt relating to Liens permitted under **Section 9(b)(iii)**, (iv) any guarantees of Debt permitted under **Section 9(d)** hereof; (v) any indebtedness listed on **Schedule D** hereof; or (vi) unsecured Debt in an aggregate outstanding amount at any time not to exceed \$250,000;

(f) Investments. (i) use any loan proceeds to purchase or carry any “margin stock” (as defined in Regulation U of the Board of Governors of the Federal Reserve System) or (ii) invest in or purchase any stock, securities or membership interest of any individual, partnership, trust, limited liability company or other corporation except (A) readily marketable direct obligations of, or obligations guaranteed by, the United States of America or any agency thereof and (B) equity investments in a subsidiary of a Borrower, not to exceed \$250,000 in the aggregate in any twelve month period;

(g) Transactions with Affiliates. enter into any lease or other transaction with any shareholder, officer or Affiliate or the German Subsidiary on terms any less favorable than those which might be obtained at the time from Persons who or which are not such a shareholder, officer or Affiliate, except for (i) loans or advances permitted pursuant to **Section 9(c)** hereof, (ii) payment to employees and officers of reasonable compensation and employee benefits in the ordinary course of business, (iii) payment of directors’ fees that shall not exceed \$400,000 in the aggregate per fiscal year, (iv) the reimbursement of out of pocket costs and expenses for employees, directors, officers and consultants in the ordinary course of business, and (v) Restricted Payments as to the German Subsidiary to the extent not prohibited by **Section 9(l)**;

(h) Subsidiaries. sell, transfer or otherwise dispose of any stock of any subsidiary of a Loan Party, except to another subsidiary of a Loan Party;

(i) Mergers, Consolidations, Sales, Asset Acquisitions, or Statutory Plan of Division or Liquidation. (i) merge, amalgamate, or consolidate with or into any corporation; (ii) enter into any joint venture or partnership with any Person; (iii) convey, lease or sell all or any material portion of its property or assets or business to any other Person except as permitted by **Section 9(a)**; (iv) convey, lease or sell any of its assets to any Person for less than the fair market value thereof; (v) acquire (in any transaction analogous in purpose or effect to a consolidation, amalgamation, or merger) all or substantially all of the assets of any Person, except in a transaction in which Lender obtains a perfected security interest in such assets at the closing thereof and the aggregate consideration (including any contingent consideration) for any transaction, or series of related transactions, does not exceed \$4,000,000 without prior written consent of Lender, or (vi) consummate any statutory plan of division;

(j) Change in Legal Status. , (i) change its name, its place of business or, if more than one, chief executive office, or its mailing address or organizational identification number if it has one, or (ii) change its type of organization, jurisdiction of organization or other legal structure, without the prior written consent of the Lender, which shall not be unreasonably withheld, conditioned or delayed. If a Loan Party does not have an organizational identification number and later obtains one, such Loan Party shall promptly notify the Lender of such organizational identification number;

(k) Amendments of Certain Agreements; Material Contracts.

(i) amend or modify any agreement, instrument or document evidencing or relating to any such subordinated Debt, except in accordance with the subordination agreement relative thereto or the subordination provisions thereof; or

(ii) amend and modify any Material Contract in any manner which is adverse to the interests of Lender.

(l) Restricted Payments; Ameluz Payments. make any Restricted Payments or Ameluz Payments other than:

(i) as to Restricted Payments: (A) repayments of Debt that is subordinated to the Obligations in a manner satisfactory to Lender that are expressly permitted by the subordination agreement relative thereto, or (B) as to Debt for which the Lender did not require a subordination agreement (other than Debt referenced in **Section 9(e)(i)**, but including the obligations under the Maruho Agreement), regularly scheduled payments, but not prepayments, of interest and principal (I) so long as no Event of Default has occurred and is continuing or will occur as a result of or immediately following such cash payment, and (II) Excess Availability is no less than \$650,000 prior to and immediately following any such cash payment (as evidenced in part by pro-forma calculations provided Borrower to the Lender in advance of any such payments), or (C) payments directly or indirectly to or in favor of or for the benefit of the German Subsidiary in excess of \$250,000 in the aggregate per annum;

(ii) as to Restricted Payments, repayments of Debt referenced in **Section 9(e)(i)** so long as such payments are made in the ordinary course of business;

(iii) as to Ameluz Payments, payments to the extent permitted under the related Liquidation License Agreement; and

(iv) other Restricted Payments (I) so long as no Event of Default has occurred and is continuing or will occur as a result of or immediately following such cash payment, and (II) Excess Availability is no less than \$650,000 prior to and immediately following any such cash payment (as evidenced in part by pro-forma calculations provided Borrower to the Lender in advance of any such payments).

(m) Financial Covenants.

(i) Minimum EBITDA Requirement. following the election of the Borrower in writing to permanently remove the Availability Block and adopt this minimum EBITDA requirement, commencing with the last day of the fiscal quarter (the “**Initial Quarter End**”) ending after the fiscal quarter in which such election is made and continuing as of the last day of each fiscal quarter thereafter, permit Borrower’s EBITDA for the applicable measurement period set forth in the chart below to be less than the minimum EBITDA as set forth in the chart below for such quarter end, for the corresponding time period set forth in the chart below, to be tested as of the test date set forth in the chart below:

<u>Test Date</u>	<u>Minimum EBITDA</u>	<u>Measurement Period</u>
<i>on the Initial Quarter End</i>	<i>\$ 250,000</i>	<i>Trailing three-month period then ended</i>
<i>on the last day of the first fiscal quarter after the Initial Quarter End</i>	<i>\$ 500,000</i>	<i>Trailing six-month period then ended</i>
<i>on the last day of the second fiscal quarter after the Initial Quarter End</i>	<i>\$ 750,000</i>	<i>Trailing nine-month period then ended</i>
<i>on the last day of each fiscal quarter thereafter</i>	<i>\$ 1,000,000</i>	<i>Trailing twelve-month period then ended</i>

(ii) Minimum Ameluz Revenue. for the quarterly testing periods set forth in the table below, permit the Ameluz Revenue as to such fiscal quarter then ending to be less than the level set forth in the table below for each respective period:

<u>Fiscal Quarter Period Ending</u>	<u>Minimum Quarterly Ameluz Revenue</u>
June 30, 2023	\$ 4,500,000
September 30, 2023	\$ 6,650,000
December 31, 2023	\$ 11,750,000
March 31, 2024	\$ 8,800,000
June 30, 2024	\$ 6,375,000
September 30, 2024	\$ 10,800,000
December 31, 2024	\$ 12,500,000
March 31, 2025	\$ 12,500,000
June 30, 2025	\$ 8,400,000
September 30, 2025, and on the last day of each fiscal quarter thereafter	\$ 12,500,000

(n) Compliance with ERISA. (i) maintain, or permit any ERISA Affiliate to maintain, or become obligated to contribute, to any Plan other than those Plans disclosed on **Schedule F**, (ii) engage, or knowingly permit any ERISA Affiliate to engage, in any non-exempt “prohibited transaction”, as that term is defined in section 406 of ERISA and Section 4975 of the IRC, (iii) incur, or permit any ERISA Affiliate to incur, any “accumulated funding deficiency”, as that term is defined in Section 302 of ERISA or Section 412 of the IRC, (iv) terminate, or permit any ERISA Affiliate to terminate, any Plan where such event could result in any material liability of any Loan Party or any ERISA Affiliate or the imposition of a lien on the property of any Loan Party or any ERISA Affiliate pursuant to Section 4068 of ERISA, (v) assume, or permit any ERISA Affiliate to assume any obligation to contribute to any Multiemployer Plan, (vi) incur or permit any ERISA Affiliate to incur, any withdrawal liability to any Multiemployer Plan, (vii) fail promptly to notify the Lender of the occurrence of any Termination Event, (viii) fail to comply in any material respect, or permit an ERISA Affiliate to fail to comply in any material respect, with the requirements of ERISA or the IRC or other applicable law in respect of any Plan, (ix) fail to meet, or permit any ERISA Affiliate to fail to meet, all minimum funding requirements under ERISA or the IRC or postpone or delay or allow any ERISA Affiliate to postpone or delay any funding requirement with respect of any Plan.

(o) Subsidiary. cause, allow or permit the German Subsidiary to incur any Debt or liabilities outside of the ordinary course of business.

10. DEFAULT; RIGHTS AND REMEDIES UPON DEFAULT.

(a) The occurrence of any one or more of the following events listed below (herein, each an “**Event of Default**” and individually and collectively, “**Events of Default**”), shall constitute an Event of Default hereunder and shall also constitute, without notice or demand, a default under all Loan Documents and any other agreements between Lender and any Loan Party and instruments and papers given Lender by any Loan Party, whether such agreements, instruments, or papers now exist or hereafter arise.

(i) The failure by Borrower to pay when due, any principal or interest due under this Agreement or the Revolving Note, or the failure by Borrower to pay any fees due under this Agreement or the Revolving Note within two (2) Business Days of the date when due.

(ii) The failure by Borrower to pay when due any costs, expenses or other Obligations within five (5) Business Days of the date when due.

(iii) (A) Except as provided in clauses, (i) or (ii) above or (iii)(B), (iii)(C) and (iii)(D) below, the failure by a Loan Party to promptly, punctually and faithfully perform, or observe any term, covenant or agreement on its part to be performed or observed pursuant to any of the provisions of this Agreement, or (B) the failure by Borrower to promptly, punctually and faithfully perform, or observe any term, covenant or agreement on its part to be performed or observed pursuant to **Section 8(a)(v)** hereof and the continuation of such default for two (2) days following the initial failure (provided that the Lender shall not be obligated to fund any additional advances or loans during such two (2) day period, and provided further that Borrower may only eliminate such potential Event of Default by delivering a Compliance Certificate evidencing its compliance with **Sections 9(m)(i), if applicable, and 9(m)(ii)**), or (C) the failure by Borrower to promptly, punctually and faithfully perform, or observe any term, covenant or agreement on its part to be performed or observed pursuant to **Sections 4, 7(d) or 7(f)** hereof and the continuation of such default for seven (7) days following the initial failure, or (D) the failure by Borrower to promptly, punctually and faithfully perform, or observe any term, covenant or agreement on its part to be performed or observed pursuant to **Sections 7(e) or 7(i)** hereof or any other Loan Documents, and the continuation of such default for fifteen (15) days following the initial failure.

(iv) Any warranty, representation, written report or certification made or delivered to Lender by or on behalf of any Loan Party pursuant to or in connection with this Agreement or any other Loan Document or the Lender’s electronic client portal, was not true or accurate in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance, delivery or making or deemed making thereof, including when made and reaffirmed in accordance with **Section 2**.

(v) The occurrence of any event such that any Debt of a Loan Party from any creditor or lender other than Lender, involving an aggregate amount of \$250,000 or more, could be accelerated, notwithstanding that such acceleration has not taken place.

(vi) The occurrence of any event which would cause a lien creditor, as that term is defined in Section 9-102 of the Code, with respect to any obligations in the aggregate amount of \$50,000 or more to take priority over Obligations made by Lender.

(vii) Except to the extent in respect of clause (B) the lien and amount owed is subject to a Permitted Protest, a filing against or relating to a Loan Party of (A) a federal tax lien in favor of the United States of America or any political subdivision of the United States of America, or (B) a state tax lien in favor of any state of the United States of America or any political subdivision of any such state, and the payment pertaining to such lien is not paid before such payment is delinquent.

(viii) The occurrence of any event of default under any other Loan Document or other agreement between Lender and a Loan Party or instrument or paper given Lender by Borrower, whether such agreement, instrument, or paper now exists or hereafter arises (notwithstanding that Lender may not have exercised its rights upon default under any such other agreement, instrument or paper).

(ix) Any act by, against, or relating to a Loan Party, or its property or assets, which act constitutes the application for, consent to, or sufferance of the appointment of a receiver, trustee, liquidator, monitor or other Person, pursuant to court action or otherwise, over all or any material part of a Loan Party's property (which, in the case of any involuntary act, is not discharged, dismissed or stayed within forty five (45) days, so long as during which period the Loan Party is diligently seeking the discharge, dismissal or stay of such act and the Lender shall be under no obligation to advance any Revolving Loans).

(x) The granting of any trust mortgage or execution of an assignment for the benefit of the creditors of a Loan Party, or the occurrence of any other voluntary or involuntary liquidation or stay or proceeding or extension of debt agreement for a Loan Party; the failure by a Loan Party to generally pay the debts of such Loan Party as they mature or generally as they become due; adjudication of bankruptcy or insolvency relative to a Loan Party; the entry of an order for relief or similar order with respect to a Loan Party in any proceeding pursuant to Title 11 of the United States Code entitled "Bankruptcy" (the "**Bankruptcy Code**") or any other federal bankruptcy law; the filing of any complaint, application, or petition by or against a Loan Party initiating any matter in which such Loan Party is or may be granted any relief from the debts of such Loan Party pursuant to the Bankruptcy Code or any other insolvency statute, rule, law or procedure (which, in the case of any involuntary proceeding, is not discharged, dismissed or stayed within forty five (45) days, so long as during which period the Loan Party is diligently seeking the discharge, dismissal or stay of such involuntary proceeding and the Lender shall be under no obligation to advance any Revolving Loans); the calling or sufferance of a meeting of creditors of a Loan Party; the meeting by a Loan Party with a formal or informal creditor's committee; the offering by or entering into by a Loan Party of any composition, extension or any other arrangement seeking relief or extension for the debts of such Loan Party, or the initiation of any other judicial or non-judicial proceeding or agreement by, against or including a Loan Party which seeks or intends to accomplish a reorganization or arrangement with creditors.

(xi) The entry of one or more judgments in excess of \$250,000 in the aggregate against a Loan Party or its assets, which judgment is not satisfied or appealed from (with execution or similar process stayed) within twenty (20) days of its entry, except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage.

(xii) The occurrence of any event or circumstance with respect to a Loan Party such that Lender shall believe in reasonable good faith that the prospect of payment of all or any part of the Obligations or the performance when due by a Loan Party under this Agreement or any other Loan Document is impaired or there shall occur any material adverse change in the business or financial condition of a Loan Party.

(xiii) The entry of any court order which enjoins, restrains or in any way prevents a Loan Party from conducting all or any material part of its business affairs in the ordinary course of business.

(xiv) The occurrence of any loss, theft, damage or destruction to any material asset(s) of a Loan Party in excess of \$250,000, except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage.

(xv) Any act by or against, or relating to a Loan Party or its assets pursuant to which any creditor of such Loan Party seeks to reclaim or repossess or reclaims or repossesses all, or a portion with a value in excess of \$100,000, of such Loan Party's assets.

(xvi) The termination of existence, dissolution, or liquidation of a Loan Party or the ceasing to carry on actively any substantial part of a Loan Party's current business.

(xvii) This Agreement shall, at any time after its execution and delivery and for any reason, cease (A) to create a valid and perfected first priority security interest in and to the property purported to be subject to this Agreement; or (B) to be in full force and effect or shall be declared null and void, or the validity or enforceability hereof shall be contested by a Loan Party or any other Guarantor of Borrower denies it has any further liability or obligation hereunder.

(xviii) Any Guarantor shall repudiate, purport to revoke or fail to perform his, her or its obligations under his, her or its guaranty or any other guarantor shall cease to exist.

(xix) Any Loan Party shall take or participate in any action which would be prohibited under the provisions of any subordination or intercreditor agreement or make any payment on subordinated debt to any Person or entity that was not entitled to receive under the provisions of any such agreement.

(xx) Any Change of Control shall occur.

(xxi) The occurrence of an ERISA Termination Event.

(xxii) The occurrence of any event such that the counterparty to any Material Contract could terminate the Material Contract in accordance with the express terms thereof, notwithstanding that such termination has not taken place, or if any Material Contract is terminated (regardless of which party terminates the Material Contract) or otherwise not in full force and effect, provided that any such circumstance will not constitute an Event of Default hereunder to the extent that the Loan Parties, within thirty (30) days of the occurrence of such circumstance, either (i) obtain a complete waiver from the third party under such Material Contract of such default or breach thereunder (in the event of a default or other breach thereof by the Loan Parties), or (ii) enter into, or have entered into, another arrangement or arrangements that is or are reasonably expected to provide replacement revenues that are no less than the level of revenues lost, if any, due to the terminations referenced above or conduct of the third party giving rise to its default or breach of such Material Contract, each in form and substance satisfactory to the Lender.

Upon the occurrence, and during the continuance, of an Event of Default, Lender may, without notice or demand, declare any obligation Lender may have hereunder to be cancelled, declare all Obligations to be due and payable and proceed to enforce payment of the Obligations and to exercise any and all of the rights and remedies afforded to Lender by the Code or under the terms of this Agreement, the other Loan Documents or otherwise.

In addition, if any Event of Default referred to in **Section 10(a)(x)** occurs, all of the commitments to lend shall automatically and immediately terminate, if not previously terminated, and Lender shall not thereafter be under any obligation to grant any further Loans, and the principal of and interest then outstanding on all of the Loans, and all of the other Obligations, shall thereupon become and thereafter be immediately due and payable in full (if the Obligations are not already due and payable), all without any presentment, demand or notice of any kind, which are hereby waived by each Loan Party.

(b) Any sale or other disposition of the Collateral upon an exercise of remedies by Lender after the occurrence, and during the continuance, of an Event of Default, may be at public or private sale upon such terms and in such manner as Lender deems advisable, having due regard to compliance with any statute or regulation which might affect, limit or apply to Lender's disposition of the Collateral. Lender may conduct any such sale or other disposition of the Collateral upon a Loan Party's premises. Unless the Collateral is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market (in which event Lender shall provide Borrower with such notice as may be practicable under the circumstances), Lender shall give Borrower at least the greater of the minimum notice required by law or ten (10) days prior written notice of the date, time and place of any proposed public sale, and of the date after which any private sale or other disposition of the Collateral may be made. Lender may purchase the Collateral, or any portion of it at any public sale.

(c) If the Lender sells any of the Collateral on credit, the Borrower will be credited only with payments actually made by the purchaser of such Collateral and received by the Lender. If the purchaser fails to pay for the Collateral, the Lender may re-sell the Collateral and the Borrower shall be credited with the proceeds of the sale.

(d) In connection with Lender's exercise of Lender's rights under this Agreement, Lender may enter upon, occupy and use any premises owned or occupied by a Loan Party, and may exclude such Loan Party from such premises or portion thereof as may have been so entered upon, occupied, or used by Lender. Lender may, but shall not be required to remove any of the Collateral from any such premises upon Lender's taking possession thereof, and may render any Collateral unusable to Borrower. In no event shall Lender be liable to a Loan Party for use or occupancy by Lender of any premises pursuant to this Agreement.

(e) Upon the occurrence and during the continuance of any Event of Default, Lender may require Borrower to assemble the Collateral and make it available to Lender at Borrower's sole risk and expense at a place or places which are reasonably convenient to both Lender and Borrower.

(f) Any default of this Agreement by a Loan Party shall constitute, likewise, a default by such Loan Party of any other existing agreement with Lender, and any default by a Loan Party of any other agreement with Lender shall constitute a default of this Agreement.

(g) Borrower acknowledges that the purpose of this section is to provide non-exhaustive indications of what actions or omissions by Lender would not be commercially unreasonable in Lender's exercise of remedies against the Collateral after the occurrence and during the continuance of an Event of Default and that other actions or omissions by Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this section. Without limitation upon the foregoing, nothing contained in this section shall be construed to grant any rights to Borrower or to impose any duties on Lender that would not have been granted or imposed by this Agreement or by applicable law in the absence of this section.

11. STANDARDS FOR EXERCISING REMEDIES.

To the extent that applicable law imposes duties on Lender to exercise remedies in a commercially reasonable manner, Borrower acknowledges and agrees that it is not commercially unreasonable for Lender (a) to fail to incur expenses reasonably deemed significant by Lender to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other Persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against account debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other Persons, whether or not in the same business as Borrower, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (h) to dispose of the Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, and specifically to disclaim any warranties of title or the like, (k) to purchase insurance or credit enhancements to insure Lender against risks of loss, collection or disposition of Collateral or to provide to Lender a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by Lender, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Lender in the collection or disposition of any of the Collateral. Borrower acknowledges that the purpose of this section is to provide non-exhaustive indications of what actions or omissions by Lender would not be commercially unreasonable in Lender's exercise of remedies against the Collateral and that other actions or omissions by Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this section. Without limitation upon the foregoing, nothing contained in this section shall be construed to grant any rights to Borrower or to impose any duties on Lender that would not have been granted or imposed by this Agreement or by applicable law in the absence of this section.

12. TERMINATION.

(a) Unless sooner terminated by Lender as a result of the occurrence of an Event of Default, Borrower's eligibility to request loans hereunder shall commence on the date hereof and shall continue for a period through and including the Maturity Date (the "**Term**"). If Borrower desires to terminate this Agreement prior to the end of the Term, Borrower shall give at least thirty (30) days prior written notice to Lender of Borrower's intention to do so and shall pay to Lender the termination charge set forth in **Section 12(b)** below. Borrower's eligibility to request revolving loans may be extended after the Term (and after any Renewal Term, as defined below) only with the express written consent of the Loan Parties and Lender, in their respective sole discretion. Any such extension (and any further extension) shall be made only with the express written consent of the Loan Parties and Lender, in their respective sole discretion (each being a "**Renewal Term**"). At the end of the Term (or at the end of a Renewal Term, if applicable), Borrower shall pay the Full Payment to the Lender. Further, upon termination of this Agreement, all of the rights, interests and remedies of Lender and Obligations of the Loan Parties shall survive and Borrower shall have no right to receive, and Lender shall have no obligation to make, any further loans. Upon Full Payment to Lender, all rights and remedies of the Loan Parties and Lender hereunder (other than inchoate indemnification and reimbursement obligations and other obligations which, by their terms, survive termination of this Agreement) shall cease, so long as any payment so made to Lender and applied to the Obligations is not thereafter recovered from or repaid by Lender in whole or in part in any bankruptcy, insolvency or similar proceeding instituted by or against a Loan Party, whereupon this Agreement shall be automatically reinstated without any further action by any Loan Party and Lender and shall continue to be fully applicable to such Obligations to the same extent as though the payment so recovered or repaid had never been originally made on such Obligations.

(b) If this Agreement is terminated or the Obligations are accelerated by the Lender following the occurrence of an Event of Default that begins, or if any Event of Default described in **Section 10(a)(x)** occurs, prior to the date that is the date that is the third anniversary of the date of this Agreement, or if the Borrower requests that the Lender terminate on a date prior to the date that is sixty (60) days prior to the date that is the third anniversary date of this Agreement, then the Borrower shall pay to the Lender a termination fee in an amount equal to (i) \$150,000 if the termination occurs on or before the first anniversary of this Agreement; (ii) \$100,000 if the termination occurs after the first anniversary date of this Agreement but on or before the date that is the second anniversary date of this Agreement; and (iii) \$50,000 if the termination occurs after the second anniversary date of this Agreement but on or before the date that is (or, as applicable, 60 days prior to the date that is) the third anniversary date of this Agreement.

(c) In the event that Borrower desires to terminate this Agreement prior to the end of the Term (or any Renewal Term, if applicable) and fails to deliver to Lender the thirty (30) day notice required pursuant to **Section 12(a)** above, Borrower may nevertheless terminate this Agreement and pay the Obligations in full if it (i) pays the termination charge set forth in **Section 12(b)** above, and (ii) pays additional interest for each day that the notice was short of the required thirty (30) day notice, which interest shall be in an amount that is equal to the Default Rate based on the Borrower's average borrowings under this Agreement for such thirty (30) day period prior to the date that Lender receives delivery of actual notice of Borrower's intention to terminate this Agreement.

13. MISCELLANEOUS.

(a) **Governing Law; Sealed Instrument.** The laws of the State of New York shall exclusively (without regard to rules or principles relating to conflicts of laws) govern the construction of this Agreement and the rights and duties of the parties hereto. This Agreement shall take effect as a sealed instrument.

(b) **Consent to Jurisdictions.** Each Loan Party and Lender agree that any action or proceeding to enforce or arising out of this Agreement may be commenced in any court of the State of New York or in the District Court of the United States for the District of New York, and each Loan Party waives personal service of process and agrees that a summons and complaint commencing an action or proceeding in any such court shall be properly served and confer personal jurisdiction if served by registered or certified mail to a Loan Party, or as otherwise provided by the laws of the State of New York or the United States of America.

(c) WAIVER OF JURY TRIAL. EACH LOAN PARTY AND LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT SUCH LOAN PARTY OR LENDER MAY HAVE OR HEREAFTER HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. Each Loan Party hereby certifies that neither Lender nor any of its representatives, agents or counsel has represented, expressly or otherwise, that Lender would not, in the event of any such suit, action or proceeding, seek to enforce this waiver of right to trial by jury. Each Loan Party acknowledges that Lender has been induced to enter into this Agreement by, among other things, this waiver. Each Loan Party acknowledges that it has read the provisions of this Agreement and in particular, this section; has consulted legal counsel; understands the right it is granting in this Agreement and is waiving in this section in particular; and makes the above waiver knowingly, voluntarily and intentionally.

(d) Assignment and Participations. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties hereto; provided, however, that Loan Parties may not assign this Agreement or any rights or duties hereunder without Lender's prior written consent and any prohibited assignment shall be absolutely void. No consent to an assignment by Lender shall release Borrower from its Obligations. Lender shall have the right to assign all or any of its rights and obligations under the Loan Documents to one or more other Persons (other than, so long as no Event of Default is continuing hereunder, any competitor of Borrower or of any Affiliate of Borrower), and Borrower agrees to execute all agreements, instruments and documents requested by Lender in connection with each such assignments. Notwithstanding any provision of this Agreement or any other Loan Document to the contrary, Lender may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement and the other Loan Documents to secure obligations of Lender.. Lender reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in Lender's rights and benefits hereunder; provided no such participation shall release Lender from its obligations hereunder. In connection with any assignment or participation, Lender may disclose all documents and information which Lender now or hereafter may have relating to a Loan Party or a Loan Party's business. To the extent that Lender assigns its rights and obligations hereunder to another party, Lender thereafter shall be released from such assigned obligations to the Loan Parties and such assignment shall effect a novation between the Loan Parties and such other party.

(e) Notices. Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other loan document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, or electronic mail to the Loan Parties at its address set forth on **Exhibit 1** to this Agreement, or to Lender at its address set forth on **Exhibit 1** to this Agreement.

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other. All notices or demand sent in accordance with this section shall be deemed received on the earlier of the date of actual receipt or three (3) days after the deposit thereof in the mail.

(f) Records. Lender shall have no obligation to maintain any electronic records or any documents, schedules, invoices, agings or any other paper delivered to Lender by a Loan Party in connection with this Agreement or any other agreement for more than four (4) months after receipt of the same by Lender.

(g) Amendments. This Agreement can only be amended by a writing signed by Lender and Borrower.

(h) Counterparts and Signatures. This Agreement may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party hereto had signed on the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereto and may be attached to another part of this Agreement identical in form hereto and having attached to it one or more additional signature pages. This Agreement may be transmitted by facsimile machine or by electronic mail in portable document format (“pdf”) and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability or binding effect hereof.

(i) Construction. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties.

(j) Code. Unless otherwise defined herein, any terms (including Accounts, account debtor, certificated security, chattel paper, commercial tort claims, deposit Accounts, documents, electronic chattel paper, Equipment, farm products, fixtures, general intangibles, goods, health-care-insurance receivables, instruments, Inventory, letter-of-credit rights, proceeds, supporting obligations and tangible chattel paper) used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, that to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

(k) Time. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, all references to time of day refer to Eastern standard time or Eastern daylight saving time, as in effect in New York, New York on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to and including”; provided that, with respect to a computation of fees or interest payable to Lender, such period shall in any event consist of at least one full day.

(l) Schedules and Exhibits. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

(m) Dollars. All amounts referred to herein shall be in Dollars. All of the property and assets of the Loan Parties, including, without limitation, its receivables, shall be valued in, and converted into, Dollars in accordance with Lender’s customary banking and conversion practices and procedures.

(n) Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, that if Borrower notifies Lender that Borrower requests an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision, regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Lender and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lender and Loan Parties after such Accounting Change conform as nearly as possible to their respective positions immediately before such Accounting Change took effect. When used herein, the term “financial statements” shall include the notes and schedules thereto. Whenever the term “Borrower” or “Loan Party” is used in respect of a financial covenant or a related definition, it shall be understood to mean each such Person and its Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. Notwithstanding anything to the contrary contained herein, (a) all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards Board’s Accounting Standards Codification Topic 825 (or any similar accounting principle) permitting a Person to value its financial liabilities or indebtedness at the fair value thereof, and (b) the term “unqualified opinion” as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is (i) unqualified, and (ii) does not include any explanation, supplemental comment, or other comment concerning the ability of the applicable Person to continue as a going concern or concerning the scope of the audit

(o) Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

(p) Events of Default. Notwithstanding anything to the contrary contained herein, any references herein to “during the continuance of,” defaults or Events of Default “continuing” or “cure” or words to similar effect in any Loan Document, shall not be construed in any manner to allow for any cure periods that are not otherwise expressly and specifically provided for in this Agreement or any other Loan Document, or create any burden or standard of providing any waivers as to the related Events of Default. Such references are simply included to address the possibility that such cure rights may be expressly and specifically provided for in this Agreement or other Loan Documents for certain provisions, or waivers conceptually may be provided in the Lender’s sole and unfettered discretion, and the parties hereto agreement as to how such applicable provisions will be construed in the event of any such cure or waiver.

(q) Ambiguity. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Lender or a Loan Party, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

(r) Authority. Lender is authorized to make loans under the terms of this Agreement upon the request, either written or oral, in the name of Borrower by any authorized person whose name appears at the end of this Agreement or by any of the following named persons, from time to time, holding the following offices of Borrower, President, Treasurer, Chief Financial Officer and such other officers and authorized signatories as may from time to time be set forth in separate resolutions. Borrower agrees that any and all loans made by Lender to Borrower or for their account at the request of the Borrower or pursuant to the terms of this Agreement shall be conclusively deemed to have been authorized by Borrower and to have been made pursuant to duly authorized requests therefor on its behalf.

(s) Rights and Remedies. No delay or omission on the part of Lender in exercising any rights shall operate as a waiver of such right or any other right. Waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All Lender’s rights and remedies, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singularly or concurrently. It is distinctly understood and agreed that all of the rights of Lender contained in this Agreement shall likewise apply, insofar as applicable, to any modification of or supplement to this Agreement and to any other agreements between Lender and any Loan Party.

(t) Severability. Paragraph and section headings used in this Agreement are for convenience only, and shall not affect the construction of this Agreement. If one or more provisions of this Agreement (or the application thereof) shall be invalid, illegal or unenforceable in any respect in any jurisdiction, the same shall not invalidate or render illegal or unenforceable such provision (or its application) in any other jurisdiction or any other provision of this Agreement (or its application).

(u) **Integration**. This Agreement, together with the other documents and instruments executed concurrently herewith represent the entire and final understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by evidence of any prior, contemporaneous or subsequent other agreement, oral or written, before the date hereof.

(v) **Patriot Act**. Lender hereby notifies the Loan Parties that pursuant to the Patriot Act, it is required to obtain, verify and record information that identifies the Loan Parties and each other party to the transaction contemplated hereunder, which information includes the name and address of the Loan Parties and each such other party and other information that will allow Lender to identify the Loan Parties and each such other party in accordance therewith.

14. DEFINITIONS.

“**Adjusted Term SOFR**” means a variable rate of interest per annum equal to the sum of (i) Term SOFR plus (ii) the Spread Adjustment per annum.

“**Affiliate**” shall mean any Person (i) which directly or indirectly Controls, or is controlled by or is under common control with a Loan Party or a subsidiary of a Loan Party, or (ii) other than Biofrontera AG, which directly or indirectly beneficially holds or owns ten percent (10%) or more of any class of voting stock of a Loan Party or any subsidiary of a Loan Party, or (iii) ten percent (10%) percent or more of the voting stock of which (other than Biofrontera AG), is directly or indirectly beneficially owned or held by a Loan Party or a subsidiary of a Loan Party.

“**Agreement**” shall have the meaning set forth in the preamble.

“**Alternative Rate**” shall mean the sum of (i) a comparable index or reference rate selected by Lender, plus (ii) if applicable as determined by the Lender, a spread adjustment.

“**Alternative Rate Loan**” means each portion of a Loan that bears interest at a rate determined by reference to the Alternative Rate plus a per annum rate equal to the Applicable Margin – Revolving Loans, pertaining to Revolving Loans.

“**Ameluz Agreement**” shall refer individually and collectively to that certain Amended and Restated License and Supply Agreement dated June 16, 2021 by and among Biofrontera Pharma GmbH, Biofrontera Bioscience GmbH and the Borrower, as the same may be amended or modified from time to time, and any other commercial agreements entered into in connection therewith.

“**Ameluz Payments**” means payments owed by the Borrower under the Ameluz Agreement.

“**Ameluz Revenue**” means the gross revenue received generated by the Borrower from its Ameluz drug, as calculated in a manner consistent with past practice.

“**Annual Facility Fee Rate**” shall have the meaning set forth in **Exhibit 1**.

“**Anti-Corruption Laws**” means the FCPA, the U.K. Bribery Act of 2010, as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery or corruption in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business.

“**Anti-Money Laundering Laws**” means the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

“**Anti-Terrorism Laws**” means (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended), (b) the Patriot Act; (c) the International Emergency Economic Powers Act, along with any other enabling legislation or executive order relating thereto or any regulations passed thereunder, including the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V), and (d) any Sanctions.

“**Applicable Margin – Revolving Loans**” shall have the meaning set forth in **Exhibit 1**.

“**Bank Schedule**” shall have the meaning set forth in **Section 5(d)**.

“**Bankruptcy Code**” shall have the meaning set forth in **Section 10 (a)(x)**.

“**Board of Governors**” means the Board of Governors of the Federal Reserve System of the United States (or any successor).

“**Borrower**” shall have the meaning set forth in the preamble.

“**Borrowing Base**” as used herein shall mean the sum of the following:

- (1) up to 85% percent of the unpaid face amount of Qualified Accounts, PLUS
- (2) the least of (A) \$3,250,000, (B) 50% of the book value of all Eligible Inventory, and (C) 85% percent of the unpaid face amount of Qualified Accounts, LESS
- (3) the Borrowing Base Reserve.

“Borrowing Base Reserve” as used herein means, as of any date of determination, such amounts (expressed as either a specified amount or as a percentage of a specified category or item) as the Lender may from time to time in the exercise of its reasonable credit judgment establish and adjust in reducing the amount available for borrowing, (a) to reflect events, conditions, contingencies or risks which, as reasonably determined by the Lender, do or may affect (i) the Collateral or its value, or (ii) the assets, business or prospects of the Borrower, or (iii) the security interests and other rights of the Lender in the Collateral (including the enforceability, perfection and priority thereof), (b) in respect of dilution with respect to the Accounts, (c) to reflect the Lender’s reasonable judgment that any collateral report or financial information furnished by or on behalf of the Borrower to the Lender is or may have been incomplete, inaccurate or misleading in any material respect, and/or (d) in respect of any state of facts that the Lender reasonably determines constitutes an Event of Default. Absent exigent circumstances as reasonably determined by the Lender, Lender shall deliver reasonable advance notice (not less than two (2) Business Days) to Borrower of each such reserve established or adjusted, together the basis therefor.

“Business Day” shall mean any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of Connecticut or is a day on which banking institutions located in such state are closed.

“Change in Law” means the occurrence after the date hereof of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, (c) any new, or adjustment to, requirements prescribed by the Board of Governors for “Eurocurrency Liabilities” (as defined in Regulation D of the Board of Governors), requirements imposed on Lender in relation to the Federal Deposit Insurance Corporation, or similar requirements imposed on Lender in relation to any domestic or foreign governmental authority or resulting from compliance by Lender with any request or directive (whether or not having the force of law) from its lenders or related agent pertaining to any central bank or other Governmental Authority and related in any manner to SOFR, the Term SOFR Reference Rate, or Term SOFR, or (d) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided that notwithstanding anything in the Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Change of Control” means that (a) any “person” or “group” (within the meaning of Sections 13(d) and 14(d) of the Exchange Act) shall have acquired beneficial ownership, directly or indirectly, of Equity Interests of Borrower (or other securities convertible into such Equity Interests) representing fifty percent (50%) or more of the combined voting power of all Equity Interests of Borrower entitled (without regard to the occurrence of any contingency) to vote for the election of members of the board of directors of Borrower, and (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of Borrower by Persons who were neither (i) nominated by the board of directors of Borrower nor (ii) appointed by directors so nominated.

“Closing Facility Fee Rate” shall have the meaning set forth in **Exhibit 1**.

“**Code**” means the Uniform Commercial Code, as in effect from time to time in the State of New York.

“**Collateral**” shall have the meaning set forth in **Section 4(a)**.

“**Collateral Monitoring Charge**” shall have the meaning set forth in **Exhibit 1**.

“**Collection Account**” means an account in the name of the Lender and designated from time to time as the Collection Account hereunder by written notice from the Lender to the Borrower, and which is initially described on **Schedule B**.

“**Compliance Certificate**” means a Compliance Certificate in substantially the form of **Exhibit 5**.

“**Conforming Changes**” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption, or implementation of any Alternative Rate, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “Interest Period,” or any similar or analogous definition (or the addition of a concept of “interest period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment notices, the applicability and length of lookback periods, and other technical, administrative or operational matters) that Lender decides may be appropriate to reflect the adoption and implementation of such Alternative Rate and to permit the use and administration thereof by Lender in a manner substantially consistent with market practice (or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market practice for the administration of such Alternative Rate exists, in such other manner of administration as Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting securities, by contract or otherwise;

“**Credit Limit**” shall have the meaning set forth in **Exhibit 1**.

“**Debt**” means (without duplication), with respect to any Person, (i) all obligations or liabilities, contingent or otherwise, for borrowed money, (ii) all obligations represented by promissory notes, bonds, debentures or the like, or on which interest charges are customarily paid, (iii) all liabilities secured by any Lien on property owned or acquired, whether or not such liability shall have been assumed, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (v) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding trade payables which are not ninety days past the invoice date (unless disputed) incurred in the ordinary course of business and employee benefit obligations, but including the maximum probable amount payable under any earn-out or similar obligations), (vi) all capitalized leases of such Person, (vii) all obligations (contingent or otherwise) of such Person as an account party or applicant in respect of letters of credit and/or bankers acceptances, or in respect of financial or other hedging obligations, (viii) all equity interests issued by such Person subject to repurchase or redemption at any time on or prior to the final scheduled Maturity Date, other than voluntary repurchases or redemptions that are at the sole option of such Person, (ix) all principal outstanding under any synthetic lease, off-balance sheet loan or similar financing product, and (x) all guarantees, endorsements (other than for collection in the ordinary course of business) and other contingent obligations in respect of the obligations of others constituting “Debt” under one or more of the foregoing clauses. The amount of Indebtedness of Borrower and its Subsidiaries shall be calculated without duplication of contingent obligations of Borrower and any Subsidiary in respect thereof. Notwithstanding the above, “Debt” shall expressly include the Maruho Payments then outstanding.

“**Default Rate**” shall have the meaning set forth in **Section 3(a)**.

“**Default Rate Margin**” shall have the meaning set forth in **Exhibit 1**.

“**Designated Account**” shall have the meaning set forth in **Section 5(d)**.

“**Disqualified Equity Interests**” shall mean any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the commitments to lend hereunder), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 180 days after the Maturity Date.

“**Distributions**” shall mean all payment or distributions to shareholders in cash or in property other than reasonable salaries, bonuses and expense reimbursements.

“**Dollars**” shall mean lawful money of the United States.

“**Earnings Before Taxes**” means pretax earnings from operations of the Borrower, excluding extraordinary gains, and minority interests.

“**EBITDA**” means for any applicable measurement period, the sum, without duplication, of the following pertaining to such measurement period, all computed and calculated in accordance with GAAP:

- (i) Earnings Before Taxes, plus

(ii) Interest Expense deducted in the calculation of Earnings Before Taxes, plus

(iii) depreciation expense deducted in the calculation of Earnings Before Taxes, plus

(iv) amortization expenses deducted in the calculation of Earnings Before Taxes, plus

(v) all other one-time, nonrecurring, or extraordinary expenses not otherwise captured in clauses (i) through (iv) above deducted in the calculation of Earnings Before Taxes, provided that the aggregate amount of such expenses included under this clause (v) for such measurement period and the prior three quarters shall not to exceed \$250,000, minus

(vi) extraordinary gains that were taken into account (or added back) in the calculation of Earnings Before Taxes.

“**Eligible Inventory**” means Borrower’s finished Ameluz products (and not any other product lines, such as its Xepi line), which initially and at all times until sold:

(a) are new and unused (except, with Lender’s written approval, used inventory held for resale in the ordinary course of business), in first-class condition, merchantable and currently saleable through normal trade channels in the ordinary course of the operations of Borrower;

(b) are at a location (i) which has been identified in writing to Lender, (ii) in the United States, and (iii) which, if not owned by Borrower and required by the Lender, is subject to a landlord’s consent and waiver, or other collateral access agreement, in form and substance satisfactory to the Lender;

(c) are subject to a perfected first priority security interest in favor of Lender;

(d) are owned by Borrower free and clear of any prior assignment, claim, Lien, or security interest, except in favor of Lender and those subordinated to Lender;

(e) are not obsolete, not scrap, waste, defective goods and the like and not excess;

(f) have been produced by Borrower in accordance with the Federal Fair Labor Standards Act of 1938, as amended, and all rules, regulations and orders promulgated thereunder;

(g) are in conformance in all material respects with all standards imposed by any governmental authority which has regulatory authority over such goods or to the use or sale thereof;

(h) are not stored with a bailee, warehouseman or similar party unless Lender has given its prior written consent thereto (which may be conditioned on its receipt of an acceptable waiver form);

(i) are not raw goods, work-in-process, not perishable or alive; not supplies; not packaging, containers or spare parts; not sample inventory or customer supplied parts or inventory; not expired; not refurbished lamps;

(j) are not slow moving (as determined by Lender in its reasonable discretion), are not discontinued Inventory, and are not “seconds”; and

(k) have not been designated by Lender, in its reasonable discretion, as unacceptable for any reason by notice to the Borrower.

“**Environmental Law**” means any federal, state, local or other governmental statute, regulation, law or ordinance dealing with the protection of human health and the environment.

“**ERISA**” shall have the meaning set forth in **Section 6(j)**.

“**ERISA Affiliate**” means (a) any Person, trade or business (whether or not incorporated) subject to ERISA whose employees are treated as being employed by the same employer as the employees of any Loan Party under Section 414(b) of the IRC, (b) any Person, trade or business (whether or not incorporated) subject to ERISA whose employees are treated as being employed by the same employer as the employees of any Loan Party under Section 414(c) of the IRC, (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which any Loan Party is a member under Section 414(m) of the IRC, or (d) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any Person subject to ERISA that is a party to an arrangement with any Loan Party and whose employees are aggregated with the employees of any Loan Party under Section 414(o) of the IRC.

“**ERISA Termination Event**” shall mean (i) a Reportable Event with respect to any Plan; (ii) the existence with respect to any Plan of a non-exempt “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the IRC) for which Borrower could have liability that would result in a material adverse effect; (iii) the withdrawal of Borrower or any ERISA Affiliate from an Plan or Multiemployer Plan during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA; (iv) the providing of notice of intent to terminate an Plan in a distress termination described in Section 4041(c) of ERISA; (v) the institution by the Pension Benefit Guaranty Corporation of proceedings to terminate an Plan or Multiemployer Plan; (vi) any event or condition (a) which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan, or (b) that may result in termination of a Multiemployer Plan pursuant to Section 4041A of ERISA; or (vii) the partial or complete withdrawal within the meaning of Sections 4203 and 4205 of ERISA, of Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization.

“**Equity Interests**” means, with respect to a Person, shares of capital stock, partnership interests, membership or limited liability company interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such interest.

“**Event of Default**” and “**Events of Default**” shall have the respective meanings set forth in **Section 10(a)**.

“**Excess Availability**” means, as of any date of determination, the amount, by which the Borrowing Base exceeds the sum of (i) the principal balance of the Revolving Note and (ii) without duplication of any Borrowing Base Reserve, an amount required to satisfy all past due obligations of the Borrower (including book overdrafts and delinquent payroll taxes), and repay accounts payable to within the stated invoice terms.

“**Executive Order**” shall have the meaning set forth in **Section 6(k)**.

“**FCPA**” means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

“**Floor**” means a rate of interest equal to 2.25%.

“**Foreign Account**” shall have the meaning set forth in the definition of Qualified Account.

“**Full Payment**” means with respect to any Obligations, (a) the full and indefeasible cash payment thereof (other than inchoate indemnification and reimbursement obligations and other obligations which, by their terms, survive termination of this Agreement, except as provided in clause (b) below), including any interest, fees and other charges accruing during an insolvency proceeding (whether or not allowed in the proceeding); and (b) if such Obligations relate to Letters of Credit or are inchoate or contingent in nature, the delivery of cash to Lender, as security for the payment of Obligations, in an amount equal to (i) with respect to Letters of Credit, one hundred five (105%) percent of the L/C Amount, and (ii) with respect to any inchoate or contingent obligations, Lender’s good faith estimate of the amount due or to become due, including all fees and other amounts relating to such Obligations (or delivery of a standby letter of credit acceptable to Lender in its discretion, in the amount of required cash Collateral). No Loans shall be deemed to have been paid in full until all commitments related to such Loans have expired or been terminated.

“**GAAP**” means generally accepted accounting principles, applied on a basis consistent with the accounting practices applied in the financial statements required to be delivered hereunder.

“**Governmental Authority**” means the government of any nation or any political subdivision thereof, whether at the national, state, territorial, provincial, county, municipal or any other level, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of, or pertaining to, government (including any supra-national bodies such as the European Union or the European Central Bank).

“**Guarantor**” means each Person that becomes a guarantor in respect of the Obligations after the date hereof.

“**Hazardous Substances**” means pollutants, contaminants, hazardous substances, hazardous wastes, petroleum and fractions thereof, and all other chemicals, wastes, substances and materials listed in, regulated by or identified in any Environmental Law; and

“**IRC**” means the Internal Revenue Code of 1986, as amended and in effect from time to time.

“**Intellectual Property Rights**” shall have the meaning set forth in **Section 6(m)**.

“**Interest Expense**” means for the applicable measurement period, Borrower’s total gross interest expense during such period (excluding interest income), and shall in any event include (a) interest expense (whether or not paid) on all Debt, (b) the amortization of debt discounts, (c) the amortization of all fees payable in connection with the incurrence of Debt to the extent included in interest expense, and (d) the portion of any capitalized lease obligation allocable to interest expense.

“**Interest Period**” means a period commencing on the first day of a calendar month and ending on the last day of such calendar month, provided that if the closing date hereunder is not on the first day of a calendar month, then the initial Interest Period hereunder shall be deemed to have commenced on the first day of the calendar month in which the closing date is (i.e, if closing is April 25, 2023, the first Interest Period will have commenced on April 1, 2023).

“**IP License Agreement**” any license agreement granting to Borrower a license of Intellectual Property Rights that is used in Borrower’s Inventory.

“**L/C Amount**” is defined in **Section 1(a)(i)**.

“**L/C Sublimit**” shall have the meaning set forth in **Exhibit 1**.

“**Lender**” shall have the meaning set forth in the preamble.

“**Letter of Credit**” and “**Letters of Credit**” are defined in **Section 1(b)**.

“**Licensed Intellectual Property**” shall have the meaning set forth in **Section 6(m)**.

“**Lien**” shall have the meaning set forth in **Section 9(b)**.

“**Loan Documents**” means this Agreement, the Revolving Note, each guaranty signed by a Guarantor, work through agreements, any pledge agreements, each subordination agreement, each intercreditor agreement, each security agreement, any liquidation license agreement, together with every other agreement, note, document, contract or instrument to which Borrower or any other Loan Party now or in the future may be a party and which may be required by the Lender in connection with, or as a condition to, the execution of this Agreement, each as may be amended, modified, replaced, substituted, superseded or restated from time to time.

“**Loan**” and “**Loans**” shall refer to the Revolving Loan.

“**Loan Party**” and “**Loan Parties**” shall mean the Borrower and each Person that becomes a Borrower or Guarantor after the date hereof.

“**Maruho Agreement**” shall refer to that certain Share and Purchase Agreement dated March 25, 2019, among Biofrontera Newderm LLC, Biofrontera AG, Maruho Co. Ltd. and Cutanea Life Sciences, Inc., as the same may be amended or modified from time to time, and any other commercial agreements entered into in connection therewith.

“**Maruho Payments**” means payments owed by the Borrower under the Maruho Agreement.

“**Material Contract**” shall mean (a) any contract or other agreement (other than the Loan Documents), written or oral, of Borrower involving monetary liability of or to any Person in an amount in excess of \$250,000 in any fiscal year, (b) any lease of Borrower pertaining to a location with Eligible Inventory of Borrower in excess of \$250,000 is located, and (c) any other contract or other agreement (other than the Loan Documents), whether written or oral, to which Borrower is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would have a material adverse effect, (d) the Maruho Agreement and (e) the Ameluz Agreement.

“**Maturity Date**” shall have the meaning set forth in **Exhibit 1**.

“**Multiemployer Plan**” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding six plan years, has made or been obligated to make contributions.

“**Net Cash Proceeds**” means the cash proceeds of any asset sale (including cash proceeds received as deferred payments pursuant to a note, installment receivable or otherwise, but only upon actual receipt) net of (a) reasonable attorney, accountant, and investment banking fees and other customary transaction costs, (b) reasonable brokerage commissions, (c) amounts required to be applied to the repayment of debt secured by a Lien not prohibited by this Agreement on the asset being sold, and (d) reasonable taxes paid or reasonably estimated to be payable as a result of such asset sale.

“Obligations” means all debts, liabilities and obligations of the Loan Parties to Lender hereunder or the other Loan Documents, including without limitation the outstanding principal amount of Revolving Loans, any reimbursement obligations that may arise out of any Letter of Credit, acceptance or similar instrument or related documents, interest, fees, charges and expenses, and also any and all other debts, liabilities and obligations of the Loan Parties to Lender of every kind and description, direct or indirect, absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising, whether or not such obligations are related to the transactions described in this Agreement, by class, or kind, or whether or not contemplated by the parties at the time of the granting of this security interest, regardless of how they arise or by what agreement or instrument they may be evidenced or whether evidenced by any agreement or instrument, and includes obligations to perform acts and refrain from taking action as well as obligations to pay money including, without limitation, all interest (including interest accruing after the filing of a petition or commencement of a case by or with respect to any Loan Party seeking relief under any applicable federal and state laws pertaining to bankruptcy, reorganization, arrangement, moratorium, readjustment of debts, dissolution, liquidation or other debtor relief, specifically including the Bankruptcy Code and any fraudulent transfer and fraudulent conveyance laws, whether or not the claim for such interest is allowed in such proceeding), fees, charges, expenses and indemnities and other obligations owing, due or payable at any time by any Loan Party under the Loan Documents.

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

“OFAC Prohibited Person” means (a) a Person on OFAC’s list of Specially Designated Nationals and Blocked Persons, or any other OFAC sanctions list, or (b) a Person with whom any Borrower would be prohibited from transacting with under OFAC sanctions regulations.

“Off-the-shelf Software” shall have the meaning set forth in **Section 6(m)**.

“Operating Cash Flow” shall mean EBITDA minus Unfinanced Capital Expenditures, all determined in accordance with GAAP.

“Owned Intellectual Property” shall have the meaning set forth in **Section 6(m)**.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001), as amended, and the rules and regulations thereunder.

“Permitted Liens” means those liens permitted pursuant to **Section 9(b)** of this Agreement.

“Permitted Protest” shall have the meaning set forth in **Section 10(c)**.

“Person” means any individual, corporation, partnership, joint venture, limited and unlimited liability company, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a governmental entity, and any such Person’s successors and assigns.

“**Plan**” shall have the meaning set forth in **Section 6(j)**.

“**Qualified Account**” means an account owing to Borrower which met the following specifications at the time it came into existence and continues to meet the same until it is collected in full:

(a) The account is not more than ninety (90) days from the date of the invoice thereof.

(b) The account arose from the performance of services or an outright sale of goods by Borrower, such goods have been shipped to the account debtor, and Borrower has possession of, or has delivered to Lender, shipping and delivery receipts evidencing such shipment.

(c) The account is not subject to any prior assignment, claim, Lien, or security interest, and Borrower will not make any further assignment thereof or create any further security interest therein, nor permit Borrower’s rights therein to be reached by attachment, levy, garnishment or other judicial process.

(d) The account is not subject to set-off, credit, allowance or adjustment by the account debtor, except discount allowed for prompt payment (and the netting described below for amount due from Borrower to the applicable account debtor) and the account debtor has not challenged its liability thereon and has not returned any of the goods from the sale of which the account arose.

(e) The account arose in the ordinary course of Borrower’s business and did not arise from the performance of services or a sale of goods to an employee of Borrower or a supplier.

(f) No notice of current bankruptcy or insolvency of the account debtor has been received by or is known to Borrower.

(g) The account is not owed by an account debtor whose chief executive office and principal place of business is outside the United States of America or Canada (such account hereinafter referred to as a “**Foreign Account**”), unless such Foreign Account is subject to credit insurance payable to Lender issued by an insurer and on terms and in an amount acceptable to Lender (including being subject to a collateral assignment in favor of the Lender).

(h) The account is not owed by an entity which is a parent, brother/sister, subsidiary or Affiliate of Borrower.

(i) The account debtor is not located in the State of New Jersey, in the State of Minnesota or in the State of West Virginia (or any other state that requires an entity to file a business activity report or similar document in order to bring suit or otherwise enforce its remedies against an account debtor in the courts or through any judicial process of such state), unless (i) the applicable Borrower has filed and shall file all legally required Notice of Business Activities Reports with the New Jersey Division of Taxation, the Minnesota Department of Revenue or the West Virginia Department of Tax and Revenue, as the case may be; or (ii) the applicable Borrower is exempt from such filing requirement, including any exemption as a result of being qualified to do business in such state, or being an exempt entity, or filing taxes in the state for the applicable year.

(j) The account when aggregated with all of the accounts of that account debtor does not exceed fifteen percent (15%) of the then aggregate of all accounts, provided that such percentage shall not apply to the account(s) set forth on **Exhibit 4** attached hereto (which shall have concentration limits as shown on **Exhibit 4**), and provided further that the Lender reserves the right in its sole discretion from time to time following the request of the Borrower to establish percentages in excess of fifteen percent or the percentages set forth on **Exhibit 4** with respect to a particular account debtor.

(k) The account is not evidenced by a promissory note.

(l) The account did not arise out of any sale made on a bill and hold, dating or delayed shipment basis.

(m) The account does not arise out of a progress billing prior to completion of the order therefor.

(n) Lender, in its reasonable discretion, has not, for any reason, deemed the account or the account debtor to be unacceptable.

PROVIDED THAT if at any time twenty five percent (25%) or more of the aggregate amount of the accounts due from any account debtor are unpaid in whole or in part more than ninety (90) days from the respective original dates of invoice, from and after such time none of the accounts (then existing or hereafter arising) due from such account debtor shall be deemed to be Qualified Accounts until such time as less than twenty five percent (25%) of the unpaid accounts due from such account debtor are (as a result of actual payments received thereon) more than ninety (90) days from the original date of invoice; accounts payable by Borrower to an account debtor shall be netted against accounts due from such account debtor and the difference (if positive) shall constitute Qualified Accounts from such account debtor for purposes of determining the Borrowing Base (notwithstanding clause (d) above); characterization of any account due from an account debtor as a Qualified Account shall not be deemed a determination by Lender as to its actual value nor in any way obligate Lender to accept any account subsequently arising from such account debtor to be, or to continue to deem such account to be, a Qualified Account; it is Borrower's responsibility to determine the creditworthiness of account debtors and all risks concerning the same and collection of accounts are with Borrower; and all accounts whether or not Qualified Accounts constitute Collateral.

"**Qualified Equity Interest**" means and refers to any Equity Interests issued by Borrower (and not by one or more of its Subsidiaries) that is not a Disqualified Equity Interest.

“**Real Property**” means any estates or interests in real property now owned or hereafter acquired by a Loan Party or any subsidiary of a Loan Party and the improvements thereto.

“**Renewal Term**” shall have the meaning set forth in **Section 12(a)**.

“**Reportable Event**” means a reportable event as defined in Section 4043 of ERISA and the regulations issued thereunder as to which the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA has not waived the notification requirement of Section 4043(a), or the failure of a Plan to meet the minimum funding standards of Section 412 of the Internal Revenue Code of 1986, as amended (without regard to whether the Plan is a plan described in Section 4021(a)(2) of ERISA) or under Section 302 of ERISA.

“**Restricted Payment**” means to (a) declare or pay any dividend or make any other payment or distribution, directly or indirectly, on account of Equity Interests issued by Borrower (including any payment in connection with any merger or consolidation involving Borrower) or to the direct or indirect holders of Equity Interests issued by Borrower in their capacity as such (other than dividends or distributions payable in Qualified Equity Interests issued by Borrower), or (b) purchase, redeem, make any sinking fund or similar payment, or otherwise acquire or retire for value (including in connection with any merger or consolidation involving a Loan Party) any Equity Interests issued by Borrower, or (c) make any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Equity Interests of Borrower now or hereafter outstanding, or (d) make, or cause or suffer to permit any of Borrower’s subsidiaries to make, any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Debt.

“**Revolving Loan**” or “**Revolving Loans**” shall have the meaning set forth in **Section 1(a)**.

“**Revolving Note**” shall have the meaning set forth in **Section 1(a)**.

“**Sanctioned Entity**” means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country or list-based sanctions program administered and enforced by OFAC or any Canadian Governmental Authority.

“**Sanctioned Person**” means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC’s consolidated Non-SDN list or any other Sanctions-related list maintained by any Governmental Authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

“**Sanctions**” means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty’s Treasury of the United Kingdom, or (d) any other Governmental Authority with jurisdiction over the Lender or any Loan Party or any of their respective Subsidiaries or Affiliates.

“**SOFR**” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**SOFR Administrator**” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**SOFR Loan**” means each portion of a Loan that bears interest at a rate determined by reference to Adjusted Term SOFR plus a per annum rate equal to the Applicable Margin – Revolving Loans, pertaining to Revolving Loans.

“**Solvent**” means, with respect to any Person as of any date of determination, that (a) at fair valuations, the sum of such Person’s debts (including contingent liabilities) is less than all of such Person’s assets, (b) such Person is not engaged or about to engage in a business or transaction for which the remaining assets of such Person are unreasonably small in relation to the business or transaction or for which the property remaining with such Person is an unreasonably small capital, (c) such Person has not incurred and does not intend to incur, or reasonably believe that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise), and (d) such Person is “solvent” or not “insolvent”, as applicable within the meaning given those terms and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“**Spread Adjustment**” shall have the meaning set forth in **Exhibit 1**.

“**Term**” shall have the meaning set forth in **Section 12(a)**.

“**Term SOFR**” means, with respect to each Interest Period, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “**Periodic Term SOFR Determination Day**”) that is two (2) Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for a tenor of one month has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for one month as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate for one month was published by the Term SOFR Administrator so long as such first preceding Business Day is not more than three (3) Business Days prior to such Periodic Term SOFR Determination Day, provided, further, that if Term SOFR determined as provided above shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Lender in its reasonable discretion).

“**Term SOFR Reference Rate**” means the forward-looking term rate based on SOFR.

“**Unfinanced Capital Expenditures**” means for any period, any expenditure of money during such period for the purchase or construction of assets, or for improvements or additions to such assets, which are not financed with borrowed funds (except for those directly financed with advances hereunder) and are capitalized on the Borrower’s balance sheet.

“**Unused Line Fee**” shall have the meaning set forth in **Section 3(c)**.

“**Unused Line Fee Rate**” shall have the meaning set forth in **Exhibit 1**.

[Signature Page to Follow]

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

BORROWER:

BIOFRONTERA INC.

By: /s/ E. Fred Leffler III

Name: E. Fred Leffler III

Title: Chief Financial Officer

LENDER:

MIDCAP BUSINESS CREDIT LLC

By: /s/ Steven A. Samson

Steven A. Samson, President

[Loan and Security Agreement]

EXHIBIT 1

Financial and Other Terms

The following capitalized terms shall have the respective and corresponding meaning set forth in the table below.

Annual Facility Fee Rate		1.00%
Closing Facility Fee Rate		2.00%
Applicable Margin - Revolving Loans		4.00%
Collateral Monitoring Charge	\$	2,000
Credit Limit	\$	6,500,000
Default Rate Margin		3.00%
L/C Sublimit	\$	250,000
Maturity Date		May 8, 2026
SOFR Rate		30-Day Term SOFR
Spread Adjustment		0.15%
Unused Line Fee Rate		0.375%

LOAN PARTY NOTICE ADDRESS:

120 Presidential Way, Suite 330
Woburn, MA 01801
Attn: Erica Monaco, Chief Executive Officer
E-mail: e.monaco@bfinc.com

LENDER NOTICE ADDRESS:

433 South Main Street
West Hartford, Connecticut 06110
Attn: Steven A. Samson, President
Telephone: (860) 503-1629
E-mail: ssamson@midcap.com

EXHIBIT 2

MIDCAP BUSINESS CREDIT LLC

REVOLVING NOTE

\$6,500,000.00

May 8, 2023
West Hartford, Connecticut

For value received, the undersigned BIOFRONTERA INC., a Delaware corporation (together with its successors and permitted assigns, the “**Borrower**”), hereby promises to pay in accordance with the Loan Agreement (defined below), to the order of MidCap Business Credit LLC, a Texas limited liability company (the “**Lender**”), at its offices in West Hartford, Connecticut, or at any other place designated at any time by the holder hereof, in lawful money of the United States of America and in immediately available funds, the principal sum of six million five hundred dollars (\$6,500,000.00) or, if less, the aggregate unpaid principal amount of all revolving loans made by Lender to Borrower under the Loan Agreement, together with interest on the principal amount hereunder remaining unpaid from time to time, computed on the basis of the actual number of days elapsed and a 360-day year, from the date hereof until this Revolving Note (as amended, modified, replaced, substituted, superseded or restated from time to time, this “**Note**”) is fully paid at the rate from time to time in effect under the Loan and Security Agreement of even date herewith (as amended, modified, replaced, substituted, superseded or restated from time to time, the “**Loan Agreement**”) by and between Lender and Borrower. The principal hereof and interest accruing thereon shall be due and payable as provided in the Loan Agreement.

This Note may be prepaid only in accordance with the Loan Agreement.

This Note is issued pursuant, and is subject, to the Loan Agreement, which provides, among other things, for acceleration of the maturity hereof pursuant to the terms thereof. This Note is the “Revolving Note” referred to in the Loan Agreement.

This Note is secured, among other things, pursuant to the Loan Agreement, and may now or hereafter be secured by one or more other security agreements, mortgages, deeds of trust, assignments or other instruments or agreements.

Borrower hereby agrees to pay all costs of collection, including attorneys’ fees and legal expenses in the event this Note is not paid when due, whether or not legal proceedings are commenced.

Presentment or other demand for payment, notice of dishonor and protest are expressly waived.

[Signature Page to Follow]

All rights and obligations hereunder shall be exclusively (without regard to rules or principles relating to conflicts of laws) governed by the laws of the State of New York and this Note shall be deemed to be under seal.

BIOFRONTERA INC.

By: _____
Name: _____
Title: _____

EXHIBIT 4

BORROWER

ACCOUNT NAME

CONCENTRATION LIMIT

n/a

EXHIBIT 5

MIDCAP BUSINESS CREDIT LLC

FORM OF COMPLIANCE CERTIFICATE

To: MidCap Business Credit
433 South Main Street
West Hartford, Connecticut 06110
Attn: Steven A. Samson, President
Telecopier: (800) 217-0500
E-mail: ssamson@midcap.com

Please refer to the Loan and Security Agreement dated as of May 8, 2023 (as amended, restated, supplemented or otherwise modified from time to time, (the "**Loan Agreement**"), between **BIOFRONTERA INC., a Delaware corporation** (together with its successors and permitted assigns, the "**Borrower**"), and **MIDCAP BUSINESS CREDIT**, a Texas limited liability company. Terms used but not otherwise defined herein are used herein as defined in the Loan Agreement.

- I. Reports. Enclosed herewith is a copy of the [annual/ monthly] financial statements of the Borrower, and any related report, as at _____, ____ (the "**Computation Date**"), which such financial statements, and report, are accurate and fairly present the financial condition of the Loan Parties [(subject to the absence of footnotes and to normal year-end adjustments)] as of the Computation Date and have been prepared in accordance with GAAP consistently applied.
- II. Events of Default. Borrower further certifies to you that no Event of Default has occurred and is continuing.
- III. Financial Tests. Borrower hereby certifies and warrants to you that attached hereto as Schedule 1 is a true and correct computation as at the Computation Date of the applicable ratios and/or financial restrictions and/or financial calculations contained in the Loan Agreement.

[Signature Page to Follow]

Borrower has caused this Certificate to be executed and delivered by its chief financial officer on _____, ____.

BIOFRONTERA INC.

By: _____
Name: _____
Title: _____

[Signature Page to Compliance Certificate]

SCHEDULE 1 – COMPLIANCE CERTIFICATE

Computation Date: [_____]

A. Section 9(m)(i) - Minimum EBITDA (for the applicable measurement period, without duplication):¹

(I)	Borrower remains subject to the Availability Block (<i>Yes/ No</i>)	_____
(II)	Borrower is subject to the Minimum EBITDA (<i>Yes/ No</i>)	_____
1.	Earnings Before Taxes	\$ _____
2.	Interest Expense	\$ _____
3.	Depreciation and amortization	\$ _____
4.	One-time, Non-Recurring or Extraordinary	\$ _____
5.	EBITDA (sum of A.II.1 through A.II.4)	\$ _____
6.	Minimum Required	\$ _____ ²

B. Section 9(m)(ii) - Minimum Ameluz Revenue (for the applicable measurement period, without duplication):

1.	Ameluz Revenue	\$ _____
2.	Minimum Ameluz Revenue Require	_____ ³

¹ Note: In effect from such date when Borrower elects in accordance with Section 9(m)(i) to permanently replace the Availability Block with the covenant requirement under Section 9(m)(i).

² Note: See Section 9(m)(i) of the Loan Agreement for applicable requirement.

³ Note: See Section 9(m)(ii) of the Loan Agreement for applicable requirement.

Certification

I, Erica L. Monaco, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Biofrontera Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me by others within those entities, particularly during the period in which this report is being prepared;
 - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 12, 2023

By: /s/ Erica L. Monaco

Erica L. Monaco
Chief Executive Officer
(Principal Executive Officer)

Certification

I, Eugene Frederick Leffler, III, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Biofrontera Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me by others within those entities, particularly during the period in which this report is being prepared;
 - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 12, 2023

By: /s/ E. Fred Leffler

E. Fred Leffler, III
Chief Financial Officer
(Principal Financial Officer)

Certification*

In connection with the Quarterly Report of Biofrontera Inc. (the "Company") on Form 10-Q for the quarter ended March 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Quarterly Report") pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. § 1350), I, Erica L. Monaco, Chief Executive Officer of the Company, do hereby certify, to the best of my knowledge:

1. The Quarterly Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and
2. The information contained in the Quarterly Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the period covered by the Quarterly Report.

Date: May 12, 2023

By: /s/ Erica L. Monaco

Erica L. Monaco
Chief Executive Officer
(Principal Executive Officer)

* This certification accompanies the Quarterly Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Biofrontera Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Quarterly Report), irrespective of any general incorporation language contained in such filing.

Certification*

In connection with the Quarterly Report of Biofrontera Inc. (the "Company") on Form 10-Q for the quarter ended March 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Quarterly Report") pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. § 1350), I, Eugene Frederick Leffler, III, Chief Financial Officer of the Company, do hereby certify, to the best of my knowledge:

1. The Quarterly Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and
2. The information contained in the Quarterly Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the period covered by the Quarterly Report.

Date: May 12, 2023

By: /s/ E. Fred Leffler

E. Fred Leffler, III
Chief Financial Officer
(Principal Financial Officer)

* This certification accompanies the Quarterly Report to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Biofrontera Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Quarterly Report), irrespective of any general incorporation language contained in such filing.
