

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

**FORM 8-K**

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

**Date of Report (Date of earliest event reported): August 9, 2022**

**GEMINI THERAPEUTICS, INC.**

(Exact name of registrant as specified in its charter)

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

**001-39438**  
(Commission  
File Number)

**85-1612845**  
(IRS Employer  
Identification No.)

**297 Boston Post Road #248, Wayland, MA<sup>1</sup>**  
(Address of principal executive offices)

**01778**  
(Zip Code)

**Registrant's telephone number, including area code: (617) 401-4400**

**Not Applicable**  
(Former Name or Former Address, if Changed Since Last Report)

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

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

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

Title of each class	Trading Symbol	Name of each exchange on which registered
<b>Common Stock, par value \$0.0001 per share</b>	<b>GMTX</b>	<b>The Nasdaq Global Market</b>

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

Emerging growth company

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

<sup>1</sup> The Company does not currently maintain a physical headquarters but maintains a mailing address at 297 Boston Post Road #248, Wayland, MA 01778.

**Item 1.01. Entry into a Material Definitive Agreement.**

***Merger Agreement***

On August 9, 2022, Gemini Therapeutics, Inc., a Delaware corporation (“Gemini” or the “Company”), Gemstone Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Gemini (“Merger Sub”), and Disc Medicine, Inc., a Delaware corporation (“Disc”), entered into an Agreement and Plan of Merger and Reorganization (the “Merger Agreement”), pursuant to which, among other matters, and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Sub will merge with and into Disc, with Disc continuing as a wholly owned subsidiary of Gemini and the surviving corporation of the merger (the “Merger”). The Merger is intended to qualify for federal income tax purposes as a tax-free reorganization under the provisions of Section 368(a) of the Internal Revenue Code of 1986, as amended.

Subject to the terms and conditions of the Merger Agreement, at the closing of the Merger, (a) each then outstanding share of Disc common stock (including shares of Disc common stock issued upon conversion of Disc preferred stock and shares of Disc common stock issued in the financing transaction described below) will be converted into the right to receive a number of shares of Gemini common stock calculated in accordance with the Merger Agreement (the “Exchange Ratio”); and (b) each then outstanding Disc stock option to purchase Disc common stock will be assumed by Gemini, subject to adjustment as set forth in the Merger Agreement. Under the terms of the Merger Agreement, prior to the closing of the transaction, the board of directors of the Company (the “Board”) may take actions to effect vesting treatment of equity awards of the Company in accordance with the terms of underlying equity award agreements or otherwise in accordance with the terms of the Merger Agreement.

Under the Exchange Ratio formula in the Merger Agreement, upon the closing of the Merger, on a pro forma basis and based upon the number of shares of Company common stock expected to be issued in the Merger, pre-Merger Gemini shareholders will own approximately 28% of the combined company and pre-Merger Disc stockholders will own approximately 72% of the combined company, before giving effect to the concurrent financing transaction described below. For purposes of calculating the Exchange Ratio, shares of Gemini common stock underlying Gemini stock options outstanding as of immediately prior to the closing of the Merger with an exercise price per share of less than or equal to \$4.50 (as adjusted for the reverse stock split described below) will be deemed to be outstanding and all shares of Disc common stock underlying outstanding Disc stock options, warrants and other derivative securities will be deemed to be outstanding. The Exchange Ratio will be adjusted to the extent that Gemini’s net cash at closing is less than \$87.4 million or greater than \$96.6 million and based on the amount of the financing transaction described below, as further described in the Merger Agreement.

In connection with the Merger, Gemini will seek the approval of its stockholders to, among other things, (a) issue the shares of Gemini common stock issuable in connection with the Merger under the rules of The Nasdaq Stock Market LLC (“Nasdaq”) and (b) amend its certificate of incorporation to effect a reverse split of Gemini common stock, as determined by the Gemini board of directors prior to the closing of the Merger (the “Gemini Voting Proposals”).

Each of Gemini and Disc has agreed to customary representations, warranties and covenants in the Merger Agreement, including, among others, covenants relating to (1) using commercially reasonable efforts to obtain the requisite approval of its stockholders, (2) non-solicitation of alternative acquisition proposals, (3) the conduct of their respective businesses during the period between the date of signing the Merger Agreement and the closing of the Merger, (4) Gemini using commercially reasonable efforts to maintain the existing listing of the Gemini common stock on Nasdaq and Gemini causing the shares of

Gemini common stock to be issued in connection with the Merger to be approved for listing on Nasdaq prior to the closing of the Merger, and (5) Gemini filing with the U.S. Securities and Exchange Commission (the “SEC”) and causing to become effective a registration statement to register the shares of Gemini common stock to be issued in connection with the Merger (the “Registration Statement”).

Consummation of the Merger is subject to certain closing conditions, including, among other things, (1) approval by Gemini stockholders of the Gemini Voting Proposals, (2) approval by the Disc stockholders of the adoption of the Merger Agreement, (3) Nasdaq’s approval of the listing of the shares of Gemini common stock to be issued in connection with the Merger, and (4) the effectiveness of the Registration Statement. Each party’s obligation to consummate the Merger is also subject to other specified customary conditions, including regarding the accuracy of the representations and warranties of the other party and the performance in all material respects by the other party of its obligations under the Merger Agreement required to be performed on or prior to the date of the closing of the Merger.

The Merger Agreement contains certain termination rights of each of Gemini and Disc. Upon termination of the Merger Agreement under specified circumstances, Gemini may be required to pay Disc a termination fee of \$3,000,000 and/or reimburse Disc’s expenses up to a maximum of \$750,000, and Disc may be required to pay Gemini a termination fee of \$7,800,000 and/or reimburse Gemini’s expenses up to a maximum of \$750,000.

At the effective time of the Merger (the “Effective Time”), the Board of Directors of Gemini is expected to consist of nine (9) members, eight (8) of whom will be designated by Disc and one (1) of whom will be designated by Gemini.

#### ***Financing Transaction***

Concurrently with the execution and delivery of the Merger Agreement, certain parties have entered into agreements with Disc pursuant to which they have agreed, subject to the terms and conditions of such agreements, to purchase prior to the consummation of the Merger shares of Disc common stock for an aggregate purchase price of approximately \$53.5 million. The consummation of the transactions contemplated by such agreements is conditioned on the satisfaction or waiver of the conditions set forth in the Merger Agreement. Shares of Disc common stock issued pursuant to this financing transaction will be converted into shares of Gemini common stock in the Merger in accordance with the Exchange Ratio.

#### ***Contingent Value Rights Agreement***

At or prior to the Effective Time, the Company will enter into a Contingent Value Rights Agreement (the “CVR Agreement”) with a rights agent (“Rights Agent”) pursuant to which the Company’s pre-Merger common stockholders will receive one contingent value right (each, a “CVR”) for each outstanding share of Gemini common stock held by such stockholder on such date. Each CVR will represent the contractual right to receive payments, in the form of shares of stock of the Company, upon the actual receipt by the Company or its affiliates of certain proceeds derived from consideration paid to the Company as a result of the disposition of the Company’s pre-Merger legacy assets, net of certain expenses and other deductions. Any payments under the CVR Agreement will be in the form of shares of the Company, determined on the basis of a volume weighted average for the five (5) trading days prior to the date of issuance.

The contingent payments under the CVR Agreement, if they become payable, will become payable to the Rights Agent for subsequent distribution to the holders of the CVRs. In the event that no such proceeds are received, holders of the CVRs will not receive any payment pursuant to the CVR Agreement. There can be no assurance that any payment of any Company shares will be made or that any holders of CVRs will receive any amounts with respect thereto.

The right to the contingent payments contemplated by the CVR Agreement is a contractual right only and will not be transferable, except in the limited circumstances specified in the CVR Agreement. The CVRs will not be evidenced by a certificate or any other instrument and will not be registered with the SEC. The CVRs will not have any voting or dividend rights and will not represent any equity or ownership interest in the Company or any of its affiliates. No interest will accrue on any amounts payable in respect of the CVRs.

### ***Support Agreements and Lock-Up Agreements***

Concurrently with the execution of the Merger Agreement, (i) certain stockholders of Disc (solely in their respective capacities as Disc stockholders) holding approximately 90% of the outstanding shares of Disc capital stock have entered into support agreements with Gemini and Disc to vote all of their shares of Disc capital stock in favor of adoption of the Merger Agreement and against any alternative acquisition proposals (the “Disc Support Agreements”) and (ii) certain stockholders of Gemini holding approximately 36% of the outstanding shares of Gemini common stock have entered into support agreements with Gemini and Disc to vote all of their shares of Gemini common stock in favor of the Gemini Voting Proposals and against any alternative acquisition proposals (the “Gemini Support Agreements”, and together with the Disc Support Agreements, the “Support Agreements”).

Concurrently with the execution of the Merger Agreement, certain executive officers, directors and stockholders of Gemini and Disc have entered into lock-up agreements (the “Lock-Up Agreements”) pursuant to which, subject to specified exceptions, they agreed not to transfer their shares of Gemini common stock for the 180-day period following the closing of the Merger.

The preceding summaries of the Merger Agreement, the Support Agreements and the Lock-Up Agreements do not purport to be complete and are qualified in their entirety by reference to the Merger Agreement, the form of Disc Support Agreement, the form of Gemini Support Agreement, the form of Lock-Up Agreement and the form of Contingent Value Rights Agreement, which are filed as Exhibits 2.1, 10.1, 10.2 10.3 and 10.4, respectively, to this Current Report on Form 8-K and which are incorporated herein by reference. The Merger Agreement has been attached as an exhibit to this Current Report on Form 8-K to provide investors and securityholders with information regarding its terms. It is not intended to provide any other factual information about Disc or Gemini or to modify or supplement any factual disclosures about Gemini in its public reports filed with the SEC. The Merger Agreement includes representations, warranties and covenants of Disc, Gemini and Merger Sub made solely for the purpose of the Merger Agreement and solely for the benefit of the parties thereto in connection with the negotiated terms of the Merger Agreement. Investors should not rely on the representations, warranties and covenants in the Merger Agreement or any descriptions thereof as characterizations of the actual state of facts or conditions of Disc, Gemini or any of their respective affiliates. Moreover, certain of those representations and warranties may not be accurate or complete as of any specified date, may be subject to a contractual standard of materiality different from those generally applicable to SEC filings or may have been used for purposes of allocating risk among the parties to the Merger Agreement, rather than establishing matters of fact.

### **Item 7.01. Regulation FD Disclosure.**

On August 10, 2022, Gemini and Disc issued a joint press release announcing the execution of the Merger Agreement. The press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K and incorporated herein by reference, except that the information contained on the websites referenced in the press release is not incorporated herein by reference.

Furnished as Exhibit 99.2 hereto and incorporated herein by reference is the investor presentation that will be used by Gemini and Disc in connection with the Merger.

The Company plans to host a live webcast presentation to discuss the Merger as well as Disc's platform and pipeline assets at 8:00 am Eastern time on August 10, 2022. The live webcast presentation can be accessed at the Events & Presentations page of Gemini's website or by dialing 1-(888) 660-6186 or 1-(929) 203-0798 internationally and referencing conference ID number 6678391. A webcast of the presentation and associated slides will be available on the Investors & Media section of Gemini's website at <http://investors.geminitherapeutics.com> and a replay will be archived for 30 days following the presentation.

The information in this Item 7.01 and Exhibits 99.1 and 99.2 attached hereto shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act or the Exchange Act, except as expressly set forth by specific reference in such filing.

### **Forward-Looking Statements**

This Current Report on Form 8-K contains forward-looking statements (including within the meaning of Section 21E of the Exchange Act and Section 27A of the Securities Act of 1933, as amended (the "Securities Act")) concerning Gemini, Disc, the proposed transaction and other matters. These forward-looking statements include express or implied statements relating to Gemini's management team's expectations, hopes, beliefs, intentions or strategies regarding the future. In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. The words "anticipate," "believe," "contemplate," "continue," "could," "estimate," "expect," "intends," "may," "might," "plan," "possible," "potential," "predict," "project," "should," "will," "would" and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. These forward-looking statements are based on current expectations and beliefs concerning future developments and their potential effects. There can be no assurance that future developments affecting Gemini, Disc or the proposed transaction will be those that have been anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond Gemini's control) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, the risk that the conditions to the closing of the transaction are not satisfied, including the failure to obtain stockholder approval for the transaction; the risk that the concurrent financing is not completed in a timely manner or at all; uncertainties as to the timing of the consummation of the transaction and the ability of each of Gemini and Disc to consummate the transaction, including the concurrent financing; risks related to Gemini's continued listing on the Nasdaq Stock Market until closing of the proposed transaction; risks related to Gemini's and Disc's ability to correctly estimate their respective operating expenses and expenses associated with the transaction, as well as uncertainties regarding the impact any delay in the closing would have on the anticipated cash resources of the combined company upon closing and other events and unanticipated spending and costs that could reduce the combined company's cash resources; the occurrence of any event, change or other circumstance or condition that could give rise to the termination of the merger agreement; the effect of the announcement or pendency of the merger on Gemini's or Disc's business relationships, operating results and business generally; costs related to the merger; the outcome of any legal proceedings that may be instituted against Gemini, Disc or any of their respective directors or officers related to the merger agreement or the transactions contemplated thereby;

the ability of Gemini or Disc to protect their respective intellectual property rights; competitive responses to the transaction; unexpected costs, charges or expenses resulting from the transaction; potential adverse reactions or changes to business relationships resulting from the announcement or completion of the transaction; legislative, regulatory, political and economic developments; and those factors described under the heading “Risk Factors” in the Gemini’s most recent Annual Report on Form 10-K filed with the SEC, as well as discussions of potential risks, uncertainties, and other important factors included in later filings, including any Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. Should one or more of these risks or uncertainties materialize, or should any of Gemini’s assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. Some of these risks and uncertainties may in the future be amplified by the ongoing COVID-19 pandemic and there may be additional risks that we consider immaterial or which are unknown. It is not possible to predict or identify all such risks. Gemini’s forward-looking statements only speak as of the date they are made, and Gemini does not undertake any obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

#### **No Offer or Solicitation**

This Current Report on Form 8-K is not intended to and does not constitute an offer to sell or the solicitation of an offer to subscribe for or buy or an invitation to purchase or subscribe for any securities or the solicitation of any vote in any jurisdiction pursuant to the proposed transaction or otherwise, nor shall there be any sale, issuance or transfer of securities in any jurisdiction in contravention of applicable law. No offer of securities shall be made except by means of a prospectus meeting the requirements of the Securities Act. Subject to certain exceptions to be approved by the relevant regulators or certain facts to be ascertained, the public offer will not be made directly or indirectly, in or into any jurisdiction where to do so would constitute a violation of the laws of such jurisdiction, or by use of the mails or by any means or instrumentality (including without limitation, facsimile transmission, telephone and the internet) of interstate or foreign commerce, or any facility of a national securities exchange, of any such jurisdiction.

#### **Important Additional Information Will be Filed with the SEC**

In connection with the proposed transaction between Gemini and Disc, Gemini intends to file relevant materials with the SEC, including a registration statement on Form S-4 that will contain a proxy statement/prospectus of Gemini and information statement of Disc. **GEMINI URGES INVESTORS AND STOCKHOLDERS TO READ THESE MATERIALS CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT GEMINI, DISC, THE PROPOSED TRANSACTION AND RELATED MATTERS.** Investors and shareholders will be able to obtain free copies of the proxy statement/prospectus/information statement and other documents filed by Gemini with the SEC (when they become available) through the website maintained by the SEC at [www.sec.gov](http://www.sec.gov). In addition, investors and shareholders should note that Gemini communicates with investors and the public using its website ([www.gemini therapeutics.com](http://www.gemini therapeutics.com)) and the investor relations website (<https://investors.gemini therapeutics.com/>) where anyone will be able to obtain free copies of the proxy statement/prospectus/information statement and other documents filed by Gemini with the SEC and stockholders are urged to read the proxy statement/prospectus/information statement and the other relevant materials when they become available before making any voting or investment decision with respect to the proposed transaction.

## Participants in the Solicitation

Gemini, Disc and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies in connection with the proposed transaction. Information about Gemini's directors and executive officers is included in Gemini's most recent Annual Report on Form 10-K, including any information incorporated therein by reference, as filed with the SEC. Additional information regarding these persons and their interests in the transaction will be included in the proxy statement/prospectus/information statement relating to the transaction when it is filed with the SEC. These documents can be obtained free of charge from the sources indicated above.

### Item 9.01. Financial Statements and Exhibits.

#### (d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
2.1*	Agreement and Plan of Merger and Reorganization, dated as of August 9, 2022, by and among Gemini Therapeutics, Inc., Gemstone Merger Sub, Inc. and Disc Medicine, Inc.
10.1	Form of Disc Support Agreement
10.2	Form of Gemini Support Agreement
10.3	Form of Lock-Up Agreement
10.4	Form of Contingent Value Rights Agreement
99.1	Joint Press Release issued on August 10, 2022
99.2	Investor Presentation, dated August 10, 2022
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

\* Exhibits and/or schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant hereby undertakes to furnish supplementally copies of any of the omitted exhibits and schedules upon request by the SEC; provided, however, that the registrant may request confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for any exhibits or schedules so furnished.

**SIGNATURE**

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 hereunto duly authorized.

GEMINI THERAPEUTICS, INC.

Date: August 10, 2022

By: /s/ Dr. Georges Gemayel

Name: Dr. Georges Gemayel

Title: Interim President and Chief Executive Officer



**AGREEMENT AND PLAN OF MERGER  
AND REORGANIZATION**

among:

**GEMINI THERAPEUTICS, INC.;**

**GEMSTONE MERGER SUB, INC.;** and

**DISC MEDICINE, INC.**

Dated as of August 9, 2022

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## TABLE OF CONTENTS

	<b>Page</b>
Section 1. Definitions and Interpretative Provisions	3
1.1 Definitions	3
1.2 Other Definitional and Interpretative Provisions	19
Section 2. Description of Transaction	20
2.1 The Merger	20
2.2 Effects of the Merger	20
2.3 Closing; Effective Time	20
2.4 Certificate of Incorporation and Bylaws; Directors and Officers	20
2.5 Conversion of Shares	21
2.6 Closing of the Company's Transfer Books	22
2.7 Surrender of Certificates	22
2.8 Appraisal Rights	24
2.9 Further Action	24
2.10 Tax Consequences; Withholding	24
2.11 Gem Net Cash	25
Section 3. Representations and Warranties of the Company	27
3.1 Due Organization; Subsidiaries	27
3.2 Organizational Documents	27
3.3 Authority; Binding Nature of Agreement	27
3.4 Vote Required	28
3.5 Non-Contravention; Consents	28
3.6 Capitalization	29
3.7 Financial Statements	31
3.8 Absence of Changes	32
3.9 Absence of Undisclosed Liabilities	32
3.10 Title to Assets	33
3.11 Real Property; Leasehold	33
3.12 Intellectual Property	33
3.13 Agreements, Contracts and Commitments	36
3.14 Compliance; Permits; Restrictions	39
3.15 Legal Proceedings; Orders	41

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
3.16 Tax Matters	42
3.17 Employee and Labor Matters; Benefit Plans	43
3.18 Environmental Matters	46
3.19 Insurance	46
3.20 No Financial Advisors	47
3.21 Transactions with Affiliates	47
3.22 Privacy and Data Security	47
3.23 Subscription Agreement	48
3.24 No Other Representations or Warranties	48
Section 4. Representations and Warranties of Gem and Merger Sub	48
4.1 Due Organization; Subsidiaries	48
4.2 Organizational Documents	49
4.3 Authority; Binding Nature of Agreement	49
4.4 Vote Required	50
4.5 Non-Contravention; Consents	50
4.6 Capitalization	51
4.7 SEC Filings; Financial Statements	52
4.8 Absence of Changes	54
4.9 Absence of Undisclosed Liabilities	54
4.10 Title to Assets	54
4.11 Real Property; Leasehold	54
4.12 Intellectual Property	55
4.13 Agreements, Contracts and Commitments	56
4.14 Compliance; Permits; Restrictions	57
4.15 Legal Proceedings; Orders	59
4.16 Tax Matters	60
4.17 Employee and Labor Matters; Benefit Plans	61
4.18 Environmental Matters	64
4.19 Insurance	64
4.20 Transactions with Affiliates	64
4.21 No Financial Advisors	64

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
4.22 Valid Issuance	65
4.23 Privacy and Data Security	65
4.24 No Other Representations or Warranties	65
Section 5. Certain Covenants of the Parties	65
5.1 Operation of Gem's Business	65
5.2 Operation of the Company's Business	67
5.3 Access and Investigation	69
5.4 No Solicitation	70
5.5 Notification of Certain Matters	71
5.6 CVR Arrangements	72
5.7 Gem Asset Disposition	72
Section 6. Additional Agreements of the Parties	72
6.1 Registration Statement; Proxy Statement	72
6.2 Company Stockholder Written Consent	74
6.3 Gem Stockholder Meeting	76
6.4 Efforts; Regulatory Approvals	77
6.5 Company Options	78
6.6 Gem Options	79
6.7 Employee Benefits	79
6.8 Indemnification of Officers and Directors	80
6.9 Disclosure	81
6.10 Listing	82
6.11 Tax Matters	82
6.12 Legends	83
6.13 Directors	83
6.14 Termination of Certain Agreements and Rights	83
6.15 Section 16 Matters	83
6.16 Allocation Certificate	83
6.17 Nasdaq Reverse Split	84
6.18 Takeover Statutes	84
6.19 Stockholder Litigation	84

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
6.20 Gem SEC Documents	84
6.21 Obligations of Merger Sub	84
Section 7. Conditions Precedent to Obligations of Each Party	84
7.1 Effectiveness of Registration Statement	84
7.2 No Restraints	85
7.3 Stockholder Approval	85
7.4 Listing	85
Section 8. Additional Conditions Precedent to Obligations of Gem and Merger Sub	85
8.1 Accuracy of Representations	85
8.2 Performance of Covenants	86
8.3 Closing Certificate	86
8.4 FIRPTA Certificate	86
8.5 No Company Material Adverse Effect	86
8.6 Company Lock-Up Agreements	86
8.7 Termination of Investor Agreements	86
8.8 Company Preferred Stock Conversion	86
8.9 Third Party Consents	86
8.10 Dividend	86
Section 9. Additional Conditions Precedent to Obligation of the Company	86
9.1 Accuracy of Representations	87
9.2 Performance of Covenants	87
9.3 Documents	87
9.4 No Gem Material Adverse Effect	87
9.5 Gem Lock-Up Agreements	87
9.6 Listing	88
Section 10. Termination	88
10.1 Termination	88
10.2 Effect of Termination	90
10.3 Expenses; Termination Fees	90
Section 11. Miscellaneous Provisions	91
11.1 Non-Survival of Representations and Warranties	91

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
11.2 Amendment	92
11.3 Waiver	92
11.4 Entire Agreement; Counterparts; Exchanges by Facsimile	92
11.5 Applicable Law; Jurisdiction	92
11.6 Assignability	93
11.7 Notices	93
11.8 Cooperation	94
11.9 Severability	94
11.10 Other Remedies; Specific Performance	94
11.11 No Third Party Beneficiaries	95

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**Exhibits:**

Exhibit A	Form of Gem Stockholder Support Agreement
Exhibit B	Form of Company Stockholder Support Agreement
Exhibit C	Form of Lock-Up Agreement
Exhibit D	Form of Subscription Agreement
Exhibit E	Form of CVR Agreement

## AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

THIS AGREEMENT AND PLAN OF MERGER AND REORGANIZATION (this “**Agreement**”) is made and entered into as of August 9, 2022, by and among **GEMINI THERAPEUTICS, INC.**, a Delaware corporation (“**Gem**”), **GEMSTONE MERGER SUB, INC.**, a Delaware corporation and wholly owned subsidiary of Gem (“**Merger Sub**”), and **DISC MEDICINE, INC.**, a Delaware corporation (the “**Company**”). Certain capitalized terms used in this Agreement are defined in Section 1.

### RECITALS

A. Gem and the Company intend to effect a merger of Merger Sub with and into the Company (the “**Merger**”) in accordance with this Agreement and the DGCL. Upon consummation of the Merger, Merger Sub will cease to exist and the Company will become a wholly owned subsidiary of Gem.

B. The Parties intend that the Merger qualify as a “reorganization” within the meaning of Section 368(a) of the Code and that this constitute a “plan of reorganization” within the meaning of Treasury Regulations Section 1.368-2(g).

C. The Gem Board has (i) determined that the Contemplated Transactions are fair to, advisable and in the best interests of Gem and its stockholders, (ii) approved and declared advisable this Agreement and the Contemplated Transactions, including the issuance of shares of Gem Common Stock to the stockholders of the Company pursuant to the terms of this Agreement, (iii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholders of Gem vote to approve this Agreement and thereby approve the Contemplated Transactions, including the issuance of shares of Gem Common Stock to the stockholders of the Company pursuant to the terms of this Agreement, (iv) determined that an amendment to Gem’s certificate of incorporation to effect the Nasdaq Reverse Split is advisable and in the best interests of Gem and its stockholders and (v) determined to recommend that the stockholders of Gem vote to approve an amendment to Gem’s certificate of incorporation to effect the Nasdaq Reverse Split and to make the other amendments provided in Section 2.4(c).

D. The Merger Sub Board has (i) determined that the Contemplated Transactions are fair to, advisable, and in the best interests of Merger Sub and its sole stockholder, (ii) approved and declared advisable this Agreement and the Contemplated Transactions and (iii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholder of Merger Sub votes to adopt this Agreement and approve the Contemplated Transactions.

E. The Company Board has (i) determined that the Contemplated Transactions are fair to, advisable and in the best interests of the Company and its stockholders, (ii) approved and declared advisable this Agreement and the Contemplated Transactions and (iii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholders of the Company vote to adopt this Agreement and approve the Contemplated Transactions.

F. Concurrently with the execution and delivery of this Agreement and as a condition and inducement to the Company’s willingness to enter into this Agreement, (i) the stockholders of Gem specified on Schedule F-1 of the Gem Disclosure Schedules are executing support agreements in favor of the Company, in substantially the form attached hereto as Exhibit A (each,



a “**Gem Stockholder Support Agreement**”), pursuant to which such Persons have, subject to the terms and conditions set forth therein, agreed to vote all of their shares of capital stock of Gem in favor of the adoption and approval of this Agreement and approve the Contemplated Transactions and the Nasdaq Reverse Split and against any competing proposals, and (ii) the stockholders of Gem specified on Schedule F-2 of the Gem Disclosure Schedule are executing lock-up agreements in substantially the form attached hereto as Exhibit C (collectively, the “**Gem Lock-Up Agreements**”).

G. Concurrently with the execution and delivery of this Agreement and as a condition and inducement to Gem’s willingness to enter into this Agreement, (i) the officers, directors and 5% or greater stockholders (together with their Affiliates) of the Company listed on Section A of the Company Disclosure Schedule (solely in their capacity as stockholders of the Company) are concurrently executing support agreements in favor of Gem in substantially the form attached hereto as Exhibit B (each, a “**Company Stockholder Support Agreement**”), pursuant to which such Persons have, subject to the terms and conditions set forth therein, agreed to vote all of their shares of Company Capital Stock in favor of the adoption and approval of this Agreement and approve the Contemplated Transactions and against any competing proposals, and (ii) the officers, directors and stockholders of the Company listed on Section B of the Company Disclosure Schedule are executing lock-up agreements in substantially the form attached hereto as Exhibit C (collectively, the “**Company Lock-Up Agreements**”).

J. It is contemplated by this Agreement that, within two (2) Business Days after the Registration Statement is declared effective under the Securities Act, the holders of shares of Company Capital Stock sufficient to adopt and approve this Agreement and the Merger as required under the DGCL and the Company’s certificate of incorporation and bylaws will execute and deliver an action by written consent adopting this Agreement, in form and substance reasonably acceptable to Gem, in order to obtain the Required Company Stockholder Vote (each, a “**Company Stockholder Written Consent**” and collectively, the “**Company Stockholder Written Consents**”).

K. Prior to the Effective Time, Gem shall enter into a contingent value rights agreement substantially in the form attached hereto as Exhibit E (subject to changes to reflect the reasonable requests of the other parties thereto) (the “**CVR Agreement**”) with an institution appointed by the parties thereto to act as Rights Agent and a person or entity which will act as the Holders’ Representative (as such terms are defined in the CVR Agreement), pursuant to which Gem shall grant each holder of Gem Common Stock as of a record date prior to the Effective Time Contingent Value Rights (as defined in the CVR Agreement) in respect of certain potential future payments.

L. Immediately prior to the execution and delivery of this Agreement, and as a condition of the willingness of Gem to enter into this Agreement, certain investors have executed the Subscription Agreement, in the form attached hereto as Exhibit D, with the Company, pursuant to which such investors have agreed to purchase certain shares of Company Capital Stock prior to the Closing in connection with the Company Pre-Closing Financing.

## AGREEMENT

The Parties, intending to be legally bound, agree as follows:

### Section 1. Definitions and Interpretative Provisions.

#### 1.1 Definitions.

a) For purposes of the Agreement (including this Section 1):

“**Acceptable Confidentiality Agreement**” means a confidentiality agreement containing terms not materially less restrictive in the aggregate to the counterparty thereto than the terms of the Confidentiality Agreement, except such confidentiality agreement need not contain any standstill, non-solicitation or no hire provisions. Notwithstanding the foregoing, a Person who has previously entered into a confidentiality agreement with Gem relating to a potential Acquisition Proposal on terms that are not materially less restrictive than the Confidentiality Agreement with respect to the scope of coverage and restrictions on disclosure and use shall not be required to enter into a new or revised confidentiality agreement, and such existing confidentiality agreement shall be deemed to be an Acceptable Confidentiality Agreement.

“**Acquisition Inquiry**” means, with respect to a Party, an inquiry, indication of interest or request for information (other than an inquiry, indication of interest or request for information made or submitted by the Company, on the one hand, or Gem, on the other hand, to the other Party) that could reasonably be expected to lead to an Acquisition Proposal.

“**Acquisition Proposal**” means, with respect to a Party, any offer or proposal, whether written or oral (other than an offer or proposal made or submitted by or on behalf of the Company or any of its Affiliates, on the one hand, or by or on behalf of Gem or any of its Affiliates, on the other hand, to the other Party) contemplating or otherwise relating to any Acquisition Transaction with such Party.

“**Acquisition Transaction**” means any transaction or series of related transactions involving:

(a) any merger, consolidation, amalgamation, share exchange, business combination, issuance of securities, acquisition of securities, reorganization, recapitalization, tender offer, exchange offer or other similar transaction: (i) in which a Party is a constituent Entity, (ii) in which a Person or “group” (as defined in the Exchange Act and the rules promulgated thereunder) of Persons directly or indirectly acquires beneficial or record ownership of securities representing more than 20% of the outstanding securities of any class of voting securities of a Party or any of its Subsidiaries or (iii) in which a Party or any of its Subsidiaries issues securities representing more than 20% of the outstanding securities of any class of voting securities of such Party or any of its Subsidiaries;

(b) any sale, lease, exchange, transfer, license, acquisition or disposition of any business or businesses or assets that constitute or account for 20% or more of the consolidated book value or the fair market value of the assets of a Party and its Subsidiaries, taken as a whole; or

(c) effect or become party to or adopt a plan of liquidation or dissolution with respect to any Party or any of its Subsidiaries.

“**Affiliate**” shall have the meaning given to such term in Rule 145 under the Securities Act.

“**Affordable Care Act**” means the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act.

“**Allocation Certificate**” shall have the meaning set forth in Section 6.16.

“**Asset Disposition Proceeds**” means the proceeds, in whatever form or amount, received by Gem prior to the Effective Time in respect of any sale, transfer, license, assignment or other transaction with respect to any of Gem’s tangible or intangible assets.

“**Business Day**” means any day other than a day on which banks in the State of New York are authorized or obligated to be closed.

“**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as set forth in Section 4980B of the Code and Part 6 of Title I of ERISA.

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

“**Company Associate**” means any current or former employee, independent contractor, officer or director of the Company or any of its Subsidiaries.

“**Company Board**” means the board of directors of the Company.

“**Company Capital Stock**” means the Company Common Stock and the Company Preferred Stock.

“**Company Capitalization Representations**” means the representations and warranties of the Company set forth in Sections 3.6(a) and 3.6(d).

“**Company Common Stock**” means the common stock, \$0.0001 par value per share, of the Company.

“**Company Contract**” means any Contract: (a) to which the Company or any of its Subsidiaries is a party, (b) by which the Company or any of its Subsidiaries is or may become bound or under which the Company or any of its Subsidiaries has, or may become subject to, any obligation or (c) under which the Company or any of its Subsidiaries has or may acquire any right or interest.

“**Company Employee Plan**” means any Employee Plan that the Company or any of its Subsidiaries sponsors, contributes to, or provides benefits under or through, or has any obligation to contribute to or provide benefits under or through, or if such plan provides benefits to or otherwise covers any current or former employee, officer, director or other service provider of the Company or any of its Subsidiaries (or their spouses, dependents, or beneficiaries) or with respect to which the Company or any of its Subsidiaries has or may have any liability (contingent or otherwise, including by reason of being an ERISA Affiliate).

“**Company Fundamental Representations**” means the representations and warranties of the Company set forth in Sections 3.1, 3.2, 3.3, 3.4, 3.5(a)(i), 3.6(a) and 3.20.

“**Company IP Rights**” means all Intellectual Property owned, licensed, or controlled by the Company or any of its Subsidiaries that is necessary for or used in the operation of the business of the Company or any of its Subsidiaries as presently conducted.

“**Company IP Rights Agreement**” means any instrument, Contract or agreement governing, related to or pertaining to any Company IP Rights.

“**Company Material Adverse Effect**” means any Effect that, considered together with all other Effects that have occurred prior to the date of determination of the occurrence of a Company Material Adverse Effect, has or would reasonably be expected to have a material adverse effect on the business, financial condition, assets, liabilities or results of operations of the Company or its Subsidiaries, taken as a whole; provided, however, that Effects arising or resulting from the following shall not be taken into account in determining whether there has been a Company Material Adverse Effect: (a) the announcement of the Agreement or the pendency of the Contemplated Transactions, (b) the taking of any action, or the failure to take any action, by the Company that is required to comply with the terms of the Agreement, (c) any natural disaster or epidemics, pandemics or other force majeure events, or any act or threat of terrorism or war, any armed hostilities or terrorist activities (including any escalation or general worsening of any of the foregoing) anywhere in the world or any governmental or other response or reaction to any of the foregoing, (d) any change in GAAP or applicable Law or the interpretation thereof, or (e) general economic or political conditions or conditions generally affecting the industries in which the Company and its Subsidiaries operate; except in each case with respect to clauses (c), (d) and (e), to the extent disproportionately affecting the Company and its Subsidiaries, taken as a whole, relative to other similarly situated companies in the industries in which the Company and its Subsidiaries operate.

“**Company Options**” means options or other rights to purchase shares of Company Capital Stock issued by the Company.

“**Company Pre-Closing Financing**” means an acquisition of Company Common Stock to be consummated prior to the Closing pursuant to the Subscription Agreement with aggregate gross cash proceeds to the Company not to exceed \$53,500,000 (not including any conversion of promissory notes (which promissory notes were outstanding as of the date of this Agreement) in connection therewith).

“**Company Registered IP**” means all Company IP Rights that are owned or exclusively licensed by the Company that are registered, filed or issued under the authority of, with or by any Governmental Authority, including all patents, registered copyrights and registered trademarks and any application or registration for any of the foregoing.

“**Company Stockholder Support Agreements**” shall have the meaning set forth in the recitals.

“**Company Stockholder Written Consent**” shall have the meaning set forth in the recitals.

“**Company Triggering Event**” shall be deemed to have occurred if: (a) the Company Board or any committee thereof shall have made a Company Board Adverse Recommendation Change or approved, endorsed or recommended any Acquisition Proposal or (b) the Company shall have entered into any letter of intent or similar document or any Contract relating to any Acquisition Proposal (other than an Acceptable Confidentiality Agreement permitted pursuant to [Section 5.4](#)).

“**Company Unaudited Interim Balance Sheet**” means the unaudited consolidated balance sheet of the Company for the three- month period ended March 31, 2022 provided to Gem prior to the date of this Agreement.

“**Confidentiality Agreement**” means the Mutual Non-Disclosure Agreement, dated as of January 31, 2022, between the Company and Gem.

“**Consent**” means any approval, consent, ratification, permission, waiver or authorization (including any Governmental Authorization).

“**Contemplated Transactions**” means the Merger and the other transactions contemplated by this Agreement.

“**Contract**” means any agreement, contract, instrument, subcontract, lease (whether for real or personal property), mortgage, license, or other legally binding commitment or undertaking of any nature to which such Person is a party or by which such Person or any of its assets are bound or affected, whether written or oral.

“**CVR Expenditure Amount**” means an amount in dollars, equal to \$250,000, to be deducted from the definition of Gem Net Cash and used by Gem solely to fund its activities pursuant to the CVR Agreement, including to maintain the viability of, and potentially sell, assign, license, or otherwise dispose of, in one or more transactions some or all of any non-cash assets of Gem that remain in possession or control of Gem as of the Closing.

“**DGCL**” means the General Corporation Law of the State of Delaware.

“**Effect**” means any effect, change, event, circumstance, or development.

“**Employee Plan**” means (A) an “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA; (B) stock option plans, stock purchase plans, equity-based plans, retention plans, profit sharing plans, bonus (including any annual bonus and retention bonus) or incentive plans, programs or arrangements, deferred compensation arrangements or agreements, employment or severance pay plans, programs or arrangements, change in control plans, programs or arrangements, supplemental income arrangements, vacation plans, and all other employee benefit plans, agreements, and arrangements, not described in (A) above; and (C) plans or arrangements providing compensation to employee and non-employee directors.

“**Encumbrance**” means any lien, pledge, hypothecation, charge, mortgage, security interest, lease, license, option, easement, reservation, servitude, adverse title, claim, infringement, interference, option, right of first refusal, preemptive right, community property interest or restriction or encumbrance of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

“**Enforceability Exceptions**” means the (a) Laws of general application relating to bankruptcy, insolvency and the relief of debtors and (b) rules of law governing specific performance, injunctive relief and other equitable remedies.

“**Entity**” means any corporation (including any non-profit corporation), partnership (including any general partnership, limited partnership or limited liability partnership), joint venture, estate, trust, company (including any company limited by shares, limited liability company or joint stock company), firm, society or other enterprise, association, organization or entity, and each of its successors.

“**Environmental Law**” means any federal, state, local or foreign Law relating to pollution or protection of human health or the environment (including ambient air, surface water, ground water, land surface or subsurface strata), including any law or regulation relating to emissions, discharges, releases or threatened releases of Hazardous Materials, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” means, with respect to any Entity, any other entity, trade or business that is, or at any applicable time was, a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes such Entity.

“**Equity Plan Amendments**” means (a) an amendment to the Gem 2021 Stock Option and Incentive Plan to provide for such number of shares of common stock of Gem equal to nine and a half percent (9.5%) on a fully diluted basis to be available for grant or issuance thereunder, as calculated to be as of immediately following the Closing, and (b) an amendment to the Gem ESPP to provide for such number of shares of common stock of Gem equal to one percent (1%) on a fully diluted basis to be available for purchase thereunder, as calculated to be as of immediately following the Closing.

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

“**Exchange Ratio**” means, subject to Section 2.5(f), the following ratio (rounded to four decimal places): the quotient obtained by dividing (a) the Company Merger Shares by (b) the Company Outstanding Shares, in which:

- “**Aggregate Valuation**” means the sum of (i) the Company Valuation, plus (ii) the Gem Valuation.
- “**Company Allocation Percentage**” means the quotient (rounded to four decimal places) determined by dividing (i) the Company Valuation by (ii) the Aggregate Valuation.
- “**Company Merger Shares**” means the product (rounded down to the nearest whole share) determined by multiplying (i) the Post-Closing Gem Shares by (ii) the Company Allocation Percentage.

- **“Company Outstanding Shares”** means, subject to Section 2.5(f), the total number of shares of Company Capital Stock outstanding immediately prior to the Effective Time expressed on a fully-diluted and as-converted to Company Common Stock basis assuming, without limitation or duplication, (i) the exercise in full of all Company Options outstanding as of immediately prior to the Effective Time that are not cancelled at the Effective Time pursuant to Section 6.5(a) (and excluding any unvested Company Options that are forfeited at the Effective Time), (ii) the conversion of all shares of Company Preferred Stock into Company Common Stock, and (iii) the issuance of shares of Company Capital Stock in respect of all other outstanding options, warrants, restricted stock units, stock appreciation rights or rights to receive such shares, whether conditional or unconditional and including any outstanding options or rights triggered by or associated with the consummation of the Merger. Company Outstanding Shares shall include all shares of the Company issued in connection with the Company Pre-Closing Financing prior to the Effective Time and exclude any shares to be issued by the Company or Gem following the Effective Time and not in connection with the Merger or the Contemplated Transactions.
- **“Company Valuation”** means (i) \$260,000,000 plus (ii) the amount of net proceeds actually received by the Company (less any fees, costs and expenses incurred or payable by the Company in connection therewith) in connection with the Company Pre-Closing Financing prior to the Effective Time as set forth in the Allocation Certificate (provided that the gross proceeds of such Company Pre-Closing Financing on which such net proceeds are calculated shall not exceed \$53,500,000).
- **“Gem Allocation Percentage”** means the quotient (rounded to four decimal places) determined by dividing (i) the Gem Valuation by (ii) the Aggregate Valuation.
- **“Gem Outstanding Shares”** means, subject to Section 2.5(f) (including, without limitation, the effects of the Nasdaq Reverse Split), the total number of shares of Gem Common Stock outstanding immediately prior to the Effective Time expressed on a fully-diluted basis, but assuming, without limitation or duplication, (i) the exercise in full of all Gem Options outstanding as of immediately prior to the Effective Time with a per share exercise price that is less than or equal to \$4.50 (as adjusted for the Nasdaq Reverse Split), and (ii) the issuance of shares of Gem Common Stock in respect of all other outstanding options (not including Gem Options excluded by clause (i) above), warrants, restricted stock units, restricted stock awards or rights to receive such shares, whether conditional or unconditional and including any outstanding options (other than Gem Options excluded by clause (i) above) or rights triggered by or associated with the consummation of the Merger (but excluding any shares of Gem Common Stock reserved for issuance other than with respect to outstanding Gem Options, restricted stock units, restricted stock awards or rights to receive such shares under the Gem Stock Plans or Gem ESPP as of immediately prior to the Effective Time).

- “**Gem Valuation**” means \$100,000,000 minus the Lower Gem Net Cash Amount (if any), plus the Higher Gem Net Cash Amount (if any), and plus the value of any Asset Disposition Proceeds.
- “**Higher Gem Net Cash Amount**” means if the Final Net Cash is more than \$96,600,000, then the amount by which the Final Net Cash is more than \$96,600,000.
- “**Lower Gem Net Cash Amount**” means if the Final Net Cash is less than \$87,400,000, then the amount by which Final Net Cash is less than \$87,400,000.
- “**Post-Closing Gem Shares**” mean the quotient determined by dividing (i) the Gem Outstanding Shares by (ii) the Gem Allocation Percentage.

Set forth on Annex A is an illustrative example of Exchange Ratio calculations.

“**Gem Associate**” means any current or former employee, independent contractor, officer or director of Gem or any of its Subsidiaries.

“**Gem Board**” means the board of directors of Gem.

“**Gem Capitalization Representations**” means the representations and warranties of Gem and Merger Sub set forth in Sections 4.6(a) and 4.6(d).

“**Gem Common Stock**” means the common stock, \$0.0001 par value per share, of Gem.

“**Gem Contract**” means any Contract: (a) to which Gem is a party, (b) by which Gem is or may become bound or under which Gem has, or may become subject to, any obligation or (c) under which Gem has or may acquire any right or interest.

“**Gem Effective Date**” means February 5, 2021.

“**Gem Employee Plan**” means any Employee Plan that Gem or any of its Subsidiaries sponsors, contributes to, or provides benefits under or through, or has any obligation to contribute to or provide benefits under or through, or if such plan provides benefits to or otherwise covers any current or former employee, officer, director or other service provider of Gem or any of its Subsidiaries (or their spouses, dependents, or beneficiaries) or with respect to which Gem or any of its Subsidiaries has or may have any liability (contingent or otherwise, including by reason of being an ERISA Affiliate).

“**Gem Fundamental Representations**” means the representations and warranties of Gem and Merger Sub set forth in Sections 4.1(a), 4.1(b), 4.2, 4.3, 4.4 and 4.21.

“**Gem IP Rights**” means all Intellectual Property owned, licensed or controlled by Gem that is necessary for or used in the operation of the business of Gem as presently conducted.

“**Gem IP Rights Agreement**” means any instrument, Contract or agreement governing, related or pertaining to any Gem IP Rights.



“**Gem Material Adverse Effect**” means any Effect that, considered together with all other Effects that have occurred prior to the date of determination of the occurrence of the Gem Material Adverse Effect, has or would reasonably be expected to have a material adverse effect on the business, financial condition, assets, liabilities or results of operations of Gem; provided, however, that Effects arising or resulting from the following shall not be taken into account in determining whether there has been a Gem Material Adverse Effect: (a) the announcement of the Agreement or the pendency of the Contemplated Transactions, (b) any change in the stock price or trading volume of Gem Common Stock (it being understood, however, that any Effect causing or contributing to any change in stock price or trading volume of Gem Common Stock may be taken into account in determining whether a Gem Material Adverse Effect has occurred, unless such Effects are otherwise excepted from this definition), (c) the taking of any action, or the failure to take any action, by Gem that is required to comply with the terms of the Agreement or the taking of any action expressly permitted by Section 5.1(b) of the Gem Disclosure Schedule, (d) any natural disaster or epidemics, pandemics or other force majeure events, or any act or threat of terrorism or war, any armed hostilities or terrorist activities (including any escalation or general worsening of any of the foregoing) anywhere in the world, or any governmental or other response or reaction to any of the foregoing, (e) any change in GAAP or applicable Law or the interpretation thereof or (f) general economic or political conditions or conditions generally affecting the industries in which Gem operates; except, in each case with respect to clauses (d), (e) and (f), to the extent disproportionately affecting Gem relative to other similarly situated companies in the industries in which Gem operates.

“**Gem Net Cash**” means, as of any applicable time of determination and without duplication, (A) the sum of (1) the cash, cash equivalents, restricted cash and marketable securities of such person and its Subsidiaries and (2) accounts receivable (including any Tax refund claims pending as of the date of this Agreement), deposits and interest, minus (B) the sum of (1) any unpaid Transaction Expenses of Gem or its Subsidiaries, (2) unpaid indebtedness for borrowed money of Gem and its Subsidiaries, (3) any accounts payable and accrued expenses (other than accrued expenses which are Transaction Expenses of Gem), including any such accounts payable or accrued expenses associated with the termination of any Gem Contracts which were in effect prior to the Effective Time (even if the applicable expenses are due and payable after the Effective Time), (4) any unpaid employer portion of payroll or employment Taxes incurred in connection with the grant, exercise, conversion, settlement or cancellation of any RSUs, options, equity compensation and other change in control or severance payments (including any bonuses payable) or any CVRs issued to holders of RSUs or options or otherwise as compensation (either incurred prior to or at the time of the Merger, and for the avoidance of doubt, not calculated as of the close of business on the Business Day prior to the Closing Date)), in each case with respect to this clause (4), incurred in connection with the Merger by Gem at or prior to the Effective Time (even if payable after the Effective Time), (5) any pre-payment, termination, “end of term” or similar fee or charge payable to any lender in connection with the repayment of indebtedness by Gem at or prior to the Effective Time, (6) contractual commitments for future payments by Gem or its Affiliates due prior to the one-year anniversary of the Closing Date; and (7) the CVR Expenditure Amount. Each component of Gem Net Cash, to the extent applicable, shall be determined in accordance with GAAP, applied on a basis consistent with the application of GAAP in the preparation of Gem’s most recent audited or reviewed financial statements. A sample calculation of Gem Net Cash and its components is set forth in Annex B for illustrative purposes only.

“**Gem Options**” means options or other rights to purchase shares of Gem Common Stock issued by Gem, other than options or other rights to purchase shares of Gem Common Stock under the Gem ESPP.

“**Gem Registered IP**” means all Gem IP Rights that are owned or exclusively licensed by Gem that are registered, filed or issued under the authority of, with or by any Governmental Authority, including all patents, registered copyrights and registered trademarks and any applications or registrations for any of the foregoing.

“**Gem RSU**” or “**Gem RSUs**” means restricted stock unit awards or similar rights to receive shares of Gem Common Stock issued by Gem.

“**Gem Stock Plans**” means each of the Gem 2021 Stock Option and Incentive Plan, the Gem 2021 Inducement Plan, and the Gem 2017 Stock Option and Grant Plan, as amended, and the Gem 2015 Employee, Director and Consultant Stock Option Plan.

“**Gem Stockholder Support Agreements**” shall have the meaning set forth in the recitals.

“**Gem Triggering Event**” shall be deemed to have occurred if: (a) Gem shall have failed to include in the Proxy Statement the Gem Board Recommendation, (b) the Gem Board or any committee thereof shall have made a Gem Board Adverse Recommendation Change or approved, endorsed or recommended any Acquisition Proposal (other than with the Company), or (c) Gem shall have entered into any letter of intent or similar document or any Contract relating to any Acquisition Proposal (other than an Acceptable Confidentiality Agreement permitted pursuant to [Section 5.4](#)).

“**Gem Unaudited Interim Balance Sheet**” means the unaudited consolidated balance sheet of Gem for the three-month period ended March 31, 2022 provided to the Company prior to the date of this Agreement.

“**Governmental Authority**” means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature, (b) federal, state, local, municipal, foreign, supra-national or other government, (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, bureau, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or Entity and any court or other tribunal, and for the avoidance of doubt, any taxing authority) or (d) self-regulatory organization (including Nasdaq).

“**Governmental Authorization**” means any: (a) permit, license, certificate, franchise, permission, variance, exception, order, approval, clearance, registration, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law or (b) right under any Contract with any Governmental Authority.

“**Hazardous Materials**” means any pollutant, chemical, substance and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical, or chemical compound, or hazardous substance, material or waste, whether solid, liquid or gas, that is subject to regulation, control or remediation under any Environmental Law, including without limitation, crude oil or any fraction thereof, and petroleum products or by-products.

**“Intellectual Property”** means (a) United States, foreign and international patents, patent applications, including all provisionals, nonprovisionals, substitutions, divisionals, continuations, continuations-in-part, reissues, extensions, supplementary protection certificates, reexaminations, term extensions, certificates of invention and the equivalents of any of the foregoing, statutory invention registrations, invention disclosures and inventions (collectively, **“Patents”**), (b) trademarks, service marks, trade names, domain names, corporate names, brand names, URLs, trade dress, logos, social media accounts and other source identifiers, including registrations and applications for registration thereof, (c) copyrights, including registrations and applications for registration thereof, (d) software, including all source code, object code and related documentation, formulae, customer lists, trade secrets, know-how, confidential information and other proprietary rights and intellectual property, whether patentable or not and (e) all United States and foreign rights arising under or associated with any of the foregoing.

**“IRS”** means the United States Internal Revenue Service.

**“Key Employee”** means, with respect to the Company or Gem, an executive officer of such Party or any employee of such Party that reports directly to the board of directors of such Party or to the Chief Executive Officer or Chief Accounting Officer of such Party.

**“Knowledge”** means, with respect to an individual, that such individual is actually aware of the relevant fact or such individual would reasonably be expected to know such fact in the ordinary course of the performance of such individual’s employment responsibilities. Any Person that is an Entity shall have Knowledge if any executive officer or director of such Person as of the date is actually aware of the relevant fact and such knowledge is imputed has or should reasonably be expected to have Knowledge of such fact or other matter.

**“Law”** means any federal, state, national, supra-national, foreign, local or municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority (including under the authority of Nasdaq or the Financial Industry Regulatory Authority).

**“Legal Proceeding”** means any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Authority or any arbitrator or arbitration panel.

**“Material Continuing Obligation”** shall mean, other than any obligations specifically set forth in the CVR Agreement, any non-competition obligation affecting any of the assets of the Company as they exist as of the date of this Agreement.

**“Merger Sub Board”** means the board of directors of Merger Sub.

**“Multiemployer Plan”** means (a) a “multiemployer plan,” as defined in Section 3(37) or 4001(a)(3) of ERISA or (b) a plan which if maintained or administered in or otherwise subject to the laws of the United States would be described in clause (a) of this definition.

**“Multiple Employer Plan”** means (a) a “multiple employer plan” within the meaning of Section 413(c) of the Code or Section 210 of ERISA or (b) a plan which if maintained or administered in or otherwise subject to the laws of the United States would be described in clause (a) of this definition.

“**Multiple Employer Welfare Arrangement**” means (a) a “multiple employer welfare arrangement” within the meaning of Section 3(40) of ERISA or (b) a plan which if maintained or administered in or otherwise subject to the laws of the United States would be described in clause (a) of this definition.

“**Nasdaq**” means The Nasdaq Stock Market.

“**Nasdaq Reverse Split**” means a reverse stock split of all outstanding shares of Gem Common Stock at a reverse stock split ratio as mutually agreed to by Gem and the Company that is effected by Gem prior to the Effective Time.

“**Order**” means any judgment, order, writ, injunction, ruling, decision or decree of (that is binding on a Party), or any plea agreement, corporate integrity agreement, resolution agreement, or deferred prosecution agreement with, or any settlement under the jurisdiction of, any court or Governmental Authority or arbitrator.

“**Ordinary Course of Business**” means, in the case of each of the Company and Gem, such actions taken in the ordinary course of its normal operations and consistent with its past practices; provided, however, that during the Pre-Closing Period, the Ordinary Course of Business of Gem shall also be deemed to include actions taken to effect the sale, transfer and/or winding down of its prior research and development assets and activities.

“**Organizational Documents**” means, with respect to any Person (other than an individual), (a) the certificate or articles of association or incorporation or organization or limited partnership or limited liability company, and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all bylaws, regulations and similar documents or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

“**Party**” or “**Parties**” means the Company, Merger Sub and Gem.

“**Permitted Alternative Agreement**” means a definitive agreement that contemplates or otherwise relates to an Acquisition Transaction that constitutes a Superior Offer.

“**Permitted Encumbrance**” means (a) any liens for current Taxes not yet due and payable or for Taxes that are being contested in good faith and for which adequate reserves have been made on the Company Unaudited Interim Balance Sheet or the Gem Unaudited Interim Balance Sheet, as applicable, in accordance with GAAP (b) minor liens that have arisen in the Ordinary Course of Business and that do not (in any case or in the aggregate) materially detract from the value of the assets subject thereto or materially impair the operations of the Company or any of its Subsidiaries or Gem, as applicable, (c) statutory liens to secure obligations to landlords, lessors or renters under leases or rental agreements, (d) deposits or pledges made in connection with, or to secure payment of, workers’ compensation, unemployment insurance or similar programs mandated by Law and (e) statutory liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies.

“**Person**” means any individual, Entity or Governmental Authority.

“**Personal Information**” means information about an identified or identifiable individual.

“**Privacy Laws**” mean Laws relating to privacy, security and/or collection, use or other processing of Personal Information.

“**Representatives**” means directors, officers, equityholders, employees, agents, consultants, attorneys, accountants, investment bankers, advisors and other representatives.

“**Sarbanes-Oxley Act**” means the Sarbanes-Oxley Act of 2002.

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

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

“**Subscription Agreement**” means the Subscription Agreement attached hereto as Exhibit D, among the Company and the Persons named therein, pursuant to which such Persons have agreed to purchase the number of shares of Company Capital Stock set forth therein in connection with the Company Pre-Closing Financing.

“**Subsequent Transaction**” means any Acquisition Transaction (with all references to 20% in the definition of Acquisition Transaction being treated as references to 70% for these purposes).

An Entity shall be deemed to be a “**Subsidiary**” of a Person if such Person directly or indirectly owns or purports to own, beneficially or of record, (a) an amount of voting securities or other interests in such Entity that is sufficient to enable such Person to elect at least a majority of the members of such entity’s board of directors or other governing body or (b) at least 50% of the outstanding equity, voting, beneficial or financial interests in such Entity.

“**Superior Offer**” means an unsolicited bona fide written Acquisition Proposal (with all references to 20% in the definition of Acquisition Transaction being treated as references to 70% for these purposes) that: (a) was not obtained or made as a direct or indirect result of a breach of (or in violation of) the Agreement, and (b) is on terms and conditions that the Gem Board or the Company Board, as applicable, determines in good faith, based on such matters that it deems relevant (including the likelihood of consummation thereof, the financing terms thereof, any termination or break-up fees and conditions to consummation), as well as any written offer by the other Party to the Agreement to amend the terms of the Agreement, and following consultation with its outside legal counsel and financial advisors, if any, are more favorable, from a financial point of view, to Gem’s stockholders or the Company’s stockholders, as applicable, than the terms of the Contemplated Transactions.

“**Tax**” means any federal, state, local, foreign or other tax, including any income tax, franchise tax, capital gains tax, gross receipts tax, value-added tax, surtax, estimated tax, unemployment tax, national health insurance tax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, business tax, withholding tax, payroll tax, customs duty, alternative or add-on minimum or other tax or similar charge, and including any fine, penalty, addition to tax or interest with respect thereto imposed by a Governmental Authority.

“**Tax Opinion**” shall have the meaning set forth in [Section 2.10\(b\)](#).

“**Tax Return**” means any return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information, and any amendment or supplement to any of the foregoing, filed or required to be filed with any Governmental Authority in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Law relating to any Tax.

“**Transfer Taxes**” shall have the meaning set forth in [Section 6.11\(b\)](#).

“**Transaction Expenses**” means, with respect to any person as of the applicable time of determination and without duplication, the sum of (A) the cash cost of any change of control, bonus, severance, retention or similar payments that become due and payable by such person or any of its Subsidiaries at or prior to the Effective Time or as a result of the Merger or the transactions contemplated hereby, and (B) subject to [Section 10.3](#), all costs, fees and expenses incurred by such person or its Subsidiaries at or prior to the Effective Time in connection with the negotiation, preparation and execution of this Agreement or any agreements, documents, certificates, opinions or other items contemplated hereby and the consummation of the Merger or the other transactions contemplated hereby and that are unpaid as of the Effective Time, including brokerage fees and commissions, finders’ fees or financial advisory fees payable by such person at or prior to the Effective Time.

“**Treasury Regulations**” means the United States Treasury regulations promulgated under the Code.

“**U.S. Tax Treatment**” shall have the meaning set forth in [Section 2.10\(a\)](#).

b) Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Accounting Firm	2.11(e)
Agreement	Preamble
Anticipated Closing Date	2.11(a)
Assumed Option	6.5(a)
Capitalization Date	4.6(a)
Cash Determination Time	2.11(a)
Certificate of Merger	2.3
Closing	2.3

<u>Term</u>	<u>Section</u>
Closing Date	2.3
Company	Preamble
Company Audited Financial Statements	3.7(e)
Company Board Adverse Recommendation Change	6.2(d)
Company Board Recommendation	6.2(c)
Company Disclosure Schedule	Section 3
Company Financials	3.7(a)
Company Interim Financial Statements	6.1(e)
Company Lock-Up Agreements	Recitals
Company Material Contract	3.13(a)
Company Plan	3.6(c)
Company Permits	3.14(b)
Company Preferred Stock	3.6(a)
Company Preferred Stock Conversion	8.8
Company Product Candidates	3.14(d)
Company Real Estate Leases	3.11
Company Regulatory Permits	3.14(d)
Company Stock Certificate	2.6
Company Stockholder Written Consents	Recitals
Company Termination Fee	10.3(b)
Costs	6.8(a)
CVR Agreement	Recitals
D&O Indemnified Parties	6.8(a)

<u>Term</u>	<u>Section</u>
Delivery Date	2.11(a)
Dispute Notice	2.11(b)
Dissenting Shares	2.8(a)
Dividends	5.1(b)(i)
Drug Regulatory Agency	3.14(c)
Effective Time	2.3
End Date	10.1(b)
Exchange Agent	2.7(a)
FDA	3.14(c)
FDCA	3.14(c)
Final Net Cash	2.11(c)
Form S-4	6.1(a)
GAAP	3.7(a)
Gem	Preamble
Gem Asset Disposition	5.7
Gem Board Adverse Recommendation Change	6.3(b)
Gem Board Recommendation	6.3(b)
Gem Disclosure Schedule	Section 4
Gem ESPP	4.6(c)
Gem Lock-Up Agreements	Recitals
Gem Material Contract	4.13
Gem Permits	4.14(b)
Gem Product Candidates	4.14(d)
Gem Regulatory Permits	4.14(d)



<u>Term</u>	<u>Section</u>
Gem Real Estate Leases	4.11
Gem SEC Documents	4.7(a)
Gem Stockholder Matters	6.3(a)
Gem Stockholder Meeting	6.3(a)
Gem Stockholder Support Agreement	Recitals
Gem Termination Fee	10.3(c)
Grant Date	3.6(f)
Investor Agreements	6.14
Liability	3.9
Merger	Recitals
Merger Consideration	2.5(a)(ii)
Merger Sub	Preamble
Net Cash Calculation	2.11(a)
Net Cash Schedule	2.11(a)
Notice Period	6.2(d)
PHSA	3.14(c)
Pre-Closing Period	5.1(a)
Privacy Policies	3.22
Proxy Statement	6.1(a)
Registration Statement	6.1(a)
Required Company Stockholder Vote	3.4
Required Gem Stockholder Vote	4.4
Response Date	2.11(b)
Stockholder Notice	6.2(b)
Surviving Corporation	2.1
Transaction Litigation	6.19

1.2 Other Definitional and Interpretative Provisions. The words “hereof,” “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Sections, Exhibits and Schedules are to Sections, Exhibits and Schedules of this Agreement unless otherwise specified. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular, the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include masculine and feminine gender. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation,” whether or not they are in fact followed by those words or words of like import. The word “or” is not exclusive. “Writing,” “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any agreement or Contract are to that agreement or Contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References to any statute are to that statute and to the rules and regulations promulgated thereunder, in each case as amended, modified, re-enacted thereof, substituted, from time to time. References to “\$” and “dollars” are to the currency of the United States. All accounting terms used herein will be interpreted, and all accounting determinations hereunder will be made, in accordance with GAAP unless otherwise expressly specified. References from or through any date shall mean, unless otherwise specified, from and including or through and including, respectively. All references to “days” shall be to calendar days unless otherwise indicated as a “Business Day.” Except as otherwise specifically indicated, for purposes of measuring the beginning and ending of time periods in this Agreement (including for purposes of “Business Day” and for hours in a day or Business Day), the time at which a thing, occurrence or event shall begin or end shall be deemed to occur in the Eastern time zone of the United States. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement. The Parties agree that the Company Disclosure Schedule or Gem Disclosure Schedule shall be arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in Section 3 or Section 4, respectively. The disclosures in any section or subsection of the Company Disclosure Schedule or the Gem Disclosure Schedule shall qualify other sections and subsections in Section 3 or Section 4, respectively, to the extent it is readily apparent from a reading of the disclosure that such disclosure is applicable to such other sections and subsections. The words “delivered” or “made available” mean, with respect to any documentation, that prior to 5:00 p.m. (New York City time) on the date that is the day prior to the date of this Agreement, a copy of such material has been posted to and made available by a Party to the other Party and its Representatives in the electronic data room maintained by such disclosing Party for the purposes of the Contemplated Transactions. The inclusion of any information in the Company Disclosure Schedule or Gem Disclosure Schedule (or any update thereto) shall not be deemed to be an admission or acknowledgement, in and of itself, that such information is required by the terms hereof to be disclosed, is material, has resulted in or would result in a Company Material Adverse Effect or Gem Material Adverse Effect, as the case may be, or its outside the Ordinary Course of Business.

## Section 2. Description of Transaction

2.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub shall be merged with and into the Company, and the separate existence of Merger Sub shall cease. The Company will continue as the surviving corporation in the Merger (the “**Surviving Corporation**”).

2.2 Effects of the Merger. The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the DGCL. As a result of the Merger, the Company will become a wholly owned subsidiary of Gem.

2.3 Closing; Effective Time. Unless this Agreement is earlier terminated pursuant to the provisions of Section 10.1, and subject to the satisfaction or waiver of the conditions set forth in Sections 7, 8 and 9, the consummation of the Merger (the “**Closing**”) shall take place remotely, as promptly as practicable (but in no event later than the second Business Day following the satisfaction or waiver of the last to be satisfied or waived of the conditions set forth in Sections 7, 8 and 9, other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of each of such conditions), or at such other time, date and place as Gem and the Company may mutually agree in writing. The date on which the Closing actually takes place is referred to as the “**Closing Date**.” At the Closing, the Parties shall cause the Merger to be consummated by executing and filing with the Secretary of State of the State of Delaware a certificate of merger with respect to the Merger, satisfying the applicable requirements of the DGCL and in form and substance as agreed to by the Parties (the “**Certificate of Merger**”). The Merger shall become effective at the time of the filing of such Certificate of Merger with the Secretary of State of the State of Delaware or at such later time as may be specified in such Certificate of Merger with the consent of Gem and the Company (the time as of which the Merger becomes effective being referred to as the “**Effective Time**”).

2.4 Certificate of Incorporation and Bylaws; Directors and Officers. At the Effective Time:

(a) By virtue of the Merger, the certificate of incorporation of the Surviving Corporation shall be amended and restated as set forth in an exhibit to the Certificate of Merger, until thereafter amended as provided by the DGCL and such certificate of incorporation;

(b) Gem shall take all actions necessary so that certificate of incorporation of Gem shall remain in effect following the Effective Time, until thereafter amended as provided by the DGCL; provided, however, that at or prior to the Effective Time, Gem shall file an amendment to its certificate of incorporation to (i) change the name of Gem to “Disc Medicine, Inc.”, (ii) effect the Nasdaq Reverse Split and (iii) make such other changes as are mutually agreeable to Gem and the Company;

(c) the bylaws of the Surviving Corporation shall be identical to the bylaws of Merger Sub as in effect immediately prior to the Effective Time, until thereafter amended as provided by the DGCL and such bylaws;

(d) the parties shall take the actions necessary so that the directors and officers of Gem, each to hold office in accordance with the certificate of incorporation and bylaws of Gem, shall be as set forth in Section 6.13; and

(e) the parties shall take the actions necessary so that the directors and officers of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation, shall be the directors and officers of Gem as set forth in Section 6.13, after giving effect to the provisions of Section 6.13.

#### 2.5 Conversion of Shares.

(a) At the Effective Time (after giving effect to the Company Preferred Stock Conversion), by virtue of the Merger and without any further action on the part of Gem, Merger Sub, the Company or any stockholder of the Company or Gem:

(i) any shares of Company Capital Stock held as treasury stock immediately prior to the Effective Time shall be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor; and

(ii) subject to Section 2.5(c), each share of Company Capital Stock (including any shares of Company Capital Stock issued pursuant to the Company Pre-Closing Financing) outstanding immediately prior to the Effective Time (excluding shares to be canceled pursuant to Section 2.5(a)(i) and excluding Dissenting Shares) shall be converted solely into the right to receive a number of shares of Gem Common Stock equal to the Exchange Ratio (the "**Merger Consideration**").

(b) If any shares of Company Capital Stock outstanding immediately prior to the Effective Time are invested or are subject to a repurchase option or a risk of forfeiture under any applicable restricted stock award agreement or other similar agreement with the Company, then the shares of Gem Common Stock issued in exchange for such shares of Company Capital Stock will to the same extent be invested and subject to the same repurchase option or risk of forfeiture, and such shares of Gem Common Stock shall accordingly be marked with appropriate legends. The Company shall take all actions that may be necessary to ensure that, from and after the Effective Time, Gem is entitled to exercise any such repurchase option or other right set forth in any such restricted stock award agreement or other agreement.

(c) No fractional shares of Gem Common Stock shall be issued in connection with the Merger, and no certificates or scrip for any such fractional shares shall be issued. Notwithstanding any other provision of this Agreement, each holder of shares of Company Capital Stock converted pursuant to the Merger who would otherwise have been entitled to receive a fraction of a share of Gem Common Stock (after taking into account all Certificates delivered by such holder and the aggregate number of shares of Company Capital Stock represented thereby) shall receive, in lieu thereof, cash (without interest and subject to applicable Tax withholding) in an amount equal to such fractional part of a share of Gem Common Stock multiplied by the last reported sale price of Gem Common Stock at the 4:00 p.m., Eastern time, end of regular trading hours on Nasdaq on the last trading day prior to the Effective Time

(d) All Company Options and all stock appreciation rights outstanding immediately prior to the Effective Time under the Company Plan shall be treated in accordance with Section 6.5.

(e) Each share of common stock, \$0.001 par value per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock, \$0.001 par value per share, of the Surviving Corporation. Each stock certificate of Merger Sub evidencing ownership of any such shares shall, as of the Effective Time, evidence ownership of such shares of common stock of the Surviving Corporation until presented for transfer or exchange.

(f) If, between the date of this Agreement and the Effective Time, the outstanding shares of Company Capital Stock or Gem Common Stock shall have been changed into, or exchanged for, a different number of shares or a different class, by reason of any stock dividend, subdivision, reclassification, recapitalization, split (including the Nasdaq Reverse Split to the extent such split has not previously been taken into account in calculating the Exchange Ratio), combination or exchange of shares or other like change, the Exchange Ratio shall, to the extent necessary, be equitably adjusted to reflect such change to the extent necessary to provide the holders of Company Capital Stock, Company Options and Gem Common Stock with the same economic effect as contemplated by this Agreement prior to such stock dividend, subdivision, reclassification, recapitalization, split, combination or exchange of shares or other like change; provided, however, that nothing herein will be construed to permit the Company or Gem to take any action with respect to Company Capital Stock or Gem Common Stock, respectively, that is prohibited or not expressly permitted by the terms of this Agreement.

2.6 Closing of the Company's Transfer Books. At the Effective Time: (a) all shares of Company Capital Stock outstanding immediately prior to the Effective Time shall be treated in accordance with Section 2.5(a), and all holders of certificates representing shares of Company Capital Stock that were outstanding immediately prior to the Effective Time shall cease to have any rights as stockholders of the Company (other than the right to receive the Merger Consideration) and (b) the stock transfer books of the Company shall be closed with respect to all shares of Company Capital Stock outstanding immediately prior to the Effective Time. No further transfer of any such shares of Company Capital Stock shall be made on such stock transfer books after the Effective Time. If, after the Effective Time, a valid certificate previously representing any shares of Company Capital Stock outstanding immediately prior to the Effective Time (a "**Company Stock Certificate**") is presented to the Exchange Agent or to the Surviving Corporation, such Company Stock Certificate shall be canceled and shall be exchanged as provided in Sections 2.5 and 2.7.

#### 2.7 Surrender of Certificates.

(a) On or prior to the Closing Date, Gem shall select a reputable bank, transfer agent or trust company to act as exchange agent in the Merger (the "**Exchange Agent**"). At the Effective Time, Gem shall deposit with the Exchange Agent evidence of book-entry shares representing the shares of Gem Common Stock issuable pursuant to Section 2.5(a) in exchange for shares of Company Capital Stock.

(b) Promptly after the Effective Time, the Parties shall cause the Exchange Agent to mail to the Persons who were record holders of shares of Company Capital Stock that were converted into the right to receive the Merger Consideration: (i) a letter of transmittal in customary form and containing such provisions as Gem may reasonably specify (including a provision confirming that delivery of Company Stock Certificates shall be effected, and risk of loss and title to Company Stock Certificates shall pass, only upon delivery of such Company Stock Certificates to the Exchange Agent) and (ii) instructions for effecting the surrender of Company Stock Certificates in exchange for book-entry shares of Gem Common Stock. Upon surrender of a Company Stock Certificate to the Exchange Agent for exchange, together with a duly executed letter of transmittal and such other documents as may be reasonably required by the Exchange Agent or Gem: (A) the holder of such Company Stock Certificate shall be entitled to receive in exchange therefor book-entry shares representing the Merger Consideration (in a number of whole shares of Gem Common Stock) that such holder has the right to receive pursuant to the provisions of [Section 2.5\(a\)](#) and (B) the Company Stock Certificate so surrendered shall be canceled. Until surrendered as contemplated by this [Section 2.7\(b\)](#), each Company Stock Certificate shall be deemed, from and after the Effective Time, to represent only the right to receive book-entry shares of Gem Common Stock representing the Merger Consideration. If any Company Stock Certificate shall have been lost, stolen or destroyed, Gem may, in its discretion and as a condition precedent to the delivery of any shares of Gem Common Stock, require the owner of such lost, stolen or destroyed Company Stock Certificate to provide an applicable affidavit with respect to such Company Stock Certificate and post a bond indemnifying Gem against any claim suffered by Gem related to the lost, stolen or destroyed Company Stock Certificate or any Gem Common Stock issued in exchange therefor as Gem may reasonably request.

(c) No dividends or other distributions declared or made with respect to Gem Common Stock with a record date after the Effective Time shall be paid to the holder of any unsurrendered Company Stock Certificate with respect to the shares of Gem Common Stock that such holder has the right to receive in the Merger until such holder surrenders such Company Stock Certificate or provides an affidavit of loss or destruction in lieu thereof in accordance with this [Section 2.7](#) (at which time such holder shall be entitled, subject to the effect of applicable abandoned property, escheat or similar Laws, to receive all such dividends and distributions, without interest).

(d) Any shares of Gem Common Stock deposited with the Exchange Agent that remain undistributed to holders of Company Stock Certificates as of the date that is 180 days after the Closing Date shall be delivered to Gem upon demand, and any holders of Company Stock Certificates who have not theretofore surrendered their Company Stock Certificates in accordance with this [Section 2.7](#) shall thereafter look only to Gem for satisfaction of their claims for Gem Common Stock and any dividends or distributions with respect to shares of Gem Common Stock.

(e) No Party shall be liable to any holder of any Company Stock Certificate or to any other Person with respect to any shares of Gem Common Stock (or dividends or distributions with respect thereto) or for any cash amounts delivered to any public official pursuant to any applicable abandoned property Law, escheat Law or similar Law.

## 2.8 Appraisal Rights.

(a) Notwithstanding any provision of this Agreement to the contrary, shares of Company Capital Stock that are outstanding immediately prior to the Effective Time and which are held by stockholders who have exercised and perfected appraisal rights for such shares of Company Capital Stock in accordance with the DGCL (collectively, the “**Dissenting Shares**”) shall not be converted into or represent the right to receive the Merger Consideration described in Section 2.5 attributable to such Dissenting Shares. Such stockholders shall be entitled to receive payment of the appraised value of such shares of Company Capital Stock held by them as determined by the Delaware Court of Chancery in accordance with the DGCL, unless and until such stockholders fail to perfect or effectively withdraw or otherwise lose their appraisal rights under the DGCL. All Dissenting Shares held by stockholders who shall have failed to perfect or who effectively shall have withdrawn or lost their right to appraisal of such shares of Company Capital Stock under the DGCL shall thereupon be deemed to be converted into and to have become exchangeable for, as of the Effective Time, the right to receive the Merger Consideration, without interest, attributable to such Dissenting Shares upon their surrender in the manner provided in Section 2.5.

(b) The Company shall give Gem prompt written notice of any demands by dissenting stockholders received by the Company, withdrawals of such demands and any other instruments served on the Company and any material correspondence received by the Company in connection with such demands. The Company shall not, without Gem’s prior written consent, make any payment with respect to, or settle or offer to settle, any such demands, or agree to do any of the foregoing.

2.9 Further Action. If, at any time after the Effective Time, any further action is determined by the Surviving Corporation to be necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full right, title and possession of and to all rights and property of the Company, then the officers and directors of the Surviving Corporation shall be fully authorized, and shall use their and its commercially reasonable efforts (in the name of the Company, in the name of Merger Sub, in the name of the Surviving Corporation and otherwise) to take such action.

## 2.10 Tax Consequences: Withholding.

(a) For U.S. federal (and applicable state and local) income tax purposes, the Merger is intended to constitute a reorganization within the meaning of Section 368(a) of the Code (the “**U.S. Tax Treatment**”). The Parties hereby (i) adopt this Agreement insofar as it relates to the Merger as a “plan of reorganization” within the meaning of Treasury Regulations Section 1.368-2(g), (ii) agree to file and retain such information as shall be required under Treasury Regulations Section 1.368-3, and (iii) agree to file all Tax Returns on a basis consistent with the U.S. Tax Treatment, unless otherwise required by a “determination” that is final within the meaning of Section 1313(a) of the Code. Notwithstanding the foregoing or anything else to the contrary contained in this Agreement, the Parties acknowledge and agree that, other than the representations set forth in Sections 3.16(l) and 4.16(k), no Party is making any representation or warranty as to the qualification of the Merger as a reorganization under Section 368(a) of the Code or as to the effect, if any, that any transaction consummated on, after or prior to the Effective Time has or may have on any such reorganization status. Each of the Parties acknowledges and agrees that each such Party (A) has had the opportunity to obtain independent legal and tax advice with respect to the transactions contemplated by this Agreement and (B) is responsible for paying its own Taxes, including any adverse Tax consequences that may result if the Merger is determined not to qualify as a reorganization under Section 368(a) of the Code.

(b) If, in connection with the preparation and filing of the Registration Statement or any other filing required by applicable Law or the SEC's review thereof, the SEC requests or requires that a tax opinion with respect to the U.S. federal income tax consequences of the Merger be prepared and submitted (a "Tax Opinion"), (i) the Company and Gem shall each use their reasonable best efforts to deliver to Goodwin Procter LLP and Wilmer Cutler Pickering Hale and Dorr LLP, respectively, in connection with any Tax Opinion to be rendered by such counsel, customary Tax representation letters satisfactory to such counsel, dated and executed as of the date such relevant filing shall have been declared effective by the SEC and such other date(s) as determined to be reasonably necessary by such counsel in connection with the preparation and filing of such Registration Statement or any other filing required by applicable Law, and (ii) the Company and Gem shall each use its reasonable best efforts to cause Goodwin Procter LLP and Wilmer Cutler Pickering Hale and Dorr LLP, respectively, to furnish a Tax Opinion, subject to customary assumptions and limitations, to the effect that the U.S. Tax Treatment should apply to the Merger. For the avoidance of doubt, in no event shall any such Tax Opinion be a condition to Closing.

(c) Each of the Exchange Agent, Gem and the Surviving Corporation shall be entitled to deduct and withhold from the amounts otherwise payable pursuant to this Agreement to any holder of shares of Company Capital Stock and any other recipient of payments hereunder such amounts as it reasonably determines that it is required to deduct and withhold with respect to the making of such payment under the Code, or any other applicable provision of Law. To the extent that amounts are so withheld and paid to the appropriate taxing authority by the Exchange Agent, the Surviving Corporation or Gem, as the case may be, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of Company Capital Stock or other recipient of payments hereunder in respect of which such deduction and withholding was made by the Exchange Agent, the Surviving Corporation or Gem, as the case may be. Prior to the Exchange Agent, Gem or the Surviving Corporation making any deduction or withholding determined to be required under applicable Law, the Parties shall cooperate in good faith to eliminate or reduce any such deduction or withholding (including through the request and provision of any statements, forms or other documents to reduce or eliminate any such deduction or withholding).

#### 2.11 Gem Net Cash.

(a) Not more than ten (10) nor less than five (5) Business Days prior to the anticipated date for Closing (as mutually agreed in good faith by Gem and the Company) (the "Anticipated Closing Date"), Gem will deliver to the Company a schedule (the "Net Cash Schedule") setting forth, in reasonable detail, Gem's good faith estimated calculation of Gem Net Cash (the "Net Cash Calculation" and the date of delivery of such schedule, the "Delivery Date") as of 5:00 p.m. Eastern Time on the last Business Day prior to the Anticipated Closing Date (the "Cash Determination Time"), prepared and certified by Gem's chief executive officer and chief financial officer (or if there is no chief financial officer at such time, the principal financial and accounting officer for Gem). Gem shall make available to the Company, or its accountants and/or counsel, the work papers and reasonable back-up materials used or useful in preparing the Net Cash Schedule, as reasonably requested by the Company (and at reasonable times and upon reasonable notice).



(b) Within three (3) Business Days after the Delivery Date (the last day of such period, the “Response Date”), the Company shall have the right to dispute any part of the Net Cash Calculation by delivering a written notice to that effect to Gem (a “Dispute Notice”). Any Dispute Notice shall identify in reasonable detail and to the extent known the nature and amounts of any proposed revisions to the Net Cash Calculation.

(c) If, on or prior to the Response Date, the Company notifies Gem in writing that it has no objections to the Net Cash Calculation or, if prior to 5:00 p.m. Eastern Time on the Response Date, the Company has failed to deliver a Dispute Notice as provided in [Section 2.11\(b\)](#), then the Net Cash Calculation as set forth in the Net Cash Schedule shall be deemed to have been finally determined for purposes of this Agreement and to represent the Net Cash at the Cash Determination Time (the “**Final Net Cash**”) for purposes of this Agreement.

(d) If the Company delivers a Dispute Notice on or prior to 5:00 p.m. Eastern Time on the Response Date, then Representatives of Gem and the Company shall promptly, and in no event later than one (1) calendar day after the Response Date, meet (in person, virtually or telephonically) and attempt in good faith to resolve the disputed item(s) and negotiate an agreed-upon determination of Gem Net Cash, which agreed upon Gem Net Cash amount shall be deemed to have been finally determined for purposes of this Agreement and to represent the Final Net Cash for purposes of this Agreement.

(e) If Representatives of Gem and the Company are unable to negotiate an agreed-upon determination of Final Net Cash pursuant to [Section 2.11\(c\)](#) within two (2) calendar days after delivery of the Dispute Notice (or such other period as Gem and the Company may mutually agree upon), then any disputed items remaining under disagreement as to the calculation of Gem Net Cash shall be referred to an independent auditor of recognized national standing jointly selected and mutually agreed upon by Gem and the Company (the “**Accounting Firm**”). Gem shall promptly deliver to the Accounting Firm the work papers and back-up materials used in preparing the Net Cash Schedule, and Gem and the Company shall use commercially reasonable efforts to cause the Accounting Firm to make its determination within five (5) calendar days of accepting its selection. Gem and the Company shall be afforded the opportunity to present to the Accounting Firm any material related to the unresolved disputes and to discuss the issues with the Accounting Firm; provided, however, that no such presentation or discussion shall occur without the presence of a Representative of each of Gem and the Company. The determination of the Accounting Firm shall be limited to the disagreements submitted to the Accounting Firm. The determination of Gem Net Cash made by the Accounting Firm shall be made in writing delivered to each of Gem and the Company, shall be final and binding on Gem and the Company and shall be deemed to have been finally determined for purposes of this Agreement and to represent the Final Net Cash for purposes of this Agreement. The Parties shall delay the Closing until the resolution of the matters described in this [Section 2.11\(e\)](#). The fees and expenses of the Accounting Firm shall be allocated between Gem and the Company in the same proportion that the disputed amount of the Gem Net Cash that was unsuccessfully disputed by such Party (as finally determined by the Accounting Firm) bears to the total disputed amount of the Gem Net Cash amount. If this [Section 2.11\(e\)](#) applies as to the determination of the Final Net Cash described in [Section 2.11\(e\)](#), upon resolution of the matter in accordance with this [Section 2.11\(e\)](#), the Parties shall not be required to determine Gem Net Cash again even though the Closing Date may occur later than the Anticipated Closing Date, except that either Gem and the Company may require a redetermination of the Final Net Cash if the Closing Date is more than ten (10) calendar days after the Anticipated Closing Date.

Section 3. Representations and Warranties of the Company.

Subject to Section 3, except as set forth in the written disclosure schedule delivered by the Company to Gem (the “**Company Disclosure Schedule**”), the Company represents and warrants to Gem and Merger Sub as follows.

3.1 Due Organization: Subsidiaries.

(a) Each of the Company and its Subsidiaries is a corporation or other legal entity duly incorporated or otherwise organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization and has all necessary power and authority: (i) to conduct its business in the manner in which its business is currently being conducted, (ii) to own or lease and use its property and assets in the manner in which its property and assets are currently owned or leased and used and (iii) to perform its obligations under all Contracts by which it is bound.

(b) Each of the Company and its Subsidiaries is duly licensed and qualified to do business and is in good standing (to the extent applicable in such jurisdiction), under the Laws of all jurisdictions where the nature of its business requires such licensing or qualification other than in jurisdictions where the failure to be so qualified individually or in the aggregate would not be reasonably expected to have a Company Material Adverse Effect.

(c) The Company has no Subsidiaries, except for the Entities identified in Section 3.1(c) of the Company Disclosure Schedule; and neither the Company nor any of the Entities identified in Section 3.1(c) of the Company Disclosure Schedule owns any capital stock of, or any equity, ownership or profit sharing interest of any nature in, or controls directly or indirectly, any other Entity other than the Entities identified in Section 3.1(c) of the Company Disclosure Schedule. Neither the Company nor any of its Subsidiaries is or has been, directly or indirectly, a party to, member of or participant in any partnership, joint venture or similar business entity. Neither the Company nor any of its Subsidiaries has agreed or is obligated to make, or is bound by any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Entity. Neither the Company nor any of its Subsidiaries has, at any time, been a general partner of, or has otherwise been liable for any of the debts or other obligations of, any general partnership, limited partnership or other Entity.

3.2 Organizational Documents. The Company has delivered to Gem accurate and complete copies of the Organizational Documents of the Company and each of its Subsidiaries. Neither the Company nor any of its Subsidiaries is in breach or violation of its Organizational Documents in any material respect.

3.3 Authority: Binding Nature of Agreement. The Company and each of its Subsidiaries have all necessary corporate power and authority to enter into and to perform its obligations under this Agreement and to consummate the Contemplated Transactions. The Company Board has (i) determined that the Contemplated Transactions are fair to, advisable and in the best interests of the Company and its stockholders, (ii) approved and declared advisable

this Agreement and the Contemplated Transactions and (iii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholders of the Company vote to adopt this Agreement and thereby approve the Contemplated Transactions. This Agreement has been duly executed and delivered by the Company and assuming the due authorization, execution and delivery by Gem and Merger Sub, constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions. Prior to the execution of the Company Stockholder Support Agreements, the Company Board approved the Company Stockholder Support Agreements and the transactions contemplated thereby.

3.4 Vote Required. The affirmative vote of (i) the holders of a majority of the shares of Company Common Stock outstanding on the record date for the Company Stockholder Written Consent and entitled to vote thereon, voting as a single class, and (ii) the holders of Company Preferred Stock constituting the Requisite Holders (including at least one Specified Series B Holder) each as defined in the Company's Second Amended and Restated Certificate of Incorporation, as in effect from time to time (the "**Required Company Stockholder Vote**"), is the only vote of the holders of any class or series of Company Capital Stock necessary to adopt and approve this Agreement and approve the Contemplated Transactions.

3.5 Non-Contravention; Consents.

(a) Subject to compliance with obtaining the Required Company Stockholder Vote and the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, neither (x) the execution, delivery or performance of this Agreement by the Company, nor (y) the consummation of the Contemplated Transactions, will directly or indirectly (with or without notice or lapse of time):

(i) contravene, conflict with or result in a violation of any of the provisions of the Company's Organizational Documents;

(ii) contravene, conflict with or result in a material violation of, or give any Governmental Authority or other Person the right to challenge the Contemplated Transactions or to exercise any remedy or obtain any relief under, any Law or any Order by which the Company or its Subsidiaries, or any of the assets owned or used by the Company or its Subsidiaries, is subject;

(iii) contravene, conflict with or result in a material violation of any of the terms or requirements of, or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by the Company or its Subsidiaries;

(iv) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Company Material Contract, or give any Person the right to: (A) declare a default or exercise any remedy under any Company Material Contract, (B) any material payment, rebate, chargeback, penalty or change in delivery schedule under any Company Material Contract, (C) accelerate the maturity or performance of any Company Material Contract or (D) cancel, terminate or modify any term of any Company Material Contract, except in the case of any non-material breach, default, penalty or modification; or

(v) result in the imposition or creation of any Encumbrance upon or with respect to any asset owned or used by the Company or its Subsidiaries (except for Permitted Encumbrances).

(b) Except for (i) the Required Company Stockholder Vote, (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, and (iii) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities laws, neither the Company nor any of its Subsidiaries was, is, or will be required to make any filing with or give any notice to, or to obtain any Consent from, any Person in connection with (x) the execution, delivery or performance of this Agreement or (y) the consummation of the Contemplated Transactions.

(c) The Company Board has taken and will take all actions necessary to ensure that the restrictions applicable to business combinations contained in Section 203 of the DGCL are, and will be, inapplicable to the execution, delivery and performance of this Agreement and the Company Stockholder Support Agreements and to the consummation of the Contemplated Transactions. No other state takeover statute or similar Law applies or purports to apply to the Merger, this Agreement, the Company Stockholder Support Agreements or any of the Contemplated Transactions.

### 3.6 Capitalization.

(a) The authorized Company Capital Stock as of the date of this Agreement consists of (i) 109,395,840 shares of Company Common Stock, par value \$0.0001 per share, of which 8,759,908 shares have been issued and are outstanding as of the date of this Agreement, and (ii) 84,166,666 shares of Preferred Stock, par value \$0.0001 per share (the “**Company Preferred Stock**”), of which (a) 5,000,000 shares have been designated Series Seed Preferred Stock, all of which are issued and outstanding, (b) 41,666,666 shares have been designated Series A Preferred Stock, all of which are issued or outstanding, and (c) 37,500,000 shares have been designated Series B Preferred Stock, all of which are issued and outstanding as of the date of this Agreement. The Company does not hold any shares of its capital stock in its treasury.

(b) All of the outstanding shares of Company Common Stock and Company Preferred Stock and all outstanding securities of the Subsidiaries as set out in Section 3.6(b) of the Company Disclosure Schedule have been duly authorized and validly issued, and are fully paid and nonassessable and are free of any Encumbrances. None of the outstanding shares of Company Common Stock or Company Preferred Stock is entitled or subject to any preemptive right, right of participation, right of maintenance or any similar right and none of the outstanding shares of Company Common Stock or Company Preferred Stock is subject to any right of first refusal in favor of the Company. Except as contemplated herein, there is no Company Contract relating to the voting or registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or granting any option or similar right with respect to), any shares of Company Common Stock or Company Preferred Stock. The Company is not under any obligation, nor is it bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding shares of Company Common Stock or other securities. Section 3.6(b) of the Company Disclosure Schedule accurately and completely lists all repurchase rights held by the Company with respect to shares of Company Common Stock (including shares issued pursuant to the exercise of stock options) and specifies which of those repurchase rights are currently exercisable. Each share of Company Preferred Stock is convertible into one share of Company Common Stock.

(c) Except for the Company's 2017 Stock Option and Grant Plan, as amended (the "**Company Plan**"), the Company does not have any stock option plan or any other plan, program, agreement or arrangement providing for any equity-based compensation for any Person. As of the date of this Agreement, the Company has reserved 17,503,334 shares of Company Common Stock for issuance under the Company Plan, of which 1,034,067 shares have been issued and are currently outstanding, 14,935,273 have been reserved for issuance upon exercise of Company Options granted under the Company Plan, and 1,533,994 shares of Company Common Stock remain available for future issuance pursuant to the Company Plan. Section 3.6(c) of the Company Disclosure Schedule sets forth the following information (A) with respect to each Company Option outstanding as of the date of this Agreement: (i) the name of the optionee, (ii) the number of shares of Company Common Stock subject to such Company Option at the time of grant, (iii) the number of shares of Company Common Stock subject to such Company Option as of the date of this Agreement, (iv) the exercise price of such Company Option, (v) the date on which such Company Option was granted, (vi) the applicable vesting schedule, including any acceleration provisions, and the number of vested and unvested options as of the date of this Agreement, (vii) the expiration date of such Company Option and (viii) whether such Company Option is intended to be an "incentive stock option" (as defined in the Code) or a non-qualified stock option and (B) with respect to each stock appreciation right granted by the Company as of the date of this Agreement (a "**Company SAR**"), (i) the name of the recipient of the grant of the Company SAR, (ii) the number of shares of Company Common Stock subject to such Company SAR at the time of grant, (iii) the number of shares of Company Common Stock subject to such Company SAR as of the date of this Agreement, (iv) the exercise price of such Company SAR, (v) the date on which such Company SAR was granted, (vi) the applicable vesting schedule, including any acceleration provisions, and the number of vested and unvested options as of the date of this Agreement, (vii) the expiration date of such Company SAR. The Company has made available to Gem an accurate and complete copy of the Company Plan, forms of all award agreements evidencing outstanding equity awards thereunder, any equity award agreements that differ in any material respect from the forms of award agreements and evidence of board and stockholder approval of the Company Plan and any amendments thereto. No vesting of Company Options will accelerate in connection with the closing of the Contemplated Transactions.

(d) Except for the outstanding Company Options and Company SARs set forth on Section 3.6(c) of the Company Disclosure Schedule, there is no: (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock or other securities of the Company or any of its Subsidiaries, (ii) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of the Company or any of its Subsidiaries, (iii) stockholder rights plan (or similar plan commonly referred to as a "poison pill") or Contract under which the Company or any of its Subsidiaries is or may become obligated to sell or otherwise issue any shares of its capital stock or any other securities or (iv) condition or circumstance that may give rise to or provide a basis for the assertion of a claim by any Person to the effect that such Person is entitled to acquire or receive any shares of capital stock or other securities of the Company or any of its Subsidiaries. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or other similar rights with respect to the Company or any of its Subsidiaries. No consent of the holders of Company Options is required in connection with the actions contemplated by Article II.

(e) All outstanding shares of Company Common Stock, Company Preferred Stock, Company Options, Company SARs and other securities of the Company have been issued and granted in material compliance with (i) all applicable securities laws and other applicable Law and (ii) all requirements set forth in applicable Contracts.

(f) With respect to Company Options and Company SARs, (i) each grant was duly authorized no later than the date on which the grant of such Company Option or Company SAR was by its terms to be effective (the “**Grant Date**”) by all necessary corporate action, (ii) each grant was made in all material respects in accordance with the terms of the Company Plan and (iii) the per share exercise price of each Company Option or Company SAR was not less than the fair market value of a share of Company Common Stock on the applicable Grant Date determined in a manner consistent with Section 409A of the Code and has not otherwise been subject to “modification” or “extension” within the meaning of Section 409A of the Code or has any feature for the deferral of compensation other than the deferral of recognition of income until the later of exercise or disposition of such option.

### 3.7 Financial Statements.

(a) Section 3.7(a) of the Company Disclosure Schedule includes accurate and complete copies of (i) the Company’s audited consolidated balance sheets at December 31, 2020 and December 31, 2021, (ii) the Company Unaudited Interim Balance Sheet, (iii) the Company’s audited consolidated statements of income, cash flow and stockholders’ equity for the years ended 2021 and 2020 and (iv) the Company’s unaudited statements of income, cash flow and stockholders’ equity for the three months ended March 31, 2022 (collectively, the “**Company Financials**”). The Company Financials (A) were prepared in accordance with United States generally accepted accounting principles (“**GAAP**”) (except as may be indicated in the footnotes to such Company Financials and that unaudited financial statements may not have notes thereto) applied on a consistent basis unless otherwise noted therein throughout the periods indicated and (B) fairly present, in all material respects, the financial position and operating results of the Company and its consolidated Subsidiaries as of the dates and for the periods indicated therein.

(b) Each of the Company and its Subsidiaries maintains a system of internal accounting controls designed to provide reasonable assurance that: (i) transactions are executed in accordance with management’s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of the financial statements of the Company and its Subsidiaries in conformity with GAAP and to maintain accountability of the Company’s and its Subsidiaries’ assets, (iii) access to the Company’s and its Subsidiaries’ assets is permitted only in accordance with management’s general or specific authorization and (iv) the recorded accountability for the Company’s and its Subsidiaries’ assets is compared with the existing assets at regular intervals and appropriate action is taken with respect to any differences. The Company and each of its Subsidiaries maintains internal control over financial reporting that provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

(c) Section 3.7(c) of the Company Disclosure Schedule lists, and the Company has delivered to Gem accurate and complete copies of the documentation creating or governing, all securitization transactions and “off-balance sheet arrangements” (as defined in Item 303(c) of Regulation S-K under the Exchange Act) effected by the Company or any of its Subsidiaries since January 1, 2019.

(d) Since January 1, 2019, there have been no formal internal investigations regarding financial reporting or accounting policies and practices discussed with, reviewed by or initiated at the direction of the chief executive officer, chief financial officer or general counsel of the Company, the Company Board or any committee thereof. Since January 1, 2019, neither the Company nor its independent auditors have identified (i) any significant deficiency or material weakness in the design or operation of the system of internal accounting controls utilized by the Company and its Subsidiaries, (ii) any fraud, whether or not material, that involves the Company, any of its Subsidiaries, the Company’s management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company and its Subsidiaries or (iii) any claim or allegation regarding any of the foregoing.

(e) The Company has made available to Gem audited financial statements of the Company for each of its fiscal years required to be included in the Proxy Registration Statement (the “**Company Audited Financial Statements**”).

3.8 Absence of Changes. Except as set forth on Section 3.8 of the Company Disclosure Schedule, between the date of the Company Unaudited Interim Balance Sheet and the date of this Agreement, the Company has conducted its business only in the Ordinary Course of Business (except for the execution and performance of this Agreement and the discussions, negotiations and transactions related thereto) and there has not been any (a) Company Material Adverse Effect or an event or development that would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, or (b) action, event or occurrence that would have required consent of Gem pursuant to Section 5.2(b) of this Agreement had such action, event or occurrence taken place after the execution and delivery of this Agreement.

3.9 Absence of Undisclosed Liabilities. Neither the Company nor any of its Subsidiaries has any liability, indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any kind, whether accrued, absolute, contingent, matured, unmatured or otherwise (each a “**Liability**”), in each case, of a type required to be reflected or reserved for on a balance sheet prepared in accordance with GAAP, except for: (a) Liabilities disclosed, reflected or reserved against in the Company Unaudited Interim Balance Sheet, (b) normal and recurring current Liabilities that have been incurred by the Company or its Subsidiaries since the date of the Company Unaudited Interim Balance Sheet in the Ordinary Course of Business (none of which relates to any breach of contract, breach of warranty, tort, infringement, or violation of Law), (c) Liabilities for performance of obligations of the Company or any of its Subsidiaries under Company Contracts, and (d) Liabilities incurred in connection with the Contemplated Transactions.

3.10 Title to Assets. Each of the Company and its Subsidiaries owns, and has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all tangible properties or assets and equipment used or held for use in its business or operations or purported to be owned by it, including: (a) all assets reflected on the Company Unaudited Interim Balance Sheet and (b) all other assets reflected in the books and records of the Company or any of its Subsidiaries as being owned by the Company or such Subsidiary. All of such assets are owned or, in the case of leased assets, leased by the Company or any of its Subsidiaries free and clear of any Encumbrances, other than Permitted Encumbrances.

3.11 Real Property; Leasehold. Neither the Company nor any of its Subsidiaries owns or has ever owned any real property. The Company has made available to Gem (a) an accurate and complete list of all real properties with respect to which the Company directly or indirectly holds a valid leasehold interest as well as any other real estate that is in the possession of or leased by the Company or any of its Subsidiaries and (b) copies of all leases under which any such real property is possessed (the “**Company Real Estate Leases**”), each of which is in full force and effect, with no existing material default thereunder.

### 3.12 Intellectual Property.

(a) Section 3.12(a) of the Company Disclosure Schedule is a complete listing of all Company Registered IP, in each case enumerating specifically the applicable filing or registration number, title, jurisdiction in which filing was made or from which registration issued, date of filing or issuance, and names of all current registered owners(s), as applicable, or in the case of domain names or social media accounts, the URL or social media account, the registrar or social media company and the date on which such URL or social media account expires (if any).

(b) Section 3.12(b) of the Company Disclosure Schedule sets forth (i) all material Company Contracts pursuant to which Company IP Rights are licensed to the Company or any of its Subsidiaries (other than (A) any non-customized software that (1) is so licensed solely in executable or object code form pursuant to a non-exclusive, internal use software license and other Intellectual Property associated with such software and (2) is not incorporated into, or material to the development, manufacturing, or distribution of, any of the Company’s or any of its Subsidiaries’ products or services, (B) any Intellectual Property licensed on a non-exclusive basis ancillary to the purchase or use of equipment, reagents or other materials, (C) any confidential information provided under confidentiality agreements and (D) agreements between Company and its employees in Company’s standard form thereof), (ii) the corresponding Company Contract pursuant to which such Company IP Rights are licensed to the Company or any of its Subsidiaries and (iii) whether the license or licenses granted to the Company or any of its Subsidiaries are exclusive or non-exclusive.

(c) Section 3.12(c) of the Company Disclosure Schedule sets forth each Company Contract pursuant to which any Person has been granted any license or covenant not to sue under, or otherwise has received or acquired any right (whether or not currently exercisable) or interest in, any Company IP Rights (other than (i) any confidential information provided under confidentiality agreements and (ii) any Company IP Rights non-exclusively licensed to academic collaborators, suppliers or service providers for the sole purpose of enabling such academic collaborator, supplier or service providers to provide services for the Company’s benefit).

(d) Neither the Company nor any of its Subsidiaries is bound by, and no Company IP Rights are subject to, any Contract containing any covenant or other provision that in any way limits or restricts the ability of the Company or any of its Subsidiaries to use, exploit, assert, defend, or enforce any Company IP Rights anywhere in the world.



(e) The Company or one of its Subsidiaries exclusively owns all right, title, and interest to and in Company IP Rights (other than (i) Company IP Rights exclusively and non-exclusively licensed to the Company or one of its Subsidiaries, or co-owned rights, each as set forth in Section 3.12(b) of the Company Disclosure Schedule, (ii) any non-customized software that (A) is licensed to the Company or any of its Subsidiaries solely in executable or object code form pursuant to a non-exclusive, internal use software license and other Intellectual Property associated with such software and (B) is not incorporated into, or material to the development, manufacturing, or distribution of, any of the Company's or any of its Subsidiaries' products or services and (iii) any Intellectual Property licensed on a non-exclusive basis ancillary to the purchase or use of equipment, reagents or other materials), in each case, free and clear of any Encumbrances (other than Permitted Encumbrances). Without limiting the generality of the foregoing:

(i) All documents and instruments necessary to register or apply for or renew registration of Company Registered IP have been validly executed, delivered, and filed in a timely manner with the appropriate Governmental Authority.

(ii) Each Person who is or was an employee or contractor of the Company or any of its Subsidiaries and who is or was involved in the creation or development of any Company IP Rights purported to be owned by the Company has signed a valid, enforceable agreement containing a present assignment of such Intellectual Property to the Company or such Subsidiary and confidentiality provisions protecting trade secrets and confidential information of the Company and its Subsidiaries.

(iii) To the Knowledge of the Company, no current or former stockholder, officer, director, or employee of the Company or any of its Subsidiaries has any claim, right (whether or not currently exercisable), or interest to or in any Company IP Rights owned or purported to be owned by the Company. To the Knowledge of the Company, no employee of the Company or any of its Subsidiaries is (a) bound by or otherwise subject to any Contract restricting such employee from performing such employee's duties for the Company or such Subsidiary or (b) in breach of any Contract with any former employer or other Person concerning Company IP Rights owned or purported to be owned by the Company or confidentiality provisions protecting trade secrets and confidential information comprising Company IP Rights owned or purported to be owned by the Company.

(iv) No funding, facilities, or personnel of any Governmental Authority were used, directly or indirectly, to develop or create, in whole or in part, any Company IP Rights in which the Company or any of its Subsidiaries has an ownership interest.

(v) The Company and each of its Subsidiaries has taken reasonable steps to maintain the confidentiality of and otherwise protect and enforce its rights in all proprietary information that the Company or such Subsidiary holds, or purports to hold, as confidential or a trade secret. There has been no unauthorized disclosure of any trade secret of the Company. No trade secret that is material to the Company has been disclosed to any third party under any confidentiality agreement with a limited term of protection.

(vi) Neither the Company nor any of its Subsidiaries has assigned or otherwise transferred ownership of, or agreed to assign or otherwise transfer ownership of, any Company IP Rights to any other Person.

(vii) To the Knowledge of the Company, the Company IP Rights constitute all Intellectual Property necessary for the Company and its Subsidiaries to conduct its business as currently conducted and planned to be conducted.

(f) The Company has delivered or made available to Gem a complete and accurate copy of all Company IP Rights Agreements. With respect to each of the Company IP Rights Agreements: (i) each such agreement is valid and binding on the Company or its Subsidiaries, as applicable, and the applicable counterparty so such Company IP Rights Agreement, and in full force and effect, (ii) the Company has not received any written notice of termination or cancellation under such agreement, or received any written notice of breach or default under such Company IP Rights Agreement, which breach has not been cured or waived and (iii) neither the Company nor its Subsidiaries, and to the Knowledge of the Company, no other party to any such agreement, is in breach or default thereof in any material respect.

(g) The manufacture, marketing, license, sale, offering for sale, importation, use, or intended use or other disposal of any product or technology as currently licensed or sold or under development by the Company or any of its Subsidiaries does not violate any license or agreement between the Company or any of its Subsidiaries and any third party, and, to the Knowledge of the Company, does not infringe, misappropriate or otherwise violate any Intellectual Property right of any other Person, other than any Company Intellectual Property licensed to the Company by any other Person. To the Knowledge of the Company, no third party is infringing, misappropriating or otherwise violating any Intellectual Property owned by Company within the Company IP Rights, or breaching any license or agreement with the Company or its Subsidiaries relating to any Company IP Rights.

(h) As of the date of this Agreement, Company is not a party to any Legal Proceeding (including, but not limited to, opposition, interference or other proceeding in any patent or other government office) contesting the validity, enforceability, claim construction, ownership or right to use, sell, offer for sale, license or dispose of any Company IP Rights. Neither the Company nor any of its Subsidiaries has received any written notice asserting that any Company IP Rights or the proposed use, sale, offer for sale, license or disposition of products, methods, or processes claimed or covered thereunder conflicts with or infringes, misappropriates or otherwise violates the rights of any other Person or that the Company or any of its Subsidiaries have otherwise infringed, misappropriated or otherwise violated any Intellectual Property of any Person. None of the Company IP Rights is subject to any outstanding Order of or agreement with any Governmental Authority or arbitrator that limits the ability of the Company to exploit any Company IP Rights.

(i) Each item of Company IP Rights that is Company Registered IP is and at all times has been filed and maintained in compliance with all applicable Law and all filings, payments, and other actions required to be made or taken to maintain such item of Company Registered IP in full force and effect have been made by the applicable deadline. To the Knowledge of the Company, all Company Registered IP that is issued or granted is valid and enforceable.

(j) To the Knowledge of the Company, no trademark (whether registered or unregistered) or trade name owned, used, or applied for by the Company or any of its Subsidiaries conflicts or interferes with any trademark (whether registered or unregistered) or trade name owned, used, or applied for by any other Person. None of the goodwill associated with or inherent in any trademark (whether registered or unregistered) in which the Company or any of its Subsidiaries has or purports to have an ownership interest has been impaired as determined by the Company or any of its Subsidiaries in accordance with GAAP. The Company has not granted any license under any trademark or trade name owned or purported to be owned by the Company.

(k) Except as set forth in Sections 3.12(b) or 3.12(c) of the Company Disclosure Schedule or as contained in license, distribution and service agreements entered into in the Ordinary Course of Business by the Company (i) neither the Company nor any of its Subsidiaries is bound by any Contract to indemnify, defend, hold harmless, or reimburse any other Person with respect to any Intellectual Property infringement, misappropriation, or similar claim which is material to the Company and its Subsidiaries, taken as a whole and (ii) neither the Company nor any of its Subsidiaries has ever assumed, or agreed to discharge or otherwise take responsibility for, any existing or potential liability of another Person for infringement, misappropriation, or violation of any Intellectual Property right, which assumption, agreement or responsibility remains in force as of the date of this Agreement.

(l) Neither the Company nor any of its Subsidiaries is party to any Contract that, as a result of such execution, delivery and performance of this Agreement, will cause the grant of any license or other right to any Company IP Rights, result in breach of, default under or termination of such Contract with respect to any Company IP Rights, or impair the right of the Company or the Surviving Corporation and its Subsidiaries to use, sell or license, defend or enforce any Company IP Rights, except for the occurrence of any such grant or impairment that would not individually or in the aggregate reasonably be expected to result in a Company Material Adverse Effect.

### 3.13 Agreements, Contracts and Commitments.

(a) Section 3.13(a) of the Company Disclosure Schedule lists the following Company Contracts in effect as of the date of this Agreement (each, a “**Company Material Contract**” and collectively, the “**Company Material Contracts**”):

(i) each Company Contract requiring payments by the Company after the date of this Agreement in excess of \$250,000 pursuant to its express terms relating to the employment of, or the performance of employment-related services by, any Person, including any employee, consultant or independent contractor, or Entity providing employment related, consulting or independent contractor services, not terminable by the Company or its Subsidiaries on ninety (90) calendar days’ or less notice without liability, except to the extent general principles of wrongful termination Law may limit the Company’s, its Subsidiaries’ or such successor’s ability to terminate employees at will;

(ii) each Company Contract relating to any agreement of holding harmless, indemnification, defending, reimbursing or guaranty not entered into in the Ordinary Course of Business;

(iii) each Company Contract containing (A) any covenant limiting the freedom of the Company, its Subsidiaries or the Surviving Corporation to engage in any line of business or compete with any Person, or limiting the development, manufacture or distribution of the Company's products or services, (B) any "most-favored nation" arrangement, including any most-favored pricing provision, (C) any exclusivity provision, (D) any non-solicitation provision, (E) any right of first refusal, right of first negotiation or similar right or (F) any grant of any option to any Intellectual Property rights;

(iv) each Company Contract required to be set forth in Sections 3.12(b) or 3.12(c) of the Company Disclosure Schedule;

(v) each Company Contract relating to capital expenditures and requiring payments after the date of this Agreement in excess of \$250,000 pursuant to its express terms and not cancelable without penalty;

(vi) each Company Contract relating to the disposition or acquisition of material assets or any ownership interest in any Entity;

(vii) each Company Contract relating to any mortgages, indentures, loans, notes or credit agreements, security agreements or other agreements or instruments relating to the borrowing of money or extension of credit in excess of \$250,000, creating any Encumbrance with respect to any Company IP Right or creating any material Encumbrances with respect to any other assets of the Company or any of its Subsidiaries or any loans or debt obligations with officers or directors of the Company;

(viii) each Company Contract requiring payment by or to the Company after the date of this Agreement in excess of \$250,000 pursuant to its express terms relating to: (A) any distribution agreement (identifying any that contain exclusivity provisions), (B) any agreement involving provision of services or products with respect to any pre-clinical or clinical development activities of the Company, (C) any dealer, distributor, joint marketing, alliance, joint venture, collaboration, cooperation, development or other agreement currently in force under which the Company has continuing obligations to research, develop or market any product, technology or service, or any agreement pursuant to which the Company has continuing obligations to develop any Intellectual Property that will not be owned, in whole or in part, by the Company or (D) any Contract to license any patent, trademark registration, service mark registration, trade name or copyright registration to or from any third party to manufacture or produce any product, service or technology of the Company or any Contract to sell, distribute or commercialize any products or service of the Company, in each case, except for Company Contracts entered into in the Ordinary Course of Business;

(ix) each Company Contract with any Person, including any financial advisor, broker, finder, investment banker or other Person, providing advisory services to the Company in connection with the Contemplated Transactions;

(x) each Company Real Estate Lease;

(xi) each Company Contract that would be a material contract as defined in Item 601(b)(10) of Regulation S-K as promulgated under the Securities Act if the Company were subject to such regulation;

(xii) each Company Contract under which a third party would be entitled to receive a license or have any other rights in Intellectual Property of the Company, Gem or any of their Subsidiaries at the time of or immediately after the Effective Time;

(xiii) each Company Contract under which the consequences of a default or termination would reasonably be likely to have a Company Material Adverse Effect;

(xiv) each Company Contract, plan, program, or policy providing for severance, termination compensation, retention or stay pay, change in control payments, or transaction-based bonuses;

(xv) each settlement Company Contract or settlement-related Company Contract (including any Company Contract in connection with which any employment-related claim has been settled) under which either party to the settlement Company Contract or settlement-related Company Contract has continuing obligations;

(xvi) any dealer, distribution, joint marketing, joint venture, joint development, partnership, strategic alliance, collaboration, development agreement or outsourcing arrangement or other similar Company Contract;

(xvii) each Company Contract which would give rise to or otherwise result in proxy statement disclosure pursuant to Item 404 of Regulation S-K (assuming the Company was subject to the requirements of the Exchange Act); or

(xviii) any other Company Contract (A) which involves payment or receipt by the Company or its Subsidiaries after the date of this Agreement under any such agreement, contract or commitment of more than \$250,000 in the aggregate, or obligations after the date of this Agreement in excess of \$250,000 in the aggregate or (B) that is material to the business or operations of the Company and its Subsidiaries, taken as a whole.

(b) The Company has delivered or made available to Gem accurate and complete copies of all Company Material Contracts, including all amendments thereto. There are no Company Material Contracts that are not in written form. Neither the Company nor any of its Subsidiaries has, nor to the Company's Knowledge, as of the date of this Agreement has any other party to a Company Material Contract, breached, violated or defaulted under, or received notice that it breached, violated or defaulted under, any of the terms or conditions of any Company Material Contract in such manner as would permit any other party to cancel or terminate any such Company Material Contract, or would permit any other party to seek damages which would reasonably be expected to have a Company Material Adverse Effect. As to the Company and its Subsidiaries, as of the date of this Agreement, each Company Material Contract is valid, binding.

enforceable and in full force and effect, subject to the Enforceability Exceptions. No Person is renegotiating, or has a right pursuant to the terms of any Company Material Contract to change, any material amount paid or payable to the Company under any Company Material Contract or any other material term or provision of any Company Material Contract.

### 3.14 Compliance; Permits; Restrictions.

(a) The Company and each of its Subsidiaries are, and since January 1, 2019 have been, in compliance in all material respects with all applicable Laws. No investigation, claim, suit, proceeding, audit, Order, or other action by any Governmental Authority is pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries. There is no agreement or Order binding upon the Company or any of its Subsidiaries which (i) has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company or any of its Subsidiaries, any acquisition of material property by the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries as currently conducted, (ii) is reasonably likely to have an adverse effect on the Company's ability to comply with or perform any covenant or obligation under this Agreement or (iii) is reasonably likely to have the effect of preventing, delaying, making illegal or otherwise interfering with the Contemplated Transactions.

(b) The Company and its Subsidiaries hold all required Governmental Authorizations which are material to the operation of the business of the Company and its Subsidiaries as currently conducted (the "**Company Permits**"). Section 3.14(b) of the Company Disclosure Schedule identifies each Company Permit. Each of the Company and its Subsidiaries is in material compliance with the terms of the Company Permits. No Legal Proceeding is pending or, to the Knowledge of the Company, threatened in writing, which seeks to revoke, substantially limit, suspend, or materially modify any Company Permit. The rights and benefits of each Company Permit will be available to the Surviving Corporation or its Subsidiaries, as applicable, immediately after the Effective Time on terms substantially identical to those enjoyed by the Company and its Subsidiaries as of the date of this Agreement and immediately prior to the Effective Time.

(c) There are no Legal Proceedings pending or, to the Knowledge of the Company, threatened with respect to an alleged material violation by the Company or any of its Subsidiaries of the Federal Food, Drug, and Cosmetic Act ("**FDCA**"), the Public Health Service Act ("**PHSA**"), the U.S. Food and Drug Administration ("**FDA**") regulations adopted thereunder, the Controlled Substances Act or any other similar Law promulgated by the FDA or other comparable Governmental Authority responsible for regulation of the development, testing, manufacturing, processing, storage, labeling, sale, marketing, advertising, distribution and importation or exportation of drug products ("**Drug Regulatory Agency**").

(d) The Company and each of its Subsidiaries holds all required Governmental Authorizations issuable by any Drug Regulatory Agency necessary for the conduct of the business of the Company or such Subsidiary as currently conducted, and the development, testing, manufacturing, processing, storage, labeling, sale, marketing, advertising, distribution and importation or exportation, as currently conducted, of any of its products or product candidates (the "**Company Product Candidates**") (collectively, the "**Company Regulatory Permits**") and no such Company Regulatory Permit has been (i) revoked, withdrawn, suspended, cancelled or terminated or (ii) modified in any adverse manner, other than immaterial adverse

modifications. The Company and each of its Subsidiaries have timely maintained and are in compliance in all material respects with the Company Regulatory Permits and have not, since January 1, 2019, received any written notice or other written communication from any Drug Regulatory Agency regarding (A) any material violation of or failure to comply materially with any term or requirement of any Company Regulatory Permit or (B) any revocation, withdrawal, suspension, cancellation, termination or material modification of any Company Regulatory Permit. The Company has made available to Gem all information requested by Gem in the Company's or its Subsidiaries' possession or control relating to the Company Product Candidates and the development, testing, manufacturing, processing, storage, labeling, sale, marketing, advertising, distribution and importation or exportation of the Company Product Candidates, including but not limited to complete copies of the following (to the extent there are any): (x) adverse event reports; pre-clinical, clinical and other study reports and material study data; inspection reports, notices of adverse findings, untitled letters, warning letters, filings and letters and other written correspondence to and from any Drug Regulatory Agency; and meeting minutes with any Drug Regulatory Agency and (y) similar reports, material study data, notices, letters, filings, correspondence and meeting minutes with any other Governmental Authority. All such information is accurate and complete in all material respects.

(e) All clinical, pre-clinical and other studies and tests conducted by or on behalf of, or sponsored by, the Company or its Subsidiaries, or in which the Company or its Subsidiaries or their respective current products or product candidates, including the Company Product Candidates, have participated, were and, if still pending, are being conducted in all material respects in accordance with standard medical and scientific research procedures, in material compliance with the applicable protocols, and in compliance in all material respects with the applicable regulations of the Drug Regulatory Agencies and other applicable Law, including 21 C.F.R. Parts 50, 54, 56, 58 and 312. Neither the Company nor any of its Subsidiaries has received any written notices, correspondence, or other communications from any Drug Regulatory Agency requiring, or to the Knowledge of the Company threatening to initiate, any action to place a clinical hold order on, or otherwise terminate, delay, or suspend any clinical studies conducted by or on behalf of, or sponsored by, the Company or any of its Subsidiaries or in which the Company or any of its Subsidiaries or their respective current products or product candidates, including the Company Product Candidates, have participated. Further, no clinical investigator, researcher, or clinical staff participating in any clinical study conducted by or, to the Knowledge of the Company, on behalf of the Company or its Subsidiaries has been disqualified from participating in studies involving the Company Product Candidates, and to the Knowledge of the Company, no such administrative action to disqualify such clinical investigators, researchers or clinical staff has been threatened or is pending.

(f) Neither the Company nor any of its Subsidiaries, and to the Knowledge of the Company, no contract manufacturer with respect to any Company Product Candidate, is the subject of any pending or, to the Knowledge of the Company, threatened investigation in respect of its business or products by the FDA pursuant to its "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" Final Policy set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries and no contract manufacturer with respect to any Company Product Candidate has committed any acts, made any statement, or failed to make any statement, in each case in respect of its business or products that would violate the FDA's "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" Final Policy, and any amendments thereto. None of the Company, any of its Subsidiaries, or any contract manufacturer

with respect to any Company Product Candidate, or any of their respective officers, directors, employees or agents has been convicted of any crime or engaged in any conduct that could result in a debarment or exclusion under (i) 21 U.S.C. Section 335a or (ii) any similar applicable Law, or is or has ever been debarred or excluded. To the Knowledge of the Company, no debarment or exclusionary claims, actions, proceedings or investigations in respect of their business or products are pending or threatened against the Company, any of its Subsidiaries, and to the Knowledge of the Company, any contract manufacturer with respect to any Company Product Candidate, or any of their respective officers, employees or agents.

(g) All manufacturing operations conducted by, or to the Knowledge of the Company, for the benefit of, the Company or its Subsidiaries in connection with any Company Product Candidate, since January 1, 2019, have been and are being conducted in compliance in all material respects with applicable Laws, including the FDA's standards for current good manufacturing practices, including applicable requirements contained in 21 C.F.R. Parts 210, 211, 600-680, and 1271, and the respective counterparts thereof promulgated by Governmental Authorities in countries outside the United States.

(h) No manufacturing site owned by the Company or its Subsidiaries, and to the Knowledge of the Company, no manufacturing site of a contract manufacturer, with respect to any Company Product Candidate, (i) is subject to a Drug Regulatory Agency shutdown or import or export prohibition or (ii) has received any Form FDA 483, notice of violation, warning letter, untitled letter, or similar correspondence or notice from the FDA or other Governmental Authority alleging or asserting noncompliance with any applicable Law, in each case, that have not been complied with or closed to the satisfaction of the relevant Governmental Authority, and, to the Knowledge of the Company, neither the FDA nor any other Governmental Authority is considering such action.

### 3.15 Legal Proceedings: Orders.

(a) There is no pending Legal Proceeding and, to the Knowledge of the Company, no Person has threatened in writing to commence any Legal Proceeding: (i) that involves the Company or any of its Subsidiaries, any Company Associate (in his or her capacity as such) or any of the material assets owned or used by the Company or its Subsidiaries or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Contemplated Transactions.

(b) There is no Order to which the Company or any of its Subsidiaries, or any of the material assets owned or used by the Company or any of its Subsidiaries, is subject. To the Knowledge of the Company, no officer or other Key Employee of the Company or any of its Subsidiaries is subject to any Order that prohibits such officer or employee from engaging in or continuing any conduct, activity or practice relating to the business of the Company or any of its Subsidiaries or to any material assets owned or used by the Company or any of its Subsidiaries.



### 3.16 Tax Matters.

(a) The Company and each of its Subsidiaries has timely filed all federal income Tax Returns and other material Tax Returns that it was required to file under applicable Law. All such Tax Returns are true, correct and complete in all material respects and have been prepared in material compliance with all applicable Laws. No written claim has ever been made by a Governmental Authority in a jurisdiction where the Company or any of its Subsidiaries does not file Tax Returns that the Company or any such Subsidiary is subject to taxation by that jurisdiction.

(b) All material Taxes due and owing by the Company and each of its Subsidiaries (whether or not shown on any Tax Return) have been paid. Since the date of the Company Unaudited Interim Balance Sheet, neither the Company nor any of its Subsidiaries has incurred any material Liability for Taxes outside the Ordinary Course of Business or otherwise inconsistent with past custom and practice.

(c) The Company and each of its Subsidiaries has withheld and paid all material Taxes required to have been withheld and paid by it in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(d) There are no Encumbrances for Taxes (other than Permitted Encumbrances) upon any of the assets of the Company or any of its Subsidiaries.

(e) No deficiencies for Taxes with respect to the Company or any of its Subsidiaries have been claimed, proposed or assessed by any Governmental Authority in writing that have not been resolved or settled in full. There are no pending (or, based on written notice, threatened) audits, assessments or other actions for or relating to any liability in respect of Taxes of the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries (or any of their predecessors) has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, which waiver or extension is currently in effect.

(f) The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(g) Neither the Company nor any of its Subsidiaries is a party to any Tax allocation, Tax sharing or similar agreement (including indemnity arrangements), other than customary indemnification provisions in commercial contracts not primarily related to Taxes entered into in the Ordinary Course of Business, including with vendors, customers, lenders, or landlords.

(h) Neither the Company nor any of its Subsidiaries has ever been a member of an affiliated group filing a consolidated U.S. federal income Tax Return (other than a group the common parent of which is the Company). Neither the Company nor any of its Subsidiaries has any material Liability for the Taxes of any Person (other than the Company and any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign Law) or as a transferee or successor.

(i) Neither the Company nor any of its Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the Code.

(j) Neither the Company nor any of its Subsidiaries has entered into any transaction identified as a “listed transaction” for purposes of Treasury Regulations Sections 1.6011-4(b)(2) or 301.6111-2(b)(2) or any analogous provision of state or local Law.

(k) Section 3.16(k) of the Company Disclosure Schedule sets forth the entity classification of each of the Company’s Subsidiaries for U.S. federal income tax purposes under Section 7701 of the Code.

(l) Neither the Company nor any of its Subsidiaries is aware of any facts, or has knowingly taken or agreed to take or refrain from taking any action, in each case, that would reasonably be expected to prevent or impede the Merger from qualifying as a “reorganization” within the meaning of Section 368(a) of the Code.

(m) There is no outstanding power of attorney from the Company or any of its Subsidiaries authorizing anyone to act on behalf of the Company or any of its Subsidiaries in connection with any Tax, Tax Return or action relating to any Tax or Tax Return of the Company or any of its Subsidiaries.

(n) Neither the Company nor its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, any taxable period (or a portion thereof) ending after the Closing Date as a result of any of the following that occurred or existed on or prior to the Closing Date: (i) a “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax Law), (ii) an installment sale or open transaction, (iii) a prepaid amount received outside the Ordinary Course of Business, (iv) an intercompany item under Treasury Regulations Section 1.1502-13 or an excess loss account under Treasury Regulations Section 1.1502-19, (v) a change in the accounting method of the Company pursuant to Section 481 of the Code or any similar provision of state, local or non-U.S. income Tax Law or the use of a method of accounting with respect to any transaction that occurred on or before the Closing Date; or (vi) any inclusion under Section 965 of the Code.

(o) The Company is not an investment company as defined in Section 368(a)(2)(F)(iii) and (iv) of the Code.

### 3.17 Employee and Labor Matters; Benefit Plans.

(a) The employment of each of the Company’s and any of its Subsidiaries’ employees is terminable by the Company or the applicable Subsidiary at will, subject to any notice provisions of applicable employment agreements. The Company has made available to Gem accurate and complete copies of all employee manuals and handbooks, disclosure materials, policy statements and other materials relating to the employment of Company Associates to the extent currently effective and material.

(b) Neither the Company nor any of its Subsidiaries is a party to, bound by, or has a duty to bargain under, any collective bargaining agreement or other Contract with a labor organization representing any of its employees, and there are no labor organizations representing or, to the Knowledge of the Company, purporting to represent or seeking to represent any employees of the Company or its Subsidiaries.

(c) Section 3.17(c) of the Company Disclosure Schedule lists all Company Employee Plans.

(d) Each Company Employee Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination or opinion letter with respect to such qualified status from the IRS or may rely on an opinion letter issued by the IRS with respect to a prototype plan adopted in accordance with the requirements for such reliance, or has time remaining for application to the IRS for a determination of the qualified status of such Employee Plan for any period for which such Employee Plan would not otherwise be covered by an IRS determination. To the Knowledge of the Company, nothing has occurred that would reasonably be expected to adversely affect the qualified status of any such Company Employee Plan or require corrective action to the IRS or Employee Plan Compliance Resolution System to maintain such qualification.

(e) Each Company Employee Plan has been established, operated and administered in compliance, in all material respects, with its terms and all applicable Law, including without limitation, the Code, ERISA, and the Affordable Care Act. No Legal Proceeding (other than those relating to routine claims for benefits) is pending or, to the Knowledge of the Company, threatened with respect to any Company Employee Plan. All payments and/or contributions required to have been made with respect to all Company Employee Plans either have been made or have been accrued in accordance with the terms of the applicable Company Employee Plan and applicable Law.

(f) Neither the Company nor any of its ERISA Affiliates has ever maintained, contributed to, or been required to contribute to or had any liability or obligation (including on account of any ERISA Affiliate) with respect to (i) any employee benefit plan that is or was subject to Title IV or Section 302 of ERISA or Section 412 of the Code, (ii) a Multiemployer Plan, (iii) any funded welfare benefit plan within the meaning of Section 419 of the Code, (iv) any Multiple Employer Plan, or (v) any Multiple Employer Welfare Arrangement. Neither the Company nor any of its ERISA Affiliates has ever incurred any liability under Title IV of ERISA that has not been paid in full.

(g) Except for as listed on Section 3.17(g) of the Company Disclosure Schedule, no Company Employee Plan provides health care or any other non-pension benefits to any service provider beyond termination of service or retirement (other than as required by Part 6 of Subtitle B of Title I of ERISA or similar state Law or as cash severance). No Company Employee Plan provides major medical health or long-term disability benefits that are not fully insured through an insurance contract.

(h) No Company Employee Plan is subject to any Law of a foreign jurisdiction outside of the United States.

(i) Each Company Employee Plan that constitutes in any part a “nonqualified deferred compensation plan” (as such term is defined under Section 409A(d)(1) of the Code and the guidance thereunder) has been operated and maintained in all material respects in operational and documentary compliance with the requirements of Section 409A of the Code and the applicable guidance thereunder. No payment to be made under any Company Employee Plan is, or to the Knowledge of the Company, will be subject to the penalties of Section 409A(a)(1) of the Code.

(j) Any transfer of property by the Company or any of its Subsidiaries which was subject to a substantial risk of forfeiture and which would otherwise have been subject to taxation under Section 83(a) of the Code is covered by a valid and timely filed election under Section 83(b) of the Code, and a copy of such election has been provided to the Company.

(k) The Company and each of its Subsidiaries is and has since January 1, 2019 been in material compliance with all applicable federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment, worker classification, and tax withholding, prohibited discrimination, equal employment, fair employment practices, meal and rest periods, immigration status, employee safety and health, wages (including overtime wages), compensation, and hours of work, and in each case, with respect to the employees of the Company and its Subsidiaries: (i) has withheld and reported all material amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to employees, (ii) is not liable for any arrears of wages, severance pay or any Taxes or any penalty for failure to comply with any of the foregoing and (iii) is not liable for any material payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the Ordinary Course of Business). To the Knowledge of the Company or any of its Subsidiaries, there are no pending or threatened or reasonably anticipated claims or actions against the Company, any of its Subsidiaries, any Company trustee or any trustee of any Subsidiary under any workers' compensation policy or long-term disability policy that would or would be reasonably expected to result in a material liability to the Company. Neither the Company nor any Subsidiary thereof is a party to a conciliation agreement, consent decree or other agreement or Order with any federal, state, or local agency or Governmental Authority with respect to employment practices.

(l) Neither the Company nor any of its Subsidiaries has any material liability with respect to any misclassification since January 1, 2019 of: (i) any Person as an independent contractor rather than as an employee, (ii) any employee leased from another employer or (iii) any employee currently or formerly classified as exempt from overtime wages. Neither the Company nor any of its Subsidiaries has taken any action which would constitute a "plant closing" or "mass layoff" within the meaning of the WARN Act or similar state or local law, issued any notification of a plant closing or mass layoff required by the WARN Act or similar state or local law, or incurred any liability or obligation under the WARN Act or any similar state or local law that remains unsatisfied.

(m) There has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, job action, union, organizing activity, question concerning representation or any similar activity or dispute, affecting the Company or any of its Subsidiaries. No event has occurred within the past six months, and no condition or circumstance exists, that might directly or indirectly be likely to give rise to or provide a basis for the commencement of any such strike, slowdown, work stoppage, lockout, job action, union organizing activity, question concerning representation or any similar activity or dispute.

(n) Neither the Company nor any of its Subsidiaries is, nor has the Company or any of its Subsidiaries been, engaged in any unfair labor practice within the meaning of the National Labor Relations Act. There is no Legal Proceeding, claim, labor dispute or grievance pending or, to the Knowledge of the Company or any of its Subsidiaries, threatened or

reasonably anticipated relating to any employment contract, employment termination, privacy right, labor dispute, wages and hours, leave of absence, plant closing notification, workers' compensation policy, long-term disability policy, harassment, retaliation, immigration, employment statute or regulation, safety or discrimination matter involving any Company Associate, including charges of unfair labor practices or discrimination complaints.

(o) No Company Employee Plan provides for any tax "gross-up" or similar "make-whole" payments.

(p) Except as set forth on Section 3.17(p) of the Company Disclosure Schedule, none of the execution and delivery of this Agreement, the shareholder approval of this Agreement, or the consummation of the transactions contemplated hereby could (either alone or in conjunction with any other event) (i) result in, or cause the accelerated vesting payment, funding or delivery of, or increase the amount or value of, any payment or benefit to any employee, officer, director or other service provider of the Company or any of its Subsidiaries; (ii) further restrict any rights of the Company to amend or terminate any Company Employee Plan; (iii) result in the forgiveness of any indebtedness of any employee, officer, director or other service provider of the Company or any of its Subsidiaries to the Company or its Subsidiaries or (iv) result in any "parachute payment" as defined in Section 280G(b)(2) of the Code (whether or not such payment is considered to be reasonable compensation for services rendered).

3.18 Environmental Matters. Since January 1, 2019, the Company and each of its Subsidiaries has complied with all applicable Environmental Laws, which compliance includes the possession by the Company of all permits and other Governmental Authorizations required under applicable Environmental Laws and compliance with the terms and conditions thereof, except for any failure to be in compliance that, individually or in the aggregate, would not result in a Company Material Adverse Effect. Neither the Company nor any of its Subsidiaries has received since January 1, 2019, any written notice or other communication (in writing or otherwise), whether from a Governmental Authority, citizens group, employee or otherwise, that alleges that the Company or any of its Subsidiaries is not in compliance with any Environmental Law and, to the Knowledge of the Company, there are no circumstances that may prevent or interfere with the Company's or any of its Subsidiaries' compliance with any Environmental Law in the future, except where such failure to comply would not reasonably be expected to have a Company Material Adverse Effect. To the Knowledge of the Company: (i) no current or prior owner of any property leased or controlled by the Company or any of its Subsidiaries has received since January 1, 2019, any written notice or other communication relating to property owned or leased at any time by the Company or any of its Subsidiaries, whether from a Governmental Authority, citizens group, employee or otherwise, that alleges that such current or prior owner or the Company or any of its Subsidiaries is not in compliance with or violated any Environmental Law relating to such property and (ii) neither the Company nor any of its Subsidiaries has any material liability under any Environmental Law.

3.19 Insurance. The Company has delivered to Gem accurate and complete copies of all material insurance policies and all material self-insurance programs and arrangements relating to the business, assets, liabilities and operations of the Company and each of its Subsidiaries. Each of such insurance policies is in full force and effect and the Company and each of its Subsidiaries are in compliance in all material respects with the terms thereof. Other than customary end of policy notifications from insurance carriers, since January 1, 2019, neither the Company nor any of its Subsidiaries has received any notice or other communication

regarding any actual or possible: (i) cancellation or invalidation of any insurance policy or (ii) refusal or denial of any coverage, reservation of rights or rejection of any material claim under any insurance policy. The Company and each of its Subsidiaries have provided timely written notice to the appropriate insurance carrier(s) of each Legal Proceeding pending against the Company or any of its Subsidiaries for which the Company or such Subsidiary has insurance coverage, and no such carrier has issued a denial of coverage or a reservation of rights with respect to any such Legal Proceeding, or informed the Company or any of its Subsidiaries of its intent to do so.

3.20 No Financial Advisors. Except as set forth on Section 3.20 of the Company Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage fee, finder's fee, opinion fee, success fee, transaction fee or other fee or commission in connection with the Contemplated Transactions based upon arrangements made by or on behalf of the Company or any of its Subsidiaries.

3.21 Transactions with Affiliates. Section 3.21 of the Company Disclosure Schedule describes any material transactions or relationships, since January 1, 2019, between, on one hand, the Company or any of its Subsidiaries and, on the other hand, any (a) executive officer or director of the Company or any of its Subsidiaries or any of such executive officer's or director's immediate family members, (b) owner of more than five percent (5%) of the voting power of the outstanding Company Capital Stock or (c) to the Knowledge of the Company, any "related person" (within the meaning of Item 404 of Regulation S-K under the Securities Act) of any such officer, director or owner (other than the Company or its Subsidiaries) in the case of each of (a), (b) or (c) that is of the type that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act.

3.22 Privacy and Data Security. The Company has complied with all applicable Privacy Laws and the applicable terms of any Company Contracts relating to privacy, security, collection or use of Personal Information of any individuals (including clinical trial participants, patients, patient family members, caregivers or advocates, physicians and other health care professionals, clinical trial investigators, researchers, pharmacists) that interact with the Company in connection with the operation of the Company's business, except for such non-compliance as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. To the Knowledge of the Company, the Company has implemented and maintains reasonable written policies and procedures, satisfying the requirements of applicable Privacy Laws, concerning the privacy, security, collection and use of Personal Information (the "**Privacy Policies**") and has complied with the same, except for such non-compliance as has not to the Knowledge of the Company had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. To the Knowledge of the Company, as of the date hereof, no claims have been asserted or threatened against the Company by any Person alleging a violation of Privacy Laws, Privacy Policies and/or the applicable terms of any Company Contracts relating to privacy, security, collection or use of Personal Information of any individuals. There have been no data security incidents, personal data breaches or other adverse events or incidents related to Personal Information or Company data in the custody or control of the Company or any service provider acting on behalf of the Company, in each case where such incident, breach or event would result in a notification obligation to any Person under applicable law or pursuant to the terms of any Company Contract.

3.23 Subscription Agreement. The Subscription Agreement has not been amended or modified in any manner prior to the date of this Agreement. Neither the Company nor, to the Knowledge of the Company, any of its Affiliates has entered into any agreement, side letter or other arrangement relating to the Company Pre-Closing Financing other than as set forth in the Subscription Agreement. The respective obligations and agreements contained in the Subscription Agreement have not been withdrawn or rescinded in any respect. The Subscription Agreement is in full force and effect and represents a valid, binding and enforceable obligation of the Company and, to the Knowledge of the Company, of each party thereto, subject to the Enforceability Exceptions. No event has occurred which, with or without notice, lapse of time or both, would constitute a breach or default on the part of the Company or, to the Knowledge of the Company, any other party thereto, under the Subscription Agreement. To the Knowledge of the Company, no party thereto will be unable to satisfy on a timely basis any term of the Subscription Agreement. There are no conditions precedent related to the consummation of the Company Pre-Closing Financing contemplated by the Subscription Agreement, other than the satisfaction or waiver of the conditions expressly set forth in Section 6 of the Subscription Agreement.

3.24 No Other Representations or Warranties. The Company hereby acknowledges and agrees that, except for the representations and warranties contained in this Agreement, neither Gem nor any other person on behalf of Gem makes any express or implied representation or warranty with respect to Gem or with respect to any other information provided to the Company, any of its Subsidiaries or stockholders or any of their respective Affiliates in connection with the Contemplated Transactions, and (subject to the express representations and warranties of Gem set forth in Section 4 (in each case as qualified and limited by the Gem Disclosure Schedule)) none of the Company, its Subsidiaries or any of their respective Representatives or stockholders, has relied on any such information (including the accuracy or completeness thereof).

#### Section 4. Representations and Warranties of Gem and Merger Sub.

Except (i) as set forth in the written disclosure schedule delivered by Gem to the Company (the “**Gem Disclosure Schedule**”) or (ii) as disclosed in the Gem SEC Documents filed or furnished with the SEC on or before the day that is one (1) Business Day prior to the date of this Agreement (but excluding any disclosures contained under the heading “Risk Factors” and any disclosure of risks included in any “forward-looking statements” disclaimer or in any other section to the extent they are cautionary, predictive or forward-looking in nature), it being understood that any matter disclosed in the Gem SEC Documents shall not be deemed disclosed for purposes of Sections 4.1(a), 4.1(b) or 4.3, Gem and Merger Sub represent and warrant to the Company as follows:

##### 4.1 Due Organization; Subsidiaries.

(a) Each of Gem and its Subsidiaries (including Merger Sub) is a corporation duly incorporated, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization and has all necessary corporate power and authority: (i) to conduct its business in the manner in which its business is currently being conducted, (ii) to own or lease and use its property and assets in the manner in which its property and assets are currently owned or leased and used and (iii) to perform its obligations under all Contracts by which it is bound. Since the date of its incorporation, Merger Sub has not engaged in any activities other than in connection with or as contemplated by this Agreement. All of Gem’s Subsidiaries are wholly owned by Gem.

(b) Each of Gem and its Subsidiaries is duly licensed and qualified to do business, and is in good standing (to the extent applicable in such jurisdiction), under the Laws of all jurisdictions where the nature of its business requires such licensing or qualification other than in jurisdictions where the failure to be so qualified individually or in the aggregate would not be reasonably expected to have a Gem Material Adverse Effect.

(c) Except as set forth on Section 4.1(c) of the Gem Disclosure Schedule, Gem has no Subsidiaries other than Merger Sub and Gem does not own any capital stock of, or any equity ownership or profit sharing interest of any nature in, or control directly or indirectly, any other Entity other than Merger Sub. Gem is not and has not otherwise been, directly or indirectly, a party to, member of or participant in any partnership, joint venture or similar business entity. Gem has not agreed and is not obligated to make, nor is Gem bound by any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Entity. Gem has not, at any time, been a general partner of, and has not otherwise been liable for any of the debts or other obligations of, any general partnership, limited partnership or other Entity.

4.2 Organizational Documents. Gem has delivered to the Company accurate and complete copies of Gem's Organizational Documents. Gem is not in breach or violation of its Organizational Documents in any material respect.

4.3 Authority; Binding Nature of Agreement. Each of Gem and Merger Sub has all necessary corporate power and authority to enter into and to perform its obligations under this Agreement and to consummate the Contemplated Transactions. The Gem Board has: (a) determined that the Contemplated Transactions are fair to, advisable and in the best interests of Gem and its stockholders, (b) approved and declared advisable this Agreement and the Contemplated Transactions, including the issuance of shares of Gem Common Stock to the stockholders of the Company pursuant to the terms of this Agreement (c) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholders of Gem vote to approve this Agreement and the Contemplated Transactions, including the issuance of shares of Gem Common Stock to the stockholders of the Company pursuant to the terms of this Agreement, (d) determined that an amendment to Gem's certificate of incorporation to effect the Nasdaq Reverse Split and the other amendments contemplated by Section 2.4(c) is advisable and in the best interests of Gem and its stockholders and (e) determined to recommend that the stockholders of Gem vote to approve an amendment to Gem's certificate of incorporation to effect the Nasdaq Reverse Split and to make the other amendments provided in Section 2.4. The Merger Sub Board has: (x) determined that the Contemplated Transactions are fair to, advisable, and in the best interests of Merger Sub and its sole stockholder, (y) deemed advisable and approved this Agreement and the Contemplated Transactions and (z) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholder of Merger Sub vote to adopt this Agreement and thereby approve the Contemplated Transactions. This Agreement has been duly executed and delivered by Gem and Merger Sub and, assuming the due authorization, execution and delivery by the Company, constitutes the legal, valid and binding obligation of Gem and Merger Sub, enforceable against each of Gem and Merger Sub in accordance with its terms, subject to the Enforceability Exceptions.



4.4 Vote Required. The affirmative vote of a majority of (a) the votes cast at the Gem Stockholder Meeting (at which a quorum is present) is the only vote of the holders of any class or series of Gem's capital stock necessary to approve this Agreement, and the Contemplated Transactions, including the issuance of the shares of Gem Common Stock to the stockholders of the Company in the Merger pursuant to the terms of this Agreement and (b) the outstanding shares of Gem Common Stock entitled to vote thereon is the only vote of the holders of any class or series of Gem's capital stock necessary to approve an amendment to Gem's certificate of incorporation to effect the Nasdaq Reverse Split and the other amendments provided in Section 2.4 (collectively, the "**Required Gem Stockholder Vote**").

4.5 Non-Contravention; Consents.

(a) Subject to compliance with, obtaining the Required Gem Stockholder Vote and the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, neither (x) the execution, delivery or performance of this Agreement by Gem or Merger Sub, nor (y) the consummation of the Contemplated Transactions, will directly or indirectly (with or without notice or lapse of time):

(i) contravene, conflict with or result in a violation of any of the provisions of the Organizational Documents of Gem or its Subsidiaries;

(ii) contravene, conflict with or result in a material violation of, or give any Governmental Authority or other Person the right to challenge the Contemplated Transactions or to exercise any remedy or obtain any relief under, any Law or any Order to which Gem or its Subsidiaries or any of the assets owned or used by Gem or its Subsidiaries, is subject;

(iii) contravene, conflict with or result in a material violation of any of the terms or requirements of, or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by Gem or its Subsidiaries or that otherwise relates to the business of Gem, or any of the assets owned, leased or used by Gem;

(iv) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Gem Material Contract, or give any Person the right to: (A) declare a default or exercise any remedy under any Gem Material Contract, (B) any material payment, rebate, chargeback, penalty or change in delivery schedule under any such Gem Material Contract, (C) accelerate the maturity or performance of any Gem Material Contract or (D) cancel, terminate or modify any term of any Gem Material Contract, except in the case of any non-material breach, default, penalty or modification; or

(v) result in the imposition or creation of any Encumbrance upon or with respect to any asset owned or used by Gem or its Subsidiaries (except for Permitted Encumbrances).

(b) Except for (i) any Consent set forth on Section 4.5 of the Gem Disclosure Schedule under any Gem Material Contract, (ii) the Required Gem Stockholder Vote, (iii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, and (iv) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable federal and state securities laws, neither Gem nor any of its Subsidiaries was, is or will be required to make any filing with or give any notice to, or to obtain any Consent from, any Person in connection with (x) the execution, delivery or performance of this Agreement or (y) the consummation of the Contemplated Transactions.

(c) The Gem Board and the Merger Sub Board have taken and will take all actions necessary to ensure that the restrictions applicable to business combinations contained in Section 203 of the DGCL are, and will be, inapplicable to the execution, delivery and performance of this Agreement, each Gem Stockholder Support Agreement and to the consummation of the Contemplated Transactions. No other state takeover statute or similar Law applies or purports to apply to the Merger, this Agreement, any Gem Stockholder Support Agreement or any of the other Contemplated Transactions.

#### 4.6 Capitalization.

(a) The authorized capital stock of Gem consists of (i) 250,000,000 shares of Gem Common Stock of which 43,244,453 shares have been issued and are outstanding as of August 8, 2022 (the “**Capitalization Date**”) and (ii) 10,000,000 shares of preferred stock, par value \$0.0001 per share, of which no shares have been issued and are outstanding as of the Capitalization Date. Gem does not hold any shares of its capital stock in its treasury.

(b) All of the outstanding shares of Gem Common Stock have been duly authorized and validly issued, and are fully paid and nonassessable and are free of any Encumbrances. None of the outstanding shares of Gem Common Stock is entitled or subject to any preemptive right, right of participation, right of maintenance or any similar right. None of the outstanding shares of Gem Common Stock is subject to any right of first refusal in favor of Gem. Except as contemplated herein, there is no Gem Contract relating to the voting or registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or granting any option or similar right with respect to), any shares of Gem Common Stock. Gem is not under any obligation, nor is Gem bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding shares of Gem Common Stock or other securities. Section 4.6(b) of the Gem Disclosure Schedule accurately and completely describes all repurchase rights held by Gem with respect to shares of Gem Common Stock (including shares issued pursuant to the exercise of stock options) and specifies which of those repurchase rights are currently exercisable.

(c) Except for the Gem Stock Plans and the Gem 2021 Employee Stock Purchase Plan (the “**Gem ESPP**”) or as set forth on Section 4.6(c) of the Gem Disclosure Schedule, Gem does not have any stock option plan or any other plan, program, agreement or arrangement providing for any equity-based compensation for any Person. As of the date of this Agreement, (i) there are no equity awards currently outstanding under the 2015 Employee, Director and Consultant Stock Option Plan and such plan was terminated as of February 5, 2021, (ii) Gem has reserved 3,557,726 shares of Gem Common Stock for issuance under the 2017 Stock Option and Grant Plan, of which 1,337,395 shares have been issued and are currently outstanding, and 2,220,331 shares remain available for future issuance, (iii) Gem has reserved 5,992,667 shares of Gem Common Stock for issuance under the 2021 Stock Option and Incentive Plan, of which 2,551,993 shares have been issued and are currently outstanding, and 3,440,674

shares remain available for future issuance, (iv) Gem has reserved 1,616,895 shares of Gem Common Stock for issuance under the 2021 Inducement Plan, of which 457,487 shares have been issued and are currently outstanding, and 1,159,408 shares remain available for future issuance. As of the date of this Agreement, Gem has reserved 430,551 shares of Gem Common Stock for future issuance pursuant to the Gem ESPP, of which 9,960 have been issued and 420,591 remain available for future issuance. Section 4.6(c) of the Gem Disclosure Schedule sets forth the following information with respect to each Gem Option and Gem RSU outstanding as of the date of this Agreement, as applicable: (i) the name of the holder, (ii) the number of shares of Gem Common Stock subject to such Gem Option or Gem RSU at the time of grant, (iii) the exercise price of any Gem Option, (iv) the date on which such Gem Option or Gem RSU was granted, and (v) the expiration date of such Gem Option (or, if applicable, such Gem RSU). Gem has made available to the Company accurate and complete copies of the Gem Stock Plans, the forms of all award agreements evidencing outstanding equity awards thereunder, any equity award agreements that differ in any material respect from the forms of award agreements and evidence of board and stockholder approval of the Gem Stock Plans and any amendments thereto.

(d) Except for the outstanding Gem Options and Gem RSUs or as set forth on Section 4.6(d) of the Gem Disclosure Schedule, there is no: (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire any shares of the capital stock or other securities of Gem, (ii) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of Gem, (iii) stockholder rights plan (or similar plan commonly referred to as a “poison pill”) or Contract under which Gem is or may become obligated to sell or otherwise issue any shares of its capital stock or any other securities or (iv) condition or circumstance that may give rise to or provide a basis for the assertion of a claim by any Person to the effect that such Person is entitled to acquire or receive any shares of capital stock or other securities of Gem. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or other similar rights with respect to Gem.

(e) All outstanding shares of Gem Common Stock, Gem Options, Gem RSUs and other securities of Gem have been issued and granted in material compliance with (i) all applicable securities laws and other applicable Law and (ii) all requirements set forth in applicable Contracts.

(f) With respect to Gem Options and Gem RSUs, each grant was made in all material respects in accordance with the terms of the Gem Stock Plan pursuant to which it was granted.

#### 4.7 SEC Filings: Financial Statements

(a) Gem has filed or furnished, as applicable, on a timely basis all forms, statements (whether registration or proxy statements), certifications, reports, schedules, exhibits and other documents required to be filed or furnished by it with the SEC under the Exchange Act or the Securities Act since the Gem Effective Date (the “**Gem SEC Documents**”). As of the time it was filed with the SEC (or, if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing), each of the Gem SEC Documents complied in all material respects with the applicable requirements of the Securities Act or the Exchange Act (as the case may be) and, to Gem’s Knowledge, as of the time they were filed, none of the Gem

SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As used in this [Section 4.7](#), the term “file” and variations thereof shall be broadly construed to include any manner in which a document or information is furnished, supplied or otherwise made available to the SEC.

(b) The financial statements (including any related notes) contained or incorporated by reference in the Gem SEC Documents: (i) complied as to form in all material respects with the published rules and regulations of the SEC applicable thereto, (ii) were prepared in accordance with GAAP (except as may be indicated in the notes to such financial statements or, in the case of unaudited financial statements, as permitted by Form 10-Q of the SEC, and except that the unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end adjustments that are not reasonably expected to be material in amount) applied on a consistent basis unless otherwise noted therein throughout the periods indicated and (iii) fairly present, in all material respects, the financial position of Gem as of the respective dates thereof and the results of operations and cash flows of Gem for the periods covered thereby. Other than as expressly disclosed in the Gem SEC Documents filed prior to the date hereof, there has been no material change in Gem’s accounting methods or principles that would be required to be disclosed in Gem’s financial statements in accordance with GAAP. The books of account and other financial records of Gem and its Subsidiaries are true and complete in all material respects.

(c) Gem’s auditor has at all times since the Gem Effective Date been: (i) a registered public accounting firm (as defined in Section 2(a)(12) of the Sarbanes-Oxley Act), (ii) to the Knowledge of Gem, “independent” with respect to Gem within the meaning of Regulation S-X under the Exchange Act and (iii) to the Knowledge of Gem, in compliance with subsections (g) through (l) of Section 10A of the Exchange Act and the rules and regulations promulgated by the SEC and the Public Company Accounting Oversight Board thereunder.

(d) Except as set forth on Section 4.7(f) of the Gem Disclosure Schedule, Gem is in compliance in all material respects with the applicable provisions of the Sarbanes-Oxley Act and the applicable listing and governance rules and regulations of Nasdaq.

(e) There have been no formal internal investigations regarding financial reporting or accounting policies and practices discussed with, reviewed by or initiated at the direction of the chief executive officer or chief financial officer of Gem, the Gem Board or any committee thereof, other than ordinary course audits or reviews of accounting policies and practices or internal controls required by the Sarbanes-Oxley Act.

(f) Gem maintains a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that is sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including policies and procedures designed to provide reasonable assurance (i) that Gem maintains records that in reasonable detail accurately and fairly reflect Gem’s transactions and dispositions of assets, (ii) that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, (iii) that receipts and expenditures are made only in accordance with authorizations of management and the Gem Board and (iv) regarding prevention or timely detection of the unauthorized acquisition, use or disposition of Gem’s assets that could have a

material effect on Gem's financial statements. Gem has evaluated the effectiveness of Gem's internal control over financial reporting and, to the extent required by applicable Law, presented in any applicable Gem SEC Document that is a report on Form 10-K or Form 10-Q (or any amendment thereto) its conclusions about the effectiveness of the internal control over financial reporting as of the end of the period covered by such report or amendment based on such evaluation. Since the Gem Effective Date, Gem has not identified any material weaknesses in the design of operation of Gem's internal control over financial reporting.

(g) Gem's "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) are reasonably designed to ensure that all information (both financial and non-financial) required to be disclosed by Gem in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such information is accumulated and communicated to Gem's management as appropriate.

4.8 Absence of Changes. Except as set forth on Section 4.8 of the Gem Disclosure Schedule, between December 31, 2021 and the date of this Agreement, Gem has conducted its business only in the Ordinary Course of Business (except for the execution and performance of this Agreement and the discussions, negotiations and transactions related thereto) and there has not been any (a) Gem Material Adverse Effect or an event or development that would, individually or in the aggregate, reasonably be expected to have a Gem Material Adverse Effect or (b) action, event or occurrence that would have required consent of the Company pursuant to Section 5.1(b) of this Agreement had such action, event or occurrence taken place after the execution and delivery of this Agreement.

4.9 Absence of Undisclosed Liabilities. Neither Gem nor any of its Subsidiaries has any Liability of a type required to be reflected or reserved for on a balance sheet prepared in accordance with GAAP, except for: (a) Liabilities disclosed, reflected or reserved against in the Gem Unaudited Interim Balance Sheet, (b) normal and recurring current Liabilities that have been incurred by Gem or its Subsidiaries since the date of the Gem Unaudited Interim Balance Sheet in the Ordinary Course of Business (none of which relates to any breach of contract, breach of warranty, tort, infringement, or violation of Law), (c) Liabilities for performance of obligations of Gem or any of its Subsidiaries under Gem Contracts, and (d) Liabilities described in Section 4.9 of the Gem Disclosure Schedule.

4.10 Title to Assets. Each of Gem and its Subsidiaries owns, and has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all tangible properties or assets and equipment used or held for use in its business or operations or purported to be owned by it, including: (a) all assets reflected on the Gem Unaudited Interim Balance Sheet and (b) all other assets reflected in the books and records of Gem as being owned by Gem. All of such assets are owned or, in the case of leased assets, leased by Gem or any of its Subsidiaries free and clear of any Encumbrances, other than Permitted Encumbrances.

4.11 Real Property; Leasehold. Neither Gem nor any of its Subsidiaries owns or has ever owned any real property. Gem has made available to the Company (a) an accurate and complete list of all real properties with respect to which Gem directly or indirectly holds a valid leasehold interest as well as any other real estate that is in the possession of or leased by Gem or any of its Subsidiaries and (b) copies of all leases under which any such real property is possessed (the "**Gem Real Estate Leases**"), each of which is in full force and effect, with no existing material default thereunder.

#### 4.12 Intellectual Property.

(a) Section 4.12(a) of the Gem Disclosure Schedule is an accurate and complete listing of all Gem Registered IP, in each case enumerating specifically the applicable filing or registration number, title, jurisdiction in which filing was made or from which registration issued, date of filing or issuance, and names of all current registered owners(s), as applicable, or in the case of domain names or social media accounts, the URL or social media account, the registrar or social media company and the date on which such URL or social media account expires (if any).

(b) Section 4.12(b) of the Gem Disclosure Schedule accurately sets forth (i) all material Gem Contracts pursuant to which Gem IP Rights are licensed to Gem (other than (A) any non-customized software that (1) is so licensed solely in executable or object code form pursuant to a non-exclusive, internal use software license and other Intellectual Property associated with such software and (2) is not incorporated into, or material to the development, manufacturing, or distribution of, any of Gem products or services, (B) any Intellectual Property licensed on a non-exclusive basis ancillary to the purchase or use of equipment, reagents or other materials, (C) any confidential information provided under confidentiality agreements and (D) agreements between Gem and its employees in Gem's standard form thereof), (ii) the corresponding Company Contract pursuant to which such Company IP Rights are licensed to the Company or any of its Subsidiaries and (iii) whether the license or licenses granted to Gem are exclusive or non-exclusive.

(c) Section 4.12(c) of the Gem Disclosure Schedule accurately sets forth each Gem Contract pursuant to which any Person has been granted any license or covenant not to sue under, or otherwise has received or acquired any right (whether or not currently exercisable) or interest in, any Gem IP Rights (other than (i) any confidential information provided under confidentiality agreements and (ii) any Gem IP Rights non-exclusively licensed to academic collaborators, suppliers or service providers for the sole purpose of enabling such academic collaborator, supplier or service providers to provide services for Gem's benefit).

(d) Gem has delivered, or made available to the Company, a complete and accurate copy of all material Gem IP Rights Agreements.

(e) The manufacture, marketing, license, offering for sale, sale, importation, use or intended use or other disposal of any product or technology as currently licensed or sold or under development by Gem does not violate any license or agreement between Gem any third party and, to the Knowledge of Gem, does not infringe, misappropriate or otherwise violate any Intellectual Property of any other Person, other than any Gem Intellectual Property licensed to Company by any other Person. To the Knowledge of Gem, no third party is infringing, misappropriating or otherwise violating any Intellectual Property owned by Gem within the Gem IP Rights, or breaching any license or agreement with Gem relating to any Gem IP Rights.

(f) As of the date of this Agreement, Gem is not a party to any Legal Proceeding (including, but not limited to, opposition, interference or other proceeding in any patent or other government office) contesting the validity, ownership or right to use, sell, offer for sale, license or dispose of any Gem Registered IP. Gem has not received any written notice asserting that any Gem Registered IP or the proposed use, sale, offer for sale, license or disposition of any products, methods, or processes claimed or covered thereunder conflicts with or infringes, misappropriates or otherwise violates the rights of any other Person or that Gem or any of its Subsidiaries have otherwise infringed, misappropriated or otherwise violated any Intellectual Property of any Person. None of the Gem IP Rights is subject to any outstanding Order of or agreement with any Governmental Authority or arbitrator that limits the ability of Gem to exploit any IP Rights.

(g) Each item of Gem IP Rights that is Gem Registered IP is and at all times has been filed and maintained in compliance with all applicable Law and all filings, payments, and other actions required to be made or taken to maintain such item of Gem Registered IP in full force and effect have been made by the applicable deadline. To the Knowledge of Gem, all Gem Registered IP that is issued or granted is valid and enforceable.

(h) To the Knowledge of Gem, no trademark (whether registered or unregistered) or trade name owned, used, or applied for by Gem conflicts or interferes with any trademark (whether registered or unregistered) or trade name owned, used, or applied for by any other Person except as would not have a Gem Material Adverse Effect. None of the goodwill associated with or inherent in any trademark (whether registered or unregistered) in which Gem has or purports to have an ownership interest has been impaired as determined by Gem in accordance with GAAP. Gem has not granted any license under any trademark or trade name owned or purported to be owned by Gem.

(i) Except as may be set forth in the Contracts listed on Section 4.12(b) or 4.12(c) of the Gem Disclosure Schedule or as contained in license, distribution and service agreements entered into in the Ordinary Course of Business by Gem (i) Gem is not bound by any Contract to indemnify, defend, hold harmless, or reimburse any other Person with respect to any Intellectual Property infringement, misappropriation, or similar claim which is material to Gem taken as a whole and (ii) Gem has never assumed, or agreed to discharge or otherwise take responsibility for, any existing or potential liability of another Person for infringement, misappropriation, or violation of any Intellectual Property right, which assumption, agreement or responsibility remains in force as of the date of this Agreement.

4.13 Agreements, Contracts and Commitments. Section 4.13 of the Gem Disclosure Schedule identifies each Gem Contract that is in effect as of the date of this Agreement and is (a) a material contract as defined in Item 601(b)(10) of Regulation S-K as promulgated under the Securities Act, (b) a Contract to which Gem is a party or by which any of its assets and properties is currently bound, which require obligations of payment by, or payments to, Gem in excess of \$250,000, (c) a Contract that is not terminable with 90 days' notice or less and without the need to pay any termination fee, (d) a Contract disclosed in or required to be disclosed in Section 4.12(b) or Section 4.12(c) of the Gem Disclosure Schedule, (e) a Contract containing (A) any covenant limiting the freedom of Gem, its Subsidiaries or the Surviving Corporation to engage in any line of business or compete with any Person, or limiting the development, manufacture or distribution of the Gem's products or services or (B) any grant of any option to any Intellectual Property rights, (f) a Contract with any Person, including any financial advisor, broker, finder, investment banker or other Person, providing advisory services to Gem or its Subsidiaries in connection with the Contemplated Transactions, (g) a Contract under which a third party would be entitled to receive a license or have any other rights in Intellectual Property of the Company,

Gem or any of their Subsidiaries at the time of or immediately after the Effective Time, (h) a Contract which would give rise to or otherwise result in proxy statement disclosure pursuant to Item 404 of Regulation S-K (assuming the Company was subject to the requirements of the Exchange Act, or (i) a Contract, plan, program, or policy providing for severance, termination compensation, retention or stay pay, change in control payments, or transaction-based bonuses. Gem has delivered or made available to the Company accurate and complete copies of all Contracts to which Gem or any of its Subsidiaries is a party or by which it is bound of the type described in clauses (a)-(c) of the immediately preceding sentence (any such Contract, a “**Gem Material Contract**”), including all amendments thereto. Gem has not nor, to Gem’s Knowledge as of the date of this Agreement, has any other party to a Gem Material Contract, breached, violated or defaulted under, or received notice that it breached, violated or defaulted under, any of the terms or conditions of any Gem Material Contract in such manner as would permit any other party to cancel or terminate any such Gem Material Contract, or would permit any other party to seek damages which would reasonably be expected to have a Gem Material Adverse Effect. As to Gem, as of the date of this Agreement, each Gem Material Contract is valid, binding, enforceable and in full force and effect, subject to the Enforceability Exceptions. No Person is renegotiating, or has a right pursuant to the terms of any Gem Material Contract to change, any material amount paid or payable to Gem under any Gem Material Contract or any other material term or provision of any Gem Material Contract.

#### 4.14 Compliance; Permits; Restrictions.

(a) Gem and each of its Subsidiaries is, and since the Gem Effective Date, has been in material compliance with all applicable Laws. No investigation, claim, suit, proceeding, audit, Order, or other action by any Governmental Authority is pending or, to the Knowledge of Gem, threatened against Gem or any of its Subsidiaries. There is no agreement or Order binding upon Gem or any of its Subsidiaries which (i) has or could reasonably be expected to have the effect of prohibiting or materially impairing any business practice of Gem, any acquisition of material property by Gem or any of its Subsidiaries or the conduct of business by Gem or any of its Subsidiaries as currently conducted, (ii) is reasonably likely to have an adverse effect on Gem’s ability to comply with or perform any covenant or obligation under this Agreement or (iii) is reasonably likely to have the effect of preventing, delaying, making illegal or otherwise interfering with the Contemplated Transactions.

(b) Each of Gem and its Subsidiaries holds all required Governmental Authorizations that are material to the operation of the business of Gem and Merger Sub as currently conducted (collectively, the “**Gem Permits**”). Section 4.14(b) of the Gem Disclosure Schedule identifies each Gem Permit. Each of Gem and its Subsidiaries is in material compliance with the terms of the Gem Permits. No Legal Proceeding is pending or, to the Knowledge of Gem, threatened in writing, which seeks to revoke, substantially limit, suspend, or materially modify any Gem Permit. The rights and benefits of each Gem Permit will be available to Gem and Surviving Corporation immediately after the Effective Time on terms substantially identical to those enjoyed by Gem and its Subsidiaries as of the date of this Agreement and immediately prior to the Effective Time.

(c) There are no Legal Proceedings pending or, to the Knowledge of Gem, threatened with respect to an alleged material violation by Gem or any of its Subsidiaries of the FDCA, PHSA, FDA regulations adopted thereunder, the Controlled Substances Act or any other similar Law promulgated by a Drug Regulatory Agency.



(d) Each of Gem and its Subsidiaries holds all required Governmental Authorizations issuable by any Drug Regulatory Agency necessary for the conduct of the business of Gem and Merger Sub as currently conducted, and, as applicable, the development, testing, manufacturing, processing, storage, labeling, distribution and importation or exportation, as currently conducted, of any of its product candidates (the “**Gem Product Candidates**”) (the “**Gem Regulatory Permits**”) and no such Gem Regulatory Permit has been (i) revoked, withdrawn, suspended, cancelled or terminated or (ii) modified in any adverse manner other than immaterial adverse modifications. Gem has timely maintained and is in compliance in all material respects with the Gem Regulatory Permits and neither Gem nor or any of its Subsidiaries has, since the Gem Effective Date, received any written notice or other written communication from any Drug Regulatory Agency regarding (A) any material violation of or failure to comply materially with any term or requirement of any Gem Regulatory Permit or (B) any revocation, withdrawal, suspension, cancellation, termination or material modification of any Gem Regulatory Permit. Except for the information and files identified in Section 4.14(d) of the Gem Disclosure Schedule, Gem has made available to the Company all information reasonably requested by the Company in Gem’s or its Subsidiaries’ possession or control relating to the Gem Product Candidates and the development, testing, manufacturing, processing, storage, labeling, distribution and importation or exportation of the Gem Product Candidates, including, but not limited to, complete copies of the following (to the extent there are any): (x) adverse event reports; pre-clinical, clinical and other study reports and material study data; inspection reports, notices of adverse findings, untitled letters, warning letters, filings and letters and other written correspondence to and from any Drug Regulatory Agency; and meeting minutes with any Drug Regulatory Agency and (y) similar reports, material study data, notices, letters, filings, correspondence and meeting minutes with any other Governmental Authority. All such information are accurate and complete in all material respects.

(e) All clinical, pre-clinical and other studies and tests conducted by or on behalf of, or sponsored by, Gem or its Subsidiaries, in which Gem or its subsidiaries or their respective product candidates, including the Gem Product Candidates, have participated were and, if still pending, are being conducted in all material respects in accordance with standard medical and scientific research procedures, in material compliance with the applicable protocols, and in compliance in all material respects with the applicable regulations of the Drug Regulatory Agencies and other applicable Law, including, without limitation, 21 C.F.R. Parts 50, 54, 56, 58 and 312. Other than as set forth on Section 4.14(e) of the Gem Disclosure Schedule, neither Gem nor any of its Subsidiaries has received any written notices, correspondence, or other communications from any Drug Regulatory Agency requiring or, to the Knowledge of Gem, any action to place a clinical hold order on, or otherwise terminate, delay, or suspend any clinical studies conducted by or on behalf of, or sponsored by, Gem or any of its Subsidiaries or in which Gem or any of its Subsidiaries or its current product candidates, including the Gem Product Candidates, have participated. Further, no clinical investigator, researcher, or clinical staff participating in any clinical study conducted by or, to the Knowledge of Gem, on behalf of Gem has been disqualified from participating in studies involving the Gem Product Candidates, and to the Knowledge of Gem, no such administrative action to disqualify such clinical investigators, researchers or clinical staff has been threatened or is pending.

(f) Neither Gem nor, to the Knowledge of Gem, any contract manufacturer with respect to any Gem Product Candidate is the subject of any pending or, to the Knowledge of Gem, threatened investigation in respect of its business or products by the FDA pursuant to its “Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities” Final Policy set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto. To

the Knowledge of Gem, Gem and any contract manufacturer with respect to any Gem Product Candidate has not committed any acts, made any statement, or failed to make any statement, in each case in respect of its business or products that would violate FDA's "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" Final Policy, and any amendments thereto. None of Gem, and, to the Knowledge of Gem, any contract manufacturer with respect to any Gem Product Candidate, or any of their respective officers, directors, employees or agents has been convicted of any crime or engaged in any conduct that could result in a material debarment or exclusion under (i) 21 U.S.C. Section 335a or (ii) any similar applicable Law, or is or has ever been debarred or excluded. To the Knowledge of Gem, no material debarment or exclusionary claims, actions, proceedings or investigations in respect of their business or products are pending or threatened against Gem, and to the Knowledge of Gem, any contract manufacturer with respect to any Gem Product Candidate, or any of its officers, employees or agents.

(g) All manufacturing operations conducted by, or to the Knowledge of Gem, for the benefit of, Gem in connection with any Gem Product Candidate, since the Gem Effective Date, have been and are being conducted in compliance in all material respects with applicable Laws, including the FDA's standards for current good manufacturing practices, including applicable requirements contained in 21 C.F.R. Parts 210 and 211, and the respective counterparts thereof promulgated by Governmental Authorities in countries outside the United States.

(h) No manufacturing site owned by Gem, and to the Knowledge of Gem, no manufacturing site of a contract manufacturer, with respect to any Gem Product Candidate, (i) is subject to a Drug Regulatory Agency shutdown or import or export prohibition or (ii) has received any Form FDA 483, notice of violation, warning letter, untitled letter, or similar correspondence or notice from the FDA or other Governmental Authority alleging or asserting noncompliance with any applicable Law, in each case, that have not been complied with or closed to the satisfaction of the relevant Governmental Authority, and, to the Knowledge of Gem, neither the FDA nor any other Governmental Authority is considering such action.

#### 4.15 Legal Proceedings; Orders.

(a) Except as set forth in Section 4.15 of the Gem Disclosure Schedule, there is no pending Legal Proceeding and, to the Knowledge of Gem, no Person has threatened in writing to commence any Legal Proceeding: (i) that involves Gem or any of its Subsidiaries or any Gem Associate (in his or her capacity as such) or any of the material assets owned or used by Gem or any of its Subsidiaries or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Contemplated Transactions.

(b) There is no Order to which Gem or any of its Subsidiaries, or any of the material assets owned or used by Gem or any of its Subsidiaries is subject. To the Knowledge of Gem, no officer or other Key Employee of Gem or any of its Subsidiaries is subject to any Order that prohibits such officer or employee from engaging in or continuing any conduct, activity or practice relating to the business of Gem or any of its Subsidiaries or to any material assets owned or used by Gem or any of its Subsidiaries.

#### 4.16 Tax Matters.

(a) Each of Gem and its Subsidiaries has timely filed all federal income Tax Returns and other material Tax Returns that it was required to file under applicable Law. All such Tax Returns are true, correct and complete in all material respects and have been prepared in material compliance with all applicable Laws. No written claim has ever been made by a Governmental Authority in a jurisdiction where Gem or any of its Subsidiaries does not file Tax Returns that Gem or any such Subsidiary is subject to taxation by that jurisdiction.

(b) All material Taxes due and owing by Gem and each of its Subsidiaries (whether or not shown on any Tax Return) have been paid. Since the date of the Gem Unaudited Interim Balance Sheet, neither Gem nor any of its Subsidiaries has incurred any material Liability for Taxes outside the Ordinary Course of Business or otherwise inconsistent with past custom and practice.

(c) Each of Gem and its Subsidiaries has withheld and paid all material Taxes required to have been withheld and paid by it in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(d) There are no Encumbrances for Taxes (other than Permitted Encumbrances) upon any of the assets of Gem or any of its Subsidiaries.

(e) No deficiencies for Taxes with respect to Gem or any of its Subsidiaries have been claimed, proposed or assessed by any Governmental Authority in writing that have not been resolved or settled in full. There are no pending (or, based on written notice, threatened) audits, assessments or other actions for or relating to any liability in respect of Taxes of Gem or any of its Subsidiaries. Neither Gem nor any of its Subsidiaries (nor any of their predecessors) has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, which waiver or extension is currently in effect.

(f) Neither Gem nor any of its Subsidiaries is a party to any Tax allocation, Tax sharing or similar agreement (including indemnity arrangements), other than customary indemnification provisions in commercial contracts not primarily related to Taxes entered into in the Ordinary Course of Business, including with vendors, customers, lenders and landlords.

(g) Neither Gem nor any of its Subsidiaries has been a member of an affiliated group filing a consolidated U.S. federal income Tax Return (other than a group the common parent of which is Gem). Neither Gem nor any of its Subsidiaries has any material Liability for the Taxes of any Person (other than Gem and any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign Law) or as a transferee or successor.

(h) Neither Gem nor any of its Subsidiaries has distributed stock of another Person, or had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the Code.

(i) Neither Gem nor any of its Subsidiaries has entered into any transaction identified as a "listed transaction" for purposes of Treasury Regulations Sections 1.6011-4(b)(2) or 301.6111-2(b)(2) or any analogous provision of state or local Law.

(j) Section 4.16(j) of the Gem Disclosure Schedule sets forth the entity classification of each of Gem's Subsidiaries for U.S. federal income tax purposes under Section 7701 of the Code.

(k) Neither Gem nor any of its Subsidiaries is aware of any facts or has knowingly taken or agreed to take or refrain from taking any action, in each case, that would reasonably be expected to prevent or impede the Merger from qualifying as a "reorganization" within the meaning of Section 368(a) of the Code.

(l) There is no outstanding power of attorney from Gem or any of its Subsidiaries authorizing anyone to act on behalf of Gem or any of its Subsidiaries in connection with any Tax, Tax Return or action relating to any Tax or Tax Return of Gem or any of its Subsidiaries.

(m) Neither Gem nor its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, any taxable period (or a portion thereof) ending after the Closing Date as a result of any of the following that occurred or existed on or prior to the Closing Date: (i) a "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax Law), (ii) an installment sale or open transaction, (iii) a prepaid amount received outside the Ordinary Course of Business, (iv) an intercompany item under Treasury Regulations Section 1.1502-13 or an excess loss account under Treasury Regulations Section 1.1502-19, (v) a change in the accounting method of Gem pursuant to Section 481 of the Code or any corresponding or similar provision of state, local or non-U.S. income Tax Law or the use of a method of accounting with respect to any transaction that occurred on or before the Closing Date; or (vi) any inclusion under Section 965 of the Code.

#### 4.17 Employee and Labor Matters: Benefit Plans.

(a) The employment of Gem's employees is terminable by Gem at will, subject to any notice provisions of applicable employment agreements. Gem has made available to the Company accurate and complete copies of all employee manuals and handbooks, disclosure materials, policy statements and other materials relating to the employment of Gem Associates to the extent currently effective and material.

(b) Neither Gem nor any of its Subsidiaries is a party to, bound by, nor has any duty to bargain under, any collective bargaining agreement or other Contract with a labor organization representing any of its employees, and there are no labor organizations representing or, to the Knowledge of Gem, purporting to represent or seeking to represent any employees of Gem.

(c) Section 4.17(c) of the Gem Disclosure Schedule lists all material Gem Employee Plans.

(d) Each Gem Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or opinion letter with respect to such qualified status from the IRS. To the Knowledge of Gem, nothing has occurred that would reasonably be expected to adversely affect the qualified status of any such Gem Employee Plan or require corrective action to the IRS or Employee Plan Compliance Resolution System to maintain such qualification.

(e) Each Gem Employee Plan has been established, operated and administered in compliance, in all material respects, with its terms all applicable Law, including, without limitation, the Code, ERISA and the Affordable Care Act. No Legal Proceeding (other than those relating to routine claims for benefits) is pending or, to the Knowledge of Gem, threatened with respect to any Gem Employee Plan. All payments and/or contributions required to have been made by Gem with respect to all Gem Employee Plans either have been made or have been accrued in accordance with the terms of the applicable Gem Employee Plan and applicable Law.

(f) Neither Gem nor any of its ERISA Affiliates has ever maintained, contributed to, or been required to contribute to or had any liability or obligation (including on account of any ERISA Affiliate) with respect to (i) any "employee benefit plan" that is or was subject to Title IV or Section 302 of ERISA or Section 412 of the Code, (ii) a Multiemployer Plan, (iii) any funded welfare benefit plan within the meaning of Section 419 of the Code, (iv) any Multiple Employer Plan, or (v) any Multiple Employer Welfare Arrangement. Neither Gem nor any of its ERISA Affiliates has ever incurred any liability under Title IV of ERISA that has not been paid in full.

(g) No Gem Employee Plan provides for health care or any other non-pension benefits to any service provider beyond termination of service or retirement (other than as required by Part 6 of Subtitle B of Title I of ERISA or similar state Law or as cash severance). No Gem Employee Plan provides major medical health or long-term disability benefits that are not fully insured through an insurance contract.

(h) No Gem Employee Plan is subject to any law of a foreign jurisdiction outside of the United States.

(i) Each Gem Employee Plan that constitutes in any part a "nonqualified deferred compensation plan" (as such term is defined under Section 409A(d)(1) of the Code and the guidance thereunder) has been operated and maintained in all material respects in operational and documentary compliance with the requirements of Section 409A of the Code and the applicable guidance thereunder. No payment to be made under any Gem Employee Plan is or, to the Knowledge of Gem, will be subject to the penalties of Section 409A(a)(1) of the Code.

(j) Any transfer of property by Gem or any of its Subsidiaries which was subject to a substantial risk of forfeiture and which would otherwise have been subject to taxation under Section 83(a) of the code is covered by a valid and timely filed election under Section 83(b) of the Code, and a copy of such election has been provided to Gem

(k) Gem is and since January 1, 2019 has been in material compliance with all applicable federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment, worker classification, tax withholding, prohibited discrimination, equal employment, fair employment practices, meal and rest periods, immigration status, employee safety and health, wages (including overtime wages), compensation, and hours of work, and in each case, with respect to the employees of Gem: (i) has withheld and reported all material amounts required by law or by agreement to be withheld and

reported with respect to wages, salaries and other payments to employees, (ii) is not liable for any arrears of wages, severance pay or any Taxes or any penalty for failure to comply with any of the foregoing and (iii) is not liable for any material payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the Ordinary Course of Business). To the Knowledge of Gem, there are no pending or threatened or reasonably anticipated claims or actions against Gem, any Gem trustee or any trustee of any Subsidiary under any workers' compensation policy or long-term disability policy that would result in a material liability to Gem. Gem is not a party to a conciliation agreement, consent decree or other agreement or Order with any federal, state, or local agency or Governmental Authority with respect to employment practices.

(l) Gem has no material liability with respect to any misclassification since January 1, 2019 of: (i) any Person as an independent contractor rather than as an employee, (ii) any employee leased from another employer or (iii) any employee currently or formerly classified as exempt from overtime wages. Gem has not taken any action which would constitute a "plant closing" or "mass layoff" within the meaning of the WARN Act or similar state or local law, issued any notification of a plant closing or mass layoff required by the WARN Act or similar state or local law, or incurred any liability or obligation under the WARN Act or any similar state or local law that remains unsatisfied.

(m) There has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, job action, union, organizing activity, question concerning representation or any similar activity or dispute, affecting Gem. No event has occurred within the past six months, and no condition or circumstance exists, that might directly or indirectly be likely to give rise to or provide a basis for the commencement of any such strike, slowdown, work stoppage, lockout, job action, union organizing activity, question concerning representation or any similar activity or dispute.

(n) Gem is not, nor has Gem been, engaged in any unfair labor practice within the meaning of the National Labor Relations Act. There is no Legal Proceeding, claim, labor dispute or grievance pending or, to the Knowledge of Gem, threatened or reasonably anticipated relating to any employment contract, employment termination, privacy right, labor dispute, wages and hours, leave of absence, plant closing notification, workers' compensation policy, long-term disability policy, harassment, retaliation, immigration, employment statute or regulation, safety or discrimination matter involving any Gem Associate, including charges of unfair labor practices or discrimination complaints.

(o) No Gem Employee Plan provides for any tax "gross-up" or similar "make-whole" payments.

(p) Except as set forth on Section 4.17(p) of the Gem Disclosure Schedule, none of the execution and delivery of this Agreement, the shareholder approval of this Agreement, or the consummation of the transactions contemplated hereby could (either alone or in conjunction with any other event) (i) result in, or cause the accelerated vesting payment, funding or delivery of, or increase the amount or value of, any payment or benefit to any employee, officer, director or other service provider of Gem or any of its Subsidiaries; (ii) further restrict any rights of Gem to amend or terminate any Gem Employee Plan; (iii) result in the forgiveness of any indebtedness of any employee, officer, director or other service provider of Gem or any of its Subsidiaries to Gem or its Subsidiaries or (iv) result in any "parachute payment" as defined in Section 280G(b)(2) of the Code (whether or not such payment is considered to be reasonable compensation for services rendered).

4.18 Environmental Matters. Since the Gem Effective Date, Gem has complied with all applicable Environmental Laws, which compliance includes the possession by Gem of all permits and other Governmental Authorizations required under applicable Environmental Laws and compliance with the terms and conditions thereof, except for any failure to be in compliance that, individually or in the aggregate, would not result in a Gem Material Adverse Effect. Gem has not received since the Gem Effective Date, any written notice or other communication (in writing or otherwise), whether from a Governmental Authority, citizens group, employee or otherwise, that alleges that Gem is not in compliance with any Environmental Law, and, to the Knowledge of Gem, there are no circumstances that may prevent or interfere with Gem's compliance with any Environmental Law in the future, except where such failure to comply would not reasonably be expected to have a Gem Material Adverse Effect. To the Knowledge of Gem: (i) no current or prior owner of any property leased or controlled by Gem has received since the Gem Effective Date, any written notice or other communication relating to property owned or leased at any time by Gem, whether from a Governmental Authority, citizens group, employee or otherwise, that alleges that such current or prior owner or Gem is not in compliance with or violated any Environmental Law relating to such property and (ii) Gem has no material liability under any Environmental Law.

4.19 Insurance. Gem has made available to the Company accurate and complete copies of all material insurance policies and all material self-insurance programs and arrangements relating to the business, assets, liabilities and operations of Gem and Merger Sub. Each of such insurance policies is in full force and effect and Gem and Merger Sub are in compliance in all material respects with the terms thereof. Other than customary end of policy notifications from insurance carriers, since the Gem Effective Date, Gem has not received any notice or other communication regarding any actual or possible: (i) cancellation or invalidation of any insurance policy or (ii) refusal or denial of any coverage, reservation of rights or rejection of any material claim under any insurance policy. Each of Gem and Merger Sub has provided timely written notice to the appropriate insurance carrier(s) of each Legal Proceeding pending against Gem for which Gem has insurance coverage, and no such carrier has issued a denial of coverage or a reservation of rights with respect to any such Legal Proceeding, or informed Gem of its intent to do so.

4.20 Transactions with Affiliates. Except as set forth in the Gem SEC Documents filed prior to the date of this Agreement, since the date of Gem's last annual report on Form 10-K for the year ended December 31, 2021 proxy statement filed in 2021 with the SEC, no event has occurred that would be required to be reported by Gem pursuant to Item 404 of Regulation S-K promulgated by the SEC. Section 4.20 of the Gem Disclosure Schedule identifies each Person who is (or who may be deemed to be) an Affiliate of Gem as of the date of this Agreement.

4.21 No Financial Advisors. Except as set forth on Section 4.21 of the Gem Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage fee, finder's fee, opinion fee, success fee, transaction fee or other fee or commission in connection with the Contemplated Transactions based upon arrangements made by or on behalf of Gem.

4.22 Valid Issuance. The Gem Common Stock to be issued in the Merger will, when issued in accordance with the provisions of this Agreement, be validly issued, fully paid and nonassessable.

4.23 Privacy and Data Security. Gem has complied with all applicable Privacy Laws and the applicable terms of any Gem Contracts relating to privacy, security, collection or use of Personal Information of any individuals (including clinical trial participants, patients, patient family members, caregivers or advocates, physicians and other health care professionals, clinical trial investigators, researchers, pharmacists) that interact with Gem in connection with the operation of Gem's business, except for such non-compliance as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Gem Material Adverse Effect. To the Knowledge of Gem, Gem has implemented and maintains reasonable Privacy Policies and has complied with its Privacy Policies, except for such non-compliance as has not to the Knowledge of the Gem had, and would not reasonably be expected to have, individually or in the aggregate, a Gem Material Adverse Effect. To the Knowledge of Gem, as of the date hereof, no claims have been asserted or threatened against Gem by any Person alleging a violation of Privacy Laws, Privacy Policies and/or the applicable terms of any Gem Contracts relating to privacy, security, collection or use of Personal Information of any individuals. To the Knowledge of Gem, there have been no data security incidents, personal data breaches or other adverse events or incidents related to Personal Information or Gem data in the custody or control of Gem or any service provider acting on behalf of Gem, in each case where such incident, breach or event would result in a notification obligation to any Person under applicable law or pursuant to the terms of any Gem Contract.

4.24 No Other Representations or Warranties. Gem hereby acknowledges and agrees that, except for the representations and warranties contained in this Agreement, neither the Company nor any of its Subsidiaries nor any other person on behalf of the Company or its Subsidiaries makes any express or implied representation or warranty with respect to the Company or its Subsidiaries or with respect to any other information provided to Gem, Merger Sub or stockholders or any of their respective Affiliates in connection with the Contemplated Transactions, and (subject to the express representations and warranties of the Company set forth in Section 3 (in each case as qualified and limited by the Company Disclosure Schedule)) none of Gem, Merger Sub or any of their respective Representatives or stockholders, has relied on any such information (including the accuracy or completeness thereof).

## Section 5. Certain Covenants of the Parties.

### 5.1 Operation of Gem's Business.

(a) Except as expressly contemplated or permitted by this Agreement, as required by applicable Law or unless the Company shall otherwise consent in writing (which consent shall not be unreasonably withheld, delayed or conditioned), during the period commencing on the date of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to Section 10 and the Effective Time (the "**Pre-Closing Period**"), Gem shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to conduct its business and operations in the Ordinary Course of Business and in material compliance with all applicable Law and the requirements of all Contracts that constitute Gem Material Contracts.



(b) Except (i) as expressly contemplated or permitted by this Agreement, (ii) as set forth in Section 5.1(b) of the Gem Disclosure Schedule, (iii) as required by applicable Law, (iv) in connection with a Gem Asset Disposition, or (v) with the prior written consent of the Company (which consent shall not be unreasonably withheld, delayed or conditioned), at all times during the Pre-Closing Period, Gem shall not and shall cause its Subsidiaries to not:

(i) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of its capital stock or repurchase, redeem or otherwise reacquire any shares of its capital stock or other securities (except for shares of Gem Common Stock from terminated employees, directors or consultants of Gem), provided, that, for the avoidance of doubt and notwithstanding anything else in this Agreement to the contrary, Gem may, at any time and from time to time, distribute, dividend, assign or otherwise transfer any cash and/or any of its assets or rights in respect of its existing assets or business, including Contingent Value Rights under the CVR Agreement (collectively, the “Dividends”);

(ii) other than as required pursuant to the terms of the Gem ESPP in effect as of the date of this Agreement, sell, issue, grant, pledge or otherwise dispose of or encumber or authorize the issuance of: (A) any capital stock or other security (except for Gem Common Stock issued upon the valid exercise or settlement of outstanding Gem Options or Gem RSUs, as applicable and except for any adjustment and/or Dividend made by Gem, as determined by the Gem Board, to any Gem Options, Gem RSUs and other equity interests in connection with the CVRs), (B) any option, warrant or right to acquire any capital stock or any other security or (C) any instrument convertible into or exchangeable for any capital stock or other security;

(iii) except as required to give effect to anything in contemplation of the Closing, amend any of its Organizational Documents, or effect or be a party to any merger, consolidation, share exchange, business combination, recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction except, for the avoidance of doubt, the Contemplated Transactions and the Nasdaq Reverse Split;

(iv) form any Subsidiary or acquire any equity interest or other interest in any other Entity or enter into a joint venture with any other Entity;

(v) (A) lend money to any Person, (B) incur or guarantee any indebtedness for borrowed money, or (C) guarantee any debt securities of others;

(vi) other than in the Ordinary Course of Business: (A) adopt, establish or enter into any Gem Employee Plan, (B) cause or permit any Gem Employee Plan to be amended other than as required by law or in order to make amendments for the purposes of Section 409A of the Code, (C) pay any bonus or make any profit-sharing or similar payment to (except with respect to obligations pursuant to any Gem Employee Plan), or increase the amount of the wages, salary, commissions, fringe benefits or other compensation or remuneration payable to, any of its employees, directors or consultants or (D) increase the severance or change of control benefits offered to any current or new employees, directors or consultants;

(vii) enter into any material transaction;

(viii) acquire any material asset or sell, lease or otherwise irrevocably dispose of any of its assets or properties, or grant any Encumbrance with respect to such assets or properties;

(ix) make (other than consistent with past practice), change or revoke any material Tax election; file any material amendment to any Tax Return or adopt or change any material accounting method in respect of Taxes; enter into any Tax allocation agreement, Tax sharing agreement or Tax indemnity agreement (other than commercial Contracts entered into in the Ordinary Course of Business the principal subject matter of which is not Taxes); enter into any closing agreement with respect to any Tax; settle or compromise any claim, notice, audit report or assessment in respect of material Taxes; apply for or enter into any ruling from any Tax authority with respect to Taxes; surrender any right to claim a material Tax refund; or consent to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment;

(x) take any action, or knowingly fail to take any action, which action or failure to act would reasonably be expected to prevent the Merger from qualifying for the U.S. Tax Treatment;

(xi) other than with respect to the Gem Asset Disposition or in the Ordinary Course of Business, enter into, amend or terminate any Gem Material Contract;

(xii) terminate or modify in any material respect, or fail to exercise renewal rights with respect to, any material insurance policy other than in the Ordinary Course of Business; or

(xiii) agree, resolve or commit to do any of the foregoing.

Nothing contained in this Agreement shall give the Company, directly or indirectly, the right to control or direct the operations of Gem prior to the Effective Time. Prior to the Effective Time, Gem shall exercise, consistent with the terms and conditions of this Agreement, complete unilateral control and supervision over its business operations.

#### 5.2 Operation of the Company's Business.

(a) Except as expressly contemplated or permitted by this Agreement, as required by applicable Law or unless Gem shall otherwise consent in writing (which consent shall not be unreasonably withheld, delayed or conditioned), during the Pre-Closing Period each of the Company and its Subsidiaries shall use commercially reasonable efforts to conduct its business and operations in the Ordinary Course of Business and in material compliance with all applicable Law and the requirements of all Contracts that constitute Company Material Contracts.

(b) Except (i) as expressly contemplated or permitted by this Agreement, (ii) as set forth in Section 5.2(b) of the Company Disclosure Schedule, (iii) as required by applicable Law or (iv) with the prior written consent of Gem (which consent shall not be unreasonably withheld, delayed or conditioned), at all times during the Pre-Closing Period, the Company shall not, nor shall it cause or permit any of its Subsidiaries to, do any of the following:

(i) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of capital stock; or repurchase, redeem or otherwise reacquire any shares of Company Capital Stock or other securities (except for shares of Company Common Stock from terminated employees, directors or consultants of the Company);

(ii) except as required to give effect to anything in contemplation of the Closing, amend any of its or its Subsidiaries' Organizational Documents, or effect or be a party to any merger, consolidation, share exchange, business combination, recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction except, for the avoidance of doubt, the Contemplated Transactions;

(iii) other than as required pursuant to the terms of any Company Employee Plan in effect as of the date of this Agreement or applicable Law and except as contemplated by the Company Preferred Stock Conversion, sell, issue, grant, pledge or otherwise dispose of or encumber or authorize any of the foregoing actions with respect to: (A) any capital stock or other security of the Company or any of its Subsidiaries (except for shares of outstanding Company Common Stock issued upon the valid exercise of Company Options), (B) any option, warrant or right to acquire any capital stock or any other security, other than grants of incentive equity awards to newly hired employees (which shall be in a number and on terms and conditions consistent with the Company's past practice and granted in accordance with applicable Law) or (C) any instrument convertible into or exchangeable for any capital stock or other security of the Company or any of its Subsidiaries;

(iv) form any Subsidiary or acquire any equity interest or other interest in any other Entity or enter into a joint venture with any other Entity;

(v) (A) lend money to any Person, (B) incur or guarantee any indebtedness for borrowed money, other than in the Ordinary Course of Business, (C) guarantee any debt securities of others or (D) make any capital expenditure or commitment in excess of \$1,000,000 (to the extent such expenditures are incurred in the Ordinary Course of Business);

(vi) other than in the Ordinary Course of Business: (A) adopt, establish or enter into any Company Employee Plan, (B) cause or permit any Company Employee Plan to be amended other than as required by Law, (C) pay any bonus or make any profit-sharing or similar payment to (except with respect to obligations pursuant to any Company Employee Plan), or increase the amount of the wages, salary, commissions, fringe benefits or other compensation or remuneration payable to, any of its directors, officers or employees or (D) increase the severance, retention, or change of control benefits offered to any current or new employees, directors or consultants;

(vii) enter into any material transaction outside the Ordinary Course of Business;

(viii) acquire any material asset or sell, lease or otherwise irrevocably dispose of any of its assets or properties, or grant any Encumbrance with respect to such assets or properties, except in the Ordinary Course of Business;

(ix) sell, assign, transfer, license, sublicense or otherwise dispose of any material Company IP Rights (other than pursuant to non-exclusive licenses in the Ordinary Course of Business);

(x) make (other than consistent with past practice), change or revoke any material Tax election; file any material amendment to any Tax Return or adopt or change any material accounting method in respect of Taxes; enter into any Tax allocation agreement, Tax sharing agreement or Tax indemnity agreement (other than commercial Contracts entered into in the Ordinary Course of Business the principal subject matter of which is not Taxes); enter into any closing agreement with respect to any Tax; settle or compromise any claim, notice, audit report or assessment in respect of material Taxes; apply for or enter into any ruling from any Tax authority with respect to Taxes; surrender any right to claim a material Tax refund; or consent to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment;

(xi) take any action, or knowingly fail to take any action, which action or failure to act would reasonably be expected to prevent the Merger from qualifying for the U.S. Tax Treatment;

(xii) other than in the Ordinary Course of Business, enter into, amend or terminate any Company Material Contract;

(xiii) (A) materially change pricing or royalties or other payments set or charged by the Company or any of its Subsidiaries to its customers or licensees or (B) agree to materially change pricing or royalties or other payments set or charged by Persons who have licensed Intellectual Property to the Company or any of its Subsidiaries; or

(xiv) agree, resolve or commit to do any of the foregoing.

(c) Nothing contained in this Agreement shall give Gem, directly or indirectly, the right to control or direct the operations of the Company prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete unilateral control and supervision over its business operations.

(d) The Company shall not agree to any amendment, termination or other modification of the agreement (or any addendum to the agreement) listed on Schedule 8.11 of this Agreement without the prior written consent of Gem.

### 5.3 Access and Investigation

(a) Subject to the terms of the Confidentiality Agreement, which the Parties agree will continue in full force following the date of this Agreement, during the Pre-Closing Period, upon reasonable notice, Gem, on the one hand, and the Company, on the other hand,

shall and shall use commercially reasonable efforts to cause such Party's Representatives to: (a) provide the other Party and such other Party's Representatives with reasonable access during normal business hours to such Party's Representatives, personnel and assets and to all existing books, records, Tax Returns, work papers and other documents and information relating to such Party and its Subsidiaries, (b) provide the other Party and such other Party's Representatives with such copies of the existing books, records, Tax Returns, work papers, product data, and other documents and information relating to such Party and its Subsidiaries, and with such additional financial, operating and other data and information regarding such Party and its Subsidiaries as the other Party may reasonably request, (c) permit the other Party's officers and other employees to meet, upon reasonable notice and during normal business hours, with the chief executive officer and other officers and managers of such Party responsible for such Party's financial statements and the internal controls of such Party to discuss such matters as the other Party may deem reasonably necessary and (d) make available to the other Party copies of any material notice, report or other document filed with or sent to or received from any Governmental Authority in connection with the Contemplated Transactions. Any investigation conducted by either Gem or the Company pursuant to this [Section 5.3](#) shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the other Party.

(b) Notwithstanding anything herein to the contrary in this [Section 5.3](#), no access or examination contemplated by this [Section 5.3](#) shall be permitted to the extent that it would require any Party or its Subsidiaries to (i) waive the attorney-client privilege or attorney work product privilege, (ii) violate any applicable Law or (iii) breach such Party's confidentiality obligations to a third party as in effect as of the date of this Agreement; provided, that such Party or its Subsidiary (I) shall be entitled to withhold only such information that may not be provided without causing such violation or waiver, (II) shall provide to the other Party all related information that may be provided without causing such violation or waiver (including, to the extent permitted, redacted versions of any such information) and (III) shall enter into such effective and appropriate joint-defense agreements or other protective arrangements as may be reasonably requested by the other Party in order that all such information may be provided to the other Party without causing such violation or waiver and (IV) in the case of subsection (iii) above, upon the other Party's reasonable request, such Party shall use its reasonable efforts to obtain such third party's consent to permit such other Party access to such information, subject to appropriate confidentiality protections.

#### 5.4 No Solicitation.

(a) Each of Gem and the Company agrees that, during the Pre-Closing Period, except as set forth in this [Section 5.4](#), neither it nor any of its Subsidiaries shall, nor shall it or any of its Subsidiaries authorize any of its Representatives to, directly or indirectly: (i) solicit, seek, initiate or knowingly encourage, induce or facilitate the communication, making, submission or announcement of any Acquisition Proposal or Acquisition Inquiry or take any action that could reasonably be expected to lead to an Acquisition Proposal or Acquisition Inquiry, (ii) furnish any non-public information regarding such Party to any Person (other than the Company or Gem) in connection with or in response to an Acquisition Proposal or Acquisition Inquiry, (iii) engage in discussions or negotiations with any Person with respect to any Acquisition Proposal or Acquisition Inquiry, (iv) approve, endorse or recommend any Acquisition Proposal (subject to [Section 6.2](#) and [Section 6.3](#)), (v) execute or enter into any letter of intent or any Contract contemplating or otherwise relating to any Acquisition Transaction, or (vi) publicly propose to do any of the foregoing; provided, however, that, notwithstanding anything contained in this

Section 5.4 and subject to compliance with this Section 5.4, prior to the approval of this Agreement by a Party's stockholders (i.e., the Required Company Stockholder Vote, in the case of the Company and its Subsidiaries, or the Required Gem Stockholder Vote in the case of Gem), such Party may furnish non-public information regarding such Party and its Subsidiaries to, and enter into discussions or negotiations with, any Person in response to a bona fide written Acquisition Proposal by such Person which such Party's board of directors determines in good faith, after consultation with such Party's financial advisors and outside legal counsel, constitutes, or is reasonably likely to result in, a Superior Offer (and is not withdrawn) if: (A) neither such Party nor any Representative of such Party shall have breached this Section 5.4, (B) the board of directors of such Party concludes in good faith based on the advice of outside legal counsel, that the failure to take such action would constitute a violation of the board of directors' fiduciary duties under applicable Law, (C) at least two (2) Business Days prior to initially furnishing any such nonpublic information to, or entering into discussions with, such Person, such Party gives the other Party written notice of the identity of such Person and of such Party's intention to furnish nonpublic information to, or enter into discussions with, such Person, (D) such Party receives from such Person an executed Acceptable Confidentiality Agreement and (E) at least two (2) Business Days prior to furnishing any such nonpublic information to such Person, such Party furnishes such nonpublic information to the other Party (to the extent such information has not been previously furnished by such Party to the other Party). Without limiting the generality of the foregoing, each Party acknowledges and agrees that, in the event any Representative of such Party takes any action that, if taken by such Party, would constitute a breach of this Section 5.4 by such Party, the taking of such action by such Representative shall be deemed to constitute a breach of this Section 5.4 by such Party for purposes of this Agreement.

(b) If any Party or any Representative of such Party receives an Acquisition Proposal or Acquisition Inquiry at any time during the Pre-Closing Period, then such Party shall promptly (and in no event later than twenty-four hours after such Party becomes aware of such Acquisition Proposal or Acquisition Inquiry) advise the other Party orally and in writing of such Acquisition Proposal or Acquisition Inquiry (including the identity of the Person making or submitting such Acquisition Proposal or Acquisition Inquiry, and the terms thereof). Such Party shall keep the other Party reasonably informed with respect to the status and terms of any such Acquisition Proposal or Acquisition Inquiry and any material modification or material proposed modification thereto.

(c) Each Party shall immediately cease and cause to be terminated any existing discussions, negotiations and communications with any Person that relate to any Acquisition Proposal or Acquisition Inquiry as of the date of this Agreement and request the destruction or return of any nonpublic information provided to such Person as soon as reasonably practicable after the date of this Agreement.

**5.5 Notification of Certain Matters.** During the Pre-Closing Period, each of the Company, on the one hand, and Gem, on the other hand, shall promptly notify the other (and, if in writing, furnish copies of) if any of the following occurs: (a) any notice or other communication is received from any Person alleging that the Consent of such Person is or may be required in connection with any of the Contemplated Transactions, (b) any Legal Proceeding against or involving or otherwise affecting such Party or its Subsidiaries is commenced, or, to the Knowledge of such Party, threatened against such Party or, to the Knowledge of such Party, any director, officer or Key Employee of such Party, (c) such Party becomes aware of any inaccuracy in any representation or warranty made by such Party in this Agreement or (d) the failure of such Party

to comply with any covenant or obligation of such Party; in each case that could reasonably be expected to make the timely satisfaction of any of the conditions set forth in Sections 7, 8 and 9, as applicable, impossible or materially less likely. No such notice shall be deemed to supplement or amend the Company Disclosure Schedule or the Gem Disclosure Schedule for the purpose of (x) determining the accuracy of any of the representations and warranties made by the Company in this Agreement or (y) determining whether any condition set forth in Section 7, 8 or 9 has been satisfied. Any failure by either Party to provide notice pursuant to this Section 5.5 shall not be deemed to be a breach for purposes of Section 8.2 or 9.2, as applicable, unless such failure to provide such notice was knowing and intentional.

5.6 CVR Arrangements. Prior to the Effective Time, Gem, a Holders' Representative and a Rights Agent shall execute the CVR Agreement.

5.7 Gem Asset Disposition. The Company and Gem agree that Gem may, without the prior written consent of the Company, sell, assign, license, or otherwise dispose of, in one or more transactions some or all of its non-cash assets at any time prior to or concurrent with the Closing, provided that such sale or disposition is also approved by the Gem Board of Directors or a committee thereof (each a "**Gem Asset Disposition**"). Notwithstanding the foregoing, Gem may not enter into any agreement with respect to a Gem Asset Disposition that would result in a Material Continuing Obligation without the prior written consent of the Company (not to be unreasonably withheld, conditioned or delayed), provided, however, that in the event that Gem intends to enter into any agreement with respect to a Gem Asset Disposition that would be reasonably likely to result in a material continuing obligation or liability of either Gem or the Company on or after the Closing that is not a Material Continuing Obligation, Gem shall provide the Company with written notice of such Gem Asset Disposition at least ten (10) Business Days prior to the consummation of such Gem Asset Disposition, which notice shall include a summary of the material terms relating to such Gem Asset Disposition (including any potential material continuing obligations or liabilities). Notwithstanding anything in this Agreement to the contrary, for clarity, this Section 5.7 shall not apply to any liability or obligation if such liability or obligation will be a deduction to Gem Net Cash pursuant to the definition thereof.

## Section 6. Additional Agreements of the Parties.

### 6.1 Registration Statement; Proxy Statement.

(a) As promptly as practicable after the date of this Agreement, (i) Gem shall, in cooperation with the Company, prepare and file with the SEC a proxy statement relating to the Gem Stockholder Meeting to be held in connection with the Merger (together with any amendments thereof or supplements thereto, the "**Proxy Statement**") and (ii) Gem, in cooperation with the Company, shall prepare and file with the SEC a registration statement on Form S-4 (the "**Form S-4**"), in which the Proxy Statement shall be included as a part (the Proxy Statement and the Form S-4, collectively, the "**Registration Statement**"), in connection with the registration under the Securities Act of the shares of Gem Common Stock to be issued by virtue of the Merger. Each of Gem and the Company shall use their reasonable best efforts to respond promptly to any comments of the SEC or its staff and to cause the Registration Statement to become effective as promptly as practicable, and shall take all or any action required under any applicable federal, state, securities and other Laws in connection with the issuance of shares of Gem Common Stock pursuant to the Merger. Each of the Parties shall furnish all information concerning itself and their Affiliates, as applicable, to the other Parties as the other Parties may reasonably request in connection with such actions and the preparation of the Registration Statement and Proxy Statement.

(b) Gem covenants and agrees that the Registration Statement (and the letter to stockholders, notice of meeting and form of proxy included therewith) will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Company covenants and agrees that the information supplied by or on behalf of the Company or its Subsidiaries to Gem for inclusion in the Registration Statement (including the Company Financials) will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make such information, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, Gem makes no covenant, representation or warranty with respect to statements made in the Registration Statement (and the letter to stockholders, notice of meeting and form of proxy included therewith), if any, based on information provided by the Company or its Subsidiaries or any of their Representatives for inclusion therein.

(c) Each of the Parties shall cause the Proxy Statement to be mailed to Gem's stockholders as promptly as practicable after the Registration Statement is declared effective under the Securities Act. If Gem, Merger Sub or the Company become aware of any event or information that, pursuant to the Securities Act or the Exchange Act, should be disclosed in an amendment or supplement to the Registration Statement or Proxy Statement, as the case may be, then such Party, as the case may be, shall promptly inform the other Parties thereof and shall cooperate with such other Parties in filing such amendment or supplement with the SEC and, if appropriate, in mailing such amendment or supplement to the Gem stockholders.

(d) The Company shall reasonably cooperate with Gem and provide, and cause its Representatives to provide, Gem and its Representatives, with all accurate and complete information regarding the Company or its Subsidiaries that is required by Law to be included in the Registration Statement or reasonably requested by Gem to be included in the Registration Statement. Without limiting the foregoing, the Company will use commercially reasonable efforts to cause to be delivered to Gem a letter of the Company's independent accounting firm, dated no more than two (2) Business Days before the date on which the Registration Statement becomes effective (and reasonably satisfactory in form and substance to Gem), that is customary in scope and substance for letters delivered by independent public accountants in connection with registration statements similar to the Registration Statement.

(e) As promptly as reasonably practicable following the date of this Agreement the Company will furnish to Gem unaudited interim financial statements for each interim period completed prior to Closing that would be required to be included in the Registration Statement or any periodic report due prior to the Closing if the Company were subject to the periodic reporting requirements under the Securities Act or the Exchange Act (the "**Company Interim Financial Statements**"). The Company Interim Financial Statements for the three and six months ended June 30, 2022 shall be furnished to Gem no later than August 31, 2022. Each of the Company Audited Financial Statements and the Company Interim Financial Statements will be suitable for inclusion in the Registration Statement and prepared in accordance with GAAP as applied on a consistent basis during the periods involved (except in each case as described in the notes thereto) and on that basis will present fairly, in all material respects, the financial position and the results of operations, changes in stockholders' equity, and cash flows of the Company as of the dates of and for the periods referred to in the Company Audited Financial Statements or the Company Interim Financial Statements, as the case may be.



## 6.2 Company Stockholder Written Consent

(a) Promptly after the Registration Statement has been declared effective under the Securities Act, and in any event no later than 5:00p.m. Eastern Time on the date that is the second (2<sup>nd</sup>) Business Day after the Registration Statement has been declared effective under the Securities Act, the Company shall obtain the approval by written consent from Company stockholders sufficient for the Required Company Stockholder Vote in lieu of a meeting pursuant to Section 228 of the DGCL, for purposes of (i) adopting and approving this Agreement and the Contemplated Transactions (including the Merger), (ii) acknowledging that the approval given thereby is irrevocable and that such stockholder is aware of its rights to demand appraisal for its shares pursuant to Section 262 of the DGCL, a copy of which will be attached thereto, and that such stockholder has received and read a copy of Section 262 of the DGCL and (iii) acknowledging that by its approval of the Merger it is not entitled to appraisal rights with respect to its shares in connection with the Merger and thereby waives any rights to receive payment of the fair value of its capital stock under the DGCL. Under no circumstances shall the Company assert that any other approval or consent is necessary by its stockholders to approve this Agreement and the Contemplated Transactions. Promptly following receipt of the duly executed Company Stockholder Written Consent, the Company shall deliver a copy of the duly executed Company Stockholder Written Consent to Parent, accompanied by a certificate signed by the Chief Executive Officer of the Company certifying to the accuracy and completeness of such Company Stockholder Written Consent.

(b) Promptly following receipt of the Required Company Stockholder Vote, the Company shall prepare and mail a notice (the “**Stockholder Notice**”), in accordance with Section 228(e) of the DGCL, to every stockholder of the Company that did not execute the Company Stockholder Written Consent. The Stockholder Notice shall (i) include a statement to the effect that the Company Board determined that the Merger is advisable in accordance with Section 251(b) of the DGCL and in the best interests of the stockholders of the Company and approved and adopted this Agreement, the Merger and the other Contemplated Transactions, (ii) provide the stockholders of the Company to whom it is sent with notice of the actions taken in the Company Stockholder Written Consent, including the adoption and approval of this Agreement, the Merger and the other Contemplated Transactions in accordance with Section 228(e) of the DGCL and the certificate of incorporation and bylaws of the Company and (iii) include a description notice of the availability of appraisal rights of the Company’s stockholders available under Section 262 of the DGCL, along with such other information as is required thereunder and pursuant to applicable Law. All materials (including any amendments thereto) submitted to the stockholders of the Company in accordance with this Section 6.2(b) shall be subject to Gem’s advance review and reasonable approval.

(c) The Company agrees that, subject to Section 6.2(d): (i) the Company Board shall recommend that the Company’s stockholders vote to adopt and approve this Agreement and the Contemplated Transactions and shall use commercially reasonable efforts to solicit such approval within the time set forth in Section 6.2(a) (the recommendation of the Company Board that the Company’s stockholders vote to adopt and approve this Agreement being referred to as the “**Company Board Recommendation**”) and (ii) the Company Board Recommendation shall not be withdrawn or modified (and the Company Board shall not publicly

propose to withdraw or modify the Company Board Recommendation) in a manner adverse to Gem, and no resolution by the Company Board or any committee thereof to withdraw or modify the Company Board Recommendation in a manner adverse to Gem or to adopt, approve or recommend (or publicly propose to adopt, approve or recommend) any Acquisition Proposal shall be adopted or proposed.

(d) Notwithstanding anything to the contrary contained in [Section 6.2\(c\)](#), and subject to compliance with [Section 5.4](#) and [Section 6.2](#), if at any time prior to approval and adoption of this Agreement by the Required Company Stockholder Vote, the Company receives a bona fide written Superior Offer, the Company Board may withhold, amend, withdraw or modify the Company Board Recommendation (or publicly propose to withhold, amend, withdraw or modify the Company Board Recommendation) in a manner adverse to Gem (collectively, a “**Company Board Adverse Recommendation Change**”) if, but only if, following the receipt of and on account of such Superior Offer, (i) the Company Board determines in good faith, based on the advice of its outside legal counsel, that the failure to withhold, amend, withdraw or modify such recommendation would constitute a violation of the Company Board’s fiduciary duties under applicable Law, (ii) the Company has, and has caused its financial advisors and outside legal counsel to, during the Notice Period (as defined below), negotiate with Gem in good faith to make such adjustments to the terms and conditions of this Agreement so that such Acquisition Proposal ceases to constitute a Superior Offer and (iii) if after Gem shall have delivered to the Company a written offer to alter the terms or conditions of this Agreement during the Notice Period, the Company Board shall have determined in good faith, based on the advice of its outside legal counsel, that the failure to withhold, amend, withdraw or modify the Company Board Recommendation would constitute a violation of the Company Board’s fiduciary duties under applicable Law (after taking into account such alterations of the terms and conditions of this Agreement); provided that (x) Gem receives written notice from the Company confirming that the Company Board has determined to change its recommendation at least four (4) Business Days in advance of the Company Board Adverse Recommendation Change (the “**Notice Period**”), which notice shall include a description in reasonable detail of the reasons for such Company Board Adverse Recommendation Change, and written copies of any relevant proposed transaction agreements with any party making a potential Superior Offer, (y) during any Notice Period, Gem shall be entitled to deliver to the Company one or more counterproposals to such Acquisition Proposal and the Company will, and cause its Representatives to, negotiate with Gem in good faith (to the extent Gem desires to negotiate) to make such adjustments in the terms and conditions of this Agreement so that the applicable Acquisition Proposal ceases to constitute a Superior Offer and (z) in the event of any material amendment to any Superior Offer (including any revision in the amount, form or mix of consideration the Company’s stockholders would receive as a result of such potential Superior Offer), the Company shall be required to provide Gem with notice of such material amendment and the Notice Period shall be extended, if applicable, to ensure that at least two (2) Business Days remain in the Notice Period following such notification during which the parties shall comply again with the requirements of this [Section 6.2\(d\)](#) and the Company Board shall not make a Company Board Adverse Recommendation Change prior to the end of such Notice Period as so extended (it being understood that there may be multiple extensions).

(e) The Company’s obligation to solicit the consent of its stockholders to sign the Company Stockholder Written Consent in accordance with [Section 6.2\(a\)](#) shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission of any Superior Offer or other Acquisition Proposal, or by any Company Board Adverse Recommendation Change.

### 6.3 Gem Stockholder Meeting.

(a) Gem shall take all action necessary under applicable Law to call, give notice of and hold a meeting of the holders of Gem Common Stock to consider and vote to approve this Agreement and the Contemplated Transactions, including the issuance of the shares of Gem Common Stock to the stockholders of the Company pursuant to the terms of this Agreement, an amendment to Gem's certificate of incorporation to effect the Nasdaq Reverse Split, and the approval of the Equity Plan Amendments (collectively, the "**Gem Stockholder Matters**") and such meeting, the "**Gem Stockholder Meeting**"). The Gem Stockholder Meeting shall be held as promptly as practicable after the Registration Statement is declared effective under the Securities Act, and in any event no later than forty-five (45) days after the effective date of the Registration Statement. Gem shall take reasonable measures to ensure that all proxies solicited in connection with the Gem Stockholder Meeting are solicited in compliance with all applicable Law. Notwithstanding anything to the contrary contained herein, if on the date of the Gem Stockholder Meeting, or a date preceding the date on which the Gem Stockholder Meeting is scheduled, Gem reasonably believes that (i) it will not receive proxies sufficient to obtain the Required Gem Stockholder Vote, whether or not a quorum would be present or (ii) it will not have sufficient shares of Gem Common Stock represented (whether in person or by proxy) to constitute a quorum necessary to conduct the business of the Gem Stockholder Meeting, Gem may postpone or adjourn, or make one or more successive postponements or adjournments of, the Gem Stockholder Meeting as long as the date of the Gem Stockholder Meeting is not postponed or adjourned more than an aggregate of forty (40) days in connection with any postponements or adjournments.

(b) Gem agrees that, subject to Section 6.3(c): (i) the Gem Board shall recommend that the holders of Gem Common Stock vote to approve the Gem Stockholder Matters and shall use commercially reasonable efforts to solicit such approval within the timeframe set forth in Section 6.3(a) above, (ii) the Proxy Statement shall include a statement to the effect that the Gem Board recommends that Gem's stockholders vote to approve the Gem Stockholder Matters (the recommendation of the Gem Board being referred to as the "**Gem Board Recommendation**") and (iii) the Gem Board Recommendation shall not be withheld, amended, withdrawn or modified (and the Gem Board shall not publicly propose to withhold, amend, withdraw or modify the Gem Board Recommendation) in a manner adverse to the Company, and no resolution by the Gem Board or any committee thereof to withdraw or modify the Gem Board Recommendation in a manner adverse to the Company or to adopt, approve or recommend (or publicly propose to adopt, approve or recommend) any Acquisition Proposal shall be adopted or proposed (the actions set forth in the foregoing clause (iii), collectively, a "**Gem Board Adverse Recommendation Change**").

(c) Notwithstanding anything to the contrary contained in Section 6.3(b), and subject to compliance with Section 5.4 and Section 6.3, if at any time prior to the approval of Gem Stockholder Matters by the Required Gem Stockholder Vote, Gem receives a bona fide written Superior Offer, the Gem Board may make a Gem Board Adverse Recommendation Change if, but only if: in the receipt of and on account of such Superior Offer, (i) the Gem Board determines in good faith, based on the advice of its outside legal counsel, that the failure to make a Gem Board Adverse Recommendation Change would constitute a violation

of the Gem Board's fiduciary duties under applicable Law, (ii) Gem has, and has caused its financial advisors and outside legal counsel to, during the Notice Period, negotiate with Company in good faith to make such adjustments to the terms and conditions of this Agreement so that such Acquisition Proposal ceases to constitute a Superior Offer and (iii) if after the Company shall have delivered to Gem a written offer to alter the terms or conditions of this Agreement during the Notice Period, the Gem Board shall have determined in good faith, based on the advice of its outside legal counsel, that the failure to withhold, amend, withdraw or modify the Gem Board Recommendation would constitute a violation of its fiduciary duties under applicable Law (after taking into account such alterations of the terms and conditions of this Agreement); provided that (1) the Company receives written notice from Gem confirming that the Gem Board has determined to change its recommendation during the Notice Period, which notice shall include a description in reasonable detail of the reasons for such Gem Board Adverse Recommendation Change, and written copies of any relevant proposed transaction agreements with any party making a potential Superior Offer, (2) during any Notice Period, the Company shall be entitled to deliver to Gem one or more counterproposals to such Acquisition Proposal and Gem will, and cause its Representatives to, negotiate with the Company in good faith (to the extent the Company desires to negotiate) to make such adjustments in the terms and conditions of this Agreement so that the applicable Acquisition Proposal ceases to constitute a Superior Offer and (3) in the event of any material amendment to any Superior Offer (including any revision in price or percentage of the combined company that Gem's stockholders would receive as a result of such potential Superior Offer), Gem shall be required to provide the Company with notice of such material amendment and the Notice Period shall be extended, if applicable, to ensure that at least two (2) Business Days remain in the Notice Period following such notification during which the parties shall comply again with the requirements of this Section 6.3(c) and the Gem Board shall not make a Gem Board Adverse Recommendation Change prior to the end of such Notice Period as so extended (it being understood that there may be multiple extensions).

(d) Gem's obligation to call, give notice of and hold the Gem Stockholder Meeting in accordance with Section 6.3(a) shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission of any Superior Offer or Acquisition Proposal, or by any withdrawal or modification of the Gem Board Recommendation.

(e) Nothing contained in this Agreement shall prohibit Gem or the Gem Board from complying with Rules 14d-9 and 14e-2(a) promulgated under the Exchange Act; provided however, that any disclosure made by Gem or the Gem Board pursuant to Rules 14d-9 and 14e-2(a) shall be limited to a statement that Gem is unable to take a position with respect to the bidder's tender offer unless the Gem Board determines in good faith, after consultation with its outside legal counsel, that such statement would constitute a violation of the Gem Board's fiduciary duties under applicable Law.

#### 6.4 Efforts; Regulatory Approvals.

(a) The Parties shall use reasonable best efforts to consummate the Contemplated Transactions. Without limiting the generality of the foregoing, each Party: (i) shall make all filings and other submissions (if any) and give all notices (if any) required to be made and given by such Party in connection with the Contemplated Transactions, (ii) shall use commercially reasonable efforts to obtain each Consent (if any) reasonably required to be obtained (pursuant to any applicable Law or Contract, or otherwise) by such Party in connection with the Contemplated Transactions or for such Contract to remain in full force and effect, (iii) shall use commercially reasonable efforts to lift any injunction prohibiting, or any other legal bar to, the Contemplated Transactions and (iv) shall use commercially reasonable efforts to satisfy the conditions precedent to the consummation of this Agreement.

(b) Notwithstanding the generality of the foregoing, each Party shall use commercially reasonable efforts to file or otherwise submit, as soon as practicable after the date of this Agreement, all applications, notices, reports and other documents reasonably required to be filed by such Party with or otherwise submitted by such Party to any Governmental Authority with respect to the Contemplated Transactions, and to submit promptly any additional information requested by any such Governmental Authority. The Company and Gem shall respond as promptly as is practicable to respond in compliance with: (i) any inquiries or requests received from the Federal Trade Commission or the Department of Justice for additional information or documentation and (ii) any inquiries or requests received from any state attorney general, foreign antitrust or competition authority or other Governmental Authority in connection with antitrust or competition matters. Each of the Parties will promptly notify the other Party of the details of any material communication it receives from any Governmental Authority relating to the matters that are subject to this Agreement, and permit the other Party to review in advance, to the extent permitted by Law, any proposed material communication to any Governmental Entity. Each of the Parties will provide the other Party with advance notice of and, to the extent permitted by such Governmental Entity, give the other party the opportunity to attend and participate in any meeting with the Governmental Entity in respect of any filings, investigations, or other inquiries. Subject to applicable Laws, the Parties will coordinate and cooperate fully and promptly with one another in exchanging such information and providing such assistance as the other Party may reasonably request in connection with the foregoing. Subject to applicable Laws, each of the Parties will provide, or cause to be provided, to the other, copies of all material correspondence, filings, or communications between them or any of their Representatives, on the one hand, and any Governmental Entity or members of its staff, on the other hand, with respect to the Merger.

#### 6.5 Company Options.

(a) Subject to Section 6.5(c), at the Effective Time, each Company Option that is outstanding and unexercised immediately prior to the Effective Time and that, following assumption by Gem at the Effective Time, will be eligible to be registered on Form S-8, whether or not vested, shall be assumed and converted into an option to purchase Gem Common Stock (an “**Assumed Option**”) in a manner consistent with the requirements of Section 409A and, for Company Options qualified under Section 422 of the Code, Section 424 of the Code, and Gem shall assume the Company Plan] All other Company Options shall be cancelled immediately prior to the Effective Time. All rights with respect to Company Common Stock under Company Options assumed by Gem shall thereupon be converted into rights with respect to Gem Common Stock. Accordingly, from and after the Effective Time: (i) each Assumed Option may be exercised solely for shares of Gem Common Stock, (ii) the number of shares of Gem Common Stock subject to each Assumed Option shall be determined by multiplying (A) the number of shares of Company Common Stock that were subject to such Assumed Option, as in effect immediately prior to the Effective Time, by (B) the Exchange Ratio, and rounding the resulting number down to the nearest whole number of shares of Gem Common Stock and (iii) the per share exercise price of each Assumed Option shall be determined by dividing (A) the per share exercise price of such Assumed Option, as in effect immediately prior to the Effective Time, by (B) the Exchange Ratio and rounding the resulting exercise price up to the nearest whole cent. Each Assumed Option shall otherwise continue to be subject to substantially the same terms and conditions (including the

vesting arrangements and other terms and conditions set forth in the Company Plan and the applicable stock option or other agreement) as in effect and applicable to the Assumed Option immediately prior to the Effective Time; provided, however, that: (A) to the extent provided under the terms of a Company Option, each Assumed Option shall, in accordance with its terms, be subject to further adjustment as appropriate to reflect any stock split, division or subdivision of shares, stock dividend, reverse stock split, consolidation of shares, reclassification, recapitalization or other similar transaction with respect to Gem Common Stock subsequent to the Effective Time and (B) the Gem Board or a committee thereof shall succeed to the authority and responsibility of the Company Board or any committee thereof with respect to each Assumed Option and the Company Plan.

(b) Gem shall file with the SEC, as soon as reasonably practicable after the Effective Time, a registration statement on Form S-8, if available for use by Gem, relating to the shares of Gem Common Stock issuable with respect to Assumed Options.

(c) Prior to the Effective Time, the Company shall take all actions that may be necessary (under the Company Plan and otherwise) to effectuate the provisions of this [Section 6.5](#) and to ensure that, from and after the Effective Time, holders of Company Options have no rights with respect thereto other than those specifically provided in this [Section 6.5](#).

#### 6.6 Gem Options and RSUs.

(a) Prior to the Closing, the Gem Board shall have adopted appropriate resolutions and taken all other actions to the extent necessary and appropriate to provide that (i) outstanding Gem Options and Gem RSUs shall be treated in accordance with their terms and the terms of any applicable Company Plan and/or (ii) in accordance with the treatment described on Schedule 6.6.

(b) Prior to the Closing, the Gem Board shall approve the Equity Plan Amendments, cause the adoption of such Equity Plan Amendments to be included in the Proxy Statement as a matter for approval at the Gem Shareholder Meeting, and recommend to the Gem stockholders the approval of such matters.

6.7 Employee Benefits. Gem and the Company shall cause Gem to comply with the terms of any employment, severance, retention, change of control, or similar agreement specified on Section 4.17(c) of the Gem Disclosure Schedule, subject to the provisions of such agreements. Gem or the Company shall make available group health plan coverage satisfying the requirements of COBRA to any employee or former employee of Gem (and their respective dependents) whose “qualifying event” (within the meaning of COBRA) occurred prior to or in connection with the Merger, and Gem or the Company shall otherwise discharge and be responsible for all liabilities related to COBRA. Gem and the Company agree that the Merger shall constitute or be deemed to constitute a “change of control” or “change in control” for purposes of the Gem Employee Plans and any awards issued thereunder and for purposes of any Gem Employee Plan maintained for current or former employees or directors of or independent contractors to Gem.

#### 6.8 Indemnification of Officers and Directors.

(a) From the Effective Time through the sixth anniversary of the date on which the Effective Time occurs, each of Gem and the Surviving Corporation shall indemnify and hold harmless each person who is now, or has been at any time prior to the date hereof, or who becomes prior to the Effective Time, a director or officer of Gem or the Company, respectively (the “**D&O Indemnified Parties**”), against all claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys’ fees and disbursements (collectively, “**Costs**”), incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to the fact that the D&O Indemnified Party is or was a director or officer of Gem or of the Company, whether asserted or claimed prior to, at or after the Effective Time, in each case, to the fullest extent permitted under the DGCL. Each D&O Indemnified Party will be entitled to advancement of expenses incurred in the defense of any such claim, action, suit, proceeding or investigation from each of Gem and the Surviving Corporation, jointly and severally, upon receipt by Gem or the Surviving Corporation from the D&O Indemnified Party of a request therefor; provided that any such person to whom expenses are advanced provides an undertaking to Gem, to the extent then required by the DGCL, to repay such advances if it is ultimately determined that such person is not entitled to indemnification. Without otherwise limiting the D&O Indemnified Parties’ rights with regards to counsel, following the Effective Time, the D&O Indemnified Parties shall be entitled to continue to retain Wilmer Cutler Pickering Hale and Dorr LLP or such other counsel selected by the D&O Indemnified Parties.

(b) The provisions of the certificate of incorporation and bylaws of Gem with respect to indemnification, advancement of expenses and exculpation of present and former directors and officers of Gem that are presently set forth in the certificate of incorporation and bylaws of Gem shall not be amended, modified or repealed for a period of six years from the Effective Time in a manner that would adversely affect the rights thereunder of individuals who, at or prior to the Effective Time, were officers or directors of Gem, unless such modification is required by applicable Law. The certificate of incorporation and bylaws of the Surviving Corporation shall contain, and Gem shall cause the certificate of incorporation and bylaws of the Surviving Corporation to so contain, provisions no less favorable with respect to indemnification, advancement of expenses and exculpation of present and former directors and officers as those presently set forth in the certificate of incorporation and bylaws of Gem.

(c) From and after the Effective Time, (i) the Surviving Corporation shall fulfill and honor in all respects the obligations of the Company to its D&O Indemnified Parties as of immediately prior to the Closing pursuant to any indemnification provisions under the Company’s Organizational Documents and pursuant to any indemnification agreements between the Company and such D&O Indemnified Parties, with respect to claims arising out of matters occurring at or prior to the Effective Time and (ii) Gem shall fulfill and honor in all respects the obligations of Gem to its D&O Indemnified Parties as of immediately prior to the Closing pursuant to any indemnification provisions under Gem’s Organizational Documents and pursuant to any indemnification agreements between Gem and such D&O Indemnified Parties, with respect to claims arising out of matters occurring at or prior to the Effective Time.

(d) From and after the Effective Time, Gem shall maintain directors’ and officers’ liability insurance policies, with an effective date as of the Closing Date, on commercially available terms and conditions and with coverage limits customary for U.S. public companies similarly situated to Gem. In addition, Gem shall purchase, prior to the Effective Time, a six-year prepaid “D&O tail policy” for the non-cancellable extension of the directors’ and officers’

liability coverage of Gem's existing directors' and officers' insurance policies for a claims reporting or discovery period of at least six years from and after the Effective Time with respect to any claim related to any period of time at or prior to the Effective Time with terms, conditions, retentions and limits of liability that are no less favorable than the coverage provided under Gem's existing policies as of the date of this Agreement with respect to any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or any matter claimed against a director or officer of Gem by reason of him or her serving in such capacity that existed or occurred at or prior to the Effective Time (including in connection with this Agreement or the Contemplated Transactions or in connection with Gem's initial public offering of shares of Gem Common Stock).

(e) From and after the Effective Time, Gem and the Surviving Corporation shall pay all expenses, including reasonable attorneys' fees, that are incurred by the persons referred to in this [Section 6.8](#) in connection with their enforcement of the rights provided to such persons in this [Section 6.8](#).

(f) The provisions of this [Section 6.8](#) are intended to be in addition to the rights otherwise available to the current and former officers and directors of Gem and the Company by Law, charter, statute, bylaw or agreement, and shall operate for the benefit of, and shall be enforceable by, each of the D&O Indemnified Parties, their heirs and their Representatives.

(g) In the event Gem or the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of Gem or the Surviving Corporation, as the case may be, shall succeed to the obligations set forth in this [Section 6.8](#). Gem shall cause the Surviving Corporation to perform all of the obligations of the Surviving Corporation under this [Section 6.8](#).

**6.9 Disclosure.** The Parties shall use their commercially reasonable efforts to agree to the text of a mutually acceptable joint initial press release and Gem's Form 8-K announcing the execution and delivery of this Agreement. Without limiting any Party's obligations under the Confidentiality Agreement, no Party shall, and no Party shall permit any of its Subsidiaries or any of its Representative to, issue any press release or make any disclosure (to any customers or employees of such Party, to the public or otherwise) regarding the Contemplated Transactions unless: (a) the other Party shall have approved such press release or disclosure in writing, such approval not to be unreasonably conditioned, withheld or delayed; or (b) such Party shall have determined in good faith, upon the advice of outside legal counsel, that such disclosure is required by applicable Law and, to the extent practicable, before such press release or disclosure is issued or made, such Party advises the other Party of, and consults with the other Party regarding, the text of such press release or disclosure; provided, however, that each of the Company and Gem may make any public statement in response to specific questions by the press, analysts, investors or those attending industry conferences or financial analyst conference calls, so long as any such statements are consistent with previous press releases, public disclosures or public statements made by the Company or Gem in compliance with this [Section 6.9](#). Notwithstanding the foregoing, a Party need not consult with any other Parties in connection with such portion of any press release, public statement or filing to be issued or made pursuant to [Section 6.3\(d\)](#) or with respect to any Acquisition Proposal, Gem Board Adverse Recommendation Change or Company Board Adverse Recommendation Change, as applicable, or with respect to Gem only, pursuant to [Section 6.3\(e\)](#).



6.10 Listing. At or prior to the Effective Time, Gem shall use its commercially reasonable efforts to (a) maintain its existing listing on Nasdaq until the Effective Time and to obtain approval of the listing of the combined corporation on Nasdaq, (b) to the extent required by the rules and regulations of Nasdaq, prepare and submit to Nasdaq a notification form for the listing of the shares of Gem Common Stock to be issued in connection with the Contemplated Transactions and to cause such shares to be approved for listing (c) prepare and timely submit to Nasdaq a notification form of the Nasdaq Reverse Stock Split and to submit a copy of the amendment to Gem's certificate of incorporation effect the Nasdaq Reverse Split and other amendments contemplated by Section 2.4 certified by the Secretary of State of the State of Delaware, to Nasdaq on the Closing Date; and (d) to the extent required by Nasdaq Marketplace Rule 5110, assist the Company in preparing and filing an initial listing application for the Gem Common Stock on Nasdaq (the "Nasdaq Listing Application"). The Party not filing the Nasdaq Listing Application will cooperate with the other Party as reasonably requested by such filing Party with respect to the Nasdaq Listing Application and promptly furnish to such filing Party all information concerning itself and its stockholders that may be required or reasonably requested in connection with any action contemplated by this Section 6.10.

6.11 Tax Matters.

(a) The Company shall (and shall cause its Affiliates to) provide any information reasonably requested to allow Gem to comply with any information reporting or withholding requirements contained in the Code or other applicable Laws with respect to the transactions contemplated by, or any payment made in connection with, this Agreement.

(b) All transfer, documentary, sales, use, value added, goods and services, stamp, registration, notarial fees and other similar Taxes and fees (collectively, "**Transfer Taxes**"), shall be paid by the Surviving Corporation. After the Closing Date, the Surviving Corporation will prepare and file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes that are required to be filed after the Closing Date, and, if required by applicable Law, Gem will, and will cause its Affiliates to, cooperate and join in the execution of any such Tax Returns and other documentation, as applicable. Each Party shall (and shall cause its Affiliates to) provide certificates or forms, and timely execute any Tax Returns, that are necessary or appropriate to establish an exemption for (or reduction in) any Transfer Tax.

(c) Each of the Parties shall (and shall cause their respective Affiliates to) cooperate fully, as and to the extent reasonably requested by another Party, in connection with the filing of relevant Tax Returns, and any audit or tax proceeding. Such cooperation shall include the retention and (upon the other Party's request) the provision (with the right to make copies) of records and information reasonably relevant to any tax proceeding or audit, making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

6.12 Legends. Gem shall be entitled to place appropriate legends on the book entries and/or certificates evidencing any shares of Gem Common Stock to be received in the Merger by equityholders of the Company who may be considered “affiliates” of Gem for purposes of Rules 144 and 145 under the Securities Act reflecting the restrictions set forth in Rules 144 and 145 and to issue appropriate stop transfer instructions to the transfer agent for Gem Common Stock. Section 6.12 of the Company Disclosure Schedule sets forth a list of those persons who are, in the Company’s reasonable judgment, “affiliates” of the Company within the meaning of Rule 145 promulgated under the Securities Act (“Rule 145 Affiliates”). The Company shall notify Gem in writing regarding any change in the identity of its Rule 145 Affiliates prior to the Closing Date. Gem shall be entitled to place appropriate legends on the certificates evidencing any shares of Merger Consideration to be received by Rule 145 Affiliates of the Company in the Merger reflecting the restrictions set forth in Rule 145 promulgated under the Securities Act and to issue appropriate stop transfer instructions to the transfer agent for Gem.

6.13 Directors.

(a) Until successors are duly elected or appointed and qualified in accordance with applicable Law, the Parties shall use reasonable best efforts and take all necessary action so that the Persons listed in Annex C are elected or appointed, as applicable, to the positions of officers and directors of Gem and the Surviving Corporation, as set forth therein, to serve in such positions effective as of the Effective Time. If any Person listed in Annex C is unable or unwilling to serve as officer or director of Gem or the Surviving Corporation, as set forth therein, the Party appointing such Person (as set forth on Annex C) shall designate a successor.

(b) On the Closing Date, Gem shall enter into customary indemnification agreements reasonably satisfactory to the Company with each individual to be appointed to, or serving on, the board of directors of Gem upon the Closing, which indemnification agreements shall continue to be effective following the Closing.

6.14 Termination of Certain Agreements and Rights. The Company shall cause any stockholders agreements, voting agreements, registration rights agreements, co-sale agreements and any other similar Contracts between the Company and any holders of Company Common Stock or Preferred Stock, including any such Contract granting any Person investor rights, rights of first refusal, registration rights or director designation rights but excluding the Form of the Registration Rights Agreement attached to the Subscription Agreement and which is expected to be entered into in connection with the Company Pre-Closing Financing (collectively, the “**Investor Agreements**”), to be terminated immediately prior to the Effective Time, without any liability being imposed on the part of the Surviving Corporation.

6.15 Section 16 Matters. Prior to the Effective Time, Gem shall take all such steps as may be required to cause any acquisitions of Gem Common Stock and any options to purchase Gem Common Stock in connection with the Contemplated Transactions, by each individual who is reasonably expected to become subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Gem, to be exempt under Rule 16b-3 promulgated under the Exchange Act.

6.16 Allocation Certificate. The Company will prepare and deliver to Gem at least ten (10) Business Days prior to the Closing Date a certificate signed by the Chief Financial Officer of the Company in a form reasonably acceptable to Gem setting forth (as of immediately prior to the Effective Time) (a) each holder of Company Capital Stock or Company Options, (b) such holder’s name and address, (c) the number and type of Company Capital Stock held and/or underlying the Company Options as of the Closing Date for each such holder and (d) the number of shares of Gem Common Stock to be issued to such holder, or to underlie any Gem Option to be issued to such holder, pursuant to this Agreement in respect of the Company Capital Stock or Company Options held by such holder as of immediately prior to the Effective Time (the “**Allocation Certificate**”).

6.17 Nasdaq Reverse Split. Gem shall submit to Gem's stockholders at the Gem Stockholder Meeting a proposal to approve and adopt an amendment to Gem's certificate of incorporation to authorize the Gem Board to effect the Nasdaq Reverse Split.

6.18 Takeover Statutes. If any takeover statute is or may become applicable to the Contemplated Transactions, each of the Company, the Company Board, Gem and the Gem Board, as applicable, shall grant such approvals and take such actions as are necessary so that the Contemplated Transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise act to eliminate or minimize the effects of such statute or regulation on the Contemplated Transactions.

6.19 Stockholder Litigation. Each Party shall keep the other Party reasonably informed regarding any stockholder litigation against Gem or any of its directors relating to this Agreement or the Contemplated Transactions ("**Transaction Litigation**"). Prior to the Closing, Gem shall have the right to control the defense and settlement of any litigation related to this Agreement or the Contemplated Transactions, but shall reasonably consult with and permit the Company and its Representatives to participate in consideration to the Company's advice with respect to Transaction Litigation. Gem shall promptly advise the Company of the initiation of, and shall keep the Company reasonably apprised of any material developments in connection with, any such Transaction Litigation.

6.20 Gem SEC Documents. From the date of this Agreement until the Effective Time, Gem shall use reasonable best efforts to timely file with the SEC all Gem SEC Documents. As of its filing date, or if amended after the date of this Agreement, as of the date of the last such amendment, each Gem SEC Document filed by Gem with the SEC shall comply in all material respects with the applicable requirements of the Exchange Act and the Securities Act.

6.21 Obligations of Merger Sub. Gem will take all action necessary to cause Merger Sub to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement.

#### Section 7. Conditions Precedent to Obligations of Each Party.

The obligations of each Party to effect the Merger and otherwise consummate the Contemplated Transactions to be consummated at the Closing are subject to the satisfaction or, to the extent permitted by applicable law, the written waiver by each of the Parties, at or prior to the Closing, of each of the following conditions:

7.1 Effectiveness of Registration Statement. The Registration Statement shall have become effective in accordance with the provisions of the Securities Act, and shall not be subject to any stop order or proceeding (or threatened proceeding by the SEC) seeking a stop order with respect to the Registration Statement that has not been withdrawn.

7.2 No Restraints. No temporary restraining order, preliminary or permanent injunction or other Order preventing the consummation of the Contemplated Transactions shall have been issued by any court of competent jurisdiction or other Governmental Authority of competent jurisdiction and remain in effect, no investigation by a Governmental Authority with respect to the consummation of the Contemplated Transactions is known to be pending, and there shall not be any Law which has the effect of making the consummation of the Contemplated Transactions illegal.

7.3 Stockholder Approval. (a) Gem shall have obtained the Required Gem Stockholder Vote and (b) the Company shall have obtained the Required Company Stockholder Vote.

7.4 Listing. The approval of the listing of the additional shares of Gem Common Stock on Nasdaq shall have been obtained and the shares of Gem Common Stock to be issued in the Merger pursuant to this Agreement shall have been approved for listing (subject to official notice of issuance) on Nasdaq.

#### Section 8. Additional Conditions Precedent to Obligations of Gem and Merger Sub.

The obligations of Gem and Merger Sub to effect the Merger and otherwise consummate the transactions to be consummated at the Closing are subject to the satisfaction or the written waiver by Gem, at or prior to the Closing, of each of the following conditions:

8.1 Accuracy of Representations. The Company Fundamental Representations shall have been accurate and complete in all respects as of the date of this Agreement and shall be accurate and complete on and as of the Closing Date with the same force and effect as if made on and as of such date (except to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be accurate and complete as of such date). The Company Capitalization Representations shall have been accurate and complete in all respects as of the date of this Agreement and shall be accurate and complete on and as of the Closing Date with the same force and effect as if made on and as of such date, except, in each case, (x) for such inaccuracies which are de minimis, individually or in the aggregate or (y) for those representations and warranties which address matters only as of a particular date (which representations and warranties shall have been accurate and complete, subject to the qualifications as set forth in the preceding clause (x), as of such particular date). The representations and warranties of the Company contained in this Agreement (other than the Company Fundamental Representations and the Company Capitalization Representations) shall have been accurate and complete as of the date of this Agreement and shall be accurate and complete on and as of the Closing Date with the same force and effect as if made on the Closing Date except (a) in each case, or in the aggregate, where the failure to be so accurate and complete would not reasonably be expected to have a Company Material Adverse Effect (without giving effect to any references therein to any Company Material Adverse Effect or other materiality qualifications) or (b) for those representations and warranties which address matters only as of a particular date (which representations shall have been accurate and complete, subject to the qualifications as set forth in the preceding clause (a), as of such particular date) (it being understood that, for purposes of determining the accuracy of such representations and warranties, any update of or modification to the Company Disclosure Schedule made or purported to have been made after the date of this Agreement shall be disregarded).

8.2 Performance of Covenants. The Company shall have performed or complied with in all material respects all agreements and covenants required to be performed or complied with by it under this Agreement at or prior to the Effective Time.

8.3 Closing Certificate. Gem shall have received a certificate executed by the Chief Executive Officer or Chief Financial Officer of the Company certifying (a) that the conditions set forth in Sections 8.1, 8.2, 8.5 and 8.7 have been duly satisfied and (b) that the information set forth in the Allocation Certificate delivered by the Company in accordance with Section 6.16 is true and accurate in all respects as of the Closing Date.

8.4 FIRPTA Certificate. On or no more than thirty (30) days prior to the Closing Date, the Company shall deliver to Gem a properly executed certification that shares of Company Capital Stock are not "U.S. real property interests" in accordance with the Treasury Regulations under Sections 897 and 1445 of the Code, together with a notice to the IRS (which shall be filed by Gem with the IRS following the Closing within the time period specified in Treasury Regulations Section 1.897-2(h)(2)) in accordance with the provisions of Treasury Regulations section 1.897-2(h)(2).

8.5 No Company Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Company Material Adverse Effect.

8.6 Company Lock-Up Agreements. The Company Lock-Up Agreements will continue to be in full force and effect as of immediately following the Effective Time.

8.7 Termination of Investor Agreements. The Investor Agreements shall have been terminated.

8.8 Company Preferred Stock Conversion. The Company shall have effected a conversion of all Company Preferred Stock into Company Common Stock as of immediately prior to the Effective Time (the "**Company Preferred Stock Conversion**").

8.9 Third Party Consents. The Company shall have obtained and delivered to Gem (i) all consents and approvals of third parties listed in Schedule 8.10 and (ii) any other consent or approval of any third party (other than a Governmental Entity) the failure of which to obtain, individually or in the aggregate, is reasonably likely to have a Company Material Adverse Effect.

8.10 Dividend. Each of the Dividends, if any, shall have been declared and the record dates with respect to such declared Dividend shall have occurred.

8.11 Agreement Addendum. The agreement (and the specified addendum to the agreement) listed on Schedule 8.11 of this Agreement shall remain in full force and effect.

#### Section 9. Additional Conditions Precedent to Obligation of the Company.

The obligations of the Company to effect the Merger and otherwise consummate the transactions to be consummated at the Closing are subject to the satisfaction or the written waiver by the Company, at or prior to the Closing, of each of the following conditions:

9.1 Accuracy of Representations. Each of the Gem Fundamental Representations shall have been accurate and complete in all respects as of the date of this Agreement and shall be accurate and complete on and as of the Closing Date with the same force and effect as if made on and as of such date (except to the extent such representations and warranties are specifically made as of a particular date, in which case such representations and warranties shall be accurate and complete as of such date). The Gem Capitalization Representations shall have been accurate and complete as of the date of this Agreement and shall be accurate and complete on and as of the Closing Date with the same force and effect as if made on and as of such date, except, in each case, (x) for such inaccuracies which are de minimis, individually or in the aggregate or (y) for those representations and warranties which address matters only as of a particular date (which representations and warranties shall have been accurate and complete, subject to the qualifications as set forth in the preceding clause (x), as of such particular date). The representations and warranties of Gem and Merger Sub contained in this Agreement (other than the Gem Fundamental Representations and the Gem Capitalization Representations) shall have been accurate and complete as of the date of this Agreement and shall be accurate and complete on and as of the Closing Date with the same force and effect as if made on the Closing Date except (a) in each case, or in the aggregate, where the failure to be accurate and complete would not reasonably be expected to have a Gem Material Adverse Effect (without giving effect to any references therein to any Gem Material Adverse Effect or other materiality qualifications) or (b) for those representations and warranties which address matters only as of a particular date (which representations shall have been accurate and complete, subject to the qualifications as set forth in the preceding clause (a), as of such particular date) (it being understood that, for purposes of determining the accuracy of such representations and warranties, any update of or modification to the Gem Disclosure Schedule made or purported to have been made after the date of this Agreement shall be disregarded).

9.2 Performance of Covenants. Gem and Merger Sub shall have performed or complied with in all material respects all of their agreements and covenants required to be performed or complied with by each of them under this Agreement at or prior to the Effective Time.

9.3 Documents. The Company shall have received the following documents, each of which shall be in full force and effect:

(a) a certificate executed by the Chief Executive Officer of Gem confirming that the conditions set forth in Sections 9.1, 9.2, and 9.4 have been duly satisfied; and

(b) written resignations in forms reasonably satisfactory to the Company, dated as of the Closing Date and effective as of the Closing, executed by the officers and directors of Gem who are not to continue as officers or directors of Gem pursuant to Section 6.13.

9.4 No Gem Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Gem Material Adverse Effect.

9.5 Gem Lock-Up Agreements. The Gem Lock-Up Agreements will continue to be in full force and effect as of immediately following the Effective Time.

9.6 Listing. The existing shares of Gem Common Stock shall have been continually listed on Nasdaq as of and from the date of this Agreement through the Closing Date.

9.7 Payoff Letter. The Company shall have received a true and correct copy of a payoff letter addressed to the Company and Gem from SVB Leerink in connection with the repayment by Gem of any unpaid indebtedness for borrowed money of Gem and related fees to SVB Leerink and termination of the relevant debt facility.

#### Section 10. Termination.

10.1 Termination. This Agreement may be terminated prior to the Effective Time (whether before or after adoption of this Agreement by the Company's stockholders and whether before or after approval of the Gem Stockholder Matters by Gem's stockholders, unless otherwise specified below):

(a) by mutual written consent of Gem and the Company;

(b) either Gem or the Company if the Merger shall not have been consummated by March 15, 2023 (subject to possible extension as provided in this Section 10.1(b), the "End Date"); provided, however, that the right to terminate this Agreement under this Section 10.1(b) shall not be available to the Company or Gem if such Party's (or in the case of Gem, Merger Sub's) action or failure to act has been a principal cause of the failure of the Merger to occur on or before the End Date and such action or failure to act constitutes a breach of this Agreement, provided, further, however, that, in the event that the condition set forth in Section 7.2 (if the injunction, investigation or order relates to antitrust Laws) shall not have been satisfied by the initial End Date, or in the event that the SEC has not declared effective under the Securities Act the Registration Statement by the date which is 60 days prior to the End Date, then either the Company or Gem shall be entitled to extend the End Date for an additional 60 days;

(c) by either Gem or the Company if a court of competent jurisdiction or other Governmental Authority shall have issued a final and nonappealable Order, or shall have taken any other action, having the effect of permanently restraining, enjoining or otherwise prohibiting the Contemplated Transactions;

(d) by Gem if the Required Company Stockholder Vote shall not have been obtained, and evidence thereof and the accompanying certificate each delivered to Gem, by 5:00 p.m. Eastern Time on the second (2<sup>nd</sup>) Business Days after the date on which the Registration Statement becomes effective in accordance with the provisions of the Securities Act provided, however, that, that once the Required Company Stockholder Vote has been obtained, Gem may not terminate this Agreement pursuant to this Section 10.1(d);

(e) by either Gem or the Company if (i) the Gem Stockholder Meeting (including any adjournments and postponements thereof) shall have been held and completed and Gem's stockholders shall have taken a final vote on the Gem Stockholder Matters and (ii) the Gem Stockholder Matters shall not have been approved at the Gem Stockholder Meeting (or at any adjournment or postponement thereof) by the Required Gem Stockholder Vote; provided, however, that the right to terminate this Agreement under this Section 10.1(e) shall not be available to Gem where the failure to obtain the Required Gem Stockholder Vote shall have been caused by the action or failure to act of Gem and such action or failure to act constitutes a material breach by Gem of this Agreement;

(f) by the Company (at any time prior to the approval of the Gem Stockholder Matters by the Required Gem Stockholder Vote) if a Gem Triggering Event shall have occurred;

(g) by Gem (at any time prior to the adoption of this Agreement and the approval of the Contemplated Transactions by the Required Company Stockholder Vote) if a Company Triggering Event shall have occurred;

(h) by the Company, upon a breach of any representation, warranty, covenant or agreement set forth in this Agreement by Gem or Merger Sub or if any representation or warranty of Gem or Merger Sub shall have become inaccurate, in either case, such that the conditions set forth in Section 9.1 or Section 9.2 would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become inaccurate; provided that the Company is not then in material breach of any representation, warranty, covenant or agreement under this Agreement; provided, further, that if such inaccuracy in Gem's or Merger Sub's representations and warranties or breach by Gem or Merger Sub is curable by Gem or Merger Sub, then this Agreement shall not terminate pursuant to this Section 10.1(h) as a result of such particular breach or inaccuracy until the expiration of a 30-day period commencing upon delivery of written notice from the Company to Gem or Merger Sub of such breach or inaccuracy and its intention to terminate pursuant to this Section 10.1(h) (it being understood that this Agreement shall not terminate pursuant to this Section 10.1(h) as a result of such particular breach or inaccuracy if such breach by Gem or Merger Sub is cured prior to such termination becoming effective);

(i) by Gem, upon a breach of any representation, warranty, covenant or agreement set forth in this Agreement by the Company or if any representation or warranty of the Company shall have become inaccurate, in either case, such that the conditions set forth in Section 8.1 or Section 8.2 would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become inaccurate; provided that Gem is not then in material breach of any representation, warranty, covenant or agreement under this Agreement; provided, further, that if such inaccuracy in the Company's representations and warranties or breach by the Company is curable by the Company then this Agreement shall not terminate pursuant to this Section 10.1(i) as a result of such particular breach or inaccuracy until the expiration of a 30-day period commencing upon delivery of written notice from Gem to the Company of such breach or inaccuracy and its intention to terminate pursuant to this Section 10.1(i) (it being understood that this Agreement shall not terminate pursuant to this Section 10.1(i) as a result of such particular breach or inaccuracy if such breach by the Company is cured prior to such termination becoming effective);

The Party desiring to terminate this Agreement pursuant to this Section 10.1 (other than pursuant to Section 10.1(a)) shall give a notice of such termination to the other Party specifying the provisions hereof pursuant to which such termination is made and the basis therefor described in reasonable detail.



10.2 Effect of Termination. In the event of the termination of this Agreement as provided in Section 10.1, this Agreement shall be of no further force or effect; provided, however, that (a) this Section 10.2, Section 10.3, and Section 11 (and the related definitions of the defined terms in such sections) shall survive the termination of this Agreement and shall remain in full force and effect and (b) the termination of this Agreement and the provisions of Section 10.3 shall not relieve any Party of any liability for fraud or for any willful and material breach of any representation, warranty, covenant, obligation or other provision contained in this Agreement.

10.3 Expenses; Termination Fees.

(a) Except as set forth in this Section 10.3 and Section 6.10 all fees and expenses incurred in connection with this Agreement and the Contemplated Transactions shall be paid by the Party incurring such expenses, whether or not the Merger is consummated; provided, however, that (i) Gem and the Company shall share equally the costs and expenses incurred in relation to the filings by the Parties under any antitrust Law applicable to this Agreement and the transactions contemplated hereby, and (ii) that Gem and the Company shall share equally all fees and expenses incurred in relation to the printing and filing with the SEC of the Registration Statement (including any financial statements and exhibits) and any amendments or supplements thereto and paid to a financial printer or the SEC.

(b) If (i) this Agreement is terminated by Gem or the Company pursuant to Section 10.1(e) or by the Company pursuant to Section 10.1(f), (ii) at any time after the date of this Agreement and prior to the Gem Stockholder Meeting an Acquisition Proposal with respect to Gem shall have been publicly announced, disclosed or otherwise communicated to the Gem Board (and shall not have been withdrawn) and (iii) in the event this Agreement is terminated pursuant to Section 10.1(e), within twelve (12) months after the date of such termination, Gem enters into a definitive agreement with respect to a Subsequent Transaction or consummates a Subsequent Transaction, then Gem shall pay to the Company, within ten (10) Business Days after termination (or, if applicable, upon such entry into a definitive agreement and/or consummation of a Subsequent Transaction), a nonrefundable fee in an amount equal to \$3,000,000 (the “**Company Termination Fee**”).

(c) If (i) this Agreement is terminated by Gem pursuant to Section 10.1(d) or Section 10.1(g), (ii) at any time after the date of this Agreement and before obtaining the Required Company Stockholder Vote an Acquisition Proposal with respect to the Company shall have been publicly announced, disclosed or otherwise communicated to the Company Board (and shall not have been withdrawn) and (iii) in the event this Agreement is terminated pursuant Section 10.1(d), within twelve (12) months after the date of such termination, the Company enters into a definitive agreement with respect to a Subsequent Transaction or consummates a Subsequent Transaction, then the Company shall pay to Gem, within ten (10) Business Days after termination (or, if applicable, upon such entry into a definitive agreement and/or consummation of a Subsequent Transaction), a nonrefundable fee in an amount equal to \$7,800,000 (the “**Gem Termination Fee**”).

(d) If this Agreement is terminated by the Company pursuant to Section 10.1(e) or Section 10.1(f), Gem shall reimburse the Company for all reasonable out-of-pocket fees and expenses incurred by the Company in connection with this Agreement and the Contemplated Transactions, up to a maximum of \$750,000, by wire transfer of same-day funds within ten (10) Business Days following the date on which the Company submits to Gem accurate and complete copies of reasonable documentation supporting such expenses.

(e) If this Agreement is terminated by Gem pursuant to Section 10.1(g) or Section 10.1(i), the Company shall reimburse Gem for all reasonable out-of-pocket fees and expenses incurred by Gem in connection with this Agreement and the Contemplated Transactions, up to a maximum of \$750,000, by wire transfer of same-day funds within ten (10) Business Days following the date on which Gem submits to the Company accurate and complete copies of reasonable documentation supporting such expenses.

(f) If either Party fails to pay when due any amount payable by it under this Section 10.3, then (i) such Party shall reimburse the other Party for reasonable costs and expenses (including reasonable fees and disbursements of counsel) incurred in connection with the collection of such overdue amount and the enforcement by the other Party of its rights under this Section 10.3 and (ii) such Party shall pay to the other Party interest on such overdue amount (for the period commencing as of the date such overdue amount was originally required to be paid and ending on the date such overdue amount is actually paid to the other Party in full) at a rate per annum equal to the "prime rate" (as announced by Bank of America or any successor thereto) in effect on the date such overdue amount was originally required to be paid plus three percent.

(g) The Parties agree that, subject to Section 10.2, the payment of the fees and expenses set forth in this Section 10.3 shall be the sole and exclusive remedy of each Party following a termination of this Agreement under the circumstances described in this Section 10.3, it being understood that in no event shall either Gem or the Company be required to pay the individual fees or damages payable pursuant to this Section 10.3 on more than one occasion. Subject to Section 10.2, following the payment of the fees and expenses set forth in this Section 10.3 by a Party, (i) such Party shall have no further liability to the other Party in connection with or arising out of this Agreement or the termination thereof, any breach of this Agreement by the other Party giving rise to such termination, or the failure of the Contemplated Transactions to be consummated, (ii) no other Party or their respective Affiliates shall be entitled to bring or maintain any other claim, action or proceeding against such Party or seek to obtain any recovery, judgment or damages of any kind against such Party (or any partner, member, stockholder, director, officer, employee, Subsidiary, Affiliate, agent or other Representative of such Party) in connection with or arising out of this Agreement or the termination thereof, any breach by such Party giving rise to such termination or the failure of the Contemplated Transactions to be consummated and (iii) all other Parties and their respective Affiliates shall be precluded from any other remedy against such Party and its Affiliates, at law or in equity or otherwise, in connection with or arising out of this Agreement or the termination thereof, any breach by such Party giving rise to such termination or the failure of the Contemplated Transactions to be consummated. Each of the Parties acknowledges that (x) the agreements contained in this Section 10.3 are an integral part of the Contemplated Transactions, (y) without these agreements, the Parties would not enter into this Agreement and (z) any amount payable pursuant to this Section 10.3 is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate the Parties in the circumstances in which such amount is payable.

#### Section 11. Miscellaneous Provisions.

11.1 Non-Survival of Representations and Warranties. The representations and warranties of the Company, Gem and Merger Sub contained in this Agreement or any certificate or instrument delivered pursuant to this Agreement shall terminate at the Effective Time, and only the covenants that by their terms survive the Effective Time and this Section 11 shall survive the Effective Time.

11.2 Amendment. This Agreement may be amended with the approval of the respective boards of directors of the Company, Merger Sub and Gem at any time (whether before or after the adoption and approval of this Agreement by the Company's stockholders or before or after obtaining the Required Gem Stockholder Vote); provided, however, that after any such approval of this Agreement by a Party's stockholders, no amendment shall be made which by Law requires further approval of such stockholders without the further approval of such stockholders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Company, Merger Sub and Gem.

11.3 Waiver.

(a) Any provision hereof may be waived by the waiving Party solely on such Party's own behalf, without the consent of any other Party. No failure on the part of any Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

(b) No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

11.4 Entire Agreement; Counterparts; Exchanges by Facsimile. This Agreement and the other agreements referred to in this Agreement constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the Parties with respect to the subject matter hereof and thereof; provided, however, that the Confidentiality Agreement shall not be superseded and shall remain in full force and effect in accordance with its terms. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by all Parties by facsimile or electronic transmission in .PDF format shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

11.5 Applicable Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws. IN ANY ACTION OR PROCEEDING BETWEEN ANY OF THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, EACH OF THE PARTIES: (A) IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE OR, TO THE EXTENT SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE SUPERIOR COURT OF THE STATE OF DELAWARE OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, (B) AGREES THAT ALL

CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED EXCLUSIVELY IN ACCORDANCE WITH CLAUSE (A) OF THIS SECTION 11.5, (C) WAIVES ANY OBJECTION TO LAYING VENUE IN ANY SUCH ACTION OR PROCEEDING IN SUCH COURTS, (D) WAIVES ANY OBJECTION THAT SUCH COURTS ARE AN INCONVENIENT FORUM OR DO NOT HAVE JURISDICTION OVER ANY PARTY, (E) AGREES THAT SERVICE OF PROCESS UPON SUCH PARTY IN ANY SUCH ACTION OR PROCEEDING SHALL BE EFFECTIVE IF NOTICE IS GIVEN IN ACCORDANCE WITH SECTION 11.7 OF THIS AGREEMENT AND (F) IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY.

11.6 Assignability. This Agreement shall be binding upon, and shall be enforceable by and inure solely to the benefit of, the Parties and their respective successors and assigns; provided, however, that neither this Agreement nor any of a Party's rights or obligations hereunder may be assigned or delegated by such Party without the prior written consent of the other Party, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by such Party without the other Party's prior written consent shall be void and of no effect.

11.7 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly delivered and received hereunder (a) one Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable international overnight courier service, (b) upon delivery in the case of delivery by hand or (c) on the date delivered in the place of delivery if sent by email or facsimile (with a written or electronic confirmation of delivery) prior to 6:00 p.m. New York City time, otherwise on the next succeeding Business Day, in each case to the intended recipient as set forth below:

if to Gem or Merger Sub:

Gemini Therapeutics, Inc.  
297 Boston Post Road #248  
Wayland, MA 01778  
Attention: CEO  
Email: \*\*\*\*\*@\*\*\*\*\*.com

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

Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, MA 02109  
Attn: Stuart M. Falber, Esq.  
E-mail: \*\*\*\*\*@\*\*\*\*\*.com

and

Wilmer Cutler Pickering Hale and Dorr LLP  
7 World Trade Center  
250 Greenwich Street  
New York, New York 10007  
Attn: Christopher D. Barnstable-Brown  
E-mail: \*\*\*\*\*@\*\*\*\*\*.com

if to the Company:

Disc Medicine, Inc.  
321 Arsenal Street, Suite 101  
Watertown, MA 02472  
Attention: CEO  
Email: \*\*\*\*\*@\*\*\*\*\*.com

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

Goodwin Procter LLP  
100 Northern Ave.  
Boston, MA 02110  
Attention: William D. Collins  
Email: \*\*\*\*\*@\*\*\*\*\*.com

11.8 Cooperation. Each Party agrees to cooperate fully with the other Party and to execute and deliver such further documents, certificates, agreements and instruments and to take such other actions as may be reasonably requested by the other Party to evidence or reflect the Contemplated Transactions and to carry out the intent and purposes of this Agreement.

11.9 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

11.10 Other Remedies; Specific Performance. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity, and each of the Parties waives any bond, surety or other security that might be required of any other Party with respect thereto.

11.11 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the Parties and the D&O Indemnified Parties to the extent of their respective rights pursuant to Section 6.8) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

**GEMINI THERAPEUTICS, INC.**

By: /s/ Dr. Georges Gemayel

Name: Dr. Georges Gemayel

Title: Interim President and Chief Executive Officer

**GEMSTONE MERGER SUB, INC.**

By: /s/ Dr. Georges Gemayel

Name: Dr. Georges Gemayel

Title: Chief Executive Officer and President

**DISC MEDICINE, INC.**

By: /s/ John Quisel

Name: John Quisel

Title: Chief Executive Officer and President

EXHIBIT A

FORM OF GEM STOCKHOLDER SUPPORT AGREEMENT

This Support Agreement (this “Agreement”) is made and entered into as of [•], 2022, by and among [•], a [•] [•] (the “Company”), [•], a Delaware corporation (“Gem”), and the undersigned stockholder (the “Stockholder”) of Gem. Capitalized terms used herein but not otherwise defined shall have the respective meanings ascribed to such terms in the Merger Agreement (as defined below).

RECITALS

WHEREAS, concurrently with the execution and delivery hereof, Gem, the Company and [•], a [•] [•] and a wholly owned subsidiary of Gem (the “Merger Sub”), have entered into an agreement and plan of merger (as such agreement may be amended or supplemented from time to time pursuant to the terms thereof, the “Merger Agreement”), pursuant to which Merger Sub will merge with and into the Company, with the Company surviving the merger as the surviving corporation and a wholly owned subsidiary of Gem (the “Merger”) upon the terms and subject to the conditions set forth in the Merger Agreement.

WHEREAS, as of the date hereof, the Stockholder is the beneficial owner (as defined in Rule 13d-3 under the Exchange Act) of such number of shares of Gem Common Stock as indicated in Appendix A.

WHEREAS, as an inducement to the willingness of the Company to enter into the Merger Agreement, the Company has required that Stockholder enter into this Agreement.

NOW, THEREFORE, intending to be legally bound, the parties hereby agree as follows:

1. Certain Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement. For all purposes of this Agreement, the following terms shall have the following respective meanings:

(a) “Constructive Sale” means, with respect to any security, a short sale with respect to such security, entering into or acquiring a derivative contract with respect to such security, entering into or acquiring a futures or forward contract to deliver such security or entering into any other hedging or other derivative transaction that has the effect of either directly or indirectly materially changing the economic benefits or risks of ownership of such security.

(b) “Shares” means (i) all shares of Gem Common Stock owned, beneficially or of record, by the Stockholder as of the date hereof, and (ii) all additional shares of Gem Common Stock acquired by the Stockholder, beneficially or of record, during the period commencing with the execution and delivery of this Agreement and expiring on the Closing Date.



(c) “Transfer” or “Transferred” means, with respect to any security, the direct or indirect assignment, sale, transfer, tender, exchange, pledge or hypothecation, or the grant, creation or suffrage of a lien, security interest or encumbrance in or upon, or the gift, grant or placement in trust, or the Constructive Sale or other disposition of such security (including transfers by testamentary or intestate succession, by domestic relations order or other court order, or otherwise by operation of law) or any right, title or interest therein (including any right or power to vote to which the holder thereof may be entitled, whether such right or power is granted by proxy or otherwise), or the record or beneficial ownership thereof, the offer to make such a sale, transfer, Constructive Sale or other disposition, and each agreement, arrangement or understanding, whether or not in writing, to effect any of the foregoing.

2. Transfer and Voting Restrictions. The Stockholder covenants to the Company as follows:

(a) Except as otherwise permitted by Section 2(c), during the period commencing with the execution and delivery of this Agreement and expiring on the Expiration Date (as defined below), the Stockholder shall not Transfer any of the Stockholder’s Shares, or publicly announce its intention to Transfer any of its Shares.

(b) Except as otherwise permitted by this Agreement or otherwise permitted or required or by order of a court of competent jurisdiction or a Governmental Authority, the Stockholder will not commit any act that would restrict the Stockholder’s legal power, authority and right to vote all of the Shares held by the Stockholder or otherwise prevent or disable the Stockholder from performing any of his, her or its obligations under this Agreement. Without limiting the generality of the foregoing, except for this Agreement and as otherwise permitted by this Agreement, the Stockholder shall not enter into any voting agreement with any person or entity with respect to any of the Stockholder’s Shares, grant any person or entity any proxy (revocable or irrevocable) or power of attorney with respect to any of the Shares, deposit any Shares in a voting trust or otherwise enter into any agreement or arrangement with any person or entity limiting or affecting the Stockholder’s legal power, authority or right to vote the Stockholder’s Shares in favor of the Gem Stockholder Matters.

(c) Notwithstanding anything else herein to the contrary, the Stockholder may, at any time, Transfer Shares (i) by will or other testamentary document or by intestacy, (ii) to any investment fund or other entity controlled or managed by the Stockholder or the investment adviser of general partner of the Stockholder, or an entity under common control or management with the Stockholders (in each case, directly or indirectly) (iii) to any member of the Stockholder’s immediate family (or, if the Stockholder is a corporation, partnership or other entity, to an immediate family member of a beneficial owner of the Shares held by the Stockholder), (iv) to any trust or other entity for the direct or indirect benefit of the Stockholder or the immediate family of the Stockholder (or, if the Stockholder is a corporation, partnership or other entity, for the direct or indirect benefit of an immediate family member of a beneficial owner of the Shares held by the Stockholder) or otherwise for estate tax or estate planning purposes, (v) in the case of a Stockholder who is not a natural person, by pro rata distributions from the Stockholder to its members, partners, or shareholders pursuant to the Stockholder’s organizational documents; provided, that in the cases of clauses (i)-(v) (x) such Transferred Shares shall continue to be bound by this Agreement and (y) the applicable direct transferee (if any) of such Transferred Shares shall have executed and delivered to Gem and the Company a support agreement substantially identical to this Agreement upon consummation of the Transfer or (vi) to the extent required by applicable Law.

3. Agreement to Vote Shares. The Stockholder covenants to the Company as follows:

(a) Until the Expiration Date (as defined below), at any meeting of the stockholders of Gem, however called, and at every adjournment or postponement thereof, and on every action or approval by written consent of the stockholders of Gem, the Stockholder shall be present (in person or by proxy) and vote, or exercise its right to consent with respect to, all Shares held by the Stockholder (A) in favor of the Gem Stockholder Matters and (B) against any Acquisition Proposal.

(b) If the Stockholder is the beneficial owner, but not the record holder, of Shares, the Stockholder agrees to take all actions necessary to cause the record holder and any nominees to be present (in person or by proxy) and vote all the Stockholder's Shares in accordance with this Section 3.

(c) In the event of a stock split, stock dividend or distribution, or any change in the capital stock of Gem by reason of any split-up, reverse stock split, recapitalization, combination, reclassification, reincorporation, exchange of shares or the like, the term "Shares" shall be deemed to refer to and include such shares as well as all such stock dividends and distributions and any securities into which or for which any or all of such shares may be changed or exchanged or which are received in such transaction.

4. Action in Stockholder Capacity Only. The Stockholder is entering into this Agreement solely in the Stockholder's capacity as a record holder and beneficial owner, as applicable, of its Shares and not in the Stockholder's capacity as a director or officer of Gem. Nothing herein shall limit or affect the Stockholder's ability to act as an officer or director of Gem.

5. Irrevocable Proxy. The Stockholder hereby revokes (or agrees to cause to be revoked) any proxies that the Stockholder has heretofore granted with respect to its Shares. In the event and to the extent that the Stockholder fails to vote the Shares in accordance with Section 3 at any applicable meeting of the stockholders of Gem or pursuant to any applicable written consent of the stockholders of Gem, the Stockholder shall be deemed to have irrevocably granted to, and appointed, the Company, and any individual designated in writing by it, and each of them individually, as his, her or its proxy and attorney-in-fact (with full power of substitution), for and in its name, place and stead, to vote his, her or its Shares in any action by written consent of Gem stockholders or at any meeting of the Gem stockholders called with respect to any of the matters specified in, and in accordance and consistent with, Section 3 of this Agreement. Gem agrees not to exercise the proxy granted herein for any purpose other than the purposes described in this Agreement. Except as otherwise provided for herein, the Stockholder hereby affirms that the irrevocable proxy is coupled with an interest and may under no circumstances be revoked and that such irrevocable proxy is executed and intended to be irrevocable. Notwithstanding any other provisions of this Agreement, the irrevocable proxy granted hereunder shall automatically terminate upon the termination of this Agreement.

6. No Solicitation. Subject to Section 4, the Stockholder agrees not to, directly or indirectly, including through any of its officers, directors or agents, (a) solicit, seek or initiate or knowingly take any action to facilitate or encourage, any offers, inquiries or the making of any proposal or offer that constitutes, or could reasonably be expected to lead to, any Acquisition Proposal or (b) enter into, continue or otherwise participate or engage in any discussions or negotiations regarding any Acquisition Proposal, or furnish to any person any non-public information or afford any person, other than Gem or the Company, as applicable, access to such party's property, books or records (except as required by applicable Law or pursuant to a request by a Governmental Authority) in connection with, any Acquisition Proposal; provided, however, that nothing in this Section 6 shall prevent the Stockholder from referring a person to this Section 6 or to the Merger Agreement.

7. Documentation and Information. The Stockholder shall permit and hereby authorizes Gem and the Company to publish and disclose in all documents and schedules filed with the SEC, and any press release or other disclosure document that Gem or the Company reasonably determines to be necessary in connection with the Merger and any of the Contemplated Transactions, a copy of this Agreement, the Stockholder's identity and ownership of the Shares and the nature of the Stockholder's commitments and obligations under this Agreement; provided, that, Gem and the Company provide such documents, schedules, press release or other disclosure document to the Stockholder in advance for its review and comment. Each of Gem and the Company is an intended third-party beneficiary of this Section 7.

8. No Exercise of Appraisal Rights; Waivers. The Stockholder hereby irrevocably and unconditionally (a) waives, and agrees to cause to be waived and to prevent the exercise of, any rights of appraisal, any dissenters' rights and any similar rights (including any notice requirements related thereto) relating to the Merger that Stockholder may have by virtue of, or with respect to, any Shares (including all rights under Section 262 of the DGCL) and (b) agrees that the Stockholder will not bring, commence, institute, maintain, prosecute or voluntarily aid or participate in any action, claim, suit or cause of action, in law or in equity, in any court or before any Governmental Authority, which (i) challenges the validity of or seeks to enjoin the operation of any provision of this Agreement or (ii) alleges that the execution and delivery of this Agreement by the Stockholder, or the approval of the Merger Agreement by the Gem Board, breaches any fiduciary duty of the Gem Board or any member thereof; provided, that the Stockholder may defend against, contest or settle any such action, claim, suit or cause of action brought against the Stockholder that relates solely to the Stockholder's capacity as a director, officer or securityholder of Gem.

9. Representations and Warranties of the Stockholder. The Stockholder hereby represents and warrants to the Company as follows:

(a) (i) The Stockholder is the beneficial or record owner of the shares of Gem Common Stock indicated in Appendix A (each of which shall be deemed to be "held" by the Stockholder for purposes of Section 3 unless otherwise expressly stated with respect to any shares in Appendix A), free and clear of any and all Liens; and (ii) the Stockholder does not beneficially own any securities of Gem other than the shares of Gem Common Stock and rights to purchase shares Gem Common Stock set forth in Appendix A.

(b) Except as otherwise provided in this Agreement, the Stockholder has full power and authority to (i) make, enter into and carry out the terms of this Agreement and (ii) vote all of its Shares in the manner set forth in this Agreement without the consent or approval of, or any other action on the part of, any other person or entity (including any Governmental Authority). Without limiting the generality of the foregoing, the Stockholder has not entered into any voting agreement (other than this Agreement) with any person with respect to any of the Stockholder's Shares, granted any person any proxy (revocable or irrevocable) or power of attorney with respect to any of the Stockholder's Shares, deposited any of the Stockholder's Shares in a voting trust or entered into any arrangement or agreement with any person limiting or affecting the Stockholder's legal power, authority or right to vote the Stockholder's Shares on any matter.

(c) This Agreement has been duly and validly executed and delivered by the Stockholder and (assuming the due authorization, execution and delivery by the other parties hereto) constitutes a valid and binding agreement of the Stockholder enforceable against the Stockholder in accordance with its terms, subject to the Enforceability Exceptions. The execution and delivery of this Agreement by the Stockholder and the performance by the Stockholder of the agreements and obligations hereunder will not result in any breach or violation of or be in conflict with or constitute a default under any term of any Contract or if applicable any provision of an organizational document (including a certificate of incorporation) to or by which the Stockholder is a party or bound, or any applicable law to which the Stockholder (or any of the Stockholder's assets) is subject or bound, except for any such breach, violation, conflict or default which, individually or in the aggregate, would not reasonably be expected to materially impair or adversely affect the Stockholder's ability to perform its obligations under this Agreement.

(d) The Stockholder has had the opportunity to review the Merger Agreement and this Agreement with the Stockholder's legal counsel. The Stockholder understands and acknowledges that the Company is entering into the Merger Agreement in reliance upon the Stockholder's execution, delivery and performance of this Agreement.

(e) The execution, delivery and performance of this Agreement by the Stockholder do not and will not require any consent, approval, authorization or permit of, action by, filing with or notification to, any Governmental Authority, except for any such consent, approval, authorization, permit, action, filing or notification the failure of which to make or obtain, individually or in the aggregate, has not and would not materially impair the Stockholder's ability to perform its obligations under this Agreement.

(f) The Stockholder has had the opportunity to review the Merger Agreement and this Agreement with counsel of the Stockholder's own choosing. The Stockholder has had an opportunity to review with its own tax advisors the tax consequences of the Merger and the Contemplated Transactions. The Stockholder understands that it must rely solely on its advisors and not on any statements or representations made by Gem, the Company or any of their respective agents or representatives with respect to the tax consequences of the Merger and the Contemplated Transactions. The Stockholder understands that such Stockholder (and not Gem, the Company or the Surviving Corporation) shall be responsible for such Stockholder's tax liability that may arise as a result of the Merger or the Contemplated Transactions. The Stockholder understands and acknowledges that the Company, Gem and Merger Sub are entering into the Merger Agreement in reliance upon the Stockholder's execution, delivery and performance of this Agreement.

(g) With respect to the Stockholder, as of the date hereof, there is no action, suit, investigation or proceeding pending against, or, to the knowledge of the Stockholder, threatened against, the Stockholder or any of the Stockholder's properties or assets (including the Shares) that would reasonably be expected to prevent or materially delay or impair the ability of the Stockholder to perform its obligations hereunder or to consummate the transactions contemplated hereby.

10. Termination. This Agreement shall terminate and shall cease to be of any further force or effect as of the earlier of (a) such date and time as the Merger Agreement shall have been terminated pursuant to the terms thereof or (b) the Effective Time (the "**Expiration Date**"); provided, however, that (i) Section 11 shall survive the termination of this Agreement, and (ii) the termination of this Agreement shall not relieve any party hereto from any liability for any material and willful breach of this Agreement prior to the Effective Time.

11. Miscellaneous Provisions.

(a) Amendments. No amendment of this Agreement shall be effective against any party unless it shall be in writing and signed by each of the parties hereto.

(b) Entire Agreement. This Agreement constitutes the entire agreement between the parties to this Agreement and supersedes all other prior agreements, arrangements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

(c) Governing Law. All matters arising out of or relating to this Agreement and the transactions contemplated hereby (including its interpretation, construction, performance and enforcement) shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the State of Delaware.

(d) Jurisdiction. Each of the parties to this Agreement (i) consents to submit itself to the exclusive personal jurisdiction of the Court of Chancery of the State of Delaware, New Castle County, or, if that court does not have jurisdiction, a federal court sitting in Wilmington, Delaware in any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (ii) agrees that all claims in respect of such action or proceeding shall be heard and determined in any such court, (iii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (iv) agrees not to bring any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any other court. Each of the parties hereto waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect thereto. Any party may make service on another party by sending or delivering a copy of the process to the party to be served at the address and in the manner provided for the giving of notices in Section 11(j). Nothing in this Section 11(d), however, shall affect the right of any party to serve legal process in any other manner permitted by law.

(e) WAIVER OF JURY TRIAL. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY TO THIS AGREEMENT IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.

(f) Assignment. Except as otherwise provided in Section 2(c) hereof, no party may assign any of its rights or delegate any of its performance obligations under this Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of the other parties hereto, and any such assignment without such prior written consent shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any purported assignment of rights or delegation of performance obligations in violation of this Section 11(f) is void.

(g) No Third Party Rights. This Agreement is not intended to, and shall not, confer upon any other person any rights or remedies hereunder other than the parties hereto to the extent expressly set forth herein.

(h) Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

(i) Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

(j) Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered (i) three Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid, or (ii) one Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable overnight courier service, in each case to the intended recipient as follows: (A) if to the Company or Gem, to the address, electronic mail address or facsimile provided in the Merger Agreement, including to the persons designated therein to receive copies; and/or (B) if to the Stockholder, to the Stockholder's address, electronic mail address or facsimile shown below Stockholder's signature to this Agreement.

(k) Counterparts. This Agreement may be executed in two or more counterparts (including by facsimile, by an electronic scan delivered by electronic mail or any electronic signature), each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile, by an electronic scan delivered by electronic mail or by delivery of any electronic signature.

(l) Confidentiality. Except to the extent required by applicable Law or regulation, the Stockholder shall hold any non-public information regarding this Agreement, the Merger Agreement and the Merger in strict confidence and shall not divulge any such information to any third person until Gem has publicly disclosed its entry into the Merger Agreement and this Agreement; provided, however, that the Stockholder may disclose such information to its Affiliates, partners, members, stockholders, parents, subsidiaries, attorneys, accountants, consultants, trustees, beneficiaries and other representatives (provided that such Persons are subject to confidentiality obligations at least as restrictive as those contained herein). Neither the Stockholder nor any of its Affiliates (other than Gem, whose actions shall be governed by the Merger Agreement), shall issue or cause the publication of any press release or other public announcement with respect to this Agreement, the Merger, the Merger Agreement or the other transactions contemplated hereby or thereby without the prior written consent of the Company and Gem, except as may be required by applicable Law in which circumstance such announcing party shall make reasonable efforts to consult with the Company and Gem to the extent practicable. The Company is an intended third-party beneficiary of this Section 11(l).

(m) Interpretation. When reference is made in this Agreement to a Section or Appendix, such reference shall be to a Section of or Appendix to this Agreement, unless otherwise indicated. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

[Remainder of Page Left Intentionally Blank]

COMPANY:  
[Company]

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

GEM:  
[Gem]

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

[STOCKHOLDER],  
in his/her capacity as the Stockholder:

Signature: \_\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





EXHIBIT B

FORM OF COMPANY STOCKHOLDER SUPPORT AGREEMENT

This Support Agreement (this "Agreement") is made and entered into as of [•], 2022, by and among [Disc] a Delaware corporation (the "Company"), [•], a Delaware corporation ("Gem"), and the undersigned stockholder (the "Stockholder") of the Company. Capitalized terms used herein but not otherwise defined shall have the respective meanings ascribed to such terms in the Merger Agreement (as defined below).

RECITALS

WHEREAS, concurrently with the execution and delivery hereof, Gem, the Company and [MERGER SUB], a Delaware corporation and a wholly owned subsidiary of Gem (the "Merger Sub"), have entered into an agreement and plan of merger (as such agreement may be amended or supplemented from time to time pursuant to the terms thereof, the "Merger Agreement"), pursuant to which Merger Sub will merge with and into the Company, with the Company surviving the merger as the surviving corporation and a wholly owned subsidiary of Gem (the "Merger") upon the terms and subject to the conditions set forth in the Merger Agreement.

WHEREAS, as of the date hereof, the Stockholder is the beneficial owner (as defined in Rule 13d-3 under the Exchange Act) of such number of shares of Company Capital Stock as indicated in Appendix A.

WHEREAS, as an inducement to the willingness of Gem to enter into the Merger Agreement, Gem has required that Stockholder enter into this Agreement.

NOW, THEREFORE, intending to be legally bound, the parties hereby agree as follows:

1. Certain Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement. For all purposes of this Agreement, the following terms shall have the following respective meanings:

(a) "Constructive Sale" means, with respect to any security, a short sale with respect to such security, entering into or acquiring a derivative contract with respect to such security, entering into or acquiring a futures or forward contract to deliver such security or entering into any other hedging or other derivative transaction that has the effect of either directly or indirectly materially changing the economic benefits or risks of ownership of such security.

(b) "Shares" means (i) all shares of Company Capital Stock beneficially owned by the Stockholder as of the date hereof, and (ii) all additional shares of Company Capital Stock acquired and beneficially owned by the Stockholder during the period commencing with the execution and delivery of this Agreement and expiring on the Closing Date.

(c) “Transfer” or “Transferred” means, with respect to any security, the direct or indirect assignment, sale, transfer, tender, exchange, pledge or hypothecation, or the grant, creation or suffrage of a lien, security interest or encumbrance in or upon, or the gift, grant or placement in trust, or the Constructive Sale or other disposition of such security (including transfers by testamentary or intestate succession, by domestic relations order or other court order, or otherwise by operation of law) or any right, title or interest therein (including any right or power to vote to which the holder thereof may be entitled, whether such right or power is granted by proxy or otherwise), or the beneficial ownership thereof, the offer to make such a sale, transfer, Constructive Sale or other disposition, and each agreement, arrangement or understanding, whether or not in writing, to effect any of the foregoing.

2. Transfer and Voting Restrictions. The Stockholder covenants to Gem as follows:

(a) Except as otherwise permitted by Section 2(c), during the period commencing with the execution and delivery of this Agreement and expiring on the Expiration Date (as defined below), the Stockholder shall not Transfer any of the Stockholder’s Shares, or publicly announce its intention to Transfer any of its Shares.

(b) Except as otherwise permitted by this Agreement or otherwise permitted or required by order of a court of competent jurisdiction or a Governmental Authority, the Stockholder will not commit any act that would restrict the Stockholder’s legal power, authority and right to vote all of the Shares held by the Stockholder or otherwise prevent or disable the Stockholder from performing any of his, her or its obligations under this Agreement. Without limiting the generality of the foregoing, except for this Agreement, the Amended and Restated Voting Agreement of the Company, dated as of August 23, 2021 (the “Voting Agreement”) and as otherwise permitted by this Agreement, the Stockholder shall not enter into any voting agreement with any person or entity with respect to any of the Stockholder’s Shares, grant any person or entity any proxy (revocable or irrevocable) or power of attorney with respect to any of the Shares, deposit any Shares in a voting trust or otherwise enter into any agreement or arrangement with any person or entity limiting or affecting the Stockholder’s legal power, authority or right to execute and deliver the Company Stockholder Written Consent.

(c) Notwithstanding anything else herein to the contrary, the Stockholder may, at any time, Transfer Shares (i) by will or other testamentary document or by intestacy, (ii) to any investment fund or other entity controlled or managed by the Stockholder or the investment adviser of general partner of the Stockholder, or an entity under common control or management with the Stockholders (in each case, directly or indirectly) (iii) to any member of the Stockholder’s immediate family (or, if the Stockholder is a corporation, partnership or other entity, to an immediate family member of a beneficial owner of the Shares held by the Stockholder), (iv) to any trust or other entity for the direct or indirect benefit of the Stockholder or the immediate family of the Stockholder (or, if the Stockholder is a corporation, partnership or other entity, for the direct or indirect benefit of an immediate family member of a beneficial owner of the Shares held by the Stockholder) or otherwise for estate tax or estate planning purposes, (v) in the case of a Stockholder who is not a natural person, by pro rata distributions from the Stockholder to its members, partners, or shareholders pursuant to the Stockholder’s organizational documents; provided, that in the cases of clauses (i)-(v) (x) such Transferred Shares shall continue to be bound by this Agreement and (y) the applicable direct transferee (if any) of such Transferred Shares shall have executed and delivered to Gem and the Company a support agreement substantially identical to this Agreement upon consummation of the Transfer or (vi) to the extent required by applicable Law.

3. Agreement to Vote Shares. The Stockholder covenants to the Company as follows:

(a) Until the Expiration Date, at any meeting of the stockholders of the Company, however called, and at every adjournment or postponement thereof, and on every action or approval by written consent of the stockholders of the Company, the Stockholder shall be present (in person or by proxy) and vote, or exercise its right to consent with respect to, all Shares held by the Stockholder (A) in favor of the adoption and approval of the Merger Agreement, (B) in favor of approval of the Contemplated Transactions, and (C) against any Acquisition Proposal.

(b) If the Stockholder is not the record holder, of Shares, the Stockholder agrees to take all actions necessary to cause the record holder and any nominees to be present (in person or by proxy) and vote all the Stockholder's Shares in accordance with this Section 3.

(c) In the event of a stock split, stock dividend or distribution, or any change in the capital stock of the Company by reason of any split-up, reverse stock split, recapitalization, combination, reclassification, reincorporation, exchange of shares or the like, the term "Shares" shall be deemed to refer to and include such shares as well as all such stock dividends and distributions and any securities into which or for which any or all of such shares may be changed or exchanged or which are received in such transaction.

4. Action in Stockholder Capacity Only. The Stockholder is entering into this Agreement solely in the Stockholder's capacity as the beneficial owner of its Shares and not in the Stockholder's capacity as a director or officer of the Company. Nothing herein shall limit or affect the Stockholder's ability to act as an officer or director of the Company.

5. Irrevocable Proxy. The Stockholder hereby revokes (or agrees to cause to be revoked) any proxies that the Stockholder has heretofore granted with respect to its Shares. In the event and to the extent that the Stockholder fails to vote the Shares in accordance with Section 3 at any applicable meeting of the stockholders of the Company or pursuant to any applicable written consent of the stockholders of the Company, the Stockholder shall be deemed to have irrevocably granted to, and appointed, the Company, and any individual designated in writing by it, and each of them individually, as his, her or its proxy and attorney-in-fact (with full power of substitution), for and in its name, place and stead, to vote his, her or its Shares in any action by written consent of Company stockholders or at any meeting of the Company stockholders called with respect to any of the matters specified in, and in accordance and consistent with, Section 3 of this Agreement. The Company agrees not to exercise the proxy granted herein for any purpose other than the purposes described in this Agreement. Except as otherwise provided for herein (including the next sentence), the Stockholder hereby affirms that the irrevocable proxy is coupled with an interest and may under no circumstances be revoked and that such irrevocable proxy is executed and intended to be irrevocable. Notwithstanding any other provisions of this Agreement, the irrevocable proxy granted hereunder shall automatically terminate upon the termination of this Agreement.

6. No Solicitation. Subject to Section 4, the Stockholder agrees not to, directly or indirectly, including through any of its officers, directors or agents, (a) solicit, seek or initiate or knowingly take any action to facilitate or encourage, any offers, inquiries or the making of any proposal or offer that constitutes, or could reasonably be expected to lead to, any Acquisition Proposal or Acquisition Inquiry or (b) enter into, continue or otherwise participate or engage in any discussions or negotiations regarding any Acquisition Proposal, or furnish to any person any non-public information or afford any person, other than Gem or the Company, as applicable, access to such party's property, books or records (except as required by applicable Law or pursuant to a request by a Governmental Authority) in connection with, any Acquisition Proposal; provided, however, that nothing in this Section 6 shall prevent the Stockholder from referring a person to this Section 6 or to the Merger Agreement.

7. Documentation and Information. The Stockholder shall permit and hereby authorizes Gem and the Company to publish and disclose in all documents and schedules filed with the SEC, and any press release or other disclosure document that Gem or the Company reasonably determines to be necessary in connection with the Merger and any of the Contemplated Transactions, a copy of this Agreement, the Stockholder's identity and ownership of the Shares and the nature of the Stockholder's commitments and obligations under this Agreement; provided, that, Gem and the Company provide such documents, schedules, press release or other disclosure document to the Stockholder in advance for its review and comment. Each of Gem and the Company is an intended third-party beneficiary of this Section 7.

8. No Exercise of Appraisal Rights; Waivers. The Stockholder hereby irrevocably and unconditionally (a) waives, and agrees to cause to be waived and to prevent the exercise of, any rights of appraisal, any dissenters' rights and any similar rights (including any notice requirements related thereto) relating to the Merger that Stockholder may have by virtue of, or with respect to, any Shares (including all rights under Section 262 of the DGCL) and (b) agrees that the Stockholder will not bring, commence, institute, maintain, prosecute or voluntarily aid or participate in any action, claim, suit or cause of action, in law or in equity, in any court or before any Governmental Authority, which (i) challenges the validity of or seeks to enjoin the operation of any provision of this Agreement or (ii) alleges that the execution and delivery of this Agreement by the Stockholder breaches any duty that such Stockholder has (or may be alleged to have) to the Company or to the other Company stockholders; provided, that (x) the Stockholder may defend against, contest or settle any such action, claim, suit or cause of action brought against the Stockholder that relates solely to the Stockholder's capacity as a director, officer or securityholder of the Company and (y) the foregoing shall not limit or restrict in any manner the Stockholder from enforcing the Stockholder's rights under this Agreement and the other agreements entered into by the Stockholder in connection herewith, or otherwise in connection with the Merger, including the Stockholder's right to receive the Merger Consideration pursuant to the terms of the Merger Agreement.

9. Representations and Warranties of the Stockholder. The Stockholder hereby represents and warrants to the Company as follows:

(a) (i) The Stockholder is the beneficial owner of the shares of Company Capital Stock indicated in Appendix A (each of which shall be deemed to be "held" by the Stockholder for purposes of Section 3 unless otherwise expressly stated with respect to any shares in Appendix A), free and clear of any and all Encumbrances (except for any Encumbrance that may be imposed pursuant to this Agreement, the Voting Agreement, the Amended and

Restated Investors' Rights Agreement of the Company, dated as of August 23, 2021 (the "Investor's Rights Agreement"), or any lock-up agreement entered into by and between the Stockholder, the Company and Gem); and (ii) the Stockholder does not beneficially own any securities of the Company other than the shares of Company Capital Stock and rights to purchase shares Company Capital Stock set forth in Appendix A.

(b) Except as otherwise provided in this Agreement, the Stockholder has full power and authority to (i) make, enter into and carry out the terms of this Agreement and (ii) vote all of its Shares in the manner set forth in this Agreement without the consent or approval of, or any other action on the part of, any other person or entity (including any Governmental Authority). Without limiting the generality of the foregoing, except for the Voting Agreement, the Stockholder has not entered into any voting agreement (other than this Agreement) with any person with respect to any of the Stockholder's Shares, granted any person any proxy (revocable or irrevocable) or power of attorney with respect to any of the Stockholder's Shares, deposited any of the Stockholder's Shares in a voting trust or entered into any arrangement or agreement with any person limiting or affecting the Stockholder's legal power, authority or right to vote the Stockholder's Shares on any matter.

(c) This Agreement has been duly and validly executed and delivered by the Stockholder and (assuming the due authorization, execution and delivery by the other parties hereto) constitutes a valid and binding agreement of the Stockholder enforceable against the Stockholder in accordance with its terms, subject to the Enforceability Exceptions. The execution and delivery of this Agreement by the Stockholder and the performance by the Stockholder of the agreements and obligations hereunder will not result in any breach or violation of or be in conflict with or constitute a default under any term of any Contract or if applicable any provision of an organizational document (including a certificate of incorporation) to or by which the Stockholder is a party or bound, or any applicable law to which the Stockholder (or any of the Stockholder's assets) is subject or bound, except for any such breach, violation, conflict or default which, individually or in the aggregate, would not reasonably be expected to materially impair or adversely affect the Stockholder's ability to perform its obligations under this Agreement.

(d) The execution, delivery and performance of this Agreement by the Stockholder do not and will not require any consent, approval, authorization or permit of, action by, filing with or notification to, any Governmental Authority, except for any such consent, approval, authorization, permit, action, filing or notification the failure of which to make or obtain, individually or in the aggregate, has not and would not materially impair the Stockholder's ability to perform its obligations under this Agreement.

(e) The Stockholder has had the opportunity to review the Merger Agreement and this Agreement with counsel of the Stockholder's own choosing. The Stockholder has had an opportunity to review with its own tax advisors the tax consequences of the Merger and the Contemplated Transactions. The Stockholder understands that it must rely solely on its advisors and not on any statements or representations made by Gem, the Company or any of their respective agents or representatives with respect to the tax consequences of the Merger and the Contemplated Transactions. The Stockholder understands that such Stockholder (and not Gem, the Company or the Surviving Corporation) shall be responsible for such Stockholder's tax liability that may arise as a result of the Merger or the Contemplated Transactions. The Stockholder understands and acknowledges that the Company, Gem and Merger Sub are entering into the Merger Agreement in reliance upon the Stockholder's execution, delivery and performance of this Agreement.

(f) With respect to the Stockholder, as of the date hereof, there is no action, suit, investigation or proceeding pending against, or, to the knowledge of the Stockholder, threatened against, the Stockholder or any of the Stockholder's properties or assets (including the Shares) that would reasonably be expected to prevent or materially delay or impair the ability of the Stockholder to perform its obligations hereunder or to consummate the transactions contemplated hereby.

10. Termination. This Agreement shall terminate and shall cease to be of any further force or effect as of the earliest of (a) such date and time as the Merger Agreement shall have been terminated pursuant to the terms thereof as in effect on the date of this Agreement (and without giving effect to any amendments thereto unless consented to by the Stockholder), (b) the Effective Time and (c) the time this Agreement is terminated upon the written agreement of the Stockholder, the Company and Gem (the "**Expiration Date**"); provided, however, that (i) Section 11 shall survive the termination of this Agreement, and (ii) the termination of this Agreement shall not relieve any party hereto from any liability for any material and willful breach of this Agreement prior to the Effective Time.

11. Miscellaneous Provisions.

(a) Amendments. No amendment of this Agreement shall be effective against any party unless it shall be in writing and signed by each of the parties hereto.

(b) Entire Agreement. This Agreement constitutes the entire agreement between the parties to this Agreement and supersedes all other prior agreements, arrangements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

(c) Governing Law. All matters arising out of or relating to this Agreement and the transactions contemplated hereby (including its interpretation, construction, performance and enforcement) shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the State of Delaware.

(d) Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws. IN ANY ACTION OR PROCEEDING BETWEEN ANY OF THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, EACH OF THE PARTIES: (A) IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE OR, TO THE EXTENT SUCH COURT DOES NOT HAVE

SUBJECT MATTER JURISDICTION, THE SUPERIOR COURT OF THE STATE OF DELAWARE OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, (B) AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED EXCLUSIVELY IN ACCORDANCE WITH CLAUSE (A) OF THIS SECTION 11(d), (C) WAIVES ANY OBJECTION TO LAYING VENUE IN ANY SUCH ACTION OR PROCEEDING IN SUCH COURTS, (D) WAIVES ANY OBJECTION THAT SUCH COURTS ARE AN INCONVENIENT FORUM OR DO NOT HAVE JURISDICTION OVER ANY PARTY, (E) AGREES THAT SERVICE OF PROCESS UPON SUCH PARTY IN ANY SUCH ACTION OR PROCEEDING SHALL BE EFFECTIVE IF NOTICE IS GIVEN IN ACCORDANCE WITH SECTION 11(j) OF THIS AGREEMENT AND (F) IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY.

(e) WAIVER OF JURY TRIAL. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY TO THIS AGREEMENT IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.

(f) Assignment. Except as otherwise provided in Section 2(c), hereof, no party may assign any of its rights or delegate any of its performance obligations under this Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of the other parties hereto, and any such assignment without such prior written consent shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any purported assignment of rights or delegation of performance obligations in violation of this Section 11(f) is void.

(g) No Third Party Rights. This Agreement is not intended to, and shall not, confer upon any other person any rights or remedies hereunder other than the parties hereto to the extent expressly set forth herein.

(h) Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.



(i) Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

(j) Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly delivered and received hereunder (i) three Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid, (ii) one Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable overnight courier service, (iii) upon delivery, in the case of delivery by hand, or (iv) on the date delivered in the place of delivery if sent by electronic mail or facsimile (with written or electronic confirmation of delivery) prior to 6:00 p.m., New York City time, otherwise on the next succeeding Business Day, in each case to the intended recipient as follows: (A) if to the Company or Gem, to the address, electronic mail address or facsimile provided in the Merger Agreement, including to the persons designated therein to receive copies; and/or (B) if to the Stockholder, to the Stockholder's address, electronic mail address or facsimile shown below Stockholder's signature to this Agreement.

(k) Counterparts. This Agreement may be executed in two or more counterparts (including by facsimile, by an electronic scan delivered by electronic mail or any electronic signature), each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile, by an electronic scan delivered by electronic mail or by delivery of any electronic signature.

(l) Confidentiality. Except to the extent required by applicable Law or regulation, the Stockholder shall hold any non-public information regarding this Agreement, the Merger Agreement and the Merger in strict confidence and shall not divulge any such information to any third person until the Company has publicly disclosed its entry into the Merger Agreement and this Agreement; provided, however, that the Stockholder may disclose such information to its Affiliates, partners, members, stockholders, parents, subsidiaries, attorneys, accountants, consultants, trustees, beneficiaries and other representatives (provided that such Persons are subject to confidentiality obligations at least as restrictive as those contained herein) or as otherwise permitted pursuant to and in accordance with the terms of Section 3.4 of the Investors' Rights Agreement. Neither the Stockholder nor any of its Affiliates (other than the Company, whose actions shall be governed by the Merger Agreement), shall issue or cause the publication of any press release or other public announcement with respect to this Agreement, the Merger, the Merger Agreement or the other transactions contemplated hereby or thereby without the prior written consent of the Company and Gem, except as may be required by applicable Law in which circumstance such announcing party shall make reasonable efforts to consult with the Company and Gem to the extent practicable. The Company is an intended third-party beneficiary of this Section 11(l).

(m) Interpretation. When reference is made in this Agreement to a Section or Appendix, such reference shall be to a Section of or Appendix to this Agreement, unless otherwise indicated. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

[Remainder of Page Left Intentionally Blank]

COMPANY:  
[Company]

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

GEM:  
[Gem]

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

[STOCKHOLDER],  
in his/her capacity as the Stockholder:

Signature: \_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## FORM OF LOCK-UP AGREEMENT

[•], 2022

[Gem]  
[Address]

Ladies and Gentlemen:

The undersigned signatory of this lock-up agreement (this "Lock-Up Agreement") understands that [Gem], a Delaware corporation ("Gem"), has entered into an Agreement and Plan of Merger and Reorganization, dated as of [•], 2022 (as the same may be amended from time to time, the "Merger Agreement") with [Merger Sub], a Delaware corporation and a wholly owned subsidiary of Gem, and [Company], a Delaware corporation (the "Company"). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement.

As a condition and inducement to Gem to enter into the Merger Agreement and to consummate the transactions contemplated thereby, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby irrevocably agrees that, subject to the exceptions set forth herein, without the prior written consent of Gem, the undersigned will not, during the period commencing upon the Closing and ending on the date that is 180 days after the Closing Date (the "Restricted Period"):

(1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Gem Common Stock or any securities convertible into or exercisable or exchangeable for shares of Gem Common Stock (including without limitation, shares of Gem Common Stock or such other securities which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the SEC and securities of Gem which may be issued upon exercise of an option to purchase shares of Gem Common Stock or a warrant to purchase shares of Gem Common Stock) that are currently or hereafter owned by the undersigned, except as set forth below (collectively, the "Undersigned's Shares");

(2) enter into any swap, short sale, hedge or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Undersigned's Shares regardless of whether any such transaction described in clause (1) above or this clause (2) is to be settled by delivery of shares of Gem Common Stock or other securities, in cash or otherwise;

(3) make any demand for, or exercise any right with respect to, the registration of any shares of Gem Common Stock or any security convertible into or exercisable or exchangeable for shares of Gem Common Stock (other than such rights set forth in the Merger Agreement); or

(4) publicly disclose the intention to do any of the foregoing.

The restrictions and obligations contemplated by this Lock-Up Agreement shall not apply to:

(a) transfers of the Undersigned's Shares:

(1) (A) to any person related to the undersigned (or to an ultimate beneficial owner of the undersigned) by blood or adoption who is an immediate family member of the undersigned, or by marriage or domestic partnership (a "Family Member"), or to a trust formed for the benefit of the undersigned or any of the undersigned's Family Members, (B) to the undersigned's estate, following the death of the undersigned, by will, intestacy or other operation of Law, (C) as a bona fide gift or a charitable contribution, (D) by operation of Law pursuant to a qualified domestic order or in connection with a divorce settlement or (E) to any partnership, corporation or limited liability company which is controlled by the undersigned and/or by any such Family Member(s);

(2) if the undersigned is a corporation, partnership, limited liability company or other entity, (A) to another corporation, partnership, limited liability company or other entity that is a direct or indirect affiliate (as defined under Rule 12b-2 of the Exchange Act) of the undersigned, including investment funds or other entities that controls or manages, is under common control or management with, or is controlled or managed by, the undersigned, (B) as a distribution or dividend to equity holders, current or former general or limited partners, members or managers (or to the estates of any of the foregoing), as applicable, of the undersigned (including upon the liquidation and dissolution of the undersigned pursuant to a plan of liquidation approved by the undersigned's equity holders), (C) as a bona fide gift or a charitable contribution or otherwise to a trust or other entity for the direct or indirect benefit of an immediate family member of a beneficial owner (as defined in Rule 13d-3 of the Exchange Act) of the Undersigned's Shares or (D) transfers or dispositions not involving a change in beneficial ownership; or

(3) if the undersigned is a trust, to any grantors or beneficiaries of the trust;

provided that, in the case of any transfer or distribution pursuant to this clause (a), such transfer is not for value (other than transfers pursuant to 1(A), 1(E) or 2(A)) and each donee, heir, beneficiary or other transferee or distributee shall sign and deliver to Gem a lock-up agreement in the form of this Lock-Up Agreement with respect to the shares of Gem Common Stock or such other securities that have been so transferred or distributed;

(b) the exercise of an option to purchase shares of Gem Common Stock (including a net or cashless exercise of an option to purchase shares of Gem Common Stock ), and any related transfer of shares of Gem Common Stock to Gem for the purpose of paying the exercise price of such options or for paying taxes (including estimated taxes) due as a result of the exercise of such options or for paying taxes (including estimated taxes) due as a result of the exercise of such options; provided that, for the avoidance of doubt, the underlying shares of Gem Common Stock shall continue to be subject to the restrictions on transfer set forth in this Lock-Up Agreement;

(c) transfers to Gem in connection with the net settlement of any other equity award that represents the right to receive in the future shares of Gem Common Stock, settled in shares of Gem Common Stock, to pay any tax withholding obligations; provided that, for the avoidance of doubt, the underlying shares of Gem Common Stock shall continue to be subject to the restrictions on transfer set forth in this Lock-Up Agreement;

(d) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Gem Common Stock; provided that such plan does not provide for any transfers of shares of Gem Common Stock during the Restricted Period;

(e) transfers by the undersigned of shares of Gem Common Stock purchased by the undersigned on the open market or in a public offering by Gem, in each case following the date of the Merger Agreement;

(f) pursuant to a bona-fide third party tender offer, merger, consolidation or other similar transaction made to all holders of Gem's capital stock involving a change of control of Gem, provided that in the event that such tender offer, merger, consolidation or other such transaction is not completed, the Undersigned's Shares shall remain subject to the restrictions contained in this Lock-Up Agreement;

(g) pursuant to an order of a court or regulatory agency; or

(h) transfers by the undersigned of shares of Gem Common Stock issued pursuant to the Merger Agreement in respect of shares of the Company, if any, purchased from the Company on or about the Closing Date but prior to the Closing.

and provided, further, that, with respect to each of (b), (c), and (d) above, no filing by any party (including any donor, donee, transferor, transferee, distributor or distributee) under Section 16 of the Exchange Act or other public announcement shall be made voluntarily reporting a reduction in beneficial ownership of shares of Gem Common Stock or any securities convertible into or exercisable or exchangeable for Gem Common Stock in connection with such transfer or disposition during the Restricted Period (other than any exit filings) and if any filings under Section 16(a) of the Exchange Act, or other public filing, report or announcement reporting a reduction in beneficial ownership of shares of Gem Common Stock in connection with such transfer or distribution, shall be legally required during the Restricted Period, such filing, report or announcement shall clearly indicate in the footnotes therein, in reasonable detail, a description of the circumstances of the transfer and that the shares remain subject to the lock-up agreement.

For purposes of this Lock-Up Agreement, "change of control" shall mean the transfer (whether by tender offer, merger, consolidation or other similar transaction), in one transaction or a series of related transactions, to a person or group of affiliated persons, of the Company's voting securities if, after such transfer, the Company's stockholders as of immediately prior to such transfer do not hold a majority of the outstanding voting securities of the Company (or the surviving entity).

Any attempted transfer in violation of this Lock-Up Agreement will be of no effect and null and void, regardless of whether the purported transferee has any actual or constructive knowledge of the transfer restrictions set forth in this Lock-Up Agreement, and will not be recorded on the share register of Gem. In furtherance of the foregoing, the undersigned agrees that Gem and any duly appointed transfer agent for the registration or transfer of the securities described herein are

hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Agreement. Gem may cause the legend set forth below, or a legend substantially equivalent thereto, to be placed upon any certificate(s) or other documents, ledgers or instruments evidencing the undersigned's ownership of Gem Common Stock:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AND MAY ONLY BE TRANSFERRED IN COMPLIANCE WITH A LOCK-UP AGREEMENT, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that if the Merger Agreement is terminated for any reason, the undersigned shall be released from all obligations under this Lock-Up Agreement. The undersigned understands that Gem is proceeding with the transactions contemplated by the Merger Agreement in reliance upon this Lock-Up Agreement.

Any and all remedies herein expressly conferred upon Gem will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by Law or equity, and the exercise by Gem of any one remedy will not preclude the exercise of any other remedy. The undersigned agrees that irreparable damage would occur to Gem in the event that any provision of this Lock-Up Agreement was not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that Gem shall be entitled to seek an injunction or injunctions to prevent breaches of this Lock-Up Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which Gem is entitled at Law or in equity, and the undersigned waives any bond, surety or other security that might be required of Gem with respect thereto.

In the event that any holder of Gem's securities that are subject to a substantially similar agreement entered into by such holder, other than the undersigned, is permitted by Gem to sell or otherwise transfer or dispose of shares of Gem Common Stock for value other than as permitted by this or a substantially similar agreement entered into by such holder (whether in one or multiple releases or waivers), the same percentage of shares of Gem Common Stock held by the undersigned on the date of such release or waiver as the percentage of the total number of outstanding shares of Gem Common Stock held by such holder on the date of such release or waiver that are the subject of such release or waiver shall be immediately and fully released on the same terms from any remaining restrictions set forth herein (the "Pro-Rata Release"); provided, however, that such Pro-Rata Release shall not be applied unless and until permission has been granted by Gem to an equity holder or equity holders to sell or otherwise transfer or dispose of all or a portion of such equity holders shares of Gem Common Stock in an aggregate amount in excess of 1% of the number of shares of Gem Common Stock subject to a substantially similar agreement.



Upon the release of any of the Undersigned's Shares from this Lock-Up Agreement, Gem will promptly cooperate with the undersigned to facilitate the timely preparation and delivery of certificates representing the Undersigned Shares without the restrictive legend above or the withdrawal of any stop transfer instructions by virtue of this Lock-Up Agreement.

This Lock-Up Agreement and any claim, controversy or dispute arising under or related to this Lock-Up Agreement shall be governed by and construed in accordance with the Laws of the state of Delaware, without regard to the conflict of Laws principles thereof.

This Lock-Up Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Lock-Up Agreement (in counterparts or otherwise) by Gem and the undersigned by facsimile or electronic transmission in .pdf format shall be sufficient to bind such parties to the terms and conditions of this Lock-Up Agreement.

*[SIGNATURE PAGE FOLLOWS]*

Very truly yours,

Print Name of Stockholder:

\_\_\_\_\_  
Signature (for individuals):

\_\_\_\_\_  
Signature (for entities):

By:

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

*[Signature Page to Lock-Up Agreement]*

Accepted and Agreed  
by [Gem]:

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

Name:

Title:

*[Signature Page to Lock-Up Agreement]*

## EXHIBIT D

### FORM OF SUBSCRIPTION AGREEMENT

This Subscription Agreement (this “*Agreement*”) is made and entered into as of August [•], 2022 (the “*Effective Date*”) by and among Disc Medicine, Inc., a Delaware corporation (the “*Company*”), and each of the purchasers listed on the signature pages hereto, severally and not jointly (each a “*Purchaser*” and together the “*Purchasers*”). Certain terms used and not otherwise defined in the text of this Agreement are defined in Section 8 hereof.

#### RECITALS

WHEREAS, the Company is party to that certain Agreement and Plan of Merger by and among the Company, Gemstone Merger Sub, Inc. (“*Merger Sub*”), and [GEMSTONE], Inc. (“*Gem*”), dated on or about the date hereof (the “*Merger Agreement*”), pursuant to which the Company will merge with and into Merger Sub and become a wholly-owned subsidiary of Gem (the “*Merger*”);

WHEREAS, the Company desires to sell to the Purchasers, and the Purchasers desire to purchase from the Company, \$53,500,000 in the aggregate of shares of the Company’s Common Stock, par value \$0.0001 (the “*Common Stock*”), at a per share purchase price equal to the Purchase Price, in accordance with the terms and provisions of this Agreement, immediately prior to, but subject to, the closing of the Merger; and

WHEREAS, the Company and the Purchasers are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the 1933 Act, and Rule 506 of Regulation D promulgated by the United States Securities and Exchange Commission (the “*Commission*”) under the 1933 Act;

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants herein contained, the parties hereto hereby agree as follows:

#### SECTION 1. Authorization of Securities.

1.01 The Company has authorized the sale and issuance of shares of Common Stock on the terms and subject to the conditions set forth in this Agreement. The shares of Common Stock sold hereunder at the Closing (as defined below) shall be referred to as the “*Securities*.”

#### SECTION 2. Sale and Purchase of the Securities.

2.01 Upon the terms and subject to the conditions herein contained, the Company agrees to sell to each Purchaser, and each Purchaser agrees, severally and not jointly, to purchase from the Company, at a closing to take place remotely via exchange of executed documents (the “*Closing*” and the date of the Closing, the “*Closing Date*”) to occur immediately prior to the Effective Time (as such term is defined in the Merger Agreement), that number of Securities (the “*Closing Shares*”) set forth opposite such Purchaser’s name on the Schedule of Purchasers for the aggregate Purchase Price set forth under the heading “Subscription Amount.”

2.02 At or prior to the Closing, each Purchaser will pay the Subscription Amount set forth opposite such Purchaser’s name on the Schedule of Purchasers by wire transfer of immediately available funds in accordance with wire instructions provided by the Company to the Purchasers at least two Business Days prior to the Closing (the “Wire Instructions Notice”). If so requested by the Company in the Wire Instructions Notice, the Subscription Amount of each Purchaser shall be paid into an escrow fund or trust account designated by the Company in writing (the “Escrow Account”) to be released to the Company only upon satisfaction of each of the closing conditions set forth in Section 6 below. In the event the Closing does not occur within three business days of the Closing Date specified in the Wire Instructions Notice, unless otherwise agreed by the Company and such Purchaser, the Company shall, or shall cause the escrow agent for the Escrow Account to, promptly (but not later than two business days thereafter) return the aggregate Purchase Price to each Purchaser by wire transfer of U.S. dollars in immediately available funds to the account specified by such Purchaser. On the Closing Date, the Company will issue, against payment of the aggregate Purchase Price, the Closing Shares.

SECTION 3. Representations and Warranties of the Purchasers. Each Purchaser, severally and not jointly, represents and warrants to the Company that:

3.01 Validity. The execution, delivery and performance of this Agreement and the consummation by the Purchaser of the transactions contemplated hereby have been duly authorized by all necessary corporate, partnership, limited liability or similar actions, as applicable, on the part of such Purchaser. This Agreement has been duly executed and delivered by the Purchaser and, assuming that this Agreement constitutes the valid and binding obligation of the Company, constitutes a valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

3.02 Brokers. There is no broker, investment banker, financial advisor, finder or other person which has been retained by or is authorized to act on behalf of the Purchaser who is entitled to any fee or commission for which the Company will be liable in connection with the execution of this Agreement and the consummation of the transactions contemplated hereby.

3.03 Investment Representations and Warranties. The Purchaser understands and agrees that the offering and sale of the Securities has not been registered under the 1933 Act or any applicable state securities laws and is being made in reliance upon federal and state exemptions for transactions not involving a public offering which depend upon, among other things, the bona fide nature of the investment intent and the accuracy of the Purchaser's representations as expressed herein.

3.04 Acquisition for Own Account. The Purchaser is acquiring the Securities for its own account for investment and not with a view towards distribution in a manner which would violate the 1933 Act or any applicable state or other securities laws.

3.05 No General Solicitation. The Purchaser is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television, radio or the internet or presented at any seminar or any other general solicitation or general advertisement. The purchase of the Securities by the Purchaser has not been solicited by or through anyone other than the Company.

3.06 Ability to Protect Its Own Interests and Bear Economic Risks. The Purchaser has the capacity to protect its own interests in connection with the transactions contemplated by this Agreement and is capable of evaluating the merits and risks of the investment in the Securities. The Purchaser is able to bear the economic risk of an investment in the Securities and is able to sustain a loss of all of its investment in the Securities without economic hardship, if such a loss should occur.

3.07 Accredited Investor. The Purchaser is an "accredited investor" as that term is defined in Rule 501(a) under the 1933 Act.

3.08 Restricted Securities. The Purchaser understands that the Securities will be characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a private placement under Section 4(a)(2) of the 1933 Act and that, under such laws and applicable regulations, such Securities may be resold without registration under the 1933 Act only in certain limited circumstances.

3.09 Tax Advisors. The Purchaser has had the opportunity to review with the Purchaser's own tax advisors the federal, state and local tax consequences of its purchase of the Securities set forth opposite such Purchaser's name on the Schedule of Purchasers, where applicable, and the transactions contemplated by this Agreement. The Purchaser is relying solely on the Purchaser's own determination as to tax consequences or the advice of such tax advisors and not on any statements or representations of the Company or any of its agents and understands that the Purchaser (and not the Company) shall be responsible for the Purchaser's own tax liability that may arise as a result of the transactions contemplated by this Agreement.

3.10 Residency. Such Purchaser's residence (if an individual) or offices in which its investment decision with respect to the Securities was made (if an entity) are located at the address immediately below such Purchaser's name on the Schedule of Purchasers.

SECTION 4. Representations and Warranties by the Company. The Company represents and warrants to the Purchasers that:

4.01 No Material Adverse Change in Business. Since December 31, 2021, (i) there has been no effect, change, condition, event, circumstance, occurrence, result, state of facts or development that has or would reasonably be expected to have a materially adverse effect on the business, financial condition, assets, operations, results of operations or financial performance of the Company and its subsidiaries, taken as a whole (a "**Material Adverse Effect**"), (ii) there have been no transactions entered into by the Company or any of its subsidiaries, other than those in the ordinary course of business and except as contemplated in this Agreement and the Merger Agreement, which are material with respect to the Company and its subsidiaries considered as one enterprise, and (iii) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

4.02 Organization and Good Standing of the Company. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware and has corporate power and authority to own, lease and operate its properties and to conduct its business as currently conducted and to enter into and perform its obligations under this Agreement and the Merger Agreement. The Company is duly qualified as a foreign corporation to transact business and is in good standing in each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect.

4.03 Organization and Good Standing of Subsidiaries. Each subsidiary of the Company has been duly incorporated or organized and is validly existing in good standing under the laws of the jurisdiction of its incorporation or organization, has corporate or similar power and authority to own, lease and operate its properties and to conduct its business as currently conducted and is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or to be in good standing would not result in a Material Adverse Effect.

4.04 Capitalization. The Company hereby represents and warrants to the Purchasers the information included in Section 3.6 of the Merger Agreement, which is hereby incorporated by reference in all respects, is true and correct in all respects.

4.05 Validity; Valid Issuance of Securities. This Agreement has been duly authorized, executed and delivered by the Company and constitutes a valid and binding obligation of the Company, enforceable against it in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies. The Securities are duly authorized and, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement, will be validly issued, fully paid and nonassessable and free and clear of any liens or other restrictions, other than restrictions on transfer under applicable state and federal securities or such restrictions as the Purchaser has agreed to in writing with the Company, and will not have been issued in violation of or subject to any preemptive or similar rights created under the Company's certificate of incorporation or bylaws or the Delaware General Corporation Law.

4.06 Absence of Violations, Defaults and Conflicts. Neither the Company nor any of its subsidiaries is (i) in violation of its charter, bylaws or similar organizational document, (ii) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound or to which any of the properties or assets of the Company or any subsidiary is subject (collectively, "**Agreements and Instruments**"), except for such defaults that would not, singly or in the aggregate, result in a Material Adverse Effect, or (iii) in violation of any law, statute, rule, regulation, judgment, order, writ or decree of any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company or any of its subsidiaries or any of their respective properties, assets or operations (each, a "**Governmental Entity**"), except for such violations that would not, singly or in the aggregate, result in a Material Adverse Effect. The execution, delivery and the performance of this Agreement and the consummation of the transactions contemplated herein (including the issuance and sale of the Securities) and compliance by the Company with its obligations hereunder do not and will not, whether with or without the giving of notice or passage of time or both, (1) conflict with or constitute a breach of, or default under, or result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Company or any subsidiary pursuant to, the Agreements and Instruments, (2) result in any violation of the provisions of the certificate of incorporation, by-laws or similar organizational document of the Company or any of its subsidiaries or (3) result in any violation of any applicable law, statute, rule, regulation, judgment, order, writ or decree of any Governmental Entity, except in the case of clauses (1) and (3) for such violations as would not, singly or in the aggregate, have or reasonably be expected to have a Material Adverse Effect, or materially affect the validity of the Securities or the legal authority of the Company to perform its obligations hereunder and timely comply in all material respects with the terms of this Agreement or the Merger Agreement.

4.07 Absence of Proceedings. There is no action, suit, proceeding, inquiry or investigation before or brought by any Governmental Entity now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries, which would have or reasonably be expected to have a Material Adverse Effect or materially affect the validity of the Securities or the legal authority of the Company to perform its obligations hereunder and timely comply in all material respects with the terms of this Agreement or the Merger Agreement.

4.08 Possession of Licenses and Permits. The Company and its subsidiaries possess such permits, licenses, approvals, consents and other authorizations (collectively, "**Governmental Licenses**") issued by the appropriate Governmental Entities necessary to conduct the business now operated by them, except where the failure so to possess would not, singly or in the aggregate, have or reasonably be expected to have a Material Adverse Effect. The Company and its subsidiaries are in compliance with the terms and conditions of all Governmental Licenses, except where the failure so to comply would not, singly or in the aggregate, have or reasonably be expected to have a Material Adverse Effect. All of the Governmental Licenses are valid and in full force and effect, except when the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not, singly or in the aggregate, have or reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any Governmental Licenses which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have or reasonably be expected to have a Material Adverse Effect.

4.09 Title to Property. The Company and its subsidiaries do not own any real property. The Company and its subsidiaries have title to all tangible personal property owned by them, in each case, free and clear of all mortgages, pledges, liens, security interests, claims, restrictions or encumbrances of any kind except such as do not, singly or in the aggregate, materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries.

4.10 Intellectual Property. The Company hereby represents and warrants to the Purchasers the information included in Section 3.12 of the Merger Agreement, which is hereby incorporated by reference in all respects, is true and correct in all respects.

4.11 Payment of Taxes. All United States federal income tax returns of the Company and its subsidiaries required by law to be filed have been filed and all taxes shown by such returns or otherwise assessed, which are due and payable, have been paid, except assessments against which appeals have been or will be promptly taken and as to which adequate reserves have been provided. No assessment in connection with United States federal tax returns has been made against the Company. The Company and its subsidiaries have filed all other tax returns that are required to have been filed by them through the date hereof or have timely requested extensions thereof pursuant to applicable foreign state, local or other law except insofar as the failure to file such returns would not have or reasonably be expected to have a Material Adverse Effect, and has paid all taxes due pursuant to such returns or all taxes due and payable pursuant to any assessment received by the Company and its subsidiaries, except for such taxes, if any, as are being contested in good faith and as to which adequate reserves have been established by the Company or its subsidiaries and except where the failure to pay such taxes would not have or reasonably be expected to have a Material Adverse Effect.

4.12 Insurance. The Company and the subsidiaries carry or are entitled to the benefits of insurance, with what the Company reasonably believes to be financially sound and reputable insurers, in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and assets, and all such insurance is in full force and effect. The Company has no reason to believe that it or any of the subsidiaries will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not have a Material Adverse Effect.

4.13 Investment Company Act. The Company is not required, and upon the issuance and sale of the Securities will not be required, to register as an "investment company" under the Investment Company Act of 1940, as amended.

4.14 Regulatory Matters. Except as would not, singly or in the aggregate, have or reasonably be expected to have a Material Adverse Effect: (i) neither the Company nor any of its subsidiaries has received any FDA Form 483, notice of adverse finding, warning letter or other correspondence or written notice from the U.S. Food and Drug Administration ("**FDA**") or any other Governmental Entity alleging or asserting noncompliance with any Applicable Laws (as defined in clause (ii) below) or Authorizations (as defined in clause (iii) below); (ii) the Company and each of its subsidiaries is and has been in compliance with statutes, laws, ordinances, rules and regulations applicable to the Company and its subsidiaries for the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product manufactured or distributed by the Company, including without limitation, the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301, et seq., similar laws of other Governmental Entities and the regulations promulgated pursuant to such laws (collectively, "**Applicable Laws**"); (iii) the Company and each of its subsidiaries possesses all licenses, certificates, approvals, clearances, authorizations, permits and supplements or amendments thereto required by any such Applicable Laws and/or to carry on its businesses as now conducted ("**Authorizations**") and such Authorizations are valid and in full force and effect and the Company is not in violation of any term of any such Authorizations; (iv) neither the Company nor any of its subsidiaries has received notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Entity or third party alleging that any product, operation or activity is in violation of any Applicable Laws or Authorizations or has any knowledge that any such Governmental Entity or third party is considering any such claim, litigation, arbitration, action, suit, investigation or proceeding, nor, to the Company's knowledge, has there been any noncompliance with or violation of any Applicable Laws by the Company or any of its subsidiaries that could reasonably be expected to require the issuance of any such communication or result in an investigation, corrective action, or enforcement action by FDA or similar Governmental Entity; (v) neither the Company nor any of its subsidiaries has received notice that any Governmental Entity has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations or has any knowledge that any such Governmental Entity is threatening or is considering such action; and (vi) the Company and each of its subsidiaries has filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were complete, correct and not misleading on the date filed (or were corrected or supplemented by a subsequent submission).



4.15 Employment Matters. The Company and its subsidiaries are in compliance in all material respects with all applicable laws relating to the employment of labor, including but not limited to those related to wages, hours, collective bargaining, equal employment opportunity, occupational health and safety, immigration, individual and collective consultation, notice of termination, and redundancy, and are not liable for any arrears of wages, taxes, penalties or other sums for failure to comply with any of the foregoing.

4.16 Private Placement. None of the Company, its subsidiaries or any person acting on its or their behalf, has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security under any circumstances that would require registration under the 1933 Act of the Securities being sold pursuant to this Agreement. Assuming the accuracy of the representations and warranties of the Purchasers contained in Section 3 hereof, the issuance of the Securities is exempt from registration under the 1933 Act.

4.17 No Disqualification Events. No “bad actor” disqualifying event described in Rule 506(d)(1)(i)-(viii) of the 1933 Act (a “**Disqualification Event**”) is applicable to the Company or, to the Company’s knowledge, any Company Covered Person (as defined below), except for a Disqualification Event as to which Rule 506(d)(2)(ii-iv) or (d)(3) is applicable. “**Company Covered Person**” means, with respect to the Company as an “issuer” for purposes of Rule 506 promulgated under the 1933 Act, any person listed in the first paragraph of Rule 506(d)(1). The Company is not aware of any Person (other than any Company Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of the Securities pursuant to this Agreement. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e).

4.18 No General Solicitation. Neither the Company nor, to the Company’s knowledge, any person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising.

4.19 No Integrated Offering. Assuming the accuracy of the Purchasers’ representations and warranties set forth in Section 3 hereof, none of the Company, its subsidiaries nor, to the Company’s knowledge, any of its Affiliates or any Person acting on its behalf has, directly or indirectly, at any time within the past six (6) months, made any offers or sales of any Company security or solicited any offers to buy any security under circumstances that would (i) eliminate the availability of the exemption from registration under Regulation D under the 1933 Act in connection with the offer and sale by the Company of the Securities as contemplated hereby or (ii) cause the offering of the Securities pursuant to this Agreement to be integrated with prior offerings by the Company for purposes of any applicable law, regulation or stockholder approval provisions, including, without limitation, under the rules and regulations of any National Exchange on which any of the securities of the Company are listed or designated.

4.20 Brokers. There is no broker, investment banker, financial advisor, finder or other person which has been retained by or is authorized to act on behalf of the Company that is entitled to any fee or commission in connection with the execution of this Agreement and the consummation of the transactions contemplated hereby.

#### SECTION 5. Covenants.

5.01 Reasonable Best Efforts. Each party shall use its reasonable best efforts to timely satisfy each of the conditions to be satisfied by it as provided in Section 6 of this Agreement.

5.02 Disclosure of Transactions and Other Material Information. The Company shall or shall cause Gem to, on the first (1st) Business Day immediately following the date of this Agreement, issue one or more press releases and/or file with the Commission a Current Report on Form 8-K (collectively, the “**Disclosure Document**”) disclosing all material terms of the transactions contemplated hereby and any other material nonpublic information that the Company, Gem or their respective officers, directors, employees, agents or any other person acting at the direction of the Company or Gem has provided to the Purchasers in connection with the transactions contemplated by this Agreement prior to the filing of the Disclosure Document. The Company shall not, and shall cause its officers, directors, employees and agents and Gem not to, publicly disclose the name of any Purchaser or any affiliate or investment adviser of any Purchaser, or include the name of any Purchaser or any affiliate or investment adviser of any Purchaser without the prior written consent (including by e-mail) of such Purchaser (i) in any press release or marketing materials, or (ii) in any filing with the Commission or any regulatory agency or

trading market, except (A) as required by the federal securities laws, rules or regulations, (B) to the extent such disclosure is required by other laws, rules or regulations, at the request of the staff of the Commission or regulatory agency or under regulations of any national securities exchange on which Gem's securities are listed for trading or (C) to the extent such announcements or other communications contain only information previously disclosed in a public statement, press release, or other communications previously approved in accordance with this Section 5.02.

5.03 Expenses. The Company and each Purchaser is liable for, and will pay, its own expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement, including, without limitation, attorneys' and consultants' fees and expenses.

#### SECTION 6. Conditions of Closing.

6.01 Conditions of the Purchasers' Obligations at the Closing. The obligations of each Purchaser under Section 2 hereof are subject to the fulfillment, at or prior to the Closing, of all of the following conditions, any of which may be waived in whole or in part by the Purchaser Majority.

(a) Representations and Warranties. The representations and warranties of the Company contained in this Agreement shall be true and correct in all respects on the Effective Date and shall be true and correct in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (except to the extent expressly made as of an earlier date in which case as of such earlier date).

(b) Performance. The Company shall have performed and complied in all material respects with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or prior to the Closing Date.

(d) Compliance Certificate. The Chief Executive Officer of the Company shall have delivered to the Purchasers at the Closing Date a certificate certifying that the conditions specified in Sections 6.01(a), 6.01(b) and 6.01(f) of this Agreement have been fulfilled.

(e) Qualification under State Securities Laws. All registrations, qualifications, permits and approvals, if any, required under applicable state securities laws shall have been obtained for the lawful execution, delivery and performance of this Agreement.

(f) Merger. All conditions to the closing of the Merger shall have been satisfied or waived (other than the Closing hereunder and other than those conditions which, by their nature, are to be satisfied at the closing of the transactions contemplated by the Merger Agreement), and the closing of the Merger shall be set to occur substantially concurrently with the Closing hereunder. The Company shall not have amended, modified, or waived any provision under the Merger Agreement in a manner that would reasonably be expected to materially and adversely affect the benefits that Purchaser would reasonably expect to receive under this Agreement without having received Purchaser's prior written consent.

(g) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by this Agreement.

(h) Registration Rights Agreement. The Company shall have delivered the fully executed Registration Rights Agreement.

6.02 Conditions of the Company's Obligations. The obligations of the Company under Section 2 hereof are subject to the fulfillment, at or prior to the Closing, of all of the following conditions, any of which may be waived in whole or in part by the Company in its absolute discretion.

(a) Representations and Warranties. The representations and warranties of the Purchasers contained in this Agreement shall be true and correct as of the Effective Date and true and correct in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (except to the extent expressly made as of an earlier date in which case shall be as of such earlier date).

(b) Performance. Each Purchaser shall have performed and complied with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by it on or prior to the Closing Date.

(c) Qualification under State Securities Laws. All registrations, qualifications, permits and approvals, if any, required under applicable state securities laws shall have been obtained for the lawful execution, delivery and performance of this Agreement.

(d) Merger. All conditions to the closing of the Merger shall have been satisfied or waived (other than the Closing hereunder and other than those conditions which, by their nature, are to be satisfied at the closing of the transactions contemplated by the Merger Agreement), and the closing of the Merger shall be set to occur substantially concurrently with the Closing hereunder.

SECTION 7. Transfer Restrictions; Restrictive Legend.

7.01 Transfer Restrictions. Each Purchaser understands that the Company may, as a condition to the transfer of any of the Securities, require that the request for transfer be accompanied by a certificate and/or an opinion of counsel reasonably satisfactory to the Company, to the effect that the proposed transfer does not result in a violation of the 1933 Act, unless such transfer is covered by an effective registration statement or is exempt from the registration requirements of the 1933 Act, including under by Rule 144. It is understood that the certificates evidencing the Securities may bear substantially the following legend:

“THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO THE SECURITIES UNDER SUCH ACT OR APPLICABLE STATE SECURITIES LAWS OR A VALID EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR APPLICABLE STATE SECURITIES LAWS.”

SECTION 8. Definitions. Unless the context otherwise requires, the terms defined in this Section 8 shall have the meanings specified for all purposes of this Agreement.

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

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

“*Affiliate*” shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the 1934 Act.

“*Business Day*” means any day other than Saturday, Sunday or other day on which commercial banks in the City of New York are authorized or required by law to remain closed.

“*National Exchange*” means the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market, or the New York Stock Exchange.

“*Person*” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“*Purchase Price*” means \$2.51 per share.

“**Purchaser Majority**” means the Purchasers committed to purchase at least a majority the Closing Shares, including at least one of AI DMI LLC and OrbiMed Private Investments VI, LP.

“**Registration Rights Agreement**” means the Registration Rights Agreement, in the form attached hereto as Exhibit A, to be entered into at the Closing among the Company and each Purchaser.

“**Rule 144**” means Rule 144 promulgated by the Commission pursuant to the 1933 Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as Rule 144.

#### SECTION 9. Miscellaneous.

9.01 Waivers and Amendments. Neither this Agreement, nor any provision hereof, may be changed, waived, amended or modified orally or by course of dealing, but only by an instrument in writing executed by the Company and the Purchaser Majority, provided that, (y) if any, change, waiver, amendment, modification disproportionately and adversely impacts a Purchaser (or group of Purchasers), the consent of such disproportionately impacted Purchaser (or group of Purchasers) shall be required and (z) any change to the Purchase Price shall require the consent of each Purchaser.

9.02 Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed delivered: (a) when delivered, if delivered personally, (b) four Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid, (c) one Business Day after being sent via a reputable nationwide overnight courier service guaranteeing next Business Day delivery, or (d) when receipt is acknowledged, in the case of email, in each case to the intended recipient as set forth below, with respect to the Company, and to the addresses set forth on the Schedule of Purchasers with respect to the Purchasers.

if to the Company:

Disc Medicine, Inc.  
321 Arsenal Street, Suite 101  
Watertown, MA 02472  
Attention: Rahul Khara, General Counsel  
Email: \*\*\*\*\*@\*\*\*\*\*.com

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

Goodwin Procter LLP  
100 Northern Ave.  
Boston, MA 02110  
Attention: William D. Collins  
Email: \*\*\*\*\*@\*\*\*\*\*.com

or at such other address as the Company or each Purchaser may specify by written notice to the other parties hereto in accordance with this Section 9.02.

9.03 Cumulative Remedies. None of the rights, powers or remedies conferred upon the Purchasers on the one hand or the Company on the other hand shall be mutually exclusive, and each such right, power or remedy shall be cumulative and in addition to every other right, power or remedy, whether conferred by this Agreement or now or hereafter available at law, in equity, by statute or otherwise.

9.04 Successors and Assigns. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective parties hereto, the successors and permitted assigns of each Purchaser and the successors of the Company, whether so expressed or not. None of the Purchasers may assign its rights or obligations hereof without the prior written consent of the Company, except that a Purchaser may, without the prior consent of the Company, assign its rights to purchase the Securities hereunder to any of its affiliates or to any other investment funds or accounts managed or advised by the investment manager who acts on behalf of Purchaser (provided each such assignee agrees to be bound by the terms of this Agreement and makes the same representations and warranties set forth in Section 3 hereof). The Company may not assign its rights or obligations hereof without the consent of the Purchasers. This Agreement shall not inure to the benefit of or be enforceable by any other person.

9.05 Headings. The headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and do not constitute a part of this Agreement.

9.06 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws. IN ANY ACTION OR PROCEEDING BETWEEN ANY OF THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, EACH OF THE PARTIES: (A) IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE OR, TO THE EXTENT SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE SUPERIOR COURT OF THE STATE OF DELAWARE OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, (B) AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED EXCLUSIVELY IN ACCORDANCE WITH CLAUSE (A) OF THIS SECTION 9.06, (C) WAIVES ANY OBJECTION TO LAYING VENUE IN ANY SUCH ACTION OR PROCEEDING IN SUCH COURTS, (D) WAIVES ANY OBJECTION THAT SUCH COURTS ARE AN INCONVENIENT FORUM OR DO NOT HAVE JURISDICTION OVER ANY PARTY, (E) AGREES THAT SERVICE OF PROCESS UPON SUCH PARTY IN ANY SUCH ACTION OR PROCEEDING SHALL BE EFFECTIVE IF NOTICE IS GIVEN IN ACCORDANCE WITH SECTION 9.02 OF THIS AGREEMENT AND (F) IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY.

9.07 Survival. The representations and warranties of the Company and the Purchasers contained in Sections 3 and 4, and the agreements and covenants set forth in Sections 5 and 9 shall survive the Closing in accordance with their respective terms. Each Purchaser shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

9.08 Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, with the same effect as if all parties had signed the same document. All such counterparts (including counterparts delivered by facsimile or other electronic format) shall be deemed an original, shall be construed together and shall constitute one and the same instrument. This Agreement shall become effective when each party hereto shall have received counterparts hereof signed by all of the other parties hereto.

9.09 Entire Agreement. This Agreement, together with the Registration Rights Agreement, contains the entire agreement among the parties hereto with respect to the subject matter hereof and, except as set forth below, this agreement supersedes and replaces all other prior agreements, written or oral, among the parties hereto with respect to the subject matter hereof. Notwithstanding the foregoing or anything to the contrary in this Agreement, this Agreement shall not supersede any confidentiality or other non-disclosure agreements that may be in place between the Company and any Purchaser.

9.10 Severability. If any provision of this Agreement shall be found by any court of competent jurisdiction to be invalid or unenforceable, the parties hereby waive such provision to the extent that it is found to be invalid or unenforceable. Such provision shall, to the maximum extent allowable by law, be modified by such court so that it becomes enforceable, and, as modified, shall be enforced as any other provision hereof, all the other provisions hereof continuing in full force and effect.

9.11 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under this Agreement are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under this Agreement. Nothing contained herein, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as, and the Company acknowledges that the Purchasers do not so constitute, a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers

are in any way acting in concert or as a group, and the Company will not assert any such claim with respect to such obligations or the transactions contemplated by this Agreement and the Company acknowledges that the Purchasers are not acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement. The Company acknowledges and each Purchaser confirms that it has independently participated in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose. The Company has elected to provide all Purchasers with the same terms for the convenience of the Company and not because it was required or requested to do so by any Purchaser.

9.12 Termination. This Agreement shall terminate and be void and of no further force and effect, and all obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earlier to occur of (a) such date and time that the Merger Agreement is terminated in accordance with its terms, (b) upon the mutual written agreement of the Company and the Purchaser, (c) if, on the Closing Date, any of the conditions of Closing set forth in Section 6 have not been satisfied as of the time required hereunder to be so satisfied or waived by the party entitled to grant such waiver and, as a result thereof, the transactions contemplated by this Agreement are not consummated, or (d) if the Closing has not occurred on or before the End Date (as such term is defined in the Merger Agreement), other than as a result of a Willful Breach of a Purchaser's obligations hereunder; *provided, however*, that nothing herein shall not relieve any party to this Agreement of any liability for common law fraud or for any Willful Breach of any representation, warranty, covenant, obligation or other provision contained in this Agreement. "**Willful Breach**" means a deliberate act or deliberate failure to act, taken with the actual knowledge that such act or failure to act would result in or constitute a material breach of this Agreement.

9.13 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Subscription Agreement to be duly executed as of the Effective Date.

**DISC MEDICINE, INC.**

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Subscription Agreement]*

IN WITNESS WHEREOF, the parties hereto have caused this Subscription Agreement to be duly executed as of the Effective Date.

•

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

Name:

Title:

*[Signature Page to Subscription Agreement]*



**Exhibit A**

**Form of Registration Rights Agreement**

**REGISTRATION RIGHTS AGREEMENT**

This Registration Rights Agreement (this "Agreement") is made and entered into as of [●], 2022, between Disc Medicine, Inc., a Delaware corporation, and each of the several purchasers signatory hereto (each such purchaser, a "Purchaser" and, collectively, the "Purchasers").

WHEREAS, the Company is party to that certain Agreement and Plan of Merger and Reorganization by and among the Company, Gemstone Merger Sub, Inc., Gemini Therapeutics, Inc. ("Gem"), dated as of August [●], 2022 (the "Merger Agreement"), pursuant to which the Company will become a wholly-owned subsidiary of Gem (the "Merger");

WHEREAS, following the Merger (as defined in the Merger Agreement), the Company will change its name to Disc Medicine Operations, Inc. and Gem will change its name to Disc Medicine, Inc. ("TopCo");

WHEREAS, the Company and the Purchasers are parties to a Subscription Agreement, dated as of the date hereof (the "Purchase Agreement"), pursuant to which the Purchasers, severally and not jointly, are purchasing shares of Common Stock of the Company (the "Purchased Shares"); and

WHEREAS, in connection with the consummation of the transactions contemplated by the Purchase Agreement, and pursuant to the terms of the Purchase Agreement, the parties desire to enter into this Agreement in order to grant certain rights to the Purchasers as set forth below.

NOW, THEREFORE, in consideration of the covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

The Company and each Purchaser hereby agree as follows:

1. Definitions.

Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement.

As used in this Agreement, the following terms shall have the following meanings:

"Advice" shall have the meaning set forth in Section 6(c).

"Company" means Disc Medicine, Inc. for all periods prior to closing of the Merger and TopCo for all periods after completion of the Merger.

"Effectiveness Date" means, with respect to the Initial Registration Statement required to be filed hereunder, the 90th calendar day following the date hereof (or, in the event of a "full review" by the Commission, the 120th calendar day following the date hereof) and with respect to any additional Registration Statements that may be required pursuant to Sections 2(b) and 2(c) or Section 3(c), the 60th calendar day following the date on which an additional Registration Statement is required to be filed hereunder (or, in the event of a "full review" by the Commission, the 90th calendar day following the date thereof); provided, however, that in the event the Company is notified by the Commission (orally or in writing) that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above, provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.

“Effectiveness Period” shall have the meaning set forth in Section 2(a).

“Filing Date” means, with respect to the Initial Registration Statement required hereunder, the 45th calendar day following the date hereof and, with respect to any additional Registration Statements that may be required pursuant to Sections 2(b) and 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

“Holder” or “Holders” means the holder or holders, as the case may be, from time to time of Registrable Securities.

“Indemnified Party” shall have the meaning set forth in Section 5(c).

“Indemnifying Party” shall have the meaning set forth in Section 5(c).

“Initial Registration Statement” means the initial Registration Statement filed pursuant to this Agreement.

“Losses” shall have the meaning set forth in Section 5(a).

“Plan of Distribution” shall have the meaning set forth in Section 2(a).

“Prospectus” means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the Commission pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Registrable Securities” means, as of any date of determination, (a) all shares of Gem common stock issued to the Purchasers at the closing of the Merger in respect of the Purchased Shares (the “Purchase Agreement Shares”), (b) all shares of Gem issued at the closing of the Merger to the Purchasers in respect of all other shares of capital stock of the Company held by Purchaser as of immediately prior to the Effective Time (as defined in the Merger Agreement), and (c) all shares of Gem held by Purchaser as of immediately prior to the Effective Time, (d) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) upon the earliest to occur of (i) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the Commission under the Securities Act and such Registrable Securities have been disposed of by the Holder in accordance with such effective Registration Statement, (ii) such Registrable Securities have been previously sold in accordance with Rule 144, (iii) such securities become eligible for resale without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by counsel to the Company pursuant to a written opinion letter to such effect, addressed, delivered and acceptable to the Company’s transfer agent and the affected Holders, and (iv) five years after the date of this Agreement.

“Registration Statement” means any registration statement required to be filed hereunder pursuant to Section 2(a) and any additional registration statements contemplated by Section 2(c) or Section 3(c), including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

“Rule 415” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“SEC Guidance” means (i) any publicly-available written or oral guidance of the Commission staff, or any comments, requirements or requests of the Commission staff; provided, that any such oral guidance, comments, requirements or requests are reduced to writing by the Commission and (ii) the Securities Act.

“Selling Stockholder Questionnaire” shall have the meaning set forth in Section 3(a).

“Trading Day” means any day on which the Gem Common Stock is traded on a National Exchange.

## 2. Shelf Registration.

(a) On or prior to each Filing Date, the Company shall (or shall cause TopCo to) prepare and file with the Commission a Registration Statement covering the resale of all of the Registrable Securities that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith, subject to the provisions of Section 2(d)) and shall contain (unless otherwise directed by at least 85% in interest of the Holders) disclosure substantially in the form of the “Plan of Distribution” attached hereto as Annex A and substantially in the form of the “Selling Stockholder” section attached hereto as Annex B. Subject to the terms of this Agreement, the Company shall use its reasonable best efforts to cause a Registration Statement filed under this Agreement (including, without limitation, under Section 3(c)) to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its reasonable best efforts to keep such Registration Statement continuously effective under the Securities Act until the earlier of (a) the date that all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company’s transfer agent

and the affected Holders and (b) five years after the date of this Agreement (the “Effectiveness Period”). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. (New York City time) on a Trading Day. The Company shall promptly notify the Holders via facsimile or by e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which shall be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. (New York City time) on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the Commission as required by Rule 424.

(b) Notwithstanding the registration obligations set forth in Section 2(a), if the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform each of the Holders thereof and use its reasonable best efforts to file amendments to the Initial Registration Statement as required by the Commission, covering the maximum number of Registrable Securities permitted to be registered by the Commission, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering; with respect to filing on Form S-3 or other appropriate form; provided, however, that prior to filing such amendment, the Company shall be obligated to use commercially reasonable efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c) Notwithstanding any other provision of this Agreement, if the Commission or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used reasonable efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the total number of Registrable Securities to be registered on such Registration Statement will be reduced as follows:

- a. First, the Company shall reduce or eliminate any securities to be included other than Registrable Securities;
- b. Second, the Company shall reduce Registrable Securities represented by Shares other than the Purchase Agreement Shares (applied, in the case that some of such Shares may be registered, to the Holders on a pro rata basis based on the total number of such unregistered Shares held by such Holders); and
- c. Third, the Company shall reduce Registrable Securities represented by the Purchase Agreement Shares (applied, in the case that some Purchase Agreement Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Purchase Agreement Shares held by such Holders)

In the event of a cutback hereunder, the Company shall give the Holder at least five (5) Trading Days prior written notice along with the calculations as to such Holder’s allotment. In the event the Company amends the Initial Registration Statement in accordance with the foregoing, the Company will use its commercially reasonable efforts to file with the Commission, as promptly as allowed by the Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended.

(d) If Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another

appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

(e) Notwithstanding anything to the contrary contained herein, in no event shall the Company be permitted to name any Holder or affiliate of a Holder as an underwriter in any Registration Statement without the prior written consent of such Holder.

### 3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than five (5) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall (i) furnish to each Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Holders, and (ii) use commercially reasonable efforts to cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Holder, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Required Holders (as defined below) shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than five (5) Trading Days after the Holders have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holders have been so furnished copies of any related Prospectus or amendments or supplements thereto. Each Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex C (a "Selling Stockholder Questionnaire") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4th) Trading Day following the date on which such Holder receives draft materials in accordance with this Section. The Company shall not be required to include any Registrable Securities in the Registration Statement for any Holder that has not provided such Selling Stockholder Questionnaire.

(b) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holders true and complete copies of all correspondence from and to the Commission relating to a Registration Statement (provided that, the Company shall excise any information contained therein that would constitute material non-public information regarding the Company or any of its subsidiaries), and (iv) comply in all material respects with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) If during the Effectiveness Period, the number of Registrable Securities at any time exceeds 100% of the number of shares of Common Stock then registered in a Registration Statement, then the Company shall, subject to Sections 2(b) and 2(c), if applicable, file as soon as reasonably practicable, but in any case prior to the applicable Filing Date, an additional Registration Statement covering the resale by the Holders of not less than the number of such Registrable Securities.

(d) Notify the Holders of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed, (B) when the Commission notifies the Company whether there will be a "review" of such Registration Statement and whenever the Commission comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any action, suit, proceeding, inquiry or investigation before or brought by any Governmental Entity (a "Proceeding") for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus; provided, however, that in no event shall any such notice contain any information that would constitute material, non-public information regarding the Company or any of its subsidiaries.

(e) Use its commercially reasonable efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(f) If requested by a Holder, furnish to each Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such

Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission, provided that any such item that is available on the EDGAR system (or successor thereto) need not be furnished in physical form.

(g) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(h) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(i) If requested by a Holder, cooperate with such Holder to facilitate the timely preparation and delivery of certificates or book entry statements, as applicable, representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by the Purchase Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holder may reasonably request; provided that Holder furnishes to Company a completed Holder Representation Letter in substantially the form attached hereto as Annex D and such other customary representations as may be required in connection therewith.

(j) Upon the occurrence of any event contemplated by Section 3(d), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus; provided that the Company shall only be entitled to exercise its right under this Section 3(j) to suspend the availability of a Registration Statement and Prospectus for a period not to exceed 60 calendar days (which need not be consecutive days) in any 12-month period. The Company will use its reasonable best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable.

(k) Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission under the Securities Act and the Exchange Act, including, without limitation, Rule 172 under the Securities Act, file any final Prospectus, including any supplement or amendment thereof, with the Commission pursuant to Rule 424 under the Securities Act,

promptly inform the Holders in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Holders are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder.

(l) The Company shall use its commercially reasonable efforts to maintain eligibility for use of Form S-3 (or any successor form thereto) for the registration of the resale of the Registrable Securities once eligible to use such form.

(m) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and, if required by the Commission, the natural persons thereof that have voting and dispositive control over the shares.

(n) The Company shall use its reasonable best efforts to cause (i) all Shares to be listed on each securities exchange or market, if any, on which the shares of Gem Common Stock have been listed.

(o) The Company shall, at its sole expense, upon appropriate notice from a Holder stating that Registrable Securities have been sold or transferred pursuant to an effective Registration Statement, timely prepare and deliver certificates or evidence of book-entry positions representing the Registrable Securities to be delivered to a transferee pursuant to such Registration Statement, which certificates or book-entry positions shall be free of any restrictive legends and in such denominations and registered in such names as the undersigned may request. Further, the Company shall use its commercially reasonable efforts, at its sole expense, to cause its legal counsel to (a) issue to the transfer agent and maintain a "blanket" legal opinion instructing the transfer agent that, in connection with a sale or transfer of "restricted securities" (i.e., securities issued pursuant to an exemption from the registration requirements of Section 5 of the Securities Act), the resale or transfer of which restricted securities has been registered pursuant to an effective Registration Statement by the holder thereof named in such Registration Statement, upon receipt of an appropriate broker representation letter and other such documentation as the Company's counsel deems necessary and appropriate and after confirming compliance with relevant prospectus delivery requirements, is authorized to remove any applicable restrictive legend in connection with such sale or transfer and (b) if the Registrable Securities are not registered pursuant to an effective Registration Statement, issue to the transfer agent a legal opinion to facilitate the sale or transfer of the Registrable Securities and removal of any restrictive legends pursuant to any exemption from the registration requirements of Section 5 of the Securities Act that may be available to the undersigned, upon request; provided, that in the case of a request to remove such restrictive legends in connection with a sale or transfer of Registrable Securities pursuant to clause (a) or (b) above, the Company shall use its commercially reasonable efforts to cause the Company's transfer agent to remove any such applicable restrictive legends in connection with such sale or transfer within two Business Days of such request. The Company shall be responsible for the fees of its transfer agent, its legal counsel and all DTC fees associated with any such request.

4. Registration Expenses. All fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the Commission, (B) with respect to filings required to be made with any National Exchange on which the Common Stock is then listed for trading, and (C) in compliance with applicable



state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement, and (vii) the reasonable fees and expenses, not to exceed \$35,000, of one counsel for the selling Holders selected by the Holders of a majority of the Registrable Securities to be registered. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any underwriting, broker or similar fees or commissions of any Holder or, except to the extent provided for in the Purchase Agreement or this Agreement, any legal fees or other costs of the Holders.

#### 5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder and its affiliates, the officers, directors, members, partners, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable and documented attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or based solely upon (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading or (2) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any state securities law, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (ii) in the case of an occurrence of an event of the type specified in Section 3(d) (iii)-(vi), the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in Section 6(c). The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions

contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person and shall survive the transfer of any Registrable Securities by any of the Holders in accordance with Section 6(f).

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Company expressly for inclusion in such Registration Statement or such Prospectus, including information provided in the Selling Stockholder Questionnaire or regarding the proposed method of distribution of Registrable Securities that was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or in any amendment or supplement thereto. In no event shall the liability of a selling Holder be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue statement or omission) received by such Holder upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all reasonable fees and expenses incurred in connection with defense thereof, provided that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses, (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding, or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no

more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable and documented fees and expenses of the Indemnified Party (including reasonable and documented fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party, provided that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) Contribution. If the indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. In no event shall the contribution obligation of a Holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

#### 6. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being

entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and each Holder agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) No Piggyback on Registrations; Prohibition on Filing Other Registration Statements. Neither the Company nor any of its security holders (other than the Holders in such capacity pursuant hereto) may include securities of the Company in any Registration Statements other than the Registrable Securities. The Company shall not file any other registration statements until all Registrable Securities are registered pursuant to a Registration Statement that is declared effective by the Commission, provided that this Section 6(b) shall not prohibit the Company from filing amendments to registration statements filed prior to the date of this Agreement so long as no new securities are registered on any such existing registration statements, nor preparing and filing with the Commission a registration statements on Form S-8 relating to its equity incentive plans.

(c) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its commercially reasonable efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable.

(d) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Required Holders, provided that, if any amendment, modification or waiver disproportionately and adversely impacts a Holder (or group of Holders), the consent of such disproportionately impacted Holder (or group of Holders) shall be required. If a Registration Statement does not register all of the Registrable Securities pursuant to a waiver or amendment done in compliance with the previous sentence, then the number of Registrable Securities to be registered for each Holder shall be reduced pro rata among all Holders and each Holder shall have the right to designate which of its Registrable Securities shall be omitted from such Registration Statement. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of a Holder or some Holders and that does not directly or indirectly affect the rights of other Holders may be given only by such Holder or Holders of all of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the first sentence of this Section 6(d). No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement. As used herein, "Required Holders" means Holders of 50.1% or more of the then outstanding Registrable Securities (for purposes of clarification, this includes any securities issuable upon conversion or exercise of any Registrable Security).

(e) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Purchase Agreement.

(f) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of all of the Holders of the then outstanding Registrable Securities. Each Holder may assign their respective rights hereunder in the manner and to the Persons as permitted under Section 9.04 of the Purchase Agreement.

(g) No Inconsistent Agreements. Neither the Company nor any of its subsidiaries has entered, as of the date hereof, nor shall the Company or any of its subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Neither the Company nor any of its subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

(h) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page was an original thereof.

(i) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Purchase Agreement.

(j) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

(k) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(l) Headings. The headings in this Agreement are for convenience only, do not constitute a part of the Agreement and shall not be deemed to limit or affect any of the provisions hereof.

(m) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters, and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or transactions. Each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and not because it was

required or requested to do so by any Holder. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among Holders.

\*\*\*\*\*

*(Signature Pages Follow)*

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

**DISC MEDICINE, INC.**

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

Name:

Title:

[SIGNATURE PAGE OF HOLDERS FOLLOWS]

Name of Holder: \_\_\_\_\_

*Signature of Authorized Signatory of Holder:* \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

[SIGNATURE PAGES CONTINUE]



### Plan of Distribution

Each Selling Stockholder (the “Selling Stockholders”) of the securities and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their securities covered hereby on the principal Trading Market or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. A Selling Stockholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the Selling Stockholders to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholders may also sell securities under Rule 144 or any other exemption from registration under the Securities Act of 1933, as amended (the “Securities Act”), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholders (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this Prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2121; and in the case of a principal transaction a markup or markdown in compliance with FINRA Rule 2121.

In connection with the sale of the securities or interests therein, the Selling Stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the securities in the course of hedging the positions they assume. The Selling Stockholders may also sell securities short and deliver these securities to close out their short positions, or loan or pledge the securities to broker-dealers that in turn may sell these securities. The Selling Stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities that require the delivery to such broker-dealer or other financial institution of securities offered by this prospectus, which securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Selling Stockholders and any broker-dealers or agents that are involved in selling the securities may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. Each Selling Stockholder has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities.

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the securities. The Company has agreed to indemnify the Selling Stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

We agreed to keep this prospectus effective until the earlier of (i) the date on which the securities may be resold by the Selling Stockholders without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, and without the requirement for the Company to be in compliance with the current public information under Rule 144 under the Securities Act or any other rule of similar effect, or (ii) all of the securities have been sold pursuant to this prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of the common stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

**SELLING STOCKHOLDERS**

For additional information regarding the issuances of those shares of common stock being registered for resale in this registration statement, see “Private Placement of Shares of Common Stock” and “Business Combination of [●] and [●]” above. We are registering the shares of common stock in order to permit the selling stockholders to offer the shares for resale from time to time.

The table below lists the selling stockholders and other information regarding the beneficial ownership of the shares of common stock by each of the selling stockholders. The second column lists the number of shares of common stock beneficially owned by each selling stockholder, based on its ownership of the shares of common stock, as of \_\_\_\_\_, 2022.

The third column lists the shares of common stock being offered by this prospectus by the selling stockholders.

The fourth column reflects the number of shares of common stock beneficially owned by each selling stockholder, assuming the sale of all of the shares offered by the selling stockholders pursuant to this prospectus.

The selling stockholders may sell all, some or none of their shares in this offering. See “Plan of Distribution.”

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<u>Name of Selling Stockholder</u>	<u>Number of shares of Common Stock Owned Prior to Offering</u>	<u>Maximum Number of shares of Common Stock to be Sold Pursuant to this Prospectus</u>	<u>Number of shares of Common Stock Owned After Offering</u>
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### Selling Stockholder Notice and Questionnaire

The undersigned owner of Registrable Securities (as such term is defined in the Registration Rights Agreement) of Disc Medicine, Inc., a Delaware corporation (the “Company”), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the “Commission”) a Registration Statement for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the “Securities Act”), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement dated as of [•], 2022 to which the Company and the undersigned are parties (the “Registration Rights Agreement”). A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

#### NOTICE

The undersigned beneficial owner (the “Selling Stockholder”) of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

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The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

#### QUESTIONNAIRE

**1. Name.**

- (a) Full Legal Name of Selling Stockholder  
\_\_\_\_\_
- (b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:  
\_\_\_\_\_
- (c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):  
\_\_\_\_\_

**2. Address for Notices to Selling Stockholder:**

Telephone: \_\_\_\_\_

\_\_\_\_\_

Fax: \_\_\_\_\_

\_\_\_\_\_

Contact Person: \_\_\_\_\_

**3. Broker-Dealer Status:**

(a) Are you a broker-dealer?

Yes  No

(b) If "yes" to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes  No

Note: If "no" to Section 3(b), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

(c) Are you an affiliate of a broker-dealer?

Yes  No

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes  No

Note: If "no" to Section 3(d), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

**4. Ownership of Securities of the Company Owned by the Selling Stockholder.**

*Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the securities issuable pursuant to the Purchase Agreement.*

(a) Type and Amount of other Company securities owned by the Selling Stockholder (including beneficially owned, as applicable):

\_\_\_\_\_  
\_\_\_\_\_

**5. Relationships with the Company:**

*Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% of more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.*

State any exceptions here:

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The undersigned agrees to promptly notify the Company of any material inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective; provided, that the undersigned shall not be required to notify the Company of any changes to the number of securities held or owned by the undersigned or its affiliates.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Date:

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Beneficial  
Owner:

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By:  
Name:  
Title:

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**PLEASE FAX A COPY (OR EMAIL A .PDF COPY) OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO:**

## HOLDER REPRESENTATION LETTER

\_\_\_\_\_, 20\_\_

Disc Medicine, Inc.

Goodwin Procter LLP  
100 Northern Ave.  
Boston, MA 02110

To Whom It May Concern:

The undersigned (the "Holder") hereby requests that the federal securities law restrictive legend be removed from the book entries representing \_\_\_\_\_ of shares (the "Shares") of common stock, par value \$0.0001 per share (the "Common Stock"), of Disc Medicine, Inc. (the "Company"). In connection with the legend removal, Holder hereby represents to, and agrees with, you as follows:

1. The Shares are owned of record and beneficially by Holder.
2. Holder agrees that, if the Shares are not eligible to be sold pursuant to Rule 144 promulgated under the Securities Act of 1933, as amended (the "Securities Act"), any offer, sale or transfer of, or other transaction involving, the Shares will only be made (i) pursuant to the Company's Registration Statement (the "Registration Statement") filed pursuant to the Securities Act, in a transaction contemplated in the "Plan of Distribution" section of the prospectus included in the Registration Statement and in accordance with the terms and conditions set forth in the Registration Rights Agreement, dated [\_\_\_], 2022, by and among Disc Medicine, Inc. and Purchasers (the "RRA"), including, but not limited to, the restrictions upon sales that may be imposed as set forth in the RRA or (ii) to an exemption from the registration requirements of the Securities Act subject to receipt of a legal opinion from Goodwin Procter LLP or other counsel acceptable to the Company that such offer, sale or transfer is exempt from the registration requirements of the Securities Act;
3. Holder agrees, for the benefit of the Company and Goodwin Procter LLP, that it will (i) not offer and sell, or cause or permit to be offered or sold, any Shares in violation of federal and state securities laws, including, without limitation, prospectus delivery requirements of the Securities Act and (ii) immediately stop selling or transferring Shares pursuant to the Registration Statement upon receipt of written notice from the Company that the Registration Statement may not be used to effect offers, sales or other transfers of the Shares;
4. Holder (or, in the case of individuals, Holder's employer) has in place internal policies and procedures to monitor and ensure that no offer, sale or transfer of, or other transaction involving, the Shares is made in violation of the foregoing restrictions, and Holder will monitor all transactions involving the Shares for the purpose of ensuring that they comply with all federal and state securities laws;
5. Holder agrees that, in the event the Company in the future reasonably determines that the Shares should be evidenced by a certificate bearing appropriate restrictive transfer legends (and/or a book-entry including a notation of restricted security status) because the Registration Statement is not available for the resale of the Shares and the Shares are not

eligible to be sold pursuant to Rule 144 promulgated under the Securities Act, the undersigned will take all reasonable action to cause all Shares it then owns or controls to be delivered promptly to the Company's transfer agent in exchange for one or more stock certificates or warrant certificates bearing restrictive legends (and/or book-entries including a notation of restricted security status) deemed appropriate by the Company;

6. Holder acknowledges that the Shares shall remain "restricted securities" as that term is defined for purposes of the Securities Act notwithstanding the removal of their federal securities law restrictive legend, and Holder agrees that it will inform its brokers of the fact that such securities are "restricted securities" before any offer, sale or transfer of, or other transaction involving, the Shares. In addition, Holder shall notify the Company of all brokers in whose name, or on whose behalf, any of the Shares are being held on behalf of Holder; and
7. Holder is familiar with the requirements for effecting resales or transfers of, or other transactions involving, the Shares in compliance with federal and state securities laws and acknowledges and agrees that the Company and Goodwin Procter LLP (together, the "Indemnified Parties") are relying on Holder's representations and agreements in this letter. Holder will indemnify and hold harmless the Indemnified Parties against any and all loss, damage, claim, liability and expense arising out of or resulting from the breach of any such representation or agreement.

Very truly yours,

[HOLDER]

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

Name:

Title:



**EXHIBIT E**

FORM OF CONTINGENT VALUE RIGHTS AGREEMENT

BETWEEN

[GEM]

and

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

Dated as of [•]

**FORM OF  
CONTINGENT VALUE RIGHTS AGREEMENT**

**THIS CONTINGENT VALUE RIGHTS AGREEMENT** (this "Agreement"), dated as of [•], is entered into by and among [Gem] a Delaware corporation ("Gem"), [\_\_\_\_], as Holder's Representative,] and [•], as initial Rights Agent (as defined herein).

**PREAMBLE**

WHEREAS, Gem, [Gemstone Merger Sub, Inc.], a Delaware corporation and wholly-owned subsidiary of Gem ("Merger Sub"), and [•], a Delaware corporation (the "Company"), have entered into an Agreement and Plan of Merger and Reorganization, dated as of [•], 2022 (the "Merger Agreement"), pursuant to which Merger Sub will merge with and into the Company (the "Merger"), with the Company surviving the Merger as a wholly-owned subsidiary of Gem (the "Surviving Corporation");

WHEREAS, pursuant to the Merger Agreement, and in accordance with the terms and conditions thereof, Gem has agreed to provide to the Holders (as defined herein), who shall initially be Persons who are stockholders of Gem as of immediately prior to the Effective Time, contingent value rights as hereinafter described, by way of a dividend or distribution consistent with the Merger Agreement; and

WHEREAS, the parties have done all things necessary to make the contingent value rights, when issued pursuant to the Merger Agreement and hereunder, the valid obligations of Gem and to make this Agreement a valid and binding agreement of Gem, in accordance with its terms.

NOW, THEREFORE, in consideration of the premises and the consummation of the transactions referred to above, it is mutually covenanted and agreed, for the proportionate benefit of all Holders, as follows:

**ARTICLE 1  
DEFINITIONS**

Section 1.1 *Definitions.*

Capitalized terms used but not otherwise defined herein have the meanings ascribed thereto in the Merger Agreement. The following terms have the meanings ascribed to them as follows:

"Acting Holders" means, at the time of determination, Holders of at least 25% of the outstanding CVRs as set forth on the CVR Register.

"Assignee" has the meaning set forth in Section 7.5

“Calendar Quarter” means the successive periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 or December 31, for so long as this Agreement is in effect; provided, however that (a) the first Calendar Quarter shall commence on the date of this Agreement and shall end on the first December 31 thereafter, and (b) the last Calendar Quarter shall commence on the first day after the full Calendar Quarter immediately preceding the effective date of the termination or expiration of this Agreement and shall end on the effective date of the termination or expiration of this Agreement.

“CVR” means a contingent contractual right of Holders to receive CVR Payments pursuant to the Merger Agreement and this Agreement.

“CVR Payment” means a number of shares of Gem Common Stock equal to (i) the CVR Proceeds for an applicable Calendar Quarter, divided by (ii) the volume weighted average of their closing market prices for the five (5) trading days ending the day prior to the date of issuance pursuant to this Agreement.

“CVR Period” means the period beginning immediately following the Effective Time and ending on the tenth anniversary of the Closing Date.

“CVR Proceeds” means the amount of Gross Proceeds received by Gem during an applicable Calendar Quarter, less the applicable accrued and reasonably documented Permitted Deductions, in each case as calculated in accordance with GAAP using the policies, methodologies, processes and procedures used to prepare Gem’s most recent year-end financial statements prior to the commencement of such Calendar Quarter.

“CVR Register” has the meaning set forth in Section 2.3(b).

“Disposition” means the sale, license, transfer, disposition or other monetizing event of any Potentially Transferable Asset (including any such sale or disposition or monetizing event of equity securities in any Subsidiary established by Gem during the Disposition Period to hold any right, title or interest in or to any Potentially Transferable Asset), in each case during the Disposition Period.

“Disposition Period” means the period beginning on the execution date of the Merger Agreement and ending on the date that is twelve-months after the Closing Date.

“Gross Proceeds” means, without duplication, any and all consideration of any kind that is paid to Gem, or is received by, Gem or any of its Affiliates during the CVR Period in respect of a Disposition. The value of any securities (whether debt or equity) or other non-cash property constituting Gross Proceeds shall be determined as follows: (A) the value of securities for which there is an established public market shall be equal to the volume weighted average of their closing market prices for the five (5) trading days ending the day prior to the date of payment to, or receipt by, Gem or its relevant Affiliate, and (B) the value of securities that have no established public market and the value of consideration that consists of other non-cash property, shall be the fair market value thereof as of the date of payment to, or receipt by, Gem or its relevant Affiliate.

“Holder” means, at the relevant time, a Person in whose name CVRs are registered in the CVR Register.

“Loss” has the meaning set forth in Section 3.2(g).

“Majority of Holders” means, at any time, the registered Holder or Holders of more than 50% of the total number of CVRs registered at such time, as set forth on the CVR Register.

“Notice” has the meaning set forth in Section 7.1.

“Officer’s Certificate” means a certificate signed by the chief executive officer and the chief financial officer of Gem, in their respective official capacities.

“Permitted Deductions” means the following costs or expenses, without duplication:

(a) any applicable Tax (including any unreimbursed applicable value added or sales taxes) imposed on Gross Proceeds and payable by Gem, the Company or any of their respective Affiliates (regardless of whether the due date for such Taxes arises during or after the Disposition Period) to any tax authority and, without duplication, any income or other similar Taxes payable by Gem, the Company or any of their respective Affiliates that would not have been incurred by Gem, the Company or any of their respective Affiliates but for the Gross Proceeds; provided that, for purposes of calculating income Taxes incurred by Gem, the Company or any of their respective Affiliates in respect of the Gross Proceeds, any such income Taxes shall be computed after taking into account any net operating loss carryforwards or other Tax attributes (including Tax credits) of Gem, the Company or any of their respective Affiliates as of the Closing Date that are available to offset such gain after taking into account any limits of the usability of such attributes, including under Section 382 of the Code (as defined herein) as reasonably determined by a nationally recognized tax advisor (and for the sake of clarity such income taxes shall be calculated without taking into account any net operating losses or other Tax attributes generated by Gem, the Company or any of their respective Affiliates after the Closing Date);

(b) any reasonable and documented out-of-pocket expenses incurred by Gem or any of its Affiliates in respect of its performance of this Agreement following the Closing Date or in respect of its performance of any agreement in connection with any Potentially Transferable Asset, including any costs related to the prosecution, maintenance or enforcement by Gem or any of its Subsidiaries of the intellectual property rights of any such Potentially Transferable Asset (but excluding any costs related to a breach of this Agreement, including costs incurred in litigation in respect of the same);

(c) any reasonable and documented out-of-pocket expenses incurred or accrued by Gem or any of its Affiliates in connection with the negotiation, entry into and closing of any Disposition of any Potentially Transferable Asset, including any brokerage fee, finder’s fee, opinion fee, success fee, transaction fee, service fee or other fee, commission or expense owed to any broker, finder, investment bank, auditor, accountant, counsel, advisor or other third party acting on behalf of Gem or its Affiliates in relation thereto;

(d) any Losses incurred and paid by Gem or any of its Affiliates arising out of any third party claims, demands, actions or other proceedings relating to or in connection with any Disposition, including Losses actually incurred or paid (or reasonably expected to be actually incurred or paid) in connection with indemnification obligations of Gem or any of its Affiliates set forth in any Sale Agreement;

(e) any Liabilities borne by Gem or any of its Affiliates pursuant to Contracts related to Potentially Transferable Assets, including costs arising from the termination thereof (in each case only to the extent not included in the calculation of Gem Net Cash (as defined in the Merger Agreement); and

(f) any Liabilities which Gem reasonably and in good faith determines (with the approval of the Special Committee) should have been, but were not, deducted from "Gem Net Cash" (as defined in the Merger Agreement) pursuant to clause (B) of such definition, in connection with the Closing of the Merger, to the extent that deduction of such Liabilities would have resulted in a change in the Exchange Ratio under the Merger Agreement were such amounts properly deducted (including after giving effect to the Higher Gem Net Cash Amount and the Lower Gem Net Cash Amount);

provided that (a) no Permitted Deductions shall be deducted until the aggregate amount of Permitted Deductions exceeds the CVR Expenditure Amount and (b) no Permitted Deductions shall be deducted if they are otherwise deducted from the calculation of Gem Net Cash (as defined in the Merger Agreement).

"Permitted Transfer" means a Transfer of one or more CVRs (i) upon death of a Holder by will or intestacy; (ii) by instrument to an *inter vivos* or testamentary trust in which the CVRs are to be passed to beneficiaries upon the death of the trustee; (iii) made pursuant to a court order of a court of competent jurisdiction (such as in connection with divorce, bankruptcy or liquidation); (iv) if the Holder is a partnership or limited liability company, a distribution by the transferring partnership or limited liability company to its partners or members, as applicable (v) made by operation of law (including a consolidation or merger) or without consideration in connection with the dissolution, liquidation or termination of any corporation, limited liability company, partnership or other entity; (vi) in the case of CVRs payable to a nominee, from a nominee to a beneficial owner (and, if applicable, through an intermediary) or from such nominee to another nominee for the same beneficial owner, in each case as permitted by The Depository Trust Company ("DTC"); (vii) to Gem or its Affiliates; or (viii) as provided in Section 2.6.

"Person" shall mean any individual, partnership, joint venture, limited liability company, firm, corporation, unincorporated association or organization, trust or other entity, and shall include any successor (by merger or otherwise) of any such Person.

"Potentially Transferrable Asset" means any and all assets, tangible and intangible, including, without limitation, patents, patent applications, know-how, trade secrets and other intellectual property rights, data, documentation, agreements and licenses, inventory related to drug products and raw materials, and biological materials, which Gem or any of its Subsidiaries owned or had rights to, as of immediately prior to the Effective Time.

“Rights Agent” means the Rights Agent named in the first paragraph of this Agreement, until a successor Rights Agent shall have been appointed pursuant to Article 3 of this Agreement, and thereafter “Rights Agent” will mean such successor Rights Agent.

“Sale Agreement” has the meaning set forth in Section 4.2.

“Special Committee” has the meaning set forth in Section 4.2.

“Transfer” means transfer, pledge, hypothecation, encumbrance, assignment or other disposition (whether by sale, merger, consolidation, liquidation, dissolution, dividend, distribution or otherwise), the offer to make such a transfer or other disposition, and each Contract, arrangement or understanding, whether or not in writing, to effect any of the foregoing.

## **ARTICLE 2 CONTINGENT VALUE RIGHTS**

### *Section 2.1 Holders of CVRs; Appointment of Rights Agent.*

(a) The CVRs shall be issued and distributed by Gem in the form of a dividend, in connection with the Merger, to the Persons who as of immediately prior to the Effective Time are stockholders of record of Gem or have the right to receive Gem Common Stock as of immediately prior to the Effective Time, as contemplated by the Merger Agreement.

(b) Gem hereby appoints the Rights Agent to act as rights agent for Gem in accordance with the express terms and conditions set forth in this Agreement, and the Rights Agent hereby accepts such appointment.

### *Section 2.2 Non-transferable.*

A Holder may not at any time Transfer CVRs, other than pursuant to a Permitted Transfer. Any attempted Transfer that is not a Permitted Transfer, in whole or in part, will be void *ab initio* and of no effect. The CVRs will not be listed on any quotation system or traded on any securities exchange.

### *Section 2.3 No Certificate; Registration; Registration of Transfer; Change of Address.*

(a) Holders’ rights and obligations in respect of CVRs derive solely from this Agreement; CVRs will not be evidenced by a certificate or other instrument.

(b) The Rights Agent will maintain an up-to-date register (the “CVR Register”) for the purposes of (i) identifying the Holders of CVRs, (ii) determining Holders’ entitlement to CVRs and (iii) registering the CVRs and Permitted Transfers thereof. The CVR Register will initially show one position for the Rights Agent representing all of the CVRs provided to the holders of shares of Gem Common Stock held immediately prior to Closing. Gem and the Rights Agent may require evidence of payment of a sum sufficient to cover any stamp, documentary, registration, or other tax or governmental charge that is imposed in connection with (and would not have been imposed in connection with (and would have been imposed but for)) any such registration of transfer (or evidence that such taxes and charges are not applicable).

(c) Subject to the restriction on transferability set forth in Section 2.2, every request made to Transfer CVRs must be in writing and accompanied by a written instrument of Transfer reasonably acceptable to the Rights Agent, together with the signature guarantee of a guarantor institution which is a participant in a signature guarantee program approved by the Securities Transfer Association (a “signature guarantee”) and other requested documentation in a form reasonably satisfactory to the Rights Agent, duly executed and properly completed, by the Holder or Holders thereof, or by the duly appointed legal representative, personal representative or survivor of such Holder or Holders, setting forth in reasonable detail the circumstances relating to the Transfer. Upon receipt of such written notice, the Rights Agent will, subject to its reasonable determination in accordance with its own internal procedures, that the Transfer instrument is in proper form and the Transfer, is a Permitted Transfer and otherwise complies on its face with the other terms and conditions of this Agreement, register the Transfer of the applicable CVRs in the CVR Register. All Transfers of CVRs registered in the CVR Register will be the valid obligations of Gem, evidencing the same right, and entitling the transferee to the same benefits and rights under this Agreement, as those held by the transferor. No transfer of CVRs shall be valid until registered in the CVR Register and any transfer not duly registered in the CVR Register shall be void. Gem shall not be responsible for any costs and expenses related to any transfer or assignment of the CVRs (including the cost of any transfer tax).

(d) A Holder may make a written request to the Rights Agent to change such Holder’s address of record in the CVR Register. Such written request must be duly executed by such Holder. Upon receipt of such written notice, the Rights Agent shall promptly record the change of address in the CVR Register.

#### *Section 2.4 Payment Procedures.*

(a) No later than forty-five (45) days following the end of each Calendar Quarter following the Closing, Gem shall (i) deliver to the Rights Agent, a certificate (each, a “CVR Certificate”) certifying to and specifying in reasonable detail, for such Calendar Quarter, the aggregate amount of (A) the CVR Proceeds received by Gem or its Affiliates during such fiscal quarter (or, in the case of the first delivery of a CVR Certificate hereunder, all CVR Proceeds received through the end of such Calendar Quarter); (B) the Permitted Deductions reflected in such CVR Proceeds; and (C) the CVR Payment payable to Holders, if any, in respect of such CVR Proceeds and (ii) deliver to the Rights Agent, or as the Rights Agent directs, the aggregate CVR Payment (if any). With respect to each Holder, the Rights Agent shall deliver, or cause to be delivered, a number of shares equal to the product determined by multiplying (i) the quotient determined by dividing (A) the number of shares representing the aggregate CVR Payment by (B) the total number of CVRs registered in the CVR Register at such time, by

(ii) the number of CVRs registered to such Holder in the CVR Register at such time. For the avoidance of doubt Gem shall have no further liability in respect of the relevant CVR Payment upon delivery of such CVR Payment in accordance with this Section 2.4(a) and the satisfaction of each of Gem's obligations set forth in this Section 2.4(a).

(b) The parties hereto agree to treat the distribution of the CVRs as constituting a nontaxable stock distribution under Section 305 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**") and the receipt of CVR Payments as a nontaxable exercise of the right to receive stock under the CVRs. The parties hereto will not take any position to the contrary on any Tax Return or for other Tax purposes except as required by a change in or clarification to applicable Law after the date hereof.

(c) Gem and the Rights Agent will be entitled to deduct and withhold, or cause to be deducted and withheld, from any CVR Payment otherwise payable pursuant to this Agreement, such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of applicable Law relating to Taxes. To the extent that amounts are so deducted and withheld, such deducted and withheld amounts will be treated for all purposes of this Agreement as having been paid to the Holder in respect of which such deduction and withholding was made. The Rights Agent shall request from each Holder an IRS Form W-9 or applicable IRS Form W-8 at such time or times as is necessary to permit any payment under this Agreement to be made without U.S. federal backup withholding. Prior to making any such Tax deductions or withholdings or causing any such Tax deductions or withholdings to be made with respect to any Holder, the Rights Agent will, to the extent reasonably practicable, provide notice to the Holder of such potential Tax deduction or withholding and a reasonable opportunity for the Holder to provide any necessary Tax forms in order to avoid or reduce such withholding amounts; *provided* that the time period for payment of a CVR Payment by the Rights Agent set forth in Section 2.4(a) will be extended by a period equal to any delay caused by the Holder providing such forms, *provided, further*, that in no event shall such period be extended for more than ten (10) Business Days, unless otherwise requested by the Holder for the purpose of delivering such forms and agreed to by the Rights Agent.

(d) Any portion of a CVR Payment that remains undistributed to the Holders six (6) months after the end of the applicable Calendar Quarter (including by means of invalid addresses on the CVR Register) will be delivered by the Rights Agent to Gem or a person nominated in writing by Gem (with written notice thereof from Gem to the Rights Agent), and any Holder will thereafter look only to Gem for payment of such CVR Payment (which shall be without interest).

*Section 2.5 No Voting, Dividends or Interest.*

(a) CVRs will not have any voting or dividend rights, and interest will not accrue on any amounts payable in respect of CVRs.

(b) CVRs will not represent any equity or ownership interests in Gem or any of its Subsidiaries or in the Surviving Corporation. The sole right of the Holders to receive property hereunder is the right to receive CVR Payments, if any, in accordance with the terms hereof. It is hereby acknowledged and agreed that a CVR shall not constitute a security of Gem or any of its Subsidiaries or of the Surviving Corporation.



(c) By voting in favor of the adoption of the Merger Agreement, the approval of the principal terms of the Merger, and the consummation of the Merger or participating in the Merger and receiving the benefits thereof, including the right to receive CVRs and any consideration payable in connection with the CVRs, each Holder hereby acknowledges and agrees that the CVRs and the possibility of any payment hereunder with respect thereto are highly speculative and subject to numerous factors outside of Gem's control, and there is no assurance that Holders will receive any payments under this Agreement or in connection with the CVRs. Each Holder acknowledges that it is highly possible that no Disposition will occur prior to the expiration of the Disposition Period and that there will not be any Gross Proceeds that may be the subject of a CVR Payment. It is further acknowledged and agreed that neither Gem nor its Affiliates owe, by virtue of their obligations under this Agreement, a fiduciary duty or any implied duties to the Holders and the parties hereto intend solely the express provisions of this Agreement to govern their contractual relationship with respect to the CVRs. It is acknowledged and agreed that this Section 2.5(b) is an essential and material term of this Agreement.

*Section 2.6 Ability to Abandon CVR.*

A Holder may at any time, at such Holder's option, abandon all of such Holder's remaining rights represented by CVRs by transferring such CVR to Gem or a person nominated in writing by Gem (with written notice thereof from Gem to the Rights Agent) without consideration in compensation therefor, and such rights will be cancelled, with the Rights Agent being promptly notified in writing by Gem of such transfer and cancellation. Nothing in this Agreement is intended to prohibit Gem or its Affiliates from offering to acquire or acquiring CVRs, in private transactions or otherwise, for consideration in its sole discretion.

**ARTICLE 3  
THE RIGHTS AGENT**

*Section 3.1 Certain Duties and Responsibilities.*

(a) The Rights Agent will not have any liability for any actions taken or not taken in connection with this Agreement, except to the extent such liability arises as a result of the willful misconduct, bad faith or gross negligence of the Rights Agent (in each case as determined by a final non-appealable judgment of court of competent jurisdiction). Notwithstanding anything in this Agreement to the contrary, any liability of the Rights Agent under this Agreement will be limited to the amount of annual fees paid by Gem to the Rights Agent during the twelve (12) months immediately preceding the event for which recovery from the Rights Agent is being sought. Anything to the contrary notwithstanding, in no event will the Rights Agent be liable for special, punitive, indirect, incidental or consequential loss or damages of any kind whatsoever (including, without limitation, lost profits), even if the Rights Agent has been advised of the likelihood of such loss or damages, and regardless of the form of action.

(b) The Rights Agent shall not have any duty or responsibility in the case of the receipt of any written demand from any Holder with respect to any action or default by any person or entity, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or to make any demand upon Gem or the Company. The Rights Agent may (but shall not be required to) enforce all rights of action under this Agreement and any related claim, action, suit, audit, investigation or proceeding instituted by the Rights Agent may be brought in its name as the Rights Agent and any recovery in connection therewith will be for the proportionate benefit of all the Holders, as their respective rights or interests may appear on the CVR Register.

Section 3.2 *Certain Rights of Rights Agent.*

(a) The Rights Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations will be read into this Agreement against the Rights Agent.

(b) The Rights Agent may rely and will be protected by Gem in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it in the absence of bad faith to be genuine and to have been signed or presented by or on behalf of Gem.

(c) Whenever the Rights Agent deems it desirable that a matter be proved or established prior to taking or omitting any action hereunder, the Rights Agent may (i) rely upon an Officer's Certificate and (ii) incur no liability and be held harmless by Gem for or in respect of any action taken or omitted to be taken by it under the provisions of this Agreement in reliance upon such Officer's Certificate.

(d) The Rights Agent may engage and consult with counsel of its selection, and the advice or opinion of such counsel will, in the absence of bad faith, gross negligence or willful misconduct (in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction) on the part of the Rights Agent, be full and complete authorization and protection in respect of any action taken or not taken by the Rights Agent in reliance thereon.

(e) Any permissive rights of the Rights Agent hereunder will not be construed as a duty.

(f) The Rights Agent will not be required to give any note or surety in respect of the execution of its powers or otherwise under this Agreement.

(g) Gem agrees to indemnify the Rights Agent for, and to hold the Rights Agent harmless from and against, any loss, liability, damage, judgment, fine, penalty, cost or expense (each, a "Loss") suffered or incurred by the Rights Agent and arising out of or in connection with the Rights Agent's performance of its obligations under this Agreement, including the reasonable and documented costs and expenses of defending the Rights Agent against any claims, charges, demands, actions or suits arising out of or in connection with the execution, acceptance, administration, exercise and performance of its duties

under this Agreement, including the costs and expenses of defending against any claim of liability arising therefrom, directly or indirectly, or enforcing its rights hereunder, except to the extent such Loss has been determined by a final non-appealable decision of a court of competent jurisdiction to have resulted from the Rights Agent's gross negligence, bad faith or willful misconduct.

(h) In addition to the indemnification provided under Section 3.2(g), Gem agrees (i) to pay the fees of the Rights Agent in connection with the Rights Agent's performance of its obligations hereunder, as agreed upon in writing by the Rights Agent and Gem on or prior to the date of this Agreement, and (ii) to reimburse the Rights Agent for all reasonable and documented out-of-pocket expenses and other disbursements incurred in the preparation, delivery, negotiation, amendment, administration and execution of this Agreement and the exercise and performance of its duties hereunder, including all Taxes (other than income, receipt, franchise or similar Taxes) and governmental charges, incurred by the Rights Agent in the performance of its obligations under this Agreement, except that Gem will have no obligation to pay the fees of the Rights Agent or reimburse the Rights Agent for the fees of counsel in connection with any lawsuit initiated by the Rights Agent on behalf of itself or the Holders, except in the case of any suit enforcing the provisions of Section 2.4(a), Section 2.4(b) or Section 3.2(g), if Gem is found by a court of competent jurisdiction to be liable to the Rights Agent or the Holders, as applicable in such suit.

(i) No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it believes that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

(j) The Rights Agent will not be deemed to have knowledge of any event of which it was supposed to receive notice hereunder but has not received written notice of such event, and the Rights Agent will not incur any liability for failing to take action in connection therewith, in each case, unless and until it has received such notice in writing.

(k) The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorney or agents and the Rights Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorney or agents or for any loss to Gem or the Company resulting from any such act, default, neglect or misconduct, absent gross negligence, bad faith or willful misconduct (each as determined by a final non-appealable judgment of a court of competent jurisdiction) in the selection and continued employment thereof.

(l) Gem shall perform, acknowledge and deliver or cause to be performed, acknowledged and delivered all such further and other acts, documents, instruments and assurances as may be reasonably required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

(m) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by Gem only.

(n) The Rights Agent shall act hereunder solely as agent for Gem and shall not assume any obligations or relationship of agency or trust with any of the owners or holders of the CVRs. The Rights Agent shall not have any duty or responsibility in the case of the receipt of any written demand from any Holders with respect to any action or default by Gem, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or to make any demand upon Gem.

(o) The Rights Agent may rely on and be fully authorized and protected in acting or failing to act upon (a) any guaranty of signature by an “eligible guarantor institution” that is a member or participant in the Securities Transfer Agents Medallion Program or other comparable “signature guarantee program” or insurance program in addition to, or in substitution for, the foregoing; or (b) any law, act, regulation or any interpretation of the same even though such law, act, or regulation may thereafter have been altered, changed, amended or repealed.

(p) The Rights Agent shall not be liable or responsible for any failure of Gem to comply with any of its obligations relating to any registration statement filed with the Securities and Exchange Commission or this Agreement, including without limitation obligations under applicable regulation or law.

(q) The obligations of Gem and the rights of the Rights Agent under this Section 3.2, Section 3.1 and Section 2.4 shall survive the expiration of the CVRs and the termination of this Agreement and the resignation, replacement or removal of the Rights Agent.

*Section 3.3 Resignation and Removal; Appointment of Successor.*

(a) The Rights Agent may resign at any time by written notice to Gem. Any such resignation notice shall specify the date on which such resignation will take effect (which shall be at least thirty (30) days following the date that such resignation notice is delivered), and such resignation will be effective on the earlier of (x) the date so specified and (y) the appointment of a successor Rights Agent.

(b) Gem will have the right to remove the Rights Agent at any time by written notice to the Rights Agent, specifying the date on which such removal will take effect. Such notice will be given at least thirty (30) days prior to the date so specified (or, if earlier, the appointment of the successor Rights Agent).

(c) If the Rights Agent resigns, is removed or becomes incapable of acting, Gem will promptly appoint a qualified successor Rights Agent. Notwithstanding the foregoing, if Gem fails to make such appointment within a period of thirty (30) days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent, then the incumbent Rights Agent may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. The successor Rights Agent so appointed will, upon its acceptance of such appointment in accordance with this Section 3.3(c) and Section 3.4, become the Rights Agent for all purposes hereunder.

(d) Gem will give notice to the Holders of each resignation or removal of the Rights Agent and each appointment of a successor Rights Agent in accordance with Section 7.2. Each notice will include the name and address of the successor Rights Agent. If Gem fails to send such notice within ten (10) Business Days after acceptance of appointment by a successor Rights Agent, the successor Rights Agent will cause the notice to be mailed at the expense of Gem.

(e) Notwithstanding anything to the contrary in this Section 3.3, unless consented to in writing by the Acting Holders, Gem will not appoint as a successor Rights Agent any Person that is not a stock transfer agent of national reputation or the corporate trust department of a commercial bank.

(f) The Rights Agent will reasonably cooperate with Gem and any successor Rights Agent in connection with the transition of the duties and responsibilities of the Rights Agent to the successor Rights Agent, including the transfer of all relevant data, including the CVR Register, to the successor Rights Agent, but such predecessor Rights Agent shall not be required to make any additional expenditure or assume any additional liability in connection with the foregoing.

*Section 3.4 Acceptance of Appointment by Successor.*

Every successor Rights Agent appointed hereunder will, at or prior to such appointment, execute, acknowledge and deliver to Gem and to the resigning or removed Rights Agent an instrument accepting such appointment and a counterpart of this Agreement, and such successor Rights Agent, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties of the Rights Agent; *provided* that upon the request of Gem or the successor Rights Agent, such resigning or removed Rights Agent will execute and deliver an instrument transferring to such successor Rights Agent all the rights, powers and trusts of such resigning or removed Rights Agent.

**ARTICLE 4  
COVENANTS**

*Section 4.1 List of Holders.*

Gem will furnish or cause to be furnished to the Rights Agent, in such form as Gem receives from Gem's transfer agent (or other agent performing similar services for Gem), the names and addresses of the Holders within fifteen (15) Business Days following the Closing Date.

(a) The Gem Board has delegated, to a special committee of the Gem Board comprised exclusively of [•]<sup>1</sup> (the “Special Committee”) the sole responsibility, authority and discretion during the Disposition Period with respect to (i) managing the Potentially Transferable Assets, and (ii) conducting any sale or transfer process (including engagement of advisors) with respect to a Disposition during the Disposition Period. The Special Committee shall also be empowered with the authority to authorize and direct any officer of Gem to negotiate, execute and deliver a definitive written agreement with respect to a Disposition (a “Sale Agreement”) in the name and on behalf of Gem, as well as to identify and retain advisers and consultants.

(b) The delegation of responsibility and authority to the Special Committee set forth in Section 4.2(a) shall not be revoked or modified at any time during the Disposition Period. The Special Committee and the Gem Board shall not have any liability to the Holders for any actions taken or not taken in connection with the matters set forth herein. No provision of this Agreement shall require the Special Committee or any members thereof to expend or risk its, his or her own funds or otherwise incur any financial liability in the performance of any duties hereunder or in the exercise of any rights or powers.

(c) The Holders shall be intended third-party beneficiaries of the provisions of this Agreement and shall be entitled to specifically enforce the terms hereof; provided, that under no circumstances shall the rights of Holders as third-party beneficiaries pursuant to this Section 4 be enforceable by such Holders or any other Person acting for or on their behalf other than the Special Committee. The Special Committee has the sole power and authority to act on behalf of the Holders in enforcing any of their rights hereunder.

(d) During the Disposition Period, Gem will, and will cause its Subsidiaries to, use commercially reasonable efforts (i) to utilize the CVR Expenditure Amount to maintain the Potentially Transferable Assets unless otherwise approved by the Special Committee, and (ii) effectuate a Disposition of the Potentially Transferable Assets, at the direction of the Special Committee, including the negotiation and execution of a Sale Agreement and completion of the transactions contemplated thereby. Further, Gem will not take any actions for the primary purpose of frustrating the payment of CVR Proceeds.

(e) Subject to the foregoing clause (d), (i) the Holders acknowledge that Gem has a fiduciary obligation to operate its business in the best interests of its stockholders, and any potential obligation to pay CVR Proceeds will not create any express or implied obligation to operate its business in any particular manner in order to maximize such CVR Proceeds, (ii) except as expressly set forth in this Agreement, the Holders are not relying on any representation of Gem or any other Person with regard to any Disposition or other action involving the Potentially Transferable Assets following the Closing, and neither Gem nor any other Person has provided, or can provide, any assurance to the Holders that any CVR Proceeds will in fact be earned and paid, and (iii) none of Gem or any of its Subsidiaries, officers or directors shall have any obligation or liability whatsoever to any Person relating to or in connection with any action,

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<sup>1</sup> Note to Draft: To be comprised of the independent continuing director(s) of Gem.

or failure to act, with respect to the sale of Potentially Transferable Assets. Gem and its Affiliates will not be required to expend any out-of-pocket amounts in excess of the CVR Expenditure Amount during the Disposition Period, but, for clarity, any amounts which are or will become payable upon consummation of the Disposition and/or the payment of CVR Proceeds and which constitute Permitted Deductions shall be disregarded for purposes of the first clause of this sentence.

(f) Following the Disposition Period, Gem shall be permitted to take any action in respect of the Potentially Transferable Assets in order to satisfy any wind-down and termination Liabilities of the Potentially Transferable Assets.

*Section 4.3 Prohibited Actions.* Unless approved by written consent or resolution by the Special Committee, prior to the end of the Disposition Period, (a) Gem shall not grant any lien, security interest, pledge or similar interest in, or otherwise sell or Transfer, any Potentially Transferable Assets or any CVR Proceeds, and (b) Gem shall not, and shall not permit its Affiliates to, grant, assign, transfer or otherwise convey any Potentially Transferable Assets (including any option to obtain rights) to any third party.

*Section 4.4 Books and Records.* Until the end of the CVR Period, Gem shall, and shall cause its Affiliates to, keep true, complete and accurate records in sufficient detail to support the applicable CVR Payments payable hereunder in accordance with the terms specified in this Agreement.

*Section 4.5 Audits.* Gem agrees to maintain, for at least two years after the last possible CVR Payment, all books and records relevant to the calculation of the Permitted Deductions. Subject to reasonable advance written notice from the Acting Holders and prior execution and delivery by it and an independent accounting firm of national reputation chosen by the Acting Holders (the "Accountant") of a reasonable and customary confidentiality/nonuse agreement, which confidentiality/nonuse agreement shall not prohibit the Acting Holders from communicating any such information with the Holders who have a need to know such information, provided that any such recipients are subject to confidentiality obligations with respect thereto, Gem shall permit the Acting Holders and the Accountant, acting as agent of the Acting Holders, to have access during normal business hours to the books and records of Gem as may be reasonably necessary to audit the calculation of the CVR Payment and the Permitted Deductions. Notwithstanding anything in this Agreement to the contrary, in no event shall Gem be required to provide any tax returns or any other tax information it deems confidential to the Acting Holders or any other party pursuant to this Agreement.

## **ARTICLE 5 AMENDMENTS**

### *Section 5.1 Amendments Without Consent of Holders or Rights Agent.*

(a) Gem, at any time and from time to time, may (without the consent of any Person, other than the Rights Agent, with such consent not to be unreasonably withheld, conditioned or delayed) enter into one or more amendments to this Agreement for any of the following purposes, without the consent of any of the Holders,

(i) to evidence the appointment of another Person as a successor Rights Agent and the assumption by any successor Rights Agent of the covenants and obligations of the Rights Agent herein in accordance with the provisions hereof;

(ii) subject to Section 6.1, to evidence the succession of another person to Gem and the assumption of any such successor of the covenants of Gem outlined herein in a transaction contemplated by Section 6.1;

(iii) as may be necessary or appropriate to ensure that CVRs are not subject to registration under the U.S. Securities Act of 1933, as amended, or the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations made thereunder, or any applicable state securities or “blue sky” laws;

(iv) as may be necessary or appropriate to ensure that Gem is not required to produce a prospectus or an admission document in order to comply with applicable Law;

(v) to cancel CVRs (i) in the event that any Holder has abandoned its rights in accordance with Section 2.6, or (ii) following a transfer of such CVRs to Gem or its Affiliates in accordance with Section 2.2 or Section 2.3; or

(vi) as may be necessary or appropriate to ensure that Gem complies with applicable Law.

(b) Promptly after the execution by Gem of any amendment pursuant to this Section 5.1, Gem will (or will cause the Rights Agent to) notify the Holders in general terms of the substance of such amendment in accordance with Section 7.2.

#### *Section 5.2 Effect of Amendments.*

Upon the execution of any amendment under this Article 5, this Agreement will be modified in accordance therewith, such amendment will form a part of this Agreement for all purposes and every Holder will be bound thereby. Upon the delivery of a certificate from an appropriate officer of Gem which states that the proposed supplement or amendment is in compliance with the terms of this Section 5, the Rights Agent shall execute such supplement or amendment. Notwithstanding anything in this Agreement to the contrary, the Rights Agent shall not be required to execute any supplement or amendment to this Agreement that it has determined would adversely affect its own rights, duties, obligations or immunities under this Agreement. No supplement or amendment to this Agreement shall be effective unless duly executed by the Rights Agent.



**ARTICLE 6**  
**CONSOLIDATION, MERGER, SALE OR CONVEYANCE**

Section 6.1 *Gem May Not Consolidate, Etc.* Gem shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person or transfer all or substantially all of its business to any Person, unless:

(a) the Person formed by such consolidation or into which Gem is merged, the Person that acquires the properties and assets of Gem substantially as an entirety or the Person that acquires by conveyance or transfer, or that leases, the Gem substantially as an entirety (the "Surviving Person") shall expressly assume payment of amounts on all CVRs and the performance of every duty and covenant of this Agreement on the part of Gem to be performed or observed; and

(b) Gem has delivered to the Rights Agent an Officer's Certificate, stating that such consolidation, merger, conveyance, transfer or lease complies with this Article 6 and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 6.2 *Successor Substituted.*

Upon any consolidation of or merger by Gem with or into any other Person, or any conveyance, transfer or lease of the properties and assets substantially as an entirety to any Person in accordance with Section 6.1, the Surviving Person shall succeed to, and be substituted for, and may exercise every right and power of, and shall assume all of the obligations of Gem under this Agreement with the same effect as if the Surviving Person had been named as Gem herein.

**ARTICLE 7**  
**MISCELLANEOUS**

Section 7.1 *Notices to Rights Agent and to Gem.*

All notices, requests and other communications (each, a "Notice") to any party hereunder shall be in writing. Such Notice shall be deemed given (a) on the date of delivery, if delivered in person, by Fedex or other internationally recognized overnight courier service or, (except with respect to any Person other than the Rights Agent), by e-mail (upon confirmation of receipt) prior to 5:00 p.m. in the time zone of the receiving party or on the next Business Day, if delivered after 5:00 p.m. in the time zone of the receiving party or (b) on the first Business Day following the date of dispatch, if delivered by FedEx or by other internationally recognized overnight courier service (upon proof of delivery), addressed as follows:

if to the Rights Agent, to:

[•]

if to Gem, to:

[•]  
Email: [•]  
with a copy, which shall not constitute notice, to:  
[•]  
Attention: [•]  
Email: [•]

or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto.

*Section 7.2 Notice to Holders.*

All Notices required to be given to the Holders will be given (unless otherwise herein expressly provided) in writing and mailed, first-class postage prepaid, to each Holder at such Holder's address as set forth in the CVR Register, not later than the latest date, and not earlier than the earliest date, prescribed for the sending of such Notice, if any, and will be deemed given on the date of mailing. In any case where notice to the Holders is given by mail, neither the failure to mail such Notice, nor any defect in any Notice so mailed, to any particular Holder will affect the sufficiency of such Notice with respect to other Holders.

*Section 7.3 Entire Agreement.*

As between Gem and the Rights Agent, this Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, notwithstanding the reference to any other agreement herein, and supersedes all prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter of this Agreement.

*Section 7.4 Merger or Consolidation or Change of Name of Rights Agent.*

Any Person into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or Person resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any Person succeeding to the stock transfer or other shareholder services business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such Person would be eligible for appointment as a successor Rights Agent under the provisions of Section 3.3. The purchase of the Rights Agent's assets employed in the performance of transfer agent activities shall be deemed a merger or consolidation for purposes of this Section 7.4.

*Section 7.5 Successors and Assigns.*

This Agreement will be binding upon, and will be enforceable by and inure solely to the benefit of, the Holders, Gem and the Rights Agent and their respective successors and assigns. Except for assignments pursuant to Section 7.4, the Rights Agent may not assign this Agreement without Gem's prior written consent. Gem or an Assignee may not otherwise assign this Agreement without the prior consent of the Majority of Holders. Any attempted assignment of this Agreement in violation of this Section 7.5 will be void *ab initio* and of no effect.

Section 7.6 *Benefits of Agreement; Action by Acting Holders.*

Nothing in this Agreement, express or implied, will give to any Person (other than Gem, the Rights Agent, the Holders and their respective permitted successors and assigns hereunder) any benefit or any legal or equitable right, remedy or claim under this Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of Gem, the Rights Agent, the Holders and their permitted successors and assigns. The Holders will have no rights hereunder except as are expressly set forth herein. Except for the rights of the Rights Agent set forth herein, the Acting Holders and/or Acting Holders, in accordance with this agreement and as the case may be, will have the sole right, on behalf of all Holders, by virtue of or under any provision of this Agreement, to institute any action or proceeding at law or in equity with respect to this Agreement, and no individual Holder or other group of Holders will be entitled to exercise such rights.

Section 7.7 *Governing Law.*

This Agreement and the CVRs will be governed by, and construed in accordance with, the laws of the State of Delaware without regard to the conflicts of law rules of such state.

Section 7.8 *Jurisdiction.*

In any action or proceeding between any of the parties hereto arising out of or relating to this Agreement or any of the transactions contemplated hereby, each of the parties hereto: (a) irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Chancery Court of the State of Delaware, County of New Castle, or, if under applicable Law exclusive jurisdiction is vested in the Federal courts, the United States District Court for the District of Delaware (and appellate courts thereof); (b) agrees that all claims in respect of such action or proceeding shall be heard and determined exclusively in accordance with clause (a) of this Section 7.8; (c) waives any objection to laying venue in any such action or proceeding in such courts; (d) waives any objection that such courts are an inconvenient forum or do not have jurisdiction over any Party; and (e) agrees that service of process upon such Party in any such action or proceeding shall be effective if notice is given in accordance with Section 7.1 or Section 7.2 of this Agreement.

Section 7.9 *WAIVER OF JURY TRIAL.*

**EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY**

**WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATION OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.9.**

Section 7.10 *Severability Clause*.

In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, is for any reason determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, will not be impaired or otherwise affected and will continue to be valid and enforceable to the fullest extent permitted by applicable Law. Upon such a determination, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible; provided, however, that if an excluded provision shall affect the rights, immunities, liabilities, duties or obligations of the Rights Agent, the Rights Agent shall be entitled to resign immediately upon written notice to Gem.

Section 7.11 *Counterparts; Effectiveness*.

This Agreement may be signed in any number of counterparts, each of which will be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original. This Agreement will become effective when each party hereto will have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement will have no effect and no party will have any right or obligation hereunder (whether by virtue of any oral or written agreement or any other communication).

Section 7.12 *Termination*.

This Agreement will automatically terminate and be of no further force or effect and, except as provided in Section 3.2, the parties hereto will have no further liability hereunder, and the CVRs will expire without any consideration or compensation therefor, upon the expiration of the CVR Period. The termination of this Agreement will not affect or limit the right of Holders to receive the CVR Payments under Section 2.4 to the extent earned prior to the termination of this Agreement, and the provisions applicable thereto will survive the expiration or termination of this Agreement.

Section 7.13 *Force Majeure*.

Notwithstanding anything to the contrary contained herein, none of the Rights Agent, Gem or any of its Subsidiaries (except as it relates to the obligations of the Company under Article 3) will be liable for any delays or failures in performance resulting from acts beyond its reasonable control including acts of God, pandemics (including COVID-19), terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunctions of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war or civil unrest.

Section 7.14 *Construction*.

(a) For purposes of this Agreement, whenever the context requires: singular terms will include the plural, and vice versa; the masculine gender will include the feminine and neuter genders; the feminine gender will include the masculine and neuter genders; and the neuter gender will include the masculine and feminine genders.

(b) As used in this Agreement, the words “include” and “including,” and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words “without limitation.”

(c) The headings contained in this Agreement are for convenience of reference only, will not be deemed to be a part of this Agreement and will not be referred to in connection with the construction or interpretation of this Agreement.

(d) Any reference in this Agreement to a date or time shall be deemed to be such date or time in New York City, United States, unless otherwise specified. The parties hereto and Gem have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and Gem and no presumption or burden of proof shall arise favoring or disfavoring any Person by virtue of the authorship of any provision of this Agreement.

(e) All references herein to “\$” are to United States Dollars.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed as of the day and year first above written.

[GEM]

By:  
Name:  
Title:

[AGENT]

By:  
Name:  
Title:

## FORM OF COMPANY STOCKHOLDER SUPPORT AGREEMENT

This Support Agreement (this "Agreement") is made and entered into as of [•], 2022, by and among Disc Medicine, Inc. a Delaware corporation (the "Company"), Gemini Therapeutics, Inc., a Delaware corporation ("Gem"), and the undersigned stockholder (the "Stockholder") of the Company. Capitalized terms used herein but not otherwise defined shall have the respective meanings ascribed to such terms in the Merger Agreement (as defined below).

## RECITALS

WHEREAS, concurrently with the execution and delivery hereof, Gem, the Company and Gemstone Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Gem (the "Merger Sub"), have entered into an agreement and plan of merger (as such agreement may be amended or supplemented from time to time pursuant to the terms thereof, the "Merger Agreement"), pursuant to which Merger Sub will merge with and into the Company, with the Company surviving the merger as the surviving corporation and a wholly owned subsidiary of Gem (the "Merger") upon the terms and subject to the conditions set forth in the Merger Agreement.

WHEREAS, as of the date hereof, the Stockholder is the beneficial owner (as defined in Rule 13d-3 under the Exchange Act) of such number of shares of Company Capital Stock as indicated in Appendix A.

WHEREAS, as an inducement to the willingness of Gem to enter into the Merger Agreement, Gem has required that Stockholder enter into this Agreement.

NOW, THEREFORE, intending to be legally bound, the parties hereby agree as follows:

1. Certain Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement. For all purposes of this Agreement, the following terms shall have the following respective meanings:

(a) "Constructive Sale" means, with respect to any security, a short sale with respect to such security, entering into or acquiring a derivative contract with respect to such security, entering into or acquiring a futures or forward contract to deliver such security or entering into any other hedging or other derivative transaction that has the effect of either directly or indirectly materially changing the economic benefits or risks of ownership of such security.

(b) "Shares" means (i) all shares of Company Capital Stock beneficially owned by the Stockholder as of the date hereof, and (ii) all additional shares of Company Capital Stock acquired and beneficially owned by the Stockholder during the period commencing with the execution and delivery of this Agreement and expiring on the Closing Date.

(c) “Transfer” or “Transferred” means, with respect to any security, the direct or indirect assignment, sale, transfer, tender, exchange, pledge or hypothecation, or the grant, creation or suffrage of a lien, security interest or encumbrance in or upon, or the gift, grant or placement in trust, or the Constructive Sale or other disposition of such security (including transfers by testamentary or intestate succession, by domestic relations order or other court order, or otherwise by operation of law) or any right, title or interest therein (including any right or power to vote to which the holder thereof may be entitled, whether such right or power is granted by proxy or otherwise), or the beneficial ownership thereof, the offer to make such a sale, transfer, Constructive Sale or other disposition, and each agreement, arrangement or understanding, whether or not in writing, to effect any of the foregoing.

2. Transfer and Voting Restrictions. The Stockholder covenants to Gem as follows:

(a) Except as otherwise permitted by Section 2(c), during the period commencing with the execution and delivery of this Agreement and expiring on the Expiration Date (as defined below), the Stockholder shall not Transfer any of the Stockholder’s Shares, or publicly announce its intention to Transfer any of its Shares.

(b) Except as otherwise permitted by this Agreement or otherwise permitted or required by order of a court of competent jurisdiction or a Governmental Authority, the Stockholder will not commit any act that would restrict the Stockholder’s legal power, authority and right to vote all of the Shares held by the Stockholder or otherwise prevent or disable the Stockholder from performing any of his, her or its obligations under this Agreement. Without limiting the generality of the foregoing, except for this Agreement, the Amended and Restated Voting Agreement of the Company, dated as of August 23, 2021 (the “Voting Agreement”) and as otherwise permitted by this Agreement, the Stockholder shall not enter into any voting agreement with any person or entity with respect to any of the Stockholder’s Shares, grant any person or entity any proxy (revocable or irrevocable) or power of attorney with respect to any of the Shares, deposit any Shares in a voting trust or otherwise enter into any agreement or arrangement with any person or entity limiting or affecting the Stockholder’s legal power, authority or right to execute and deliver the Company Stockholder Written Consent.

(c) Notwithstanding anything else herein to the contrary, the Stockholder may, at any time, Transfer Shares (i) by will or other testamentary document or by intestacy, (ii) to any investment fund or other entity controlled or managed by the Stockholder or the investment adviser of general partner of the Stockholder, or an entity under common control or management with the Stockholders (in each case, directly or indirectly) (iii) to any member of the Stockholder’s immediate family (or, if the Stockholder is a corporation, partnership or other entity, to an immediate family member of a beneficial owner of the Shares held by the Stockholder), (iv) to any trust or other entity for the direct or indirect benefit of the Stockholder or the immediate family of the Stockholder (or, if the Stockholder is a corporation, partnership or other entity, for the direct or indirect benefit of an immediate family member of a beneficial owner of the Shares held by the Stockholder) or otherwise for estate tax or estate planning purposes, (v) in the case of a Stockholder who is not a natural person, by pro rata distributions from the Stockholder to its members, partners, or shareholders pursuant to the Stockholder’s organizational documents; provided, that in the cases of clauses (i)-(v) (x) such Transferred Shares shall continue to be bound by this Agreement and (y) the applicable direct transferee (if any) of such Transferred Shares shall have executed and delivered to Gem and the Company a support agreement substantially identical to this Agreement upon consummation of the Transfer or (vi) to the extent required by applicable Law.



3. Agreement to Vote Shares. The Stockholder covenants to the Company as follows:

(a) Until the Expiration Date, at any meeting of the stockholders of the Company, however called, and at every adjournment or postponement thereof, and on every action or approval by written consent of the stockholders of the Company, the Stockholder shall be present (in person or by proxy) and vote, or exercise its right to consent with respect to, all Shares held by the Stockholder (A) in favor of the adoption and approval of the Merger Agreement, (B) in favor of approval of the Contemplated Transactions, and (C) against any Acquisition Proposal.

(b) If the Stockholder is not the record holder, of Shares, the Stockholder agrees to take all actions necessary to cause the record holder and any nominees to be present (in person or by proxy) and vote all the Stockholder's Shares in accordance with this Section 3.

(c) In the event of a stock split, stock dividend or distribution, or any change in the capital stock of the Company by reason of any split-up, reverse stock split, recapitalization, combination, reclassification, reincorporation, exchange of shares or the like, the term "Shares" shall be deemed to refer to and include such shares as well as all such stock dividends and distributions and any securities into which or for which any or all of such shares may be changed or exchanged or which are received in such transaction.

4. Action in Stockholder Capacity Only. The Stockholder is entering into this Agreement solely in the Stockholder's capacity as the beneficial owner of its Shares and not in the Stockholder's capacity as a director or officer of the Company. Nothing herein shall limit or affect the Stockholder's ability to act as an officer or director of the Company.

5. Irrevocable Proxy. The Stockholder hereby revokes (or agrees to cause to be revoked) any proxies that the Stockholder has heretofore granted with respect to its Shares. In the event and to the extent that the Stockholder fails to vote the Shares in accordance with Section 3 at any applicable meeting of the stockholders of the Company or pursuant to any applicable written consent of the stockholders of the Company, the Stockholder shall be deemed to have irrevocably granted to, and appointed, the Company, and any individual designated in writing by it, and each of them individually, as his, her or its proxy and attorney-in-fact (with full power of substitution), for and in its name, place and stead, to vote his, her or its Shares in any action by written consent of Company stockholders or at any meeting of the Company stockholders called with respect to any of the matters specified in, and in accordance and consistent with, Section 3 of this Agreement. The Company agrees not to exercise the proxy granted herein for any purpose other than the purposes described in this Agreement. Except as otherwise provided for herein (including the next sentence), the Stockholder hereby affirms that the irrevocable proxy is coupled with an interest and may under no circumstances be revoked and that such irrevocable proxy is executed and intended to be irrevocable. Notwithstanding any other provisions of this Agreement, the irrevocable proxy granted hereunder shall automatically terminate upon the termination of this Agreement.

6. No Solicitation. Subject to Section 4, the Stockholder agrees not to, directly or indirectly, including through any of its officers, directors or agents, (a) solicit, seek or initiate or knowingly take any action to facilitate or encourage, any offers, inquiries or the making of any proposal or offer that constitutes, or could reasonably be expected to lead to, any Acquisition Proposal or Acquisition Inquiry or (b) enter into, continue or otherwise participate or engage in any discussions or negotiations regarding any Acquisition Proposal, or furnish to any person any non-public information or afford any person, other than Gem or the Company, as applicable, access to such party's property, books or records (except as required by applicable Law or pursuant to a request by a Governmental Authority) in connection with, any Acquisition Proposal; provided, however, that nothing in this Section 6 shall prevent the Stockholder from referring a person to this Section 6 or to the Merger Agreement.

7. Documentation and Information. The Stockholder shall permit and hereby authorizes Gem and the Company to publish and disclose in all documents and schedules filed with the SEC, and any press release or other disclosure document that Gem or the Company reasonably determines to be necessary in connection with the Merger and any of the Contemplated Transactions, a copy of this Agreement, the Stockholder's identity and ownership of the Shares and the nature of the Stockholder's commitments and obligations under this Agreement; provided, that, Gem and the Company provide such documents, schedules, press release or other disclosure document to the Stockholder in advance for its review and comment. Each of Gem and the Company is an intended third-party beneficiary of this Section 7.

8. No Exercise of Appraisal Rights; Waivers. The Stockholder hereby irrevocably and unconditionally (a) waives, and agrees to cause to be waived and to prevent the exercise of, any rights of appraisal, any dissenters' rights and any similar rights (including any notice requirements related thereto) relating to the Merger that Stockholder may have by virtue of, or with respect to, any Shares (including all rights under Section 262 of the DGCL) and (b) agrees that the Stockholder will not bring, commence, institute, maintain, prosecute or voluntarily aid or participate in any action, claim, suit or cause of action, in law or in equity, in any court or before any Governmental Authority, which (i) challenges the validity of or seeks to enjoin the operation of any provision of this Agreement or (ii) alleges that the execution and delivery of this Agreement by the Stockholder breaches any duty that such Stockholder has (or may be alleged to have) to the Company or to the other Company stockholders; provided, that (x) the Stockholder may defend against, contest or settle any such action, claim, suit or cause of action brought against the Stockholder that relates solely to the Stockholder's capacity as a director, officer or securityholder of the Company and (y) the foregoing shall not limit or restrict in any manner the Stockholder from enforcing the Stockholder's rights under this Agreement and the other agreements entered into by the Stockholder in connection herewith, or otherwise in connection with the Merger, including the Stockholder's right to receive the Merger Consideration pursuant to the terms of the Merger Agreement.

9. Representations and Warranties of the Stockholder. The Stockholder hereby represents and warrants to the Company as follows:

(a) (i) The Stockholder is the beneficial owner of the shares of Company Capital Stock indicated in Appendix A (each of which shall be deemed to be "held" by the Stockholder for purposes of Section 3 unless otherwise expressly stated with respect to any shares in Appendix A), free and clear of any and all Encumbrances (except for any Encumbrance that may be imposed pursuant to this Agreement, the Voting Agreement, the Amended and

Restated Investors' Rights Agreement of the Company, dated as of August 23, 2021 (the "Investor's Rights Agreement"), or any lock-up agreement entered into by and between the Stockholder, the Company and Gem); and (ii) the Stockholder does not beneficially own any securities of the Company other than the shares of Company Capital Stock and rights to purchase shares Company Capital Stock set forth in Appendix A.

(b) Except as otherwise provided in this Agreement, the Stockholder has full power and authority to (i) make, enter into and carry out the terms of this Agreement and (ii) vote all of its Shares in the manner set forth in this Agreement without the consent or approval of, or any other action on the part of, any other person or entity (including any Governmental Authority). Without limiting the generality of the foregoing, except for the Voting Agreement, the Stockholder has not entered into any voting agreement (other than this Agreement) with any person with respect to any of the Stockholder's Shares, granted any person any proxy (revocable or irrevocable) or power of attorney with respect to any of the Stockholder's Shares, deposited any of the Stockholder's Shares in a voting trust or entered into any arrangement or agreement with any person limiting or affecting the Stockholder's legal power, authority or right to vote the Stockholder's Shares on any matter.

(c) This Agreement has been duly and validly executed and delivered by the Stockholder and (assuming the due authorization, execution and delivery by the other parties hereto) constitutes a valid and binding agreement of the Stockholder enforceable against the Stockholder in accordance with its terms, subject to the Enforceability Exceptions. The execution and delivery of this Agreement by the Stockholder and the performance by the Stockholder of the agreements and obligations hereunder will not result in any breach or violation of or be in conflict with or constitute a default under any term of any Contract or if applicable any provision of an organizational document (including a certificate of incorporation) to or by which the Stockholder is a party or bound, or any applicable law to which the Stockholder (or any of the Stockholder's assets) is subject or bound, except for any such breach, violation, conflict or default which, individually or in the aggregate, would not reasonably be expected to materially impair or adversely affect the Stockholder's ability to perform its obligations under this Agreement.

(d) The execution, delivery and performance of this Agreement by the Stockholder do not and will not require any consent, approval, authorization or permit of, action by, filing with or notification to, any Governmental Authority, except for any such consent, approval, authorization, permit, action, filing or notification the failure of which to make or obtain, individually or in the aggregate, has not and would not materially impair the Stockholder's ability to perform its obligations under this Agreement.

(e) The Stockholder has had the opportunity to review the Merger Agreement and this Agreement with counsel of the Stockholder's own choosing. The Stockholder has had an opportunity to review with its own tax advisors the tax consequences of the Merger and the Contemplated Transactions. The Stockholder understands that it must rely solely on its advisors and not on any statements or representations made by Gem, the Company or any of their respective agents or representatives with respect to the tax consequences of the Merger and the Contemplated Transactions. The Stockholder understands that such Stockholder (and not Gem, the Company or the Surviving Corporation) shall be responsible for such Stockholder's tax liability that may arise as a result of the Merger or the Contemplated Transactions. The Stockholder understands and acknowledges that the Company, Gem and Merger Sub are entering into the Merger Agreement in reliance upon the Stockholder's execution, delivery and performance of this Agreement.

(f) With respect to the Stockholder, as of the date hereof, there is no action, suit, investigation or proceeding pending against, or, to the knowledge of the Stockholder, threatened against, the Stockholder or any of the Stockholder's properties or assets (including the Shares) that would reasonably be expected to prevent or materially delay or impair the ability of the Stockholder to perform its obligations hereunder or to consummate the transactions contemplated hereby.

10. Termination. This Agreement shall terminate and shall cease to be of any further force or effect as of the earliest of (a) such date and time as the Merger Agreement shall have been terminated pursuant to the terms thereof as in effect on the date of this Agreement (and without giving effect to any amendments thereto unless consented to by the Stockholder), (b) the Effective Time and (c) the time this Agreement is terminated upon the written agreement of the Stockholder, the Company and Gem (the "*Expiration Date*"); provided, however, that (i) Section 11 shall survive the termination of this Agreement, and (ii) the termination of this Agreement shall not relieve any party hereto from any liability for any material and willful breach of this Agreement prior to the Effective Time.

11. Miscellaneous Provisions.

(a) Amendments. No amendment of this Agreement shall be effective against any party unless it shall be in writing and signed by each of the parties hereto.

(b) Entire Agreement. This Agreement constitutes the entire agreement between the parties to this Agreement and supersedes all other prior agreements, arrangements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

(c) Governing Law. All matters arising out of or relating to this Agreement and the transactions contemplated hereby (including its interpretation, construction, performance and enforcement) shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the State of Delaware.

(d) Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws. IN ANY ACTION OR PROCEEDING BETWEEN ANY OF THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, EACH OF THE PARTIES: (A) IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE OR, TO THE EXTENT SUCH COURT DOES NOT HAVE

SUBJECT MATTER JURISDICTION, THE SUPERIOR COURT OF THE STATE OF DELAWARE OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, (B) AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED EXCLUSIVELY IN ACCORDANCE WITH CLAUSE (A) OF THIS SECTION 11(d), (C) WAIVES ANY OBJECTION TO LAYING VENUE IN ANY SUCH ACTION OR PROCEEDING IN SUCH COURTS, (D) WAIVES ANY OBJECTION THAT SUCH COURTS ARE AN INCONVENIENT FORUM OR DO NOT HAVE JURISDICTION OVER ANY PARTY, (E) AGREES THAT SERVICE OF PROCESS UPON SUCH PARTY IN ANY SUCH ACTION OR PROCEEDING SHALL BE EFFECTIVE IF NOTICE IS GIVEN IN ACCORDANCE WITH SECTION 11(j) OF THIS AGREEMENT AND (F) IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY.

(e) WAIVER OF JURY TRIAL. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY TO THIS AGREEMENT IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.

(f) Assignment. Except as otherwise provided in Section 2(c), hereof, no party may assign any of its rights or delegate any of its performance obligations under this Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of the other parties hereto, and any such assignment without such prior written consent shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any purported assignment of rights or delegation of performance obligations in violation of this Section 11(f) is void.

(g) No Third Party Rights. This Agreement is not intended to, and shall not, confer upon any other person any rights or remedies hereunder other than the parties hereto to the extent expressly set forth herein.

(h) Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

(i) Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

(j) Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly delivered and received hereunder (i) three Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid, (ii) one Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable overnight courier service, (iii) upon delivery, in the case of delivery by hand, or (iv) on the date delivered in the place of delivery if sent by electronic mail or facsimile (with written or electronic confirmation of delivery) prior to 6:00 p.m., New York City time, otherwise on the next succeeding Business Day, in each case to the intended recipient as follows: (A) if to the Company or Gem, to the address, electronic mail address or facsimile provided in the Merger Agreement, including to the persons designated therein to receive copies; and/or (B) if to the Stockholder, to the Stockholder's address, electronic mail address or facsimile shown below Stockholder's signature to this Agreement.

(k) Counterparts. This Agreement may be executed in two or more counterparts (including by facsimile, by an electronic scan delivered by electronic mail or any electronic signature), each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile, by an electronic scan delivered by electronic mail or by delivery of any electronic signature.

(l) Confidentiality. Except to the extent required by applicable Law or regulation, the Stockholder shall hold any non-public information regarding this Agreement, the Merger Agreement and the Merger in strict confidence and shall not divulge any such information to any third person until the Company has publicly disclosed its entry into the Merger Agreement and this Agreement; provided, however, that the Stockholder may disclose such information to its Affiliates, partners, members, stockholders, parents, subsidiaries, attorneys, accountants, consultants, trustees, beneficiaries and other representatives (provided that such Persons are subject to confidentiality obligations at least as restrictive as those contained herein) or as otherwise permitted pursuant to and in accordance with the terms of Section 3.4 of the Investors' Rights Agreement. Neither the Stockholder nor any of its Affiliates (other than the Company, whose actions shall be governed by the Merger Agreement), shall issue or cause the publication of any press release or other public announcement with respect to this Agreement, the Merger, the Merger Agreement or the other transactions contemplated hereby or thereby without the prior written consent of the Company and Gem, except as may be required by applicable Law in which circumstance such announcing party shall make reasonable efforts to consult with the Company and Gem to the extent practicable. The Company is an intended third-party beneficiary of this Section 11(l).

(m) Interpretation. When reference is made in this Agreement to a Section or Appendix, such reference shall be to a Section of or Appendix to this Agreement, unless otherwise indicated. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

[Remainder of Page Left Intentionally Blank]

COMPANY:  
Disc Medicine, Inc.

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

GEM:  
Gemini Therapeutics, Inc.

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

[STOCKHOLDER],  
in his/her capacity as the Stockholder:

Signature: \_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





## FORM OF GEM STOCKHOLDER SUPPORT AGREEMENT

This Support Agreement (this "Agreement") is made and entered into as of [•], 2022, by and among Disc Medicine, Inc. a Delaware corporation (the "Company"), Gemini Therapeutics, Inc., a Delaware corporation ("Gem"), and the undersigned stockholder (the "Stockholder") of Gem. Capitalized terms used herein but not otherwise defined shall have the respective meanings ascribed to such terms in the Merger Agreement (as defined below).

## RECITALS

WHEREAS, concurrently with the execution and delivery hereof, Gem, the Company and Gemstone Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Gem (the "Merger Sub"), have entered into an agreement and plan of merger (as such agreement may be amended or supplemented from time to time pursuant to the terms thereof, the "Merger Agreement"), pursuant to which Merger Sub will merge with and into the Company, with the Company surviving the merger as the surviving corporation and a wholly owned subsidiary of Gem (the "Merger") upon the terms and subject to the conditions set forth in the Merger Agreement.

WHEREAS, as of the date hereof, the Stockholder is the beneficial owner (as defined in Rule 13d-3 under the Exchange Act) of such number of shares of Gem Common Stock as indicated in Appendix A.

WHEREAS, as an inducement to the willingness of the Company to enter into the Merger Agreement, the Company has required that Stockholder enter into this Agreement.

NOW, THEREFORE, intending to be legally bound, the parties hereby agree as follows:

1. Certain Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Merger Agreement. For all purposes of this Agreement, the following terms shall have the following respective meanings:

(a) "Constructive Sale" means, with respect to any security, a short sale with respect to such security, entering into or acquiring a derivative contract with respect to such security, entering into or acquiring a futures or forward contract to deliver such security or entering into any other hedging or other derivative transaction that has the effect of either directly or indirectly materially changing the economic benefits or risks of ownership of such security.

(b) "Shares" means (i) all shares of Gem Common Stock owned, beneficially or of record, by the Stockholder as of the date hereof, and (ii) all additional shares of Gem Common Stock acquired by the Stockholder, beneficially or of record, during the period commencing with the execution and delivery of this Agreement and expiring on the Closing Date.

(c) “Transfer” or “Transferred” means, with respect to any security, the direct or indirect assignment, sale, transfer, tender, exchange, pledge or hypothecation, or the grant, creation or suffrage of a lien, security interest or encumbrance in or upon, or the gift, grant or placement in trust, or the Constructive Sale or other disposition of such security (including transfers by testamentary or intestate succession, by domestic relations order or other court order, or otherwise by operation of law) or any right, title or interest therein (including any right or power to vote to which the holder thereof may be entitled, whether such right or power is granted by proxy or otherwise), or the record or beneficial ownership thereof, the offer to make such a sale, transfer, Constructive Sale or other disposition, and each agreement, arrangement or understanding, whether or not in writing, to effect any of the foregoing.

2. Transfer and Voting Restrictions. The Stockholder covenants to the Company as follows:

(a) Except as otherwise permitted by Section 2(c), during the period commencing with the execution and delivery of this Agreement and expiring on the Expiration Date (as defined below), the Stockholder shall not Transfer any of the Stockholder’s Shares, or publicly announce its intention to Transfer any of its Shares.

(b) Except as otherwise permitted by this Agreement or otherwise permitted or required or by order of a court of competent jurisdiction or a Governmental Authority, the Stockholder will not commit any act that would restrict the Stockholder’s legal power, authority and right to vote all of the Shares held by the Stockholder or otherwise prevent or disable the Stockholder from performing any of his, her or its obligations under this Agreement. Without limiting the generality of the foregoing, except for this Agreement and as otherwise permitted by this Agreement, the Stockholder shall not enter into any voting agreement with any person or entity with respect to any of the Stockholder’s Shares, grant any person or entity any proxy (revocable or irrevocable) or power of attorney with respect to any of the Shares, deposit any Shares in a voting trust or otherwise enter into any agreement or arrangement with any person or entity limiting or affecting the Stockholder’s legal power, authority or right to vote the Stockholder’s Shares in favor of the Gem Stockholder Matters.

(c) Notwithstanding anything else herein to the contrary, the Stockholder may, at any time, Transfer Shares (i) by will or other testamentary document or by intestacy, (ii) to any investment fund or other entity controlled or managed by the Stockholder or the investment adviser of general partner of the Stockholder, or an entity under common control or management with the Stockholders (in each case, directly or indirectly) (iii) to any member of the Stockholder’s immediate family (or, if the Stockholder is a corporation, partnership or other entity, to an immediate family member of a beneficial owner of the Shares held by the Stockholder), (iv) to any trust or other entity for the direct or indirect benefit of the Stockholder or the immediate family of the Stockholder (or, if the Stockholder is a corporation, partnership or other entity, for the direct or indirect benefit of an immediate family member of a beneficial owner of the Shares held by the Stockholder) or otherwise for estate tax or estate planning purposes, (v) in the case of a Stockholder who is not a natural person, by pro rata distributions from the Stockholder to its members, partners, or shareholders pursuant to the Stockholder’s organizational documents; provided, that in the cases of clauses (i)-(v) (x) such Transferred Shares shall continue to be bound by this Agreement and (y) the applicable direct transferee (if any) of such Transferred Shares shall have executed and delivered to Gem and the Company a support agreement substantially identical to this Agreement upon consummation of the Transfer or (vi) to the extent required by applicable Law.

3. Agreement to Vote Shares. The Stockholder covenants to the Company as follows:

(a) Until the Expiration Date (as defined below), at any meeting of the stockholders of Gem, however called, and at every adjournment or postponement thereof, and on every action or approval by written consent of the stockholders of Gem, the Stockholder shall be present (in person or by proxy) and vote, or exercise its right to consent with respect to, all Shares held by the Stockholder (A) in favor of the Gem Stockholder Matters and (B) against any Acquisition Proposal.

(b) If the Stockholder is the beneficial owner, but not the record holder, of Shares, the Stockholder agrees to take all actions necessary to cause the record holder and any nominees to be present (in person or by proxy) and vote all the Stockholder's Shares in accordance with this Section 3.

(c) In the event of a stock split, stock dividend or distribution, or any change in the capital stock of Gem by reason of any split-up, reverse stock split, recapitalization, combination, reclassification, reincorporation, exchange of shares or the like, the term "Shares" shall be deemed to refer to and include such shares as well as all such stock dividends and distributions and any securities into which or for which any or all of such shares may be changed or exchanged or which are received in such transaction.

4. Action in Stockholder Capacity Only. The Stockholder is entering into this Agreement solely in the Stockholder's capacity as a record holder and beneficial owner, as applicable, of its Shares and not in the Stockholder's capacity as a director or officer of Gem. Nothing herein shall limit or affect the Stockholder's ability to act as an officer or director of Gem.

5. Irrevocable Proxy. The Stockholder hereby revokes (or agrees to cause to be revoked) any proxies that the Stockholder has heretofore granted with respect to its Shares. In the event and to the extent that the Stockholder fails to vote the Shares in accordance with Section 3 at any applicable meeting of the stockholders of Gem or pursuant to any applicable written consent of the stockholders of Gem, the Stockholder shall be deemed to have irrevocably granted to, and appointed, the Company, and any individual designated in writing by it, and each of them individually, as his, her or its proxy and attorney-in-fact (with full power of substitution), for and in its name, place and stead, to vote his, her or its Shares in any action by written consent of Gem stockholders or at any meeting of the Gem stockholders called with respect to any of the matters specified in, and in accordance and consistent with, Section 3 of this Agreement. Gem agrees not to exercise the proxy granted herein for any purpose other than the purposes described in this Agreement. Except as otherwise provided for herein, the Stockholder hereby affirms that the irrevocable proxy is coupled with an interest and may under no circumstances be revoked and that such irrevocable proxy is executed and intended to be irrevocable. Notwithstanding any other provisions of this Agreement, the irrevocable proxy granted hereunder shall automatically terminate upon the termination of this Agreement.

6. No Solicitation. Subject to Section 4, the Stockholder agrees not to, directly or indirectly, including through any of its officers, directors or agents, (a) solicit, seek or initiate or knowingly take any action to facilitate or encourage, any offers, inquiries or the making of any proposal or offer that constitutes, or could reasonably be expected to lead to, any Acquisition Proposal or (b) enter into, continue or otherwise participate or engage in any discussions or negotiations regarding any Acquisition Proposal, or furnish to any person any non-public information or afford any person, other than Gem or the Company, as applicable, access to such party's property, books or records (except as required by applicable Law or pursuant to a request by a Governmental Authority) in connection with, any Acquisition Proposal; provided, however, that nothing in this Section 6 shall prevent the Stockholder from referring a person to this Section 6 or to the Merger Agreement.

7. Documentation and Information. The Stockholder shall permit and hereby authorizes Gem and the Company to publish and disclose in all documents and schedules filed with the SEC, and any press release or other disclosure document that Gem or the Company reasonably determines to be necessary in connection with the Merger and any of the Contemplated Transactions, a copy of this Agreement, the Stockholder's identity and ownership of the Shares and the nature of the Stockholder's commitments and obligations under this Agreement; provided, that, Gem and the Company provide such documents, schedules, press release or other disclosure document to the Stockholder in advance for its review and comment. Each of Gem and the Company is an intended third-party beneficiary of this Section 7.

8. No Exercise of Appraisal Rights; Waivers. The Stockholder hereby irrevocably and unconditionally (a) waives, and agrees to cause to be waived and to prevent the exercise of, any rights of appraisal, any dissenters' rights and any similar rights (including any notice requirements related thereto) relating to the Merger that Stockholder may have by virtue of, or with respect to, any Shares (including all rights under Section 262 of the DGCL) and (b) agrees that the Stockholder will not bring, commence, institute, maintain, prosecute or voluntarily aid or participate in any action, claim, suit or cause of action, in law or in equity, in any court or before any Governmental Authority, which (i) challenges the validity of or seeks to enjoin the operation of any provision of this Agreement or (ii) alleges that the execution and delivery of this Agreement by the Stockholder, or the approval of the Merger Agreement by the Gem Board, breaches any fiduciary duty of the Gem Board or any member thereof; provided, that the Stockholder may defend against, contest or settle any such action, claim, suit or cause of action brought against the Stockholder that relates solely to the Stockholder's capacity as a director, officer or securityholder of Gem.

9. Representations and Warranties of the Stockholder. The Stockholder hereby represents and warrants to the Company as follows:

(a) (i) The Stockholder is the beneficial or record owner of the shares of Gem Common Stock indicated in Appendix A (each of which shall be deemed to be "held" by the Stockholder for purposes of Section 3 unless otherwise expressly stated with respect to any shares in Appendix A), free and clear of any and all Liens; and (ii) the Stockholder does not beneficially own any securities of Gem other than the shares of Gem Common Stock and rights to purchase shares Gem Common Stock set forth in Appendix A.

(b) Except as otherwise provided in this Agreement, the Stockholder has full power and authority to (i) make, enter into and carry out the terms of this Agreement and (ii) vote all of its Shares in the manner set forth in this Agreement without the consent or approval of, or any other action on the part of, any other person or entity (including any Governmental Authority). Without limiting the generality of the foregoing, the Stockholder has not entered into any voting agreement (other than this Agreement) with any person with respect to any of the Stockholder's Shares, granted any person any proxy (revocable or irrevocable) or power of attorney with respect to any of the Stockholder's Shares, deposited any of the Stockholder's Shares in a voting trust or entered into any arrangement or agreement with any person limiting or affecting the Stockholder's legal power, authority or right to vote the Stockholder's Shares on any matter.

(c) This Agreement has been duly and validly executed and delivered by the Stockholder and (assuming the due authorization, execution and delivery by the other parties hereto) constitutes a valid and binding agreement of the Stockholder enforceable against the Stockholder in accordance with its terms, subject to the Enforceability Exceptions. The execution and delivery of this Agreement by the Stockholder and the performance by the Stockholder of the agreements and obligations hereunder will not result in any breach or violation of or be in conflict with or constitute a default under any term of any Contract or if applicable any provision of an organizational document (including a certificate of incorporation) to or by which the Stockholder is a party or bound, or any applicable law to which the Stockholder (or any of the Stockholder's assets) is subject or bound, except for any such breach, violation, conflict or default which, individually or in the aggregate, would not reasonably be expected to materially impair or adversely affect the Stockholder's ability to perform its obligations under this Agreement.

(d) The Stockholder has had the opportunity to review the Merger Agreement and this Agreement with the Stockholder's legal counsel. The Stockholder understands and acknowledges that the Company is entering into the Merger Agreement in reliance upon the Stockholder's execution, delivery and performance of this Agreement.

(e) The execution, delivery and performance of this Agreement by the Stockholder do not and will not require any consent, approval, authorization or permit of, action by, filing with or notification to, any Governmental Authority, except for any such consent, approval, authorization, permit, action, filing or notification the failure of which to make or obtain, individually or in the aggregate, has not and would not materially impair the Stockholder's ability to perform its obligations under this Agreement.

(f) The Stockholder has had the opportunity to review the Merger Agreement and this Agreement with counsel of the Stockholder's own choosing. The Stockholder has had an opportunity to review with its own tax advisors the tax consequences of the Merger and the Contemplated Transactions. The Stockholder understands that it must rely solely on its advisors and not on any statements or representations made by Gem, the Company or any of their respective agents or representatives with respect to the tax consequences of the Merger and the Contemplated Transactions. The Stockholder understands that such Stockholder (and not Gem, the Company or the Surviving Corporation) shall be responsible for such Stockholder's tax liability that may arise as a result of the Merger or the Contemplated Transactions. The Stockholder understands and acknowledges that the Company, Gem and Merger Sub are entering into the Merger Agreement in reliance upon the Stockholder's execution, delivery and performance of this Agreement.

(g) With respect to the Stockholder, as of the date hereof, there is no action, suit, investigation or proceeding pending against, or, to the knowledge of the Stockholder, threatened against, the Stockholder or any of the Stockholder's properties or assets (including the Shares) that would reasonably be expected to prevent or materially delay or impair the ability of the Stockholder to perform its obligations hereunder or to consummate the transactions contemplated hereby.

10. Termination. This Agreement shall terminate and shall cease to be of any further force or effect as of the earlier of (a) such date and time as the Merger Agreement shall have been terminated pursuant to the terms thereof or (b) the Effective Time (the "**Expiration Date**"); provided, however, that (i) Section 11 shall survive the termination of this Agreement, and (ii) the termination of this Agreement shall not relieve any party hereto from any liability for any material and willful breach of this Agreement prior to the Effective Time.

11. Miscellaneous Provisions.

(a) Amendments. No amendment of this Agreement shall be effective against any party unless it shall be in writing and signed by each of the parties hereto.

(b) Entire Agreement. This Agreement constitutes the entire agreement between the parties to this Agreement and supersedes all other prior agreements, arrangements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

(c) Governing Law. All matters arising out of or relating to this Agreement and the transactions contemplated hereby (including its interpretation, construction, performance and enforcement) shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the State of Delaware.

(d) Jurisdiction. Each of the parties to this Agreement (i) consents to submit itself to the exclusive personal jurisdiction of the Court of Chancery of the State of Delaware, New Castle County, or, if that court does not have jurisdiction, a federal court sitting in Wilmington, Delaware in any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, (ii) agrees that all claims in respect of such action or proceeding shall be heard and determined in any such court, (iii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (iv) agrees not to bring any action or proceeding arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement in any other court. Each of the parties hereto waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect thereto. Any party may make service on another party by sending or delivering a copy of the process to the party to be served at the address and in the manner provided for the giving of notices in Section 11(j). Nothing in this Section 11(d), however, shall affect the right of any party to serve legal process in any other manner permitted by law.

(e) WAIVER OF JURY TRIAL. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY TO THIS AGREEMENT IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.

(f) Assignment. Except as otherwise provided in Section 2(c) hereof, no party may assign any of its rights or delegate any of its performance obligations under this Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of the other parties hereto, and any such assignment without such prior written consent shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any purported assignment of rights or delegation of performance obligations in violation of this Section 11(f) is void.

(g) No Third Party Rights. This Agreement is not intended to, and shall not, confer upon any other person any rights or remedies hereunder other than the parties hereto to the extent expressly set forth herein.

(h) Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

(i) Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

(j) Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered (i) three Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid, or (ii) one Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable overnight courier service, in each case to the intended recipient as follows: (A) if to the Company or Gem, to the address, electronic mail address or facsimile provided in the Merger Agreement, including to the persons designated therein to receive copies; and/or (B) if to the Stockholder, to the Stockholder's address, electronic mail address or facsimile shown below Stockholder's signature to this Agreement.



(k) Counterparts. This Agreement may be executed in two or more counterparts (including by facsimile, by an electronic scan delivered by electronic mail or any electronic signature), each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile, by an electronic scan delivered by electronic mail or by delivery of any electronic signature.

(l) Confidentiality. Except to the extent required by applicable Law or regulation, the Stockholder shall hold any non-public information regarding this Agreement, the Merger Agreement and the Merger in strict confidence and shall not divulge any such information to any third person until Gem has publicly disclosed its entry into the Merger Agreement and this Agreement; provided, however, that the Stockholder may disclose such information to its Affiliates, partners, members, stockholders, parents, subsidiaries, attorneys, accountants, consultants, trustees, beneficiaries and other representatives (provided that such Persons are subject to confidentiality obligations at least as restrictive as those contained herein). Neither the Stockholder nor any of its Affiliates (other than Gem, whose actions shall be governed by the Merger Agreement), shall issue or cause the publication of any press release or other public announcement with respect to this Agreement, the Merger, the Merger Agreement or the other transactions contemplated hereby or thereby without the prior written consent of the Company and Gem, except as may be required by applicable Law in which circumstance such announcing party shall make reasonable efforts to consult with the Company and Gem to the extent practicable. The Company is an intended third-party beneficiary of this Section 11(l).

(m) Interpretation. When reference is made in this Agreement to a Section or Appendix, such reference shall be to a Section of or Appendix to this Agreement, unless otherwise indicated. The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

[Remainder of Page Left Intentionally Blank]

COMPANY:

Disc Medicine, Inc.

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

GEM:  
Gemini Therapeutics, Inc.

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

[STOCKHOLDER],  
in his/her capacity as the Stockholder:

Signature: \_\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## FORM OF LOCK-UP AGREEMENT

[•], 2022

Gemini Therapeutics, Inc.  
297 Boston Post Road #248  
Wayland, MA 01778

Ladies and Gentlemen:

The undersigned signatory of this lock-up agreement (this "Lock-Up Agreement") understands that Gemini Therapeutics, Inc., a Delaware corporation ("Gem"), has entered into an Agreement and Plan of Merger and Reorganization, dated as of [•], 2022 (as the same may be amended from time to time, the "Merger Agreement") with Gemstone Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Gem, and Disc Medicine, Inc., a Delaware corporation (the "Company"). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Merger Agreement.

As a condition and inducement to Gem to enter into the Merger Agreement and to consummate the transactions contemplated thereby, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby irrevocably agrees that, subject to the exceptions set forth herein, without the prior written consent of Gem, the undersigned will not, during the period commencing upon the Closing and ending on the date that is 180 days after the Closing Date (the "Restricted Period"):

(1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Gem Common Stock or any securities convertible into or exercisable or exchangeable for shares of Gem Common Stock (including without limitation, shares of Gem Common Stock or such other securities which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the SEC and securities of Gem which may be issued upon exercise of an option to purchase shares of Gem Common Stock or a warrant to purchase shares of Gem Common Stock) that are currently or hereafter owned by the undersigned, except as set forth below (collectively, the "Undersigned's Shares");

(2) enter into any swap, short sale, hedge or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Undersigned's Shares regardless of whether any such transaction described in clause (1) above or this clause (2) is to be settled by delivery of shares of Gem Common Stock or other securities, in cash or otherwise;

(3) make any demand for, or exercise any right with respect to, the registration of any shares of Gem Common Stock or any security convertible into or exercisable or exchangeable for shares of Gem Common Stock (other than such rights set forth in the Merger Agreement); or

(4) publicly disclose the intention to do any of the foregoing.

The restrictions and obligations contemplated by this Lock-Up Agreement shall not apply to:

(a) transfers of the Undersigned's Shares:

(1) (A) to any person related to the undersigned (or to an ultimate beneficial owner of the undersigned) by blood or adoption who is an immediate family member of the undersigned, or by marriage or domestic partnership (a "Family Member"), or to a trust formed for the benefit of the undersigned or any of the undersigned's Family Members, (B) to the undersigned's estate, following the death of the undersigned, by will, intestacy or other operation of Law, (C) as a bona fide gift or a charitable contribution, (D) by operation of Law pursuant to a qualified domestic order or in connection with a divorce settlement or (E) to any partnership, corporation or limited liability company which is controlled by the undersigned and/or by any such Family Member(s);

(2) if the undersigned is a corporation, partnership, limited liability company or other entity, (A) to another corporation, partnership, limited liability company or other entity that is a direct or indirect affiliate (as defined under Rule 12b-2 of the Exchange Act) of the undersigned, including investment funds or other entities that controls or manages, is under common control or management with, or is controlled or managed by, the undersigned, (B) as a distribution or dividend to equity holders, current or former general or limited partners, members or managers (or to the estates of any of the foregoing), as applicable, of the undersigned (including upon the liquidation and dissolution of the undersigned pursuant to a plan of liquidation approved by the undersigned's equity holders), (C) as a bona fide gift or a charitable contribution or otherwise to a trust or other entity for the direct or indirect benefit of an immediate family member of a beneficial owner (as defined in Rule 13d-3 of the Exchange Act) of the Undersigned's Shares or (D) transfers or dispositions not involving a change in beneficial ownership; or

(3) if the undersigned is a trust, to any grantors or beneficiaries of the trust;

provided that, in the case of any transfer or distribution pursuant to this clause (a), such transfer is not for value (other than transfers pursuant to 1(A), 1(E) or 2(A)) and each donee, heir, beneficiary or other transferee or distributee shall sign and deliver to Gem a lock-up agreement in the form of this Lock-Up Agreement with respect to the shares of Gem Common Stock or such other securities that have been so transferred or distributed;

(b) the exercise of an option to purchase shares of Gem Common Stock (including a net or cashless exercise of an option to purchase shares of Gem Common Stock ), and any related transfer of shares of Gem Common Stock to Gem for the purpose of paying the exercise price of such options or for paying taxes (including estimated taxes) due as a result of the exercise of such options or for paying taxes (including estimated taxes) due as a result of the exercise of such options; provided that, for the avoidance of doubt, the underlying shares of Gem Common Stock shall continue to be subject to the restrictions on transfer set forth in this Lock-Up Agreement;

(c) transfers to Gem in connection with the net settlement of any other equity award that represents the right to receive in the future shares of Gem Common Stock, settled in shares of Gem Common Stock, to pay any tax withholding obligations; provided that, for the avoidance of doubt, the underlying shares of Gem Common Stock shall continue to be subject to the restrictions on transfer set forth in this Lock-Up Agreement;

(d) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Gem Common Stock; provided that such plan does not provide for any transfers of shares of Gem Common Stock during the Restricted Period;

(e) transfers by the undersigned of shares of Gem Common Stock purchased by the undersigned on the open market or in a public offering by Gem, in each case following the date of the Merger Agreement;

(f) pursuant to a bona-fide third party tender offer, merger, consolidation or other similar transaction made to all holders of Gem's capital stock involving a change of control of Gem, provided that in the event that such tender offer, merger, consolidation or other such transaction is not completed, the Undersigned's Shares shall remain subject to the restrictions contained in this Lock-Up Agreement;

(g) pursuant to an order of a court or regulatory agency; or

(h) transfers by the undersigned of shares of Gem Common Stock issued pursuant to the Merger Agreement in respect of shares of the Company, if any, purchased from the Company on or about the Closing Date but prior to the Closing.

and provided, further, that, with respect to each of (b), (c), and (d) above, no filing by any party (including any donor, donee, transferor, transferee, distributor or distributee) under Section 16 of the Exchange Act or other public announcement shall be made voluntarily reporting a reduction in beneficial ownership of shares of Gem Common Stock or any securities convertible into or exercisable or exchangeable for Gem Common Stock in connection with such transfer or disposition during the Restricted Period (other than any exit filings) and if any filings under Section 16(a) of the Exchange Act, or other public filing, report or announcement reporting a reduction in beneficial ownership of shares of Gem Common Stock in connection with such transfer or distribution, shall be legally required during the Restricted Period, such filing, report or announcement shall clearly indicate in the footnotes therein, in reasonable detail, a description of the circumstances of the transfer and that the shares remain subject to the lock-up agreement.

For purposes of this Lock-Up Agreement, "change of control" shall mean the transfer (whether by tender offer, merger, consolidation or other similar transaction), in one transaction or a series of related transactions, to a person or group of affiliated persons, of the Company's voting securities if, after such transfer, the Company's stockholders as of immediately prior to such transfer do not hold a majority of the outstanding voting securities of the Company (or the surviving entity).

Any attempted transfer in violation of this Lock-Up Agreement will be of no effect and null and void, regardless of whether the purported transferee has any actual or constructive knowledge of the transfer restrictions set forth in this Lock-Up Agreement, and will not be recorded on the share register of Gem. In furtherance of the foregoing, the undersigned agrees that Gem and any duly appointed transfer agent for the registration or transfer of the securities described herein are

hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Agreement. Gem may cause the legend set forth below, or a legend substantially equivalent thereto, to be placed upon any certificate(s) or other documents, ledgers or instruments evidencing the undersigned's ownership of Gem Common Stock:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO AND MAY ONLY BE TRANSFERRED IN COMPLIANCE WITH A LOCK-UP AGREEMENT, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that if the Merger Agreement is terminated for any reason, the undersigned shall be released from all obligations under this Lock-Up Agreement. The undersigned understands that Gem is proceeding with the transactions contemplated by the Merger Agreement in reliance upon this Lock-Up Agreement.

Any and all remedies herein expressly conferred upon Gem will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by Law or equity, and the exercise by Gem of any one remedy will not preclude the exercise of any other remedy. The undersigned agrees that irreparable damage would occur to Gem in the event that any provision of this Lock-Up Agreement was not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that Gem shall be entitled to seek an injunction or injunctions to prevent breaches of this Lock-Up Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which Gem is entitled at Law or in equity, and the undersigned waives any bond, surety or other security that might be required of Gem with respect thereto.

In the event that any holder of Gem's securities that are subject to a substantially similar agreement entered into by such holder, other than the undersigned, is permitted by Gem to sell or otherwise transfer or dispose of shares of Gem Common Stock for value other than as permitted by this or a substantially similar agreement entered into by such holder (whether in one or multiple releases or waivers), the same percentage of shares of Gem Common Stock held by the undersigned on the date of such release or waiver as the percentage of the total number of outstanding shares of Gem Common Stock held by such holder on the date of such release or waiver that are the subject of such release or waiver shall be immediately and fully released on the same terms from any remaining restrictions set forth herein (the "Pro-Rata Release"); provided, however, that such Pro-Rata Release shall not be applied unless and until permission has been granted by Gem to an equity holder or equity holders to sell or otherwise transfer or dispose of all or a portion of such equity holders shares of Gem Common Stock in an aggregate amount in excess of 1% of the number of shares of Gem Common Stock subject to a substantially similar agreement.

Upon the release of any of the Undersigned's Shares from this Lock-Up Agreement, Gem will promptly cooperate with the undersigned to facilitate the timely preparation and delivery of certificates representing the Undersigned Shares without the restrictive legend above or the withdrawal of any stop transfer instructions by virtue of this Lock-Up Agreement.

This Lock-Up Agreement and any claim, controversy or dispute arising under or related to this Lock-Up Agreement shall be governed by and construed in accordance with the Laws of the state of Delaware, without regard to the conflict of Laws principles thereof.

This Lock-Up Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Lock-Up Agreement (in counterparts or otherwise) by Gem and the undersigned by facsimile or electronic transmission in .pdf format shall be sufficient to bind such parties to the terms and conditions of this Lock-Up Agreement.

*[SIGNATURE PAGE FOLLOWS]*



Very truly yours,

Print Name of Stockholder:

\_\_\_\_\_  
Signature (for individuals):

\_\_\_\_\_  
Signature (for entities):

By:

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

*[Signature Page to Lock-Up Agreement]*

Accepted and Agreed  
by Gemini Therapeutics, Inc.:

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

Name:

Title:

*[Signature Page to Lock-Up Agreement]*

FORM OF CONTINGENT VALUE RIGHTS AGREEMENT

BETWEEN

Gemini Therapeutics, Inc.

and

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

Dated as of [•]

**FORM OF  
CONTINGENT VALUE RIGHTS AGREEMENT**

**THIS CONTINGENT VALUE RIGHTS AGREEMENT** (this "Agreement"), dated as of [•], is entered into by and among Gemini Therapeutics, Inc. a Delaware corporation ("Gem"), [[\_\_\_\_], as Holder's Representative,] and [•], as initial Rights Agent (as defined herein).

**PREAMBLE**

WHEREAS, Gem, Gemstone Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of Gem ("Merger Sub"), and Disc Medicine, Inc., a Delaware corporation (the "Company"), have entered into an Agreement and Plan of Merger and Reorganization, dated as of [•], 2022 (the "Merger Agreement"), pursuant to which Merger Sub will merge with and into the Company (the "Merger"), with the Company surviving the Merger as a wholly-owned subsidiary of Gem (the "Surviving Corporation");

WHEREAS, pursuant to the Merger Agreement, and in accordance with the terms and conditions thereof, Gem has agreed to provide to the Holders (as defined herein), who shall initially be Persons who are stockholders of Gem as of immediately prior to the Effective Time, contingent value rights as hereinafter described, by way of a dividend or distribution consistent with the Merger Agreement; and

WHEREAS, the parties have done all things necessary to make the contingent value rights, when issued pursuant to the Merger Agreement and hereunder, the valid obligations of Gem and to make this Agreement a valid and binding agreement of Gem, in accordance with its terms.

NOW, THEREFORE, in consideration of the premises and the consummation of the transactions referred to above, it is mutually covenanted and agreed, for the proportionate benefit of all Holders, as follows:

**ARTICLE 1  
DEFINITIONS**

Section 1.1 *Definitions.*

Capitalized terms used but not otherwise defined herein have the meanings ascribed thereto in the Merger Agreement. The following terms have the meanings ascribed to them as follows:

"Acting Holders" means, at the time of determination, Holders of at least 25% of the outstanding CVRs as set forth on the CVR Register.

"Assignee" has the meaning set forth in Section 7.5

“Calendar Quarter” means the successive periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 or December 31, for so long as this Agreement is in effect; provided, however that (a) the first Calendar Quarter shall commence on the date of this Agreement and shall end on the first December 31 thereafter, and (b) the last Calendar Quarter shall commence on the first day after the full Calendar Quarter immediately preceding the effective date of the termination or expiration of this Agreement and shall end on the effective date of the termination or expiration of this Agreement.

“CVR” means a contingent contractual right of Holders to receive CVR Payments pursuant to the Merger Agreement and this Agreement.

“CVR Payment” means a number of shares of Gem Common Stock equal to (i) the CVR Proceeds for an applicable Calendar Quarter, divided by (ii) the volume weighted average of their closing market prices for the five (5) trading days ending the day prior to the date of issuance pursuant to this Agreement.

“CVR Period” means the period beginning immediately following the Effective Time and ending on the tenth anniversary of the Closing Date.

“CVR Proceeds” means the amount of Gross Proceeds received by Gem during an applicable Calendar Quarter, less the applicable accrued and reasonably documented Permitted Deductions, in each case as calculated in accordance with GAAP using the policies, methodologies, processes and procedures used to prepare Gem’s most recent year-end financial statements prior to the commencement of such Calendar Quarter.

“CVR Register” has the meaning set forth in Section 2.3(b).

“Disposition” means the sale, license, transfer, disposition or other monetizing event of any Potentially Transferable Asset (including any such sale or disposition or monetizing event of equity securities in any Subsidiary established by Gem during the Disposition Period to hold any right, title or interest in or to any Potentially Transferable Asset), in each case during the Disposition Period.

“Disposition Period” means the period beginning on the execution date of the Merger Agreement and ending on the date that is twelve-months after the Closing Date.

“Gross Proceeds” means, without duplication, any and all consideration of any kind that is paid to Gem, or is received by, Gem or any of its Affiliates during the CVR Period in respect of a Disposition. The value of any securities (whether debt or equity) or other non-cash property constituting Gross Proceeds shall be determined as follows: (A) the value of securities for which there is an established public market shall be equal to the volume weighted average of their closing market prices for the five (5) trading days ending the day prior to the date of payment to, or receipt by, Gem or its relevant Affiliate, and (B) the value of securities that have no established public market and the value of consideration that consists of other non-cash property, shall be the fair market value thereof as of the date of payment to, or receipt by, Gem or its relevant Affiliate.

“Holder” means, at the relevant time, a Person in whose name CVRs are registered in the CVR Register.

“Loss” has the meaning set forth in Section 3.2(g).

“Majority of Holders” means, at any time, the registered Holder or Holders of more than 50% of the total number of CVRs registered at such time, as set forth on the CVR Register.

“Notice” has the meaning set forth in Section 7.1.

“Officer’s Certificate” means a certificate signed by the chief executive officer and the chief financial officer of Gem, in their respective official capacities.

“Permitted Deductions” means the following costs or expenses, without duplication:

(a) any applicable Tax (including any unreimbursed applicable value added or sales taxes) imposed on Gross Proceeds and payable by Gem, the Company or any of their respective Affiliates (regardless of whether the due date for such Taxes arises during or after the Disposition Period) to any tax authority and, without duplication, any income or other similar Taxes payable by Gem, the Company or any of their respective Affiliates that would not have been incurred by Gem, the Company or any of their respective Affiliates but for the Gross Proceeds; provided that, for purposes of calculating income Taxes incurred by Gem, the Company or any of their respective Affiliates in respect of the Gross Proceeds, any such income Taxes shall be computed after taking into account any net operating loss carryforwards or other Tax attributes (including Tax credits) of Gem, the Company or any of their respective Affiliates as of the Closing Date that are available to offset such gain after taking into account any limits of the usability of such attributes, including under Section 382 of the Code (as defined herein) as reasonably determined by a nationally recognized tax advisor (and for the sake of clarity such income taxes shall be calculated without taking into account any net operating losses or other Tax attributes generated by Gem, the Company or any of their respective Affiliates after the Closing Date);

(b) any reasonable and documented out-of-pocket expenses incurred by Gem or any of its Affiliates in respect of its performance of this Agreement following the Closing Date or in respect of its performance of any agreement in connection with any Potentially Transferable Asset, including any costs related to the prosecution, maintenance or enforcement by Gem or any of its Subsidiaries of the intellectual property rights of any such Potentially Transferable Asset (but excluding any costs related to a breach of this Agreement, including costs incurred in litigation in respect of the same);

(c) any reasonable and documented out-of-pocket expenses incurred or accrued by Gem or any of its Affiliates in connection with the negotiation, entry into and closing of any Disposition of any Potentially Transferable Asset, including any brokerage fee, finder’s fee, opinion fee, success fee, transaction fee, service fee or other fee, commission or expense owed to any broker, finder, investment bank, auditor, accountant, counsel, advisor or other third party acting on behalf of Gem or its Affiliates in relation thereto;

(d) any Losses incurred and paid by Gem or any of its Affiliates arising out of any third party claims, demands, actions or other proceedings relating to or in connection with any Disposition, including Losses actually incurred or paid (or reasonably expected to be actually incurred or paid) in connection with indemnification obligations of Gem or any of its Affiliates set forth in any Sale Agreement;

(e) any Liabilities borne by Gem or any of its Affiliates pursuant to Contracts related to Potentially Transferable Assets, including costs arising from the termination thereof (in each case only to the extent not included in the calculation of Gem Net Cash (as defined in the Merger Agreement); and

(f) any Liabilities which Gem reasonably and in good faith determines (with the approval of the Special Committee) should have been, but were not, deducted from "Gem Net Cash" (as defined in the Merger Agreement) pursuant to clause (B) of such definition, in connection with the Closing of the Merger, to the extent that deduction of such Liabilities would have resulted in a change in the Exchange Ratio under the Merger Agreement were such amounts properly deducted (including after giving effect to the Higher Gem Net Cash Amount and the Lower Gem Net Cash Amount);

provided that (a) no Permitted Deductions shall be deducted until the aggregate amount of Permitted Deductions exceeds the CVR Expenditure Amount and (b) no Permitted Deductions shall be deducted if they are otherwise deducted from the calculation of Gem Net Cash (as defined in the Merger Agreement).

"Permitted Transfer" means a Transfer of one or more CVRs (i) upon death of a Holder by will or intestacy; (ii) by instrument to an *inter vivos* or testamentary trust in which the CVRs are to be passed to beneficiaries upon the death of the trustee; (iii) made pursuant to a court order of a court of competent jurisdiction (such as in connection with divorce, bankruptcy or liquidation); (iv) if the Holder is a partnership or limited liability company, a distribution by the transferring partnership or limited liability company to its partners or members, as applicable (v) made by operation of law (including a consolidation or merger) or without consideration in connection with the dissolution, liquidation or termination of any corporation, limited liability company, partnership or other entity; (vi) in the case of CVRs payable to a nominee, from a nominee to a beneficial owner (and, if applicable, through an intermediary) or from such nominee to another nominee for the same beneficial owner, in each case as permitted by The Depository Trust Company ("DTC"); (vii) to Gem or its Affiliates; or (viii) as provided in Section 2.6.

"Person" shall mean any individual, partnership, joint venture, limited liability company, firm, corporation, unincorporated association or organization, trust or other entity, and shall include any successor (by merger or otherwise) of any such Person.

"Potentially Transferrable Asset" means any and all assets, tangible and intangible, including, without limitation, patents, patent applications, know-how, trade secrets and other intellectual property rights, data, documentation, agreements and licenses, inventory related to drug products and raw materials, and biological materials, which Gem or any of its Subsidiaries owned or had rights to, as of immediately prior to the Effective Time.

“Rights Agent” means the Rights Agent named in the first paragraph of this Agreement, until a successor Rights Agent shall have been appointed pursuant to Article 3 of this Agreement, and thereafter “Rights Agent” will mean such successor Rights Agent.

“Sale Agreement” has the meaning set forth in Section 4.2.

“Special Committee” has the meaning set forth in Section 4.2.

“Transfer” means transfer, pledge, hypothecation, encumbrance, assignment or other disposition (whether by sale, merger, consolidation, liquidation, dissolution, dividend, distribution or otherwise), the offer to make such a transfer or other disposition, and each Contract, arrangement or understanding, whether or not in writing, to effect any of the foregoing.

## **ARTICLE 2 CONTINGENT VALUE RIGHTS**

### *Section 2.1 Holders of CVRs; Appointment of Rights Agent.*

(a) The CVRs shall be issued and distributed by Gem in the form of a dividend, in connection with the Merger, to the Persons who as of immediately prior to the Effective Time are stockholders of record of Gem or have the right to receive Gem Common Stock as of immediately prior to the Effective Time, as contemplated by the Merger Agreement.

(b) Gem hereby appoints the Rights Agent to act as rights agent for Gem in accordance with the express terms and conditions set forth in this Agreement, and the Rights Agent hereby accepts such appointment.

### *Section 2.2 Non-transferable.*

A Holder may not at any time Transfer CVRs, other than pursuant to a Permitted Transfer. Any attempted Transfer that is not a Permitted Transfer, in whole or in part, will be void *ab initio* and of no effect. The CVRs will not be listed on any quotation system or traded on any securities exchange.

### *Section 2.3 No Certificate; Registration; Registration of Transfer; Change of Address.*

(a) Holders’ rights and obligations in respect of CVRs derive solely from this Agreement; CVRs will not be evidenced by a certificate or other instrument.



(b) The Rights Agent will maintain an up-to-date register (the “CVR Register”) for the purposes of (i) identifying the Holders of CVRs, (ii) determining Holders’ entitlement to CVRs and (iii) registering the CVRs and Permitted Transfers thereof. The CVR Register will initially show one position for the Rights Agent representing all of the CVRs provided to the holders of shares of Gem Common Stock held immediately prior to Closing. Gem and the Rights Agent may require evidence of payment of a sum sufficient to cover any stamp, documentary, registration, or other tax or governmental charge that is imposed in connection with (and would not have been imposed in connection with (and would have been imposed but for)) any such registration of transfer (or evidence that such taxes and charges are not applicable).

(c) Subject to the restriction on transferability set forth in Section 2.2, every request made to Transfer CVRs must be in writing and accompanied by a written instrument of Transfer reasonably acceptable to the Rights Agent, together with the signature guarantee of a guarantor institution which is a participant in a signature guarantee program approved by the Securities Transfer Association (a “signature guarantee”) and other requested documentation in a form reasonably satisfactory to the Rights Agent, duly executed and properly completed, by the Holder or Holders thereof, or by the duly appointed legal representative, personal representative or survivor of such Holder or Holders, setting forth in reasonable detail the circumstances relating to the Transfer. Upon receipt of such written notice, the Rights Agent will, subject to its reasonable determination in accordance with its own internal procedures, that the Transfer instrument is in proper form and the Transfer, is a Permitted Transfer and otherwise complies on its face with the other terms and conditions of this Agreement, register the Transfer of the applicable CVRs in the CVR Register. All Transfers of CVRs registered in the CVR Register will be the valid obligations of Gem, evidencing the same right, and entitling the transferee to the same benefits and rights under this Agreement, as those held by the transferor. No transfer of CVRs shall be valid until registered in the CVR Register and any transfer not duly registered in the CVR Register shall be void. Gem shall not be responsible for any costs and expenses related to any transfer or assignment of the CVRs (including the cost of any transfer tax).

(d) A Holder may make a written request to the Rights Agent to change such Holder’s address of record in the CVR Register. Such written request must be duly executed by such Holder. Upon receipt of such written notice, the Rights Agent shall promptly record the change of address in the CVR Register.

#### *Section 2.4 Payment Procedures.*

(a) No later than forty-five (45) days following the end of each Calendar Quarter following the Closing, Gem shall (i) deliver to the Rights Agent, a certificate (each, a “CVR Certificate”) certifying to and specifying in reasonable detail, for such Calendar Quarter, the aggregate amount of (A) the CVR Proceeds received by Gem or its Affiliates during such fiscal quarter (or, in the case of the first delivery of a CVR Certificate hereunder, all CVR Proceeds received through the end of such Calendar Quarter); (B) the Permitted Deductions reflected in such CVR Proceeds; and (C) the CVR Payment payable to Holders, if any, in respect of such CVR Proceeds and (ii) deliver to the Rights Agent, or as the Rights Agent directs, the aggregate CVR Payment (if any). With respect to each Holder, the Rights Agent shall deliver, or cause to be delivered, a number of shares equal to the product determined by multiplying (i) the quotient determined by dividing (A) the number of shares representing the aggregate CVR Payment by (B) the total number of CVRs registered in the CVR Register at such time, by

(ii) the number of CVRs registered to such Holder in the CVR Register at such time. For the avoidance of doubt Gem shall have no further liability in respect of the relevant CVR Payment upon delivery of such CVR Payment in accordance with this Section 2.4(a) and the satisfaction of each of Gem's obligations set forth in this Section 2.4(a).

(b) The parties hereto agree to treat the distribution of the CVRs as constituting a nontaxable stock distribution under Section 305 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**") and the receipt of CVR Payments as a nontaxable exercise of the right to receive stock under the CVRs. The parties hereto will not take any position to the contrary on any Tax Return or for other Tax purposes except as required by a change in or clarification to applicable Law after the date hereof.

(c) Gem and the Rights Agent will be entitled to deduct and withhold, or cause to be deducted and withheld, from any CVR Payment otherwise payable pursuant to this Agreement, such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of applicable Law relating to Taxes. To the extent that amounts are so deducted and withheld, such deducted and withheld amounts will be treated for all purposes of this Agreement as having been paid to the Holder in respect of which such deduction and withholding was made. The Rights Agent shall request from each Holder an IRS Form W-9 or applicable IRS Form W-8 at such time or times as is necessary to permit any payment under this Agreement to be made without U.S. federal backup withholding. Prior to making any such Tax deductions or withholdings or causing any such Tax deductions or withholdings to be made with respect to any Holder, the Rights Agent will, to the extent reasonably practicable, provide notice to the Holder of such potential Tax deduction or withholding and a reasonable opportunity for the Holder to provide any necessary Tax forms in order to avoid or reduce such withholding amounts; *provided* that the time period for payment of a CVR Payment by the Rights Agent set forth in Section 2.4(a) will be extended by a period equal to any delay caused by the Holder providing such forms, *provided, further*, that in no event shall such period be extended for more than ten (10) Business Days, unless otherwise requested by the Holder for the purpose of delivering such forms and agreed to by the Rights Agent.

(d) Any portion of a CVR Payment that remains undistributed to the Holders six (6) months after the end of the applicable Calendar Quarter (including by means of invalid addresses on the CVR Register) will be delivered by the Rights Agent to Gem or a person nominated in writing by Gem (with written notice thereof from Gem to the Rights Agent), and any Holder will thereafter look only to Gem for payment of such CVR Payment (which shall be without interest).

*Section 2.5 No Voting, Dividends or Interest.*

(a) CVRs will not have any voting or dividend rights, and interest will not accrue on any amounts payable in respect of CVRs.

(b) CVRs will not represent any equity or ownership interests in Gem or any of its Subsidiaries or in the Surviving Corporation. The sole right of the Holders to receive property hereunder is the right to receive CVR Payments, if any, in accordance with the terms hereof. It is hereby acknowledged and agreed that a CVR shall not constitute a security of Gem or any of its Subsidiaries or of the Surviving Corporation.

(c) By voting in favor of the adoption of the Merger Agreement, the approval of the principal terms of the Merger, and the consummation of the Merger or participating in the Merger and receiving the benefits thereof, including the right to receive CVRs and any consideration payable in connection with the CVRs, each Holder hereby acknowledges and agrees that the CVRs and the possibility of any payment hereunder with respect thereto are highly speculative and subject to numerous factors outside of Gem's control, and there is no assurance that Holders will receive any payments under this Agreement or in connection with the CVRs. Each Holder acknowledges that it is highly possible that no Disposition will occur prior to the expiration of the Disposition Period and that there will not be any Gross Proceeds that may be the subject of a CVR Payment. It is further acknowledged and agreed that neither Gem nor its Affiliates owe, by virtue of their obligations under this Agreement, a fiduciary duty or any implied duties to the Holders and the parties hereto intend solely the express provisions of this Agreement to govern their contractual relationship with respect to the CVRs. It is acknowledged and agreed that this Section 2.5(b) is an essential and material term of this Agreement.

*Section 2.6 Ability to Abandon CVR.*

A Holder may at any time, at such Holder's option, abandon all of such Holder's remaining rights represented by CVRs by transferring such CVR to Gem or a person nominated in writing by Gem (with written notice thereof from Gem to the Rights Agent) without consideration in compensation therefor, and such rights will be cancelled, with the Rights Agent being promptly notified in writing by Gem of such transfer and cancellation. Nothing in this Agreement is intended to prohibit Gem or its Affiliates from offering to acquire or acquiring CVRs, in private transactions or otherwise, for consideration in its sole discretion.

**ARTICLE 3  
THE RIGHTS AGENT**

*Section 3.1 Certain Duties and Responsibilities.*

(a) The Rights Agent will not have any liability for any actions taken or not taken in connection with this Agreement, except to the extent such liability arises as a result of the willful misconduct, bad faith or gross negligence of the Rights Agent (in each case as determined by a final non-appealable judgment of court of competent jurisdiction). Notwithstanding anything in this Agreement to the contrary, any liability of the Rights Agent under this Agreement will be limited to the amount of annual fees paid by Gem to the Rights Agent during the twelve (12) months immediately preceding the event for which recovery from the Rights Agent is being sought. Anything to the contrary notwithstanding, in no event will the Rights Agent be liable for special, punitive, indirect, incidental or consequential loss or damages of any kind whatsoever (including, without limitation, lost profits), even if the Rights Agent has been advised of the likelihood of such loss or damages, and regardless of the form of action.

(b) The Rights Agent shall not have any duty or responsibility in the case of the receipt of any written demand from any Holder with respect to any action or default by any person or entity, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or to make any demand upon Gem or the Company. The Rights Agent may (but shall not be required to) enforce all rights of action under this Agreement and any related claim, action, suit, audit, investigation or proceeding instituted by the Rights Agent may be brought in its name as the Rights Agent and any recovery in connection therewith will be for the proportionate benefit of all the Holders, as their respective rights or interests may appear on the CVR Register.

Section 3.2 *Certain Rights of Rights Agent.*

(a) The Rights Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants or obligations will be read into this Agreement against the Rights Agent.

(b) The Rights Agent may rely and will be protected by Gem in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it in the absence of bad faith to be genuine and to have been signed or presented by or on behalf of Gem.

(c) Whenever the Rights Agent deems it desirable that a matter be proved or established prior to taking or omitting any action hereunder, the Rights Agent may (i) rely upon an Officer's Certificate and (ii) incur no liability and be held harmless by Gem for or in respect of any action taken or omitted to be taken by it under the provisions of this Agreement in reliance upon such Officer's Certificate.

(d) The Rights Agent may engage and consult with counsel of its selection, and the advice or opinion of such counsel will, in the absence of bad faith, gross negligence or willful misconduct (in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction) on the part of the Rights Agent, be full and complete authorization and protection in respect of any action taken or not taken by the Rights Agent in reliance thereon.

(e) Any permissive rights of the Rights Agent hereunder will not be construed as a duty.

(f) The Rights Agent will not be required to give any note or surety in respect of the execution of its powers or otherwise under this Agreement.

(g) Gem agrees to indemnify the Rights Agent for, and to hold the Rights Agent harmless from and against, any loss, liability, damage, judgment, fine, penalty, cost or expense (each, a "Loss") suffered or incurred by the Rights Agent and arising out of or in connection with the Rights Agent's performance of its obligations under this Agreement, including the reasonable and documented costs and expenses of defending the Rights Agent against any claims, charges, demands, actions or suits arising out of or in connection with the execution, acceptance, administration, exercise and performance of its duties

under this Agreement, including the costs and expenses of defending against any claim of liability arising therefrom, directly or indirectly, or enforcing its rights hereunder, except to the extent such Loss has been determined by a final non-appealable decision of a court of competent jurisdiction to have resulted from the Rights Agent's gross negligence, bad faith or willful misconduct.

(h) In addition to the indemnification provided under Section 3.2(g), Gem agrees (i) to pay the fees of the Rights Agent in connection with the Rights Agent's performance of its obligations hereunder, as agreed upon in writing by the Rights Agent and Gem on or prior to the date of this Agreement, and (ii) to reimburse the Rights Agent for all reasonable and documented out-of-pocket expenses and other disbursements incurred in the preparation, delivery, negotiation, amendment, administration and execution of this Agreement and the exercise and performance of its duties hereunder, including all Taxes (other than income, receipt, franchise or similar Taxes) and governmental charges, incurred by the Rights Agent in the performance of its obligations under this Agreement, except that Gem will have no obligation to pay the fees of the Rights Agent or reimburse the Rights Agent for the fees of counsel in connection with any lawsuit initiated by the Rights Agent on behalf of itself or the Holders, except in the case of any suit enforcing the provisions of Section 2.4(a), Section 2.4(b) or Section 3.2(g), if Gem is found by a court of competent jurisdiction to be liable to the Rights Agent or the Holders, as applicable in such suit.

(i) No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it believes that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

(j) The Rights Agent will not be deemed to have knowledge of any event of which it was supposed to receive notice hereunder but has not received written notice of such event, and the Rights Agent will not incur any liability for failing to take action in connection therewith, in each case, unless and until it has received such notice in writing.

(k) The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorney or agents and the Rights Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorney or agents or for any loss to Gem or the Company resulting from any such act, default, neglect or misconduct, absent gross negligence, bad faith or willful misconduct (each as determined by a final non-appealable judgment of a court of competent jurisdiction) in the selection and continued employment thereof.

(l) Gem shall perform, acknowledge and deliver or cause to be performed, acknowledged and delivered all such further and other acts, documents, instruments and assurances as may be reasonably required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

(m) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by Gem only.

(n) The Rights Agent shall act hereunder solely as agent for Gem and shall not assume any obligations or relationship of agency or trust with any of the owners or holders of the CVRs. The Rights Agent shall not have any duty or responsibility in the case of the receipt of any written demand from any Holders with respect to any action or default by Gem, including, without limiting the generality of the foregoing, any duty or responsibility to initiate or attempt to initiate any proceedings at law or otherwise or to make any demand upon Gem.

(o) The Rights Agent may rely on and be fully authorized and protected in acting or failing to act upon (a) any guaranty of signature by an “eligible guarantor institution” that is a member or participant in the Securities Transfer Agents Medallion Program or other comparable “signature guarantee program” or insurance program in addition to, or in substitution for, the foregoing; or (b) any law, act, regulation or any interpretation of the same even though such law, act, or regulation may thereafter have been altered, changed, amended or repealed.

(p) The Rights Agent shall not be liable or responsible for any failure of Gem to comply with any of its obligations relating to any registration statement filed with the Securities and Exchange Commission or this Agreement, including without limitation obligations under applicable regulation or law.

(q) The obligations of Gem and the rights of the Rights Agent under this Section 3.2, Section 3.1 and Section 2.4 shall survive the expiration of the CVRs and the termination of this Agreement and the resignation, replacement or removal of the Rights Agent.

*Section 3.3 Resignation and Removal; Appointment of Successor.*

(a) The Rights Agent may resign at any time by written notice to Gem. Any such resignation notice shall specify the date on which such resignation will take effect (which shall be at least thirty (30) days following the date that such resignation notice is delivered), and such resignation will be effective on the earlier of (x) the date so specified and (y) the appointment of a successor Rights Agent.

(b) Gem will have the right to remove the Rights Agent at any time by written notice to the Rights Agent, specifying the date on which such removal will take effect. Such notice will be given at least thirty (30) days prior to the date so specified (or, if earlier, the appointment of the successor Rights Agent).

(c) If the Rights Agent resigns, is removed or becomes incapable of acting, Gem will promptly appoint a qualified successor Rights Agent. Notwithstanding the foregoing, if Gem fails to make such appointment within a period of thirty (30) days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent, then the incumbent Rights Agent may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. The successor Rights Agent so appointed will, upon its acceptance of such appointment in accordance with this Section 3.3(c) and Section 3.4, become the Rights Agent for all purposes hereunder.

(d) Gem will give notice to the Holders of each resignation or removal of the Rights Agent and each appointment of a successor Rights Agent in accordance with Section 7.2. Each notice will include the name and address of the successor Rights Agent. If Gem fails to send such notice within ten (10) Business Days after acceptance of appointment by a successor Rights Agent, the successor Rights Agent will cause the notice to be mailed at the expense of Gem.

(e) Notwithstanding anything to the contrary in this Section 3.3, unless consented to in writing by the Acting Holders, Gem will not appoint as a successor Rights Agent any Person that is not a stock transfer agent of national reputation or the corporate trust department of a commercial bank.

(f) The Rights Agent will reasonably cooperate with Gem and any successor Rights Agent in connection with the transition of the duties and responsibilities of the Rights Agent to the successor Rights Agent, including the transfer of all relevant data, including the CVR Register, to the successor Rights Agent, but such predecessor Rights Agent shall not be required to make any additional expenditure or assume any additional liability in connection with the foregoing.

*Section 3.4 Acceptance of Appointment by Successor.*

Every successor Rights Agent appointed hereunder will, at or prior to such appointment, execute, acknowledge and deliver to Gem and to the resigning or removed Rights Agent an instrument accepting such appointment and a counterpart of this Agreement, and such successor Rights Agent, without any further act, deed or conveyance, will become vested with all the rights, powers, trusts and duties of the Rights Agent; *provided* that upon the request of Gem or the successor Rights Agent, such resigning or removed Rights Agent will execute and deliver an instrument transferring to such successor Rights Agent all the rights, powers and trusts of such resigning or removed Rights Agent.

**ARTICLE 4  
COVENANTS**

*Section 4.1 List of Holders.*

Gem will furnish or cause to be furnished to the Rights Agent, in such form as Gem receives from Gem's transfer agent (or other agent performing similar services for Gem), the names and addresses of the Holders within fifteen (15) Business Days following the Closing Date.

(a) The Gem Board has delegated, to a special committee of the Gem Board comprised exclusively of [•]<sup>1</sup> (the “Special Committee”) the sole responsibility, authority and discretion during the Disposition Period with respect to (i) managing the Potentially Transferable Assets, and (ii) conducting any sale or transfer process (including engagement of advisors) with respect to a Disposition during the Disposition Period. The Special Committee shall also be empowered with the authority to authorize and direct any officer of Gem to negotiate, execute and deliver a definitive written agreement with respect to a Disposition (a “Sale Agreement”) in the name and on behalf of Gem, as well as to identify and retain advisers and consultants.

(b) The delegation of responsibility and authority to the Special Committee set forth in Section 4.2(a) shall not be revoked or modified at any time during the Disposition Period. The Special Committee and the Gem Board shall not have any liability to the Holders for any actions taken or not taken in connection with the matters set forth herein. No provision of this Agreement shall require the Special Committee or any members thereof to expend or risk its, his or her own funds or otherwise incur any financial liability in the performance of any duties hereunder or in the exercise of any rights or powers.

(c) The Holders shall be intended third-party beneficiaries of the provisions of this Agreement and shall be entitled to specifically enforce the terms hereof; provided, that under no circumstances shall the rights of Holders as third-party beneficiaries pursuant to this Section 4 be enforceable by such Holders or any other Person acting for or on their behalf other than the Special Committee. The Special Committee has the sole power and authority to act on behalf of the Holders in enforcing any of their rights hereunder.

(d) During the Disposition Period, Gem will, and will cause its Subsidiaries to, use commercially reasonable efforts (i) to utilize the CVR Expenditure Amount to maintain the Potentially Transferable Assets unless otherwise approved by the Special Committee, and (ii) effectuate a Disposition of the Potentially Transferable Assets, at the direction of the Special Committee, including the negotiation and execution of a Sale Agreement and completion of the transactions contemplated thereby. Further, Gem will not take any actions for the primary purpose of frustrating the payment of CVR Proceeds.

(e) Subject to the foregoing clause (d), (i) the Holders acknowledge that Gem has a fiduciary obligation to operate its business in the best interests of its stockholders, and any potential obligation to pay CVR Proceeds will not create any express or implied obligation to operate its business in any particular manner in order to maximize such CVR Proceeds, (ii) except as expressly set forth in this Agreement, the Holders are not relying on any representation of Gem or any other Person with regard to any Disposition or other action involving the Potentially Transferable Assets following the Closing, and neither Gem nor any other Person has provided, or can provide, any assurance to the Holders that any CVR Proceeds will in fact be earned and paid, and (iii) none of Gem or any of its Subsidiaries, officers or directors shall have any obligation or liability whatsoever to any Person relating to or in connection with any action,

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<sup>1</sup> Note to Draft: To be comprised of the independent continuing director(s) of Gem.



or failure to act, with respect to the sale of Potentially Transferable Assets. Gem and its Affiliates will not be required to expend any out-of-pocket amounts in excess of the CVR Expenditure Amount during the Disposition Period, but, for clarity, any amounts which are or will become payable upon consummation of the Disposition and/or the payment of CVR Proceeds and which constitute Permitted Deductions shall be disregarded for purposes of the first clause of this sentence.

(f) Following the Disposition Period, Gem shall be permitted to take any action in respect of the Potentially Transferable Assets in order to satisfy any wind-down and termination Liabilities of the Potentially Transferable Assets.

*Section 4.3 Prohibited Actions.* Unless approved by written consent or resolution by the Special Committee, prior to the end of the Disposition Period, (a) Gem shall not grant any lien, security interest, pledge or similar interest in, or otherwise sell or Transfer, any Potentially Transferable Assets or any CVR Proceeds, and (b) Gem shall not, and shall not permit its Affiliates to, grant, assign, transfer or otherwise convey any Potentially Transferable Assets (including any option to obtain rights) to any third party.

*Section 4.4 Books and Records.* Until the end of the CVR Period, Gem shall, and shall cause its Affiliates to, keep true, complete and accurate records in sufficient detail to support the applicable CVR Payments payable hereunder in accordance with the terms specified in this Agreement.

*Section 4.5 Audits.* Gem agrees to maintain, for at least two years after the last possible CVR Payment, all books and records relevant to the calculation of the Permitted Deductions. Subject to reasonable advance written notice from the Acting Holders and prior execution and delivery by it and an independent accounting firm of national reputation chosen by the Acting Holders (the "Accountant") of a reasonable and customary confidentiality/nonuse agreement, which confidentiality/nonuse agreement shall not prohibit the Acting Holders from communicating any such information with the Holders who have a need to know such information, provided that any such recipients are subject to confidentiality obligations with respect thereto, Gem shall permit the Acting Holders and the Accountant, acting as agent of the Acting Holders, to have access during normal business hours to the books and records of Gem as may be reasonably necessary to audit the calculation of the CVR Payment and the Permitted Deductions. Notwithstanding anything in this Agreement to the contrary, in no event shall Gem be required to provide any tax returns or any other tax information it deems confidential to the Acting Holders or any other party pursuant to this Agreement.

## **ARTICLE 5 AMENDMENTS**

### *Section 5.1 Amendments Without Consent of Holders or Rights Agent.*

(a) Gem, at any time and from time to time, may (without the consent of any Person, other than the Rights Agent, with such consent not to be unreasonably withheld, conditioned or delayed) enter into one or more amendments to this Agreement for any of the following purposes, without the consent of any of the Holders,

(i) to evidence the appointment of another Person as a successor Rights Agent and the assumption by any successor Rights Agent of the covenants and obligations of the Rights Agent herein in accordance with the provisions hereof;

(ii) subject to Section 6.1, to evidence the succession of another person to Gem and the assumption of any such successor of the covenants of Gem outlined herein in a transaction contemplated by Section 6.1;

(iii) as may be necessary or appropriate to ensure that CVRs are not subject to registration under the U.S. Securities Act of 1933, as amended, or the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations made thereunder, or any applicable state securities or “blue sky” laws;

(iv) as may be necessary or appropriate to ensure that Gem is not required to produce a prospectus or an admission document in order to comply with applicable Law;

(v) to cancel CVRs (i) in the event that any Holder has abandoned its rights in accordance with Section 2.6, or (ii) following a transfer of such CVRs to Gem or its Affiliates in accordance with Section 2.2 or Section 2.3; or

(vi) as may be necessary or appropriate to ensure that Gem complies with applicable Law.

(b) Promptly after the execution by Gem of any amendment pursuant to this Section 5.1, Gem will (or will cause the Rights Agent to) notify the Holders in general terms of the substance of such amendment in accordance with Section 7.2.

#### *Section 5.2 Effect of Amendments.*

Upon the execution of any amendment under this Article 5, this Agreement will be modified in accordance therewith, such amendment will form a part of this Agreement for all purposes and every Holder will be bound thereby. Upon the delivery of a certificate from an appropriate officer of Gem which states that the proposed supplement or amendment is in compliance with the terms of this Section 5, the Rights Agent shall execute such supplement or amendment. Notwithstanding anything in this Agreement to the contrary, the Rights Agent shall not be required to execute any supplement or amendment to this Agreement that it has determined would adversely affect its own rights, duties, obligations or immunities under this Agreement. No supplement or amendment to this Agreement shall be effective unless duly executed by the Rights Agent.

**ARTICLE 6**  
**CONSOLIDATION, MERGER, SALE OR CONVEYANCE**

Section 6.1 *Gem May Not Consolidate, Etc.* Gem shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person or transfer all or substantially all of its business to any Person, unless:

(a) the Person formed by such consolidation or into which Gem is merged, the Person that acquires the properties and assets of Gem substantially as an entirety or the Person that acquires by conveyance or transfer, or that leases, the Gem substantially as an entirety (the "Surviving Person") shall expressly assume payment of amounts on all CVRs and the performance of every duty and covenant of this Agreement on the part of Gem to be performed or observed; and

(b) Gem has delivered to the Rights Agent an Officer's Certificate, stating that such consolidation, merger, conveyance, transfer or lease complies with this Article 6 and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 6.2 *Successor Substituted.*

Upon any consolidation of or merger by Gem with or into any other Person, or any conveyance, transfer or lease of the properties and assets substantially as an entirety to any Person in accordance with Section 6.1, the Surviving Person shall succeed to, and be substituted for, and may exercise every right and power of, and shall assume all of the obligations of Gem under this Agreement with the same effect as if the Surviving Person had been named as Gem herein.

**ARTICLE 7**  
**MISCELLANEOUS**

Section 7.1 *Notices to Rights Agent and to Gem.*

All notices, requests and other communications (each, a "Notice") to any party hereunder shall be in writing. Such Notice shall be deemed given (a) on the date of delivery, if delivered in person, by Fedex or other internationally recognized overnight courier service or, (except with respect to any Person other than the Rights Agent), by e-mail (upon confirmation of receipt) prior to 5:00 p.m. in the time zone of the receiving party or on the next Business Day, if delivered after 5:00 p.m. in the time zone of the receiving party or (b) on the first Business Day following the date of dispatch, if delivered by FedEx or by other internationally recognized overnight courier service (upon proof of delivery), addressed as follows:

if to the Rights Agent, to:

[•]

if to Gem, to:

[•]  
Email: [•]  
with a copy, which shall not constitute notice, to:  
[•]  
Attention: [•]  
Email: [•]

or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto.

*Section 7.2 Notice to Holders.*

All Notices required to be given to the Holders will be given (unless otherwise herein expressly provided) in writing and mailed, first-class postage prepaid, to each Holder at such Holder's address as set forth in the CVR Register, not later than the latest date, and not earlier than the earliest date, prescribed for the sending of such Notice, if any, and will be deemed given on the date of mailing. In any case where notice to the Holders is given by mail, neither the failure to mail such Notice, nor any defect in any Notice so mailed, to any particular Holder will affect the sufficiency of such Notice with respect to other Holders.

*Section 7.3 Entire Agreement.*

As between Gem and the Rights Agent, this Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, notwithstanding the reference to any other agreement herein, and supersedes all prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter of this Agreement.

*Section 7.4 Merger or Consolidation or Change of Name of Rights Agent.*

Any Person into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or Person resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any Person succeeding to the stock transfer or other shareholder services business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such Person would be eligible for appointment as a successor Rights Agent under the provisions of Section 3.3. The purchase of the Rights Agent's assets employed in the performance of transfer agent activities shall be deemed a merger or consolidation for purposes of this Section 7.4.

*Section 7.5 Successors and Assigns.*

This Agreement will be binding upon, and will be enforceable by and inure solely to the benefit of, the Holders, Gem and the Rights Agent and their respective successors and assigns. Except for assignments pursuant to Section 7.4, the Rights Agent may not assign this Agreement without Gem's prior written consent. Gem or an Assignee may not otherwise assign this Agreement without the prior consent of the Majority of Holders. Any attempted assignment of this Agreement in violation of this Section 7.5 will be void *ab initio* and of no effect.

Section 7.6 *Benefits of Agreement; Action by Acting Holders.*

Nothing in this Agreement, express or implied, will give to any Person (other than Gem, the Rights Agent, the Holders and their respective permitted successors and assigns hereunder) any benefit or any legal or equitable right, remedy or claim under this Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of Gem, the Rights Agent, the Holders and their permitted successors and assigns. The Holders will have no rights hereunder except as are expressly set forth herein. Except for the rights of the Rights Agent set forth herein, the Acting Holders and/or Acting Holders, in accordance with this agreement and as the case may be, will have the sole right, on behalf of all Holders, by virtue of or under any provision of this Agreement, to institute any action or proceeding at law or in equity with respect to this Agreement, and no individual Holder or other group of Holders will be entitled to exercise such rights.

Section 7.7 *Governing Law.*

This Agreement and the CVRs will be governed by, and construed in accordance with, the laws of the State of Delaware without regard to the conflicts of law rules of such state.

Section 7.8 *Jurisdiction.*

In any action or proceeding between any of the parties hereto arising out of or relating to this Agreement or any of the transactions contemplated hereby, each of the parties hereto: (a) irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Chancery Court of the State of Delaware, County of New Castle, or, if under applicable Law exclusive jurisdiction is vested in the Federal courts, the United States District Court for the District of Delaware (and appellate courts thereof); (b) agrees that all claims in respect of such action or proceeding shall be heard and determined exclusively in accordance with clause (a) of this Section 7.8; (c) waives any objection to laying venue in any such action or proceeding in such courts; (d) waives any objection that such courts are an inconvenient forum or do not have jurisdiction over any Party; and (e) agrees that service of process upon such Party in any such action or proceeding shall be effective if notice is given in accordance with Section 7.1 or Section 7.2 of this Agreement.

Section 7.9 *WAIVER OF JURY TRIAL.*

**EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY**

**WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATION OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.9.**

Section 7.10 *Severability Clause*.

In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, is for any reason determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, will not be impaired or otherwise affected and will continue to be valid and enforceable to the fullest extent permitted by applicable Law. Upon such a determination, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible; provided, however, that if an excluded provision shall affect the rights, immunities, liabilities, duties or obligations of the Rights Agent, the Rights Agent shall be entitled to resign immediately upon written notice to Gem.

Section 7.11 *Counterparts; Effectiveness*.

This Agreement may be signed in any number of counterparts, each of which will be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original. This Agreement will become effective when each party hereto will have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement will have no effect and no party will have any right or obligation hereunder (whether by virtue of any oral or written agreement or any other communication).

Section 7.12 *Termination*.

This Agreement will automatically terminate and be of no further force or effect and, except as provided in Section 3.2, the parties hereto will have no further liability hereunder, and the CVRs will expire without any consideration or compensation therefor, upon the expiration of the CVR Period. The termination of this Agreement will not affect or limit the right of Holders to receive the CVR Payments under Section 2.4 to the extent earned prior to the termination of this Agreement, and the provisions applicable thereto will survive the expiration or termination of this Agreement.

Section 7.13 *Force Majeure*.

Notwithstanding anything to the contrary contained herein, none of the Rights Agent, Gem or any of its Subsidiaries (except as it relates to the obligations of the Company under Article 3) will be liable for any delays or failures in performance resulting from acts beyond its reasonable control including acts of God, pandemics (including COVID-19), terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunctions of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war or civil unrest.

Section 7.14 *Construction*.

(a) For purposes of this Agreement, whenever the context requires: singular terms will include the plural, and vice versa; the masculine gender will include the feminine and neuter genders; the feminine gender will include the masculine and neuter genders; and the neuter gender will include the masculine and feminine genders.

(b) As used in this Agreement, the words “include” and “including,” and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words “without limitation.”

(c) The headings contained in this Agreement are for convenience of reference only, will not be deemed to be a part of this Agreement and will not be referred to in connection with the construction or interpretation of this Agreement.

(d) Any reference in this Agreement to a date or time shall be deemed to be such date or time in New York City, United States, unless otherwise specified. The parties hereto and Gem have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and Gem and no presumption or burden of proof shall arise favoring or disfavoring any Person by virtue of the authorship of any provision of this Agreement.

(e) All references herein to “\$” are to United States Dollars.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed as of the day and year first above written.

Gemini Therapeutics, Inc.

By:  
Name:  
Title:

[AGENT]

By:  
Name:  
Title:



## Gemini Therapeutics and Disc Medicine Announce Merger Agreement

- *Merger to create NASDAQ-listed, clinical-stage biopharmaceutical company focused on advancing Disc Medicine's portfolio of hematology programs*
- *Combined company is expected to have approximately \$175 million of cash or cash equivalents at close, including approximately \$53.5 million from a concurrent financing restricted to Disc's existing investors, and which is expected to provide funding into 2025*
- *Transaction will fund multiple clinical studies, including clinical trials of bitopertin for erythropoietic porphyrias, DISC-0974 for anemia of myelofibrosis, and DISC-0974 for anemia of chronic kidney disease*
- *Companies will host a joint webcast today, August 10, 2022 at 8:00 a.m. Eastern Time*

WAYLAND, Mass. and WATERTOWN, Mass. (August 10, 2022) – Gemini Therapeutics, Inc. (Nasdaq: GMTX) (“Gemini”) and Disc Medicine, Inc. (“Disc”), a privately-held, clinical-stage biopharmaceutical company focused on the discovery and development of novel treatments for patients suffering from serious hematologic diseases, announced today that they have entered into a definitive merger agreement to combine the companies in an all-stock transaction. The combined company will focus on advancing Disc’s pipeline of hematology programs, including multiple patient studies for its clinical-stage programs bitopertin and DISC-0974. Upon shareholder approval, the combined company is expected to operate under the name Disc Medicine, Inc. and trade on the Nasdaq Global Market under the ticker symbol IRON.

In support of the merger, Disc has secured commitments from a syndicate of healthcare investors led by Access Biotechnology and including OrbiMed, Atlas Venture, 5AM Ventures, Novo Holdings A/S, Arix Bioscience, Rock Springs Capital, and Janus Henderson Investors, for a \$53.5 million financing that is expected to close concurrent with the completion of the merger. With the cash expected from both companies at closing and the proceeds of the concurrent financing, the combined company is currently expected to have approximately \$175 million of cash or cash equivalents. The cash resources will be used to advance Disc’s pipeline through multiple clinical studies and provide runway into 2025. The merger and related financing are expected to close in the fourth quarter of 2022.

“I’m delighted to announce this merger with Gemini, which comes at a pivotal moment for our company. In the last few months, we have initiated clinical studies in patients for both bitopertin and DISC-0974 and presented first-in-human data from DISC-0974, our hepcidin suppression program, establishing clinical proof-of-mechanism,” said John Quisel, J.D., Ph.D., Chief Executive Officer and President of Disc Medicine. “This transaction will provide us with tremendous financial strength, propel several programs through a series of data catalysts and enable us to explore the full potential of our pipeline.”

“Gemini’s strategic review was a thorough and thoughtful process,” said Georges Gemayel, Ph.D., Executive Chair and interim President and Chief Executive Officer of Gemini. “We believe that this transaction presents an exciting opportunity for our shareholders, as Disc has built a diversified, clinical-stage pipeline of product candidates, and we believe in the ability of Disc’s experienced management team to lead the combined company. We look forward to its continued success.”

#### About Disc Medicine’s Hematology Portfolio

Disc has a clinical-stage development pipeline composed of investigational product candidates that affect heme biosynthesis and iron metabolism. Disc’s programs are designed to target pathways with established, clinically-validated biology and have the potential to address multiple indications. This includes:

*Bitopertin (Heme Synthesis Modulator)*: Bitopertin is an inhibitor of glycine transporter, GlyT1, and has demonstrated effects on heme biosynthesis in clinical studies. Bitopertin was in-licensed by Disc from Roche in 2021 and has been extensively studied, including a safety data package reflecting clinical experience in over 4,000 individuals. Inhibition of heme biosynthesis has the potential to address a wide range of hematologic disorders. Disc has initiated BEACON, an open-label, phase 2 trial of bitopertin in patients with erythropoietic porphyria, a rare, debilitating and potentially fatal genetic disorder that results in dysregulated heme biosynthesis and where bitopertin has the potential to become the first disease-modifying treatment. Additional clinical studies in Diamond-Blackfan Anemia (DBA) and other indications are being planned.

*DISC-0974 (Hepcidin Suppression)*: DISC-0974 is a monoclonal antibody targeting a co-receptor called hemojuvelin (HJV) and is designed to suppress hepcidin production and increase serum iron levels in patients suffering from the anemia of inflammation. DISC-0974 was in-licensed by Disc from AbbVie in 2019. Anemia of inflammation arises from abnormally elevated hepcidin and is the most common form of anemia, affecting millions of patients across numerous diseases such as chronic kidney disease, myelofibrosis, cancer, autoimmune diseases, and other conditions with an inflammatory component. Disc has established clinical proof-of-mechanism of DISC-0974 in a phase 1 study of healthy volunteers and initiated a phase 1b/2 clinical study of DISC-0974 in patients with anemia of myelofibrosis. Disc plans to initiate a phase 1b/2 clinical study of DISC-0974 in patients with anemia of chronic kidney disease (non-dialysis) in late 2022.

*Matriptase-2 Inhibitor (Hepcidin Induction)*: Disc has a research program designed to identify orally-available, small molecules to inhibit Matriptase-2 (referred to as Mat-2 or TMPRSS6) and increase the production of hepcidin and restrict iron availability. The therapeutic role of hepcidin has been established in patients with polycythemia vera and hereditary hemochromatosis, and is being studied for the treatment of diseases associated with iron overload, including beta-thalassemia, myelodysplastic syndromes, and sickle cell disease.

#### About the Proposed Transaction, Management and Organization

Pre-merger Gemini shareholders are expected to own approximately 28% of the combined company and pre-merger Disc shareholders are expected to own approximately 72% of the combined company, in each case before giving effect to the concurrent financing. The percentage of the combined company that Gemini's shareholders will own as of the close of the transaction is subject to adjustment based on the amount of Gemini's net cash at the closing date. Immediately prior to the closing of the proposed merger, Gemini stockholders will be issued contingent value rights representing the right to receive certain payments from proceeds received by the combined company, if any, related to pre-transaction legacy assets during the period ending one year following the closing of the merger.

Following the merger, the combined company will be led by John Quisel, J.D., Ph.D., the current CEO and President of Disc Medicine, and other members of the Disc management team. Gemini Therapeutics, Inc. will be renamed "Disc Medicine, Inc." and the corporate headquarters will be located in Watertown, MA. The merger agreement provides that the Board of Directors of the combined company will be composed of nine members, including eight Disc board members and one from Gemini. The transaction has been unanimously approved by the Board of Directors of both companies and is expected to close in the fourth quarter of 2022, subject to customary closing conditions, including, the approvals by the stockholders of each company and other customary closing conditions.

SVB Securities is serving as the exclusive financial advisor and Wilmer Cutler Pickering Hale and Dorr LLP is serving as legal counsel to Gemini. Morgan Stanley is serving as the lead financial advisor to Disc Medicine along with Wedbush PacGrow, and Goodwin Procter LLP is serving as legal counsel to Disc Medicine.

#### Webcast Presentation

The companies will host a webcast presentation to discuss the proposed transaction as well as Disc's platform and pipeline assets today, August 10, 2022, at 8:00 a.m. ET. The live webcast can be accessed on the Events & Presentations page of Gemini's website or by dialing 1-(888) 660-6186 or 1-(929) 203-0798 internationally and referencing conference ID number 6678391. A webcast of the presentation and associated slides will be available on the Investors & Media section of Gemini's website at <http://investors.geminitherapeutics.com> and a replay will be archived for 30 days following the presentation.

## About Gemini Therapeutics, Inc.

Gemini Therapeutics is a clinical-stage precision medicine company previously focused on developing novel therapeutic compounds to treat genetically defined age-related macular degeneration (AMD).

For more information, visit [www.geminitherapeutics.com](http://www.geminitherapeutics.com).

## About Disc Medicine, Inc.

Disc Medicine is a clinical-stage biopharmaceutical company that is dedicated to transforming the lives of patients with hematologic disorders. Disc is building a portfolio of innovative, first-in-class therapeutic candidates that affect fundamental pathways of red blood cell biology. Disc Medicine is committed to developing treatments that empower and bring hope to the many patients who suffer from hematologic disease. For more information, please visit [www.discmedicine.com](http://www.discmedicine.com).

## Forward-Looking Statements

Certain statements in this press release and the information incorporated herein by reference may constitute “forward-looking statements” for purposes of the federal securities laws concerning Gemini, Disc, the proposed transaction and other matters. These forward-looking statements include express or implied statements relating to Gemini’s management team’s expectations, hopes, beliefs, intentions or strategies regarding the future. In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. The words “anticipate,” “believe,” “contemplate,” “continue,” “could,” “estimate,” “expect,” “intends,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “will,” “would” and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. These forward-looking statements are based on current expectations and beliefs concerning future developments and their potential effects. There can be no assurance that future developments affecting Gemini, Disc or the proposed transaction will be those that have been anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond Gemini’s control) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, the risk that the conditions to the closing of the transaction are not satisfied, including the failure to obtain stockholder approval for the transaction; the risk that the concurrent financing is not completed in a timely manner or at all; uncertainties as to the timing of the consummation of the transaction and the ability of each of Gemini and Disc to consummate the transaction, including the concurrent financing; risks related to Gemini’s continued listing on the Nasdaq Stock Market until closing of the proposed transaction; risks related to Gemini’s and Disc’s ability to correctly estimate their respective operating expenses and expenses associated with the transaction, as well as uncertainties regarding the impact any delay in the closing would have on the anticipated cash resources of the combined company upon closing and other events and unanticipated spending and costs that could reduce the combined company’s cash resources; the occurrence of any event, change or other circumstance or condition that could give rise to the termination of the merger agreement; the effect of the announcement or pendency of the merger on Gemini’s or Disc’s business relationships, operating results and business generally; costs related to the merger; the outcome of any legal proceedings that may be instituted against Gemini, Disc or any of their respective directors or officers related to the merger agreement or the transactions contemplated thereby; the ability of Gemini or Disc to protect their respective intellectual property rights; competitive responses to the transaction; unexpected costs, charges or expenses resulting from the transaction; potential adverse reactions or changes to business relationships resulting from the announcement or completion of the transaction; and legislative, regulatory, political and economic developments; and those factors described under the heading “Risk Factors” in the Gemini’s most recent Annual Report on Form 10-K filed with the SEC, as well as discussions of potential risks, uncertainties, and other important factors included in later

filings, including any Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. Should one or more of these risks or uncertainties materialize, or should any of Gemini's assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. Some of these risks and uncertainties may in the future be amplified by the ongoing COVID-19 pandemic and there may be additional risks that we consider immaterial or which are unknown. It is not possible to predict or identify all such risks. Gemini's forward-looking statements only speak as of the date they are made, and Gemini does not undertake any obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

#### No Offer or Solicitation

This press release is not intended to and does not constitute an offer to sell or the solicitation of an offer to subscribe for or buy or an invitation to purchase or subscribe for any securities or the solicitation of any vote in any jurisdiction pursuant to the proposed transaction or otherwise, nor shall there be any sale, issuance or transfer of securities in any jurisdiction in contravention of applicable law. No offer of securities shall be made except by means of a prospectus meeting the requirements of the Securities Act. Subject to certain exceptions to be approved by the relevant regulators or certain facts to be ascertained, the public offer will not be made directly or indirectly, in or into any jurisdiction where to do so would constitute a violation of the laws of such jurisdiction, or by use of the mails or by any means or instrumentality (including without limitation, facsimile transmission, telephone and the internet) of interstate or foreign commerce, or any facility of a national securities exchange, of any such jurisdiction.

#### Important Additional Information Will be Filed with the SEC

In connection with the proposed transaction between Gemini and Disc, Gemini intends to file relevant materials with the SEC, including a registration statement on Form S-4 that will contain a proxy statement/prospectus of Gemini and information statement of Disc. **GEMINI URGES INVESTORS AND STOCKHOLDERS TO READ THESE MATERIALS CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT GEMINI, DISC, THE PROPOSED TRANSACTION AND RELATED MATTERS.** Investors and shareholders will be able to obtain free copies of the proxy statement/prospectus/information statement and other documents filed by Gemini with the SEC (when they become available) through the website maintained by the SEC at [www.sec.gov](http://www.sec.gov). In addition, investors and shareholders should note that Gemini communicates with investors and the public using its website ([www.geminitherapeutics.com](http://www.geminitherapeutics.com)), the investor relations website (<https://investors.geminitherapeutics.com/>) where anyone will be able to obtain free copies of the proxy statement/prospectus/information statement and other documents filed by Gemini with the SEC and stockholders are urged to read the proxy statement/prospectus/information statement and the other relevant materials when they become available before making any voting or investment decision with respect to the proposed transaction.

#### Participants in the Solicitation

Gemini and its directors and executive officers may be deemed to be participants in the solicitation of proxies in connection with the proposed transaction. Information about Gemini's directors and executive officers is included in Gemini's most recent Annual Report on Form 10-K, including any information incorporated therein by reference, as filed with the SEC. Additional information regarding these persons and their interests in the transaction will be included in the proxy statement/prospectus/information statement relating to the transaction when it is filed with the SEC. These documents can be obtained free of charge from the sources indicated above.

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Contacts

**Gemini Therapeutics, Inc.**

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IR@geminitherapeutics.com

**Disc Medicine, Inc.**

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Verge Scientific Communications  
prusconi@vergescientific.com

Christina Tartaglia (Investor)  
Stern Investor Relations  
christina.tartaglia@sternir.com



**Merger Announcement**  
August 10, 2022

# Disclaimer and FLS

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# Merger with Disc to be Transformative

Transition into a clinical-stage company with multiple programs focused on hematology



- **Disc Medicine opportunity:** Provides Gemini shareholders with opportunity to participate in the Disc Medicine growth story, at a pivotal time for Disc Medicine
- **Diversified and clinical-stage portfolio:** Two programs currently in clinical trials (DISC-0974 and bitopertin); provides multiple shots on goal
- **Near-term clinical catalysts:** Steady stream of clinical data read-outs, including interim data from patient studies in the next 6-12 months
- **Combined financial strength – financing into 2025:** Combined company expected to have approximately \$175 million in cash and cash equivalents upon closing; resources expected to fund operations into 2025



# Merger of Gemini and Disc

## Overview

- Merger with Disc Medicine, a privately-held company focused on hematology
- Strong balance sheet of approximately \$175 MM expected to provide funding for operations into 2025
- Upon close, company expected to be renamed "Disc Medicine" trading as NASDAQ: IRON

## Transaction Summary

- Expected ownership approximately 72% Disc, 28% Gemini, in each case before giving effect to the concurrent financing, subject to adjustment based on Gemini's net cash at closing
- Projected \$92 million net cash from Gemini + additional \$53.5 million concurrent financing
- CVR agreement to provide additional consideration to Gemini stockholders if legacy Gemini programs GEM103 and GEM307 are monetized
- Expected close Q4'2022 subject to approval of stockholders

## Management and Programs

- Existing Disc Medicine management to lead the merged company
- New Board of Directors will include 9 members (8 existing Disc, 1 Gemini)
- Combined company will focus on advancing development of Disc programs

# Disc is Building a Leading Company Dedicated to Treating Hematologic Diseases

Focus on  
Hematologic  
Disorders

Potential to address  
immense need spanning a  
wide spectrum of disorders

Predictive, objective  
endpoints

Fundamental  
& Validated  
Pathways

Fundamental to red blood  
cell biology: iron and heme

Clinical and genetic  
evidence of target  
mechanism in humans

Clinical-Stage  
Portfolio with  
Broad Potential

Initiated Bitopertin Ph 2 in  
EPP and XLP

Initiated DISC-0974 Ph  
1b/2 in Anemia of MF

Multiple  
Near-Term  
Catalysts

Data expected 2023:

Bitopertin in EPP

DISC-0974 in Anemia of  
Inflammation: MF and CKD

EPP (Erythropoietic Protoporphyrin); XLP (X-linked Protoporphyrin); MF (myelofibrosis); CKD (chronic kidney disease)

5

**disc**medicine

# Our Executive Team

Deep experience building companies and bringing therapies to patients

## John Quisel, JD, PhD | CEO & President

Former EVP & Chief Business Officer at Acceleron Pharma; 14 years through transformative Celgene partnerships, IPO and launch of Reblozyl®; led re-acquisition and positioning of sotatercept for PAH



## Brian MacDonald, MB, ChB, PhD | Chief Innovation Officer

Founder and former Board Member of Disc Medicine; founder and CEO of Merganser Biotech; Previously at Zelus Therapeutics, 3-Dimensional Pharmaceuticals, GlaxoSmithKline



## Jonathan Yu, MBA | Chief Business Officer

Opex Biopharma (Co-founder), The Medicines Company, Acceleron Pharma, and Johnson & Johnson. Leadership roles in corporate strategy, finance and operations licensing, M&A, and commercial planning



## Srikanth Venkatraman, PhD | SVP Chemistry

Merck and Schering-Plough, leadership roles in discovery, manufacturing and formulation, including for Victrelis® (boceprevir), first approved HCV protease inhibitor



## Hua Yang, PhD | VP Nonclinical R&D

Agios, Millennium / Takeda, BMS. Leadership positions in DMPK and Clinical Pharmacology, including for approved therapies IDHIFA® (enasidnib), TIBSOVO® (ivosidenib) and PYRUKIND® (mitapivat)



## Joanne Bryce, CPA | Chief Financial Officer

Former CFO of Arkuda Therapeutics, Dyne Therapeutics, and Quartet Medicine; previously at WITricity, Speedy Packets, Narrative Communications; Arthur Andersen



## Will Savage, MD, PhD | Chief Medical Officer

Magenta Therapeutics and Shire / Takeda; Trained in Pediatric Hematology & Transfusion Medicine; Faculty at Harvard Medical School, Johns Hopkins University School of Medicine



## Rahul Khara, PharmD, JD | General Counsel

Former VP Legal and Chief Compliance Officer at Acceleron Pharma, supported commercial launch of Reblozyl® and eventual acquisition by Merck; Arnold & Porter, LLP; Sidley Austin LLP



## Min Wu, PhD | VP Biology

Proteostasis, FORMA, Agios, AVEO Oncology. Discovery and development across range of therapeutic areas including oncology and orphan disease including AATD, CF, lysosomal storage disease and others



## Jeremy Brinkerhoff, CPA | VP Finance

Former Partner at CFGI, a portfolio company of The Carlyle Group and largest non-audit accounting advisory firm in US and focused on life science companies; Covidien; PwC



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# Our Investors & Advisors

## Investors



## Board of Directors

Donald Nicholson, PhD  
Former CEO, Nimbus Therapeutics  
Chairman of the Board

Kevin Bitterman, PhD  
Partner  
Atlas Venture

Eric Snyder, PhD  
Partner  
Novo Ventures

Mona Ashiya, PhD  
Partner  
OrbiMed

Mark Chin, MS, MBA  
Managing Director  
Arix Biosciences

William White, JD  
CFO, Akerio Therapeutics  
Audit Committee Chair

Jay Backstrom, MD, MPH  
Former EVP and CMO  
Accelaron Pharma

Liam Ratcliffe, MD, PhD  
Head of Biotechnology  
Access Industries

John Quisel, JD, PhD  
CEO and President  
Disc Medicine

## Scientific Advisory Board

Mark Fleming, MD, DPhil  
Professor, Pathology  
Harvard Medical School

Stefano Rivella, PhD  
Professor, Pediatric Medicine  
Chair, Sickle Cell Anemia, CHOP

Tomas Ganz, MD, PhD  
Professor, Medicine  
UCLA

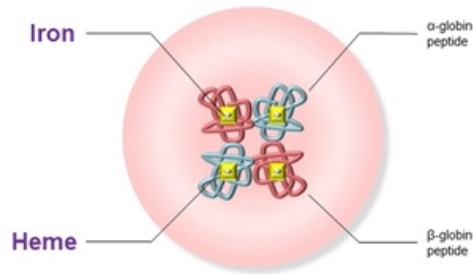
Uma Sinha, PhD  
CSO, Bridge Bio  
Former CSO, Global Blood Therapeutics

Elizabeta Nemeth, PhD  
Professor, Medicine  
UCLA

Srdan Verstovsek, MD, PhD  
Professor, Medicine  
U. Texas / MD Anderson

# Targeting Fundamental Pathways that Impact the Biology of Red Blood Cells

Iron and heme formation play a central role in erythropoiesis



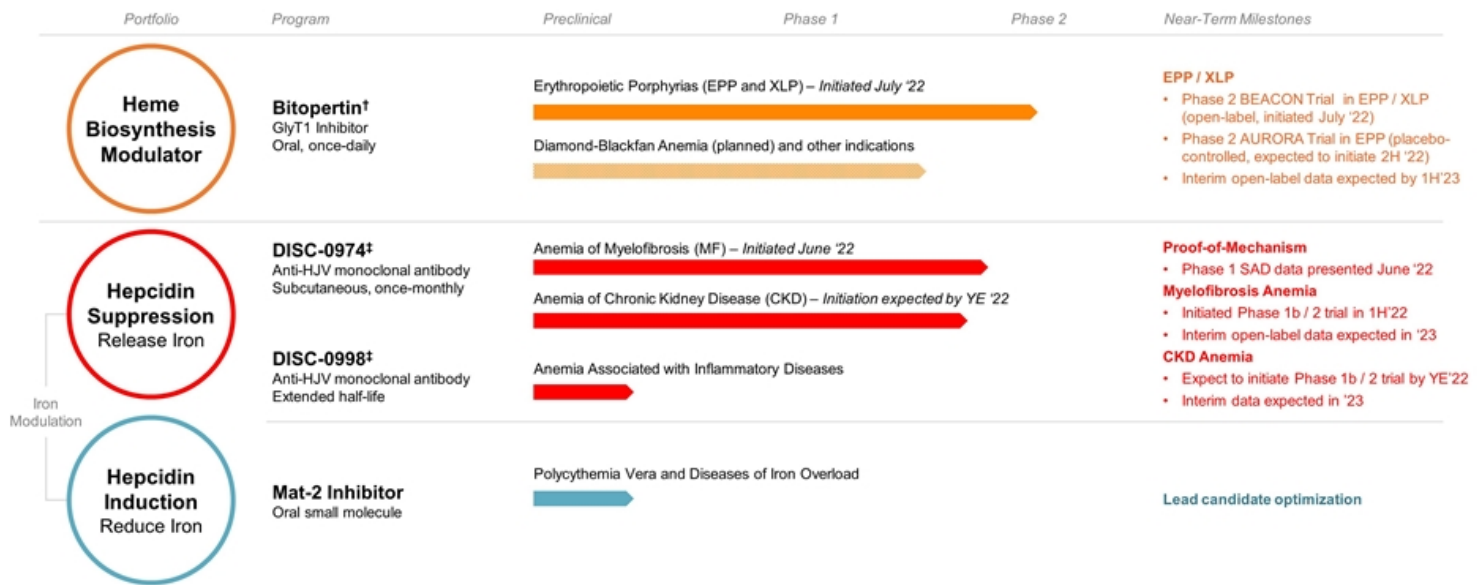
Critical points of intervention across multiple hematologic diseases

Wide Spectrum of Hematologic Diseases Addressable by Disc Portfolio

Severe Rare (000s)		Moderate Prevalence (100K+)				Widely Prevalent (MMs)			
Diamond-Blackfan Anemia	Erythropoietic Porphyrrias	Beta-Thalassemia	Anemia of Myelofibrosis	Myelodysplastic Syndromes	Sickle Cell Disease	Polycythemia Vera	Hereditary Hemochromatosis	IBD Anemia	CKD Anemia

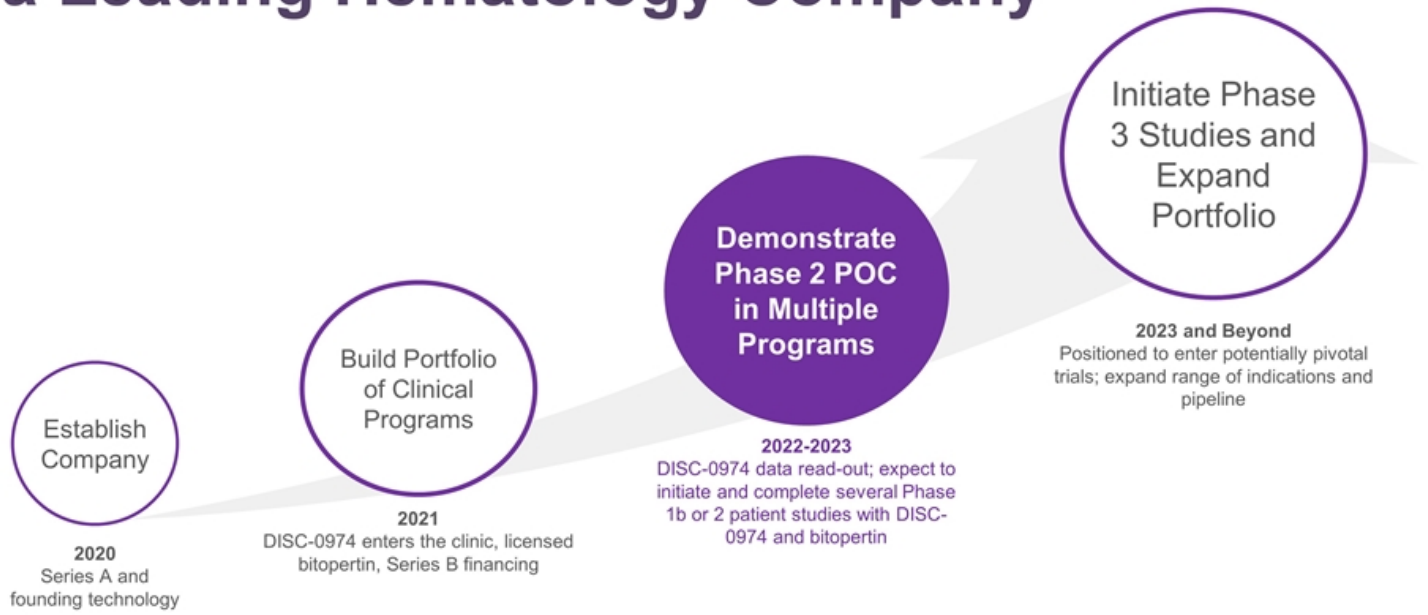
# Our Hematology-Focused Pipeline

Multiple programs in development, each with pipeline-in-a-product potential



<sup>1</sup> Bitopertin in-licensed from Roche; <sup>1</sup> DISC-0974 and DISC-0998 in-licensed from Abbvie

# Strong Growth Trajectory Towards Building a Leading Hematology Company



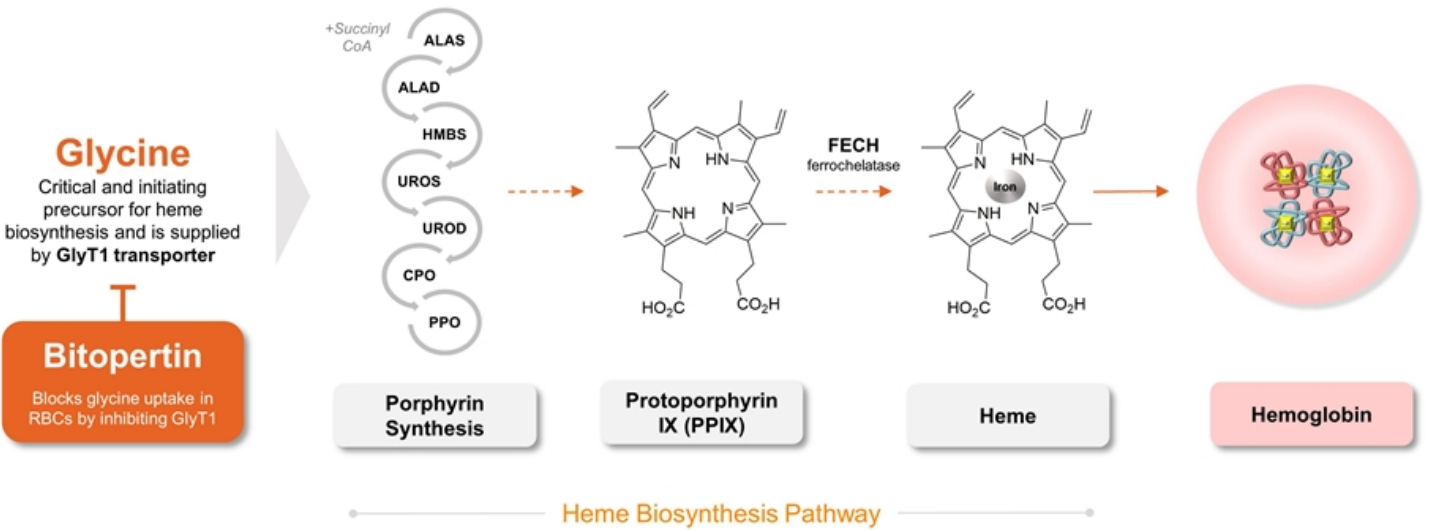


**Bitopertin**  
**GlyT1 Inhibitor**  
Heme Biosynthesis  
Modulation



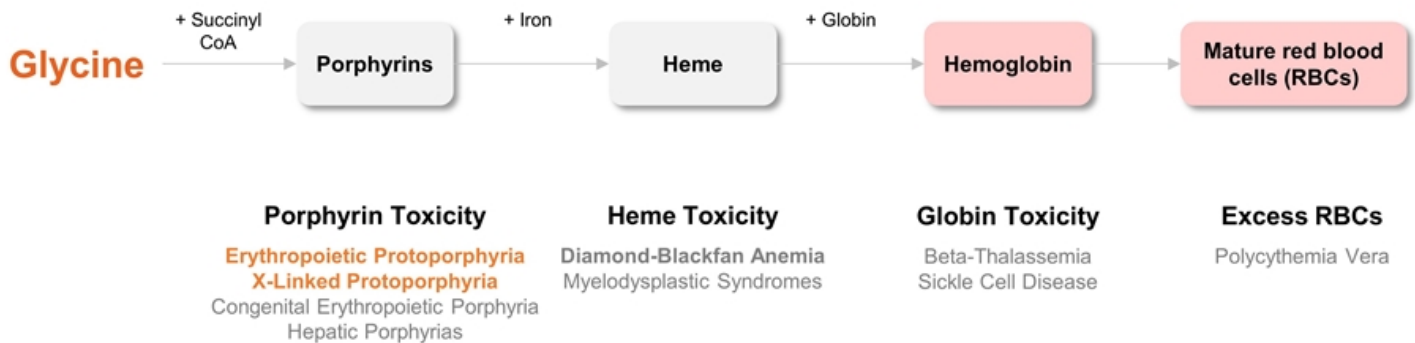
# Bitopertin: Oral, Selective GlyT1 Inhibitor

In multiple clinical trials by Roche, bitopertin was observed to modulate heme biosynthesis by blocking uptake of glycine in erythrocytes



# Dysregulated Hemoglobin Synthesis Drives Disease

Inhibiting heme synthesis with bitopertin has potential to address a wide range of hematologic diseases



**bold (trial ongoing) / bold (trial planned)**

# Erythropoietic Protoporphyrria (EPP)

Rare, debilitating and lifelong condition characterized by extreme pain and damage to skin caused by light

Genetic condition caused by defective heme biosynthesis – deficient enzyme ferrochelatase

- Lifelong and presents in early childhood
- Caused by accumulation of toxic metabolite PPIX
- XLP, mechanistically similar disease, also PPIX-related

**Debilitating and potentially life-threatening**

- Skin: severe, disabling pain attacks (days), edema, burning
- Hepatobiliary disease: gallstones, liver dysfunction or failure
- Psychosocial well-being (fear, anxiety) and development

**No cure or disease-modifying treatment**

- Avoid sun / light, protective clothing, window tinting, Zn/Ti Oxide
- One FDA-approved agent, afamelanotide, a surgically-implanted tanning agent

Sources: Deybach et al (2009) *Orphanet Journal of Rare Diseases*; American Porphyria Foundation; Dickey et al (2021) *Genet. Med.*

14

## EPP and XLP Prevalence:

Approximately 7-8k+ addressable patients in US and Europe; recent genetic studies suggest number may be higher



Image sources: Daily Mail Australia (2019); FDA Scientific Workshop on EPP (2016); Buonuomo et al. (2014) *Arch Dis Child*

# EPP Impacts Multiple Aspects of Patients' Lives

## Attacks are easily triggered and result in excruciating pain that has neuropathic qualities and can last for days

**Madelyn**  
11-Year Old  
Patient

"I can only tolerate about 10 minutes of direct sunlight before I get a reaction.

These reactions can last up to five days. When I have a reaction, I can't sleep because the pain is so strong. It hurts so much."

**Darlene & Nanelle**  
Adult Patients

"It's like a chemical burn. It's like a burn from the inside out as opposed to the surface."

"If you've ever worked with jalapenos or habanero peppers, you know. That burning gets on your hands, and there's nothing you can do. It takes about five to seven days for it to wear off."

**Kristin**  
Mother of boy  
with EPP

"I'm deeply concerned about what this is doing to his mind. I see his personality changing before my eyes.

The anxiety, the isolation, the loneliness, how people treat him, how he's treating the world around him, it's changing. I can see it - that's really hard to manage as a parent."

**Meghan**  
16-Year Old  
Patient

"My life and that of my family's is completely different than it would be if I were able to be in the sun.

The curtains in our home are always closed. There are no outside activities during the day -- no beach, no picnics, no washing the car or cutting the lawn, no camping, no theme parks."

Sources: FDA Scientific Workshop on EPP

15

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# PPIX is a Driver of Disease in EPP / XLP Patients

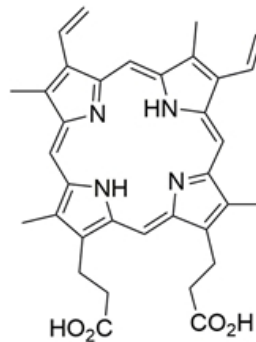
## Toxic and photo-active metabolite accumulates in RBCs and is transported to skin and other organs, causing damage

### Skin

- Porphyrin ring absorbs light and **emits energy and heat**
- Oxidative damage to endothelial capillaries and surrounding tissue, perivascular edema, complement activation
- Pain, burning sensation, swelling, inflammation, chronic skin lesions

### Psychosocial

- Issues with focus and concentration
- Lack of sleep, physical and social isolation
- Significant lifestyle modification, fear and anxiety



Protoporphyrin IX

### Hepatobiliary

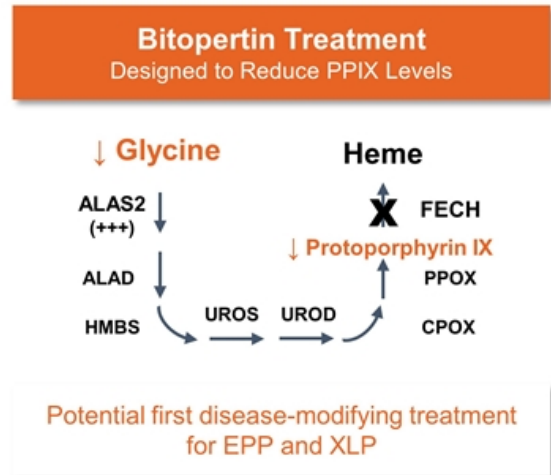
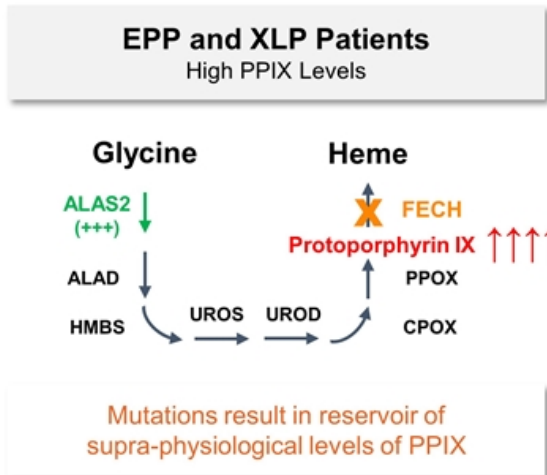
- PPIX accumulation in bile canaliculae, causing oxidative damage
- Cholelithiasis requiring surgery or impaired liver function (~25%) and end-stage liver disease requiring transplant (2-5%)
- Clinical and biochemical surveillance

### Other Complications

- Nutritional deficiency resulting in osteoporosis and propensity for fractures, chronic alterations to skin (e.g. fragile), mild anemia

# Bitopertin: Potential Disease-Modifying Treatment

Designed to reduce disease-causing PPIX by limiting uptake of glycine into developing erythrocytes

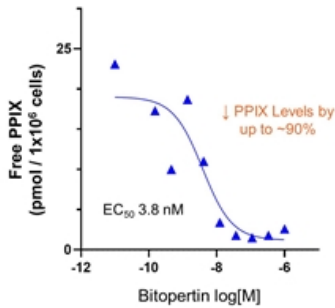


Figures adapted from Halloy et al. (2021) Cell Chem Biol

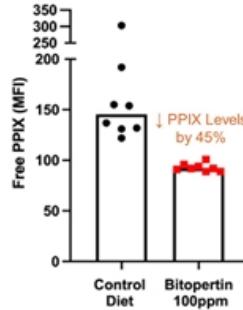
# Bitopertin Reduced PPIX in Models of EPP / XLP

## Effects on PPIX have the potential to be disease-modifying

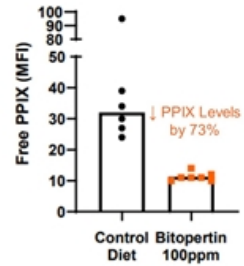
**In vitro – EPP Model (K562 Cell)**  
FECH<sup>IVS3-48C/KO</sup> Mutation



**In vivo - EPP Model (Mouse)**  
FECH<sup>m1pas</sup> Missense Mutation



**In vivo - XLP Model (Mouse)**  
ALAS2<sup>Q548X</sup> Gain-of-Function Mutation



Bitopertin reduces PPIX, the driver of disease pathophysiology, and is expected to be disease-modifying

- Reductions in PPIX levels of ≥30% reported in literature to have a major impact on photosensitivity in patients<sup>†</sup>
- Bitopertin has been shown in animal model of EPP (not shown) to reduce liver fibrosis

Data presented at the 63<sup>rd</sup> ASH Annual Meeting (December 2021); Studies performed in collaboration with Boston Children's Hospital (PI: Paul Schmidt, Advisor: Mark Fleming)  
Sources: <sup>†</sup>Heerfordt et al. (2016) *Br J Dermatol*; Wulf et al. (2019) *Photodiagn and Photodyn Ther*; Poh-Fitzpatrick (1997) *J Am Acad Derm*

# Bitopertin Robust Data Package

Extensive non-clinical, CMC and clinical development has already been completed

Non-Clinical	CMC	Clinical
<ul style="list-style-type: none"><li>✓ Genetic toxicity and Safety pharmacology</li><li>✓ Long-term GLP toxicology</li><li>✓ Juvenile GLP toxicology studies supporting patients <math>\geq 2</math> y/o</li><li>✓ Carcinogenicity studies</li><li>✓ Full reproductive GLP toxicology</li><li>✓ Metabolites fully qualified</li></ul>	<ul style="list-style-type: none"><li>✓ Commercial-scale production</li><li>✓ Optimized oral formulation (tablet and capsule)</li><li>✓ Highly stable molecule (at least 5 years)</li><li>✓ Available commercial-grade drug substance (metric tons)</li></ul>	<ul style="list-style-type: none"><li>✓ Healthy volunteer studies</li><li>✓ Drug-drug interaction studies</li><li>✓ Hepatic impairment</li><li>✓ Renal impairment</li><li>✓ TQT (heart rhythm) study</li><li>✓ Pharmacokinetics in patients of Asian descent</li><li>✓ 30+ Other clinical trials</li></ul>

Note: Total clinical experience of bitopertin is extensive and includes 700+ HV and 4,000 patients in over 30 clinical trials; all trials referenced conducted by Roche



# BEACON Trial: Open-Label Ph 2 Trial in EPP / XLP

Open-label, parallel-dose trial to establish POC and assess efficacy, safety in patients (N~20)

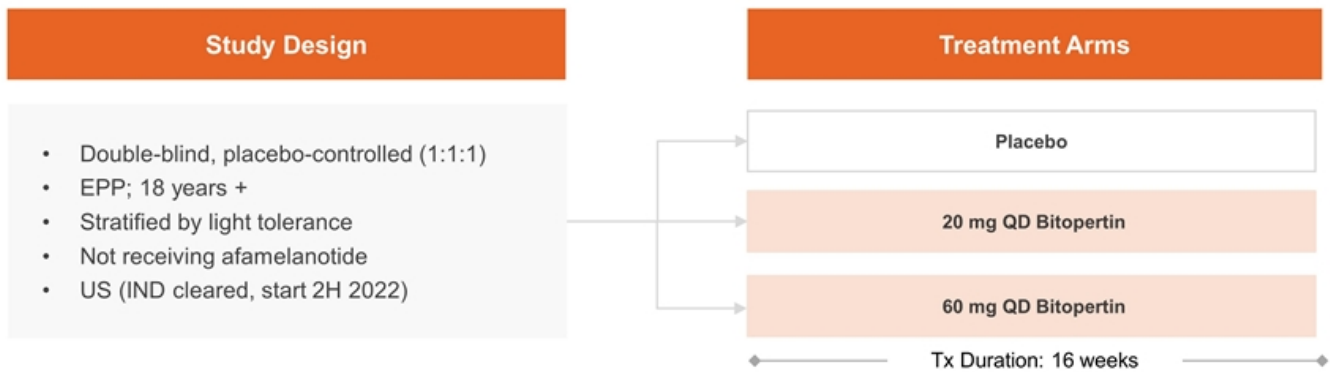


**Study measures:** Changes in blood PPIX levels, light tolerance, time to prodromal symptom (TTPS), hepatobiliary markers, QOL, safety / PK

**Data availability:** Interim, open-label, PPIX data expected by 1H 2023

# AURORA Trial: Ph 2 Trial in EPP

Randomized, Double-Blind, Placebo Controlled trial to assess efficacy, safety in patients (N~75)



**Study measures:** Changes in blood PPIX levels, time in daylight without pain, light tolerance, time to prodromal symptom (TTPS), hepatobiliary markers, QOL, safety / PK

**Data availability:** Data expected by 2H 2023

# Development Status and Upcoming Milestones

## Phase 2 BEACON trial initiated, data expected by 1H'23

### Operational activities to enable initiation of patient studies completed

- Roche license signed May 2021
- GMP clinical supply completed June 2022
- BEACON trial - Open-label, parallel-dose trial in EPP and XLP patients in AU – *initiated July 2022*

### Next milestones

- AURORA trial – Randomized, placebo-controlled trial in EPP patients in US – *IND open Aug 2022*
- Interim open label data from the BEACON trial – *expected by 1H 2023*
- Phase 2 IIT in Diamond-Blackfan Anemia – *site contracting in process, startup expected 1H 2023*
- AURORA trial data – *expected 2H 2023*
- Planning underway for studies in additional indications

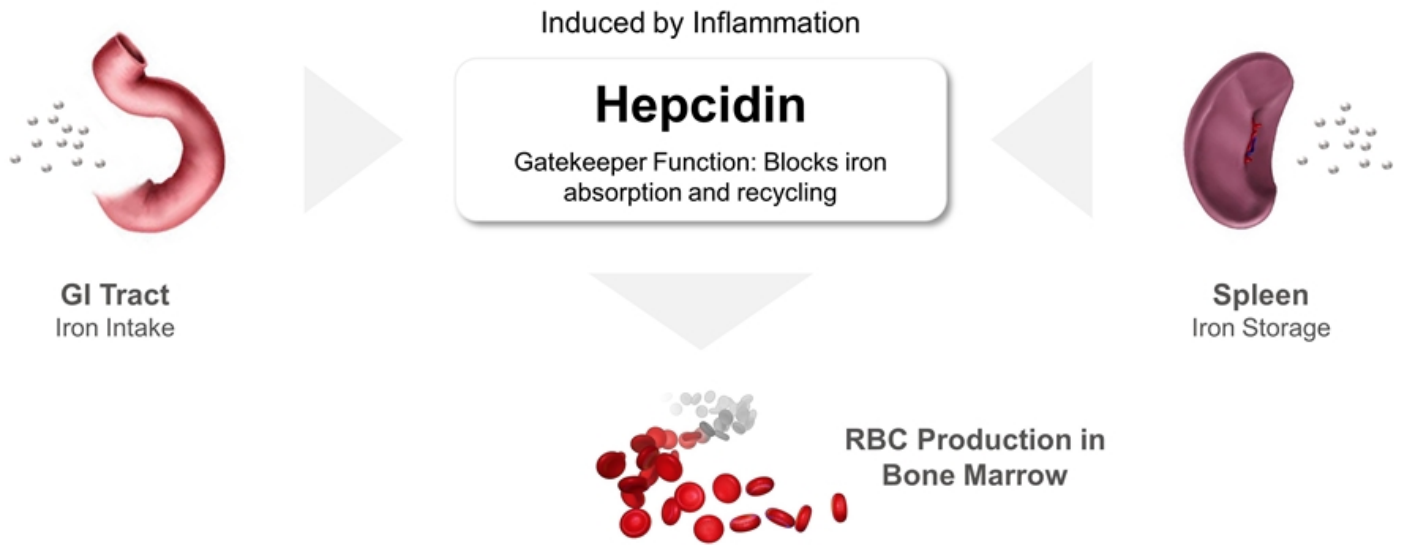


# Hepcidin Modulation

Iron Homeostasis

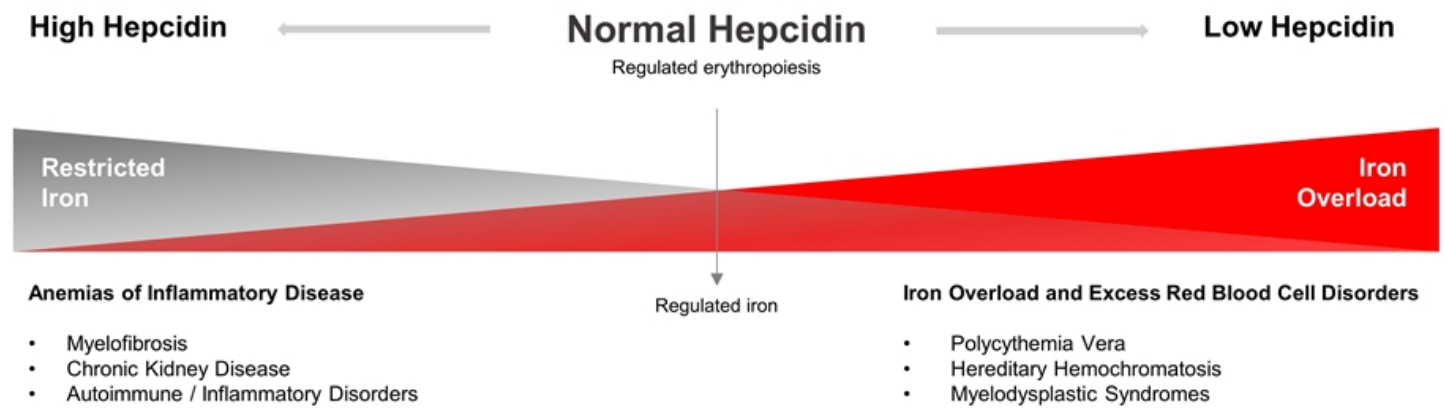
# Iron is Fundamental to RBC Biology

Hepcidin is a regulatory hormone that plays a central role in iron metabolism and homeostasis



# Hepcidin is a Therapeutic Target for Diseases

Dysregulated hepcidin drives a wide range of hematologic diseases

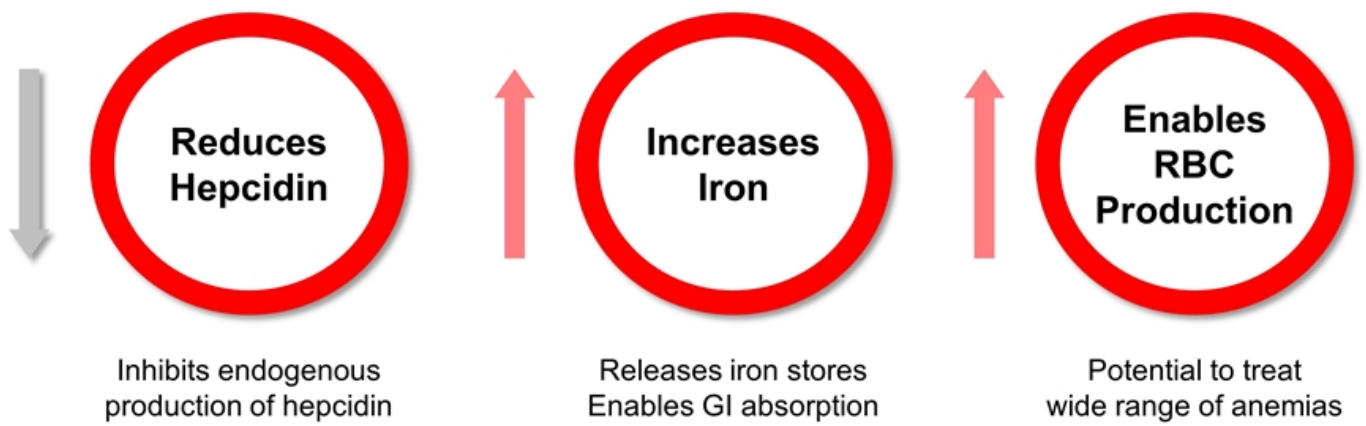




**DISC-0974**  
Anti-HJV mAb  
Hepcidin Suppression

# DISC-0974: Novel Anti-HJV mAb to Suppress Hepcidin

Designed to enhance iron availability to address a wide range of hematologic disorders





# Anemia of Inflammation or Chronic Disease

Inflammation caused by a wide range of conditions results in anemia due to elevated hepcidin

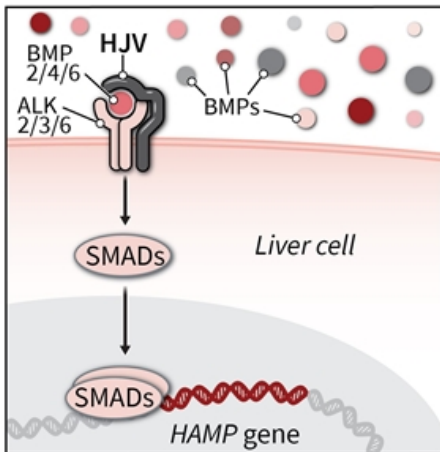
Anemia Types	Est. % Anemic
Myelofibrosis (MF)	87%
Chronic Kidney Disease (CKD)	17-50%
Inflammatory Bowel Disease	25-35%
Anemia of Cancer	35-80%
Systemic Lupus Erythematosus	50%

- **Anemia of inflammation (also called Anemia of Chronic Disease or ACD)** is the 2<sup>nd</sup> most common form of anemia
- **Estimated 40% of all anemias** are driven by or have an inflammatory component
- **Hepcidin is up-regulated** and correlates with anemia, driven by inflammation

Sources: Weiss (2019); Maccio (2014); Tefferi (2012); Lupus Foundation; Stauffer (2014); Filmann (2014); Koutroubakis (2015)

# Targeting Hemojuvelin (HJV) to Suppress Hepcidin

Critical and specific target for hepcidin expression



Inhibiting Hemojuvelin (HJV) Prevents Hepcidin Expression and Increases Iron

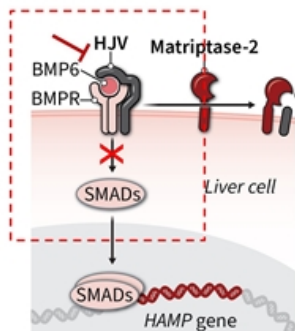
- **Genetic validation** in patients with Juvenile Hemochromatosis (lower hepcidin and elevated iron levels)
  - Loss-of-function mutations in HJV are phenotypically indistinguishable from mutations in *HAMP* (hepcidin) gene
- **Functionally specific** to hepcidin / iron
- **Tissue specific** expression primarily in the liver

Sources: Finberg et al, (2010) *Blood*; Zhang et al, (2010) *J Biol Chem*

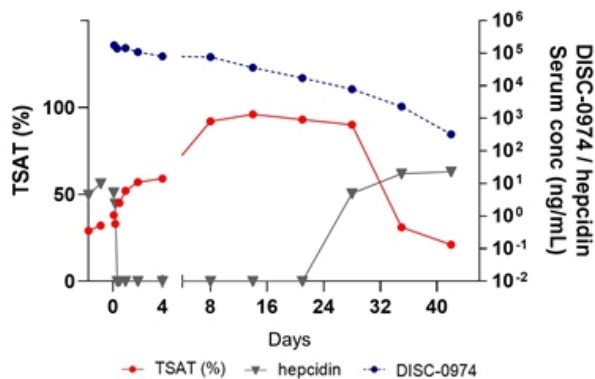
# DISC-0974 Mechanism of Action

Designed to reduce hepcidin and increase serum iron levels

DISC-0974 mAb binds to and prevents signaling through hemojuvelin (HJV) co-receptor



Potent and rapid effects on hepcidin and iron with single 5 mg / kg dose (NHP)

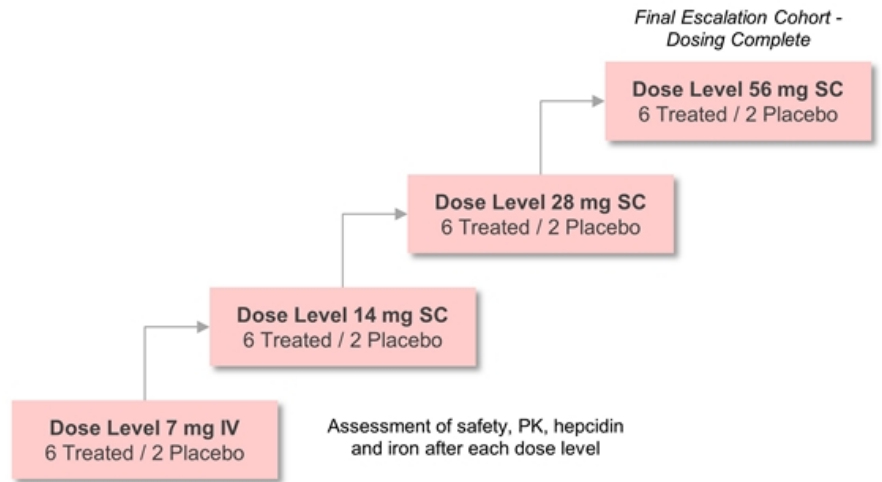


# Phase 1 SAD Trial in Healthy Volunteers

Establish proof-of-mechanism based on hepcidin and iron parameters (dosing completed)

## Study Design

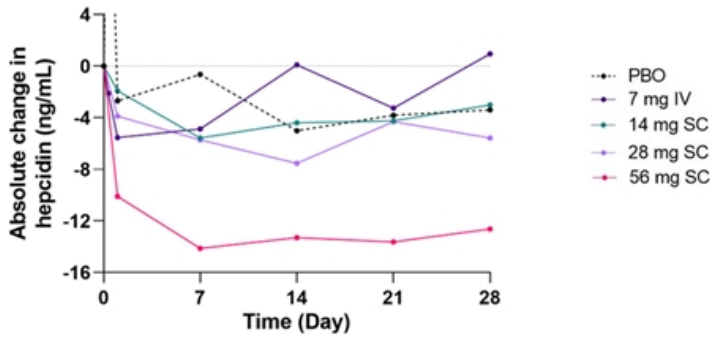
- Single-ascending dose in  $\geq 32$  healthy volunteers
- Key outcome measures:
  - Safety and PK
  - Hepcidin level, serum iron level, % TSAT
- Dose escalation until TSAT  $> 40\%$  for at least 2 weeks
- Dose levels: 7 mg dose (IV); 14, 28 and 56 mg doses (SC)



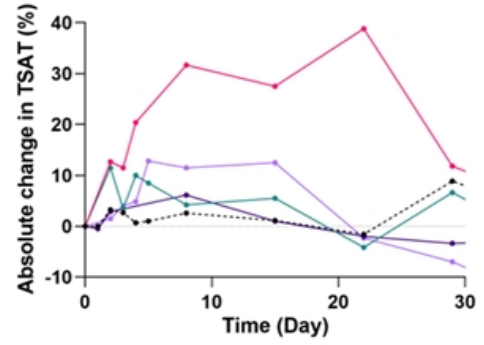
# DISC-0974 Phase 1 SAD Preliminary Data

Dosing of DISC-0974 resulted in reduction of hepcidin and iron mobilization

↓ DISC-0974 Reduced Hepcidin Production

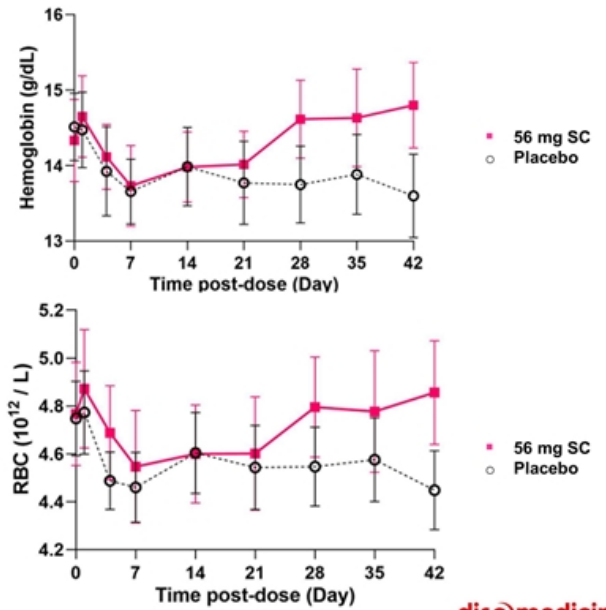
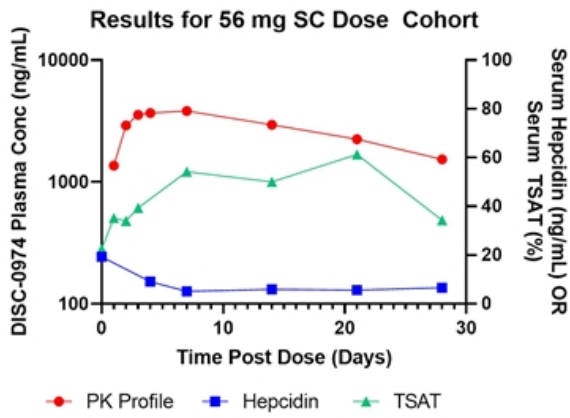


↑ DISC-0974 Increased TSAT



# DISC-0974 Phase 1 SAD Preliminary Data (cont.)

Top dose (56 mg) pharmacodynamic activity improves key clinical parameters (> 1g/dL Hgb)



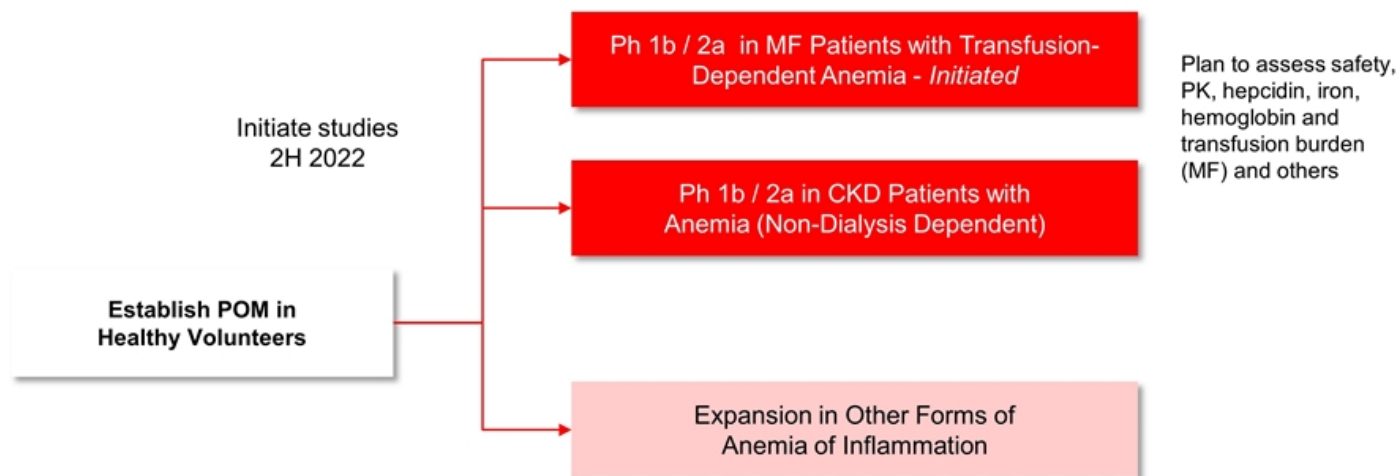
# DISC-0974 Phase 1 SAD Preliminary Safety

Safety profile is consistent with selective target biology and preclinical studies; no serious or AEs > Grade 1

	Total n=42	Pooled Placebo n=10	7 mg IV n=8	14 mg SC n=6	28 mg SC n=6	28 mg IV n=6	56 mg SC n=6
Diarrhea	1 (2.4)	1 (10.0)	0	0	0	0	0
Dizziness	2 (4.8)	0	0	0	0	1 (16.7)	1 (16.7)
Dyspepsia	1 (2.4)	0	0	0	0	0	1 (16.7)
Eye pruritis	1 (2.4)	0	0	0	1 (16.7)	0	0
Hand swelling	1 (2.4)	0	0	0	0	1 (16.7)	0
Headache	1 (2.4)	0	0	0	1 (16.7)	0	0
Myalgia	1 (2.4)	0	0	0	0	0	1 (16.7)
Nasal congestion	1 (2.4)	0	0	0	0	0	1 (16.7)
Pain in extremity	1 (2.4)	1 (10.0)	0	0	0	0	0
Seasonal allergy	1 (2.4)	0	0	0	1 (16.7)	0	0
Vessel puncture site bruise	1 (2.4)	1 (10.0)	0	0	0	0	0
Vomiting	1 (2.4)	1 (10.0)	0	0	0	0	0

# DISC-0974 Development Strategy

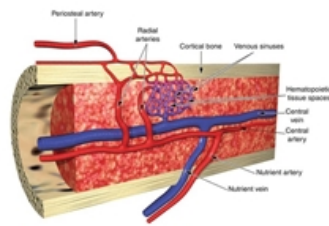
## Demonstrate POC in anemia of MF and CKD



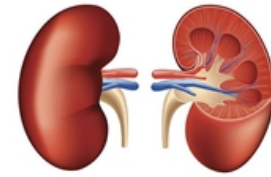


# DISC-0974: Anemia of Inflammation

Initiate development in parallel in anemias of MF and CKD



Anemia of Myelofibrosis (MF)



Anemia of CKD (NDD and DD)

<b>Est. # Patients</b>	16,000 to 18,500 patients (US alone)	5 to 6 million patients (US alone)
<b>Etiology of Anemia</b>	High hepcidin from inflammation JAKi's worsen anemia; Loss of marrow function	High hepcidin from inflammation & poor renal clearance Compromised erythropoietin production
<b>Unmet Medical Needs</b>	Severe and difficult to treat; high transfusion burden No approved or effective anemia therapy Anemia limits optimal JAKi treatment	Majority patients untreated or under-treated ESAs restricted due to safety and black box Mean Hb 9.3 g/dL in patients initiating dialysis

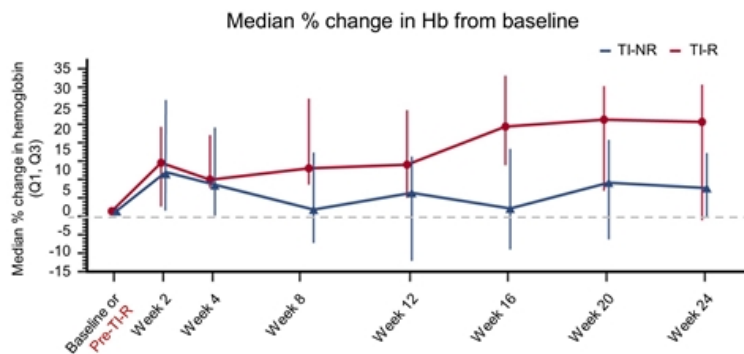
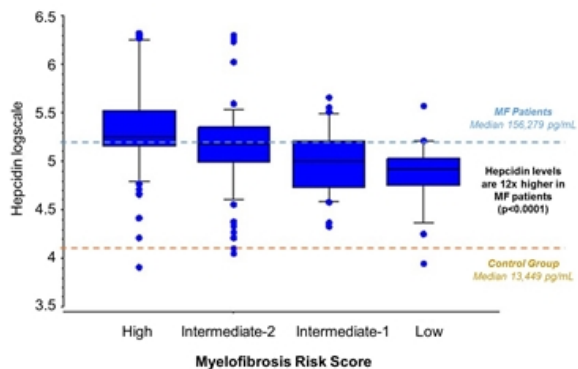
NDD: Non-Dialysis Dependent, DD: Dialysis Dependent

# Hepcidin is a Key Driver of MF Anemia

## Clinical POC that inhibiting hepcidin axis can impact Hb Levels

**Hepcidin Levels are Elevated in MF**  
~ 12x higher than control and associated with severity of anemia and transfusion burden

**Clinical Proof-of-Principle**  
Hepcidin suppression increased Hb and reduced transfusion burden (41% TI and 85% transfusion reduction)

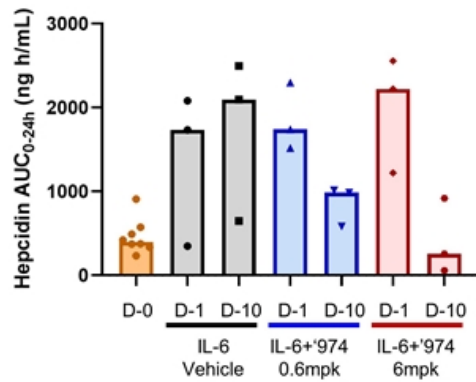


Source: Pardanani et al (2013) Am. J. Hematol; Oh et al., (2020) Blood Adv; TI-R: Transfusion-Independent for > 12 weeks by week 24; TI-NR: Transfusion Independent Non-Response

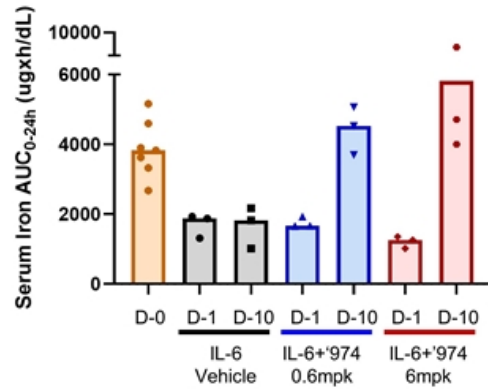
# DISC-0974 Lowered Hepcidin in Inflammation Model

## NHP: IL6-induced hepcidin and hypoferremia

↓ DISC-0974 Reduced Hepcidin Production



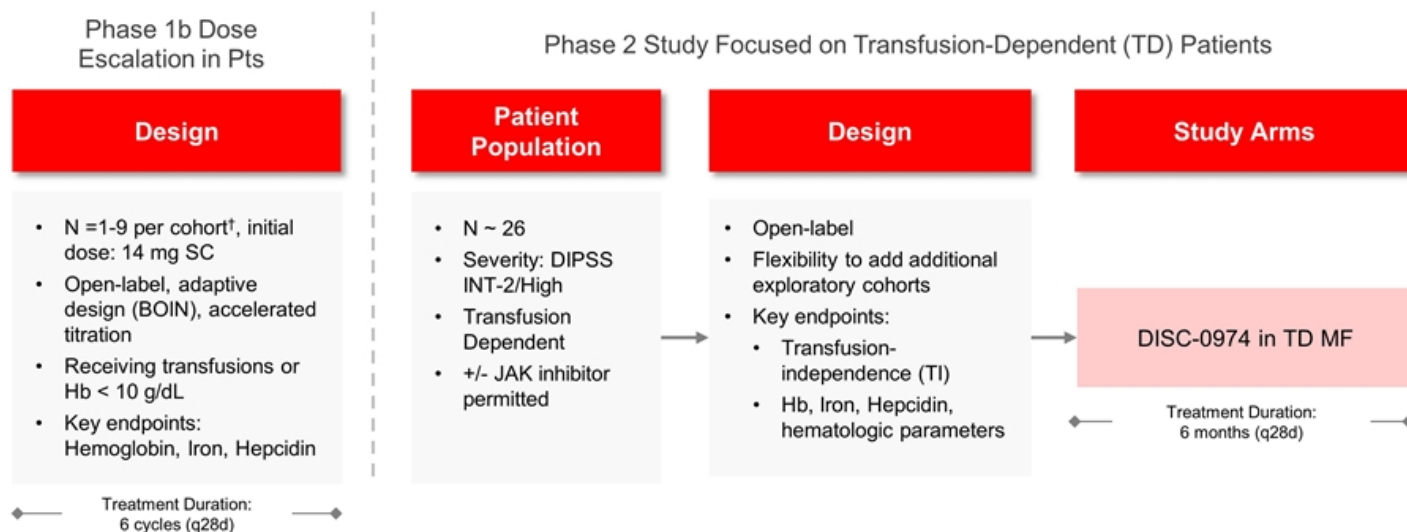
↑ DISC-0974 Increased Serum Iron Levels



Similar effects in animal models of infection-induced hypoferrremia, IRIDA and anemia of inflammation

# Phase 1b / 2 Study in MF Anemia

Evaluate efficacy and safety and position program for pivotal study; Ph 1b data expected 2023

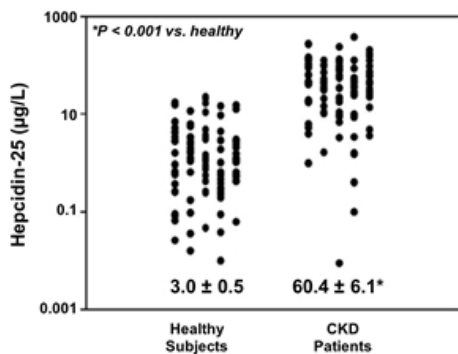


<sup>†</sup>Note: In Part 1, expect one patient per cohort until iron mechanism is engaged

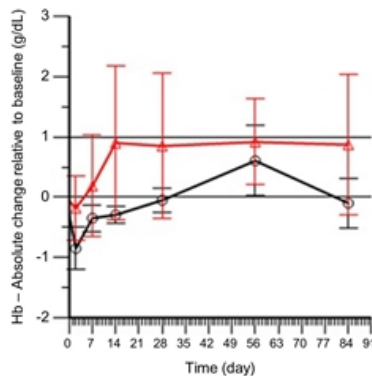
# Hepcidin is a Key Driver of CKD Anemia

Clinical POC that inhibiting hepcidin axis can impact Hb Levels

**Hepcidin Levels Elevated in CKD Patients**  
~ 20x higher than healthy subjects and increases with disease severity



**Clinical Proof-of-Principle**  
Hepcidin inhibition via single dose of mechanistically similar BMP-6 mAb increases Hb in dialysis patients

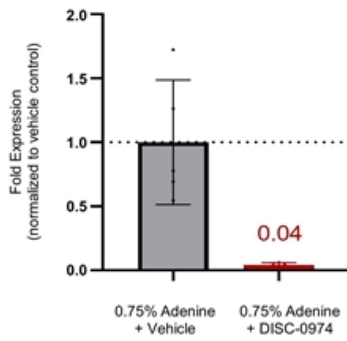


Sources: Trout et al. (2013), *J Clin Lab Anal*; Sheelz et al. (2019) *Br J Clin Pharmacol*. (2019)

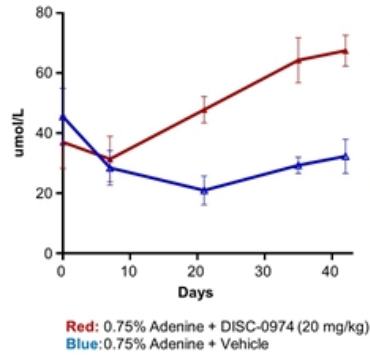
# DISC-0974 Improved Anemia in Model of CKD

## Rat Model of Adenine Diet-Induced CKD

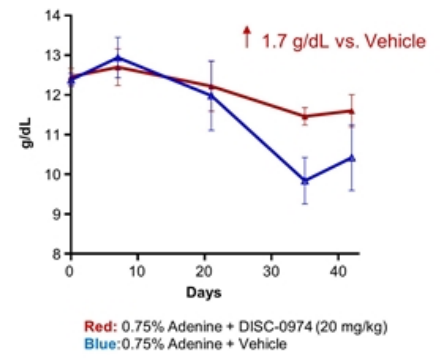
↓ DISC-0974 Reduced  
Hepcidin Expression



↑ DISC-0974 Increased  
Serum Iron

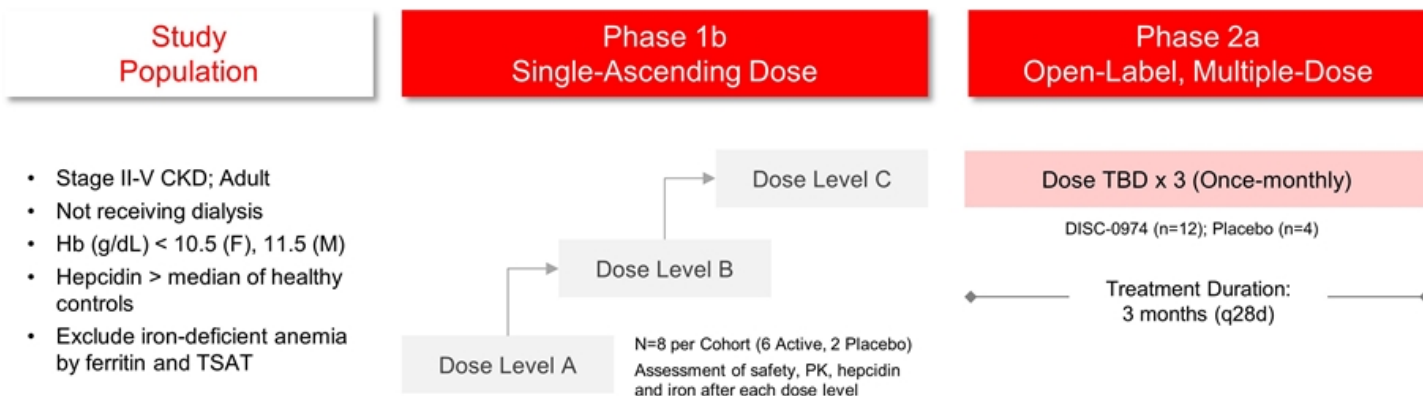


↑ DISC-0974 Increased  
Hemoglobin Levels



# Phase 1b / 2a POC Study in CKD Anemia

Evaluate efficacy and safety in non-dialysis dependent patients



**Key Endpoints / Measures:** Change in hemoglobin; iron, hepcidin, and other hematologic parameters, safety / PK

**Data availability:** Interim data expected in 2023

# Development Status and Upcoming Milestones

Ongoing phase 1b/2 study in MF and plans to initiate phase 1b/2 study in NDD-CKD by year-end 2022

## Operational activities to enable initiation of patient studies completed

- Ph 1 SAD study – completed; excellent safety profile and proof of mechanism for hepcidin and iron modulation; data presented at EHA, June 2022
- Obtained pre-IND feedback from hematology division of FDA for next studies in MF and CKD
- GMP clinical supply completed
- Initiated Ph 1b/2 study in MF anemia – *study active and recruiting (NCT05320198)*

## Next milestones

- Ph 1b/2 study in NDD-CKD anemia: planning to file IND and initiate study – *expected by YE 2022*
- Interim open label data from Ph 1b/2 study in MF anemia – *expected 2023*
- Interim data from Ph 1b cohorts NDD-CKD anemia – *expected 2023*
- Planning underway for studies in additional indications





**Matriptase-2  
Inhibitor**  
Hepcidin Induction

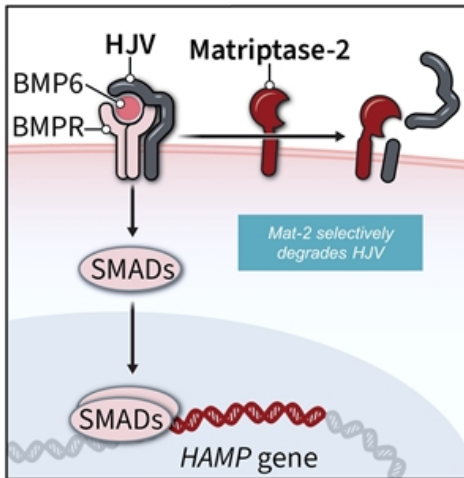
# Mat-2 Inhibitor to Induce Hepcidin Production

Designed to modulate RBC development by limiting iron availability to address a wide range of hematologic disorders



# Targeting Matriptase-2 to Increase Hepcidin

Potent and specific target normally limits endogenous hepcidin



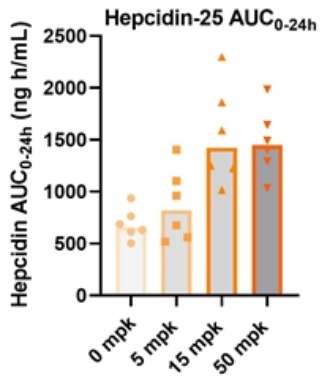
## Inhibiting Matriptase-2 Promotes Hepcidin Expression through HJV

- **Genetic validation** in patients with IRIDA (Iron-Refractory Iron Deficiency Anemia)
  - LOF mutation increases hepcidin levels
  - Reduces iron availability
- **Functionally specific** to hepcidin / iron
- **Tissue specific** expression primarily in the liver

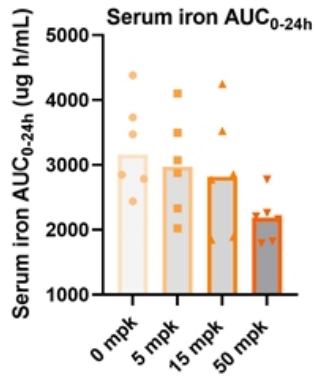
# Mat-2 Inhibition Has Potent Effects on Hepcidin

## Effects with a single dose in non-human primates

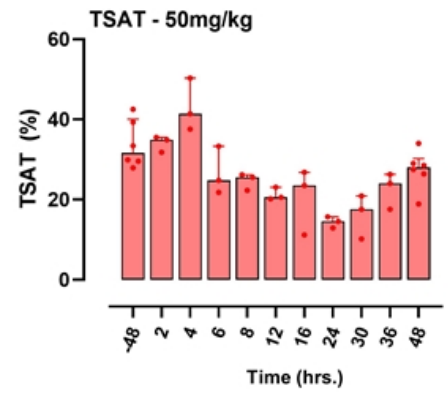
↑ Hepcidin



↓ Serum Iron

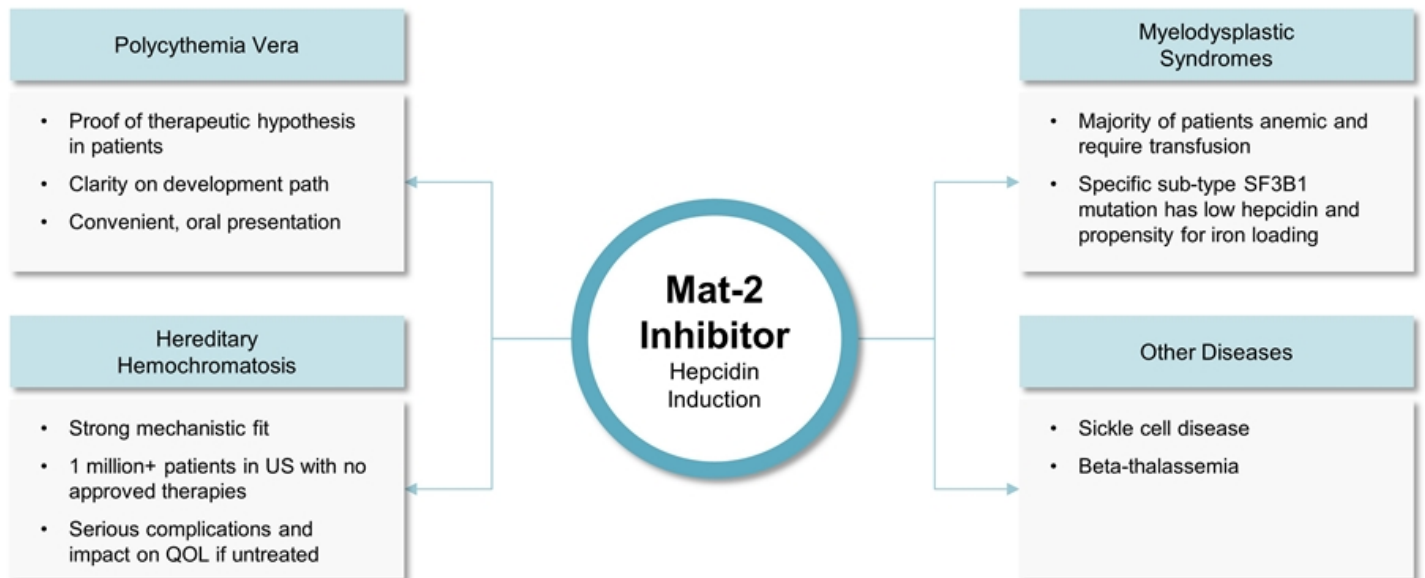


↓ % TSAT



# Mat-2 Inhibitor Planned Development Strategy

Erythrocytosis and Disorders of Iron Overload / Ineffective Erythropoiesis



# Disc is Building a Leading Company Dedicated to Treating Hematologic Diseases

- **Clinical-stage biopharmaceutical company developing therapies for hematologic diseases**
  - Focused on fundamental and well-validated pathways that affect heme biosynthesis and iron homeostasis
- **Portfolio of 3 distinct “pipeline-in-a-product” programs with broad applications and opportunity for growth**
  - Bitopertin (Phase 2): Potential 1st disease-modifying treatment for debilitating, orphan diseases EPP / XLP
  - DISC-0974 (Phase 1b/2): Targeting anemia of inflammation opportunity with non-ESA mechanism
  - Mat-2 Inhibitor (Research): Optimizing leads to identify an oral agent against an important therapeutic target
- **Entering catalyst-rich period with multiple data read-outs anticipated across portfolio in next 6-12 months**
  - Interim data DISC-0974 Phase 1b/2 trials in anemias of CKD and MF; interim data bitopertin Phase 2 trial in EPP / XLP
- **Strong foundation positions us to build Disc into a leading hematology company**
  - Leadership with deep experience developing and commercializing therapies; strong balance sheet with support from top-tier healthcare investors

# Risk Factors

*The list below of risk factors has been prepared solely for purposes of the proposed private placement transaction (the "Private Placement") as part of the proposed merger transaction (the "Merger") between Gemini Therapeutics, Inc. ("Gem"), Gemstone Merger Sub, Inc. ("Merger Sub") and Disc Medicine, Inc. ("Disc"), and solely for potential investors in the Private Placement, and not for any other purpose. The risks presented below are certain of the general risks related to the businesses of Disc, the Private Placement and the Merger, and such list is not exhaustive. The list below is qualified in its entirety by disclosures contained in future documents filed or furnished by Gem with the U.S. Securities and Exchange Commission ("SEC"), including the documents filed or furnished in connection with the proposed transactions between Disc and Gem. The risks presented in such filings will be consistent with those that would be required for a public company in its SEC filings, including with respect to the business and securities of Disc and Gem and the proposed transactions between Disc and Gem, and may differ significantly from and be more extensive than those presented below. Investing in securities (the "Securities") to be issued in connection with the Merger involves a high degree of risk. Investors should carefully consider the risks and uncertainties inherent in an investment in Disc and in the Securities, including those described below, before subscribing for the Securities. If either Disc cannot address any of the following risks and uncertainties effectively, or any other risks and difficulties that may arise in the future, Disc's business, financial condition or results of operations could be materially and adversely affected. The risks described below are not the only ones Disc faces. Additional risks that Disc currently does not know about or that Disc currently believes to be immaterial may also impair its business, financial condition or results of operations. You should review the investors' presentation and perform your own due diligence, prior to making an investment in Gem or Disc.*

## Risks Related to the Disc

- We are a biopharmaceutical company with a limited operating history and have not generated any revenue to date from drug sales, and may never become profitable.
- We have incurred significant operating losses in recent periods and anticipate that we will incur continued losses for the foreseeable future.
- We have no products approved for commercial sale and have not generated any revenue from product sales.
- We will need to raise substantial additional funding. If we are unable to raise capital when needed or on attractive terms, we would be forced to delay, scale back or discontinue some of our product candidate development programs or future commercialization efforts.
- Our programs are focused on the development of therapeutics for patients with hematologic diseases, which is a rapidly evolving area of science, and the approach we are taking to discover and develop product candidates is novel and may never lead to approved or marketable products.
- We have never successfully completed any clinical trials, and we may be unable to do so for any product candidates we develop. Certain of our programs are still in preclinical development and may never advance to clinical development.
- Because we are developing some of our product candidates for the treatment of diseases in which there is little clinical experience and, in some cases, using new endpoints or methodologies, the FDA or other regulatory authorities may not consider the endpoints of our clinical trials to predict or provide clinically meaningful results.
- Business interruptions resulting from the coronavirus disease (COVID-19) outbreak or similar public health crises could cause a disruption of the development of our product candidates and adversely impact our business.
- We may not be successful in our efforts to identify or discover additional product candidates or we may expend our limited resources to pursue a particular product candidate or indication and fail to capitalize on product candidates or indications that may be more profitable or for which there is a greater likelihood of success.
- If we experience delays or difficulties in the initiation or enrollment of patients in clinical trials, our receipt of necessary regulatory approvals could be delayed or prevented.
- Our current or future product candidates may cause adverse or other undesirable side effects that could delay or prevent their regulatory approval, limit the commercial profile of an approved label, or result in significant negative consequences following marketing approval, if any.
- Even if we receive regulatory approval for any of our current or future product candidates, we will be subject to ongoing obligations and continued regulatory review, which may result in significant additional expense.
- We rely, and expect to continue to rely, on third parties to conduct our ongoing and planned clinical trials for our current and future product candidates. If these third parties do not successfully carry out their contractual duties, comply with regulatory requirements or meet expected deadlines, we may not be able to obtain marketing approval for or commercialize our current and potential future product candidates and our business could be substantially harmed.
- If we are unable to obtain and maintain patent and other intellectual property protection for our technology and product candidates or if the scope of the intellectual property protection obtained is not sufficiently broad, our competitors could develop and commercialize technology and drugs similar or identical to ours, and our ability to successfully commercialize our technology and drugs may be impaired.
- If the market opportunities for our programs and product candidates are smaller than we estimate, if any regulatory approval that we obtain is based on a narrower definition of the patient population, or our current product candidates or any future product candidates do not achieve broad market acceptance, our revenue and ability to achieve profitability will be materially adversely affected.

# Risk Factors

## **Risks Related to the Private Placement**

- Disc may be unable to raise sufficient capital in the Private Placement or otherwise obtain additional financing to fund the operations and growth of the combined company (the "Combined Company") following the Merger.
- The issuance of shares in connection with the Private Placement and Merger will dilute substantially the voting power of Combined Company's stockholders.

## **Risks Related to the Transactions**

- The consummation of the Merger is subject to a number of conditions and if those conditions are not satisfied or waived, the merger agreement may be terminated in accordance with its terms and the Merger may not be completed.
- The ability to successfully effect the Merger and the Combined Company's ability to successfully operate the business thereafter will be largely dependent upon the efforts of certain key personnel. The loss of such key personnel could negatively impact the operations and financial results of the combined business.
- If the Merger's benefits do not meet the expectations of investors or securities analysts, the market price of Gem's securities or, following the consummation of the Merger, the Combined Company's securities, may decline.
- A market for the Combined Company's securities may not develop, which would adversely affect the liquidity and price of such securities.
- There can be no assurance that the Combined Company's securities will be approved for listing on the Nasdaq Global Market ("Nasdaq") or that the Combined Company will be able to comply with the continued listing standards of Nasdaq.
- Directors of each of Gem and Disc may have potential conflicts of interest in recommending that their respective company's stockholders vote in favor of the adoption of the Merger.
- Legal proceedings in connection with the Merger, the outcomes of which are uncertain, could delay or prevent the completion of the Merger.
- Changes in laws or regulations, or a failure to comply with any laws and regulations, may adversely affect Disc's and the Combined Company's business, including Disc's and the Combined Company's ability to consummate the Merger, and results of operations.





**Merger Announcement**  
August 10, 2022