

MOBILION EQUIPMENT LOAN AGREEMENT

THIS EQUIPMENT LOAN AGREEMENT (the "**Agreement**") is made this [] day of December, 2022 (the "**Effective Date**") by and between MOBILion Systems, Inc., a Delaware corporation located at 4 Hillman Drive, Suite 130, Chadds Ford, PA 19317 ("**MOBILion**"), and [], a [] located at [] ("**Recipient**").

Background

MOBILion owns certain structures for lossless ion manipulation technology ("**SLIM Technology**"), including developments, patents, marketing, and licensing rights in and related thereto. MOBILion desires to loan to Recipient, and Recipient desires to borrow from MOBILion, one (1) MOBILE instrument containing SLIM Technology and certain materials and information related thereto.

Agreement

NOW, THEREFORE, in consideration of the covenants and undertakings hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

1. **Loan of Equipment.** Subject to the terms and conditions of this Agreement, MOBILion hereby loans to Recipient, for the Term defined in Section 2 and for the purpose set forth in Section 3 below, one (1) MOBILE instrument containing SLIM Technology (the "**Equipment**"), which may consist of the hardware, software and documentation described in the Equipment Schedule attached hereto as Exhibit A. At its sole discretion, MOBILion may from time to time add, upgrade, or remove the Equipment from Recipient's location during the Term. All Equipment that Recipient subsequently may receive during the Term will be described in an additional Equipment Schedule executed by both parties and appended to this Agreement.
2. **Term.** This Agreement will begin as of the Effective Date and continue until the first anniversary of the Effective Date (the "**Term**"), unless earlier terminated by MOBILion or Recipient upon 30 days prior written notice to the other party. In its sole discretion, MOBILion may extend the Term pursuant to written notice to Recipient.
3. **Use.** Recipient may use the Equipment solely for the purpose []. Recipient may not modify the Equipment or move the Equipment to another location without MOBILion's prior written consent. Recipient's right to use the Equipment is non-transferable and the Equipment will be kept free of any liens, charges, pledges, security interests or other encumbrances. [*Note to Draft: Purpose of the use of the Equipment to be updated as necessary.*]
4. **Software and Documentation.** All software and documentation provided with the Equipment is hereby licensed to Recipient under the then-current MOBILion license terms provided with the software or Equipment. Notwithstanding the foregoing, if Recipient wishes to make copies of any documentation, it must first obtain MOBILion's prior written consent.
5. **Ownership; Obligations; and Notice to Creditors.** MOBILion retains all right, title and ownership to the Equipment, unless Recipient purchases any of the Equipment under the terms set forth in Section 12 below. Upon reasonable advance written notice, MOBILion may from time to time inspect the Equipment. Recipient acknowledges that the Equipment will constitute bailed property and hereby grants MOBILion the power of attorney to file UCC financing statements or similar notices describing the Equipment and to provide notice to other parties that

MOBILION EQUIPMENT LOAN AGREEMENT

the Equipment is not the property of Recipient. Should this Agreement or related transactions under this Agreement be deemed to pass title to the Equipment to Recipient other than provided in Section 12 below, Recipient agrees that MOBILion will be deemed to hold (and Recipient grants to MOBILion) a purchase money security interest in the Equipment, and the proceeds thereof, to secure all of its obligations to MOBILion, including its obligation to return the Equipment. Recipient will take all necessary steps to ensure that the Equipment will be marked as the property of MOBILion Systems, Inc. and be kept separate or identifiable from other materials, tools or property of Recipient. Recipient further agrees that the Equipment will remain personal property, and the Equipment will not become a fixture to Recipient's personal property. Within two business days after receipt of a request from MOBILion, Recipient will deliver written notice to existing secured creditors in form and substance satisfactory to MOBILion to the effect that the Equipment is MOBILion property and provide MOBILion with copies of any replies or related correspondence. In connection with any agreement by Recipient to pledge any of its assets or properties, Recipient will secure and concurrently deliver to MOBILion such secured creditor's written acknowledgement that the Equipment will remain the property of MOBILion. Recipient will further execute and deliver documents as MOBILion may reasonably request in order to ensure that MOBILion is and remains the owner of the Equipment.

6. **Warranty Disclaimer.** THE EQUIPMENT IS PROVIDED "AS IS," AND WITHOUT WARRANTY OF ANY KIND, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Recipient understands that some newly manufactured Equipment may contain remanufactured parts that are equivalent to new in performance.
7. **Maintenance.** During the Term, Recipient will maintain the Equipment in good working order. If applicable, Recipient will ensure that the Equipment is calibrated in accordance with industry standards or MOBILion specifications, as provided from time to time. Recipient agrees that only MOBILion or its authorized service providers may provide installation, maintenance or support services on the Equipment. Recipient will provide authorized service personnel ready and safe access to the Equipment. Unless otherwise agreed in writing, any maintenance or support provided by MOBILion will be billed to Recipient at MOBILion's standard service rates.
8. **Risk of Loss.** Recipient shall bear all risk of loss with respect to or arising from the Equipment from receipt until the Equipment is returned to MOBILion, including, without limitation, the risk of loss of all other property of Recipient (or property of a third party in its possession) or injury to individuals resulting from the use of the Equipment. As between Recipient and MOBILion, Recipient shall be solely liable for any damages arising out of Recipient's use of the Equipment, the SLIM Technology or the materials provided by MOBILion. All Equipment returned to MOBILion must include the same components received by Recipient and must be in good working order. MOBILion may impose additional charges if Recipient fails to return the Equipment in such condition or within the return time frame set forth in Section 11 below.
9. **Shipping Costs.** Unless otherwise agreed, MOBILion will pay all delivery, freight and rigging charges, all taxes and duties, and all other shipping costs and expenses with respect to the delivery or return of all Equipment.

MOBILION EQUIPMENT LOAN AGREEMENT

10. **Indemnification; Limitation of Liability.**

- (a) To the fullest extent permitted by law, Recipient shall defend, indemnify and hold harmless MOBILion and its affiliates, officers, directors, equity holders, and employees from and against all liabilities, losses, costs, expenses (including reasonable attorneys' fees), judgments, claims and damages (collectively, "**Losses**") arising out of or relating to any (i) willful misconduct or grossly negligent act or omission of Recipient in the performance of its obligations hereunder; (ii) knowing or intentional violation by Recipient of any laws, rules, or regulations applicable to the performance of Recipient's obligations under this Agreement; or (iii) Recipient's breach of any of its obligations, representations or covenants under this Agreement.
- (b) To the fullest extent permitted by law, MOBILion shall defend, indemnify and hold harmless Recipient and its affiliates, officers, directors, equity holders, and employees from and against all Losses resulting from any (i) willful misconduct or grossly negligent act or omission of MOBILion; (ii) MOBILion's breach of any of its obligations, representations or covenants under this Agreement; or (iii) infringement or alleged infringement of any trade secrets, copyrights, trademarks, trade names or other proprietary or contractual rights of any third party concerning the SLIM Technology or the Equipment.
- (c) TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, ARISING OUT OF THIS EQUIPMENT LOAN AGREEMENT. TO THE EXTENT PERMITTED BY LAW, COMPANY'S CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE LIST PRICE OF THE EQUIPMENT.

11. **Termination.** Upon the termination or expiration of this Agreement: (i) Recipient shall promptly return all Confidential Information disclosed to it upon written request of MOBILion; and (ii) Recipient shall immediately discontinue its use of the SLIM Technology and the Equipment, and, except as set forth in Section 12 below, shall promptly return the Equipment and any other information or materials relating to the foregoing or the SLIM Technology to MOBILion within ten (10) working days of the expiration or termination of this Agreement.. If Recipient fails to return the Equipment to MOBILion within the required ten (10) day period, Recipient will be deemed to have elected to purchase the Equipment. MOBILion will invoice Recipient accordingly, and Recipient will tender payment to MOBILion pursuant to MOBILion's invoice terms.

12. **Purchase Option.** Prior to the expiration of the Term, Recipient may, pursuant to ninety (90) days' prior written notice to MOBILion, elect to purchase the Equipment from MOBILion under MOBILion's then current standard terms and conditions or under Recipient's purchase agreement with MOBILion, provided that Recipient may not purchase the Equipment solely for resale. Such purchase of Equipment shall occur within thirty (30) days following the expiration of the Term. Equipment will be provided with MOBILion's then current standard warranty provisions for used equipment. The purchase price for the Equipment purchased under this Section will be the then current list price less a 10% discount. No other promotional or purchase discounts will apply.

MOBILION EQUIPMENT LOAN AGREEMENT

Recipient's purchase will not qualify for any stock rotation or price protection under any other agreement that Recipient may have with MOBILion.

13. **Recipient Representations and Warranties.**

- (a) Recipient represents and warrants that Recipient's laboratory is compatible with the Equipment and that Recipient's employees possess the training, skills and expertise necessary to use the Equipment for its intended purpose. Recipient further represents and warrants that it will use the Equipment solely for its intended purpose and pursuant to the instructions provided by MOBILion from time to time.
- (b) Recipient agrees to use the Equipment in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with industry standards. Recipient represents and warrants that it will not knowingly use the Equipment in a manner that violates or infringes upon any third party's intellectual property rights. If Recipient becomes aware of any such possible infringement during the Term, Recipient shall immediately notify MOBILion in writing.
- (c) Recipient agrees to take commercially reasonable precautions to safeguard MOBILion's SLIM Technology, the Equipment and any other property entrusted to Recipient's custody or control.

14. **MOBILion Intellectual Property.**

- (a) Notwithstanding anything in this Agreement to the contrary, MOBILion shall own, control and retain exclusive ownership of, and worldwide rights, title, and interest in and to all intellectual property and other proprietary rights in and to MOBILion's products, technology and intellectual property which were possessed, discovered or acquired by MOBILion prior to the execution of this Agreement or are conceived, developed or acquired by MOBILion independent of this Agreement, including, without limitation, the SLIM Technology, the Equipment, and any improvements, modifications, advancements or derivatives thereof or thereto (the "**Intellectual Property**").
- (b) It is not anticipated that Recipient will develop any new intellectual property or invent any product, device, process or method, whether patentable or unpatentable, based on, containing, or derived from the SLIM Technology or the Equipment during the Term; however, if Recipient develops any such intellectual property or invention, Recipient shall promptly notify MOBILion in writing, but not any other individual or entity, of any such development. The Intellectual Property and any deliverables or work product produced by Recipient in connection therewith shall be considered "work made for hire" as defined under 17 U.S.C. § 101 and shall be owned by MOBILion. Notwithstanding the foregoing, if any invention is determined to be a "joint invention" as defined by 35 U.S.C. § 116, then such joint invention shall be owned by MOBILion, and Recipient shall be deemed to have assigned to MOBILion its rights in any such joint invention and shall execute any separate assignment documentation in MOBILion's favor at MOBILion's reasonable request and at MOBILion's cost. MOBILion shall have the sole and absolute right, but not the obligation, to determine (in its sole discretion) whether any particular U.S. or foreign patent or patent application covering any joint invention shall be filed, prosecuted, defended, amended, licensed, enforced or maintained.

MOBILION EQUIPMENT LOAN AGREEMENT

- (c) Notwithstanding any provision of this Agreement to the contrary, the term “Intellectual Property” shall not include any pre-existing, Recipient-owned, intellectual property or invention of Recipient or any developments thereto (“**Retained Property**”). MOBILion will receive a royalty-free, non-exclusive and irrevocable license throughout the world to use, disclose, publish, translate, reproduce, deliver, perform, dispose of and authorize others so to do, all Retained Property incorporated into any deliverables.

15. **Confidentiality.**

- (a) For purposes of this Agreement, “**Confidential Information**” means all information of either party (or information of an “Affiliate” (as defined below) or another party which either party or its Affiliate has in its possession or otherwise discloses to the other party or its Affiliates) including, but not limited to, information relating to such party’s or its Affiliate’s business, trade secrets, financial information, marketing information, intellectual property rights, customer lists, operations and software products, computer source code and object code, hardware and software designs and specifications, schematics, engineering details and reports, flow charts, technology, tax returns, vendor lists, pricing and other product information, business plans and related documents, regardless of whether such information was or is transmitted orally, in writing, electronically or in whatever other form, or whether such information was or is tangible or intangible or obtained from observation. The terms and conditions of this Agreement, the SLIM Technology, and the Equipment are Confidential Information. Confidential Information shall further include any supplemental information the disclosing party or its Affiliates have provided to the receiving party or provides to the receiving party in the future, as well as information that has been or is expressly designated by the disclosing party or its Affiliates as “Confidential Information.” If the information disclosed was or is oral, then it shall be presumed by the receiving party and its Affiliates to be Confidential Information. For purposes of this Agreement, “**Affiliates**” of a party are such party’s employees, agents, consultants, investors, strategic partners, and other affiliates.
- (b) Neither party shall disclose or transmit any Confidential Information to any person or entity other than such party’s Affiliates who have a need to know such information and who have been informed of and agree to abide by such party’s obligations under this Agreement. Each such Affiliate shall also be informed that by accepting such access, he, she, or it agrees to be bound by the provisions of this Agreement. Furthermore, by allowing any such access, the receiving party agrees to be and remain jointly and severally liable for any disclosure by any such Affiliate that is not in accordance with this Agreement. The receiving party and its Affiliates shall use not less than the same degree of care to avoid disclosure of Confidential Information as the receiving party or its Affiliate uses for its own confidential information of like importance, and at a minimum, shall exercise reasonable care.
- (c) Neither party or its Affiliates shall use Confidential Information for its own benefit or disclose it to third parties without the prior written consent of the disclosing party. For purpose of clarity, Recipient acknowledges and agrees that it shall not use any Confidential Information of MOBILion, including, without limitation, any Intellectual Property owned by MOBILion or know-how, processes, procedures or methodologies

MOBILION EQUIPMENT LOAN AGREEMENT

provided by MOBILion pursuant to this Agreement, to develop, provide, market or sell any services or products to third parties.

- (d) Notwithstanding the foregoing, Confidential Information shall not include any information that (i) was in the public domain at the time of the disclosing party's or its Affiliate's communications to the receiving party; (ii) entered the public domain through no fault of the receiving party or its Affiliates subsequent to the time of communication to the receiving party or its Affiliates; (iii) was already known to the receiving party or its Affiliates at the time of disclosure, as evidenced by the receiving party's or its Affiliate's prior written records; (iv) was disclosed under no obligation of confidentiality to the receiving party or its Affiliates by a third party that is not otherwise an Affiliate of the disclosing party hereunder; or (v) the parties have agreed in writing may be disclosed. Further, the parties agree that this Agreement does not prohibit the disclosure of Confidential Information where applicable law requires, including, but not limited to, disclosure in response to subpoenas and/or orders of a governmental agency or court of competent jurisdiction and any disclosures necessary to comply with applicable securities laws. In the event the receiving party or its Affiliate is required to disclose Confidential Information in accordance with the previous sentence, the receiving party or its Affiliate shall, to the extent permitted by law, immediately, and in no event later than five (5) days prior to such required disclosure, notify the disclosing party and its applicable Affiliates in writing, and cooperate with the disclosing party and its applicable Affiliates in seeking to limit the disclosure of such Confidential Information in accordance with public law.
- (e) The Affiliates of each of the parties shall be considered intended third party beneficiaries of the rights and obligations set forth in this Section 15.

16. **General Provisions.**

- (a) **Notices.** All notices that are required under this Agreement will be in writing and will be considered given as of twenty-four (24) hours after sending by electronic means, facsimile transmission, overnight courier, or hand delivery, or as of five (5) days of certified mailing.
- (b) **No Assignment.** Neither this Agreement nor any right, privilege, license or obligation set forth herein may be assigned, transferred or shared by Recipient without MOBILion's prior written consent, and any such attempted assignment or transfer is void to the fullest extent permitted by law. Any merger, consolidation, reorganization, transfer of substantially all assets of Recipient or other change in control or ownership of Recipient will be considered an assignment for the purposes of this Agreement.
- (c) **No Waiver.** The waiver of any term, condition, or provision of this Agreement must be in writing and signed by an authorized representative of the waiving party. To the fullest extent permitted by law, any such waiver will not be construed as a waiver of any other term, condition or provision except as provided in writing, nor as a waiver of any subsequent breach of the same term, condition or provision.
- (d) **Severability.** To the extent that any provision or a portion of any provision of this Agreement is determined to be illegal or unenforceable, the remainder of this Agreement will remain in full force and effect.

MOBILION EQUIPMENT LOAN AGREEMENT

- (e) Entire Agreement. This Agreement and the Exhibits constitute the entire agreement between MOBILion and Recipient, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder.
- (f) Governing Law. This Agreement will be governed in all respects by the laws of the Commonwealth of Pennsylvania without reference to any choice of laws provision. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. The parties agree that all disputes arising out of or relating to this Agreement shall be brought exclusively in the Court of Common Pleas, Chester County, Pennsylvania, or the United States District Court for the Eastern District of Pennsylvania. The parties hereto irrevocably consent, to the fullest extent permitted by law, to the jurisdiction of such courts and waive any objection either party may have based on lack of personal jurisdiction, forum nonconveniens, or improper venue.

[Signature Page follows]

MOBILION EQUIPMENT LOAN AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed effective as of the Effective Date.

RECIPIENT:

[_____]

By: _____

Print Name: _____

Title: _____

COMPANY:

MOBILION SYSTEMS, INC.

By: _____

Print Name: _____

Title: _____

MOBILION EQUIPMENT LOAN AGREEMENT

EXHIBIT A

EQUIPMENT SCHEDULE

The items listed below will be provided:

- MOBIE instrument
- Associated instrument control software (MOBIE EyeOn) and accessories for MOBIE instrument