
**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): **December 15, 2022**

ACURA PHARMACEUTICALS, INC.
(Exact Name of Registrant as specified in its Charter)

New York
(State or other jurisdiction of
incorporation or organization)

1-10113
(Commission File Number)

11-0853640
(I.R.S. Employer
Identification Number)

616 N. North Court, Suite 120
Palatine, Illinois 60067
(Address of principal executive offices) (Zip code)

(847) 705-7709
(Registrant's telephone number, including area code)

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

<u>Title of Each Class</u>	<u>Trading Symbol(s)</u>	<u>Name of Each Exchange on Which Registered</u>
Common Stock, \$0.01 par value per share	ACUR	OTC Market – OTC Expert Market

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:

- ☐ 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 (17CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17CFR 240.13e-4(c))

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. ☐

Item 1.01 - Entry into a Material Definitive Agreement.

On December 15, 2022, Acura Pharmaceuticals, Inc. (“we” “Acura” or the “Company”), entered into an agreement to further amend the June 28, 2019 License, Development and Commercialization Agreement (“Agreement”) with Abuse Deterrent Pharma, LLC (“AD Pharma”), for the development of LTX-03 (hydrocodone bitartrate with acetaminophen) immediate-release tablets utilizing Acura’s patented LIMITx technology which addresses the consequences of excess oral administration of opioid tablets, the most prevalent route of opioid overdose and abuse.

The amendment to the Agreement extends the FDA’s acceptance date of a New Drug Application (“NDA”) for LTX-03 to June 30, 2023 (“NDA Acceptance Date”) (“Amended Agreement”).

AD Pharma may terminate the Amended Agreement at any time. Additionally, if the NDA for LTX-03 is not accepted by the FDA by the NDA Acceptance Date, AD Pharma may terminate the Amended Agreement and take ownership of the intellectual property rights of LTX-03 from the Company. Should AD Pharma choose not to exercise this option to terminate the Amended Agreement and the NDA for LTX-03 is subsequently accepted by the FDA, such option to terminate the Amended Agreement expires.

The inclusion of a description of the Amended Agreement with AD Pharma under Item 1.01 of this Current Report on Form 8-K shall not be deemed an acknowledgment that the Amended Agreement is a material agreement not made, or deemed not to be made, in the ordinary course of our business.

Item 1.01 - Entry into a Material Definitive Agreement.

On December 22, 2022 we received a \$250,000 loan from AD Pharma. This loan combined with the \$2,319,279 under the November 10, 2022 Amended Consolidated and Restated Secured Promissory Note assigned to AD Pharma by Mr. John Schutte, now totals \$2,569,279, bears interest at 5.25% and matures on December 31, 2023, at which time all principal and interest is due. Events of default under the Note include, among other items, bankruptcy events, failure to pay interest and principal when due and such failure continues for 5 days, and if Acura is generally not, or is unable to, or admits in writing its inability to, pay its debts as they become due. If any amount payable hereunder is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration, or otherwise, including upon an event of default, such overdue amount shall bear interest at the rate per annum of 7.5% from the date of such non-payment until such amount is paid in full.

The funding provided by AD Pharma will be used for operations over the course of the next month. There can be no assurance we will be successful in receiving additional financing. In the absence of the receipt of additional financing by end of January 2023, we will be required to scale back or terminate operations and/or seek protection under applicable bankruptcy laws. This could result in a complete loss of shareholder value in the Company. Even assuming we are successful in securing additional sources of financing to fund continued operations, there can be no assurance that the proceeds of such financing will be sufficient to fund operations until such time, if at all, that we generate sufficient revenue from our products and product candidates to sustain and grow our operation.

The inclusion of a description of the Note under Item 1.01 of this Current Report on Form 8-K shall not be deemed an acknowledgement that the Note is a material agreement not made, or deemed not to be made, in the ordinary course of our business.

At December 15, 2022, AD Pharma directly owns approximately 66% of the outstanding common stock of the Company. The ownership percentage of the Company held by AD Pharma does not include their warrant to purchase 10.0 million shares of common stock of the Company. AD Pharma is an entity controlled by Mr. Schutte, of which Mr. Schutte is the managing partner and investor. At December 15, 2022, Mr. Schutte directly owns approximately 14% of our common stock.

Item 2.01 – Completion of Acquisition or Disposition of Assets

The contents of Item 1.01 are incorporated herein by reference.

Item 2.03 - Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The contents of Item 1.01 are incorporated herein by reference.

Forward-Looking Statements

Statements in this Current Report constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from any future results, performance, or achievements expressed or implied by such forward-looking statements.

Forward-looking statements may include, but are not limited to:

- our ability to fund or obtain funding for our continuing operations, including the development of our products utilizing our LIMITx and IMPEDE technologies;
- whether we will receive FDA acceptance for an NDA for LTX-03 by the target date, currently June 30, 2023;
- whether our licensees will terminate the license prior to commercialization;
- the expected results of clinical studies relating to LTX-03 or any successor product candidate, the date by which such studies will complete and the results will be available and whether any product candidate will ultimately receive FDA approval;
- the ability of LTX-03 single tablets to achieve bioequivalence or to demonstrate efficacy in a clinical study;
- whether our licensing partners will develop any additional products and utilize Acura for such development;
- whether LIMITx will retard the release of opioid active ingredients as dose levels increase;
- whether the extent to which products formulated with the LIMITx technology mitigate respiratory depression risk will be determined sufficient by the FDA;
- our and our licensee's ability to successfully launch and commercialize our products and technologies;
- our and our licensee's ability to obtain necessary regulatory approvals and commercialize products utilizing our technologies;
- the market acceptance of, timing of commercial launch and competitive environment for any of our products;
- our ability to develop and enter into additional license agreements for our product candidates using our technologies;
- the ability to avoid infringement of patents, trademarks and other proprietary rights of third parties;
- the ability of our patents to protect our products from generic competition and our ability to protect and enforce our patent rights in any paragraph IV patent infringement litigation;
- the adequacy of the development program for our product candidates, including whether additional clinical studies will be required to support an NDA and FDA approval of our product candidates;
- changes in regulatory requirements;
- adverse safety findings relating to our commercialized products or product candidates in development;
- whether or when we are able to obtain FDA approval of labeling for our product candidates for the proposed indications and whether we will be able to promote the features of our technologies; and
- whether our product candidates will ultimately perform as intended in commercial settings.

In some cases, you can identify forward- looking statements by terms such as "may," "will", "should," "could," "would," "expects," "plans," "anticipates," "believes," "estimates," "indicates", "projects," "predicts," "potential" and similar expressions intended to identify forward-looking statements. These statements reflect our current views with respect to future events and are based on assumptions and subject to risks and uncertainties. Given these uncertainties, you should not place undue reliance on these forward-looking statements. We discuss many of these risks in greater detail in our filings with the Securities and Exchange Commission.

Item 9.01 - Financial Statements and Exhibits

<u>Exhibit Number</u>	<u>Description</u>
99.1	Amendment #4 dated November 10, 2022 to License, Development and Commercialization Agreement with Abuse Deterrent Pharma, LLC
99.2	Amended Consolidated and Restated Secured Promissory Note dated November 10, 2022 assigned to Abuse Deterrent Pharma, LLC
99.3	Amendment #5 dated December 15, 2022 to License, Development and Commercialization Agreement with Abuse Deterrent Pharma, LLC
104	Cover Page Interactive Data File (embedded as Inline XBRL document)

SIGNATURES

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

ACURA PHARMACEUTICALS, INC.

By: /s/ Peter A. Clemens

Peter A. Clemens

Senior Vice President & Chief Financial Officer

Date: December 22, 2022

AMENDMENT #4
TO LICENSE, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT

This AMENDMENT #4 (this “**Amendment**”) TO LICENSE, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT (the “**Agreement**”) dated June 28, 2019 between Acura Pharmaceuticals, Inc. (“**Acura**”), a New York corporation, having a place of business at 616 N. North Court, Suite 120, Palatine, IL 60067, and Abuse Deterrent Pharma, LLC (“**AD Pharma**”), a Kentucky limited liability company, having a place of business at 333 E. Main Street, Suite 220, Louisville, Kentucky 40202, is made as of November 10, 2022.

RECITALS

WHEREAS, Acura and AD Pharma entered into that certain Amendment to the Agreement on October 16, 2020 (“**Amendment #1**”);

WHEREAS, Acura and AD Pharma entered into that certain Amendment #2 to the Agreement on June 17, 2021 (“**Amendment #2**”); and

WHEREAS, Acura and AD Pharma entered into that certain Amendment #3 to the Agreement on February 28, 2022 (“**Amendment #3**” and together with Amendment #1 and Amendment #2, the “**Prior Amendments**”); and

WHEREAS, the Parties desire to further amend the Agreement as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and promises contained in the Agreement, as amended, and this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Acura and AD Pharma agree as follows:

ARTICLE 1
AMENDMENTS TO AGREEMENT

1.1 The Agreement is hereby amended by the addition of a new Section 3.13 reading in its entirety as follows:

“**3.13 Option for License to Alprazolam Product.** If, within Five (5) Years of the Effective Date, AD Pharma provides written notice to Acura of its desire to add the Alprazolam Product as an additional licensed product under this Agreement, Acura shall grant a license to AD Pharma, which shall be (unless mutually agreed by the Parties) an exclusive (even as to Acura), sub-licensable (subject to Section 2.10), royalty-bearing right and license under the LIMITx™ Technology to develop, manufacture, have manufactured, distribute, have distributed, sell, have sold, market, have marketed, commercialize and have commercialized the Alprazolam Product in the Field in the Territory, on terms and conditions substantially identical to the Hydrocodone Product (including, without limitation, with respect to the Royalty Payment and Milestone Payments; provided, however, that no “Maximum Pre-Regulatory Application Submission Payment” or other upfront payment or option fee or the like shall be required).”

1.2 The Agreement is hereby amended by the addition of a new Section 3.14 reading in its entirety as follows:

“3.14 Option for License to Oxycodone Product. If, within Five (5) Years of the Effective Date, AD Pharma provides written notice to Acura of its desire to add the Oxycodone Product as an additional licensed product under this Agreement, Acura shall grant a license to AD Pharma, which shall be (unless mutually agreed by the Parties) an exclusive (even as to Acura), sub-licensable (subject to Section 2.10), royalty-bearing right and license under the LIMITx™ Technology to develop, manufacture, have manufactured, distribute, have distributed, sell, have sold, market, have marketed, commercialize and have commercialized the Oxycodone Product in the Field in the Territory, on terms and conditions substantially identical to the Hydrocodone Product (including, without limitation, with respect to the Royalty Payment and Milestone Payments; provided, however, that no “Maximum Pre-Regulatory Application Submission Payment” or other upfront payment or option fee or the like shall be required).”

ARTICLE 2 MISCELLANEOUS

2.1 **Governing Law.** This Amendment shall be governed by the laws of the State of New York without regard to its conflict of laws rules or principles.

2.2 **Amendments.** Except as expressly amended by this Amendment #4, the Agreement (as amended by the Prior Amendments) shall remain unmodified and in full force and effect.

2.3 **Entire Agreement.** The Agreement (including the Schedules attached thereto), as amended by the Prior Amendments and this Amendment, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersede all prior understandings and writings between the Parties relating thereto.

2.4 **Interpretation.** Any capitalized terms used in this Amendment and not otherwise defined herein shall have the meaning provided in the Agreement.

2.5 **Counterparts.** This Amendment may be executed manually or electronically by the Parties, in any number of counterparts, each of which shall be considered one and the same amendment and shall become effective when a counterpart hereof shall have been signed by each of the Parties and delivered to the other Party.

[End of text; signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed in their names by their properly and duly authorized officers or representatives as of the date first written above.

ACURA PHARMACEUTICALS, INC.

By: /s/ Peter A. Clemens
Name: Peter A. Clemens
Title: Senior Vice President & CFO

ABUSE DETERRENT PHARMA, LLC

By: /s/ John Schutte
Name: John Schutte
Title: Managing Partner

**AMENDED, CONSOLIDATED AND RESTATED
SECURED PROMISSORY NOTE**

November 10, 2022

FOR VALUE RECEIVED, ACURA PHARMACEUTICALS, INC., a New York corporation having its principal place of business at 616 N. North Court, Suite 120, Palatine, Illinois, as maker (the “**Company**”), hereby unconditionally promises to pay to the order of Abuse Deterrent Pharma, LLC, a Kentucky limited liability company having its principal place of business at 2604 River Green Circle, Louisville, Kentucky 40206, or its assigns (the “**Noteholder**”), the aggregate principal sum of **TWO MILLION THREE HUNDRED NINETEEN THOUSAND TWO HUNDRED SEVENTY-NINE DOLLARS (\$2,319,279)**, in lawful money of the United States of America, together with interest thereon, as provided in this Promissory Note (this “**Note**”).

This Note amends, consolidates, restates and replaces the promissory notes made by the Company in the aggregate original principal amount of One Million Nine Hundred Twenty-Five Thousand Dollars (\$1,925,000), as set forth on Exhibit A attached hereto, and assigned to the Noteholder (collectively, the “**Prior Notes**”). This Note is not intended to be, and shall not be construed as, a novation of the indebtedness evidenced by the Prior Notes. The principal amount of this Note includes the interest previously accrued on the Prior Notes as of the date of the issuance of this Note. This Note shall be entitled to the benefits (in the same priority) of, *inter alia*, any security at any time granted and pledged by the Company to the Noteholder in conjunction with the original execution and delivery of the Prior Notes or predecessor notes or by the Company or any other person at any time thereafter. This Note also evidences an additional loan from the Noteholder to the Company made on the date hereof in the original principal amount of Three Hundred Fifty Thousand Dollars (\$350,000).

1. Definitions. Unless defined elsewhere in this Note, capitalized terms used herein shall have the meanings set forth in this Section 1.

“**Contingent Obligation**” means any direct or indirect liability, contingent or not, of the Company for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by the Company, or for which the Company is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of the Company; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect the Company against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Company in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Indebtedness**” means (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

“**Permitted Indebtedness**” means (a) the Company’s Indebtedness to the Noteholder under this Note; (b) Subordinated Debt; (c) Indebtedness existing on the date hereof and disclosed on the Perfection Certificate(s) delivered in accordance with the Security Agreement; (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business; (e) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred by the Company to finance the acquisition, repair, improvement or construction of fixed or capital assets of such person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made); (f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of the Company’s business; and (g) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (e) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon the Company.

“**Person**” means any individual, corporation, limited liability company, trust, joint venture, association, company, limited or general partnership, unincorporated organization, governmental authority or other entity.

“**Subordinated Debt**” is Indebtedness incurred by the Company subordinated to all Indebtedness of the Company to the Noteholder (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to the Noteholder, entered into between the Noteholder, the Company, and the other creditor), on terms acceptable to the Noteholder.

2. **Maturity Date; Prepayment.**

2.1 **Maturity Date.** The Company agrees to pay the principal sum of this Note and interest on the unpaid principal sum of this Note on December 31, 2023 (the “**Maturity Date**”). Time shall be of the essence with respect to all of the Company’s obligations under this Note.

2.2 **Prepayment.** This Note may not be prepaid by the Company (either in whole or in part) without the prior written consent of the Noteholder in its sole discretion.

2.3 **Payment Mechanics.** All payments of interest and principal shall be made in lawful money of the United States of America on the date on which such payment is due by wire transfer of immediately available funds to the Noteholder’s account at a bank specified by the Noteholder in writing. All payments on this Note shall be applied first to the payment of any expenses or charges payable hereunder, and next to accrued interest, and then to the principal balance hereof, or in such other order as the Noteholder may elect in its sole discretion.

2.4 **Rescission.** If at any time any payment made against this Note (whether payment is made by the Company, any guarantor, or any other Person) is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of the Company or such other Person who made the payment, or otherwise, or if any check or other written order to pay any amount to the Noteholder is dishonored or returned as unpaid by the bank against whom it is drawn, the Company's obligation to make such payment shall be reinstated as though such payment had not been made.

2.5 **Election to Apply to Alprazolam Product and Oxycodone Product.** In the event the Noteholder elects to add the Alprazolam Product or Oxycodone Product, or both, as an additional licensed product under the License, Development and Commercialization Agreement dated as of June 28, 2019, as amended, by and between the Company and the Noteholder (the "**License Agreement**"), the Noteholder shall have the right, in its sole discretion, upon written notice to the Company at any time, to have One Million Dollars (\$1,000,000) of the amount payable hereunder be applied, in lieu of payment to the Noteholder, to amounts payable by the Noteholder in respect of each such license (i.e. a total of Two Million Dollars (\$2,000,000) in the event the Noteholder elects to add both the Alprazolam Product and Oxycodone Product as additional licensed products).

3. **Interest.** The outstanding principal amount of this Note shall bear interest at a fixed rate equal to five and one-quarter percent (5.25%) per annum and shall accrue and be payable at the Maturity Date. If any amount payable hereunder is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration, or otherwise, including upon an Event of Default, such overdue amount shall bear interest at a rate equal to seven and one-half percent (7.5%) per annum from the date of such non-payment until such amount is paid in full. All computations of interest shall be made on the basis of 365 or 366 days, as the case may be, and the actual number of days elapsed.

4. **Limitation.** Notwithstanding anything to the contrary contained herein, all agreements and communications between the Company and Noteholder are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Noteholder shall never exceed the maximum legal rate of interest permitted by law.

5. **Events of Default.** The occurrence of any of the following shall constitute an "**Event of Default**" hereunder:

- (a) The Company fails to pay any principal or interest or any other amount payable hereunder when due and such failure continues for 5 days;
- (b) The Company fails to perform any other covenant or obligation set forth in this Note or the Security Agreement;
- (c) The License Agreement is terminated by the Noteholder pursuant to Section 3.1.3 or 3.1.4 thereof;

(d) The Company fails to pay when due any of its indebtedness for borrowed money (other than indebtedness under this Note) in a principal amount exceeding \$100,000, or any interest or premium thereon, when due and such failure continues after the applicable grace period, if any, specified in the agreement or instrument relating to such indebtedness;

(e) The Company commences any voluntary case, proceeding, or other action (i) under any existing or future law relating to bankruptcy, insolvency, reorganization, or other relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts, or (ii) seeking appointment of a receiver, trustee, custodian, conservator, or other similar official for it or for all or any substantial part of its assets, or the Company makes a general assignment for the benefit of its creditors;

(f) There is commenced against the Company any involuntary case, proceeding, or other action of a nature referred to in (e) above which (i) results in the entry of an order for relief or any such adjudication or appointment or (ii) remains undismissed, undischarged, or unbonded for a period of 30 days;

(g) There is commenced against the Company any case, proceeding, or other action seeking issuance of a warrant of attachment, execution, or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which has not been vacated, discharged, or stayed or bonded pending appeal within 30 days from the entry thereof;

(h) The Company takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in (e), (f) or (g) above;

(i) The Company is generally not, or is unable to, or admits in writing its inability to, pay its debts as they become due; or

(j) A final non-appealable judgment or decree for money in excess of \$100,000 (to the extent not paid or covered by insurance) is entered against the Company and such judgment or decree has not been vacated, discharged, or stayed or bonded pending appeal within 30 days from the entry thereof.

6. **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter during the continuance of such Event of Default, the Noteholder may at its option, by written notice to the Company (a) declare the entire principal amount of this Note, together with all accrued interest thereon and all other amounts payable under this Note, immediately due and payable and/or (b) exercise any or all of its rights, powers, or remedies under applicable law; *provided, however* that, if an Event of Default described in any of (e) through (i) above shall occur, the principal of and accrued interest on this Note shall become immediately due and payable without any notice, declaration, or other act on the part of the Noteholder.

7. Negative Covenants. The Company shall not do any of the following without the prior written consent of the Noteholder in its sole discretion:

(a) create, or authorize the creation of, or issue or obligate itself to issue any securities (other than the issuance of stock options, restricted stock units or other equity incentive grants of the Company pursuant to the terms of stock option plans, restricted stock unit plans or similar plans, provided such issuances do not exceed, in the aggregate, 1,250,000 shares during the period of eighteen (18) months commencing on the date of this Note);

(b) create, incur, assume, or be liable for any Indebtedness, other than Permitted Indebtedness; or

(c) issue any press release or make any public statement other than as required to satisfy its statutory or regulatory filing and reporting obligations or to comply with any other legal or regulatory requirements to which the Company is subject, provided that the Company takes reasonable steps to minimize the extent of any such disclosure.

8. Transfer. This Note may be assigned, transferred, or negotiated by the Noteholder to any individual or entity, at any time, without notice to or the consent of the Company. The Company shall not have the right to assign, delegate or transfer its rights or obligations under this Note without the prior written consent of Noteholder, and any attempted assignment, delegation or transfer without such consent shall be null and void. This Note shall inure to the benefit of and be binding upon the parties hereto and their permitted assigns.

9. Miscellaneous.

9.1 Governing Law; Jurisdiction. This Note, and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Note and the transactions contemplated hereby and thereby shall be governed by the laws of the Commonwealth of Kentucky, without giving effect to conflict of law provisions. The Company hereby consents to the jurisdiction of any state or federal court located within the County of Jefferson, Commonwealth of Kentucky, and irrevocably agrees that, subject to the Noteholder's sole and absolute election, any case or proceeding relating to Title 11 of the United States Code and any actions relating to the indebtedness evidenced hereby shall be litigated in such courts, and the Company waives any objection that it may have based on improper venue or forum non conveniens to the conduct of any proceeding in any such court. Nothing contained in this paragraph shall affect the right of the Noteholder to bring any action or proceeding against the Company or its property in the courts of any other jurisdiction.

9.2 Waiver of Jury Trial. **THE COMPANY ACKNOWLEDGES THAT THE TIME AND EXPENSE REQUIRED FOR TRIAL BY JURY EXCEED THE TIME AND EXPENSE REQUIRED FOR A BENCH TRIAL AND HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND AFTER HAVING CONSULTED (OR HAVING HAD AMPLE OPPORTUNITY TO CONSULT) ITS LEGAL COUNSEL CONCERNING THE CONSEQUENCES OF SUCH WAIVER, ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION OR OTHER PROCEEDING BROUGHT TO ENFORCE OR COLLECT OR OTHERWISE IN CONNECTION WITH THIS NOTE OR ANY RELATED DOCUMENTS.**

9.3 Waiver of Notice. The Company hereby waives presentment, demand for payment, protest, notice of dishonor, notice of protest or nonpayment, notice of acceleration of maturity, and diligence in connection with the enforcement of this Note or the taking of any action to collect sums owing hereunder.

9.4 Amendments and Waivers. This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of the Company or Noteholder, but only by an agreement in writing signed by both Noteholder and the Company. Any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.

9.5 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising on the part of the Noteholder, of any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.6 Severability. If any term or provision of this Note is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Note or invalidate or render unenforceable such term or provision in any other jurisdiction.

9.7 Security. This Note is secured by and entitled to the benefits of that certain Security Agreement dated as of the date hereof by and between the Company and the Noteholder, as the same may be amended or restated and including any successor agreement (the “**Security Agreement**”).

[End of text; signature page follows.]

IN WITNESS WHEREOF, the Company has executed this Amended, Consolidated and Restated Secured Promissory Note as of November 10, 2022.

ACURA PHARMACEUTICALS, INC.

By: /s/ Peter A. Clemens

Name: Peter A. Clemens

Title: Senior Vice President & CFO

Exhibit A

Date	Loan #	Principal		Aggregated Principal	
12/21/2021	1	\$	150,000	\$	150,000
1/3/2022	2	\$	125,000	\$	275,000
1/31/2022	3	\$	200,000	\$	475,000
3/31/2022	4	\$	150,000	\$	625,000
4/29/2022	5	\$	150,000	\$	775,000
5/20/2022	6	\$	100,000	\$	875,000
6/10/2022	7	\$	100,000	\$	975,000
7/6/2022	8	\$	150,000	\$	1,125,000
7/18/2022	9	\$	150,000	\$	1,275,000
8/23/2022	10	\$	250,000	\$	1,525,000
9/20/2022	11	\$	150,000	\$	1,675,000
10/13/2022	12	\$	250,000	\$	1,925,000
		\$	1,925,000		

**AMENDMENT #5
TO LICENSE, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT**

This AMENDMENT #5 (this “**Amendment**”) TO LICENSE, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT (the “**Agreement**”) dated June 28, 2019 between Acura Pharmaceuticals, Inc. (“**Acura**”), a New York corporation, having a place of business at 616 N. North Court, Suite 120, Palatine, IL 60067, and Abuse Deterrent Pharma, LLC (“**AD Pharma**”), a Kentucky limited liability company, having a place of business at 333 E. Main Street, Suite 220, Louisville, Kentucky 40202, is made as of December 15, 2022.

RECITALS

WHEREAS, Acura and AD Pharma entered into that certain Amendment to the Agreement on October 16, 2020 (“**Amendment #1**”);

WHEREAS, Acura and AD Pharma entered into that certain Amendment #2 to the Agreement on June 17, 2021 (“**Amendment #2**”); and

WHEREAS, Acura and AD Pharma entered into that certain Amendment #3 to the Agreement on February 28, 2022 (“**Amendment #3**”) and

WHEREAS, Acura and AD Pharma entered into that certain Amendment #4 to the Agreement on November 10, 2022 (“**Amendment #4**” and together with Amendment #1, Amendment #2 and Amendment 3 constitute the “**Prior Amendments**”); and

WHEREAS, the Parties desire to amend the Agreement to provide for an extension to the LIMITx™ Regulatory Submission Timeline.

NOW THEREFORE, in consideration of the mutual covenants and promises contained in the Agreement, as amended, and this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Acura and AD Pharma agree as follows:

**ARTICLE 1
AMENDMENTS TO AGREEMENT**

1.1 Item 3 of Schedule 1 “LIMITx™ Regulatory Application Submission Timeline” is hereby amended and replaced in its entirety as follows:

3. By June 30, 2023, Acura must gain filing acceptance by the FDA of a Regulatory Approval Application for the Product.

**ARTICLE 2
MISCELLANEOUS**

2.1 Governing Law. This Amendment shall be governed by the laws of the State of New York without regard to its conflict of laws rules or principles.

2.2 Amendments. Except as expressly amended by this Amendment #5 and the “Prior Amendments”, the Agreement shall remain unmodified and in full force and effect.

2.3 Entire Agreement. The Agreement (including the Schedules attached thereto), as amended by the “Prior Amendments” and this Amendment, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersede all prior understandings and writings between the Parties relating thereto.

2.4 Interpretation. Any capitalized terms used in this Amendment and not otherwise defined herein shall have the meaning provided in the Agreement.

2.5 Counterparts. This Amendment may be executed manually or electronically by the Parties, in any number of counterparts, each of which shall be considered one and the same amendment and shall become effective when a counterpart hereof shall have been signed by each of the Parties and delivered to the other Party.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed in their names by their properly and duly authorized officers or representatives as of the date first written above.

ACURA PHARMACEUTICALS, INC.

By: /s/ Robert B. Jones

Name: Robert B. Jones

Title: CEO and President

ABUSE DETERRENT PHARMA, LLC

By: /s/ John Schutte

Name: John Schutte

Title: Managing Partner
