UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2020

OR

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

For the transition period from _____ to _____

Commission File Number: 001-38112

ATHENEX, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**43-1985966**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
1001 Main Street, Suite 600 Buffalo, NY	
(Address of principal executive offices)	**14203 (Zip Code)**

(716) 427-2950
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.001 per share	ATNX	The Nasdaq Global Select Market

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Small reporting company	☐
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. ☐

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

As of July 31, 2020, the registrant had 81,725,534 shares of common stock, $0.001 par value per share, outstanding.

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PART I—FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements.

ATHENEX, INC. AND SUBSIDIARIES
Condensed Consolidated Balance Sheets
(unaudited)
(In thousands, except share and per share data)

	June 30, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents	$ 105,901	$ 127,674
Restricted cash	11,000	—
Short-term investments	10,414	33,139
Accounts receivable, net of chargebacks and other deductions of $12,769 and $14,394, respectively, and provision for credit losses of $163 and $124, respectively	38,620	16,689
Inventories	31,143	32,630
Prepaid expenses and other current assets	19,528	20,794
Total current assets	216,606	230,926
Property and equipment, net	26,867	23,153
Goodwill	38,496	38,513
Intangible assets, net	8,015	8,522
Operating lease right-of-use assets, net	7,846	8,818
Other assets	222	—
Total assets	$ 298,052	$ 309,932
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 15,945	$ 23,331
Accrued expenses	47,144	44,307
Current portion of operating lease liabilities	2,713	3,010
Current portion of long-term debt	1,107	880
Total current liabilities	66,909	71,528
Long-term liabilities:		
Long-term operating lease liabilities	6,850	7,620
Long-term debt and finance lease obligations	95,389	52,366
Deferred tax liabilities	51	—
Other long-term liabilities	2,607	2,563
Total liabilities	171,806	134,077
Commitments and contingencies (See Note 16)		
Stockholders' equity:		
Common stock, par value $0.001 per share, 250,000,000 shares authorized at June 30, 2020 and December 31, 2019; 83,362,454 and 83,231,063 shares issued at June 30, 2020 and December 31, 2019, respectively; 81,689,534 and 81,558,143 shares outstanding at June 30, 2020 and December 31, 2019, respectively	83	83
Additional paid-in capital	775,042	763,648
Accumulated other comprehensive loss	(1,067)	(635)
Accumulated deficit	(627,345)	(567,465)
Less: treasury stock, at cost; 1,672,920 shares at June 30, 2020 and December 31, 2019	(7,406)	(7,406)
Total Athenex, Inc. stockholders' equity	139,307	188,225
Non-controlling interests	(13,061)	(12,370)
Total stockholders' equity	126,246	175,855
Total liabilities and stockholders' equity	$ 298,052	$ 309,932

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

ATHENEX, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Operations and Comprehensive Loss
(unaudited)
(In thousands, except share and per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Revenue:				
Product sales, net	$ 40,167	$ 22,033	$ 58,714	$ 47,196
License and other revenue	5	164	28,393	308
Total revenue	40,172	22,197	87,107	47,504
Cost of sales	33,006	16,942	52,578	36,844
Gross Profit	7,166	5,255	34,529	10,660
Operating expenses:				
Research and development expenses	22,015	18,507	39,207	42,982
Selling, general, and administrative expenses	17,486	17,169	43,234	32,357
Total operating expenses	39,501	35,676	82,441	75,339
Operating loss	(32,335)	(30,421)	(47,912)	(64,679)
Interest income	185	475	598	758
Interest expense	1,565	1,754	3,238	3,509
Loss on extinguishment of debt	7,230	—	7,230	—
Loss before income tax expense	(40,945)	(31,700)	(57,782)	(67,430)
Income tax expense	106	405	2,987	905
Net loss	(41,051)	(32,105)	(60,769)	(68,335)
Less: net loss attributable to non-controlling interests	(600)	(74)	(889)	(1,071)
Net loss attributable to Athenex, Inc.	$ (40,451)	$ (32,031)	$ (59,880)	$ (67,264)
Unrealized gain (loss) on investment, net of income taxes	117	(83)	49	(80)
Foreign currency translation adjustment, net of income taxes	(43)	(446)	(481)	622
Comprehensive loss	$ (40,377)	$ (32,560)	$ (60,312)	$ (66,722)
Net loss per share attributable to Athenex, Inc. common stockholders, basic and diluted (See Note 13)	$ (0.50)	$ (0.44)	$ (0.73)	$ (0.96)
Weighted-average shares used in computing net loss per share attributable to Athenex, Inc. common stockholders, basic and diluted (See Note 13)	81,564,441	73,114,392	81,551,995	70,079,771

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

ATHENEX, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Stockholders' Equity
(unaudited)
(In thousands, except share data)

	Common Stock		Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive income (loss)	Treasury Stock		Total Athenex, Inc. stockholders' equity	Non-controlling interests	Total stockholders' equity
	Shares	Amount				Shares	Amount			
Balance at January 1, 2019	68,668,986	$ 69	$ 591,064	$ (443,716)	$ (656)	(1,672,920)	$ (7,406)	$ 139,355	$ (10,586)	$ 128,769
Stock-based compensation cost	—	—	1,693	—	—	—	—	1,693	—	1,693
Stock options and warrants exercised	49,632	—	278	—	—	—	—	278	—	278
Net loss	—	—	—	(35,233)	—	—	—	(35,233)	(997)	(36,230)
Other comprehensive income, net of tax	—	—	—	—	1,071	—	—	1,071	—	1,071
Balance at March 31, 2019 (unaudited)	68,718,618	69	593,035	(478,949)	415	(1,672,920)	(7,406)	107,164	(11,583)	95,581
Sale of common stock, net of costs of $54	10,033,362	10	100,309	—	—	—	—	100,319	—	100,319
Stock-based compensation cost	92,723	—	3,382	—	—	—	—	3,382	—	3,382
Stock options exercised	92,442	—	559	—	—	—	—	559	—	559
Net loss	—	—	—	(32,031)	—	—	—	(32,031)	(74)	(32,105)
Other comprehensive loss, net of tax	—	—	—	—	(529)	—	—	(529)	—	(529)
Balance at June 30, 2019 (unaudited)	78,937,145	$ 79	$ 697,285	$ (510,980)	$ (114)	(1,672,920)	$ (7,406)	$ 178,864	$ (11,657)	$ 167,207

	Common Stock		Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive income (loss)	Treasury Stock		Total Athenex, Inc. stockholders' equity	Non-controlling interests	Total stockholders' equity
	Shares	Amount				Shares	Amount			
Balance at January 1, 2020	83,231,063	$ 83	$ 763,648	$ (567,465)	$ (635)	(1,672,920)	$ (7,406)	$ 188,225	$ (12,370)	$ 175,855
Stock-based compensation cost	—	—	1,864	—	—	—	—	1,864	—	1,864
Restricted stock expense	(3,000)	—	397	—	—	—	—	397	—	397
Stock options exercised	70,200	—	344	—	—	—	—	344	—	344
Net loss	—	—	—	(19,429)	—	—	—	(19,429)	(289)	(19,718)
Other comprehensive loss, net of tax	—	—	—	—	(506)	—	—	(506)	—	(506)
Balance at March 31, 2020 (unaudited)	83,298,263	83	766,253	(586,894)	(1,141)	(1,672,920)	(7,406)	170,895	(12,659)	158,236
Sale of common stock and issuance of stock in connection with acquisition	51,691	—	269	—	—	—	—	269	—	269
Stock-based compensation cost	—	—	2,640	—	—	—	—	2,640	—	2,640
Restricted stock expense	—	—	413	—	—	—	—	413	—	413
Stock options exercised	12,500	—	125	—	—	—	—	125	—	125
Issuance of warrants, net	—	—	5,342	—	—	—	—	5,342	—	5,342
Non-controlling interests	—	—	—	—	—	—	—	—	198	198
Net loss	—	—	—	(40,451)	—	—	—	(40,451)	(600)	(41,051)
Other comprehensive income, net of tax	—	—	—	—	74	—	—	74	—	74
Balance at June 30, 2020 (unaudited)	83,362,454	$ 83	$ 775,042	$ (627,345)	$ (1,067)	(1,672,920)	$ (7,406)	$ 139,307	$ (13,061)	$ 126,246

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

ATHENEX, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Cash Flows
(unaudited)
(In thousands)

	Six Months Ended June 30,	
	2020	**2019**
Cash flows from operating activities:		
Net loss	$ (60,769)	$ (68,335)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,121	1,807
Stock-based compensation expense	5,314	5,075
Amortization of debt discount	553	513
Loss on disposal of assets and impairment charges	173	—
Loss on extinguishment of debt	7,230	—
Deferred income taxes	51	486
Changes in operating assets and liabilities:		
Receivables, net	(21,931)	3,387
Prepaid expenses and other assets	1,044	(25,310)
Inventories	1,487	1,548
Accounts payable and accrued expenses	(5,341)	43,056
Net cash used in operating activities	(70,068)	(37,773)
Cash flows from investing activities:		
Purchase of property and equipment	(4,566)	(4,891)
Payments for licenses	(83)	(4,175)
Purchases of short-term investments	(23,571)	(43,461)
Sales and maturities of short-term investments	46,345	57,291
Net cash provided by investing activities	18,125	4,764
Cash flows from financing activities:		
Proceeds from sale of stock	269	100,373
Proceeds from issuance of debt	95,164	3,649
Proceeds from issuance of warrants	5,836	—
Costs incurred related to the sale of stock	—	(54)
Costs incurred related to the issuance of debt and warrants	(6,125)	—
Proceeds from exercise of stock options	469	837
Investment from non-controlling interest	198	—
Repayment of finance lease obligations and long-term debt	(54,238)	(107)
Net cash provided by financing activities	41,573	104,698
Net (decrease) increase in cash, cash equivalents, and restricted cash	(10,370)	71,689
Cash, cash equivalents, and restricted cash, beginning of period	127,674	49,794
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	(403)	715
Cash, cash equivalents, and restricted cash, end of period (See Note 3)	$ 116,901	$ 122,198
Supplemental cash flow disclosures		
Interest paid	$ 3,081	$ 2,471
Non-cash investing and financing activities:		
Accrued purchases of property and equipment	$ 436	$ 1,174
Accrued purchases of licenses	$ 500	$ —
Equipment purchased with capital lease obligation	$ 564	$ —
Accrued cost of debt issuance	$ 287	$ —
ROU assets derecognized from modification of operating lease obligations	$ (468)	$ —
ROU assets recognized in exchange for operating lease obligations	$ 353	$ 583

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

1. Company and Nature of Business

Organization and Description of Business

Athenex, Inc. and subsidiaries (the "Company" or "Athenex"), originally under the name Kinex Pharmaceuticals LLC ("Kinex"), formed in November 2003, commenced operations on February 5, 2004, and operated as a limited liability company until it was incorporated in the State of Delaware under the name Kinex Pharmaceuticals, Inc. on December 31, 2012. The Company changed its name to Athenex, Inc. on August 26, 2015.

Athenex is a global biopharmaceutical company dedicated to becoming a leader in the discovery, development and commercialization of next generation drugs for the treatment of cancer. The Company's mission is to improve the lives of cancer patients by creating more effective, safer and tolerable treatments. The Company's current clinical pipeline is derived from Orascovery, Src Kinase Inhibition, T-cell receptor-engineered T-cells ("TCR-T"), and Arginine Deprivation Therapy technology platforms. The Company has assembled a strong and experienced leadership team and has established global operations across the pharmaceutical value chain to execute its goal of becoming a global leader in bringing innovative cancer treatments to the market and improve health outcomes. The Company is primarily engaged in conducting research and development activities through corporate collaborators, in-licensing and out-licensing pharmaceutical compounds and technology, conducting preclinical and clinical testing, recruiting personnel, identifying and evaluating additional drug candidates for potential in-licensing or acquisition, and raising capital to support development and commercialization activities. The Company also conducts commercial sales of specialty products through its wholly owned subsidiary, Athenex Pharmaceutical Division ("APD"), and 503B products through its wholly owned subsidiary, Athenex Pharma Solutions ("APS").

Significant Risks and Uncertainties

The Company has incurred operating losses since its inception and, as a result, as of June 30, 2020 and December 31, 2019 had an accumulated deficit of $627.3 million and $567.5 million, respectively. As of June 30, 2020, the Company had cash and cash equivalents of $105.9 million, restricted cash of $11.0 million, and short-term investments of $10.4 million. The Company believes that the existing cash and cash equivalents, restricted cash, and short-term investments will fund operations into the second quarter of 2021 but will not be sufficient to fund current operating plans through one year after the date that these unaudited condensed consolidated financial statements are issued. This conclusion does not contemplate the additional funding the Company may receive through the Senior Credit Agreement and Revenue Interest Financing Agreement, further discussed below. The Company has based these estimates on assumptions that may prove to be wrong, and it could spend the available financial resources much faster than expected and need to raise additional funds sooner than anticipated. Operations have been funded primarily through the sale of common stock, senior secured loans, and to a lesser extent, from convertible bond financing, revenue, and grant funding. The Company will require significant additional funds to conduct clinical trials and to fund its commercialization and manufacturing operations. There can be no assurance that this funding will be available for our use when needed, or at all. In addition, disruptions in the capital markets and the operations of commercial partners due to the COVID-19 pandemic may make it difficult for us to raise additional funds. If adequate funds are not available, the Company may be required to delay, modify, or terminate its research and development programs or reduce its planned commercialization efforts. Further, if the Company is unable to obtain additional financing, the Company will need to reevaluate future operating plans. Although the Company plans to raise additional funds or access additional funding via the Senior Credit Agreement and Revenue Interest Financing, these plans are subject to market conditions which are outside of its control and based on the satisfaction of future milestone funding conditions, and therefore cannot be deemed to be probable. As a result, these uncertainties, among others, raise substantial doubt about the Company's ability to continue as a going concern.

Since there is uncertainty around the Company's ability to achieve various funding conditions that trigger the lenders' obligations to make payments under the Senior Credit Agreement and the Revenue Interest Financing Agreement, there can be no assurance that this funding will be available for our use when needed, or at all. However, if the Company meets applicable funding conditions, anticipated future proceeds from the Senior Credit Agreement and the Revenue Interest Financing Agreement, together with the existing cash and cash equivalents, restricted cash, and short-term investments, are estimated to extend the Company's cash runway into 2022, as they provide us the financial flexibility to draw another $125.0 million and $50.0 million of contingent milestone-based, non-dilutive capital. See below for a description of the Senior Credit Agreement and Note 17 of the Notes to Condensed Consolidated Financial Statements contained in Item 1 of this quarterly report on Form 10-Q for a description of the Revenue Interest Financing Agreement.

These condensed consolidated financial statements have been prepared on a going concern basis, which implies the Company will continue to realize its assets and discharge its liabilities in the normal course of the business. The Company's recurring losses from operations and negative cash flows from operations have raised substantial doubt regarding its ability to continue as a going concern. The condensed consolidated financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result from the outcome of this uncertainty.

The Company entered into a senior secured loan agreement and related security agreements (the "Senior Credit Agreement") with Oaktree Fund Administration, LLC as administrative agent, and the lenders party thereto (collectively "Oaktree") which contains various affirmative, negative, and financial covenants customary to agreements of this type. A breach of any of these covenants could result in a default. If a default under the Senior Credit Agreement is not cured or waived, the default could result in the acceleration of debt, which could require the Company to repay the outstanding debt in full prior to the date it is otherwise due together with exit fees and any applicable prepayment fees. If the Company defaults, the lenders may seek repayment through the Company's subsidiary guarantors or by executing on the security interest granted pursuant to the Senior Credit Agreement. The Company was in compliance with all applicable covenants as of June 30, 2020.

The Company is subject to a number of risks similar to other biopharmaceutical companies, including, but not limited to, the lack of available capital, possible failure of preclinical testing or clinical trials, inability to obtain marketing approval of product candidates, competitors developing new technological innovations, unsuccessful commercialization strategy and launch plans for its proprietary drug candidates, market acceptance of the Company's products, and protection of proprietary technology. If the Company does not successfully commercialize any of its product candidates, it will be unable to generate sufficient product revenue and might not, if ever, achieve profitability and positive cash flow.

Senior Secured Loan Agreement and Detachable Warrants

On June 19, 2020, the Company entered into the Senior Credit Agreement to borrow up to $225.0 million in five tranches with a maturity date of June 19, 2026, bearing interest at a fixed annual rate of 11.0%. The first tranche of $100.0 million was drawn by the Company prior to June 30, 2020, with the proceeds used in part to repay in full the outstanding loan and fees under the credit agreement with Perceptive Advisors LLC and its affiliates ("Perceptive"). Additional debt tranches of $125 million in aggregate are available subject to the Company's achievement of certain regulatory and commercial milestones. The Company is required to make quarterly interest-only payments until June 19, 2022, after which the Company is required to make quarterly amortizing payments, with the remaining balance of the principal plus accrued and unpaid interest due at maturity.

In connection with our entry into the Senior Credit Agreement, the Company granted warrants to Oaktree to purchase up to an aggregate of up to 908,393 shares of the Company's common stock at a purchase price of $12.63 per share. This transaction was accounted for as a detachable warrant at its fair value, using the relative fair value method, which is based on a number of unobservable inputs, and is recorded as an increase to additional paid-in-capital on the consolidated statement of stockholders' equity.

2. Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles in the United States of America ("GAAP") for interim financial information (Accounting Standards Codification ("ASC") 270, *Interim Reporting*) and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, these financial statements do not include all of the information necessary for a full presentation of financial position, results of operations, and cash flows in conformity with GAAP. In the opinion of management, the condensed consolidated financial statements reflect all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation of the results of the Company for the periods presented. These condensed consolidated financial statements reflect the accounts and operations of Athenex, Inc. and those of its subsidiaries in which Athenex, Inc. has a controlling financial interest. Intercompany transactions and balances have been fully eliminated in consolidation.

Results of the Company's operations for the three and six months ended June 30, 2020 are not necessarily indicative of the results expected for the year ending December 31, 2020, or for any other future annual or interim period. These condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2019, filed with the Securities and Exchange Commission ("SEC") on March 2, 2020.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities as of the date of the consolidated financial statements and the reported amount of revenue and expenses during the reporting period. Such management estimates include those relating to assumptions used in clinical research accruals, chargebacks, measurement of acquired assets and assumed liabilities in business combinations, provision for credit losses, inventory reserves, income taxes, the estimated useful life and recoverability of long-lived assets, and the valuation of stock-based awards. Actual results could differ from those estimates.

Credit Losses

The Company estimates and records a provision for its expected credit losses related to its financial instruments, including its trade receivables and contract assets recorded under ASC 606, *Revenue from Contracts with Customers* ("Topic 606"). The Company considers historical collection rates, current financial status of its customers, macroeconomic factors, and other industry-specific factors when evaluating for current expected credit losses. Forward-looking information is also considered in the evaluation of current expected credit losses. However, because of the short time to the expected receipt of accounts receivable and contract assets, the Company believes that the carrying value, net of excepted losses, approximates fair value and therefore, relies more on historical and current analysis of such financial instruments.

To determine the provision for credit losses for accounts receivable, the Company has disaggregated its accounts receivable by class of customer, as the Company determined that risk profile of its customers is consistent based on the type and industry in which they operate. These customer classes include pharmaceutical wholesalers for specialty product sales, drug manufacturers for active pharmaceutical ingredient (API) sales, and hospitals and end-users for 503B sales. Each class of customer is analyzed for estimated credit losses individually. In doing so, the Company establishes a historical loss matrix, based on the previous collections of accounts receivable by the age of such receivables, and evaluates the current and forecasted financial position of its customers, as available. Further, the Company considers macroeconomic factors and the status of the pharmaceutical industry, including unemployment rates, industry indices, and other factors, to estimate if there are current expected credit losses within its trade receivables based on the trends and the Company's expectation of the future status of such economic and industry-specific factors. The Company believes that its customers, the majority of which are in the pharmaceutical industries with sound financial condition, and therefore, the Company's evaluation of macroeconomic and industry-specific factors did not have a significant impact on the provision for credit losses. As of June 30, 2020, the Company recorded a provision for credit losses of $0.2 million for accounts receivable related to the customer classes of pharmaceutical wholesalers, drug manufacturers, and hospitals and end users.

Expected credit losses related to contract assets are evaluated on an individual basis. The Company's contract assets relate to upfront fees or milestone payments due from licensees for which the underlying performance obligations have been satisfied. The Company evaluates the financial status of the licensee and any historical payment activity from them. Macroeconomic and industry-specific factors are considered when estimated current expected credit losses related to contract assets. Contract assets are generally classified as short-term, and the Company is in frequent communication with licensees to establish timely payment terms. If the Company expects that credit losses exist for license-related contract assets, it will record provision for such losses against the contract asset. As of June 30, 2020, the Company determined that credit losses related to its contract assets recognized in connection with its license arrangements are not expected to be significant.

Concentration of Credit Risk, Other Risks and Uncertainties

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents, restricted cash, and short-term investments. The Company deposits its cash equivalents in interest-bearing money market accounts and certificates of deposit, invests in highly liquid U.S. treasury notes and high-quality investment grade commercial paper. The Company deposits its cash with multiple financial institutions. Cash balances exceed federally insured limits. The primary focus of the Company's investment strategy is to preserve capital and meet liquidity requirements. The Company's investment policy addresses the level of credit exposure by limiting the concentration in any one corporate issuer and establishing a minimum allowable credit rating. The Company also has significant assets and liabilities overseas, including its manufacturing facility, and research and development facility in China, and therefore is subject to foreign currency fluctuation.

Recent Adopted Accounting Pronouncements

In June 2016, the FASB issued ASU No. 2016-13, *"Measurement of Credit Losses on Financial Instruments"* to improve reporting requirements specific to loans, receivables, and other financial instruments. The new standard requires that credit losses on financial assets, including trade receivables and held-to-maturity debt securities, measured at amortized cost be determined using an expected loss model, instead of the current incurred loss model. In addition, ASC 326 requires that credit losses related to available-for-sale debt securities be recorded through an allowance for credit losses if the Company does not intend to sell or believes that it is more likely than not they will be required to sell, and limited to the amount by which carrying value exceeds fair value. The new standard also requires enhanced disclosure of credit risk associated with financial assets.

The standard is effective for interim and annual periods beginning after December 15, 2019 with early adoption permitted. The standard is required to be applied using the modified retrospective approach with a cumulative-effect adjustment to retained earnings, if any, upon adoption.

This standard became effective for us on January 1, 2020, and based on the composition of our trade receivables, investment portfolio and other financial assets, current economic conditions and historical credit loss activity, the adoption of this standard did not have a material impact on our condensed consolidated financial statements and related disclosures. A significant portion of the Company's accounts receivable is from large pharmaceutical wholesalers in the U.S., and a licensing fee receivable from a public company in the People's Republic of China ("PRC"). The Company's estimate of expected credit losses as of June 30, 2020, using its expected credit loss evaluation process described above, resulted in no adjustments to the provision for credit losses and no cumulative-effect adjustment to retained earnings on the adoption date of the standard.

Subsequent Events

The Company reviewed and evaluated subsequent events through the issuance date of the Company's unaudited condensed consolidated financial statements.

3. Restricted Cash

The Company has a restricted cash balance of $11.0 million as of June 30, 2020 held in a controlled bank account in connection with the Senior Credit Agreement, which requires the Company to maintain, in a debt service reserve account, a minimum cash balance equal to twelve months of interest on the outstanding loans under the Senior Credit Agreement.

4. Inventories

Inventories consist of the following (in thousands):

	June 30, 2020	December 31, 2019
Raw materials and purchased parts	$ 3,191	$ 4,176
Work in progress	1,453	1,870
Finished goods	26,499	26,584
Total inventories	$ 31,143	$ 32,630

5. Intangible Assets, net

The Company's identifiable intangible assets, net, consist of the following (in thousands):

	June 30, 2020			
	Cost/Fair Value	Accumulated Amortization	Impairments	Net
Amortizable intangible assets:				
Licenses	$ 9,518	$ 4,358	$ —	$ 5,160
Polymed customer list	1,593	1,291	—	302
Polymed technology	3,712	1,417	—	2,295
Indefinite-lived intangible assets:				
CDE in-process research and development (IPR&D)	723	—	—	723
Effect of currency translation adjustment	(465)	—	—	(465)
Total intangible assets, net	$ 15,081	$ 7,066	$ —	$ 8,015

	December 31, 2019			
	Cost/Fair Value	Accumulated Amortization	Impairments	Net
Amortizable intangible assets				
Licenses	$ 8,935	$ 3,561	$ —	$ 5,374
Polymed customer list	1,593	1,164	—	429
Polymed technology	3,712	1,297	—	2,415
Product rights	530	360	170	—
Indefinite-lived intangible assets:				
CDE in-process research and development (IPR&D)	728	—	—	728
Effect of currency translation adjustment	(424)	—	—	(424)
Total intangibles, net	$ 15,074	$ 6,382	$ 170	$ 8,522

As of June 30, 2020, licenses at cost include an Orascovery license of $0.4 million, licenses purchased from Gland Pharma Limited ("Gland") of $4.4 million, a license purchased from MAIA Pharmaceuticals, Inc. ("MAIA") for $4.0 million, and licenses of other specialty products of $0.7 million. The Orascovery license with Hanmi Pharmaceuticals Co. Ltd. ("Hanmi") was purchased directly from Hanmi and is being amortized on a straight-line basis over a period of 12.75 years, the remaining life of the license agreement at the time of purchase. The licenses purchased from Gland are being amortized on a straight-line basis over a period of 5 years, the remaining life of the license agreement at the time of purchase. The license purchased from MAIA is being amortized over a period of 7 years, the remaining life of the license agreement at the time of purchase.

The remaining intangible assets were acquired in connection with the acquisitions of Polymed Therapeutics, Inc. ("Polymed") and Comprehensive Drug Enterprises ("CDE"). Intangible assets are amortized using an economic consumption model over their useful lives. The Polymed customer list and technology are amortized on a straight-line basis over 6 and 12 years, respectively. The CDE in-process research and development, ("IPR&D"), will not be amortized until the related projects are completed. IPR&D is tested annually for impairment, unless conditions exist causing an earlier impairment test (e.g., abandonment of project). The Company recorded no impairments of IPR&D during the six months ended June 30, 2020. The weighted-average useful life for all intangible assets was 7.69 years as of June 30, 2020.

The Company recorded $0.5 million of amortization expense for both the three-month periods ended June 30, 2020 and 2019, and $0.9 million of amortization expense for both the six-month periods ended June 30, 2020 and 2019, respectively.

The Company's goodwill balance is the result of prior period acquisitions and is allocated to the Global Supply Chain Platform reporting unit and the Oncology Innovation Platform reporting unit. Changes in goodwill balances reported within the unaudited condensed consolidated balance sheet as of June 30, 2020 are due to the effect of foreign currency on goodwill from acquisitions of subsidiaries that have a functional currency other than USD.

6. Fair Value Measurements

Financial instruments consist of cash and cash equivalents, restricted cash, short-term investments, an equity investment, accounts receivable, accounts payable, accrued liabilities, detachable warrants issued in connection with the Senior Credit Agreement, and debt. Short-term investments and the equity investment are stated at fair value. Cash and cash equivalents, restricted cash, accounts receivable, accounts payable and accrued liabilities, and debt, are stated at their carrying value, which approximates fair value due to the short time to the expected receipt or payment date of such amounts.

ASC 820, *Fair Value Measurements*, establishes a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). The three levels of the fair value hierarchy under the ASC 820 are described as follows:

Level 1—Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Company has the ability to access.

Level 2—Inputs to the valuation methodology include:

- Quoted prices for similar assets or liabilities in active markets;
- Quoted prices for identical or similar assets or liabilities in inactive markets;
- Inputs other than quoted prices that are observable for the asset or liability;

- Inputs that are derived principally from or corroborated by observable market data by correlation or other means; and
- If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

Level 3—Inputs to the valuation methodology are unobservable, supported by little or no market activity, and are significant to the fair value measurement.

Transfers between levels, if any, are recorded as of the beginning of the reporting period in which the transfer occurs. There were no transfers between Levels 1, 2 or 3 for any of the periods presented.

The following tables represent the fair value hierarchy for those assets and liabilities that the Company measures at fair value on a recurring basis (in thousands):

	Fair Value Measurements at June 30, 2020 Using:			
	Total	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Financial assets included within cash and cash equivalents				
Money market funds	$ 13,749	$ 13,749	$ —	$ —
Short-term investments - certificates of deposit	15,188	—	15,188	—
Short-term investments - U.S. government bonds	19,998	—	19,998	—
Short-term investments - commercial paper	24,997	—	24,997	—
Financial assets included within short-term investments				
Short-term investments - certificates of deposit	10,144	—	10,144	—
Available-for-sale investment	270	270	—	—
Total assets	$ 84,346	$ 14,019	$ 70,327	$ —

	Fair Value Measurements at December 31, 2019 Using:			
	Total	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Financial assets included within cash and cash equivalents				
Money market funds	$ 5,460	$ 5,460	$ —	$ —
Short-term investments - certificates of deposit	15,110	—	15,110	—
Short-term investments - commercial paper	51,017	—	51,017	—
Financial assets included within short-term investments				
Short-term investments - certificates of deposit	10,054	—	10,054	—
Short-term investments - commercial paper	22,835	—	22,835	—
Available-for-sale investment	250	250	—	—
Total assets	$ 104,726	$ 5,710	$ 99,016	$ —

The Company classifies its money market funds within Level 1 because it uses quoted market prices to determine their fair value. The Company classifies its commercial paper, corporate notes, certificates of deposit, and U.S. government bonds within Level 2 because it uses quoted prices for similar assets or liabilities in active markets and each has a specified term and all Level 2 inputs are observable for substantially the full term of each instrument.

The Company owns 68,000 shares of PharmaEssentia, a company publicly traded on the Taiwan OTC Exchange. As of June 30, 2020 and December 31, 2019, the Company’s investment in PharmaEssentia was valued at the reported closing price on such dates. This investment is classified as a Level 1 investment and is recorded as an available-for-sale investment within short-term investments on the Company’s condensed consolidated balance sheet.

7. Acquisitions and Business Combinations

CIDAL

On June 27, 2019, the Company entered into a definitive asset purchase agreement (the "APA") with CIDAL Limited, a British Virgin Islands company limited by shares, and several of its affiliates ("CIDAL"). CIDAL operates as a contract research organization with headquarters in Guatemala and operations in various countries in Central America. Pursuant to the terms of the APA, the Company acquired certain assets of CIDAL in exchange for agreeing to assume certain liabilities of CIDAL and issuing milestone payments of an aggregate of 67,796 shares of the Company's common stock, contingent upon the achievement of certain developmental and regulatory events through the third quarter of 2021. The Company accounted for the asset purchase using the acquisition method of accounting and accordingly, the identifiable assets acquired, and liabilities assumed were recorded based upon management's estimates of current fair values as of the acquisition date. The Company received net cash of $0.9 million, acquired property and equipment of less than $0.1 million, assumed liabilities of $1.1 million, and recorded goodwill of approximately $1.0 million, and has paid contingent equity consideration associated with the transaction of $0.8 million to date.

The operating results of CIDAL have been included within the Company's Oncology Innovation Platform operating segment from the closing date of the acquisition. CIDAL incurred a net loss of $1.1 million for the three months ended June 30, 2020 and added $0.1 million of revenue and incurred a net loss of $2.1 million for the six months ended June 30, 2020. During the six months ended June 30, 2020, CIDAL achieved two of its six clinical milestones associated with the contingent equity consideration from the acquisition. As a result, the Company issued 22,598 shares of its common stock to CIDAL during the six months ended June 30, 2020.

8. Accrued Expenses

Accrued expenses consist of the following (in thousands):

	June 30, 2020	December 31, 2019
Accrued wages and benefits	$ 11,091	$ 7,541
Accrued selling fees and rebates	10,101	1,577
Accrued construction costs	8,202	22,811
Accrued tax withholdings	5,228	187
Accrued inventory purchases	4,774	7,194
Accrued clinical expenses	3,600	2,510
Accrued operating expenses	2,065	1,885
Accrued costs for product launch	1,602	—
Accrued R&D licensing fees	384	384
Deferred revenue	97	218
Total accrued expenses	$ 47,144	$ 44,307

The accrued construction costs relate to the building of the manufacturing facility in Dunkirk, NY. This amount, plus an additional $0.3 million paid by the Company is expected to be funded by New York State. Therefore, $8.5 million is recorded within prepaid expenses and other current assets on the Company's condensed consolidated balance sheet as of June 30, 2020.

9. Income Taxes

The Company did not record a provision for U.S. federal income taxes for the six months ended June 30, 2020 because it expects to generate a loss for the year ending December 31, 2020 and the Company's net deferred tax assets continue to be fully offset by a valuation allowance. Tax expense to date is the result of tax to be withheld in China, in the amount of $2.8 million, on a milestone payment in connection with an out-license agreement and recording a deferred tax liability, in the amount of $0.1 million, against indefinite lived intangible assets.

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") into law. The CARES Act includes several significant business tax provisions that, among other things, would eliminate the taxable income limit for certain net operating losses ("NOLs") and allow businesses to carry back NOLs arising in 2018, 2019, and 2020 to the five prior tax years, accelerate refunds of previously generated corporate alternative minimum tax credits, change the business interest limitation under IRC section 163(j) of the Internal Revenue Code from 30 percent to 50 percent, and fix qualified improvement property from the Tax Cuts and Jobs Act of 2017. This new legislation did not materially affect the Company's income tax position.

10. Debt and Lease Obligations

Debt

The Company's debt as of June 30, 2020 and December 31, 2019, consists of the following (in thousands):

	June 30, 2020	December 31, 2019
Current portion of mortgage	$ 676	$ 686
Current portion of finance and capital lease obligations	361	194
Current portion of operating lease obligations	2,713	3,010
Long-term portion of finance and capital lease obligations	506	227
Long-term portion of operating lease obligations	6,850	7,620
Chongqing Maliu Credit Agreement	6,636	5,731
Senior secured loan, net of debt discount and financing fees of $11,753 and $3,592, respectively	88,247	46,408
Total	$ 105,989	$ 63,876

The mortgage payments, assumed in connection with the acquisition of CDE, extend through December 31, 2020.

During the first quarter of 2019, the Company was issued an unsecured, subordinated bank loan from China Merchants Bank to fund operations in China. This loan had a principal value of $0.7 million, a maturity date of December 11, 2019, and bore interest at a fixed rate of 5.7% annually. The loan was paid in full as of December 31, 2019.

During the second quarter of 2019, the Company entered into a credit agreement which amended the existing partnership agreement with Chongqing Maliu Riverside Development and Investment Co., LTD ("CQ"), for a Renminbi ¥50.0 million (USD $7.2 million at June 30, 2020) line of credit to be used for the construction of the new API plant in China. The Company is required to repay the principal amount with accrued interest within three years after the plant receives the U.S. Current Good Manufacturing Practices ("cGMP") certification, with 20% of the total loan with accrued interest is due within the first twelve months following receiving the certification, 30% of the total loan with accrued interest due within twenty-four months, and the remaining balance with accrued interest due within thirty-six months. Interest accrues at the three-year loan interest rate by the People's Bank of China for the same period on the date of the deposit of the full loan amount. If the Company fails to obtain the cGMP certification within three years upon the acceptance of the plant, it shall return all renovation costs with the accrued interest to CQ in a single transaction within the first ten business days. The Company draws on this debt as needed and received $1.0 million during the six months ended June 30, 2020. As of June 30, 2020, the balance due to CQ was $6.6 million.

On June 19, 2020, the Company paid off all obligations owing under, and terminated, the senior secured loan agreement with Perceptive. The secured interests were terminated in connection with the Company's payoff of all obligations. In connection with the repayment of the Perceptive loan, the Company incurred a $3.8 million prepayment fee, the unamortized debt discount of $3.1 million, and $0.3 million in other charges. The Perceptive debt extinguishment resulted in a $7.2 million loss that was included in debt extinguishment expenses, in the unaudited condensed consolidated statements of operations.

On June 19, 2020 ("Closing Date"), the Company entered into the Senior Credit Agreement to borrow up to $225.0 million in five tranches, with a maturity date of June 19, 2026. The first tranche ("Tranche A") of term loans with an aggregate principal amount of $100.0 million was drawn by the Company as of June 30, 2020. A portion of the proceeds of the first tranche was used to repay in full the existing senior secured loan with Perceptive, including related prepayment fees, unpaid interest, and legal fees. The second advance of $25.0 million ("Tranche B"), the third advance of $25.0 million ("Tranche C"), and the fourth advance of $25.0 million ("Tranche D") will be available to the Company from 90 days after the Closing Date through June 20, 2022, subject to the Company's satisfaction of certain regulatory and commercial milestones; and the fifth advance of $50.0 million ("Tranche E") will be available to the Company from 90 days after the Closing Date through June 19, 2023, also subject to the Company's satisfaction of certain regulatory and commercial milestones. The loan bears interest at a fixed annual rate of 11.0%. The Company is required to make quarterly interest-only payments until June 19, 2022, after which the Company is required to make quarterly amortizing payments, with the remaining balance of the principal plus accrued and unpaid interest due at maturity. Beginning on September 17, 2020, the Company will be required to pay a commitment fee on any undrawn commitments equal to 0.6% per annum, payable on each subsequent funding date or the commitment termination date. Prepayments of the loan, in whole or in part, will subject to early prepayment fee which declines each year until the fourth anniversary date of the Closing Date, after which no prepayment fee is required. Upon the final payment, the Company must also pay an exit fee calculated based on a percentage of the aggregate principal amount of all tranches advanced to the Company, and as of June 30, 2020, the Company has reflected a long-term exit fee liability of $2.0 million within the unaudited condensed consolidated balance sheet.

The Senior Credit Agreement contains certain representations and warranties, affirmative covenants, negative covenants and conditions that were customarily required for similar financings. The Company is subject to certain financial covenants under the Senior Credit Agreement, including (1) a minimum liquidity amount in cash or permitted cash equivalent investments of $20.0 million from the closing date until the date on which the aggregate principal amount of loans outstanding is greater than or equal to $150.0 million (the "First Step-Up Date"), $25.0 million from the First Step-Up Date until the date on which the aggregate principal amount of loans outstanding balance is equal to $225.0 million (the "Second Step-Up Date), and $30.0 million from the Second Step-up Date until the maturity date ; (2) minimum revenue no less than 50% of target revenue beginning with the fiscal quarter ended on December 31, 2020 and with respect to each such subsequent fiscal quarter prior to the revenue covenant termination date; (3) leverage ratio covenant not to exceed 4.50 to 1.00 as of the last day of any fiscal quarter beginning with the first fiscal quarter following the revenue covenant termination date. At June 30, 2020, the Company was in compliance with all applicable debt covenants.

Lease Obligations

The Company has operating leases for office and manufacturing facilities in several locations in the U.S., Asia, and Latin America and has three finance leases for manufacturing equipment used in its facilities near Buffalo, NY. The components of lease expense are as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Operating lease cost	768	$ 793	1,523	$ 1,571
Finance lease cost:				
Amortization of assets	64	14	81	26
Interest on lease liabilities	20	8	26	17
Total net lease cost	$ 852	$ 815	$ 1,630	$ 1,614

The Company has elected to exclude short-term leases from its operating lease right-of-use ("ROU") assets and lease liabilities. Lease costs for short-term leases were not material to the financial statements for the three months ended June 30, 2020. Variable lease costs for the three months ended June 30, 2020 were not material to the financial statements.

Supplemental balance sheet information related to leases is as follows (in thousands, except lease term and discount rate):

	June 30, 2020
Finance leases:	
Property and equipment, at cost	$ 1,252
Accumulated amortization, net	(207)
Property and equipment, net	$ 1,045
Current obligations of finance leases	$ 361
Long-term portion of finance leases	506
Total finance lease obligations	$ 867
Weighted average remaining lease term (in years):	
Operating leases	4.89
Finance leases	3.24
Weighted average discount rate:	
Operating leases	12.9%
Finance leases	9.5%

Supplemental cash flow information related to leases is as follows (in thousands):

	Six Months Ended June 30, 2020
Cash paid for amount included in the measurements of lease liabilities:	
Operating cash flows from operating leases	$ (1,617)
Operating cash flows from finance leases	(26)
Financing cash flows from finance leases	(118)
ROU assets derecognized from modification of operating lease obligations	(468)
ROU assets recognized in exchange for operating lease obligations	$ 353

Future minimum payments and maturities of leases is as follows (in thousands):

Year ending December 31:	Operating Leases	Finance Leases
2020 (remaining six months)	$ 1,486	$ 194
2021	2,840	389
2022	2,621	182
2023	2,096	147
2024	2,002	110
Thereafter	1,950	—
Total lease payments	12,995	1,022
Less: Imputed interest	(3,432)	(155)
Total lease obligations	9,563	867
Less: Current obligations	(2,713)	(361)
Long-term lease obligations	$ 6,850	$ 506

Pursuant to the public-private partnership agreements with the State of New York and CQ, the Company will rent the manufacturing facilities in Dunkirk, NY and Chongqing, China, respectively. In 2019, construction of the API plant was completed. However, neither lease term had commenced as of June 30, 2020, as neither of the facilities were operational, and no lease costs were incurred during the six-month period ended June 30, 2020.

The Company exercises judgment in determining the discount rate used to measure the lease liabilities. When rates are not implicit within an operating lease, the Company uses its incremental borrowing rate as its discount rate, which is based on yield trends in the biotechnology and healthcare industry and debt instruments held by the Company with stated interest rates. The Company re-assesses its incremental borrowing rate when new leases arise, or existing leases are modified.

11. Related Party Transactions

During the six months ended June 30, 2020 and 2019, the Company entered into transactions with individuals and companies that have financial interests in the Company. Related party transactions included the following:

a. In June 2018, the Company entered into two in-licensing agreements with Avalon BioMedical (Management) Limited (“Avalon”) wherein the Company obtained certain intellectual property (“IP”) from Avalon to develop and commercialize the underlying products. Under these agreements the Company is required to pay upfront fees and future milestone payments and sales-based royalties. During the year ended December 31, 2019, the Company recorded a $1.0 million milestone fee paid to Avalon, as research and development expenses on its condensed consolidated statement of operations and comprehensive loss. During the six months ended June 30, 2020 and 2019, no fees were paid to Avalon in connection with the license agreements. Certain members of the Company’s board and management collectively have a controlling interest in Avalon. The Company does not hold any interest in Avalon and does not have any obligations to absorb losses or any rights to receive benefits from Avalon. As of June 30, 2020, and December 31, 2019, Avalon held 786,061 shares of the Company’s common stock, which represented approximately 1% of the Company’s total issued shares for both periods. Balances due from Avalon recorded on the condensed consolidated balance sheets were not significant.

In June 2019, the Company entered into an agreement whereby Avalon would hold a 90% ownership interest and the Company would hold a 10% ownership interest of the newly formed entity under the name Nuwagen Limited ("Nuwagen"), incorporated under the laws of Hong Kong. Nuwagen is principally engaged in the development and commercialization of herbal medicine products for metabolic, endocrine, and other related indications. The Company contributed nonmonetary assets in exchange for the 10% ownership interest. In July 2020, the transaction was closed.

b. The Company earns licensing revenue from PharmaEssentia, an entity in which the Company has an investment classified as available-for-sale (see Note 6—*Fair Value Measurements*). Funds paid to or received from PharmaEssentia under the license and cost-sharing agreements were not material for the three and six-month periods ended June 30, 2020, and 2019.

c. The Company receives certain clinical development services from ZenRx Limited and its affiliate ("ZenRx"), a company for which one of the Company's executive officers serves on the board of directors. In connection with such services, the Company made payments to ZenRx of $0.2 million and $0.3 million for the three months ended June 30, 2020 and 2019, respectively, and $0.3 million and $0.6 million for the six months ended June 30, 2020 and 2019, respectively. In April 2013, the Company entered into a license agreement with ZenRx pursuant to which the Company granted an exclusive, sublicensable license to use certain of the Company's IP to develop and commercialize oral irinotecan and encequidar ("Oral Irinotecan"), and oral paclitaxel and encequidar ("Oral Paclitaxel") in Australia and New Zealand, and a non-exclusive license to manufacture a certain compound, but only for use in Oral Irinotecan and Oral Paclitaxel. ZenRx is responsible for all development, manufacturing and commercialization, and the related costs and expenses, of any product candidates resulting from the agreement. No revenue was earned from this license agreement in the periods presented in these consolidated financial statements.

d. Certain family members of executives perform consulting services for the Company. Such services were not significant to the condensed consolidated financial statements.

12. Stock-Based Compensation

Common Stock Option Plans

The Company has four equity compensation plans, adopted in 2017, 2013, 2007 and 2004 (the "Plans") which, taken together, authorize the grant of up to 16,000,000 shares of common stock to employees, directors, and consultants. On May 23, 2019, the board of directors approved the amendment and restatement of the 2017 Omnibus Incentive Plan, which increases the number of shares available for issuance under the 2017 plan by up to 3,500,000 shares, which was approved by the Company's stockholders at the Company's 2020 annual meeting of stockholders. The Company also has an employee stock purchase plan, the 2017 Employee Stock Purchase Plan (the "ESPP"), adopted on June 14, 2017, which authorizes the issuance of up to 1,000,000 shares of common stock for future issuances to eligible employees.

Stock Options

The total fair value of stock options vested and recorded as compensation expense during the three months ended June 30, 2020 and 2019, and six months ended June 30, 2020 and 2019 was $2.5 million, $2.1 million, $4.4 million, and $3.8 million, respectively. As of June 30, 2020, $17.5 million of unrecognized cost related to non-vested stock options was expected to be recognized over a weighted-average period of approximately 1.76 years. The total intrinsic value of options exercised was approximately $0.8 million and $1.0 million for the six months ended June 30, 2020 and 2019, respectively.

The following table summarizes the status of the Company's stock option activity granted under the Plans to employees, directors, and consultants (aggregate intrinsic value in thousands):

	Stock Options	Weighted-Average Exercise price	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding at December 31, 2019	10,916,936	$ 8.88	5.68	$ 69,785
Granted	932,545	12.62	—	—
Exercised	(82,700)	5.54	—	—
Forfeited and expired	(64,328)	14.29	—	—
Outstanding at June 30, 2020	11,702,453	$ 9.17	5.56	$ 53,727
Vested and exercisable at June 30, 2020	9,117,601	$ 7.81	4.73	$ 54,226

The Company determines the fair value of stock-based awards on the grant date using the Black-Scholes option pricing model, which is impacted by assumptions regarding several highly subjective variables. The following table summarizes the weighted-average assumptions used as inputs to the Black-Scholes model during the periods indicated:

	Six Months Ended June 30,	
	2020	2019
Weighted average grant date fair value	$ 7.60	$ 8.03
Expected dividend yield	—%	—%
Expected stock price volatility	66%	64%
Risk-free interest rate	1.34%	2.61%
Expected life of options (in years)	6.2	6.3

Employee Stock Purchase Plan

The ESPP is available to eligible employees (as defined in the plan document). Under the ESPP, shares of the Company's common stock may be purchased at a discount (15%) of the lesser of the closing price of the Company's common stock on the first trading or the last trading day of the offering period. The current offering period extends from June 1, 2020 to November 30, 2020. The Company expects to offer six-month offering periods after the current period. The 2017 Plans reserved 1,000,000 shares of common stock for issuance under the ESPP. Stock-based compensation related to the ESPP amounted to $0.1 million for each of the three months ended June 30, 2020 and 2019, and $0.1 million and $0.2 million for the six months ended June 30, 2020 and 2019, respectively.

Restricted Stock Awards

The Company granted 131,000 restricted stock awards to employees during 2019. No restricted stock awards were granted during the six months ended June 30, 2020. Stock-based compensation related to the restricted stock awards amounted to $0.4 million for the three months ended June 30, 2020 and $0.8 million for the six months ended June 30, 2020. No stock-based compensation related to restricted stock was recorded during the three or six months ended June 30, 2019. As of June 30, 2020, $1.0 million of unrecognized cost related to non-vested restricted stock awards were expected to be recognized over a weighted-average period of approximately 0.1 years.

Stock-Based Compensation Cost

The components of stock-based compensation and the amounts recorded within cost of sales, research and development expenses and selling, general, and administrative expenses in the Company's consolidated statements of operations and comprehensive loss consisted of the following for the three and six months ended June 30, 2020 and 2019 (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Stock options	$ 2,501	$ 2,108	$ 4,365	$ 3,801
Restricted stock expense	413	—	810	—
Stock grants to officers and employees	—	1,106	—	1,106
Employee stock purchase plan	139	83	139	168
Total stock-based compensation expense	$ 3,053	$ 3,297	$ 5,314	$ 5,075
Cost of sales	$ 55	$ 64	$ 109	$ 128
Research and development expenses	1,012	914	1,958	1,505
Selling, general, and administrative expenses	1,986	2,319	3,247	3,442
Total stock-based compensation expense	$ 3,053	$ 3,297	$ 5,314	$ 5,075

13. Net Loss per Share Attributable to Athenex, Inc. Common Stockholders

Basic net loss per share is calculated by dividing net loss attributable to Athenex, Inc. common stockholders by the weighted-average number of common shares issued, outstanding, and vested during the period. Diluted net loss per share is computed by dividing net loss attributable to common stockholders by the weighted-average number of common stock and common stock equivalents for the period using the treasury-stock method. For the purposes of this calculation, warrants to purchase common stock and stock options are considered common stock equivalents but are only included in the calculation of diluted net loss per share when their effect is dilutive.

The following outstanding shares of common stock equivalents were excluded from the calculation of diluted net loss per share attributable to common stockholders for the periods presented because including them would have been antidilutive:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Stock options and other common stock equivalents	11,700,399	11,447,877	11,709,928	11,184,541
Unvested restricted shares	79,000	—	105,000	—
Total potential dilutive shares	11,779,399	11,447,877	11,814,928	11,184,541

14. Business Segment, Geographic, and Concentration Risk Information

The Company has three operating segments, which are organized based mainly on the nature of the business activities performed and regulatory environments in which they operate. The Company also considers the types of products from which the reportable segments derive their revenue (only applicable to two reportable segments). Each operating segment has a segment manager who is held accountable for operations and has discrete financial information that is regularly reviewed by the Company's chief operating decision-maker. Consequently, the Company has concluded each operating segment to be a reportable segment. The Company's operating segments are as follows:

Oncology Innovation Platform— This operating segment performs research and development on certain of the Company's proprietary drugs, from the preclinical development of its chemical compounds, to the execution and analysis of its several clinical trials. It focuses specifically on Orascovery and Src Kinase Inhibition research platforms, and TCR-T Immunotherapy and Arginine Deprivation Therapy. This segment operates in the United States, Taiwan, Hong Kong, mainland China, the United Kingdom, and Latin America.

Global Supply Chain Platform— This operating segment includes APS and Polymed and the construction of the manufacturing facilities in Chongqing, China and Dunkirk, New York. APS is a contract manufacturing company that provides small to mid-scale cGMP manufacturing of clinical and commercial products for pharmaceutical and biotech companies and for use as internal supplies to the clinical studies and commercial development of the Company's proprietary drugs. APS also performs microbiological and analytical testing for raw material and formulated products and has expanded to manufacture and sell pharmaceutical products under Section 503B of the Compounding Quality Act within the Federal Food, Drug & Cosmetic Act ("FDCA"). Polymed is primarily in the business of marketing and selling API in North America, Europe, and Asia from its locations in Texas and China. Polymed also develops new compounds and processing techniques, and recently completed construction of a new API manufacturing facility in Chongqing, China. The 440,000-square-foot facility is expected to commence operations in the second half of 2020. The Company has an existing API manufacturing facility in Chongqing, China, where operations were suspended as a result of the COVID-19 outbreak in China but resumed producing API primarily for internal use in March in accordance with local regulatory guidance.

Commercial Platform— This operating segment includes APD and Athenex Oncology, which focus on the manufacturing, distribution, and sales of specialty pharmaceuticals and the pre-launch commercial activities for the Company's proprietary drugs, respectively. This segment provides services and products to external customers based mainly in the United States.

The Company's Oncology Innovation Platform segment operates and holds long-lived assets located in the United States, Taiwan, Hong Kong, mainland China, the United Kingdom, and Latin America. The Global Supply Chain Platform segment operates and holds long-lived assets located in the United States and China. The Commercial Platform segment operates and holds long-lived assets located in the United States. For geographic segment reporting, product sales have been attributed to countries based on the location of the customer.

Segment information is as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Total revenue:				
Oncology Innovation Platform	$ 5	$ 164	$ 28,393	$ 308
Global Supply Chain Platform	4,982	11,407	8,696	22,745
Commercial Platform	36,214	11,597	51,755	26,273
Total revenue for reportable segments	41,201	23,168	88,844	49,326
Intersegment revenue	(1,029)	(971)	(1,737)	(1,822)
Total consolidated revenue	$ 40,172	$ 22,197	$ 87,107	$ 47,504

Intersegment revenue eliminated in the above table reflects sales from the Global Supply Chain Platform to the Oncology Innovation Platform (in thousands).

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Total revenue by product group:				
License fees	$ —	$ —	$ 28,381	$ —
Commercial product sales	38,881	18,165	56,383	38,246
API sales	1,229	3,830	2,251	8,661
Contract manufacturing revenue	57	38	80	289
Other revenue	5	164	12	308
Total consolidated revenue	$ 40,172	$ 22,197	$ 87,107	$ 47,504

Intersegment revenue is recognized by the selling segment when its customer obtains control of promised goods or services, in an amount that reflects the consideration which it expects to receive in exchange for those goods or services. Upon consolidation, all intersegment revenue and related cost of sales are eliminated from the selling segment's ledger (in thousands).

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Net loss attributable to Athenex, Inc.:				
Oncology Innovation Platform	$ (35,024)	$ (29,792)	$ (35,982)	$ (57,395)
Global Supply Chain Platform	(5,745)	313	(11,731)	(454)
Commercial Platform	318	(2,552)	(12,167)	(9,415)
Total consolidated net loss attributable to Athenex, Inc.	$ (40,451)	$ (32,031)	$ (59,880)	$ (67,264)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Total depreciation and amortization:				
Oncology Innovation Platform	$ 188	$ 210	$ 363	$ 399
Global Supply Chain Platform	426	325	922	636
Commercial Platform	421	393	836	772
Total consolidated depreciation and amortization	$ 1,035	$ 928	$ 2,121	$ 1,807

	June 30, 2020	December 31, 2019
Total assets:		
Oncology Innovation Platform	$ 139,152	$ 194,183
Global Supply Chain Platform	97,772	63,598
Commercial Platform	61,128	52,151
Total consolidated assets	$ 298,052	$ 309,932

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Total revenue:				
United States	$ 26,001	$ 18,160	$ 43,522	$ 38,495
United Kingdom	12,933	—	12,933	1,023
South Korea	1,060	—	1,693	
China	125	889	28,638	1,275
Austria	33	1,773	33	3,947
India	—	605	—	1,382
Other foreign countries	20	770	288	1,382
Total consolidated revenue	$ 40,172	$ 22,197	$ 87,107	$ 47,504

	June 30, 2020	December 31, 2019
Total property and equipment, net:		
United States	$ 12,503	$ 11,486
China	14,364	11,667
Total consolidated property and equipment, net	$ 26,867	$ 23,153

Customer revenue and accounts receivable concentration amounted to the following for the identified periods. These customers relate to the Commercial Platform segment and the Global Supply Chain Platform segment.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Percentage of total revenue by customer:				
Customer A	32%	0%	15%	0%
Customer B	15%	19%	7%	21%
Customer C	14%	7%	6%	14%
Customer D	9%	18%	4%	15%
Customer E	0%	0%	32%	0%

	June 30, 2020	December 31, 2019
Percentage of total accounts receivable by customer:		
Customer A	28%	0%
Customer B	24%	0%
Customer C	15%	45%
Customer D	13%	31%
Customer E	6%	10%

15. Revenue Recognition

The Company records revenue in accordance with ASC, Topic 606 "*Revenue from Contracts with Customers*." Under Topic 606, the Company recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration which it expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that the Company determines are within the scope of Topic 606, the entity performs the following five steps: (i) identifies the contract(s) with a customer; (ii) identifies the performance obligations in the contract; (iii) determines the transaction price; (iv) allocates the transaction price to the performance obligations in the contract; and (v) recognizes revenue when (or as) the entity satisfies a performance obligation. The Company only applies the five-step model to contracts when it is probable that the entity will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. Below is a description of principal activities – separated by reportable segments – from which the Company generates its revenue.

1. Oncology Innovation Platform

The Company out-licenses certain of its IP to other pharmaceutical companies in specific territories that allow the customer to use, develop, commercialize, or otherwise exploit the licensed IP. In accordance with Topic 606, the Company analyzes the contracts to identify its performance obligations within the contract. Most of the Company's out-license arrangements contain multiple performance obligations and variable pricing. After the performance obligations are identified, the Company determines the transaction price, which generally includes upfront fees, milestone payments related to the achievement of developmental, regulatory, or commercial goals, and royalty payments on net sales of licensed products. The Company considers whether the transaction price is fixed or variable, and whether such consideration is subject to return. Variable consideration is only included in the transaction price to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. If any portion of the transaction price is constrained, it is excluded from the transaction price until the constraint no longer exists. The Company then allocates the transaction price to the performance obligation to which the consideration is related. Where a portion of the transaction price is received and allocated to continuing performance obligations under the terms of the arrangement, it is recorded as deferred revenue and recognized as revenue when (or as) the underlying performance obligation is satisfied.

The Company's contracts may contain one or multiple promises, including the license of IP and development services. The licensed IP is capable of being distinct from the other performance obligations identified in the contract and is distinct within the context of the contract, as upon transfer of the IP, the customer is able to use and benefit from it, and the customer could obtain the development services from other parties. The Company also considers the economic and regulatory characteristics of the licensed IP and other promises in the contract to determine if it is a distinct performance obligation. The Company considers if the IP is modified or enhanced by other performance obligations through the life of the agreement and whether the customer is contractually or practically required to use updated IP. The IP licensed by the Company has been determined to be functional IP. The IP is not modified during the license period and therefore, the Company recognizes revenues from any portion of the transaction price allocated to the licensed IP when the license is transferred to the customer and they can benefit from the right to use the IP. For the six-month period ended June 30, 2020, the Company recognized revenue of $28.3 million, net of $1.7 million value added tax ("VAT") collected on behalf of the counterparty, upon transferring certain IP to the customer. No license revenue was recognized for the three-month period ended June 30, 2020 and no license revenue was recognized for the same three and six-month periods ended June 30, 2019.

Other performance obligations included in most of the Company's out-licensing agreements include performing development services to reach clinical and regulatory milestone events. The Company satisfies these performance obligations at a point-in-time, because the customer does not simultaneously receive and consume the benefits as the development occurs, the development does not create or enhance an asset controlled by the customer, and the development does not create an asset with no alternative use. The Company considers milestone payments to be variable consideration measured using the most likely amount method, as the entitlement to the consideration is contingent on the occurrence or nonoccurrence of future events. The Company allocates each variable milestone payment to the associated milestone performance obligation, as the variable payment relates directly to the Company's efforts to satisfy the performance obligation and such allocation depicts the amount of consideration to which the Company expects to be entitled for satisfying the corresponding performance obligation. The Company re-evaluates the probability of achievement of such performance obligations and any related constraint and adjusts its estimate of the transaction price as appropriate. To date, no amounts have been constrained in the initial or subsequent assessments of the transaction price.

Certain out-license agreements include performance obligations to manufacture and provide drug product in the future for commercial sale when the licensed product is approved. For the commercial, sales-based royalties, the consideration is predominantly related to the licensed IP and is contingent on the customer's subsequent sales to another commercial customer. Consequently, the sales- or usage-based royalty exception would apply. Revenue will be recognized for the commercial, sales-based milestones as the underlying sales occur.

The Company exercises significant judgment when identifying distinct performance obligations within its out-license arrangements, determining the transaction price, which often includes both fixed and variable considerations, and allocating the transaction price to the proper performance obligation. The Company did not use any other significant judgments related to out-licensing revenue during the three and six-month periods ended June 30, 2020 and 2019.

2. Global Supply Chain Platform

The Company's Global Supply Chain Platform manufactures API for use internally in its research and development activities as well as its clinical studies, and for sale to pharmaceutical customers globally. The Company generates additional revenue on this platform, by providing small to mid-scale cGMP manufacturing of clinical and commercial products for pharmaceutical and biotech companies and selling pharmaceutical products under 503B regulations set forth by the U.S. Food and Drug Administration ("FDA").

Revenue earned by the Global Supply Platform is recognized when the Company has satisfied its performance obligation, which is the shipment or the delivery of drug products. The underlying contracts for these sales are generally purchase orders and the Company recognizes revenue at a point-in-time. Any remaining performance obligations related to product sales are the result of customer deposits and are reflected in the deferred revenue contract liability balance.

3. Commercial Platform

The Company's Commercial Platform generates revenue by distributing specialty products through independent pharmaceutical wholesalers. The wholesalers then sell to an end-user, normally a hospital, alternative healthcare facility, or an independent pharmacy, at a lower price previously established by the end-user and the Company. Upon the sale by the wholesaler to the end-user, the wholesaler will chargeback the difference between the original list price and price at which the product was sold to the end-user. The Company also offers cash discounts, which approximate 2.3% of the gross sales price, as an incentive for prompt customer payment, and, consistent with industry practice, the Company's return policy permits customers to return products within a window of time before and after the expiration of product dating. Further, the Company offers contractual allowances, generally in the form of rebates or administrative fees, to certain wholesale customers, group purchasing organizations ("GPOs"), and end-user customers, consistent with pharmaceutical industry practices. Revenues are recorded net of provisions for variable consideration, including discounts, rebates, GPO allowances, price adjustments, returns, chargebacks, promotional programs and other sales allowances. Accruals for these provisions are presented in the consolidated financial statements as reductions in determining net sales and as a contra asset in accounts receivable, net (if settled via credit) and other current liabilities (if paid in cash). As of June 30, 2020, and December 31, 2019, the Company's total provision for chargebacks and other deductions included as a reduction of accounts receivable totaled $12.8 million and $14.4 million, respectively. The Company's total provision for chargebacks and other revenue deductions was $20.2 million, and $20.1 million for the three months ended June 30, 2020, and 2019, respectively, and $45.1 million, and $39.5 million for the six months ended June 30, 2020.

The Company exercises significant judgment in its estimates of the variable transaction price at the time of the sale and recognizes revenue when the performance obligation is satisfied. Factors that determine the final net transaction price include chargebacks, fees for service, cash discounts, rebates, returns, warranties, and other factors. The Company estimates all of these variables based on historical data obtained from previous sales finalized with the end-user customer on a product-by-product basis. At the time of sale, revenue is recorded net of each of these deductions. Through the normal course of business, the wholesaler will sell the product to the end-user, determining the actual chargeback, return products, and take advantage of cash discounts, charge fees for services, and claim warranties on products. The final transaction price per product is compared to the initial estimated net sale price and reviewed for accuracy. The final prices and other factors are immediately included in the Company's historical data from which it will estimate the transaction price for future sales. The underlying contracts for these sales are generally purchase orders including a single performance obligation, generally the shipment or delivery of products and the Company recognizes this revenue at a point-in-time.

Disaggregation of revenue

The following represents the Company's revenue for its reportable segment by country, based on the locations of the customer.

	For the Three Months Ended June 30, 2020 (In Thousands)			
	Oncology Innovation Platform	Global Supply Chain Platform	Commercial Platform	Consolidated Total
United States	$ —	$ 2,720	$ 23,281	$ 26,001
United Kingdom	—	—	12,933	12,933
South Korea	—	1,060	—	1,060
China	5	120	—	125
Other foreign countries	—	53	—	53
Total revenue	$ 5	$ 3,953	$ 36,214	$ 40,172

	For the Three Months Ended June 30, 2019 (In Thousands)			
	Oncology Innovation Platform	Global Supply Chain Platform	Commercial Platform	Consolidated Total
United States	$ —	$ 6,563	$ 11,597	$ 18,160
India	—	605	—	605
Austria	—	1,773	—	1,773
China	164	725	—	889
Other foreign countries	—	770	—	770
Total revenue	$ 164	$ 10,436	$ 11,597	$ 22,197

	For the Six Months Ended June 30, 2020 (In Thousands)			
	Oncology Innovation Platform	Global Supply Chain Platform	Commercial Platform	Consolidated Total
United States	$ —	$ 4,700	$ 38,822	$ 43,522
China	28,314	324	—	28,638
United Kingdom	—	—	12,933	12,933
South Korea	—	1,693	—	1,693
Other foreign countries	79	242	—	321
Total revenue	$ 28,393	$ 6,959	$ 51,755	$ 87,107

	For the Six Months Ended June 30, 2019 (In Thousands)			
	Oncology Innovation Platform	Global Supply Chain Platform	Commercial Platform	Consolidated Total
United States	$ —	$ 12,222	$ 26,273	$ 38,495
India	—	1,382	—	1,382
Austria	—	3,947	—	3,947
China	308	967	—	1,275
United Kingdom	—	1,023	—	1,023
Other foreign countries	—	1,382	—	1,382
Total revenue	$ 308	$ 20,923	$ 26,273	$ 47,504

The Company also disaggregates its revenue by product group which can be found in Note 14 – *Business Segment, Geographic, and Concentration Risk Information*.

Contract balances

The following table provides information about receivables and contract liabilities from contracts with customers. The Company has not recorded any contract assets from contracts with customers.

	June 30, 2020	December 31, 2019
	(In Thousands)	
Accounts receivable, gross	$ 51,552	$ 31,207
Chargebacks and other deductions	(12,769)	(14,394)
Provision for credit losses	(163)	(124)
Accounts receivable, net	$ 38,620	$ 16,689
Deferred revenue	97	218
Total contract liabilities	$ 97	$ 218

The following tables illustrate accounts receivable and contract asset balances by reportable segments.

	June 30, 2020 (In Thousands)			
	Oncology Innovation Platform	Global Supply Chain Platform	Commercial Platform	Consolidated Total
Accounts receivable, gross	$ 11,056	$ 1,565	$ 38,931	$ 51,552
Chargebacks and other deductions	—	(1)	(12,768)	(12,769)
Provision for credit losses	—	(118)	(45)	(163)
Accounts receivable, net	11,056	1,446	26,118	38,620

	December 31, 2019 (In Thousands)			
	Oncology Innovation Platform	Global Supply Chain Platform	Commercial Platform	Consolidated Total
Accounts receivable, gross	$ 49	$ 1,522	$ 29,636	$ 31,207
Chargebacks and other deductions	—	(1)	(14,393)	(14,394)
Provision for credit losses	—	(114)	(10)	(124)
Accounts receivable, net	$ 49	$ 1,407	$ 15,233	$ 16,689

As of June 30, 2020, $10.9 million of accounts receivable, net, related to an upfront fee receivable in connection with the license agreement entered into with Guangzhou Xiangxue Pharmaceutical Co., Ltd in December 2019.

As of June 30, 2020 and December 31, 2019, the deferred revenue balances relate to customer deposits made by customers of the Global Supply Chain Platform and are included within accrued expenses on the condensed consolidated balance sheet.

There were no other material changes to contract balances during the three and six months ended June 30, 2020.

16. Commitments and Contingencies

Future minimum payments under the non-cancelable operating leases consists of the following as of June 30, 2020 (in thousands):

Year ending December 31:	Minimum payments
2020 (remaining six months)	$ 1,486
2021	2,840
2022	2,621
2023	2,096
2024	2,002
Thereafter	1,950
	$ 12,995

Legal Proceedings

From time to time, the Company may become subject to other legal proceedings, claims and litigation arising in the ordinary course of business. In addition, the Company may receive letters alleging infringement of patent or other intellectual property rights. The Company is not currently a party to any other material legal proceedings, nor is it aware of any pending or threatened litigation that, in the Company's opinion, would have a material adverse effect on the business, operating results, cash flows or financial condition should such litigation be resolved unfavorably.

17. Subsequent Events

On August 4, 2020, we entered into a Revenue Interest Financing Agreement with Sagard Healthcare Royalty Partners, LP ("Sagard"), pursuant to which Sagard has agreed to pay the Company $50.0 million (the "Product Payment") to provide funding for the Company's development and commercialization of Oral Paclitaxel upon receipt of marketing authorization for Oral Paclitaxel by the FDA for the treatment of metastatic breast cancer. In exchange for the Product Payment, we have agreed to make payments to Sagard (the "Payments") equal to 5.0% of our world-wide net sales of Oral Paclitaxel, subject to a hard cap equal to the lesser of 170% of the Product Payment and the Put/Call Price set forth below (the "Hard Cap"). We are required to make certain additional payments to Sagard to the extent Sagard has not received Payments equaling at least $20.0 million by September 30, 2024 and at least $50.0 million by August 4, 2026. In addition, if Sagard has not received Payments equaling at least $85.0 million by the tenth anniversary of the date the Product Payment is funded (the "Funding Date"), then subject to the Hard Cap, we will be required to pay Sagard an amount such that Sagard will have obtained a 6.0% internal rate of return, calculated on a quarterly basis and calculated from the Funding Date to the tenth anniversary of the Funding Date, on the amount of the Product Payment, taking into account all other payments received by Sagard from us under the Revenue Interest Financing Agreement.

Our obligations under the Revenue Interest Financing Agreement are secured, subject to customary permitted liens and other agreed upon exceptions and subject to an intercreditor agreement with Oaktree Fund Administration, LLC as administrative agent for the lenders under our Senior Credit Agreement, by a perfected security interest in (i) accounts receivable arising from net sales of Oral Paclitaxel and (ii) intellectual property that is claiming or covering Oral Paclitaxel itself or any method of using, making or manufacturing Oral Paclitaxel.

At any time after August 4, 2022, we will have the right, but not the obligation (the "Call Option"), to buy out Sagard's interest in the Payments at a repurchase price (the "Put/Call Price") equal to (a) on or before August 4, 2023, a payment sufficient to generate an internal rate of return of 18.0% of the Product Payment, (b) after August 4, 2023 and on or before August 4, 2024, a payment sufficient to generate an internal rate of return of 16.0% of the Product Payment, (c) after August 4, 2024 and on or before August 4, 2025, a payment sufficient to generate an internal rate of return of 15.0% of the Product Payment, and (d) thereafter, the greater of (i) an amount that, when paid to Sagard, would generate an internal rate of return of 13.0% of the Product Payment, and (ii) an amount equal to the product of the Product Payment and 165%, in the case of each foregoing clause (a) through (d), taking into account all other payments received by Sagard from us under the Revenue Interest Financing Agreement.

The Revenue Interest Financing Agreement contains customary representations and warranties and certain restrictions on our ability to incur indebtedness and grant liens on intellectual property related to Oral Paclitaxel. In addition, the Revenue Interest Financing Agreement provides that if certain events ("Put Option Events") occur, including certain bankruptcy events, non-payment of Payments, a change of control, an out-license or sale of all of the rights in and to Oral Paclitaxel in the U.S. (other than any out-licensing transaction that includes all or substantially all of the U.S. and European development and commercialization rights to Oral Paclitaxel with a pharmaceutical company with global annual revenues for its most recently completed fiscal year that is greater than or equal to $500.0 million attributable to its oncology business) and (subject to applicable cure periods) non-compliance with the covenants in the Revenue Interest Financing Agreement, Sagard may require us to repurchase its interests in the Payments at the Put/Call Price. Sagard may also terminate the Revenue Interest Financing Agreement if we have not received marketing authorization for Oral Paclitaxel by the FDA for the treatment of metastatic breast cancer by December 31, 2021.

Sagard and its co-investors OPB SHRP Co-Invest Credit Limited and SIMCOE SHRP Co-Invest Credit Ltd. (the "IMCO Investors") also acquired by assignment (the "Assignment") term loans and commitments equal to $50.0 million under the Senior Credit Agreement. In connection with the Assignment, we granted warrants to Sagard and the IMCO Investors to purchase up to 201,865 shares of our common stock at a purchase price of $12.63 per share (the "Sagard Warrants"). The Sagard Warrants will expire on June 19, 2027 and may be net exercised at the holder's election.

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

The following discussion contains management's discussion and analysis of our financial condition and results of operations and should be read together with the unaudited condensed consolidated financial statements and the notes thereto included in Part I, Item 1 of this Quarterly Report on Form 10-Q and with our audited consolidated financial statements and related notes thereto for the year ended December 31, 2019 included in our Annual Report on Form 10-K for the year ended December 31, 2019. Unless the context indicates otherwise, as used in this Quarterly Report, the terms "Athenex," the "Company," "we," "us," and "our" refer to Athenex, Inc., a Delaware corporation, and its subsidiaries taken as a whole, unless otherwise noted. This discussion and other parts of this Quarterly Report contain forward-looking statements that involve risks and uncertainties, such as our plans, objectives, expectations, intentions and beliefs. Our actual results could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below and those discussed in the section entitled "Risk Factors" included in our Annual Report on Form 10-K for the year ended December 31, 2019 and our Quarterly Report on Form 10-Q for the quarter ended March 31, 2020.

NOTE ABOUT FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and section 27A of the Securities Act of 1933, as amended (the "Securities Act"). All statements other than statements of historical fact are "forward-looking statements" for purposes of this Quarterly Report. These forward-looking statements may include, but are not limited to, statements regarding our future results of operations and financial position, business strategy, potential market size, potential growth opportunities, the timing and results of clinical trials, the impact of COVID-19 on our business, and potential regulatory approval and commercialization of product candidates. In some cases, forward-looking statements may be identified by terminology such as "believe," "may," "will," "should," "predict," "goal," "strategy," "potentially," "estimate," "continue," "anticipate," "intend," "could," "would," "project," "plan," "expect," "seek" and similar expressions and variations thereof. These words are intended to identify forward-looking statements.

We have based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in the "Risk Factors" section included in our Annual Report on Form 10-K for the year ended December 31, 2019 and our Quarterly Report on Form 10-Q for the quarter ended March 31, 2020. Moreover, we operate in a very competitive and rapidly changing environment, and new risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business. In light of these risks, uncertainties and assumptions, actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee that the future results, levels of activity, performance or events and circumstances reflected in the forward-looking statements will be achieved or occur. We undertake no obligation to update publicly any forward-looking statements for any reason after the date hereof to conform these statements to actual results or to changes in our expectations, except as required by law.

Overview and Recent Developments

We are a global biopharmaceutical company dedicated to becoming a leader in the discovery, development and commercialization of next generation drugs for the treatment of cancer. Our mission is to improve the lives of cancer patients by creating more effective, safer and tolerable treatments. We have assembled a strong and experienced leadership team and have established global operations across the pharmaceutical value chain to execute our goal of becoming a global leader in bringing innovative cancer treatments to the market and improving health outcomes.

We are organized around three operating segments: (1) our Oncology Innovation Platform, dedicated to the research and development of our proprietary drugs; (2) our Commercial Platform, focused on the sales and marketing of our specialty drugs and the market development of our proprietary drugs; and (3) our Global Supply Chain Platform, dedicated to providing a stable and efficient supply of APIs for our clinical and commercial efforts. Our current clinical pipeline in the Oncology Innovation Platform is derived from four different proprietary technologies: (1) Orascovery, based on a P-glycoprotein or P-gp, pump, inhibitor, (2) Src Kinase inhibition, (3) TCR-T immunotherapy, and (4) arginine deprivation therapy.

Significant developments in our Orascovery platform include the following:

On May 29, 2020, we presented interim data from an ongoing Phase II clinical trial in which oral paclitaxel and encequidar (Oral Paclitaxel, formerly known as Oraxol) monotherapy showed encouraging efficacy and tolerability in elderly patients with unresectable cutaneous angiosarcoma, an aggressive malignancy with poor prognosis. The interim results were presented at the American Society of Clinical Oncology 2020 (ASCO20) Virtual Scientific Program, held from May 29 to 31, 2020, and reflected data from 22 evaluable patients out of 26 enrolled patients (16 males and 10 females, median age 75 years (range: 49-93 years)).The interim data showed a clinical benefit rate (CR+PR+SD) of 100% in 22 evaluable patients receiving Oral Paclitaxel treatment, who reached their first post treatment efficacy evaluation. All 22 patients experienced a reduction in tumor size. Complete responses (CR) were observed in 27.3% of patients (6/22), partial responses (PR) were observed in 22.7% of patients (5/22), and stable disease was observed in 50% of patients (11/22). Oral Paclitaxel has been generally well tolerated in this predominantly elderly population. In April 2018, FDA granted an Orphan Drug Designation for Oral Paclitaxel for the treatment of angiosarcoma, and Oral Paclitaxel also received Orphan Designations from the European Commission for the treatment of soft tissue sarcoma in October 2019.

On April 9, 2020, we announced that we participated in a constructive meeting with the FDA as scheduled, to discuss the clinical section of our New Drug Application (NDA) for Oral Paclitaxel for the treatment of metastatic breast cancer ("MBC"). We will provide a further update on the NDA after an official response by the FDA on our NDA filing becomes available.

We announced topline results in August 2019 for our Phase 3 study of Oral Paclitaxel for the treatment of MBC and presented further data of the Phase 3 study in an oral presentation at the 2019 San Antonio Breast Cancer Symposium, or SABCS, in December 2019. Results demonstrated that the study met its primary endpoint showing statistically significant improvement in overall response rate for Oral Paclitaxel compared to intravenous ("IV") paclitaxel and neuropathy was less frequent with Oral Paclitaxel compared to IV paclitaxel. In addition, ongoing analysis of secondary endpoints of survival showed a strong trend favoring Oral Paclitaxel. In particular, Oral Paclitaxel showed a statistically significant improvement in overall survival compared to IV paclitaxel in the prespecified modified intention-to-treat population.

We are also evaluating Oral Paclitaxel in combination with other therapies, including anti-VEGF and anti-PD-1 therapies. We are studying Oral Paclitaxel with ramucirumab in a Phase 1b study in patients with advanced gastric cancer who failed previous chemotherapy. We presented results from the study at the 2019 European Society for Medical Oncology (ESMO) Congress on the first three patient cohorts and are continuing to advance in the expansion phase of the study. Our Phase 1/2 study of Oral Paclitaxel in combination with pembrolizumab, or Keytruda, in patients with advanced solid malignancies is ongoing.

In addition to our lead product candidate, development of our other Orascovery product candidates is ongoing. We presented preliminary results with respect to our Phase 1 study of oral irinotecan and encequidar ("Oral Irinotecan") at the American Society of Clinical Oncology annual meeting in May 2019 ("2019 ASCO Annual Meeting"). We are planning Phase 2 studies for both oral irinotecan and encequidar ("Oral Irinotecan") and oral docetaxel and encequidar ("Oral Docetaxel"). A Phase 1 study of oral eribulin and encequidar ("Oral Eribulin") in patients with solid tumors is ongoing.

If approved, we intend to establish Oral Paclitaxel as the chemotherapy of choice for patients receiving chemotherapy for MBC, although we can provide no assurance that we will be successful in obtaining the FDA's approval to commercialize Oral Paclitaxel. We intend to explore establishing Oral Paclitaxel in other oncology indications where we believe taxanes will continue to be a foundational treatment and continue to explore combination therapies. Our strategy is to develop and, if we receive approval from the FDA, commercialize Oral Paclitaxel in the U.S. through our Commercial Platform. We also plan to evaluate marketing options outside of the U.S., including using our internal resources, partnering with others, or out-licensing the product. In the second half of 2020, we plan to focus on:

- quantitative and qualitative market research, including on health outcomes and qualitative pricing, to understand our customers, patients, and the market;
- examining our competitive landscape;
- developing brand strategy;
- developing key opinion leader relationships;
- attending priority medical conferences to increase awareness of the Company and Oral Paclitaxel;
- creating a market access strategy;
- developing and executing a scientific publication plan;
- developing our patient and patient advocacy strategy;
- completing account, physician and patient segmentation in order to prioritize and target commercial efforts effectively;
- developing our distribution and patient support plans;

- developing our patient adherence to therapy strategy;
- completing our organizational design to determine the overall size of our go-to-market commercial team based on our market opportunity;
- continuing to hire key commercial and medical affairs leadership roles;
- completing a life cycle plan for Oral Paclitaxel; and
- preliminary marketing and launching forecasts.

We can provide no assurance that we will be successful in obtaining the FDA's approval to commercialize Oral Paclitaxel.

On June 13, 2020, Athenex Oncology, one of our U.S. based divisions, launched Facing MBC Together – a public education and patient support campaign that addresses isolation for people living with metastatic breast cancer (MBC). In addition to providing a unique digital resource that enables the provision of practical and emotional support to individuals with MBC, the campaign, which Athenex Oncology unveiled at the Living Beyond Breast Cancer (LBBC) 2020 Virtual Conference on Metastatic Breast Cancer, highlights the stories of nine people of diverse ages and backgrounds who share their insights about the challenges they face, their sources of support, and words of encouragement for others living with this advanced form of breast cancer.

Significant developments in our Src Kinase inhibition platform include the following:

In March 2020, we announced that the FDA had completed its filing review and determined that our NDA for tirbanibulin ointment (formerly known as KX2-391 or KX-01 ointment) for the treatment of actinic keratosis (AK) is sufficiently complete to permit a substantive review. Under the Prescription Drug User Fee Act (PDUFA), the FDA has set a target action date of December 30, 2020. Additionally, the FDA has communicated that it is not currently planning on holding an advisory committee to discuss the application. In March 2020, our partner Almirall S.A. ("Almirall") also announced that the European Medicines Agency (EMA) accepted the filing of a European marketing authorization for tirbanibulin ointment for the treatment of AK.

We completed two Phase 3 studies for tirbanibulin ointment in the treatment of AK and presented topline results from the two Phase 3 studies in a late breaker session at the 2019 annual meeting of the American Academy of Dermatology (AAD). The results showed that both studies achieved their primary endpoint with 44% and 54% of patients in studies KX01-AK-003 and KX01-AK-004, respectively, achieving 100% AK lesion clearance at Day 57 within the face or scalp treatment areas. There was a statistically significant greater clearance rate in favor of tirbanibulin ointment 1% versus vehicle in each study and in each of the pre-defined patient subgroups. Safety results showed that tirbanibulin ointment was well tolerated. In October 2019, we announced a progress update for tirbanibulin ointment in the treatment of AK from our partner Almirall, with whom we are collaborating for the development and commercialization of tirbanibulin in the U.S. and Europe.

The development of our other Src kinase programs/product candidates is ongoing.

Other Platforms

The other technologies in our Oncology Innovation Platform are our TCR-T immunotherapy technology under which we are advancing TCR affinity-enhancing specific T-cell (TAEST) therapy with our first drug candidate, TAEST16001, and our arginine deprivation therapy technology under which we are advancing PT01, also known as Pegtomarginase.

In March 2019, we announced that our partner, Xiangxue Life Sciences Limited ("XLifeSc"), a subsidiary of Guangzhou Pharmaceutical Co., Ltd ("Xiangxue"), received notice of allowance from the China National Medical Product Administration ("NMPA") of its Investigational New Drug ("IND") application to initiate registration related clinical studies in China of TAEST therapy in patients with solid tumors that are HLA-A*02:01 positive and NY-ESO-1 positive. The cancer immunotherapy product, named TAEST 16001, is an autologous cell-based therapy utilizing the TAEST technology to enhance affinity against the HLA-A*02:01 restricted antigen NY-ESO-1. We are currently preparing the US IND for TAEST 16001.

In June 2019, the FDA allowed our IND application for the clinical investigation of PT01 for the treatment of patients with advanced malignancies. The compound targets cancer growth and survival by removing the supply of arginine to cancers that have a disrupted urea cycle. Also in June 2019 we presented preclinical study results of PT01 in a poster session at the 2019 ASCO Annual Meeting. The biologic agent demonstrated high enzymatic activity, predictable pharmacokinetic-pharmacodynamic profiles, and cytotoxicity in vitro. Mouse xenograft models showed good tumor growth inhibition activity at tolerable doses with only transient weight loss during therapy. We are currently planning a Phase 1 clinical study for PT01.

Recent business updates and *COVID-19 related measures*

In the first quarter of 2020, after monitoring developments related to the spread of COVID-19, we undertook a number of measures in response to the COVID-19 pandemic, with a goal to prioritize the health and safety of our employees and ensure continuity in our business. These measures included implementing a work-from-home policy at various times and other efforts in accordance with recommendations by local authorities for certain of our personnel across the globe as well as imposing restrictions on travel and in-person meetings to protect the health and safety of our workforce while we continue to advance our clinical programs and operations. While our operations in China were disrupted from late January to early March due to the COVID-19 pandemic, during March our Chinese operations returned to normal operation. We have been deemed an "essential business" by New York State and as a result, we have experienced minimal disruptions at our New York-based operations in Clarence and Buffalo in the first and second quarters. We have supplied our employees with face coverings and other necessary personal protective equipment and have taken other measures to reduce the risk of the spread of COVID-19 at our work sites. Currently, construction at our Dunkirk facility is proceeding according to schedule and our recently constructed API plant in Chongqing also remains on schedule to commence operations during the second half of 2020. We are actively monitoring our operations and supply chain across the globe and are making adjustments to respond to logistical challenges that arise due to COVID-19 where appropriate. Further, we have opened up our production facilities to produce medicines that are used to treat COVID-19 as part of our commitment to contribute to the COVID-19 relief effort.

With respect to our clinical development program, our anticipated timelines for our later-stage product candidates remain largely unaffected by COVID-19. However, for our earlier stage product candidates, in line with the industry overall, we have experienced and expect to continue to experience, slowed enrollment for our clinical trials as well as suspensions in our clinical trials as healthcare resources are diverted to address the COVID-19 pandemic. We remain committed to advancing our pipeline while ensuring the safety of all participants as well as the integrity of the data and will monitor developments with respect to COVID-19 as well as industry and regulatory best practices for continuing clinical development programs during the pandemic, including, if and where appropriate, the use of virtual communications, interviews and visits as well as self-administration and remote monitoring techniques to address health and safety concerns while minimizing disruptions and delays to our clinical development timelines.

In the first quarter, we also put in place a number of measures intended to adjust/allocate resources towards prioritizing key business operations such as clinical and regulatory activities for later-stage product candidates and pre-launch commercial activities, and to delay or defray compensation costs in order to preserve our cash on hand and liquidity during a volatile period in the U.S. and global capital markets. In addition to deferring the payment of 2019 bonuses and freezing base pay across the Company, we entered into an arrangement with our chairman and chief executive officer, Dr. Lau on March 24, 2020 whereby Dr. Lau agreed to receive options to purchase shares of our common stock in lieu of his remaining base salary for fiscal 2020. Under the terms of the arrangement, Dr. Lau reduced his remaining base for fiscal 2020 to $40,000 in cash and, in exchange for his remaining base salary, agreed to receive a stock option to purchase 55,045 shares of common stock pursuant to our 2017 Omnibus Incentive Plan. The stock option vests in one lump sum on December 31, 2020. The grant date fair value of the stock option was equivalent to the value of Dr. Lau's foregone base salary.

On March 31, 2020, we entered into a letter agreement with Xiangxue to amend certain provisions of the license agreement entered into with Xiangxue in December 2019 (the "2019 Xiangxue License Agreement"). Pursuant to the letter agreement, Xiangxue acknowledges and agrees that Athenex is entitled to payment of the US $30 million upfront payment (the "Upfront Payment") under the 2019 Xiangxue License Agreement. The parties further acknowledge certain difficulties Xiangxue has experienced due to the COVID-19 pandemic in making the Upfront Payment. Therefore, in order to facilitate Xiangxue's payment of the Upfront Payment to Athenex, the parties have agreed to make certain allowances to the payment timeline as well as the payment mechanics. In particular, the parties have agreed that, notwithstanding the provisions of the 2019 Xiangxue License Agreement to the contrary, Xiangxue shall be entitled to make the Upfront Payment in Chinese Renminbi to Chongqing Taihao Pharmaceutical Co. Ltd. ("Taihao"), Athenex's wholly owned subsidiary in China, and that Xiangxue shall remit the gross amount of the Upfront Payment to Taihao with Athenex bearing the responsibility for value added taxes with respect to the same. On June 30, 2020, Athenex entered into a second supplemental agreement to amend certain provisions of the 2019 Xiangxue License Agreement to further facilitate the Company's receipt of the remainder of the Upfront Payment, providing, among other things, that notwithstanding the provisions of the 2019 Xiangxue License Agreement to the contrary, Athenex would bear the responsibility for indirect taxes in connection with license payments made under the 2019 Xiangxue License Agreement rather than Xiangxue. We subsequently received the full amount of the Upfront Payment from Xiangxue during the 3rd quarter of 2020.

On June 19, 2020, we entered into a senior secured loan agreement and related security agreements (the "Senior Credit Agreement) with Oaktree Fund Administration, LLC as administrative agent, and the lenders party thereto (collectively "Oaktree") to borrow up to $225.0 million in five tranches with a maturity date of June 19, 2026, bearing interest at a fixed annual rate of 11.0%. The first tranche of $100.0 million was funded up front, with a portion of the upfront loan proceeds being used to repay in full our existing credit facility with Perceptive Advisors LLC and its affiliates ("Perceptive"). Additional debt tranches of $125.0 million in aggregate are available, subject to our achievement of certain regulatory and commercial milestones (see *Liquidity and Capital Resources - Recent Debt Financings - Oaktree Facility*). In connection with our entry into the Senior Credit Agreement, we granted

warrants to Oaktree to purchase up to an aggregate of 908,393 shares of our common stock at a purchase price of $12.63 per share and entered into a registration rights agreement with Oaktree on June 19, 2020, pursuant to which, among other things, the Company agreed to register for resale the shares of common stock issuable upon exercise of the warrants in the third quarter of 2020.

Financial Summary and Outlook

We have three operating segments: our Oncology Innovation Platform, Global Supply Chain Platform and Commercial Platform. Since inception, we have devoted a substantial amount of our resources to research and development of our lead product candidates under our Orascovery, Src Kinase Inhibition research platforms, and TCR-T Immunotherapy and Arginine Deprivation Therapy. We have incurred significant net losses since inception.

For the six months ended June 30, 2020, our net loss was $60.8 million, compared to $68.3 million for the same period in 2019. As of June 30, 2020 and December 31, 2019, we had an accumulated deficit of $627.3 million and $567.5 million, respectively. We expect to incur significant expenses and increasing operating losses for the foreseeable future. We anticipate that our expenses will increase substantially as we:

- Continue to advance our lead programs, Orascovery and Src Kinase Inhibition technology platforms, through clinical development;
- Continue to invest in further developing our Commercial Platform ahead of our intended proprietary drug launch;
- Continue our current preclinical and clinical research program and development activities;
- Continue to invest in our manufacturing facilities;
- Advance the preclinical and clinical research program and development activities of our in-licensed technology platforms, TCR-T Immunotherapy and Arginine Deprivation Therapy;
- Seek to identify additional research programs and product candidates within existing platform technologies;
- Attain new drugs and technologies through acquisitions or in-licensing opportunities;
- Hire additional research, development and business personnel;
- Maintain, expand and protect our intellectual property (“IP”) portfolio; and
- Incur additional costs associated with operating as a public company.

We have borrowed and, in the future, may borrow additional capital from institutional and commercial banking sources to fund future growth, including pursuant to our Senior Credit Agreement, or potentially pursuant to new arrangements with different lenders. We may borrow funds on terms that may include restrictive covenants, including covenants that restrict the operation of our business, liens on assets, high effective interest rates, financial performance covenants and repayment provisions that reduce cash resources and limit future access to capital markets. In addition, we expect to continue to opportunistically seek access to the equity capital markets to support our development efforts and operations. To the extent that we raise additional capital by issuing equity securities, our stockholders may experience substantial dilution. To the extent that we raise additional funds through collaboration or partnering arrangements, we may be required to relinquish some of our rights to our technologies or rights to market and sell our products in certain geographies, grant licenses on terms that are not favorable to us, or issue equity that may be substantially dilutive to our stockholders.

We have funded our operations to date primarily from the issuance and sale of our common stock through public offerings, senior secured loans, private placements, and to a lesser extent, from convertible bond financing, revenue, and grant funding. Due to the COVID-19 pandemic, access to public and private debt and equity markets may be limited during 2020. As of June 30, 2020, we had cash and cash equivalents of $105.9 million, restricted cash of $11.0 million, and short-term investments of $10.4 million.

Key Components of Results of Operations

Revenue

We derive our consolidated revenue primarily from (i) the sales of generic injectable products by our Commercial Platform; (ii) the sales of 503B and API products by our Global Supply Chain Platform; (iii) licensing and collaboration projects conducted by our Oncology Innovation Platform, which generates revenue in the form of upfront payments, milestone payments, and payments received for providing research and development services for our collaboration projects and for other third parties; and (iv) grant awards from government agencies and universities for our continuing research and development efforts.

We do not anticipate revenue being generated from sales of our product candidates under development in our Oncology Innovation Platform until we have obtained regulatory approval. We cannot assure you that we will succeed in achieving regulatory approval for our drug candidates as planned, or at all.

Cost of Sales

Along with sourcing from third-party manufacturers, we manufacture clinical products in our cGMP facility in New York. Cost of sales primarily includes the cost of finished products, raw materials, labor costs, manufacturing overhead expenses and reserves for expected scrap, as well as transportation costs. Cost of sales also includes depreciation expense for production equipment, changes to our excess and obsolete inventory reserves, certain direct costs such as shipping costs, net of costs charged to customers, and royalty costs related to in-license agreements.

Research and Development Expenses

Research and development ("R&D") expenses consist of the costs associated with in-licensing of product candidates, milestone payments, conducting preclinical studies and clinical trials, activities related to regulatory filings and other R&D activities. Our current R&D activities mainly relate to the clinical development of our Oncology Innovation Platform.

We expense R&D costs as incurred. We record costs for certain development activities, such as clinical trials, based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment or clinical site activations. We do not allocate employee-related costs, depreciation, rental and other indirect costs to specific R&D programs because these costs are deployed across multiple product programs under R&D.

We cannot determine with certainty the duration, costs and timing of the current or future preclinical or clinical studies of our drug candidates. The duration, costs, and timing of clinical studies and development of our drug candidates will depend on a variety of factors, including:

- The scope, rate of progress, and costs of our ongoing, as well as any additional, clinical studies and other R&D activities;
- Future clinical study results;
- Uncertainties in clinical study enrollment rates;
- Significant and changing government regulation; and
- The timing and receipt of any regulatory approvals.

A change in the outcome of any of these variables with respect to the development of a drug candidate could mean a significant change in the costs and timing associated with the development of that drug candidate.

R&D activities are central to our business model. We expect our R&D expenses to continue to increase for the foreseeable future as we continue to support the clinical trials of Oral Paclitaxel, Oral Irinotecan, Oral Docetaxel, Oral Topotecan, Oral Eribulin, tirbanibulin ointment, tirbanibulin oral and KX2-361, as well as initiate and prepare for additional clinical and preclinical studies, including TCR-T and Arginine Deprivation program activities. We also expect spending to increase in the R&D for API, 503B and specialty products. There are numerous factors associated with the successful commercialization of any of our drug candidates, including future trial design and various regulatory requirements, many of which cannot be determined with accuracy at this time based on our stage of development. Additionally, future commercial and regulatory factors beyond our control will likely impact our clinical development programs and plans.

Selling, General and Administrative Expenses

Selling, general and administrative, ("SG&A"), expenses primarily consist of compensation, including salary, employee benefits and stock-based compensation expenses for sales and marketing personnel, and for administrative personnel that support our general operations such as executive management, legal counsel, financial accounting, information technology, and human resources personnel. SG&A expenses also include professional fees for legal, patent, consulting, auditing and tax services, as well as other direct and allocated expenses for rent and maintenance of facilities, development of the facility in Dunkirk, NY, insurance and other supplies used in the selling, marketing, general and administrative activities. SG&A expenses also include costs associated with our commercialization efforts for our proprietary drugs, such as market research, brand strategy and development work on market access, scientific publication, product distribution and patient support.

Results of Operations

Three Months Ended June 30, 2020 Compared to Three Months Ended June 30, 2019

The following table sets forth a summary of our condensed consolidated results of operations for the three months ended June 30, 2020 and 2019, together with the changes in those items in dollars and as a percentage. This information should be read together with our condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q. Our operating results in any period are not necessarily indicative of the results that may be expected for any future period.

	Three Months Ended June 30,			
	2020	2019	Change	
	(in thousands)	(in thousands)	(in thousands)	%
Revenue				
Product sales, net	$ 40,167	$ 22,033	$ 18,134	82%
License fees and other revenue	5	164	(159)	NM
Total revenue	40,172	22,197	17,975	
Cost of sales	(33,006)	(16,942)	(16,064)	95%
Gross profit	7,166	5,255	1,911	
Research and development expenses	(22,015)	(18,507)	(3,508)	19%
Selling, general, and administrative expenses	(17,486)	(17,169)	(317)	2%
Interest income	185	475	(290)	-61%
Interest expense	(1,565)	(1,754)	189	-11%
Loss on extinguishment of debt	(7,230)	—	(7,230)	NM
Income tax expense	(106)	(405)	299	-74%
Net loss	(41,051)	(32,105)	(8,946)	
Less: net loss attributable to non-controlling interests	(600)	(74)	(526)	711%
Net loss attributable to Athenex, Inc.	$ (40,451)	$ (32,031)	$ (8,420)	

Revenue

Revenue from product sales increased to $40.2 million for the three months ended June 30, 2020, from $22.0 million for the three months ended June 30, 2019, an increase of $18.1 million or 82%. This increase was primarily attributable to a significant increase in specialty product sales of $24.6 million, driven by the impact of the global health pandemic which led to the increased demand for COVID-19 related drugs. We experienced an increase in purchases from our existing customers as well as obtaining large, non-recurring orders of specialty products from new customers. Fluctuations in the infection rate and the spread of the global health pandemic and market demand can significantly affect our product sales in the future. If and when the COVID-19 pandemic recedes temporarily or is quelled, we expect to see a significant softening in demand for these products. This increase was partially offset by a decrease in API and 503B products sales of $2.6 million, and $3.8 million, respectively, due to the suspension of production of commercial batches at our API facilities and the discontinued vasopressin sales.

Cost of Sales

Cost of sales for the three months ended June 30, 2020 totaled $33.0 million, an increase of $16.1 million, or 95%, as compared to $16.9 million for the three months ended June 30, 2019. Increase in cost of specialty product sales was in-line with the increase in revenue and we continued to incur fixed costs despite decreased production at our API and APS facilities. Changes in the availability of products and market demand could increase or decrease our revenue and gross profit related to these products in the future.

Research and Development Expenses

R&D expenses for the three months ended June 30, 2020 totaled $22.0 million, an increase of $3.5 million, or 19%, as compared to $18.5 million for the three months ended June 30, 2019. This was primarily due to an increase in regulatory costs, R&D related compensation, preclinical operations, and drug licensing costs and included the following:

- $3.4 million increase in regulatory cost in connection with our NDA preparation and filing for our late-stage drug candidates;
- $1.4 million increase in R&D related compensation due to an increase in workforce;
- $1.1 million increase in preclinical operations related to API R&D and TCR-T development; and
- $0.6 million increase in drug licensing costs related to specialty product in-licenses.

The increase in these R&D expenses was partially offset by a $2.6 million decrease in clinical study costs as both tirbanibulin Phase 3 studies wound down and a $0.4 million decrease in 503B development costs.

Selling, General, and Administrative Expenses

SG&A expenses for the three months ended June 30, 2020 totaled $17.5 million, an increase of $0.3 million, or 2%, as compared to $17.2 million for the three months ended June 30, 2019. This was due to an increase of $1.3 million related to professional fees and IT costs, partially offset by a $1.0 million decrease in certain operational costs as a result of travel and other office expenditures due to the COVID-19 pandemic.

Interest Income and Interest Expense

Interest income consisted of interest earned on our short-term investments and decreased from $0.5 million to $0.2 million for the three months ended June 30, 2020 and 2019, respectively. Interest expense totaled $1.6 million and $1.8 million for the three months ended June 30, 2020 and 2019, respectively. The majority of the interest expense in the both periods was incurred from our variable-rate, long-term debt with Perceptive entered into during the third quarter of 2018. The interest expense incurred from the Senior Credit Agreement was $0.3 million for the three months ended June 30, 2020.

Loss on extinguishment of debt

We recognized $7.2 million loss on the extinguishment of debt related to the termination of the senior secured loan agreement with Perceptive for the three months ended June 30, 2020.

Income Tax Expense

For the three months ended June 30, 2020, we incurred income tax expense of $0.1 million, compared to $0.4 million for the same period in 2019. The decrease in income tax expenses was primarily attributable to the recording a foreign valuation allowance on our deferred tax asset during the prior year.

Six Months Ended June 30, 2020 Compared to Six Months Ended June 30, 2019

The following table sets forth a summary of our condensed consolidated results of operations for the six months ended June 30, 2020 and 2019, together with the changes in those items in dollars and as a percentage. This information should be read together with our condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q. Our operating results in any period are not necessarily indicative of the results that may be expected for any future period.

	Six Months Ended June 30,			
	2020	2019	Change	
	(in thousands)	(in thousands)	(in thousands)	%
Revenue				
Product sales, net	$ 58,714	$ 47,196	$ 11,518	24%
License fees and other revenue	28,393	308	28,085	NM
Total revenue	87,107	47,504	39,603	
Cost of sales	(52,578)	(36,844)	(15,734)	43%
Gross profit	34,529	10,660	23,869	
Research and development expenses	(39,207)	(42,982)	3,775	-9%
Selling, general, and administrative expenses	(43,234)	(32,357)	(10,877)	34%
Interest income	598	758	(160)	-21%
Interest expense	(3,238)	(3,509)	271	-8%
Loss on extinguishment of debt	(7,230)	—	(7,230)	NM
Income tax expense	(2,987)	(905)	(2,082)	230%
Net loss	(60,769)	(68,335)	7,566	
Less: net loss attributable to non-controlling interests	(889)	(1,071)	182	-17%
Net loss attributable to Athenex, Inc.	$ (59,880)	$ (67,264)	$ 7,384	

Revenue

Revenue from product sales increased to $58.7 million for the six months ended June 30, 2020, from $47.2 million for the six months ended June 30, 2019, an increase of $11.5 million or 24%. This increase was primarily attributable to a significant increase in specialty product sales of $25.5 million as the result of increased demand for COVID-19 related drugs due to the global health pandemic and the launch of additional products. We experienced an increase in purchases from our existing customers as well as obtaining large, non-recurring orders of specialty products from new customers.

Fluctuations in the infection rate and the spread of the global health pandemic and market demand can significantly affect our product sales in the future. If and when the COVID-19 pandemic recedes temporarily or is quelled, we expect to see a significant softening in demand for these products. This increase was partially offset by a decrease in API and 503B products sales of $6.5 million, and $7.3 million, respectively, due to the suspension of production of commercial batches at our API facilities and the discontinued vasopressin sales. We recognized $28.3 million in license revenue, net of $1.7 million VAT, for the six months ended June 30, 2020, pursuant to the 2019 Xiangxue License Agreement.

Cost of Sales

Cost of sales for the six months ended June 30, 2020 totaled $52.6 million, an increase of $15.8 million, or 43%, as compared to $36.8 million for the six months ended June 30, 2019. Increase in cost of specialty product sales was in-line with the increase in revenue and we continued to incur fixed costs despite decreased production at our API and APS facilities. Changes in the availability of products and market demand could increase or decrease our revenue and gross profit related to these products in the future.

Research and Development Expenses

R&D expenses for the six months ended June 30, 2020 totaled $39.2 million, a decrease of $3.8 million, or 9%, as compared to $43.0 million for the six months ended June 30, 2019. This was primarily due to a decrease in licensing fees, clinical operations, and preclinical operations and included the following:

- $5.2 million decrease in drug licensing costs related to specialty product in-license expenses and an upfront license payment due to XLifeSc related to TCR-T technology incurred during the prior year;
- $4.7 million decrease of clinical studies costs related to the supply of encequidar and tirbanibulin ointment for clinical studies. In addition, patient costs on the two Phase 3 tirbanibulin studies continued to decrease as both Phase 3 studies wound down; and
- $0.3 million decrease of preclinical operations related to fewer up-front expenses for Arginine Deprivation Therapy, and a decrease in API R&D costs.

The decrease in these R&D expenses was partially offset by an increase of $6.4 million in regulatory costs in connection with our NDA preparations and compensation expense.

Selling, General, and Administrative Expenses

SG&A expenses for the six months ended June 30, 2020 totaled $43.2 million, an increase of $10.8 million, or 34%, as compared to $32.4 million for the six months ended June 30, 2019. This was primarily due to an increase of $7.4 million related to the costs of preparing to commercialize our proprietary drugs, if approved, and an increase of $3.4 million of general administrative expense, including professional service fees and other operating expenses.

Interest Income and Interest Expense

Interest income consisted of interest earned on our short-term investments and decreased to $0.6 million from $0.8 million for the six months ended June 30, 2020 and 2019, respectively. Interest expense totaled $3.2 million and $3.5 million for the six months ended June 30, 2020 and 2019, respectively. The majority of the interest expense in the both periods was incurred from our variable-rate, long-term debt with Perceptive entered into during the third quarter of 2018. The interest expense incurred from the Oaktree Senior Credit Agreement was $0.3 million for the six-months ended June 30, 2020.

Loss on extinguishment of debt

We recognized $7.2 million loss on the extinguishment of debt related to the termination of the senior secured loan agreement with Perceptive for the six-months ended June 30, 2020.

Income Tax Expense

For the six months ended June 30, 2020, we incurred income tax expense of $3.0 million, compared to $0.9 million for the same period in 2019. The increase in income tax expenses was primarily attributable to $2.8 million foreign tax withholding in relation to license revenue recognized in the six months ended June 30, 2020.

Liquidity and Capital Resources

Capital Resources

Since our inception, we have incurred net losses and negative cash flows from our operations. Substantially all of our losses have resulted from funding our R&D programs, SG&A costs associated with our operations, and the development of our specialty drug operations in our Commercial Platform and 503B operations and the investment we are making in our pre-launch activities in anticipation of commercializing our proprietary drugs. We incurred net losses of $60.8 million and $68.3 million for the six months ended June 30, 2020 and 2019, respectively. As of June 30, 2020, we had an accumulated deficit of $627.3 million. Our operating activities used $70.1 million and $37.8 million of cash during the six months ended June 30, 2020 and 2019, respectively. We intend to continue to advance our various clinical and pre-clinical programs which we expect will lead to increased cash outflow of R&D costs and increase our investments in commercialization activities for our proprietary drugs, if approved. In addition, we can provide no assurance that our funding requirements to diversify our product portfolio for specialty drug products in our Commercial Platform and 503B operations will decline in the future. As of June 30, 2020 we had cash and cash equivalents of $105.9 million, restricted cash of $11.0 million, and short-term investments of $10.4 million, which will fund operations into the second quarter of 2021 but will not be sufficient to fund current operating plans through one year after the date that these unaudited condensed consolidated financial statements are issued. This conclusion does not contemplate the additional funding the Company may receive through the Senior Credit Agreement and Revenue Interest Financing Agreement, further discussed below.

Recent Equity Financings

On May 7, 2019, we completed a private placement equity offering of 10 million shares of our common stock. All shares were offered by us at a price of $10.00 per share to three institutional investors, namely Perceptive, Avoro Capital Advisors (formerly known as venBio Select Advisor), and OrbiMed. The aggregate net proceeds received by us from the offering were $99.9 million, net of offering expenses of approximately $0.1 million.

On December 9, 2019, we completed a private placement with a group of institutional investors, led by Kingdon Capital Management, LLC, pursuant to which we sold an aggregate of 3,945,750 shares of its common stock at a purchase price of $15.30 per share for aggregate net proceeds of $59.4 million, net of offering expenses of approximately $1.0 million.

Recent Debt Financings

Oaktree Facility

On June 19, 2020 (the “Closing Date”), we entered into the Senior Credit Agreement to borrow up to $225.0 million in five tranches with a maturity date of June 19, 2026, bearing interest at a fixed annual rate of 11.0%, payable quarterly. We are required to make quarterly interest-only payments until the second anniversary of the Closing Date, after which we are required to make quarterly amortizing payments, with the remaining balance of the principal plus accrued and unpaid interest due at maturity. After the date that is 90 days after the Closing Date, we will be required to pay a commitment fee on any undrawn commitments equal to 0.6% per annum, payable on each subsequent funding date and the commitment termination date. We are also required to pay an exit fee at maturity equal to 2.0% of the aggregate principal amount of the loans funded under the Senior Credit Agreement.

The first tranche of $100.0 million was drawn prior to June 30, 2020, with $54.1 million of the proceeds used in part to repay in full the outstanding loan and fees under the credit agreement with Perceptive and an additional $11.0 million of the upfront loan proceeds held by us as restricted cash in a debt service reserve account, and $6.4 million in fees and expenses incurred in connection with the financing, leaving $28.5 million in available proceeds from the first tranche. An additional four debt tranches of $125 million in the aggregate are available for borrowing from time to time prior to the date that is either 24 or 36 months after the Closing Date, subject to our achievement of certain regulatory and commercial milestones, each as further set forth below:

Tranche	**Funding Condition**	**Tranche Commitment Amount**
Tranche B	Acceptance by the FDA of an NDA filing relating to Oral Paclitaxel.	$25.0 million
Tranche C	The receipt of approval from the FDA of an NDA in respect of the use of Oral Paclitaxel to treat metastatic breast cancer.	$25.0 million
Tranche D	The receipt of approval from the FDA of an NDA in respect of the use of Tirbanibulin to treat actinic keratosis.	$25.0 million
Tranche E	The achievement of (A) net sales for the twelve (12) consecutive month period ending on the last day of a fiscal quarter in excess of $200.0 million and (B) net sales attributable to Oral Paclitaxel for such quarter in excess of $40.0 million.	$50.0 million

We may voluntarily prepay the Senior Credit Agreement at any time subject to a prepayment premium which up until the second anniversary of the Closing Date is equal to the amount of interest that would have been paid up to, but not including, the second anniversary date (excluding interest amounts already paid), plus 3.0% of the principal amount of the senior secured loans being repaid. Thereafter, the prepayment premium equals 3.0% of the principal amount of the senior secured loans being repaid and is reduced over time until the fourth anniversary date, after which no prepayment premium is required.

We are required to make mandatory prepayments of the senior secured loans with net cash proceeds from certain asset sales or insurance proceeds or condemnation awards, in each case, subject to certain exceptions and reinvestment rights.

Our obligations under the Senior Credit Agreement are guaranteed by us and certain of our existing domestic subsidiaries and subsequently acquired or organized subsidiaries subject to certain exceptions. Our obligations under the Senior Credit Agreement and the related guarantees thereunder are secured, subject to customary permitted liens and other agreed upon exceptions, by (i) a pledge of all of the equity interests of our direct subsidiaries, and (ii) a perfected security interest in all of our tangible and intangible assets.

The Senior Credit Agreement contains customary representations and warranties and customary affirmative and negative covenants, including, among other things, restrictions on indebtedness, liens, investments, mergers, dispositions, prepayment of other indebtedness, and dividends and other distributions, subject to certain exceptions, including specific exceptions with respect to product commercialization and development activities. In addition, the Senior Credit Agreement contains certain financial covenants, including, among other things, maintenance of minimum liquidity and a minimum revenue test, measured quarterly until the last day of the second consecutive fiscal quarter where the consolidated leverage ratio does not exceed 4.5 to 1, provided that thereafter we cannot allow our consolidated leverage ratio to exceed 4.5 to 1, measured quarterly. Failure of the Company to comply with the financial covenants will result in an event of default, subject to certain cure rights of the Company. At June 30, 2020, we were in compliance with all applicable covenants.

The Senior Credit Agreement contains events of default which are customary for financings of this type, in certain circumstances subject to customary cure periods. Following an event of default and any cure period, if applicable, Oaktree will have the right upon notice to terminate any undrawn commitments and may accelerate all amounts outstanding under the Senior Credit Agreement, in addition to other remedies available to it as a secured creditor of the Company.

In connection with our entry into the Senior Credit Agreement, we granted warrants to Oaktree to purchase up to an aggregate of 908,393 shares of our common stock at a purchase price of $12.63 per share and entered into a registration rights agreement with Oaktree on June 19, 2020, pursuant to which, among other things, the Company agreed to register for resale the shares of common stock issuable upon exercise of the warrants of no later than the 45th day following the issuance of the warrants.

Revenue Interest Financing Agreement

On August 4, 2020, we entered into a Revenue Interest Financing Agreement with Sagard Healthcare Royalty Partners, LP (“Sagard”), pursuant to which Sagard has agreed to pay the Company $50.0 million (the “Product Payment”) to provide funding for the Company’s development and commercialization of Oral Paclitaxel upon receipt of marketing authorization for Oral Paclitaxel by the FDA for the treatment of metastatic breast cancer. In exchange for the Product Payment, we have agreed to make payments to Sagard (the “Payments”) equal to 5.0% of our world-wide net sales of Oral Paclitaxel, subject to a hard cap equal to the lesser of 170% of the Product Payment and the Put/Call Price set forth below (the “Hard Cap”). We are required to make certain additional payments to Sagard to the extent Sagard has not received Payments equaling at least $20.0 million by September 30, 2024 and at least $50.0 million by August 4, 2026. In addition, if Sagard has not received Payments equaling at least $85.0 million by the tenth anniversary of the date the Product Payment is funded (the “Funding Date”), then subject to the Hard Cap, we will be required to pay Sagard an amount such that Sagard will have obtained a 6.0% internal rate of return, calculated on a quarterly basis and calculated from the Funding Date to the tenth anniversary of the Funding Date, on the amount of the Product Payment, taking into account all other payments received by Sagard from us under the Revenue Interest Financing Agreement.

Our obligations under the Revenue Interest Financing Agreement are secured, subject to customary permitted liens and other agreed upon exceptions and subject to an intercreditor agreement with Oaktree Fund Administration, LLC as administrative agent for the lenders under our Senior Credit Agreement, by a perfected security interest in (i) accounts receivable arising from net sales of Oral Paclitaxel and (ii) intellectual property that is claiming or covering Oral Paclitaxel itself or any method of using, making or manufacturing Oral Paclitaxel.

At any time after August 4, 2022, we will have the right, but not the obligation (the “Call Option”), to buy out Sagard’s interest in the Payments at a repurchase price (the “Put/Call Price”) equal to (a) on or before August 4, 2023, a payment sufficient to generate an internal rate of return of 18.0% of the Product Payment, (b) after August 4, 2023 and on or before August 4, 2024, a payment sufficient to generate an internal rate of return of 16.0% of the Product Payment, (c) after August 4, 2024 and on or before August 4, 2025, a payment sufficient to generate an internal rate of return of 15.0% of the Product Payment, and (d) thereafter, the greater of (i) an amount that, when paid to Sagard, would generate an internal rate of return of 13.0% of the Product Payment, and (ii) an amount equal to the product of the Product Payment and 165%, in the case of each foregoing clause (a) through (d), taking into account all other payments received by Sagard from us under the Revenue Interest Financing Agreement.

The Revenue Interest Financing Agreement contains customary representations and warranties and certain restrictions on our ability to incur indebtedness and grant liens on intellectual property related to Oral Paclitaxel. In addition, the Revenue Interest Financing Agreement provides that if certain events ("Put Option Events") occur, including certain bankruptcy events, non-payment of Payments, a change of control, an out-license or sale of all of the rights in and to Oral Paclitaxel in the U.S. (other than any out-licensing transaction that includes all or substantially all of the U.S. and European development and commercialization rights to Oral Paclitaxel with a pharmaceutical company with global annual revenues for its most recently completed fiscal year that is greater than or equal to $500.0 million attributable to its oncology business) and (subject to applicable cure periods) non-compliance with the covenants in the Revenue Interest Financing Agreement, Sagard may require us to repurchase its interests in the Payments at the Put/Call Price. Sagard may also terminate the Revenue Interest Financing Agreement if we have not received marketing authorization for Oral Paclitaxel by the FDA for the treatment of metastatic breast cancer by December 31, 2021.

Sagard and its co-investors OPB SHRP Co-Invest Credit Limited and SIMCOE SHRP Co-Invest Credit Ltd. (the "IMCO Investors") also acquired by assignment (the "Assignment") term loans and commitments equal to $50.0 million under the Senior Credit Agreement. In connection with the Assignment, we granted warrants to Sagard and the IMCO Investors to purchase up to 201,865 shares of our common stock at a purchase price of $12.63 per share (the "Sagard Warrants"). The Sagard Warrants will expire on June 19, 2027 and may be net exercised at the holder's election.

Outlook

We have borrowed and, in the future, may borrow additional capital from institutional and commercial banking sources to fund future growth, including pursuant to the Senior Credit Agreement, or potentially pursuant to new arrangements with different lenders. We may borrow additional funds on terms that may include restrictive covenants, including covenants that further restrict the operation of our business, liens on assets, high effective interest rates, financial performance covenants and repayment provisions that reduce cash resources and limit future access to capital markets. In addition, we expect to continue to opportunistically seek access to the equity capital markets to support our development efforts and operations. To the extent that we raise additional capital by issuing equity securities, our stockholders may experience substantial dilution. To the extent that we raise additional funds through collaboration or partnering arrangements, we may be required to relinquish some of our rights to our technologies or rights to market and sell our products in certain geographies, grant licenses on terms that are not favorable to us, or issue equity that may be substantially dilutive to our stockholders.

As of June 30, 2020, the Company had cash and cash equivalents of $105.9 million, restricted cash of $11.0 million, and short-term investments of $10.4 million. The Company believes that the existing cash and cash equivalents, restricted cash, and short-term investments will fund operations into the second quarter of 2021 but will not be sufficient to fund current operating plans through one year after the date that these unaudited condensed consolidated financial statements are issued. This conclusion does not contemplate the additional funding the Company may receive through the Senior Credit Agreement and Revenue Interest Financing Agreement, further discussed below. We have based these estimates on assumptions that may prove to be wrong, and it could spend the available financial resources much faster than expected and need to raise additional funds sooner than anticipated. Since there is uncertainty around our ability to achieve various funding conditions that trigger the lenders' obligations to make payments under the Senior Credit Agreement and the Revenue Interest Financing Agreement, there can be no assurance that this funding will be available for our use when needed, or at all. In addition, disruptions in the capital markets and the operations of commercial partners due to the COVID-19 pandemic may make it difficult for us to raise additional funds. As a result, these uncertainties, among others, raise substantial doubt about the Company's ability to continue as a going concern.

If we meet applicable funding conditions, anticipated future proceeds from the Senior Credit Agreement and the Revenue Interest Financing, together with the existing cash and cash equivalents, restricted cash, and short-term investments, are estimated to extend the Company's cash runway into 2022, as they provide us the financial flexibility to draw another $125.0 million and $50.0 million of contingent milestone-based, non-dilutive capital.

We expect that our expenses will increase as we continue to fund clinical and preclinical development of our research programs, pre-launch activities of our proprietary drugs, funding of our Commercial Platform and manufacturing facilities, and working capital and other general corporate purposes. We have based our estimates on assumptions that might prove to be wrong, and we might use our available capital resources sooner than we currently expect. Because of the numerous risks and uncertainties associated with the development and commercialization of our drug candidates, we are unable to accurately estimate the amounts of increased capital outlays and operating expenditures necessary to complete the development and commercialization of our drug candidates.

Our future capital requirements will depend on many factors, including:

- Our ability to generate revenue and profits from our Commercial Platform or otherwise;
- The costs, timing and outcome of regulatory reviews and approvals;
- Progress of our drug candidates to progress through clinical development successfully;

- The initiation, progress, timing, costs and results of nonclinical studies and clinical trials for our other programs and potential drug candidates;
- The costs of preparing our Commercial Platform for the commercialization of our proprietary drugs;
- The costs of construction and fit-out of planned drug at both Dunkirk and API manufacturing facilities;
- The number and characteristics of the drug candidates we pursue;
- The costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our IP rights and defending IP related claims;
- The extent to which we acquire or in-license other products and technologies; and
- Our ability to maintain and establish collaboration arrangements on favorable terms, if at all.

We believe that our existing cash, cash equivalents, restricted cash, and short-term investments will not be sufficient to enable us to complete all necessary development or commercially launch our proprietary drug candidates. Until such time, if ever, as we can generate substantial product revenue, we expect to finance our cash needs through a combination of equity offerings, debt financings, collaborations, strategic alliances, licensing arrangements, and government grants. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the ownership interest of our existing stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect rights of holders of common stock. Additional debt financing, if available, may involve agreements that include covenants further limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends and might require the issuance of warrants, which could potentially dilute the ownership interest of holders of common stock. If we raise additional funds through collaborations, strategic alliances or licensing arrangements with third parties, we might have to relinquish valuable rights to our technologies, future revenue streams or research programs or to grant licenses on terms that might not be favorable to us. The COVID-19 pandemic has reduced the valuation of many publicly traded stocks, including our own, and has disrupted capital markets in the U.S. and globally. Until global economies recover, we may not be able to raise additional funds through equity or debt financings. If we are unable to raise additional funds through equity or debt financings when needed, we might be required to delay, limit, reduce, or terminate our product development or future commercialization efforts or grant rights to develop and market products or drug candidates that we would otherwise prefer to develop and market ourselves.

Cash Flows

The following table provides information regarding our cash flows for the six months ended June 30, 2020 and 2019:

	Six Months Ended June 30,	
	2020	2019
	(in thousands)	
Net cash used in operating activities	$ (70,068)	$ (37,773)
Net cash provided by investing activities	18,125	4,764
Net cash provided by financing activities	41,573	104,698
Net effect of foreign exchange rate changes	(403)	715
Net (decrease) increase in cash, cash equivalents, and restricted cash	$ (10,773)	$ 72,404

Net Cash Used in Operating Activities

The use of cash in our operating activities resulted primarily from our net loss adjusted for non-cash charges and changes in components of working capital. The primary use of our cash in the periods presented was to fund our R&D, regulatory and other clinical trial costs, drug licensing costs, inventory purchases, pre-launch commercialization activities, and other expenditures related to sales, marketing and administration. Net cash used in operating activities increased $32.3 million or 85.5% for the six months ended June 30, 2020. The increase is primarily attributable to increases in cost of sales, SG&A costs, and losses related to the extinguishment of debt.

Net cash used in operating activities was $70.1 million for the six months ended June 30, 2020. This resulted primarily from our net loss of $60.8 million, adjusted for non-cash charges of $15.4 million, and by cash used by our operating assets and liabilities of $24.7 million. Our operating assets increased $21.9 million for accounts receivable mainly related to the contract asset recognized from license revenue in the current period and the increased sales of specialty products during the six-months ended June 30, 2020, and decreased by $1.5 million for inventory of all drug products, and $1.0 for prepaids and other assets. Our operating liabilities increased by $5.3 million mainly due to an increase in accrued selling costs and rebates, and an increase in accrued wages and benefits, and other operating liabilities. Our net non-cash charges during the six months ended June 30, 2020 primarily consisted of $7.2 million of loss on extinguishment of debt, $5.3 million of stock-based compensation expense, and $2.1 million depreciation and amortization expense.

Net cash used in operating activities was $37.8 million for the six months ended June 30, 2019. This resulted primarily from our net loss of $68.3 million, adjusted for non-cash charges of $7.9 million, and by cash used by our operating assets and liabilities of $22.7 million. Our operating assets decreased $3.4 million for accounts receivable mainly related to the decreased sales of API products during the six months ended June 30, 2019, and $1.5 million for inventory of all drug products, while prepaid and accrued expenses increased by $25.3 million primarily related to construction at the Dunkirk facility. Our operating liabilities increased by $43.1 million mainly due to $24.3 million related to construction at our Dunkirk facility, and $20.0 million of deferred revenue related to a milestone payment received from Almirall. Our net non-cash charges during the six months ended June 30, 2019 primarily consisted of $5.1 million of stock-based compensation expense, and $1.8 million depreciation and amortization expense.

Net Cash Provided by Investing Activities

Net cash provided by investing activities was $18.1 million for the six months ended June 30, 2020, compared to $4.8 million in the six months ended June 30, 2019. The difference was primarily due to more cash being obtained by the maturities of short-term investments and a decrease in the purchases of short-term investments and in-licenses.

Net Cash Provided by Financing Activities

Net cash provided by financing activities was $41.6 million for the six months ended June 30, 2020, which primarily consisted of $94.2 million from the draw downs of debt from our credit facility with Oaktree and $1.0 million to fund our new API plant in China, $5.8 million from the issuance of warrants to Oaktree, and $0.8 million from the exercise of stock options and sale of common stock, partially offset by $54.1 million repayment of Perceptive debt and $6.1 million issuance costs of the new Oaktree debt.

Net cash provided by financing activities was $104.7 million for the six months ended June 30, 2019, which primarily consisted of net proceeds of $99.9 million from the issuance of common stock from the private placement and $3.6 million from the issuance of debt to fund our new API plant in China.

Contractual Obligations

A summary of our contractual obligations as of June 30, 2020 is as follows:

	Payments Due by Period				
	Within 1 Year	1 to 3 years	3 to 5 years	More than 5 years	Total Amounts Committed
	(in thousands)				
Operating leases	$ 2,903	$ 5,095	$ 4,050	$ 947	$ 12,995
Long-term debt	842	16,744	27,215	65,506	110,307
Finance lease obligations	389	450	183	—	1,022
Licensing fees	384	—	—	—	384
	$ 4,518	$ 22,289	$ 31,448	$ 66,453	$ 124,708

The above table includes the Company's operating leases and the amounts committed under those leases by each location: (1) the rental of our global headquarters in the Conventus Center for Collaborative Medicine in Buffalo, NY; (2) the rental of our R&D facility in the IC Development Centre in Hong Kong; (3) the rental of the Commercial Platform headquarters in Chicago, IL; (4) the rental of our clinical research headquarters in Cranford, NJ; (5) the rental of our clinical data management center in Taipei, Taiwan; (6) the rental of eight facilities of our contract research organization throughout Latin America; (7) the rental of our Global Supply Chain distribution office in Houston, TX; (8) the rental of our Global Supply Chain API manufacturing facility in Chongqing, China; and (9) the rental of other facilities and equipment located mainly in Buffalo, NY.

The long-term debt is comprised of (1) the principal and fees related to the first tranche of our Senior Credit Agreement with Oaktree; (2) our credit arrangement with Chongqing Maliu Riverside Development and Investment Co., LTD; and (3) our mortgage assumed in connection with the acquisition of CDE.

The finance lease obligations represent the lease of various equipment for our facilities in and near Buffalo, NY.

The license fee obligations are due in connection with our in-licensing arrangements for certain of the Commercial Platform's specialty products.

Off-Balance Sheet Arrangements

We do not maintain any off-balance sheet partnerships, arrangements, or other relationships with unconsolidated entities or others, often referred to as structured finance or special purpose entities, which are established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

Critical Accounting Policies and Significant Judgments and Estimates

Our condensed consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). The preparation of these condensed consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, costs and expenses, and related disclosures. These estimates form the basis for judgments we make about the carrying values of our assets and liabilities, which are not readily apparent from other sources. We base our estimates and judgments on historical experience and on various other assumptions that we believe are reasonable under the circumstances. On an ongoing basis, we evaluate our estimates and assumptions. Our actual results may differ from these estimates under different assumptions or conditions.

We believe that the assumptions and estimates associated with R&D expenses, chargebacks, stock-based compensation and inventory reserves have the most significant impact on our condensed consolidated financial statements. Therefore, we consider these to be our critical accounting policies and estimates.

There have been no significant changes in our critical accounting policies and estimates as compared to the critical accounting policies and estimates disclosed in Management's Discussion and Analysis of Financial Condition and Operations included in our Annual Report on Form 10-K for the year ended December 31, 2019.

Recent Accounting Pronouncements

In the normal course of business, we evaluate all new accounting pronouncements issued by the Financial Accounting Standards Board, the Securities and Exchange Commission (the "SEC"), or other authoritative accounting bodies to determine the potential impact they may have on our condensed consolidated financial statements. See Note 2 of the Notes to Condensed Consolidated Financial Statements contained in Item 1 of this quarterly report on Form 10-Q for additional information about these recently issued accounting standards and their potential impact on our financial condition or results of operations.

Item 3. Quantitative and Qualitative Disclosures about Market Risk.

Foreign Currency Exchange Risk

A significant portion of our business is located outside the United States and, as a result, we generate revenue and incur expenses denominated in currencies other than the U.S. dollar, a majority of which is denominated in Chinese Renminbi ("RMB"). In the six months ended June 30, 2020 and 2019, approximately 0% and 1%, respectively, of our sales, excluding intercompany sales, were denominated in foreign currencies. As a result, our revenue can be impacted by fluctuations in foreign currency exchange rates. We expect that foreign currencies will represent a lower percentage of our sales in the future due to the anticipated growth of our U.S. business. Our international selling, marketing, and administrative costs related to these sales are largely denominated in the same foreign currencies, which somewhat mitigates our foreign currency exchange risk rate exposure.

Currency Convertibility Risk

A portion of our revenues and expenses, and a portion of our assets and liabilities are denominated in RMB. The People's Republic of China ("PRC") government uses a single rate of exchange as quoted daily by the People's Bank of China, ("PBOC"). The PRC imposes a number of procedural requirements that limit the ability to readily convert RMB into U.S. dollars or other foreign currencies. All foreign exchange transactions continue to take place either through the PBOC or other banks authorized to buy and sell foreign currencies at the exchange rates quoted by the PBOC. Approvals of foreign currency payments by the PBOC or other institutions require submitting a payment application form together with suppliers' invoices, shipping documents and signed contracts.

Additionally, the value of the RMB is subject to changes in PRC central government policies and international economic and political developments affecting supply and demand in the PRC foreign exchange trading system market.

Interest Rate Sensitivity

We had cash, cash equivalents, restricted cash, and short-term investments of $127.3 million as of June 30, 2020. Our primary exposure to market risk is interest income sensitivity, which is affected by changes in the general level of U.S. interest rates. However, because of the short-term nature of the instruments in our portfolio, a sudden change in U.S. market interest rates is not expected to have a material impact on our condensed consolidated financial condition or results of operations. We do not believe that our cash or cash equivalents have significant risk of default or illiquidity.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Board Chairman (Principal Executive Officer) and our Chief Financial Officer (Principal Financial and Accounting Officer), evaluated the effectiveness of our disclosure controls and procedures as of June 30, 2020. The term "disclosure controls and procedures," as defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act means controls and other procedures of a company that are designed to ensure that information required to be disclosed by the company 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 SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well-designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of June 30, 2020, our Chief Executive Officer and Board Chairman (Principal Executive Officer) and our Chief Financial Officer (Principal Financial and Accounting Officer) concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended June 30, 2020 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. We have not experienced any material impact to our internal controls over financial reporting despite the fact that most of our employees are working remotely due to the COVID-19 pandemic. We are continually monitoring and assessing the COVID-19 situation on our internal controls to minimize the impact on their design and operating effectiveness.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

From time to time we may become involved in legal proceedings or be subject to claims arising in the ordinary course of our business. Regardless of the outcome, litigation can have an adverse impact on us because of prosecution, defense and settlement costs, unfavorable awards, diversion of management resources and other factors.

Item 1A. Risk Factors.

For a discussion of the Company's potential risks or uncertainties, please see "Part I—Item 1A—Risk Factors" and "Part II—Item 7—Management's Discussion and Analysis of Financial Condition and Results of Operations" in the Company's Annual Report on Form 10-K for the year ended December 31, 2019 filed with the SEC, and "Part I—Item 2—Management's Discussion and Analysis of Financial Condition and Results of Operations" herein. Other than as described below and our Quarterly Report on Form 10-Q for the quarter ended March 31, 2020, there have been no material changes to the risk factors disclosed in Part I—Item 1A of the Company's Annual Report on Form 10-K for the year ended December 31, 2019.

Risks Related to the COVID-19 Pandemic

The COVID-19 pandemic could continue to adversely impact our business, including our commercial operations, clinical development activities and clinical trials.

As a result of the COVID-19 pandemic, we experienced disruptions in production at our Chongqing API production facility in the first quarter of 2020, as well as difficulties in clinical trial recruitment suspensions of early stage trials, which continued through the second quarter of 2020. The future impact of the COVID-19 pandemic on our business and operations is largely unknown and the situation is fluid. The extent to which our business and operations may be impacted by the pandemic will depend on a number of factors, including (i) the ultimate spread and severity of the outbreaks in the U.S. and globally, (ii) the existence of additional waves of outbreak as containment measures are lifted, (iii) the scope, duration and impact of containment measures on individuals and businesses, and (iv) the timing to market and relative availability of testing and treatment options for COVID-19. If the pandemic worsens or we experience additional waves of outbreak on a local, national or global scale, we may experience a multitude of additional disruptions that could severely impact our business, operations, clinical development activities and planned clinical trials, including without limitation, the following:

- a spread of COVID-19 among our workforce and/or management team, which would result in our reduced capacity to manage our business to the extent key personnel are impacted or our personnel are impacted in significant numbers;
- continued delays or difficulties in clinical trials, which could include extended periods of time in which early stage trials are suspended, sustained difficulties enrolling patients in clinical trials and/or disruptions to ongoing trials based on the attrition of patients as a result of contracting or being exposed to COVID-19, facility closures or limitations on the use of hospitals as clinical trial sites and governmental restrictions on "non-essential" procedures and activities, any of which may further delay our clinical development plans and timelines and also may impact the integrity of our clinical trial data for ongoing trials;
- temporary or long-term disruptions in our supply chains and resulting delays in the delivery of products, services or other materials necessary for our operations;
- interruptions in FDA operations or the operations of comparable foreign regulatory agencies, which may in turn impact our timelines for receiving regulatory approvals and feedback;
- complete or partial shutdowns of the construction efforts at our Dunkirk or PRC facilities or additional production slowdowns or stoppages at our Chongqing facility;
- disruptions due to the increased cybersecurity vulnerabilities caused by remote work and a distributed workforce, including data breaches and data loss;
- interruption or delays in our and our partners ability to meet expected clinical development deadlines or to comply with contractual commitments with respect to the same, including timelines around preclinical studies and planned clinical trials which could in turn delay overall developmental and commercialization timelines; and
- limitations on our ability to engage in face-to-face essential business activities as well as marketing and public relations activities due to the health risks posed by such activities, the widespread cancellation of conferences and events targeting the biotech and medical fields, and restrictions on domestic and international travel, including travel bans and government imposed quarantines.

Each of these disruptions as well as others arising from the COVID-19 pandemic could adversely impact our ability to conduct clinical development activities, planned clinical trials and our business generally, and could have a material adverse impact on our operations and financial condition and results.

The economic disruption from the COVID-19 pandemic may result in material adverse consequences for general economic, financial and business conditions, and could result in increased credit and counterparty risks.

Through our normal business activities, we are subject to significant credit and counterparty risks that arise in the ordinary course of business. These risks have been heightened due to the COVID-19 pandemic and resulting economic turbulence, giving rise to substantial macroeconomic uncertainty. In the event of a sustained economic downturn, our customers, lenders, licensing partners, service providers, and other counterparties may be unable to fully fulfil their respective obligations to us in a timely manner, or at all. In addition, governments that we have partnered with and received grants from in connection with the construction of certain production facilities may be unable to timely fulfil their obligations under such agreements due to the impact of COVID-19 on their financial conditions.

In particular, we are a party to various strategic collaboration and license agreements that are important to our business and to our current and future product candidates. Unfavorable macroeconomic conditions caused by COVID-19 may lead our business partners to delay or curtail planned expenditures under our licensing arrangements, which could delay the development and commercialization of our product candidates in certain geographies for certain indications, which would harm our business prospects, financial condition and results of operations.

As a result of COVID-19, we have experienced difficulties in collecting certain license agreement receivables. For instance, we recently experienced a significant delay in the receipt of an upfront payment from a license partner – see Part 1, Item 2, "*Management Discussion and Analysis*," under the heading "*Recent business updates and COVID-19 related measures*" for further information. If any of these difficulties persist for one or more of our partnerships, we may need to declare a default and terminate a license arrangement, which could delay or impair our ability to develop and commercialize the product candidates in the territories covered by the license agreement. In addition, we may seek replacement partnerships to develop and commercialize these product candidates in the territories covered by the terminated arrangement, the negotiation and entry into which may impact our development timelines and otherwise be on terms less favorable compared to existing contractual terms. This could in turn have a material adverse effect on our competitive position, business, financial conditions, results of operations, and prospects.

In addition, a prolonged downturn in macroeconomic conditions or negative trends in the global credit markets could further negatively impact our ability to collect on receivables, including milestone payments, due to us which may increase our concessions and discount rates as well as the length of time until these receivables are collected. An inability to timely collect may lead to an increase in our borrowing requirements, our accounts receivable and potentially lead to increased write-offs, with possible adverse effects on our business, financial condition, results of operations and cash flows.

Risks Related to Our Financial Position and Need for Additional Capital

Our ability to continue as a going concern will require us to obtain additional financing to fund our current operations, which may be unavailable on acceptable terms, or at all.

Our recurring losses from operations and our current operating plans raise substantial doubt about our ability to continue as a going concern. As a result, our independent registered public accounting firm included an explanatory paragraph in its report on our consolidated financial statements as of and for the year ended December 31, 2019 with respect to this uncertainty. Our ability to continue as a going concern will require us to obtain additional financing to fund our current operating plans. For additional information, please see "*Note 1 - Company and Nature of Business - Significant Risks and Uncertainties*".

We will need to obtain additional financing to fund our operations, and if we are unable to obtain such financing, we may be unable to complete the development and commercialization of our drug candidates.

To date, we have financed our operations with the proceeds from debt financings, public and private securities offerings, public-private partnerships, the issuance of convertible notes and public grants. Our drug candidates will require the completion of clinical studies and regulatory review, significant sales and marketing efforts and substantial investment before they can provide us with any product sales revenue. Our operations have consumed substantial amounts of cash since inception. The net cash used for our operating activities was $97.5 million, $109.4 million and $81.5 million for the years ended December 31, 2019, 2018 and 2017 respectively. We expect to continue to spend substantial amounts on advancing the clinical and regulatory development of our proprietary drug candidates, launching and commercializing any proprietary drug candidates for which we receive regulatory approval, including building our own commercial infrastructure to address certain markets.

On June 19, 2020, we entered into a 6-year $225.0 million loan agreement with Oaktree Fund Administration, LLC as administrative agent, and the lenders party thereto (the "Senior Credit Agreement"), bearing interest at a fixed annual rate of 11%. We expect to use borrowings under our Senior Credit Agreement, proceeds from out-licensing arrangements and potential future financing transactions, if necessary, to fund expenditures that are in excess of our operating cash flow and cash on hand, including completing the development and commercialization of our proprietary drug candidates and to conduct additional clinical trials for the approval of our proprietary drug candidates if requested by regulatory bodies and to complete the development of any additional proprietary drug candidates we might discover. Moreover, our research and development expenses and other contractual commitments are substantial and are expected to increase in the future. In addition, we will require additional financial resources and personnel to begin operations at our public-private partnership facilities in Chongqing, China and Dunkirk, New York. To the extent the costs of constructing the Dunkirk facility exceed approximately $206 million, we will also be responsible for those costs.

Our forecast of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement and involves risks and uncertainties, and actual results could vary as a result of a number of factors, including the factors discussed elsewhere in this "Risk Factors" section. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect. Our future funding requirements will depend on many factors, including, but not limited to:

- the progress, timing, scope and costs of our clinical trials, including the ability to timely enroll patients in our planned and potential future clinical trials;
- the outcome, timing and cost of regulatory approvals by the FDA, NMPA and regulatory authorities in jurisdictions where we seek such approvals, including the possibility that the FDA, NMPA or regulatory authorities may require that we perform more studies than those that we currently expect;
- our ability to secure adequate coverage and reimbursement for our proprietary drug candidates from government (including U.S. federal health care programs) and private payors;
- the number and characteristics of drug candidates that we may in-license and develop;
- our ability to successfully and compliantly launch and commercialize our drug candidates;
- the amount of sales and other revenues from drug candidates that we may commercialize, if any, including the selling prices for such potential products and the availability of adequate reimbursement by third-party payors;
- the amount of rebates or other price concessions we may owe under U.S. federal health care programs that cover and reimburse our proprietary drug candidates;
- the amount and timing of the milestone and royalty payments we receive from our collaborators under our licensing arrangements;
- the cost of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;
- selling and marketing costs associated with our potential products, including the cost and timing of expanding our marketing and sales capabilities;
- the terms and timing of any potential future collaborations, licensing or other arrangements that we may establish;
- cash requirements of any future acquisitions and/or the development of other drug candidates;
- the costs of operating as a public company;
- the cost and timing of completion of commercial-scale outsourced manufacturing activities; and
- the time and cost necessary to respond to technological and market developments.

We have also incurred debt service obligations under our Senior Credit Agreement and have minimum payment obligations under our Revenue Interest Financing Agreement, which could make it more difficult for us to fund our operations. Under the Senior Credit Agreement, we are required to make quarterly interest-only payments until June 19, 2022, after which we are required to make quarterly amortizing payments, with the remaining balance of the principal plus accrued and unpaid interest due at maturity. Beginning on September 17, 2020, we will also be required to pay a commitment fee on any undrawn commitments equal to 0.6% per annum, payable on each subsequent funding date or the commitment termination date. Under the Revenue Interest Financing Agreement, to the extent we do not generate revenues from Oral Paclitaxel sufficient to satisfy minimum payment obligations of $20.0 million by September 30, 2024 and $50.0 million by August 4, 2026, we will in each instance be required to pay Sagard the amount of the shortfall. In addition, if Sagard has not received payments equaling at least $85.0 million by the tenth anniversary of the date the Product Payment is funded, then subject to the Hard Cap, we will be required to pay Sagard an amount such that Sagard will have obtained a 6.0% internal rate of return on the Product Payment (taking into account all other payments received by Sagard from us under the Revenue Interest Financing Agreement). For additional information, please see "*Liquidity and Capital Resources —Recent Debt Financings*".

Until we can generate a sufficient amount of revenue, we may finance future cash needs through public or private equity offerings, debt financings, collaborations and strategic alliances. Additional funds may not be available when we need them on terms that are acceptable to us, or at all. General market conditions or the market price of our common stock may not support capital raising transactions such as an additional public or private offering of our common stock or other securities. In addition, our ability to raise additional capital may be dependent upon our common stock being quoted on The Nasdaq Global Select Market or upon obtaining stockholder approval to issue a sufficient number of shares of our common stock. There can be no assurance that we will be able to satisfy the criteria for continued listing on The Nasdaq Global Select Market or that we will be able to obtain stockholder approval of such stock issuances if it is necessary. If adequate funds are not available to us on acceptable terms, or at all, we may be required to delay or reduce the scope of, or eliminate, one or more of our research or development programs or our commercialization efforts. We may seek to access the public or private capital markets whenever conditions are favorable, even if we do not have an immediate need for additional capital at that time. In addition, if we raise additional funds through collaborations, strategic alliances or marketing, distribution or licensing arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams or drug candidates or to grant licenses on terms that may not be favorable to us.

We believe that our existing cash and cash equivalents and short-term investments will not be sufficient to enable us to complete all necessary development or commercially launch our proprietary drug candidates. If we are unable to raise capital when needed or on attractive terms, we will be forced to delay, reduce or eliminate our research and development programs or future commercialization efforts. Our inability to obtain additional funding when needed could seriously harm our business.

Covenants in the agreements governing our existing debt agreement restrict the manner in which we conduct our business.

The Senior Credit Agreement contains various covenants that limit, subject to certain exemptions, our ability and/or our certain of our subsidiaries' ability to, among other things, incur additional indebtedness or liens; make investments; consummate business combinations such as mergers and dispositions; prepay other indebtedness; and to declare dividends and other distributions, subject to certain exceptions, including specific exceptions with respect to product commercialization and development activities. In addition, the Senior Credit Agreement contains certain financial covenants, including, among other things, maintenance of minimum liquidity and a minimum revenue test, measured quarterly until the last day of the second consecutive fiscal quarter where the consolidated leverage ratio does not exceed 4.5 to 1, provided that thereafter we cannot allow our consolidated leverage ratio to exceed 4.5 to 1, measured quarterly.

The Senior Credit Agreement requires that we maintain (i) a debt service reserve account with a minimum cash balance equal to the amount required to pay interest on the outstanding loan for a period of the next twelve months and (ii) a minimum liquidity amount in cash or permitted cash equivalent investments of $20.0 million until the date on which the aggregate principal amount of loans outstanding is greater than or equal to $150.0 million (the "First Step-Up Date"), $25.0 million from the First Step-Up Date until the date on which the aggregate principal amount of loans outstanding balance is equal to $225.0 million (the "Second Step-Up Date"), and $30.0 million from the Second Step-up Date until the maturity date. Our obligations under the Senior Credit Agreement are guaranteed by certain of our existing domestic subsidiaries and subsequently acquired or organized subsidiaries subject to certain exceptions. Our obligations under the Senior Credit Agreement and the related guarantees thereunder are secured, subject to customary permitted liens and other agreed upon exceptions, by (i) a pledge of all of the equity interests of our direct subsidiaries, and (ii) a perfected security interest in all of our tangible and intangible assets.

The restrictions contained in our Senior Credit Agreement governing our debt could adversely affect our ability to:

- finance our operations;
- make needed capital expenditures;
- make strategic acquisitions or investments or enter into alliances;
- withstand a future downturn in our business or the economy in general;
- engage in business activities, including future opportunities, that may be in our interest; and
- plan for or react to market conditions or otherwise execute our business strategies.

A breach of any of these covenants, subject to certain cure rights of the Company, could result in a default under the Senior Credit Agreement governing our debt. Further, additional indebtedness that we incur in the future may subject us to further covenants. If a default under any such loan agreement is not cured or waived, the default could result in the acceleration of debt, which could require us to repay debt prior to the date it is otherwise due and that could adversely affect our financial condition. If we default, the lenders under the Senior Credit Agreement may seek repayment through our subsidiary guarantors or by executing on the security interest granted pursuant to the Senior Credit Agreement and related security agreements.

Our ability to comply with the covenants, restrictions and specified financial ratios contained in our senior secured loan agreement may be affected by events beyond our control, including prevailing economic, financial, and industry conditions. Even if we are able to comply with all of the applicable covenants, the restrictions on our ability to manage our business in our sole discretion could adversely affect our business by, among other things, limiting our ability to take advantage of financings, mergers, acquisitions, and other corporate opportunities that we believe would be beneficial to us. In addition, our obligations under the loan agreement are secured, on a first-priority basis, and such security interests could be enforced in the event of default by the collateral agent for the loan agreement.

Our access to additional capital under the Oaktree facility and our out-licensing agreements is dependent on the achievement of certain milestones, which we may not achieve.

As of June 30, 2020, we had $100.0 million of indebtedness outstanding, $54.1 million of which was used to repay amounts outstanding under our previous facility with Perceptive and an additional $11.0 million of the upfront loan proceeds held by us as restricted cash in a debt service reserve account, and $6.4 million in fees and expenses incurred in connection with the financing, leaving $28.5 million in available proceeds from the first tranche after payment of fees and expenses incurred in connection with our entry into the Senior Credit Agreement. Under our Senior Credit Agreement and our out-licensing arrangements, our ability to access additional capital is dependent on our ability to achieve various regulatory and commercial milestones, which we may never achieve. Our Senior Credit Agreement provides that we must meet funding conditions to draw down the remaining $125 million of commitments under the Oaktree facility. For additional information, please see "*Liquidity and Capital Resources —Recent Debt Financings —Oaktree Facility*."

In the event we are unable to meet the above funding conditions and/or achieve the various commercial and regulatory milestones in our out-licensing agreements, we will need to raise additional capital and can provide no assurances that we will be able to do so when needed or on acceptable terms. In the event we are unable to access additional capital we would be forced to delay, reduce or eliminate our research and drug development programs or commercialization efforts. In addition, the failure to meet these conditions and milestones would have broader implications on the value and prospects of our Company and could impair our ability to raise such additional necessary capital, grow our business, retain key employees and continue our operations.

Heightened tensions between the U.S. and China over Hong Kong and resulting retaliatory policies may materially and adversely affect our business, financial condition and results of operations and may result in our inability to sustain our growth and expansion strategies.

We have operations in Hong Kong and expect that a portion of our future revenue will be sourced from licensing partnerships and API sales in China. Accordingly, our operations, financial condition and results of operations are affected by economic, political and legal developments between the U.S. and China. The recent tensions between the U.S. and China over China's June 30, 2020 enactment of a new national security law in Hong Kong has resulted in heightened diplomatic tensions and a number of escalating retaliatory measures by the U.S. and China, culminating in an executive order signed by President Trump on July 14, 2020, which ended the special economic status that was afforded to Hong Kong under the United States-Hong Kong Policy Act of 1992.

The increasing tensions between the U.S. and China create uncertainties for doing business in China, including the risk of additional protectionist trade policies and tariffs being imposed that could increase the cost of doing business, restrictions being placed on the sharing of intellectual property between the countries or measures enacted that further impede our ability to repatriate capital from our subsidiaries in China. The uncertainties caused by heightened tension, together with the risk of escalating retaliatory policies could increase our cost of doing business, adversely affect our business, financial condition and results of operations and may result in our inability to sustain our operations, and growth and expansion strategies with respect to China.

Risks Related to Our Common Stock

Because we do not expect to pay dividends in the foreseeable future, you must rely on price appreciation of our common stock for return on your investment, if any.

We intend to retain most, if not all, of our available funds and earnings to fund the development and growth of our business. In addition, our Senior Credit Agreement with Oaktree restricts our and our restricted subsidiaries' ability to pay dividends. As a result, we do not expect to pay any cash dividends in the foreseeable future. Therefore, you should not rely on an investment in our common stock as a source for any future dividend income.

Our board of directors has significant discretion as to whether to distribute dividends, subject to the restrictions contained in the Oaktree facility. Even if our board of directors decides to declare and pay dividends, the timing, amount and form of future dividends, if any, will depend on, among other things, restrictions on the form and amount of such dividends in our debt agreements, our future results of operations and cash flow, our capital requirements and surplus, the amount of distributions, if any, received by us from our subsidiaries, our financial condition, contractual restrictions and other factors deemed relevant by our board of directors. Accordingly, the return on an investment in our common stock will likely depend entirely upon any future price appreciation of our common stock. There is no guarantee that our common stock will appreciate in value or even maintain its current market price. You may not realize a return on your investment in our common stock and you may even lose your entire investment in our common stock.

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

During the six months ended June 30, 2020, CIDAL achieved two of its six clinical milestones associated with the contingent equity consideration from our acquisition of CIDAL. As a result, the Company issued 22,598 shares of its common stock to CIDAL on June 30, 2020. In issuing the shares to CIDAL, the Company relied on an exemption from registration under the Securities Act, as set forth in Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder.

Item 3. Defaults Upon Senior Securities.

Not applicable.

Item 4. Mine Safety Disclosures.

Not applicable

Item 5. Other Information.

None.

Item 6. Exhibits.

The exhibits filed or furnished as part of this Quarterly Report on Form 10-Q are set forth below.

Exhibit Number	Exhibit Title	Incorporated by Reference (Unless Otherwise Indicated)			
		Form	File	Exhibit	Filing Date
4.1	Form of Warrant to Purchase Common Stock	Form 8-K	001-38112	4.1	June 22, 2020
10.1	Credit Agreement and Guaranty dated as of June 19, 2020, by and among Athenex, Inc., the subsidiary guarantors from time to time party thereto, the lenders from time to time party thereto, and Oaktree Fund Administration, LLC, as administrative agent.	Form 8-K	001-38112	10.1	June 22, 2020
10.2	Security Agreement dated as of June 19, 2020, by and among Athenex, Inc., the subsidiary guarantors from time to time party thereto, the lenders from time to time party thereto, and Oaktree Fund Administration, LLC, as administrative agent.	—	—	—	Filed herewith
10.3	Registration Rights Agreement by and among Athenex, Inc. and the purchasers named therein, dated as of June 19, 2020.	—	—	—	Filed herewith
10.4	Amended and Restated 2017 Omnibus Incentive Plan	—	—	—	Filed herewith
10.5	Second Supplemental Agreement to License Agreement dated December 12, 2019 by and among Athenex, Inc. and Chongqing Taihao Pharmaceutical Co. Ltd. and Guangzhou Xiangxue Pharmaceutical Co., Ltd., dated June 30, 2020.	—	—	—	Filed herewith
31.1	Certification of the Chief Executive Officer and Board Chairman (Principal Executive Officer) pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	—	—	—	Filed herewith
31.2	Certification of the Chief Financial Officer (Principal Financial and Accounting Officer) pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	—	—	—	Filed herewith
32.1	Certification of the Chief Executive Officer and Board Chairman (Principal Executive Officer) and the Chief Financial Officer (Principal Financial and Accounting Officer) pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	—	—	—	Filed herewith
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.	—	—	—	Filed herewith
101.SCH	Inline XBRL Taxonomy Extension Schema Document.	—	—	—	Filed herewith
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.	—	—	—	Filed herewith
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.	—	—	—	Filed herewith
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.	—	—	—	Filed herewith
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.	—	—	—	Filed herewith
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)	—	—	—	Filed herewith

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.

Athenex, Inc.

Date: August 6, 2020

By: /s/ Johnson Y.N. Lau
Chief Executive Officer and Board Chairman
(Principal Executive Officer)

Date: August 6, 2020

By: /s/ Randoll Sze
Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 10.2

SECURITY AGREEMENT

by and among

ATHENEX, INC.,

a Delaware corporation
(the "Borrower")

the Borrower's Subsidiaries named in the signature pages hereto or having acceded hereto pursuant to Section 24

(each a "Subsidiary Guarantor"
and, together with the Borrower, each a "Grantor"
and, collectively, the "Grantors")

OAKTREE FUND ADMINISTRATION, LLC,

as Administrative Agent for the Lenders referred to below
(in such capacity, together with its successors and assigns,
the "Administrative Agent").

Dated as of June 19, 2020

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SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "***Agreement***"), dated as of June 19, 2020, is made by and among Athenex, Inc., a Delaware corporation (the "***Borrower***"), the Borrower's Subsidiaries named in the signature pages hereto or having acceded hereto pursuant to **Section 24** (each a "***Subsidiary Guarantor***" and, together with the Borrower, each a "***Grantor***" and, collectively, the "***Grantors***"), and Oaktree Fund Administration, LLC, as administrative agent for the Lenders referred to below (in such capacity, together with its successors and assigns, the "***Administrative Agent***").

WHEREAS, the Borrower, the Subsidiary Guarantors from time to time party thereto, the lenders from time to time party thereto (the "***Lenders***") and the Administrative Agent are parties to that certain Credit Agreement and Guaranty, dated as of June 19, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "***Credit Agreement***");

WHEREAS, in order to guarantee the indebtedness and other obligations of the Borrower under the Credit Agreement, each Subsidiary Guarantor has executed the Credit Agreement, or will execute and deliver on the date such Subsidiary Guarantor accedes hereto, a Guarantee Assumption Agreement (as defined in the Credit Agreement); and

WHEREAS, it is a condition precedent to the Borrowing under the Credit Agreement that the Grantors enter into this Agreement and grant to the Administrative Agent, for itself and on behalf of and for the ratable benefit of the other Secured Parties, the security interests hereinafter provided to secure the obligations of the Borrower and the Subsidiary Guarantors described below.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 Definitions; Interpretation.

(a) **Terms Defined in Credit Agreement**. All capitalized terms used in this Agreement (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

(b) **Certain Defined Terms**. As used in this Agreement, the following terms shall have the following meanings:

"***Acceding Grantor***" has the meaning set forth in **Section 24**.

"***Accession Agreement***" has the meaning set forth in **Section 24**.

"***Books***" means all books, records and other written, electronic or other documentation in whatever form maintained now or hereafter by or for any Grantor in connection with the ownership of its assets or the conduct of its business or evidencing or containing information relating to the Collateral, including: (i) ledgers; (ii) records indicating, summarizing, or evidencing any Grantor's assets (including Inventory and Rights to Payment), business operations or financial condition; (iii) computer programs and software; (iv) computer discs, tapes, files, manuals, spreadsheets; (v) computer printouts and output of whatever kind; (vi) any other computer prepared or electronically stored, collected or reported information and equipment of any kind; and (vii) any and all other rights now or hereafter arising out of any Contract or agreement between any Grantor and any service bureau, computer or data processing company or other Person charged with preparing or maintaining any of any Grantor's books or records or with credit reporting, including with regard to any such Grantor's Accounts.

"***Collateral***" has the meaning set forth in **Section 2**.

"***Excluded Asset***" means:

(i) any Equity Interests of any Foreign Subsidiary that is a CFC (and any of its Subsidiaries) and any Equity Interests of any CFC Holding Company (and any of its Subsidiaries), in each case, other than 65% of the issued and outstanding voting Equity Interests of a CFC or CFC Holding Company;

(ii) any leases, licenses, contracts, rights, instrument, document or other agreements contained within the Collateral to which any Grantor is a party or any of its rights or interests are subject thereto (including pursuant to a purchase money security interest or similar arrangement) to the extent and solely to the extent that the grant of such security interest shall (1) constitute or result in the abandonment, invalidation or unenforceability of any right, title, interest or purchase money arrangement of such Grantor therein, (2) create a situation under which such Grantor shall be deemed to have breached or terminated pursuant to the terms of, or defaulted under, or a termination right shall arise under any such Collateral; and in each cause under **clauses (1)** and **(2)** above such abandonment, invalidation, unenforceability, breach, termination or default (x) would not be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the NY UCC (or any successor provision or provisions) of any relevant jurisdiction or any applicable Law or principles or equity or (y) is waivable by any Grantor or Subsidiary thereof, or (3) violate any material provisions of law applicable to such Grantor of lease, license, contract, right or other agreement (so long as such term was not incurred or entered into in contemplation of this Agreement); provided, however, that the Excluded Assets shall not include, and such security interest shall attach immediately at such time as the condition causing such abandonment, invalidation, unenforceability, breach, termination, default, termination right or violation shall be remedied and to the extent severable, shall attach immediately to, any portion of such lease, license, contract, right, agreement or purchase money arrangement that does not result in any of the consequences specified in **(1)**, **(2)** or **(3)** above;

(iii) any property subject to a Permitted Lien pursuant to Section 9.02(c) of the Credit Agreement;

(iv) assets to the extent (and only to the extent) and for so long as the grant of a security interest by any Grantor in such assets hereunder would violate any provision of Law applicable to such Grantor or such assets, after giving effect to any applicable anti-assignment provision of the NY UCC or other applicable Law and other than proceeds thereof to the extent that the assignment of the same is effective under the NY UCC or other applicable Law notwithstanding such restriction;

(v) any intent-to-use trademark application solely to the extent that and solely during the period in which the grant of such security interest would impair the validity or enforceability, or result in the cancellation, of such intent-to-use trademark application under federal law;

(vi) any particular assets if the burden, cost or consequences of creating or perfecting such pledges or security interests in such assets is excessive in relation to the benefits to be obtained by the Secured Parties under the Loan Documents as mutually agreed by the Borrower and the Administrative Agent;

(vii) any property or assets of a CFC or CFC Holding Company (and in each case its Subsidiaries) to the extent a security interests therein would result in material adverse tax consequences to the Borrower or any of its Domestic Subsidiaries, as reasonably determined by the Borrower in consultation with the Administrative Agent;

(viii) Excluded Accounts; and

(ix) motor vehicles and other assets subject to certificates of title, except to the extent a security interest therein can be perfected by the filing of a UCC financing statement;

provided that the Proceeds of any Excluded Assets shall not constitute Excluded Assets and shall be subject to the Security Interest.

"***Grantors***" has the meaning set forth in the preamble to this Agreement.

"***Intellectual Property Collateral***" means the following properties and assets owned or otherwise controlled by any Grantor or in which any Grantor otherwise has any interest, now existing or hereafter acquired or arising:

(i) all Patents, domestic or foreign, all Licenses relating to any of the foregoing and all income and royalties with respect to any Licenses (including such Patents and Patent licenses as are described in **Schedule 2**), all rights to sue for past, present or future infringement thereof, all rights arising therefrom and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof;

(ii) all Copyrights, domestic or foreign, together with the underlying works of authorship (including titles), whether or not the underlying works of authorship have been published and whether said Copyrights are statutory or arise under the common law, and all other rights and works of authorship (including the Copyrights described in **Schedule 2**), all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating any Copyrights, all Licenses relating to any of the foregoing and all income and royalties with respect to any Licenses, and all other rights, Claims and demands in any way relating to any such Copyrights or works, including royalties and rights to sue for past, present or future infringement, and all rights of renewal and extension of such Copyrights;

(iii) all state (including common law), federal and foreign Trademarks, all Licenses relating to any of the foregoing and all income and royalties with respect to any Licenses (including such Trademarks and Trademark licenses as described in **Schedule 2**), whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;

(iv) all trade secrets, trade dress, trade styles, logos, other source of business identifiers, mask-works, mask-work registrations, mask-work applications, software, confidential and proprietary information, customer lists, advertising materials, operating manuals, methods, processes, know-how, algorithms, formulae, data (including business data and technical data), databases, quality control procedures, product, service and technical specifications, operating, production and quality control manuals, sales literature, drawings, specifications, blue prints, descriptions, inventions, name plates, catalogs, internet websites, and internet domain names and associated URL addresses;

(v) the entire goodwill of or associated with the businesses now or hereafter conducted by such Grantor connected with and symbolized by any of the aforementioned properties and assets; and

(vi) all accounts, all other proprietary rights, all other intellectual or other similar property and all other intangibles associated with or arising out of any of the aforementioned properties and assets and not otherwise described above.

"***Intellectual Property Security Agreement***" means each Copyright Security Agreement in substantially the form of **Exhibit C**, each Trademark Security Agreement in substantially the form of **Exhibit D**, each Patent Security Agreement in substantially the form of **Exhibit E** or any amendment thereto and prepared for purposes of recordation with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable.

"***License***" shall mean any written agreement pursuant to which any Grantor grants or receives any license, sublicense, covenant not to assert or other right to the extent the foregoing is with respect to any Intellectual Property owned or controlled by any Obligor, including those listed on **Schedule 2**.

"***NY UCC***" means the Uniform Commercial Code as from time to time in effect in the State of New York.

"***Partnership and LLC Collateral***" means any and all limited, limited liability and general partnership interests and limited liability company interests of any type or nature (including any such interests in the Borrower's direct or indirect Subsidiaries now or hereafter owned by any Grantor), whether now existing or hereafter acquired or arising, including any such interests specified in **Schedule 3**.

"***Perfection Certificate***" means the Perfection Certificate dated the Closing Date delivered to the Administrative Agent, as amended, restated, supplemented or otherwise modified from time to time.

"***Pledge Supplement***" has the meaning specified in **Section 3(i)**.

"***Pledged Collateral***" means any and all (i) Pledged Shares; (ii) additional capital stock or other Equity Interests of the direct Subsidiaries of any Grantor, whether certificated or uncertificated; (iii) other Investment Property of any Grantor; (iv) warrants, options or other rights entitling any Grantor to acquire any interest in Equity Interests or other securities of such Subsidiaries or any other Person; (v) Partnership and LLC Collateral; (vi) Instruments and Pledged Debt Securities; (vii) securities, property, interest, dividends and other payments and distributions from time to time received, receivable or otherwise distributed in respect of, or issued as an addition to, in redemption of, in renewal or exchange for, in substitution or upon conversion of, or otherwise on account of, any of the foregoing; (viii) certificates and instruments now or hereafter representing or evidencing any of the foregoing; (ix) rights, interests and Claims with respect to the foregoing, including under any and all related agreements, instruments and other documents, and (x) cash and non-cash proceeds of any of the foregoing, in each case whether presently existing or owned or hereafter arising or acquired and wherever located, and as from time to time received or receivable by, or otherwise paid or distributed to or acquired by, any Grantor.

"***Pledged Collateral Agreements***" has the meaning specified in **Section 5(p)(i)**.

"***Pledged Debt Securities***" means any and all the debt securities and promissory notes and other instruments evidencing Indebtedness for borrowed money held by such Grantor on the date hereof (including all such debt securities listed opposite the name of such Grantor on **Schedule 1**) and not an Excluded Asset and (ii) any debt securities or promissory notes or other instruments evidencing Indebtedness for borrowed money in the future issued to such Grantor and not an Excluded Asset.

"***Pledged Shares***" means all of the issued and outstanding shares of Equity Interests, whether certificated or uncertificated, of the Borrower's direct or indirect Subsidiaries, now or hereafter owned by any Grantor, including each Subsidiary identified on **Schedule 3** (as amended or supplemented from time to time).

"***Proceeds Account***" has the meaning set forth in **Section 10(c)**.

"***Rights to Payment***" means any and all of any Grantor's Accounts and any and all of any Grantor's rights and Claims to the payment or receipt of money or other forms of consideration of any kind in, to and under or with respect to its Chattel Paper, Documents, General Intangibles, Instruments, Investment Property, Letter-of-Credit Rights, Proceeds and Supporting Obligations.

"***Secured Obligations***" means all Obligations (as defined in the Credit Agreement) other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made.

(c) **Terms Defined in the NY UCC**. Where applicable and except as otherwise defined herein or in the Credit Agreement, terms used in this Agreement shall have the meanings assigned to them in the NY UCC; provided that to the extent that the NY UCC is used to define any term herein and such term is defined differently in different Articles of the NY UCC, the definition of such term contained in (and ascribed thereto in) Article 9 shall govern.

(d) **Interpretation**. The rules of interpretation set forth in Section 1.03 of the Credit Agreement shall be applicable to this Agreement and are incorporated herein by this reference.

SECTION 2 Security Interest.

(a) **Grant of Security Interest**. As security for the payment or performance, as the case may be, in full in cash of the Secured Obligations, each Grantor hereby grants to the Administrative Agent, for itself and on behalf of and for the ratable benefit of the other Secured Parties, a security interest (the "***Security Interest***") in and lien on all of such Grantor's right, title and interest in, to and under all of such Grantor's personal property, wherever located and whether now existing or owned or hereafter acquired by such Grantor, or in which such Grantor now has or at any time in the future may acquire, including the following property (collectively, the "***Collateral***"): (i) all Accounts; (ii) all Chattel Paper; (iii) all Commercial Tort Claims specified in **Schedule 1** or notified to the Administrative Agent pursuant to **Section 5(o)**; (iv) all Deposit Accounts, Securities Accounts and Commodity Accounts; (v) all Documents; (vi) all Equipment; (vii) all General Intangibles; (viii) all Instruments; (ix) all Inventory; (x) all Investment Property; (xi) all Letter-of-Credit Rights; (xii) all other Goods; (xiii) all Intellectual Property Collateral; (xiv) all money; (xv) all Pledged Collateral; (xvi) all Books pertaining to the foregoing; and (xvii) all products, Proceeds and Supporting Obligations of any and all of the foregoing.

Notwithstanding the foregoing or anything herein to the contrary, in no event shall the "***Collateral***" include or the Security Interest attach to any Excluded Asset.

(b) **Grantors Remain Liable**. The Security Interest is granted as security only and shall not subject the Administrative Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Collateral. Anything herein to the contrary notwithstanding, (i) each Grantor shall remain liable under any Contracts included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Administrative Agent of any of the rights granted to the Administrative Agent hereunder shall not release any Grantor from any of its duties or obligations under any such Contracts included in the Collateral, and (iii) neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any such Contracts included in the Collateral by reason of this Agreement, nor shall the Administrative Agent or any other Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any such Contract included in the Collateral.

(c) **Continuing Security Interest; Ratable Benefit.** Each Grantor agrees that this Agreement shall create a continuing security interest in the Collateral which shall remain in effect until terminated in accordance with **Section 25**, and such security has been granted to the Administrative Agent for itself and on behalf of and for the ratable benefit of the Secured Parties.

SECTION 3 Perfection and Priority.

(a) **Financing Statements, Etc**. Each Grantor hereby authorizes the Administrative Agent to file at any time and from time to time in any relevant jurisdiction in the United States (including any jurisdiction within or of the United States) any financing statements (including fixture filings) with respect to the Collateral or any part thereof and amendments thereto that (i) indicate the Collateral as "all assets" of such Grantor or words of similar effect, and (ii) contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including (A) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor and (B) in the case of a financing statement filed as a fixture filing, a sufficient description of the real property to which such Collateral relates. Each Grantor agrees to provide such information to the Administrative Agent promptly (and in any case within five (5) Business Days) upon its reasonable request. The Agent is further authorized to file with the United States Patent and Trademark Office or United States Copyright Office (or any successor office) such documents as may be necessary or advisable for the purpose of perfecting, confirming, continuing, enforcing or protecting the Security Interest granted by each Grantor, without the signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Administrative Agent as secured party. Each Grantor shall execute and deliver to the Administrative Agent, and each Grantor hereby authorizes the Administrative Agent to file, at any time and from time to time, all amendments to financing statements, continuation financing statements, termination statements, Intellectual Property Security Agreements, assignments, fixture filings, affidavits, reports, notices and all other documents and instruments, in form reasonably satisfactory to the Administrative Agent, as the Administrative Agent or the Majority Lenders may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in the Collateral and to accomplish the purposes of this Agreement. Without limiting the generality of the foregoing, each Grantor shall from time to time take the actions specified in **subsections (b)** through **(j)** below.

(b) **Delivery of Pledged Collateral**. Each Grantor hereby agrees to deliver promptly (and in any case within five (5) Business Days following its acquisition thereof) to the Administrative Agent, the certificates, instruments and other writings representing any Pledged Collateral (other than Instruments subject to **subsection (c)** below), which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, in form reasonably satisfactory to the Administrative Agent. If any Grantor shall become entitled to receive or shall receive any Pledged Collateral (other than Instruments subject to **subsection (c)** below) after the date hereof, such Grantor shall accept the foregoing as the agent for the Administrative Agent, shall hold it in trust for the Administrative Agent, shall segregate it from other property or funds of such Grantor, and shall promptly deliver the same and all certificates, instruments and other writings representing such Pledged Collateral forthwith to or for the account of the Administrative Agent, at the address in New York and to the Person to be designated by the Administrative Agent, which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank in form satisfactory to the Administrative Agent.

Notwithstanding the foregoing, if any Pledged Collateral is pledged or shall be pledged under a foreign law Security Document, each Grantor shall deliver such Pledged Collateral in accordance with the terms and procedures contained therein.

Notwithstanding the foregoing, no action by the Grantors shall be required by this **subsection (b)** with respect to any Equity Interests marked with an asterisk on **Schedule 3**.

(c) **Instrument Collateral**. Anything herein to the contrary notwithstanding, so long as no Event of Default shall have occurred and be continuing, each Grantor may retain for collection in the ordinary course any Instruments representing amounts not exceeding $5,000,000 individually and any notes evidencing intercompany balances, in each case received by such Grantor in the ordinary course, and the Administrative Agent shall, promptly upon request of such Grantor, make appropriate arrangements for making any other Instruments pledged by such Grantor available to the payor of any such Instrument for purposes of presentation, collection or renewal (any such arrangement to be effected, to the extent required under applicable Law to continue to have perfected the Administrative Agent's security interest in such Instruments, against trust receipt or like document).

(d) **Transfer of Security Interest Other Than by Delivery**. If for any reason Pledged Collateral cannot be delivered to or for the account of the Administrative Agent as provided in **Section 3(b)**, each applicable Grantor shall promptly take such other steps as may be necessary or as shall be reasonably requested from time to time by the Administrative Agent to effect a transfer of a perfected first priority security interest in and pledge of the Pledged Collateral to the Administrative Agent for itself and on behalf of and for the ratable benefit of the other Secured Parties pursuant to the NY UCC. To the extent practicable, each such Grantor shall thereafter deliver the Pledged Collateral to or for the account of the Administrative Agent as provided in **Section 3(b)**.

(e) **Intellectual Property Collateral**. (i) Each Grantor shall execute and deliver to the Administrative Agent, concurrently with the execution of this Agreement, such Intellectual Property Security Agreements as the Administrative Agent may reasonably request, and record such Intellectual Property Security Agreements with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, and take such other action as may be necessary, or as the Administrative Agent may reasonably request, to perfect the Administrative Agent's security interest in such U.S. Intellectual Property Collateral. Notwithstanding anything herein to the contrary, for the avoidance of doubt, no Grantor shall be required to take any action to perfect Administrative Agent's security interest in Intellectual Property Collateral in any jurisdiction except the U.S.

(ii) Following the creation or other acquisition of any Intellectual Property Collateral by any Grantor after the date hereof which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, such Grantor shall include details of such newly created or acquired Intellectual Property Collateral on the next Compliance Certificate provided under Section 8.01 of the Credit Agreement, and modify this Agreement by amending **Schedule 2** to include any Intellectual Property Collateral which becomes part of the Collateral and which was not included on **Schedule 2** as of the date hereof and record such Intellectual Property Security Agreement with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, and take such other action as may be necessary, or as the Administrative Agent or the Majority Lenders may reasonably request, to perfect the Administrative Agent's security interest in such U.S. Intellectual Property Collateral.

(f) **Documents, Etc.** Each Grantor shall deliver to the Administrative Agent, or an agent designated by it, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Documents and Chattel Paper, and all other Rights to Payment, in each case, representing amounts in excess of $1,000,000 at any time evidenced by promissory notes, trade acceptances or other instruments, not already delivered hereunder pursuant to this **Section 3**.

(g) **Bailees**. Any Person (other than the Administrative Agent) at any time and from time to time holding all or any portion of the Collateral shall be deemed to, and shall, hold the Collateral as the agent of, and as pledge holder for, the Administrative Agent. At any time and from time to time, upon the consent of the applicable Grantor, the Administrative Agent may give notice to any such Person holding all or any portion of the Collateral that such Person is holding the Collateral as the agent and bailee of, and as the pledge holder for, the Administrative Agent and obtain such Person's written acknowledgement thereof. In connection with the immediately preceding sentence, each Grantor will, upon the reasonable request of the Administrative Agent, join with the Administrative Agent in notifying any Person who has possession of any Collateral of the Administrative Agent's security interest therein and obtaining an acknowledgement from such Person that it is holding the Collateral for the benefit of the Administrative Agent.

(h) **Control**. Each Grantor will cooperate with the Administrative Agent in obtaining control (as defined in the NY UCC) of Collateral consisting of any Deposit Accounts, Securities Accounts, Electronic Chattel Paper, Investment Property or Letter-of-Credit Rights, including delivery of Control Agreements with respect to Controlled Accounts (as defined in the Credit Agreement), as the Administrative Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in such Collateral.

(i) **Additional Subsidiaries**. In the event that any Grantor acquires rights in any Subsidiary after the date hereof and such Subsidiary is required to become a Subsidiary Guarantor under Section 8.12 of the Credit Agreement, such applicable Grantor shall deliver to the Administrative Agent a completed pledge supplement, substantially in the form of **Exhibit B** (the "***Pledge Supplement***"), together with all schedules thereto, reflecting such new Subsidiary. Notwithstanding the foregoing, it is understood and agreed that the security interest of the Administrative Agent shall attach to the Pledged Collateral (other than Excluded Assets) related to such Subsidiary immediately upon any Grantor's acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a Pledge Supplement.

(j) **Further Assurances**. Each Grantor agrees that, at its own expense, it will promptly execute, acknowledge, deliver and cause to be filed all further instruments and documents and take all other actions as the Administrative Agent may from time to time reasonably request in order to assure, obtain, perfect, preserve and protect any security interest granted or purported to be granted under this Agreement or enable the Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral, including the payment of any fees and Other Taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any financing or continuation statements (including fixture filings) or other documents in connection herewith or therewith.

(k) **Taxes**. At its option, the Administrative Agent may discharge past due Taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Collateral and not expressly permitted pursuant to the Credit Agreement, and may pay for the maintenance and preservation of the Collateral to the extent any Grantor fails to do so to the extent required by the Credit Agreement or this Agreement, and each Grantor jointly and severally agrees to reimburse the Administrative Agent on demand for any reasonable payment made or any reasonable expense incurred by the Administrative Agent pursuant to the foregoing authorization; provided, however, that nothing in this paragraph shall be interpreted as excusing any Grantor from the performance of, or imposing any obligation on the Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to Taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.

SECTION 4 Representations and Warranties. Each Grantor represents and warrants to each Secured Party as of the date of this Agreement that:

(a) **Location of Chief Executive Office and Collateral**. Such Grantor's chief executive office and principal place of business (as of the date of this Agreement) is located at the address set forth in **Schedule 1**, and all other locations (as of the date of this Agreement) where such Grantor conducts business or Collateral is kept are set forth in the **Schedule 1**.

(b) **Locations of Books**. All Books pertaining to the Rights to Payment of such Grantor are kept at such Grantor's chief executive office, principal place of business or place where such Grantor conducts business.

(c) **Jurisdiction of Organization and Names**. Such Grantor's jurisdiction of organization is set forth in **Schedule 1**; and such Grantor's exact legal name is as set forth in the signature pages of this Agreement. All trade names and trade styles under which such Grantor presently conducts its business operations are set forth in **Schedule 1**, and, except as set forth in **Schedule 1**, such Grantor has not, at any time in the past: (i) been known as or used any other corporate, trade or fictitious name or (ii) changed its name; (iii) been the surviving or resulting corporation in a merger or consolidation; or (iv) acquired through asset purchase or otherwise any business of any Person.

(d) **Collateral**. Such Grantor has rights in or the power to transfer the Collateral, and such Grantor has legal title to the Collateral (or, in the case of after-acquired Collateral, at the time such Grantor acquires rights in such Collateral, will have good and valid title therein), free from any Lien other than Permitted Liens.

(e) **Enforceability; Priority of Security Interest**. (i) This Agreement creates a valid security interest in the Collateral which is enforceable against the Collateral in which such Grantor now has rights and will create a valid security interest which is enforceable against the Collateral in which such Grantor hereafter acquires rights at the time such Grantor acquires any such rights; and (ii) upon the completion of the filings described in **Section 4(f)** and delivery of certificates, instruments and other writing representing Pledged Collateral (if any) and performance of other actions described in **Section 3**, the Administrative Agent will have a perfected security interest in the Collateral in which such Grantor now has rights, and will have a perfected security interest in the Collateral in which such Grantor hereafter acquires rights at the time such Grantor acquires any such rights, in each case, for the Administrative Agent's own benefit and for the ratable benefit of the other Secured Parties, subject to Permitted Liens and securing the payment and performance of the Secured Obligations.

(f) **Perfection Certificate**. The Perfection Certificate has been duly prepared, completed and executed and the information set forth therein is correct and complete in all material respects as of the Closing Date. The Uniform Commercial Code financing statements attached as **Schedule 4** have been prepared by the Administrative Agent based upon the information provided to the Administrative Agent and the Secured Parties in the Perfection Certificate for filing in each United States governmental, municipal or other office specified in the Perfection Certificate, which are all the filings, recordings and registrations (other than filings required to be made in the United States Patent and Trademark Office and the United States Copyright Office in order to perfect the Security Interest in the Collateral consisting of United States Patents, Trademarks and Copyrights) that are necessary as of the Closing Date to perfect the Security Interest in favor of the Administrative Agent (for the ratable benefit of the Secured Parties) in respect of all Collateral in which the Security Interest may be perfected by filing a Uniform Commercial Code Financing Statement. Each Grantor represents and warrants that upon filing and recording of the Intellectual Property Security Agreements executed in favor of and delivered to the Administrative Agent pursuant to **Section 3(e)**, together with the consummation of the other actions set forth above in this **clause (f)**, to the extent that a security interest with respect to Patents, Trademarks and Copyrights may be perfected by the filing and recording of financing statements and short-form security agreements of the type described in this **clause (f)**, the Administrative Agent will have a perfected security interest in all Collateral consisting of Patents, Trademarks and Copyrights that are issued by, registered with or the subject of a pending application before the United States Patent and Trademark Office or the United States Copyright Office.

(g) **Other Financing Statements**. Other than (i) financing statements disclosed to the Administrative Agent, (ii) financing statements in favor of the Administrative Agent for itself and on behalf of and for the ratable benefit of the Secured Parties or (iii) financing statements in respect of Permitted Liens, no effective financing statement naming such Grantor as debtor, assignor, grantor, mortgagor, pledgor or the like and covering all or any part of the Collateral is on file in any filing or recording office in any jurisdiction.

(h) **Rights to Payment.**

(i) To the best of such Grantor’s knowledge, the Rights to Payment of such Grantor represent valid, binding and enforceable obligations of the account debtors or other Persons obligated thereon, representing undisputed, bona fide transactions completed in accordance with the terms and provisions contained in any documents related thereto, and are and will be genuine and what they purport to be, in each case, in all material respects;

(ii) such Grantor has not assigned any of its rights under any of its Rights to Payment except as provided in this Agreement or as set forth in the other Loan Documents;

(iii) all Rights to Payment of such Grantor comply in all material respects with all applicable Law concerning form, content and manner of preparation and execution;

(iv) to the best of such Grantor’s knowledge, all account debtors and other obligors on the Rights to Payment of such Grantor are solvent and generally paying their debts as they come due; and

(v) such Grantor has no knowledge of any fact or circumstance which would materially impair the validity or collectability of any of the Rights to Payment of such Grantor.

(i) **Inventory**. No Inventory of such Grantor is stored with any bailee, warehouseman or similar Person or on any premises leased to such Grantor, no such Inventory has been consigned to such Grantor or consigned by such Grantor to any Person, nor is any such Inventory held by such Grantor for any Person under any "bill and hold" or other arrangement, except as set forth in **Schedule 1**.

(j) [Reserved].

(k) **Instrument Collateral**. (i) Such Grantor has not previously assigned any interest in any Instruments held by such Grantor (other than such interests as will be released on or before the date hereof), (ii) no Person other than such Grantor owns an interest in such Instruments (whether as joint holders, participants or otherwise), and (iii) no material default exists under or in respect of such Instruments.

(l) **Pledged Shares, Partnership and LLC Collateral and other Pledged Collateral**. As of the Closing Date, **Schedule 3** correctly sets forth (A) the percentage of the issued and outstanding shares of each class of Equity Interests of the issuer thereof (except for Peterson Athenex Pharmaceuticals, LLC) and (B) includes all Equity Interests required to be pledged hereunder. (i) All of the Pledged Shares and Partnership and LLC Collateral of such Grantor have been, and upon issuance any additional Pledged Collateral consisting of Pledged Shares, Partnership and LLC Collateral or any other securities of such Grantor, will be, duly and validly issued, and are and will be fully paid and non-assessable, subject in the case of Partnership and LLC Collateral to future assessments required under applicable Law and any applicable partnership or operating agreement, (ii) such Grantor is or, in the case of any such additional Pledged Collateral will be, the legal record and beneficial owner thereof, (iii) there are no restrictions on the transferability of such Pledged Collateral or such additional Pledged Collateral to the Administrative Agent or with respect to the foreclosure, transfer or disposition thereof by the Administrative Agent, except (a) as provided under applicable securities or "Blue Sky" laws and (b) with respect to Equity Interests of Peterson Athenex Pharmaceuticals, LLC, (iv) the Pledged Shares and Partnership and LLC Collateral of such Grantor constitute 100% of the issued and outstanding shares of capital stock of directly owned Subsidiaries of such Grantor or, in the case of Foreign Subsidiaries and Athenex R&D LLC, 65% of the outstanding voting stock of such Subsidiary, and no securities convertible into or exchangeable for any shares of capital stock of any such Subsidiary, or any options, warrants or other commitments entitling any Person to purchase or otherwise acquire any shares of capital stock of any such Subsidiary, are issued and outstanding, (v) any and all Pledged Collateral Agreements which affect or relate to the voting or giving of written consents with respect to any of the Pledged Shares pledged by such Grantor, and any and all other Pledged Collateral Agreements relating to the Partnership and LLC Collateral of such Grantor, have been disclosed in writing to the Administrative Agent and the Lenders, and (vi) as to each such Pledged Collateral Agreement relating to the Partnership and LLC Collateral of such Grantor, (A) such agreement contains the entire agreement between the parties thereto with respect to the subject matter thereof, has not been amended or modified, and is in full force and effect in accordance with its terms, (B) there exists no material violation or material default under any such agreement by such Grantor or, to the best knowledge of such Grantor party thereto, the other parties thereto, and (C) such Grantor has not knowingly waived or released any of its material rights under or otherwise consented to a material departure from the terms and provisions of any such agreement. No consent or approval of any Governmental Authority, any securities exchange or any other person was or is necessary to the validity of the pledge of any Equity Interests (other than such as have been obtained and are in full force and effect).

(m) **Control Agreements**. No Control Agreements exist with respect to any Collateral held by such Grantor other than any Control Agreements in favor of the Administrative Agent.

(n) **Letter-of-Credit Rights**. Such Grantor does not have any Letter-of- Credit Rights except as set forth in **Schedule 1**.

(o) **Commercial Tort Claims**. Such Grantor does not have any Commercial Tort Claims the recovery from which would reasonably be expected to exceed $1,000,000 except as set forth in **Schedule 1**.

(p) **Leases**. Such Grantor is not and will not become a lessee under any real property lease or other agreement governing the location of Collateral at the premises of another Person pursuant to which the lessor or such other Person may obtain any rights in any of the Collateral, and no such lease or other such agreement now prohibits, restrains, impairs or will prohibit, restrain or impair such Grantor's right to remove any Collateral from the premises at which such Collateral is situated, except for the usual and customary restrictions contained in such leases of real property.

(q) **Pledged Debt Securities**. As of the Closing Date, **Schedule 1** correctly sets forth a list of all Collateral constituting Pledged Debt Securities, the aggregate principal amount and maturity date of all Indebtedness represented by any Pledged Debt Securities and (ii) includes all debt securities, promissory notes and other Collateral constituting Pledged Debt Securities required to be pledged hereunder. The Collateral constituting Pledged Debt Securities are valid and binding obligations of the issuers thereof, subject as to the enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(r) **No Transfer Restrictions**. Except for (i) restrictions and limitations imposed by the Loan Documents or securities laws generally or (v) otherwise expressly permitted hereunder, the Pledged Collateral is and will continue to be freely transferable and assignable, and none of such Pledged Collateral is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that might prohibit, impair, delay or otherwise affect the pledge of such Pledged Collateral hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Administrative Agent of rights and remedies hereunder.

SECTION 5 **Covenants**. So long as any of the Secured Obligations remain unsatisfied or any Lender shall have any Commitment, each Grantor agrees that:

(a) **Defense of Collateral**. Such Grantor will appear in and defend any action, suit or proceeding which may to a material extent affect its title to, or right or interest in, or the Administrative Agent's right or interest in, the Collateral, including any action, suit or proceeding with respect to any Liens on the Collateral (other than any Lien not prohibited by the Loan Documents).

(b) **Preservation of Collateral**. Such Grantor will do and perform all commercially reasonable acts that may be necessary and appropriate to maintain, preserve and protect the Collateral.

(c) **Compliance with Laws, Etc.** Such Grantor will comply, in all material respects, with all applicable Laws, and all policies of insurance, relating to the possession, operation, maintenance and control of the Collateral.

(d) **Location of Books and Chief Executive Office**. Such Grantor will: (i) keep all Books pertaining to the Rights to Payment of such Grantor at such Grantor's chief executive office, principal place of business or place where such Grantor conducts business and (ii) promptly notify the Administrative Agent of any changes in the location of such Grantor's chief executive office or principal place of business.

(e) **Location of Collateral**. Such Grantor will: (i) keep the Collateral (to the extent such Collateral is tangible or a tangible embodiment of Collateral) held by such Grantor at the locations set forth in **Schedule 1** or at such other locations as may be disclosed in writing to the Administrative Agent pursuant to **clause (ii)** and will not remove any such Collateral from such locations (other than in connection with sales of Inventory in the ordinary course of such Grantor's business, other dispositions permitted by **Section 5** and movements of Collateral from one disclosed location to another disclosed location); and (ii) give the Administrative Agent prompt notice of any change in the locations set forth in **Schedule 1**.

(f) **Change in Name, Identity or Structure**. Such Grantor will give five (5) Business Days prior written notice to the Administrative Agent of (i) any change in name, (ii) any change in its jurisdiction of organization, (iii) any change in its registration as an organization (or any new registration); and (iv) any changes in its identity or structure in any manner which might make any financing statement filed hereunder incorrect or misleading; provided that such changes are otherwise permitted by the Loan Documents and that Grantor shall not change its jurisdiction of organization to a jurisdiction outside of the United States.

(g) **Maintenance of Records**. Such Grantor will keep, at its own cost and expense, separate, accurate and complete Books as is consistent with its practices as of the date hereof in all material respects with respect to the Collateral held by such Grantor.

(h) **Disposition of Collateral**. Such Grantor will not surrender or lose possession of (other than to the Administrative Agent), sell, lease, rent, or otherwise dispose of or transfer any of the Collateral held by such Grantor or any right or interest therein, except to the extent permitted by the Loan Documents.

(i) **Leased Premises; Collateral Held by Warehouseman, Bailee, Etc.** At the Administrative Agent's reasonable request and with the consent of the Grantor, such Grantor will use commercially reasonable efforts to obtain from each Person so reasonably requested by the Administrative Agent from whom such Grantor leases any premises, and from each other Person so reasonably requested by the Administrative Agent at whose premises any Collateral held by such Grantor is present (including any bailee, warehouseman or similar Person), any such collateral access, subordination, landlord waiver, bailment, consent and estoppel agreements as the Administrative Agent may reasonably request, in form and substance reasonably satisfactory to the Administrative Agent; provided that such landlord waiver shall be in substantially the form of Exhibit G to the Credit Agreement and such bailee letter shall be in substantially the form of **Exhibit F** hereto. For the avoidance of doubt, the failure to obtain such collateral access, subordination, landlord waiver, bailment or consent and estoppel agreements after the use of commercially reasonable efforts shall not be a Default or an Event of Default.

(j) **Rights to Payment**. Such Grantor will:

(i) with such frequency as the Administrative Agent may reasonably require or as may be required under the Credit Agreement, furnish to the Administrative Agent full and complete reports, in form and substance reasonably satisfactory to the Administrative Agent, with respect to the Accounts;

(ii) if any Accounts of such Grantor in an aggregate amount in excess of $1,000,000 per fiscal year arise from Contracts with the United States or any department, agency or instrumentality thereof, promptly notify the Administrative Agent thereof and execute any documents and instruments and take any other steps reasonably requested by the Administrative Agent in order that all monies due and to become due thereunder shall be assigned to the Administrative Agent upon the occurrence and continuance of an Event of Default;

(iii) upon the occurrence and during the continuation of an Event of Default and upon the request of the Administrative Agent (A) notify all or any designated portion of the account debtors and other obligors on the Rights to Payment of such Grantor of the security interest hereunder, and (B) notify the account debtors and other obligors on the Rights to Payment or any designated portion thereof that payment shall be made directly to the Administrative Agent or to such other Person or location as the Administrative Agent shall specify; and

(iv) upon the occurrence and during the continuation of an Event of Default, establish such lockbox or similar arrangements for the payment of the Accounts and other Rights to Payment of such Grantor as the Administrative Agent shall require.

(k) **Instruments, Investment Property, Etc.** Upon the reasonable request of the Administrative Agent, such Grantor will (i) promptly deliver to the Administrative Agent, or an agent designated by it in New York, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Instruments, Documents, Chattel Paper and certificated securities with respect to any Investment Property held by such Grantor, all letters of credit of such Grantor, and all other Rights to Payment held by such Grantor at any time evidenced by promissory notes, trade acceptances or other instruments, (ii) cause any securities intermediaries to show on their books that the Administrative Agent is the entitlement holder with respect to any Investment Property held by such securities intermediary on behalf of such Grantor, and/or obtain Control Agreements in favor of the Administrative Agent from such securities intermediaries, in form and substance satisfactory to the Administrative Agent, with respect to any such Investment Property, as reasonably requested by the Administrative Agent, and (iii) provide such notice, obtain such acknowledgments and take all such other action, with respect to any Chattel Paper, Documents and Letter-of-Credit Rights held by such Grantor, as the Administrative Agent shall reasonably specify.

(l) **Deposit Accounts and Securities Accounts.** Such Grantor will (i) give the Administrative Agent prompt notice of the establishment of any new Deposit Account, new Securities Account and new Commodity Account, in each case other than any Excluded Account, established in the U.S. by such Grantor with respect to any Investment Property held by such Grantor and (ii) obtain Control Agreements in favor of the Administrative Agent with respect to such Deposit Account, Securities Account and Commodity Account within 45 days (or such longer time as agreed by the Administrative Agent in its sole discretion) of the establishing of such account, in form and substance reasonably satisfactory to the Administrative Agent.

(m) **Inventory**. Such Grantor will not store any Inventory with a bailee, warehouseman or similar Person or on premises leased to such Grantor, nor dispose of any Inventory on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment or similar basis, nor acquire any Inventory from any Person on any such basis, without in each case giving the Administrative Agent prior written notice thereof.

(n) **Intellectual Property Collateral.** Such Grantor will:

(i) not allow or suffer any Intellectual Property Collateral held by such Grantor to become abandoned, nor any registration thereof to be abandoned, terminated, forfeited, expired or dedicated to the public, except as shall be reasonable and appropriate in accordance with prudent business practice;

(ii) notify the Administrative Agent promptly if it knows or has reason to know (A) that any Material Intellectual Property owned or controlled by any Obligor constituting Intellectual Property Collateral may become abandoned, terminated, forfeited, expired or dedicated to the public, except to the extent expressly permitted by the Credit Agreement or (B) of any materially adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, United States Copyright Office or any court or similar office of any other jurisdiction) regarding such Grantor’s ownership or control of any such Material Intellectual Property, its right to register the same, or its right to keep and maintain the same.

(iii) upon the delivery of a Compliance Certificate pursuant to Section 8.03(c) of the Credit Agreement, give the Administrative Agent notice of any rights such Grantor may obtain to any new patentable inventions, copyrightable works or other new Intellectual Property Collateral which such Grantor intends to register, prior to the filing of any application for registration thereof;

(iv) diligently prosecute all applications for patents, copyrights and trademarks, and file and prosecute any and all continuations, continuations-in-part, applications for reissue, applications for certificate of correction and like matters as shall be reasonable and appropriate in accordance with prudent business practice, and promptly and timely pay any and all maintenance, license, registration and other fees, taxes and expenses incurred in connection with any Intellectual Property Collateral held by such Grantor; and

(v) in the event that any Grantor knows or has reason to believe that any Material Intellectual Property owned or controlled by any Obligor constituting Intellectual Property Collateral has been or will imminently be infringed, misappropriated or otherwise violated by a third person in any manner that would reasonably be expected to result in a Material Adverse Change, such Grantor shall promptly (and in any case within five Business Days after obtaining knowledge thereof) notify the Administrative Agent and shall, if consistent with good business judgment, promptly take such commercially reasonable measures to cause a cessation of such infringement, misappropriation or other violation and to recover damages therefor.

(o) **Notices, Reports and Information**. Such Grantor will (i) within 45 days after the end of each fiscal quarter, notify the Administrative Agent of any other modifications of or additions to the information contained in **Schedule 1** (including any acquisition or holding of an interest in any Chattel Paper, Commercial Tort Claims and Letter-of-Credit Rights) (ii) upon the delivery of a Compliance Certificate pursuant to Section 8.03(c) of the Credit Agreement, notify the Administrative Agent of any material Claim made or asserted against the Collateral by any Person and of any change in the composition of the Collateral or other event which could materially adversely affect the value of the Collateral or the Administrative Agent's Lien thereon; and (iii) upon the reasonable request of the Administrative Agent make such demands and requests for information and reports as such Grantor is entitled to make in respect of the Collateral.

(p) **Shareholder Agreements; Other Agreements.**

(i) Such Grantor shall comply in all material respects with all of its obligations under any shareholders agreement, operating agreement, partnership agreement, voting trust, proxy agreement or other agreement or understanding (collectively, the "***Pledged Collateral Agreements***") to which it is a party and shall enforce all of its rights thereunder.

(ii) Such Grantor will take all actions necessary to cause each such Pledged Collateral Agreement relating to Partnership and LLC Collateral (other than with respect to the Pledged Collateral Agreement of Athenex Pharma Solutions, LLC in the case of clause (A) below) to provide specifically at all times that: (A) no such Partnership and LLC Collateral shall be a security governed by Article 8 of the NY UCC or any other applicable state's Uniform Commercial Code; and (B) no consent of any member, manager, partner or other Person shall be a condition to the admission as a member or partner of any transferee (including the Administrative Agent) that acquires ownership of such Partnership and LLC Collateral as a result of the exercise by the Administrative Agent of any remedy hereunder or under applicable Law. Additionally, such Grantor agrees that no such Partnership and LLC Collateral (A) shall be dealt in or traded on any securities exchange or in any securities market, (B) shall constitute an investment company security, or (C) shall be held by such Grantor in a Securities Account.

(iii) Such Grantor shall not vote to enable or take any other action to: amend or terminate, or waive compliance with any of the terms of, any such Pledged Collateral Agreement, certificate or articles of incorporation, bylaws or other organizational documents in any way that materially changes the rights of such Grantor with respect to any such Pledged Collateral in a manner adverse to the Administrative Agent or the other Secured Parties or that adversely affects the validity, perfection or priority of the Administrative Agent's security interest therein.

SECTION 6 Rights to Payment and Pledged Collateral.

(a) **Collection of Rights to Payment**. Until the Administrative Agent exercises its rights hereunder to collect any Rights to Payment of any Grantor, each such Grantor shall endeavor in the first instance diligently to collect all amounts due or to become due on or with respect to the Rights to Payment held by such Grantor. At the request of the Administrative Agent, upon the occurrence and during the continuation of an Event of Default, all remittances received by such Grantor shall be held in trust for the Administrative Agent and, in accordance with the Administrative Agent's instructions, remitted to the Administrative Agent or deposited to an account with the Administrative Agent in the form received (with any necessary endorsements or instruments of assignment or transfer).

(b) **Pledged Collateral**. Unless and until an Event of Default shall have occurred and is continuing, each Grantor shall be entitled to receive and retain for its own account any cash dividend on or other cash distribution or payment, if any, in respect of the Pledged Collateral, to the extent not prohibited under the Credit Agreement. At the request of the Administrative Agent, upon the occurrence and during the continuation of an Event of Default, the Administrative Agent shall have the sole and exclusive right and authority to receive all distributions and payments of any nature with respect to any Pledged Collateral, and all such distributions or payments received by such Grantor shall be held in trust for the Administrative Agent and, in accordance with the Administrative Agent's instructions, remitted to the Administrative Agent or deposited to an account with the Administrative Agent in the form received (with any necessary endorsements or instruments of assignment or transfer). All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this **Section 6(b)** shall be held in trust for the benefit of the Administrative Agent, shall be segregated from other property or funds of such Grantor and shall be forthwith delivered to the Administrative Agent upon demand in the same form as so received (with any necessary endorsement or instrument of assignment). Following the occurrence and during the continuation of an Event of Default, any such distributions and payments with respect to any such Pledged Collateral held in any Securities Account shall be held and retained in such Securities Account, in each case as part of the Collateral hereunder. Additionally, the Administrative Agent shall have the right, upon the occurrence and during the continuation of an Event of Default, following prior written notice to any applicable Grantor, to vote and to give consents, ratifications and waivers with respect to any Pledged Collateral held by such Grantor, and to exercise all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining thereto, as if the Administrative Agent were the absolute owner thereof; provided that the Administrative Agent shall have no duty to exercise any of the foregoing rights afforded to it and shall not be responsible to such Grantor or any other Person for any failure to do so or delay in doing so.

(c) **Voting Prior to an Event of Default**. Unless and until an Event of Default shall have occurred and is continuing, each Grantor shall have the right to vote the Pledged Collateral held by such Grantor and to give consents, ratifications and waivers in respect thereof, and shall retain the power to control the direction, management and policies of any Person comprising such Pledged Collateral to the same extent as such Grantor would if such Pledged Collateral were not pledged to the Administrative Agent pursuant to this Agreement; provided that no vote shall be cast or consent, waiver or ratification given or action taken which would have the effect of materially impairing the position or interest of the Administrative Agent and the other Secured Parties in respect of such Pledged Collateral or which would alter the voting rights with respect to the stock or other ownership interest in or of any such Person or be inconsistent with or violate any provision of this Agreement, the Credit Agreement, or any other Loan Documents. If applicable, such Grantor shall be deemed the beneficial owner of all such Pledged Collateral for purposes of Sections 13 and 16 of the Exchange Act and agrees to file all reports required to be filed by beneficial owners of securities thereunder. The Administrative Agent shall execute and deliver (or cause to be executed and delivered) to each Grantor all such proxies and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and other rights which it is entitled to exercise pursuant to this **subsection (c)** and to receive the distributions which it is authorized to receive and retain pursuant to this **subsection (c)**.

(d) **Certain Other Administrative Matters**. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent may cause any of the Pledged Collateral to be transferred into its name or into the name of its nominee or nominees (subject to the revocable rights specified in this **Section 6**). Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent shall have the right to exchange uncertificated Pledged Collateral for certificated Pledged Collateral, and to exchange certificated Pledged Collateral for certificates of larger or smaller denominations, for any purpose consistent with this Agreement.

SECTION 7 Authorization; Agent Appointed Attorney-in-Fact. In addition to (and not in limitation of) any other right or remedy provided to the Administrative Agent hereunder, the Administrative Agent shall have the right to, in the name of any Grantor, or in the name of the Administrative Agent or otherwise, without notice to or assent by any such Grantor, and each Grantor hereby constitutes and appoints the Administrative Agent (and any of the Administrative Agent's officers or employees or agents designated by the Administrative Agent) as such Grantor's true and lawful attorney-in-fact, with full power and authority to:

(a) file any of the financing statements which must be filed to perfect or continue perfected, maintain the priority of, or provide notice of, the Administrative Agent's Lien in the Collateral;

(b) take possession of and endorse any notes, acceptances, checks, drafts, money orders or other forms of payment or security and collect any Proceeds of any Collateral;

(c) sign and endorse any invoice or bill of lading relating to any of the Collateral, warehouse or storage receipts, drafts against customers or other obligors, assignments, notices of assignment, verifications and notices to customers or other obligors;

(d) notify the U.S. Postal Service and other postal authorities to change the address for delivery of mail addressed to such Grantor to such address as the Administrative Agent may designate; and, without limiting the generality of the foregoing, establish with any Person lockbox or similar arrangements for the payment of the Rights to Payment of such Grantor;

(e) receive, open and dispose of all mail addressed to such Grantor;

(f) send requests for verification of Rights to Payment to the customers or other obligors of such Grantor;

(g) contact, or direct such Grantor to contact, all account debtors and other obligors on the Rights to Payment of such Grantor and instruct such account debtors and other obligors to make all payments directly to the Administrative Agent;

(h) assert, adjust, sue for, compromise or release any claims under any policies of insurance;

(i) exercise dominion and control over, and refuse to permit further withdrawals from, any Deposit Accounts of such Grantor maintained with the Administrative Agent, any Lender or any other bank, financial institution or other Person, in each case other than any Excluded Accounts;

(j) notify each Person maintaining lockbox or similar arrangements for the payment of the Rights to Payment of such Grantor to remit all amounts representing collections on such Rights to Payment directly to the Administrative Agent;

(k) ask, demand, collect, receive and give acquittances and receipts for any and all Rights to Payment of such Grantor, enforce payment or any other rights in respect of the Rights to Payment and other Collateral, grant consents, agree to any amendments, modifications or waivers of the agreements and documents governing such Rights to Payment and other Collateral, and otherwise file any Claims, take any action or institute, defend, settle or adjust any actions, suits or proceedings with respect to the Collateral, as the Administrative Agent may deem necessary or desirable to maintain, preserve and protect the Collateral, to collect the Collateral or to enforce the rights of the Administrative Agent with respect to the Collateral;

(l) execute any and all applications, documents, papers and instruments necessary for the Administrative Agent to use the Intellectual Property Collateral and grant or issue any exclusive or non-exclusive License with respect to any Intellectual Property Collateral;

(m) execute any and all endorsements, assignments or other documents and instruments necessary to sell, lease, assign, convey or otherwise transfer title in or dispose of the Collateral;

(n) execute and deliver to any securities intermediary or other Person any entitlement order or other notice, document or instrument which the Administrative Agent may deem necessary or advisable to maintain, protect, realize upon and preserve the Deposit Accounts and Investment Property of such Grantor constituting Collateral and the Administrative Agent’s security interest therein;

(o) commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral;

(p) settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral; and

(q) use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and execute any and all such other documents and instruments, and do any and all acts and things for and on behalf of such Grantor, which the Administrative Agent may deem necessary or advisable to maintain, protect, realize upon and preserve the Collateral and the Administrative Agent's security interest therein and to accomplish the purposes of this Agreement.

The Administrative Agent agrees that, except upon the occurrence and during the continuation of an Event of Default, it shall not exercise the power of attorney, or any rights granted to the Administrative Agent, pursuant to **clauses (b)** through **(q)**. The foregoing power of attorney is coupled with an interest and irrevocable so long as the Lenders have any Commitments or the Secured Obligations have not been paid and performed in full. Each Grantor hereby ratifies, to the extent permitted by Law, all that the Administrative Agent shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this **Section 7**.

SECTION 8 Agent Performance of Grantor Obligations. Upon the occurrence and continuation of an Event of Default, the Administrative Agent shall have the right (but not any obligation) to perform or pay any obligation which any Grantor has agreed to perform or pay under or in connection with this Agreement, and such Grantor shall reimburse the Administrative Agent on demand for all documented out of pocket costs and expenses by the Administrative Agent pursuant to this **Section 8**.

SECTION 9 Agent's Duties. Notwithstanding any provision contained in this Agreement, the Administrative Agent shall have no duty to exercise any of the rights, privileges or powers afforded to it and shall not be responsible to any Grantor or any other Person for any failure to do so or delay in doing so. Without limiting the generality of the foregoing, nothing herein contained shall be construed as requiring or obligating the Administrative Agent to make any commitment or to make any inquiry as to the nature of sufficiency of any payment received by the Administrative Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. With the exception of the exercise of reasonable care to assure the safe custody of Collateral in the Administrative Agent's possession and the accounting for moneys actually received by the Administrative Agent hereunder, the Administrative Agent and its officers, directors, employees, agents or sub-agents shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Collateral.

SECTION 10 Remedies.

(a) **Remedies**. Solely upon the occurrence and during the continuation of an Event of Default, each Grantor agrees to deliver each item of Collateral to the Administrative Agent on demand, and the Administrative Agent shall have, in addition to all other rights and remedies granted to it in this Agreement, the Credit Agreement, or any other Loan Document, all rights and remedies of a secured party under the NY UCC and other applicable Law. Without limiting the generality of the foregoing, each Grantor agrees that:

(i) The Administrative Agent may peaceably, with or without legal process and with or without notice, without liability for trespass enter any premises of such Grantor, take possession of any Collateral, remove or dispose of all or part of the Collateral on any premises of such Grantor or elsewhere, or, in the case of Equipment, render it nonfunctional, and otherwise collect, receive, appropriate and realize upon all or any part of the Collateral, and demand, give receipt for, settle, renew, extend, exchange, compromise, adjust, or sue for all or any part of the Collateral, as the Administrative Agent may determine, and, generally, exercise any and all rights afforded to a secured party under the Uniform Commercial Code or other applicable law.

(ii) The Administrative Agent may require such Grantor to assemble all or any part of the Collateral and make it available to the Administrative Agent, at any place and time designated by the Administrative Agent.

(iii) The Administrative Agent may use or transfer any of such Grantor's rights and interests in any Intellectual Property Collateral, by license, by sublicense (solely to the extent permitted by such applicable license) or otherwise, on such conditions and in such manner as the Administrative Agent may determine.

(iv) The Administrative Agent may secure the appointment of a receiver of the Collateral or any part thereof (to the extent and in the manner provided by applicable Law).

(v) The Administrative Agent may withdraw (or cause to be withdrawn) any and all funds from any Deposit Accounts, Securities Accounts or Commodity Accounts, in each case other than Excluded Accounts.

(vi) The Administrative Agent may sell, resell, lease, use, assign, transfer or otherwise dispose of any or all of the Collateral in its then condition or following any commercially reasonable preparation or processing (utilizing in connection therewith any of such Grantor's assets, without charge or liability to the Administrative Agent therefor) at public or private sale or at any broker's board or any securities exchange, by one or more Contracts, in one or more parcels, at the same or different times, for cash or credit or for future delivery without assumption of any credit risk, all as the Administrative Agent deems advisable; provided that such Grantor shall be credited with the net proceeds of a sale only when such proceeds are finally collected by the Administrative Agent. The Administrative Agent and each of the other Secured Parties shall have the right upon any such public sale, and, to the extent permitted by Law, upon any such private sale, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption, which right or equity of redemption such Grantor hereby releases, to the extent permitted by Law. The Administrative Agent shall give such Grantor such notice of any public or private sale as may be required by the NY UCC or other applicable Law. Such Grantor recognizes that the Administrative Agent may be unable to make a public sale of any or all of the Pledged Collateral, by reason of prohibitions contained in applicable securities laws or otherwise, and expressly agrees that a private sale to a restricted group of purchasers for investment and not with a view to any distribution thereof shall be considered a commercially reasonable sale. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives and releases (to the extent permitted by law) all rights of redemption, stay, valuation and appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Administrative Agent shall give each applicable Grantor not less than 10 days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the NY UCC or its equivalent in other jurisdictions) of the Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Administrative Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, and by the Administrative Agent in its own right or by one or more agents or contractors, upon any premises owned, leased or occupied by any Grantor, the Administrative Agent or any such agent or contractor, and any such sale may include any other property, in each case, as the Administrative Agent may (in its sole and absolute discretion) determine. The Administrative Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Administrative Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Administrative Agent until the sale price is paid by the purchaser or purchasers thereof, but the Administrative Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by law, private) sale

made pursuant to this Agreement, any Secured Party may bid for or purchase, free (to the extent permitted by applicable law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all said rights being also hereby waived and released to the extent permitted by applicable law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Administrative Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Administrative Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Obligations shall have been indefeasibly paid in full in cash. As an alternative to exercising the power of sale herein conferred upon it, the Administrative Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this **Section 10(a)** shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the NY UCC or its equivalent in other jurisdictions. Neither the Administrative Agent nor the Secured Parties shall be required to marshal any present or future Collateral or to resort to such Collateral in any particular order.

(vii) Neither the Administrative Agent nor any other Secured Party shall have any obligation to clean up or otherwise prepare the Collateral for sale. The Administrative Agent has no obligation to attempt to satisfy the Secured Obligations by collecting them from any other Person liable for them and the Administrative Agent and the other Secured Parties may release, modify or waive any Collateral provided by any other Person to secure any of the Secured Obligations, all without affecting the Administrative Agent's or any other Secured Party's rights against such Grantor. Such Grantor waives any right it may have to require the Administrative Agent or any other Secured Party to pursue any third Person for any of the Secured Obligations. The Administrative Agent and the other Secured Parties may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. The Administrative Agent may sell the Collateral without giving any warranties as to the Collateral. The Administrative Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If the Administrative Agent sells any of the Collateral upon credit, such Grantor will be credited only with payments actually made by the purchaser, received by the Administrative Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Administrative Agent may resell the Collateral and the Grantors shall be credited with the proceeds of the sale.

(b) **License**. For the purpose of enabling the Administrative Agent to exercise its rights and remedies under this **Section 10** or otherwise in connection with this Agreement, and solely during the continuance of an Event of Default, each Grantor hereby grants to the Administrative Agent an irrevocable, non-exclusive license (exercisable without payment or royalty or other compensation to such Grantor) to use, license or sublicense any Intellectual Property Collateral and, including in such license, all access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof; provided, however, that nothing in this **Section 10(b)** shall require a Grantor to grant any license that (i) violates the express terms of any agreement between a Grantor and a third party governing such Grantor's use of such Intellectual Property Collateral, or gives such third party any right of acceleration, modification or cancellation therein, or (ii) is prohibited by any applicable Law; provided, further, that such licenses to be granted hereunder with respect to Trademarks shall be subject to maintenance of quality standards with respect to the goods and services on which such Trademarks are used sufficient to preserve the validity of such Trademarks.

(c) **Proceeds Account**. To the extent that any of the Secured Obligations may be contingent, unmatured or unliquidated at such time as an Event of Default has occurred and is continuing, the Administrative Agent may, at its election, (i) retain the proceeds of any sale, collection, disposition or other realization upon the Collateral (or any portion thereof) in a special purpose non-interest-bearing restricted deposit account (the "***Proceeds Account***") created and maintained by the Administrative Agent for such purpose (which shall constitute a Deposit Account included within the Collateral hereunder) until such time as the Administrative Agent may elect to apply such proceeds to the Secured Obligations, and each Grantor agrees that such retention of such proceeds by the Administrative Agent shall not be deemed strict foreclosure with respect thereto; (ii) in any manner elected by the Administrative Agent, estimate the liquidated amount of any such contingent, unmatured or unliquidated Claims and apply the proceeds of the Collateral against such amount; or (iii) otherwise proceed in any manner permitted by applicable Law. Each Grantor agrees that the Proceeds Account shall be a blocked account and that upon the irrevocable deposit of funds into the Proceeds Account, such Grantor shall not have any right of withdrawal with respect to such funds. Accordingly, each Grantor irrevocably waives until the termination of this Agreement in accordance with **Section 25** the right to make any withdrawal from the Proceeds Account and the right to instruct the Administrative Agent to honor drafts against the Proceeds Account.

(d) **Application of Proceeds**. The cash proceeds actually received from the sale or other disposition or collection of any Grantor's Collateral, and any other amounts received in respect of such Collateral the application of which is not otherwise provided for herein, shall be applied as provided in Section 4.01(b) of the Credit Agreement. Any surplus thereof which exists after payment and performance in full of the Secured Obligations shall be promptly paid over to such Grantor or otherwise disposed of in accordance with the NY UCC or other applicable Law. Each Grantor shall remain liable to the Administrative Agent and the other Secured Parties for any deficiency which exists after any sale or other disposition or collection of Collateral.

SECTION 11 **Certain Waivers**. Each Grantor waives, to the fullest extent permitted by Law, (i) any right of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling of the Collateral or other collateral or security for the Secured Obligations; (ii) any right to require the Administrative Agent or the other Secured Parties (w) to proceed against any Person, (x) to exhaust any other collateral or security for any of the Secured Obligations, (y) to pursue any remedy in the Administrative Agent's or any of the other Secured Parties' power, or (z) to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any of the Collateral; and (iii) all Claims, damages, and demands against the Administrative Agent or the other Secured Parties arising out of the repossession, retention, sale or application of the proceeds of any sale of the Collateral.

SECTION 12 **Notices**. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) shall be given or made in writing (including by telecopy or email) delivered, if to any of the parties hereto, as specified in the Credit Agreement. Except as otherwise provided in this Agreement or therein, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication).

SECTION 13 **No Waiver; Cumulative Remedies**. No failure on the part of the Administrative Agent or any other Secured Party to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Any waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default at the time. No notice or demand on any Grantor in any case shall entitle any Grantor to any other or further notice or demand in similar or other circumstances. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

SECTION 14 Costs and Expenses; Indemnification.

(a) **Costs and Expenses**. In addition to the payment and reimbursement obligations set forth in Section 14.03(a) of the Credit Agreement, each Grantor jointly and severally agrees to pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and any other Secured Party (including the fees and expenses of legal counsel) in connection with the enforcement or collection proceedings resulting from the occurrence of an Event of Default (A) in connection with this Agreement, including its rights under this **Section 14**, (B) in connection with the Secured Obligations, including all such reasonable and documented out-of-pocket expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement or in respect of the Secured Obligations, and including in or in connection with any Insolvency Proceeding, and (C) in connection with the protection, sale or collection of, or other realization upon, any of the Collateral, including all reasonable and documented out of pocket expenses of taking, collecting, holding, sorting, handling, preparing for sale, selling, or the like, and other such expenses of sales and collections of Collateral, and (ii) all reasonable and documented out of pocket title, appraisal, survey, audit, environmental inspection, consulting, search, recording, filing and similar costs, fees and expenses incurred or sustained by the Administrative Agent or any of its Affiliates in connection with this Agreement or the Collateral.

(b) **Indemnification**. Each Grantor, jointly and severally, hereby indemnifies each Indemnified Party pursuant to Section 14.03(b) of the Credit Agreement.

(c) **Payment**. All amounts due under this **Section 14** shall be due payable upon demand therefor.

(d) **Interest**. Any amounts payable to the Administrative Agent or any Secured Party under this **Section 14** or otherwise under this Agreement if not paid upon the due date shall bear interest from the date of such demand until paid in full, at the rate of interest set forth in Section 3.02(b) of the Credit Agreement.

(e) **Survival**. The agreements in this **Section 14** shall survive the termination of the Commitments and the repayment of all Secured Obligations.

SECTION 15 Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by each Grantor, the Administrative Agent, each Secured Party, each Indemnified Party referred to in **Section 14**, and their respective successors and assigns and shall bind any Person who becomes bound as a debtor to this Agreement. This Agreement shall be construed as a separate agreement with respect to each Grantor and may be amended, modified, supplemented, waived or release with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereto. No Grantor shall assign or delegate this Agreement, any of its rights or obligations hereunder or any interest herein or in the Collateral (in each case, except as expressly contemplated by this Agreement or the Credit Agreement) without the prior written consent of the Administrative Agent, and any attempted assignment without such consent shall be null and void.

SECTION 16 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York.

SECTION 17 Submission to Jurisdiction.

(a) **Submission to Jurisdiction**. Each party hereto agrees that any suit, action or proceeding with respect to this Agreement or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the federal or state courts in New York, New York or in the courts of its own corporate domicile and irrevocably submits to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment.

(b) **Waiver of Venue**. Each party hereto irrevocably waives to the fullest extent permitted by Law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document and hereby further irrevocably waives to the fullest extent permitted by Law any Claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such Grantor is or may be subject, by suit upon judgment.

(c) **Alternative Process**. Nothing herein shall in any way be deemed to limit the ability of the parties hereto to serve any process or summons in any manner permitted by any Law.

SECTION 18 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 19 Entire Agreement; Amendment. This Agreement and the other Loan Documents contain the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including any confidentiality (or similar) agreements. EACH GRANTOR ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND WILL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS. This Agreement shall not be amended except by the written agreement of the parties as provided in the Credit Agreement.

SECTION 20 **Severability**. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

SECTION 21 **Counterparts**. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof.

SECTION 22 **Incorporation of Provisions of the Credit Agreement**. To the extent the Credit Agreement contains provisions of general applicability to the Loan Documents, including any such provisions contained in Section 14 thereof, such provisions are incorporated herein by this reference.

SECTION 23 **No Inconsistent Requirements**. Each Grantor acknowledges that this Agreement and the other Loan Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms.

SECTION 24 **Accession**. At such time following the date hereof as any Person (an "*Acceding Grantor*") is required to accede hereto pursuant to the terms of Section 8.12 of the Credit Agreement, such Acceding Grantor shall execute and deliver to the Administrative Agent an accession agreement substantially in the form of **Exhibit A** (an "*Accession Agreement*"), signifying its agreement to be bound by the provisions of this Agreement as a Grantor to the same extent as if such Acceding Grantor had originally executed this Agreement as of the date hereof.

SECTION 25 **Termination**. Upon the termination of the Commitments of the Lenders and payment and performance in full of all Secured Obligations, the security interests created by this Agreement shall automatically terminate and the Administrative Agent shall promptly execute and deliver to each Grantor such documents and instruments reasonably requested by such Grantor as shall be necessary to evidence the termination of all security interests given by such Grantor to the Administrative Agent hereunder. Any execution and delivery of such documents pursuant to this Section 25 shall be without recourse to or representation or warranty by the Administrative Agent or any Secured Party. The Borrower shall reimburse the Administrative Agent upon demand for all reasonable and documented costs and out of pocket expenses, including the reasonable fees, charges and expenses of counsel, incurred by it in connection with any action contemplated by this Section 25.

Upon the consummation of any transaction permitted under the Credit Agreement as a result of which such Grantor ceases to be a Subsidiary Guarantor, such Grantor shall be automatically released from its obligations hereunder arising after the date on which such Grantor ceases to be a Subsidiary Guarantor and the security interests created hereunder in the Collateral of such Grantor shall be automatically released.

Upon any sale, lease, transfer or other disposition by any Grantor of any Collateral that is permitted under the Credit Agreement to any Person that is not another Grantor, the security interest in such Collateral shall be automatically released.

In addition, in connection with any Permitted Licenses, the Administrative Agent shall, at the request of any Grantor, negotiate and enter into a non-disturbance agreement and other similar agreements in form and substance reasonably satisfactory to the Administrative Agent.

SECTION 26 Right of Set-Off. If an Event of Default shall have occurred and is continuing, each Secured Party is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all Collateral (including any deposits (general or special, time or demand, provisional or final)) at any time held and other obligations at any time owing by such Secured Party to or for the credit or the account of any Grantor against any and all of the obligations of such Grantor now or hereafter existing under this Agreement and the other Loan Documents held by such Secured Party, irrespective of whether or not such Secured Party shall have made any demand under this Agreement or any other Loan Document and although such obligations may be unmatured. The rights of each Secured Party under this Section 26 are in additional to others rights and remedies (including other rights of setoff) which such Secured Party may have.

[*Remainder of page intentionally left blank; signature pages follow*]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

GRANTOR:

ATHENEX, INC.

By: /s/ Johnson Lau
Name: Johnson Y.N. Lau
Title: Chief Executive Officer

ATHENEX PHARMACEUTICAL DIVISION, LLC

By: /s/ Teresa Bair
Name: Teresa Bair
Title: Vice President

ATHENEX PHARMACEUTICALS LLC

By: /s/ Teresa Bair

Name: Teresa Bair

Title: General Counsel and Senior Vice President, Administration of Athenex, Inc., as sole member of Athenex Pharmaceuticals LLC

ATHENEX PHARMA SOLUTIONS, LLC

By: /s/ Teresa Bair
Name: Teresa Bair
Title: Vice President

ADMINISTRATIVE AGENT:

OAKTREE FUND ADMINISTRATION, LLC

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

EXHIBIT A

TO THE SECURITY AGREEMENT

FORM OF ACCESSION AGREEMENT

To: OAKTREE FUND ADMINISTRATION, LLC, as the Administrative Agent

Re: ATHENEX, INC., as the Borrower

Ladies and Gentlemen:

This Accession Agreement is made and delivered as of _____, 20__ pursuant to **Section 24** of that certain Security Agreement, dated as of June 19, 2020 (as amended, modified, renewed or extended from time to time, the "***Security Agreement***"), between each Grantor party thereto (each a "***Grantor***" and collectively, the "***Grantors***"), and Oaktree Fund Administration, LLC (in such capacity, together with its successors and assigns, the "***Administrative Agent***"). All capitalized terms used in this Accession Agreement and not otherwise defined herein shall have the meanings assigned to them in either the Security Agreement or the Credit Agreement (as defined in the Security Agreement), as the context may require.

The undersigned, _____ *[insert name of Acceding Grantor]*, a _____ *[corporation, partnership, limited liability company, etc.]*, hereby acknowledges for the benefit of the Secured Parties that it shall be a "Grantor" for all purposes of the Security Agreement effective from the date hereof. The undersigned confirms that the representations and warranties set forth in **Section 4** of the Security Agreement are true and correct as to the undersigned as of the date hereof. The undersigned further represents and warrants to the Administrative Agent and the other Secured Parties that this Accession Agreement has been duly authorized, executed and delivered by it and constitutes its valid and binding obligation, enforceable against it in accordance with its terms, subject, as to the enforcement of remedies, to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Without limiting the foregoing, the undersigned hereby agrees to perform all of the obligations of a Grantor under, and to be bound in all respects by the terms of, the Security Agreement, including **Section 5** thereof, to the same extent and with the same force and effect as if the undersigned were an original signatory thereto. The undersigned hereby grants to the Administrative Agent, for itself and on behalf of and for the ratable benefit of the other Secured Parties, a security interest in all of the undersigned's right, title and interest in, to and under all of its personal property other than Excluded Assets, wherever located and whether now existing or owned or hereafter acquired or arising, including all Collateral, as security for the payment and performance of the Secured Obligations.

The undersigned agrees to reimburse the Administrative Agent for its reasonable and documented out-of-pocket expenses in connection with this Accession Agreement, including the reasonable fees, other charges and disbursements of counsel for the Administrative Agent, in accordance with the terms of the Security Agreement.

Schedules 1 through **3** to the Security Agreement are hereby amended by adding **Schedules 1** through **3** attached hereto to the Security Agreement. *[Attach hereto completed **Schedules 1** through **3** in the form of **Schedules 1** through **3** attached to the Security Agreement.]*

This Accession Agreement shall constitute a Loan Document under the Credit Agreement. Except as expressly supplemented hereby, the Security Agreement shall remain in full force and effect.

If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

THIS ACCESSION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

[*Remainder of page intentionally left blank; signature pages follow*]

IN WITNESS WHEREOF, the undersigned has executed this Accession Agreement as of the date first above written.

[ACCEDING GRANTOR]

By: _____
Name:
Title:

Address for Notices:
[ ]
Attn: [ ]
Tel.: [ ]
Fax: [ ]
Email: [ ]

EXHIBIT B

TO THE SECURITY AGREEMENT

FORM OF PLEDGE SUPPLEMENT

To: OAKTREE FUND ADMINISTRATION, LLC, as the Administrative Agent

Re: ATHENEX, INC., as the Borrower

Ladies and Gentlemen:

This Pledge Supplement (this "***Pledge Supplement***") is made and delivered as of _____, 20 pursuant to **Section 3(i)** of that certain Security Agreement, dated as of June 19, 2020 (as amended, modified, renewed or extended from time to time, the "***Security Agreement***"), among each Grantor party thereto (each a "***Grantor***" and collectively, the "***Grantors***"), and Oaktree Fund Administration, LLC, (in such capacity, together with its successors and assigns, the "***Administrative Agent***"). All capitalized terms used in this Pledge Supplement and not otherwise defined herein shall have the meanings assigned to them in either the Security Agreement or the Credit Agreement (as defined in the Security Agreement), as the context may require.

The _____ undersigned, _____ *[insert _____ name _____ of _____ Grantor]*, a _____ *[corporation, partnership, limited liability company, etc.]*, confirms and agrees that all Pledged Collateral of the undersigned other than Excluded Assets, including the property described on the supplemental schedule attached hereto (such property, the "**New Collateral**"), shall be and become part of the Pledged Collateral and shall secure all Secured Obligations. The undersigned confirms that the representations and warranties set forth in **Section 4(l)** of the Security Agreement are true and correct as to the New Collateral as of the date hereof. The undersigned further represents and warrants to the Administrative Agent and the other Secured Parties that this Pledge Supplement has been duly authorized, executed and delivered by it and constitutes its valid and binding obligation, enforceable against it in accordance with its terms, subject, as to the enforcement of remedies, to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

The undersigned agrees to reimburse the Administrative Agent for its reasonable and documented out-of-pocket expenses in connection with this Pledge Supplement, including the reasonable fees, other charges and disbursements of counsel for the Administrative Agent, in accordance with the terms of the Security Agreement.

Schedule 3 to the Security Agreement is hereby amended by adding to such **Schedule 3** the information set forth in the supplement attached hereto.

This Pledge Supplement shall constitute a Loan Document under the Credit Agreement. THIS PLEDGE SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Except as expressly supplemented hereby, the Security Agreement shall remain in full force and effect.

If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

[*Remainder of page intentionally left blank; signature pages follow*]

IN WITNESS WHEREOF, the undersigned has executed this Pledge Supplement, as of the date first above written.

[ ]

By: _____
Name: _____
Title: _____

SUPPLEMENT TO SCHEDULE 3
TO THE SECURITY AGREEMENT

PARTNERSHIP AND LLC COLLATERAL

Limited Liability Company Interests Constituting Collateral

Grantor	Name of Issuer of Interests	Number of Units Held by Grantor	Date Units Issued to Grantor	Percentage Ownership Interest

Partnership Interests Constituting Collateral

Grantor	Name of Issuer of Interests	Type of Partnership Interest	Number of Units Held by Grantor	Date Units Issued to Grantor	Percentage Ownership Interest

PLEDGED SHARES

Pledged Shares Held by each Grantor

Grantor	Name of Issuer of Pledged Shares	Number and Class of Pledged Shares	Certificate Numbers	Certificate Dates	Percentage Ownership Interest

EXHIBIT C

TO THE SECURITY AGREEMENT

FORM OF COPYRIGHT SECURITY AGREEMENT

This COPYRIGHT SECURITY AGREEMENT, dated as of [_____], 20[__] ("***Copyright Security Agreement***"), made by each of the signatories hereto (the "***Copyright Grantors***"), is in favor of Oaktree Fund Administration, LLC, as administrative agent for the Secured Parties (in such capacity, together with its successors and assigns, the "***Administrative Agent***").

W I T N E S S E T H:

WHEREAS, the Copyright Grantors are party to a Security Agreement dated as of June 19, 2020 (the "***Security Agreement***") in favor of the Administrative Agent, pursuant to which the Copyright Grantors are required to execute and deliver this Copyright Security Agreement (capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Security Agreement);

WHEREAS, pursuant to the terms of the Security Agreement, each Copyright Grantor has created in favor of the Administrative Agent a security interest in, and the Administrative Agent has become a secured creditor with respect to, the Copyright Collateral (as defined below);

NOW, THEREFORE, in consideration of the premises and to induce the Administrative Agent and the Lender to enter into the Credit Agreement and to induce the Lender to make their respective extensions of credit to the Borrower thereunder, each Copyright Grantor hereby grants to the Administrative Agent, for itself and on behalf of and for the ratable benefit of the other Secured Parties, a security interest in all of such Grantor's Copyrights, including those listed in Schedule 1 (collectively, the "***Copyright Collateral***"), as collateral security for the complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of all Secured Obligations:

(a) all Copyrights of such Copyright Grantor, including, without limitation, the registered and applied-for Copyrights of such Copyright Grantor listed on **Schedule 1** attached hereto;

(b) to the extent not covered by **clause (a)**, all Proceeds of any of the foregoing; and

(c) to the extent not covered by **clause (a)**, all causes of action arising prior to or after the date hereof for infringement of any of the Copyrights.

The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to the Administrative Agent pursuant to the Security Agreement, and the Copyright Grantors hereby acknowledge and affirm that the rights and remedies of the Administrative Agent with respect to the security interest in the Copyrights made and granted hereby are more fully set forth in the Security Agreement. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

Each Copyright Grantor hereby authorizes and requests that the Register of Copyrights record this Copyright Security Agreement.

THIS COPYRIGHT SECURITY AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS COPYRIGHT SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

This Copyright Security Agreement may be executed by one or more of the parties to this Copyright Security Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Copyright Security Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof.

[*Remainder of This Page Intentionally Left Blank.*]

IN WITNESS WHEREOF, each Copyright Grantor has caused this COPYRIGHT SECURITY AGREEMENT to be executed and delivered by its duly authorized officer as of the date first above written.

[GRANTOR(S)]

By: _____
Name:
Title:

Address: _____
_____
_____
_____
_____

Accepted and Agreed:
OAKTREE FUND ADMINISTRATION, LLC, as the Administrative Agent

By _____
Name:
Title:

By _____
Name:
Title:

Address:

Schedule 1

COPYRIGHTS

Copyright Registrations

Title of Work	Reg. No.	Reg. Date	Owner

EXHIBIT D

TO THE SECURITY AGREEMENT

FORM OF TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT, dated as of [_____], 20[__] ("***Trademark Security Agreement***"), made by each of the signatories hereto (the "***Trademark Grantors***"), is in favor of Oaktree Fund Administration, LLC, as administrative agent for the Secured Parties (in such capacity, together with its successors and assigns, the "***Administrative Agent***").

W I T N E S S E T H:

WHEREAS, the Trademark Grantors are party to a Security Agreement, dated as June 19, 2020 (the "***Security Agreement***") in favor of the Administrative Agent, pursuant to which the Trademark Grantors are required to execute and deliver this Trademark Security Agreement (capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Security Agreement);

WHEREAS, pursuant to the terms of the Security Agreement, each Trademark Grantor has created in favor of the Administrative Agent a security interest in, and the Administrative Agent has become a secured creditor with respect to, the Trademark Collateral (as defined below);

NOW, THEREFORE, in consideration of the premises and to induce the Administrative Agent and the Lender to enter into the Credit Agreement and to induce the Lender to make their respective extensions of credit to the Borrower thereunder, each Trademark Grantor hereby grants to the Administrative Agent, for itself and on behalf of and for the ratable benefit of the other Secured Parties, a security interest in all of the following property now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "***Trademark Collateral***"), as collateral security for the complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of all Secured Obligations:

(a) all Trademarks of such Trademark Grantor, including, without limitation, the registered and applied-for Trademarks of such Grantor listed on **Schedule 1** attached hereto; provided, that no Lien or security interest is granted hereunder with respect to any United States "intent-to-use" trademark or service mark application filed pursuant to Section 1(b) of the Lanham Act, solely to the extent that, and only for so long as, the grant of a security interest therein would impair the validity or enforceability of, or render void or voidable or result in the cancellation of, any Grantor's right, title or interest therein;

(b) to the extent not covered by **clause (a)**, all Proceeds of any of the foregoing;

(c) to the extent not covered by **clause (a)**, the goodwill of the businesses with which the Trademarks are associated; and

(d) to the extent not covered by **clause (a)**, all causes of action arising prior to or after the date hereof for infringement of any of the Trademarks or unfair competition regarding the same.

The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Administrative Agent pursuant to the Security Agreement, and the Trademark Grantors hereby acknowledge and affirm that the rights and remedies of the Administrative Agent with respect to the security interest in the Trademarks made and granted hereby are more fully set forth in the Security Agreement. In the event that any provision of this Trademark Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

Each Trademark Grantor hereby authorizes and requests that the Commissioner of Trademarks record this Trademark Security Agreement.

THIS TRADEMARK SECURITY AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS TRADEMARK SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

This Trademark Security Agreement may be executed by one or more of the parties to this Trademark Security Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Trademark Security Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof.

[*Remainder of This Page Intentionally Left Blank.*]

IN WITNESS WHEREOF, each Trademark Grantor has caused this TRADEMARK SECURITY AGREEMENT to be executed and delivered by its duly authorized officer as of the date first above written.

[GRANTOR(S)]

By: _____
Name:
Title:

Address: _____

Accepted and Agreed:
OAKTREE FUND ADMINISTRATION, LLC, as the Administrative Agent

By _____
Name:
Title:

By _____
Name:
Title:

Address:

Schedule 1

TRADEMARKS

Trademark Registrations and Applications

Trademark	Reg. No. (App. No.)	Reg. Date (App. Date)	Owner

EXHIBIT E

TO THE SECURITY AGREEMENT

FORM OF PATENT SECURITY AGREEMENT

This PATENT SECURITY AGREEMENT, dated as of [_____], 20[_] ("***Patent Security Agreement***"), made by each of the signatories hereto (the "***Patent Grantors***"), is in favor of Oaktree Fund Administration, LLC, as administrative agent for the Secured Parties (in such capacity, together with its successors and assigns, the "***Administrative Agent***").

W I T N E S S E T H:

WHEREAS, the Patent Grantors are party to a Security Agreement dated as of June 19, 2020 (the "***Security Agreement***") in favor of the Administrative Agent, pursuant to which the Patent Grantors are required to execute and deliver this Patent Security Agreement (capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Security Agreement);

WHEREAS, pursuant to the terms of the Security Agreement, each Patent Grantor has created in favor of the Administrative Agent a security interest in, and the Administrative Agent has become a secured creditor with respect to, the Patent Collateral (as defined below);

NOW, THEREFORE, in consideration of the premises and to induce the Administrative Agent and the Lender to enter into the Credit Agreement and to induce the Lender to make their respective extensions of credit to the Borrower thereunder, each Patent Grantor hereby grants to the Administrative Agent, for itself and on behalf of and for the ratable benefit of the other Secured Parties, a security interest in all of the following property now owned or at any time hereafter acquired by such Patent Grantor or in which such Patent Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "***Patent Collateral***"), as collateral security for the complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of all Secured Obligations:

(a) all Patents of such Patent Grantor, including, without limitation, the registered and applied-for Patents of such Grantor listed on **Schedule 1** attached hereto;

(b) to the extent not covered by **clause (a)**, all Proceeds of any of the foregoing; and

(c) to the extent not covered by **clause (a)**, all causes of action arising prior to or after the date hereof for infringement of any of the Patents.

The security interest granted pursuant to this Patent Security Agreement is granted in conjunction with the security interest granted to the Administrative Agent pursuant to the Security Agreement, and the Patent Grantors hereby acknowledge and affirm that the rights and remedies of the Administrative Agent with respect to the security interest in the Patents made and granted hereby are more fully set forth in the Security Agreement. In the event that any provision of this Patent Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

Each Patent Grantor hereby authorizes and requests that the Commissioner of Patents record this Patent Security Agreement.

THIS PATENT SECURITY AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS PATENT SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

This Patent Security Agreement may be executed by one or more of the parties to this Patent Security Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Patent Security Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof.

[Remainder of This Page Intentionally Left Blank.]

IN WITNESS WHEREOF, each Patent Grantor has caused this PATENT SECURITY AGREEMENT to be executed and delivered by its duly authorized officer as of the date first above written.

[GRANTOR(S)]

By: _____
Name:
Title:

Address: _____
_____
_____
_____
_____

Accepted and Agreed:
OAKTREE FUND ADMINISTRATION, LLC, as the Administrative Agent

By _____
Name:
Title:

By _____
Name:
Title:

Address:

PATENTS

Patents and Patent Applications

Patent	Reg. No. (App. No.)	Reg. Date (App. Date)	Owner

EXHIBIT F

TO THE SECURITY AGREEMENT

FORM OF BAILEE LETTER

[INSERT DATE]

To: [INSERT NAME AND ADDRESS OF BAILEE]

_____

_____

Re: [INSERT NAME OF RELEVANT OBLIGOR]

Ladies and Gentlemen:

We are the agent for certain lending institutions that are making or have made certain credit extensions to [Athenex, Inc. (the "***Company***")][1] [Athenex, Inc., the [direct] [indirect] parent of [OBLIGOR] (the "***Company***"), and the Company has provided a guaranty thereof].[2] The Company has entered into (i) that certain Credit Agreement and Guaranty, dated as of June 19, 2020, among [Athenex, Inc.] [the Company], as borrower, the Subsidiary Guarantors from time to time party thereto [including the Company], the Lender and ourselves, as Administrative Agent (as amended or otherwise modified from time to time, the "***Credit Agreement***") and (ii) that certain Security Agreement, dated as of June 19, 2020 among [Athenex, Inc.] [the Company], the other Grantors from time to time party thereto [including the Company], and ourselves, as Administrative Agent (as amended or otherwise modified from time to time, the "***Security Agreement***").

Pursuant to the Security Agreement, we have obtained a continuing security interest in all of the Company's personal property other than Excluded Assets (the "***Collateral***"), until all Obligations have been paid in full indefeasibly in cash and the Commitment under the Credit Agreement has been terminated (the capitalized terms used above but not defined shall have the definition provided in the Credit Agreement).

We understand that the Company has made arrangements with you to locate from time to time certain Collateral at the location(s) described in **Annex A** hereto (the "***Premises***"). (The agreement between you and the Company governing the location of the Collateral at the Premises shall be hereinafter referred to as the "***Agreement***.")

[1] Insert if obligor is Athenex, Inc.
[2] Insert if obligor is a guarantor

Because Collateral will be located at the Premises, we will require certain agreements and acknowledgments from you. Accordingly, we would appreciate your execution of this letter.

By your signature below you acknowledge notice of our security interest in the Collateral.

This letter will also confirm your agreement to the following:

The Collateral located at the Premises will be and remain personal property of the Company, and such Collateral will not be deemed a fixture or part of the Premises even if the Collateral may be affixed to or placed in, or about the Premises.

Until such time as the security interests in the Collateral granted to us by the Company have been terminated, you hereby waive and release in favor of us: (a) any liens on, claims to, or interest in the Collateral and the proceeds thereof and agree not to assert any claim against the Collateral or proceeds thereof and (b) any and all other interests or claims of every nature whatsoever which you may now or hereafter have in or against the Collateral for any rent, storage charges, or other sums due or to become due to you.

You will allow us, or our auditors or other agents or representatives, reasonable access to the Premises from time to time to inspect the Collateral in accordance with the Credit Agreement.

In the event that the Company defaults in its obligations under the Agreement or abandons or surrenders the Premises, or you desire or elect to terminate or exercise remedies under the Agreement for any reason, you will provide notice to us in writing of this fact, at the address provided beneath our signature block, prior to your terminating or exercising remedies under the Agreement and retaking possession of the Premises. In such event, you will allow us, at our option, 30 days from our receipt of such notice in which to cure or request the Company to cure such default. If any order or injunction is issued or stay granted that prohibits us from exercising any of our rights hereunder, then the period to exercise our rights shall be stayed during the period of such prohibition and shall continue thereafter for the greater of (a) the number of days remaining in the initial period or (b) thirty (30) days.

Upon our request, you will grant us, or our agents or representatives on our behalf, access to the Premises at reasonable times and upon reasonable prior notice so that we may preserve, protect and enforce our security interests. In such event you will allow us, or our agents or representatives on our behalf, access to the Premises to assemble, appraise, repair, service and maintain the Collateral, to show the Collateral to potential purchasers or lessees, to prepare the Collateral for removal for return to us or for other sale or disposition and to remove the Collateral from the Premises. At your option, you may elect to have an agent accompany us or our agents or representatives while on the Premises; provided that your failure to have your agent accompany us or our agents or representatives will not in any way limit our right to enter upon the Premises. While on the Premises, we will use reasonable efforts so as not to disturb any other tenant, occupant or you. We will reimburse you for, or repair, at our cost, any damage to the Premises caused by the removal of the Collateral or otherwise caused by us or our agents or representatives during our possession of the Premises.

You will permit us to remain on the Premises for a period of up to 30 days following receipt by us of written notice from you that you are in possession and control of the Premises, have terminated the Agreement and are directing removal of the Collateral. Any extensions of the foregoing period shall be with your written consent.

Nothing herein contained will be deemed to make us a tenant at the Premises, or be deemed to delegate any duties or obligations to us under the Agreement or constitute any assumption thereof by us of any unperformed or unpaid obligations of the Company under the Agreement. This letter and any right, remedy, obligation, claim, controversy, dispute or cause of action (whether in contract, tort or otherwise) based upon, arising out of or relating to this letter will be governed and controlled by, and interpreted under, the laws of the State of New York.

You will notify any purchaser or successor owner or landlord of the Premises of the existence of this letter, which will be binding upon your executors, administrators, successors, transferees or assignees.

This letter may be executed in one or more counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which, when taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of this letter by facsimile shall be equally as effective as delivery of a manually executed counterpart of this letter.

[*Remainder of page intentionally left blank*]

Very truly yours,

OAKTREE FUND ADMINISTRATION, LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

Address:

Accepted and approved:
[BAILEE'S NAME]

By _____
Name:
Title:

Address for Notices:
[ ]
[ ]
Attn: [ ]
Tel.: [ ]
Fax: [ ]
Email: [ ]

Acknowledged and agreed to:
[COMPANY'S NAME]

By _____
Name:
Title:

Exhibit 10.3

ATHENEX, INC.
REGISTRATION RIGHTS AGREEMENT

This **REGISTRATION RIGHTS AGREEMENT** (this "***Agreement***") is made as of June 19, 2020, by and among Athenex, Inc., a Delaware corporation (the "***Company***"), and the purchasers identified on **Schedule A** hereto (each, a "***Purchaser***" and collectively, the "***Purchasers***") and such other Persons, if any, from time to time, that become a party hereto as holders of Registrable Securities (as defined below).

RECITALS

WHEREAS, pursuant to the Credit Agreement (as defined below), concurrently with the execution of this Agreement, on the Closing Date, the Company will issue to each Purchaser a warrant to purchase such number of shares of Common Stock (as defined below) as is set forth opposite such Purchaser's name on **Schedule A** hereto (as such number may be adjusted pursuant to the terms of such warrant) (each, a "***Warrant***" and collectively, the "***Warrants***");

WHEREAS, the Warrants will be exercisable into shares of Common Stock from time to time on or after June 19, 2020 and on or prior to the close of business on June 19, 2027, in accordance with the terms thereof;

WHEREAS, in connection with the execution and delivery of the Credit Agreement and the issuance of the Warrants and the consummation of the transactions contemplated thereby the Company has agreed to grant the Holders (as defined below) certain registration rights as set forth below; and

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and other consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
Definitions

1.1 Definitions. Unless otherwise defined herein, capitalized terms used in this Agreement have the meanings ascribed to them in the Credit Agreement. As used in this Agreement, the following terms shall have the meanings set forth below:

(a) "***Additional Shares***" means any shares of Common Stock issued to the Purchasers pursuant to a stock split, stock dividend or other distribution with respect to, or in exchange or in replacement of, the Underlying Shares, or in connection with a combination of shares, distribution, recapitalization, merger, consolidation, other reorganization or other similar event.

(b) "***Agreement***" has the meaning set forth in the Preamble.

(c) "***Business Day***" means any day, excluding Saturday, Sunday and any day which is a legal holiday in the City of New York or is a day on which banking institutions located in the City of New York are authorized or required by law or other governmental action to close.

(d) "***Change of Control***" means an event or series of events (i) as a result of which any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Act) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all Common Stock that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of fifty percent (50%) or more of the Common Stock entitled to vote for members of the Company's Board of Directors on a fully diluted basis (and taking into account all such Common Stock that such person or group has the right to acquire pursuant to any option right); or (ii) that results in the sale of all or substantially all of the assets or businesses of the Company and its consolidated subsidiaries, taken as a whole.

(e) "***Common Stock***" means shares of the common stock of the Company, par value $0.001 per share.

(f) "***Company***" has the meaning set forth in the Preamble.

(g) "***Company Indemnified Party***" has the meaning set forth in Section 2.4(a).

(h) "***Controlling Person"*** has the meaning set forth in Section 2.8(a).

(i) ***Credit Agreement***" means that certain Credit Agreement and Guaranty (as may be amended or restated from time to time), dated as of June 19, 2020, by and among the Company, the subsidiaries of the Company party thereto as Guarantors, the lenders party thereto and Oaktree Fund Administration, LLC, as administrative agent.

(j) "***Default***" has the meaning set forth in Section 2.1(c).

(k) "***Effectiveness Deadline***" means the Shelf Effectiveness Deadline and the Subsequent Shelf Effectiveness Deadline.

(l) "***End of Suspension Notice***" has the meaning set forth in Section 2.2(c).

(m) "***Holder***" (collectively, "***Holders***") means any Purchaser and any transferee permitted under Section 3.1, in each case, to the extent holding or beneficially owning Registrable Securities.

(n) "***Holder Indemnified Parties***" has the meaning set forth in Section 2.4(a).

(o) "***Indemnified Party***" has the meaning set forth in Section 2.4(b).

(p) "***Liquidated Damages***" has the meaning set forth in Section 2.1(c).

(q) ***"Person"*** means any person, individual, corporation, limited liability company, partnership, trust or other nongovernmental entity or any governmental agency, court, authority or other body (whether foreign, federal, state, local or otherwise).

(r) "***Prospectus***" means the prospectus or prospectuses (whether preliminary or final) included in any Registration Statement and relating to Registrable Securities, as amended or supplemented and including all material incorporated by reference in such prospectus or prospectuses.

(s) "***register***," "***registered***" and "***registration***" refer to a registration effected by filing with the SEC a registration statement in compliance with the Securities Act, and the declaration or ordering by the SEC of the effectiveness of such registration statement.

(t) "***Registrable Securities***" means (i) the Underlying Shares and (ii) any Additional Shares; *provided, however*, that Underlying Shares or Additional Shares shall cease to be treated as Registrable Securities on the earliest to occur of, (A) the date such security has been disposed of pursuant to an effective registration statement, (B) the date on which such security is sold pursuant to Rule 144 or (C) the date on which the Holder thereof, together with its Affiliates, is able to dispose of all of its Registrable Securities during any three-month period in compliance with Rule 144 (or any successor rule).

(u) "***Registration Expenses***" means any and all expenses incident to the Company's performance of or compliance with this Agreement, including without limitation: (i) all SEC and other registration and filing fees, (ii) all fees and expenses associated with filings to be made with, or the listing of any Registrable Securities on, any securities exchange or over-the-counter trading market on which the Registrable Securities are to be listed or quoted, (iii) all fees and expenses with respect to filings required to be made with an exchange or any securities industry self-regulatory body, (iv) all fees and expenses of compliance with securities or "blue sky" laws (including fees and disbursements of counsel for the Company in connection therewith), (v) all transfer agent's and registrar's fees, (vi) all fees and disbursements of counsel for the Company and customary fees and expenses for independent certified public accountants retained by the Company, (vii) securities acts liability insurance, if the Company so desires, (viii) all internal expenses of the Company (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), (ix) the expense of any annual audit, and (x) the fees and expenses of any Person, including special experts, retained by the Company. For the avoidance of doubt, "***Registration Expenses***" shall not include underwriting discounts or commissions attributable to the sale of the Registrable Securities or (except as otherwise set forth in this Agreement) any legal fees and expenses of counsel to the Holders.

(v) "***Registration Statement***" means any registration statement of the Company under the Securities Act which covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, all amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all documents incorporated by reference in such Registration Statement.

(w) "***Rule 144***" means Rule 144 under the Securities Act.

(x) "***SEC***" means the U.S. Securities and Exchange Commission.

(y) "***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as the same may be amended from time to time.

(z) "***Shelf Effectiveness Deadline***" has the meaning set forth in Section 2.1(b).

(aa) "***Shelf Registration***" has the meaning set forth in Section 2.1(a).

(bb) "***Shelf Registration Statement***" has the meaning set forth in Section 2.1(a).

(cc) "***Subsequent Shelf Effectiveness Deadline***" has the meaning set forth in Section 2.1(b).

(dd) "***Subsequent Shelf Registration Statement***" has the meaning set forth in Section 2.1(b).

(ee) "***Suspension Event***" has the meaning set forth in Section 2.2(b).

(ff) "***Suspension Notice***" has the meaning set forth in Section 2.2(c).

(gg) "***Termination Date***" has the meaning set forth in Section 2.1(b).

(hh) "***Trading Day***" means a day on which the Common Stock is traded on a Trading Market or, if the Common Stock is not traded on a Trading Market, then on the principal securities exchange or securities market on which the Common Stock is then traded.

(ii) "***Trading Market***" means any market or exchange of The Nasdaq Stock Market LLC or the New York Stock Exchange.

(jj) "***Underlying Shares***" means any and all shares of Common Stock issuable upon exercise of the Warrants.

(kk) "***Warrant***" has the meaning set forth in the Recitals.

ARTICLE II
Registration Rights

2.1 Shelf Registration.

(a) Filing. Within 45 days following the date hereof, the Company shall file with the SEC a Registration Statement on Form S-3 (unless the Company is ineligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form) or the then appropriate form for an offering to be made on a delayed or continuous basis pursuant to Rule 415 under the Securities Act or any successor rule thereto (a "***Shelf Registration Statement***") pursuant to which all of the Registrable Securities shall be included (on the initial filing or by supplement or amendment thereto) to enable the public resale of the Registrable Securities on a delayed or continuous basis pursuant to Rule 415 under the Securities Act or any successor rule thereto (a "***Shelf Registration***"). If permitted under the Securities Act, such Shelf Registration Statement shall be an "automatic shelf registration statement" as defined in Rule 405 under the Securities Act.

(b) Effectiveness. The Company shall use its reasonable best efforts to (i) cause the Shelf Registration Statement filed pursuant to Section 2.1(a) to be declared effective by the SEC as soon as reasonably practicable, and in any event by the date that is the earlier of (A) 120 days following the date hereof and (B) five Trading Days after the date the Company receives written notification from the SEC that the Shelf Registration will not be reviewed (the "***Shelf Effectiveness Deadline***") and (ii) maintain the effectiveness of such Shelf Registration Statement, including by filing any necessary post-effective amendments and Prospectus supplements and by filing one or more replacement or renewal Shelf Registration Statements (each, a "***Subsequent Shelf Registration Statement***") upon the expiration of such Shelf Registration Statement, as required by Rule 415 under the Securities Act, continuously until the earliest to occur of (1) the 30-month anniversary of the date hereof, (2) a Change of Control and (3) such time as there are no Registrable Securities remaining (the "***Termination Date***"). If a Subsequent Shelf Registration Statement is filed, the Company shall use its reasonable best efforts to (i) cause such Subsequent Shelf Registration Statement to be declared effective by the SEC as soon as reasonably practicable after such filing, but in any event by the date that is fifty (50) days after such Subsequent Shelf Registration Statement is filed (the "***Subsequent Shelf Effectiveness Deadline***"), and (ii) keep such Subsequent Shelf Registration Statement (or another Subsequent Shelf Registration Statement) continuously effective until the Termination Date. Any Subsequent Shelf Registration Statement shall be a Shelf Registration Statement.

(c) Default. In the event that (i) the Shelf Registration Statement filed pursuant to Section 2.1(a) is not declared effective by the SEC by the Shelf Effectiveness Deadline, (ii) a Subsequent Shelf Registration Statement (if required to be filed pursuant to Section 2.1(b)) is not filed by the Subsequent Shelf Effectiveness Deadline, or (iii) after a Shelf Registration Statement has been declared effective, sales cannot be made continuously pursuant to such Shelf Registration Statement for any reason (including without limitation by reason of a stop order, or the Company's failure to update the Shelf Registration Statement), other than, in each case, during the time period(s) permitted by Section 2.2(b) (each such event, a "***Default***"), then, in addition to any other rights a Holder may have hereunder or under applicable law, on the first day of the occurrence of the Default, and on the same day of each succeeding month (if the applicable Default shall not have been cured by such date) until the applicable Default is cured, the Company shall pay to each Holder an amount in cash, as liquidated damages and not as a penalty (the "***Liquidated Damages***"), on the date of the Default and the same day each succeeding month, equal to 1% of the aggregate purchase price paid for the Registrable Securities held by such Holder pursuant to the respective Warrant. The parties agree that in no event shall the aggregate amount of Liquidated Damages payable to any Holder exceed, in the aggregate, twenty-five percent (25%) of the aggregate purchase price paid for the Registrable Securities held by such Holder pursuant to the respective Warrant. If the Company fails to pay any Liquidated Damages pursuant to this Section 2.1(c) in full within five (5) Business Days after the date payable, the Company will pay interest thereon at a rate of 1.5% per month (or such lesser maximum amount that is permitted to be paid by applicable law) to each Holder, accruing daily from the date such Liquidated Damages are due until such amounts, plus all such interest thereon, are paid in full. The Liquidated Damages pursuant to the terms hereof shall apply on a daily pro-rata basis for any portion of a month prior to the cure of a Default, except in the case of the first occurrence of the Default. The applicable Effectiveness Deadline shall be extended without Default or Liquidated Damages hereunder in the event that the Company's failure to obtain the effectiveness of such Shelf Registration Statement or Subsequent Shelf Registration Statement on a timely basis results from the failure of any Holder to timely provide the Company with information requested by the Company and necessary to complete the Shelf Registration Statement or Subsequent Shelf Registration Statement in accordance with the requirements of the Securities Act (in which case the applicable Effectiveness Deadline would be extended with respect to Registrable Securities held by such Holder).

(d) Additional Registrable Securities; Additional Selling Stockholders. At any time and from time to time that a Shelf Registration Statement is effective, if a Holder of Registrable Securities reasonably requests that such Holder be added as a selling stockholder in such Shelf Registration Statement, the Company shall as promptly as reasonably practicable amend or supplement the Shelf Registration Statement to cover such Holder.

2.2 Provisions Relating to Registration.

(a) If and whenever the Company is required to effect the registration of any Registrable Securities pursuant to this Agreement, the Company shall use its reasonable best efforts to effect and facilitate the registration of such Registrable Securities as promptly as is practicable and, pursuant thereto, the Company shall as expeditiously as possible and as applicable:

(i) prepare and file with the SEC a Registration Statement with respect to such Registrable Securities, make all required filings required in connection therewith and (if the Registration Statement is not automatically effective upon filing) use its reasonable best efforts to cause such Registration Statement to become effective as promptly as practicable; *provided* that before filing a Registration Statement or any amendments or supplements thereto, the Company shall furnish to counsel to the Holders for such registration copies of all documents proposed to be filed, which documents shall be subject to review by counsel to the Holders at the Holder's expense, and give the Holders participating in such registration an opportunity to comment on such documents and keep such Holders reasonably informed as to the registration process;

(ii) furnish to each Holder participating in the registration, without charge, such number of copies of the Prospectus included in such Registration Statement (including each preliminary Prospectus) and any supplement thereto (in each case including all exhibits thereto and all documents incorporated by reference therein) and such other documents as such Holder may reasonably request, including in order to facilitate the disposition of the Registrable Securities owned by such Holder;

(iii) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such U.S. jurisdiction(s) or such U.S. self-regulatory bodies as any Holder participating in the registration reasonably requests and do any and all other acts and things that may be necessary or reasonably advisable to enable such Holder to consummate the disposition of such Holder's Registrable Securities in such jurisdiction(s); *provided*, that the Company shall not be required to qualify generally to do business, subject itself to taxation or consent to general service of process in any jurisdiction where it would not otherwise be required to do so but for its obligations pursuant to this Section 2.2(a)(iii);

(iv) notwithstanding any other provisions of this Agreement to the contrary, cause (A) any Registration Statement (as of the effective date of the Registration Statement), any amendment thereof (as of the effective date thereof) or supplement thereto (as of its date), (1) to comply in all material respects with the applicable requirements of the Securities Act and the rules and regulations of the SEC and (2) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading and (B) any related Prospectus, preliminary Prospectus and any amendment thereof or supplement thereto (as of its date), (1) to comply in all material respects with the applicable requirements of the Securities Act and the rules and regulations of the SEC, and (2) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, *however*, the Company shall have no such obligations or liabilities with respect to any written information pertaining to a Holder and furnished to the Company by or on behalf of such Holder specifically for inclusion therein; *provided further*, that each Holder of Registrable Securities, upon receipt of any notice from the Company of any event of the kind described in this Section 2.2(a)(iv), shall forthwith discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Holder is advised in writing by the Company that the use of the Prospectus may be resumed and is furnished with a supplemented or amended Prospectus as contemplated by this Section 2.2(a)(iv);

(v) as promptly as practicable (and in any event, within twenty-four (24) hours), notify the Holders: (A) when the Registration Statement, any pre-effective amendment thereto, the Prospectus or any Prospectus supplement or any post-effective amendment thereto has been filed with the SEC and when the Registration Statement or any post-effective amendment thereto has become effective, (B) of any oral or written comments by the SEC or of any request by the SEC for amendments or supplements to the Registration Statement or the Prospectus included therein or for any additional information regarding such Holder, (C) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or the initiation or threatening of any proceedings for that purpose and of any other action, event or failure to act that would cause the Registration Statement not to remain effective, and (D) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any Registrable Securities for sale under the applicable securities or blue sky laws of any jurisdiction or the initiation of any proceeding for such purpose;

(vi) in the event of the issuance of any stop order suspending the effectiveness of a Registration Statement, any order suspending or preventing the use of any related Prospectus or any suspension of the qualification or exemption from qualification of any Registrable Securities for sale in any jurisdiction, use its reasonable best efforts to promptly obtain the withdrawal or lifting of any such order or suspension, and each Holder of Registrable Securities, upon receipt of any notice from the Company of any event of the kind described in this Section 2.2(a)(vi), shall forthwith discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Holder is advised in writing by the Company that the use of the Prospectus may be resumed and is furnished with a supplemented or amended Prospectus, if applicable;

(vii) not file or make any amendment to any Registration Statement with respect to any Registrable Securities, or any amendment of or supplement to the Prospectus used in connection therewith, that refers to any Holder covered thereby by name or otherwise identifies such Holder as the holder of any securities of the Company without the consent of such Holder (which consent shall not be unreasonably withheld, conditioned or delayed), unless and to the extent such disclosure is required by law; *provided*, that (A) each Holder shall furnish to the Company in writing such information regarding itself and the distribution proposed by it as the Company may reasonably request for use in connection with a Registration Statement or Prospectus and (B) each Holder agrees to notify the Company as promptly as practicable of any inaccuracy or change in information previously furnished to the Company by such Holder or of the occurrence of any event that would cause the Prospectus included in such Registration Statement to contain an untrue statement of a material fact regarding such Holder or the distribution of such Registrable Securities or to omit to state any material fact regarding such Holder or the distribution of such Registrable Securities required to be stated therein or necessary to make the statements made therein not misleading in light of the circumstances under which they were made and to furnish to the Company, as promptly as practicable, any additional information required to correct and update the information previously furnished by such Holder such that such Prospectus shall not contain any untrue statement of a material fact regarding such Holder or the distribution of such Registrable Securities or omit to state a material fact regarding such Holder or the distribution of such Registrable Securities necessary to make the statements therein not misleading in light of the circumstances under which they were made;

(viii) cause such Registrable Securities to be listed on each securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on any securities exchange, use its reasonable best efforts to cause such Registrable Securities to be listed on a national securities exchange selected by the Company after consultation with the Holders participating in such registration;

(ix) provide a transfer agent and registrar (which may be the same Person) for all such Registrable Securities not later than the effective date of such Registration Statement and, within a reasonable time prior to any proposed sale of Registrable Shares pursuant to a Registration Statement, provide the transfer agent if reasonably required by the transfer agent, an opinion of counsel as to the effectiveness of the Registration Statement, together with any other authorizations, certificates and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Shares without legend upon sale by the Holder of such Registrable Shares under the Registration Statement, subject to the provisions of Section 3.1;

(x) otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC, and make available to its stockholders, as soon as reasonably practicable, an earnings statement (in a form that satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 under the Securities Act or any successor rule thereto) covering the period of at least 12 months beginning with the first day of the Company's first full fiscal quarter after the effective date of the applicable Registration Statement, which requirement shall be deemed satisfied if the Company timely files complete and accurate information on Forms 10-K, 10-Q and 8-K under the Exchange Act and otherwise complies with Rule 158 under the Securities Act or any successor rule thereto;

(xi) (A) furnish to each Holder all legal opinions of outside counsel to the Company required to be included in the Registration Statement, which provision shall be satisfied by filing with the SEC any such opinion as an exhibit to the Registration Statement, and (B) obtain all consents of independent public accountants required to be included in the Registration Statement;

(xii) cooperate with the Holders of the Registrable Securities to facilitate the timely preparation and delivery of certificates representing the Registrable Securities to be sold pursuant to such Registration Statement free of any restrictive legends and representing such number of shares of Common Stock and registered in such names as the Holders of the Registrable Securities may reasonably request a reasonable period of time prior to sales of Registrable Securities pursuant to such Registration Statement; *provided*, that the Company may satisfy its obligations hereunder without issuing physical stock certificates through the use of The Depository Trust Company's Direct Registration System; and

(xiii) otherwise use its reasonable best efforts to take or cause to be taken all other actions necessary or reasonably advisable to effect the registration of such Registrable Securities contemplated by this Agreement.

(b) As promptly as practicable after becoming aware of such event, the Company shall notify the Holders of the happening of any event (a "***Suspension Event***"), of which the Company has knowledge, as a result of which the Prospectus included in a Registration Statement as then in effect includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances under which they were made, and as promptly as practicable, the Company shall prepare and file with the SEC a supplement or amendment to the Registration Statement to correct such untrue statement or omission, and deliver such number of copies of such supplement or amendment to the Holders as the Holders may reasonably request so that, as thereafter delivered to the purchasers of such Registrable Securities, such Prospectus will not contain any untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading in the light of the circumstances under which they were made; *provided*, *however*, that, for not more than forty-five (45) consecutive days (or a total of not more than one hundred twenty (120) Trading Days in any 12-month period), the Company may delay or suspend the filing, effectiveness or use of a Registration Statement or Prospectus, to the extent permitted by and in a manner not in violation of applicable securities laws, if the board of directors of the Company determines in good faith, based on the advice of counsel, that (i) proceeding with the filing, effectiveness or use of such Registration Statement or Prospectus would reasonably be expected to require the Company to disclose any information the disclosure of which would have a material adverse effect on the Company and that the Company would not otherwise be required to disclose at such time or (ii) the registration or offering proposed to be delayed or suspended would reasonably be expected to, if not delayed or suspended, have a material adverse effect on any pending negotiation or plan of the Company to effect a merger, acquisition, disposition, financing, reorganization, recapitalization or similar transaction, in each case that, if consummated, would be material to the Company.

(c) Upon a Suspension Event, the Company shall promptly give written notice (a "***Suspension Notice***") to the Holders to suspend sales of the affected Registrable Securities, and such notice shall state that such suspension shall continue only for so long as the Suspension Event or its effect is continuing and the Company is pursuing with reasonable diligence the completion of the matter giving rise to the Suspension Event or otherwise taking all reasonable steps to terminate suspension of the effectiveness or use of the Registration Statement. In no event shall the Company, without the prior written consent of the Holders, disclose to the Holders any of the facts or circumstances giving rise to the Suspension Event. The Holders shall not effect any sales of the Registrable Securities pursuant to the Registration Statement (or such filings), at any time after they have received a Suspension Notice and prior to receipt of an End of Suspension Notice. The Holders may resume effecting sales of the Registrable Securities under the Registration Statement (or such filings), following further notice to such effect (an "***End of Suspension Notice***") from the Company. This End of Suspension Notice shall be given by the Company to the Holders in the manner described above promptly following the conclusion of any Suspension Event and its effect. For the avoidance of doubt, a Suspension Notice shall not affect or otherwise limit sales of affected Registrable Securities under Rule 144 or otherwise outside of the Registration Statement;

(d) Notwithstanding any provision herein to the contrary, if the Company gives a Suspension Notice pursuant to Section 2.2(c) with respect to any Registration Statement, the Company shall extend the period during which the Registration Statement shall be maintained effective under this Agreement by the number of days during the period from the date of the giving of the Suspension Notice to and including the date when the Holders shall have received the End of Suspension Notice and copies of the supplemented or amended Prospectus necessary to resume sales.

(e) Notwithstanding anything to the contrary contained in this Agreement, the Company shall not be required to include Registrable Securities in any Registration Statement unless the Holder owning the Registrable Securities to be registered on the Registration Statement, following reasonable advance written request by the Company, furnishes to the Company, at least ten Business Days prior to the scheduled filing date of the Registration Statement, an executed stockholder questionnaire in the form attached hereto as **Exhibit A**.

2.3 Registration Expenses

(a) The Company shall bear all Registration Expenses.

(b) The obligation of the Company to bear and pay the Registration Expenses shall apply irrespective of whether a registration becomes effective or is withdrawn or suspended; *provided*, that the Registration Expenses for any Registration Statement withdrawn solely at the request of one or more Holder(s) (unless withdrawn following commencement of a Suspension Event) shall be borne by such Holder(s).

2.4 Indemnification.

(a) The Company shall, to the fullest extent permitted by law, indemnify and hold harmless each Holder and any Person who is or might be deemed to be a "controlling person" of such Holder (within the meaning of the Securities Act or the Exchange Act) (each such Person, a "***Controlling Person***") and their respective direct and indirect general and limited partners, advisory board members, directors, officers, trustees, managers, members, employees, agents, Affiliates and shareholders, and each other Person, if any, who acts on behalf of or controls any such Holder or Controlling Person (collectively, the "***Holder Indemnified Parties***") from and against any losses, claims, damages, liabilities or expenses, joint or several, or any actions in respect thereof to which each Holder Indemnified Party may become subject under the Securities Act, the Exchange Act, any state blue sky securities laws, insofar as such losses, claims, damages, liabilities, expenses or actions arise out of or are based upon (i) any untrue statement or alleged untrue statement of a material fact contained in or incorporated by reference in any Registration Statement or in any amendment thereof, in each case at the time such became effective under the Securities Act, (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading or (iii) any violation or alleged violation by the Company of the Securities Act or any other similar federal or state securities laws or any rule or regulation promulgated thereunder applicable to the Company and relating to any action or inaction required of the Company in connection with any registration of securities, and the Company shall reimburse, as incurred, the Holder Indemnified Parties for any reasonable and documented legal or other reasonable and documented expenses

reasonably incurred by them in connection with investigating, defending or settling any such loss, claim, damage, liability, expense or action in respect thereof; *provided, however*, that the Company shall not be liable in any such case to the extent that such loss, claim, damage, liability, expense or action arises out of or is based upon (i) any untrue statement or omission made or incorporated by reference in any such Registration Statement, any Prospectus or in any amendment thereof or supplement thereto in reliance upon and in conformity with written information pertaining to a Holder and furnished to the Company by or on behalf of such Holder or such Holder Indemnified Party specifically for inclusion therein or (ii) the failure of such Holder to comply with the covenants and agreements contained in this Agreement respecting sales of Registrable Securities; *provided further* that the foregoing indemnity agreement is subject to the condition that, insofar as it relates to any such untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus but eliminated or remedied in the amended prospectus on file with the SEC at the time any Registration Statement becomes effective or in an amended prospectus filed with the SEC pursuant to Rule 424(b) which meets the requirements of Section 10(a) of the Securities Act (each, a "***Final Prospectus***"), such indemnity shall not inure to the benefit of any such Holder or any such Controlling Person, if a copy of a Final Prospectus furnished by the Company to the Holder for delivery was not furnished to the Person asserting the loss, liability, claim or damage at or prior to the time such furnishing is required by the Securities Act and a Final Prospectus would have cured the defect giving rise to such loss, liability, claim or damage. In connection with any registration in which a Holder of Registrable Securities is participating, each such Holder shall furnish to the Company in writing such information as the Company reasonably requests for use in connection with any such Registration Statement or Prospectus and shall, severally and not jointly, to the fullest extent permitted by law, indemnify and hold harmless the Company, its directors and officers, employees, agents and any Person who is or might be deemed to be a Controlling Person (a "***Company Indemnified Party***") from and against any losses, claims, damages, liabilities or expenses or any actions in respect thereof, to which a Company Indemnified Party may become subject under the Securities Act, the Exchange Act, any state blue sky securities laws, any equivalent non-U.S. securities laws or otherwise, insofar as such losses, claims, damages, liabilities or actions arise out of or are based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or in any amendment thereof, in each case at the time such became effective under the Securities Act, or in any Prospectus or in any amendment thereof or supplement thereto, or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus, in the light of the circumstances under which they were made) not misleading, but in each of clauses (i) and (ii), only to the extent that the untrue statement or omission or alleged untrue statement or omission was made in reliance upon and in conformity with written information pertaining to such Holder and furnished to the Company by or on behalf of such Holder specifically for inclusion therein, and, subject to the limitation immediately preceding this clause, shall reimburse, as incurred, the Company Indemnified Parties for any legal or other expenses reasonably incurred by them in connection with investigating, defending or settling any such loss, claim, damage, liability, expense or action in respect thereof. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Holder, or any such director, officer, employees, Affiliates and agents and shall survive the transfer of such Registrable Securities by such Holder, and such Holder shall reimburse the Company, and each such

director, officer, employees, Affiliates and agents for any legal or other expenses reasonably incurred by them in connection with investigating, defending, or settling any such loss, claim, damage, liability, action, or proceeding; *provided*, *however*, that the indemnity amount contained in this Section 2.4(a) shall in no event exceed the net proceeds actually received by such Holder in the sale of Registrable Securities to which such Registration Statement or Prospectus relates.

(b) Promptly after receipt by a Holder Indemnified Party or a Company Indemnified Party (each, an "***Indemnified Party***") of notice of the commencement of any action or proceeding (including a governmental investigation), such Indemnified Party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 2.4, notify the indemnifying party of the commencement thereof; *provided*, that the omission to so notify the indemnifying party will not relieve the indemnifying party from liability under Sections 2.4(a) or 2.4(a) unless and to the extent it did not otherwise learn of such action and the indemnifying party has been materially prejudiced by such failure. In case any such action is brought against any Indemnified Party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof at the indemnifying party's expense, with counsel reasonably satisfactory to such Indemnified Party (who shall not, except with the consent of the Indemnified Party, be counsel to the indemnifying party); *provided*, that any Indemnified Party shall continue to be entitled to participate in the defense of such claim or action, with counsel of its own choice, but the indemnifying party shall not be obligated to reimburse such Indemnified Party for any fees, costs and expenses subsequently incurred by the Indemnified Party in connection with such defense unless (i) the indemnifying party has agreed in writing to pay such fees, costs and expenses, (ii) the indemnifying party has failed to assume the defense of such claim or action within a reasonable time after receipt of notice of such claim or action, (iii) having assumed the defense of such claim or action, the indemnifying party fails to employ counsel reasonably acceptable to the Indemnified Party or to pursue the defense of such claim or action in a reasonably vigorous manner, (iv) the use of counsel chosen by the indemnifying party to represent the Indemnified Party would present such counsel with a conflict of interest or (v) the Indemnified Party has reasonably concluded that there may be one or more legal or equitable defenses available to it and/or other any other Indemnified Party which are different from or additional to those available to the indemnifying party. In no event shall the indemnifying party be liable for the fees and expenses of more than one counsel (together with appropriate local counsel) at any time for any Indemnified Party in connection with any one action or separate but substantially similar or related actions arising in the same jurisdiction out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending or threatened action in respect of which any Indemnified Party is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party unless such settlement (i) includes an unconditional release of such Indemnified Party from all liability on any claims that are the subject matter of such action, in form and substance reasonably satisfactory to such Indemnified Party, and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any Indemnified Party.

(c) If the indemnification provided for in this Section 2.4 is unavailable or insufficient to hold harmless an Indemnified Party under Sections 2.4(a) or 2.4(a), then each indemnifying party shall contribute to the amount paid or payable by such Indemnified Party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to in Sections 2.4(a) or 2.4(a) in such proportion as is appropriate to reflect the relative fault of the indemnifying party or parties on the one hand and the Indemnified Party on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities (or actions in respect thereof) as well as any other relevant equitable considerations. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or a Holder or Holder Indemnified Party, as the case may be, on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid by an Indemnified Party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this Section 2.4 shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any action or claim that is the subject of this Section 2.4(b). The parties agree that it would not be just and equitable if contributions were determined by *pro rata* allocation (even if a Holder was treated as one Person for such purpose) or any other method of allocation that does not take account of the equitable considerations referred to above. Notwithstanding any other provision of this Section 2.4(b), no Holder shall be required to contribute any amount in excess of the amount by which the net proceeds received by such Holder from the sale of the Registrable Securities pursuant to the Registration Statement exceeds the amount of damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(d) The agreements contained in this Section 2.4 shall survive the sale of the Registrable Securities pursuant to the Registration Statement and shall remain in full force and effect, regardless of any termination or cancellation of this Agreement or any investigation made by or on behalf of any Indemnified Party.

ARTICLE III
Transfer Restrictions

3.1 Transfer Restrictions. Each Holder acknowledges and agrees that the following legend shall be imprinted on any certificate or book-entry security entitlement evidencing any of the Registrable Securities to the extent that at the time of issuance such Registrable Securities are not covered by an effective Registration Statement:

> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "***ACT***"), OR UNDER THE SECURITIES LAWS OF ANY STATE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

This legend shall be removed by the Company from any certificate or book-entry security entitlement evidencing the Registrable Securities upon delivery by the holder thereof to the Company of a written request to that effect if at the time of such written request (a) a registration statement under the Securities Act is at that time in effect with respect to the legended security, or (b) the legended security can be transferred in a transaction in compliance with Rule 144, and, in the case of (b), upon the request and in the reasonable discretion of the Company's transfer agent, the holder of such Registrable Securities executes and delivers a representation letter that includes customary representations regarding the holding requirements and whether such holder is an "affiliate" for purposes of Rule 144. The Company represents and warrants to the Purchasers that the Company is not currently a shell company (as defined in Rule 405 promulgated under the Securities Act).

3.2 Rule 144 Compliance. With a view to making available to the Holders of Registrable Securities the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration until such date on which the Holders no longer hold any Registrable Securities, the Company shall:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) use reasonable best efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(c) furnish to any Holder of Registrable Securities, promptly upon request, a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and of the Securities Act and the Exchange Act.

ARTICLE IV
Miscellaneous.

4.1 Remedies; Specific Performance. In the event of a breach or a threatened breach by any party to this Agreement of its obligations under this Agreement, any party injured or to be injured by such breach shall be entitled to specific performance of its rights under this Agreement or to injunctive relief, in addition to being entitled to exercise all rights provided in this Agreement and granted by law, it being agreed by the parties that the remedy at law, including monetary damages, for breach of any such provision will be inadequate compensation for any loss and that any defense or objection in any action for specific performance or injunctive relief for which a remedy at law would be adequate is hereby waived.

4.2 No Waivers. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

4.3 Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

4.4 Notices. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or e-mail as follows:

If to the Company:
Athenex, Inc.
1001 Main Street
Suite 600
Buffalo, NY 14203
Attn: Teresa Bair
Tel. [*]
Fax: [*]
E-mail: [*]

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

Cooley LLP
101 California Street, 5th Floor
San Francisco, CA 94111-5800
E-mail: gmamarca@cooley.com
Attn: Gian-Michele A Marca

If to a Purchaser:

Oaktree Fund Administration, LLC
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: [*]
Email: [*]

With a copy to:
Oaktree Capital Management, L.P.
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: [*]
Email: [*]

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

Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
E-mail: blauta@sullcrom.com
Attn: Ari Blaut

Notices or communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, notices or communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient) and notices or communications sent by e-mail shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) (except that, if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient).

4.5 Headings. Section headings herein are included for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

4.6 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

4.7 Governing Law; Disputes.

(a) Governing Law. This Agreement and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby shall be governed by, and construed in accordance with, the law of the State of New York.

(b) Jurisdiction. Each party hereto hereby irremovably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or tort or otherwise, against such other party in any way relating to this Agreement or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Waiver of Venue. Each party hereto irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement and hereby further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such party is or may be subject, by suit upon judgment.

(d) Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 4.7.

(e) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 4.2.

4.8 Successors and Assigns. This Agreement and the rights and obligations evidenced hereby shall be binding upon and inure to the benefit of the parties hereto and their respective the successors and permitted assigns. The Company will not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Purchasers who hold at least fifty percent (50%) of the Registrable Securities then held by all Purchasers (the "Majority Purchasers"), and no Purchaser may assign this Agreement or any rights or obligations hereunder without the prior written consent of the Company

4.9 Amendments. No provision of this Agreement may be amended, waived or modified other than by an instrument in writing signed by the Company and Holders representing at least fifty percent (50%) of the Registrable Securities then-held by all Holders.

4.10 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

4.14 Termination. This Agreement shall terminate with respect to any Holder upon such time as such Holder ceases to hold or beneficially own any remaining Registrable Securities or upon the dissolution, liquidation or winding up of the Company or a Change of Control; *provided that* Section 2.3, Section 2.4 of this Agreement and this Article IV shall survive such termination.

4.15 No Third Party Beneficiaries. This Agreement is intended for the sole benefit of the parties hereto and their respective permitted successors and assigns and transferees, and is not for the benefit of, nor may any provision hereof be enforced by, any other person; *provided, however*, that the parties hereto hereby acknowledge that the Persons set forth in Section 2.4 shall be express third-party beneficiaries of the obligations of the parties hereto set forth in Section 2.4.

4.16 Language; Currency. This Agreement has been prepared in the English language and the English language shall control its interpretation. In addition, all notices required or permitted to be given hereunder, and all written, electronic, oral or other communications between the parties regarding this Agreement, shall be in the English language. All references to "$" contained in this Agreement shall refer to United States Dollars unless otherwise stated.

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

COMPANY:

Athenex, Inc.
a Delaware Corporation

By: /s/ Johnson Y.N. Lau
Name: Johnson Y.N. Lau
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

OAKTREE-TCDRS STRATEGIC CREDIT, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

EXELON STRATEGIC CREDIT HOLDINGS LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

OAKTREE-NGP STRATEGIC CREDIT, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

OAKTREE-MINN STRATEGIC CREDIT, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

OAKTREE-FORREST MULTI-STRATEGY CREDIT, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

OAKTREE-TBMR STRATEGIC CREDIT FUND C, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

OAKTREE-TBMR STRATEGIC CREDIT FUND F, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

OAKTREE-TBMR STRATEGIC CREDIT FUND G, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

OAKTREE-TSE 16 STRATEGIC CREDIT, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

INPRS STRATEGIC CREDIT HOLDINGS, LLC

By: Oaktree Capital Management, L.P.
Its: Manager

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

OAKTREE GILEAD INVESTMENT FUND, L.P.

By: Oaktree Gilead Investment Fund GP, L.P.
Its: General Partner

By: Oaktree Fund GP, LLC
Its: General Partner

By: Oaktree Fund GP I, L.P.
Its: Managing Member

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Authorized Signatory

By: /s/ Brian Price
Name: Brian Price
Title: Authorized Signatory

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

OAKTREE HUNTINGTON-GCF INVESTMENT FUND, L.P.

By: Oaktree Huntington-GCF Investment Fund GP, L.P.
Its: General Partner

By: Oaktree Huntington-GCF Investment Fund GP, LLC
Its: Managing Member

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Authorized Signatory

By: /s/ Brian Price
Name: Brian Price
Title: Authorized Signatory

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

OAKTREE STRATEGIC INCOME II, INC.

By: Oaktree Fund Advisors, LLC
Its: Investment Advisor

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

OAKTREE SPECIALTY LENDING CORPORATION

By: Oaktree Fund Advisors, LLC
Its: Investment Advisor

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have duly executed this Registration Rights Agreement as of the date first written above.

PURCHASER:

OAKTREE STRATEGIC INCOME CORPORATION

By: Oaktree Fund Advisors, LLC
Its: Investment Advisor

By: /s/ Jessica Dombroff
Name: Jessica Dombroff
Title: Vice President

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

Schedule A

Purchasers

Purchaser	**Shares Issuable Upon Exercise of Warrants**	**Total Registrable Securities**
Oaktree-TCDRS Strategic Credit, LLC	50,319.00	50,319.00
Exelon Strategic Credit Holdings LLC	29,937.00	29,937.00
Oaktree-NGP Strategic Credit LLC	50,503.00	50,503.00
Oaktree-Minn Strategic Credit, LLC	24,407.00	24,407.00
Oaktree-Forrest Multi-Strategy, LLC – Series A	41,636.00	41,636.00
Oaktree-TBMR Strategic Credit Fund C, LLC	23,837.00	23,837.00
Oaktree-TBMR Stategic Credit Fund F, LLC	37,200.00	37,200.00
Oaktree-TBMR Strategic Credit Fund G, LLC	60,915.00	60,915.00
Oaktree-TSE 16 Strategic Credit, LLC	46,575.00	46,575.00
INPRS Strategic Credit Holdings, LLC	13,595.000	13,595.000
Oaktree Gilead Investment Fund, L.P.	91,866.00	91,866.00
Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P.	12,249.00	12,249.00
Oaktree Strategic Income II, Inc.	97,205.00	97,205.00
Oaktree Specialty Lending Corporation	266,052.00	266,052.00
Oaktree Strategic Income Corporation	62,097.00	62,097.00
TOTAL:	**908,393.00**	**908,393.00**

Exhibit A
Form of Selling Stockholder Questionnaire
ATHENEX, INC.

SELLING STOCKHOLDER NOTICE AND QUESTIONNAIRE

The undersigned holder of warrants issued by Athenex, Inc. (the "***Company***") understands that the Company intends to file with the Securities and Exchange Commission a registration statement on Form S-3 (the "***Registration Statement***") for the registration and the 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 June 19, 2020, by and among the Company and the Purchasers party thereto (the "***Registration Rights Agreement***"). All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

In order to sell or otherwise dispose of any Registrable Securities pursuant to the Registration Statement, a holder of Registrable Securities generally will be required to be named as a selling stockholder in the related prospectus or a supplement thereto (as so supplemented, the "***Prospectus***"), deliver the Prospectus to purchasers of Registrable Securities (including pursuant to Rule 172 under the Securities Act) and be bound by the provisions of the Registration Rights Agreement (including certain indemnification provisions, as described therein). Holders must complete and deliver this notice and questionnaire ("***Notice and Questionnaire***") in order to be named as selling stockholders in the Prospectus. Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the Prospectus. Holders of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not named as a selling stockholder in the Registration Statement and the Prospectus.

NOTICE

The undersigned holder (the "***Selling Stockholder***") of Registrable Securities hereby gives notice to the Company of its intention to sell or otherwise dispose of Registrable Securities owned by it and listed below in Part III(b) pursuant to the Registration Statement. The undersigned, by signing and returning this Notice and Questionnaire, understands and agrees that it will be bound by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is materially accurate and complete:

QUESTIONNAIRE

PART I. Name:

(a) Full legal name of the Selling Stockholder:

_____

(b) Full legal name of the registered holder (if not the same as Part I(a) above) through which the Registrable Securities listed in Part III below are held:

_____

(c) Full legal name of any natural control person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the Registrable Securities listed in Part III below):

_____

PART II. Notices to Selling Stockholder:

(a) Address:

_____

(b) Telephone:

_____

(c) Fax:

_____

(d) Contact person:

_____

(e) E-mail address of contact person:

_____

PART III. Beneficial Ownership of Registrable Securities:

(a) Type and number of Registrable Securities beneficially owned:

_____

_____

_____

(b) Number of shares of Common Stock to be registered for resale pursuant to this Notice and Questionnaire:

_____

_____

_____

PART IV. Broker-Dealer Status:

(a) Are you a broker-dealer?

Yes ☐ No ☐

(b) If you answered "yes" to Part IV(a) above, did you receive your Registrable Securities as compensation for investment banking services provided to the Company?

Yes ☐ No ☐

Note: If you answered "no", the SEC'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 ☐

If you answered "yes", provide a narrative explanation below:

_____

_____

_____

(d) If you are an affiliate of a broker-dealer, do you certify that you bought 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 you answered "no", the SEC's staff has indicated that you should be identified as an underwriter in the Registration Statement.

PART V. Beneficial Ownership of Other Securities of the Company Owned by the Selling Stockholder:

Except as set forth below in this Part V, the undersigned is not the beneficial or registered owner of any securities of the Company, other than the Registrable Securities listed above in Part III.

Type and amount of other securities beneficially owned:

_____

_____

_____

PART VI. Relationships with the Company:

(a) Have you or any of your affiliates, officers, directors or principal equity holders (owners of 5% or more of the equity securities of the undersigned) held any position or office or have you had any other material relationship with the Company (or its predecessors or affiliates) within the past three years?

Yes ☐ No ☐

(b) If your response to Part VI(a) above is "yes", please state the nature and duration of your relationship with the Company:

_____

_____

_____

PART VII. Plan of Distribution:

The undersigned has reviewed the form of Plan of Distribution attached as Annex I hereto, and hereby confirms that, except as set forth below, the information contained therein regarding the undersigned and its plan of distribution is correct and complete.

State any exceptions here:

The undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof and prior to the effective date of any applicable Registration Statement. All notices hereunder shall be delivered as set forth in the Registration Rights Agreement. In the absence of any such notification, the Company shall be entitled to continue to rely on the accuracy of the information in this Notice and Questionnaire.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Parts I through VII above and the inclusion of such information in the Registration Statement and the Prospectus. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of any such Registration Statement and Prospectus.

By signing below, the undersigned acknowledges that it understands its obligation to comply, and agrees that it will comply, with the provisions of the Exchange Act and the rules and regulations thereunder, particularly Regulation M in connection with any offering of Registrable Securities pursuant to the Registration Statement. The undersigned also acknowledges that it understands that the answers to this Notice and Questionnaire are furnished for use in connection with registration statements filed pursuant to the Registration Rights Agreement and any amendments or supplements thereto filed with the SEC pursuant to the Securities Act.

The undersigned confirms that, to the best of his/her knowledge and belief, the foregoing answers to this Notice and Questionnaire are correct.

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.

Dated: _____

Selling Stockholder

_____

Name of Entity or Individual

By: _____

Name: _____

Title: _____

Annex I

Plan of Distribution

ATHENEX, INC.

AMENDED AND RESTATED
2017 OMNIBUS INCENTIVE PLAN

1. Purposes of the Plan. The purposes of this Plan are to attract and retain the best available personnel, to provide additional incentives to Employees, Directors and Consultants and to promote the success of the Company's business.

2. Definitions. The following definitions shall apply as used herein and in the individual Award Agreements except as defined otherwise in an individual Award Agreement. In the event a term is separately defined in an individual Award Agreement, such definition shall supersede the definition contained in this Section 2.

(a) "Administrator" means the Board or any of the Committees appointed to administer the Plan.

(b) "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 promulgated under the Exchange Act.

(c) "Applicable Laws" means the legal requirements relating to the Plan and the Awards under applicable provisions of federal securities laws, state corporate and securities laws, the Code, the rules of any applicable stock exchange or national market system, and the rules of any non-U.S. jurisdiction applicable to Awards granted to residents therein.

(d) "Assumed" means that pursuant to a Corporate Transaction either (i) the Award is expressly affirmed by the Company or (ii) the contractual obligations represented by the Award are expressly assumed (and not simply by operation of law) by the successor entity or its Parent in connection with the Corporate Transaction with appropriate adjustments to the number and type of securities of the successor entity or its Parent subject to the Award and the exercise or purchase price thereof which at least preserves the compensation element of the Award existing at the time of the Corporate Transaction as determined in accordance with the instruments evidencing the agreement to assume the Award.

(e) "Award" means the grant of an Option, SAR, Dividend Equivalent Right, Restricted Stock, Restricted Stock Unit, Cash-Based Award or other right or benefit under the Plan.

(f) "Award Agreement" means the written agreement evidencing the grant of an Award executed by the Company and the Grantee, including any amendments thereto.

(g) "Board" means the Board of Directors of the Company.

(h) "Cash-Based Award" means an award denominated in cash that may be settled in cash and/or Shares, which may be subject to restrictions, as established by the Administrator.

(i) "Cause" means, with respect to the termination by the Company or a Related Entity of the Grantee's Continuous Service, "Cause" as such term (or word of like import) is expressly defined in a then-effective written agreement between the Grantee and the Company or such Related Entity, or in the absence of such then-effective written agreement and definition, the Grantee's: (i) performance of any act or failure to perform any act in bad faith and to the detriment of the Company or a Related Entity; (ii) dishonesty, intentional misconduct or material breach of any agreement with the Company or a Related Entity; or (iii) commission of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person, in each case as determined by the Administrator; provided, however, that with regard to any agreement that defines "Cause" as occurring upon the consummation of, or in connection with, a Corporate Transaction or a Change in Control, such definition of "Cause" shall not apply until a Corporate Transaction or a Change in Control is actually consummated.

(j) "Change in Control" means a change in ownership or control of the Company effected through either of the following types of transactions:

(i) the direct or indirect acquisition by any person or related group of persons (other than an acquisition from or by the Company or by a Company-sponsored employee benefit plan or by a person that directly or indirectly controls, is controlled by, or is under common control with, the Company) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's stockholders which a majority of the Continuing Directors who are not Affiliates or Associates of the offeror do not recommend such stockholders accept, or

(ii) a change in the composition of the Board over a period of twelve (12) months or less such that a majority of the Board members (rounded up to the next whole number) ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who are Continuing Directors.

(k) "Code" means the Internal Revenue Code of 1986, as amended.

(l) "Committee" means any committee composed of members of the Board appointed by the Board to administer the Plan.

(m) "Common Stock" means the common stock of the Company.

(n) "Company" means Athenex, Inc., a Delaware corporation, or any successor entity that adopts the Plan in connection with a Corporate Transaction.

(o) "Consultant" means any person (other than an Employee or a Director, solely with respect to rendering services in such person's capacity as a Director) who is engaged by the Company or any Related Entity to render consulting or advisory services to the Company or such Related Entity.

(p) "Continuing Directors" means members of the Board who either (i) have been Board members continuously for a period of at least twelve (12) months or (ii) have been Board members for less than twelve (12) months and were elected or nominated for election as Board members by at least a majority of the Board members described in clause (i) who were still in office at the time such election or nomination was approved by the Board.

(q) "Continuous Service" means that the provision of services to the Company or a Related Entity by an Employee, Director or Consultant in any capacity has not been interrupted or terminated. In jurisdictions requiring notice in advance of an effective termination as an Employee, Director or Consultant, Continuous Service shall be deemed terminated upon the actual cessation of providing services to the Company or a Related Entity notwithstanding any required notice period that must be fulfilled before a termination as an Employee, Director or Consultant can be effective under Applicable Laws. A Grantee's Continuous Service shall be deemed to have terminated either upon an actual termination of Continuous Service or upon the entity to which the Grantee provides services ceasing to be a Related Entity. Continuous Service shall not be considered interrupted in the case of (i) any approved leave of absence, (ii) transfers of an Employee, Director or Consultant among the Company, any Related Entity, or any successor, in any capacity, or (iii) any change in status of an Employee, Director or Consultant as long as the individual remains in the service of the Company or a Related Entity in any capacity (except as otherwise provided in the Award Agreement). Notwithstanding the foregoing, except as otherwise determined by the Administrator, in the event of any spin-off of a Related Entity, service as an Employee, Director or Consultant for such Related Entity following such spin-off shall be deemed to be Continuous Service for purposes of the Plan and any Award under the Plan. An approved leave of absence shall include sick leave, military leave, or any other authorized personal leave. For purposes of each Incentive Stock Option granted under the Plan, if such leave exceeds three (3) months, and reemployment upon expiration of such leave is not guaranteed by statute or contract, then the Incentive Stock Option shall be treated as a Non-Qualified Stock Option on the day three (3) months and one (1) day following the expiration of such three (3) month period.

(r) "Corporate Transaction" means any of the following transactions, provided, however, that the Administrator shall determine under parts (iv) and (v) whether multiple transactions are related, and its determination shall be final, binding and conclusive:

(i) a merger or consolidation in which the Company is not the surviving entity and securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities are transferred to a person or persons different from those who held such securities immediately prior to such merger or consolidation, except for a transaction the principal purpose of which is to change the state in which the Company is incorporated;

(ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company;

(iii) the complete liquidation or dissolution of the Company;

(iv) any reverse merger or series of related transactions culminating in a reverse merger (including, but not limited to, a tender offer followed by a reverse merger) in which the Company is the surviving entity but (A) the shares of Common Stock outstanding immediately prior to such merger are converted or exchanged by virtue of the merger into other property, whether in the form of securities, cash or otherwise, and (B) in which securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities are transferred to a person or persons different from those who held such securities immediately prior to such merger or the initial transaction culminating in such merger, but excluding any such transaction or series of related transactions that the Administrator determines shall not be a Corporate Transaction; or

(v) acquisition in a single or series of related transactions by any person or related group of persons (other than the Company or by a Company-sponsored employee benefit plan) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities but excluding any such transaction or series of related transactions that the Administrator determines shall not be a Corporate Transaction.

(s) "Director" means a member of the Board or the board of directors of any Related Entity.

(t) "Disability" means a "Disability" as defined under the long-term disability policy of the Company or the Related Entity to which the Grantee provides services regardless of whether the Grantee is covered by such policy. If the Company or the Related Entity to which the Grantee provides service does not have a long-term disability plan in place, "Disability" means that a Grantee is unable to carry out the responsibilities and functions of the position held by the Grantee by reason of any medically determinable physical or mental impairment for a period of not less than ninety (90) consecutive days. A Grantee will not be considered to have incurred a Disability unless he or she furnishes proof of such impairment sufficient to satisfy the Administrator in its discretion.

(u) "Dividend Equivalent Right" means a right entitling the Grantee to compensation measured by dividends paid with respect to Common Stock, provided that no such right may be granted with respect to Options or SARs. Dividend Equivalent Rights granted in connection with a Restricted Stock Unit shall be subject to the vesting of the underlying Restricted Stock Unit.

(v) "Employee" means any person, including an Officer, who is in the employ of the Company or any Related Entity, subject to the control and direction of the Company or any Related Entity as to both the work to be performed and the manner and method of performance. The payment of a director's fee by the Company or a Related Entity shall not be sufficient to constitute "employment" by the Company.

(w) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(x) "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on one or more established stock exchanges or national market systems, including without limitation, The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market of The NASDAQ Stock Market LLC, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on the principal exchange or system on which the Common Stock is listed (as determined by the Administrator) on the date of determination (or, if no closing sales price or closing bid was reported on that date, as applicable, on the last trading date such closing sales price or closing bid was reported), as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted on an automated quotation system (including the OTC Bulletin Board) or by a recognized securities dealer, its Fair Market Value shall be the closing sales price for such stock as quoted on such system or by such securities dealer on the date of determination, but if selling prices are not reported, the Fair Market Value of a share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the date of determination (or, if no such prices were reported on that date, on the last date such prices were reported), as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock of the type described in (i) and (ii), above, the Fair Market Value thereof shall be determined by the Administrator in good faith.

(y) "Grantee" means an Employee, Director or Consultant who receives an Award under the Plan.

(z) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code.

(aa) "Non-Qualified Stock Option" means an Option not intended to qualify as an Incentive Stock Option.

(bb) "Officer" means a person who is an officer of the Company or a Related Entity within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(cc) "Option" means an option to purchase Shares pursuant to an Award Agreement granted under the Plan.

(dd) "Parent" means a "parent corporation", whether now or hereafter existing, as defined in Section 424(e) of the Code.

(ee) "Performance Period" means the period of time during which the performance goals must be met in order to determine the degree of payout and/or vesting with respect to, or the amount or entitlement to, an Award.

(ff) "Plan" means this Amended and Restated 2017 Omnibus Incentive Plan, as amended from time to time.

(gg) "Related Entity" means any Parent or Subsidiary of the Company.

(hh) "Replaced" means that pursuant to a Corporate Transaction the Award is replaced with a comparable stock award or a cash incentive award or program of the Company, the successor entity (if applicable) or the Parent of either of them which preserves the compensation element of such Award existing at the time of the Corporate Transaction and provides for subsequent payout in accordance with the same (or, for the Grantee, a more favorable) vesting schedule applicable to such Award. The determination of Award comparability shall be made by the Administrator and its determination shall be final, binding and conclusive.

(ii) "Restricted Stock" means Shares issued under the Plan to the Grantee for such consideration, if any, and subject to such restrictions on transfer, rights of first refusal, repurchase provisions and forfeiture provisions, if any, and other terms and conditions as established by the Administrator. Dividends payable in connection with a Restricted Stock Award shall only be payable upon the vesting of the underlying Share of Restricted Stock.

(jj) "Restricted Stock Units" means an Award which may be earned based on criteria, if any, established by the Administrator, including being earned in whole or in part upon the passage of time or the attainment of performance criteria established by the Administrator, and which may be settled for cash, Shares or other securities or a combination of cash, Shares or other securities as established by the Administrator.

(kk) "Rule 16b-3" means Rule 16b-3 promulgated under the Exchange Act or any successor thereto.

(ll) "SAR" means a stock appreciation right entitling the Grantee to Shares or cash compensation, as established by the Administrator, measured by appreciation in the value of Common Stock.

(mm) "Share" means a share of the Common Stock.

(nn) "Subsidiary" means a "subsidiary corporation", whether now or hereafter existing, as defined in Section 424 (f) of the Code.

3. Stock and Cash Subject to the Plan.

(a) Subject to the provisions of Section 10 below, the maximum aggregate number of Shares which may be issued pursuant to all Awards shall be 7,700,000 Shares. Notwithstanding the foregoing, subject to the provisions of Section 10, below, the maximum aggregate number of Shares that may be issued pursuant to Incentive Stock Options is 7,700,000 Shares. The Shares to be issued pursuant to Awards may be authorized, but unissued, or reacquired Common Stock.

(b) Except as otherwise provided by this Section 3(b), any Shares covered by an Award (or portion of an Award) which is forfeited, canceled or expires (whether voluntarily or involuntarily) shall be deemed not to have been issued for purposes of determining the maximum aggregate number of Shares which may be issued under the Plan. Shares that actually have been issued under the Plan pursuant to an Award shall not be returned to the Plan and shall not become available for future issuance under the Plan. Any Shares covered by an Award which are surrendered (i) in payment of the Award exercise or purchase price (including pursuant to the "net exercise" of an option pursuant to Section 7(b)(v)) or (ii) in satisfaction of tax withholding obligations incident to the exercise, vesting or settlement of an Award shall be deemed to have been issued for purposes of determining the maximum number of Shares which may be issued pursuant to all Awards under the Plan. SARs payable in Shares shall reduce the maximum aggregate number of Shares which may be issued under the Plan by the number of Shares covered by the SAR.

4. Administration of the Plan.

(a) Plan Administrator.

(i) Administration with Respect to Directors and Officers. With respect to grants of Awards to Directors, or Employees who are also Officers or Directors of the Company, the Plan shall be administered by (A) the Board or (B) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the Applicable Laws and to permit such grants and related transactions under the Plan to be exempt from Section 16(b) of the Exchange Act in accordance with Rule 16b-3. Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. In the case of Awards granted to Directors, or Employees who are also Officers or Directors of the Company, references to the "Administrator" or to a "Committee" shall be deemed to be references to such Committee.

(ii) Administration With Respect to Consultants and Other Employees. With respect to grants of Awards to Employees or Consultants who are neither Directors nor Officers of the Company, the Plan shall be administered by (A) the Board or (B) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the Applicable Laws. Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. The Board or such Committee may authorize one or more Officers to grant such Awards and may limit such authority as the Board or such Committee determines from time to time.

(b) Powers of the Administrator. Subject to Applicable Laws, the provisions of the Plan (including any other powers given to the Administrator hereunder) and the limitation set forth in Section 4(c) below, and except as otherwise provided by the Board, the Administrator shall have the authority, in its discretion:

(i) to select the Employees, Directors and Consultants to whom Awards may be granted from time to time hereunder;

(ii) to determine whether and to what extent Awards are granted hereunder;

(iii) to determine the number of Shares or the amount of cash or other consideration to be covered by each Award granted hereunder;

(iv) to approve forms of Award Agreements for use under the Plan;

(v) to determine the terms and conditions of any Award granted hereunder;

(vi) to amend the terms of any outstanding Award granted under the Plan, provided that any amendment that would adversely affect the Grantee's rights under an outstanding Award shall not be made without the Grantee's written consent; provided, however, that an amendment or modification that may cause an Incentive Stock Option to become a Non-Qualified Stock Option shall not be treated as adversely affecting the rights of the Grantee;

(vii) to prescribe, amend and rescind rules and regulations relating to the Plan and to define terms not otherwise defined herein;

(viii) to construe and interpret the terms of the Plan and Awards, including without limitation, any notice of award or Award Agreement, granted pursuant to the Plan;

(ix) to approve corrections in the documentation or administration of any Award;

(x) to grant Awards to Employees, Directors and Consultants employed outside the United States or to otherwise adopt or administer such procedures or subplans that the Administrator deems appropriate or necessary on such terms and conditions different from those specified in the Plan as may, in the judgment of the Administrator, be necessary or desirable to further the purpose of the Plan; and

(xi) to take such other action, not inconsistent with the terms of the Plan, as the Administrator deems appropriate.

The express grant in the Plan of any specific power to the Administrator shall not be construed as limiting any power or authority of the Administrator; provided, however, that the Administrator may not exercise any right or power reserved to the Board. Any decision made, or action taken, by the Administrator in connection with the administration of this Plan in accordance with the terms hereof shall be final, conclusive and binding on all persons having an interest in the Plan.

(c) Repricing Prohibited Absent Stockholder Approval. Notwithstanding any provision of the Plan, except for adjustments pursuant to Section 10 below, neither the Board, the Committee nor the Administrator may reprice, adjust or amend the exercise price of Options or the base appreciation amount of SARs previously awarded to any Grantee, whether through amendment, cancellation and replacement grant, or any other means, unless such action is approved by the stockholders of the Company. In addition, notwithstanding any other provision in the Plan to the contrary, an Option or SAR may not be surrendered in consideration of, or exchanged for cash, other Awards, or a new Option or SAR having an exercise price or base appreciation amount below that of the Option or SAR which was surrendered or exchanged, unless the exchange occurs in connection with a merger, acquisition or similar transaction as set forth in Section 11 below, or such action is approved by the stockholders of the Company. Any amendment or repeal of this Section 4(c) shall require the approval of the stockholders of the Company.

(d) Conditional Awards.

(i) Prior to the approval of the Plan (as hereby amended and restated) by the stockholders of the Company, the Administrator may grant Options that are conditioned on such approval occurring no later than the 2020 annual meeting of the stockholders of the Company ("Conditional Awards"). If the stockholders of the Company fail to approve the Plan by the date of such annual meeting, then all Conditional Awards shall be automatically cancelled and immediately become null and void.

(ii) Conditional Awards may be granted under the Plan only under the following conditions: (1) a Conditional Award may only be granted in the form of an Option; (2) a Conditional Award shall be clearly identified as a Conditional Award; (3) the grant of a Conditional Award shall be expressly conditioned on the approval of the Plan by the stockholders of the Company no later than the 2020 annual meeting of the stockholders of the Company; and (4) notwithstanding any other provision of the Plan, no Grantee of a Conditional Award shall have any right to exercise the Option or receive Shares prior to such stockholder approval.

(e) Indemnification. In addition to such other rights of indemnification as they may have as members of the Board or as Officers or Employees of the Company or a Related Entity, members of the Board and any Officers or Employees of the Company or a Related Entity to whom authority to act for the Board, the Administrator or the Company is delegated shall be defended and indemnified by the Company to the extent permitted by law on an after-tax basis against all reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with the defense of any claim, investigation, action, suit or proceeding, or in connection with any appeal related thereto, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan, or any Award granted hereunder, and against all amounts paid by them in settlement thereof (provided such settlement is approved by the Company) or paid by them in satisfaction of a judgment in any such claim, investigation, action, suit or proceeding, except in relation to matters as to which such member of the Board or Officer or Employee shall be adjudged in such claim, investigation, action, suit or proceeding to be liable for gross negligence, bad faith or intentional misconduct; provided, however, that within thirty (30) days after the institution of such claim, investigation, action, suit or proceeding, such member of the Board or Officer or Employee shall offer to the Company, in writing, the opportunity for the Company to defend such claim, investigation, action, suit or proceeding at the Company's expense.

5. Eligibility. Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants. Incentive Stock Options may be granted only to Employees of the Company or a Parent or a Subsidiary of the Company. An Employee, Director or Consultant who has been granted an Award may, if otherwise eligible, be granted additional Awards. Awards may be granted to such Employees, Directors or Consultants who are residing in non-U.S. jurisdictions as the Administrator may determine from time to time.

6. Terms and Conditions of Awards.

(a) Types of Awards. The Administrator is authorized under the Plan to award any type of arrangement to an Employee, Director or Consultant that is not inconsistent with the provisions of the Plan and that by its terms involves or might involve the issuance of (i) Shares, (ii) cash or (iii) an Option, SAR or similar right with a fixed or variable price related to the Fair Market Value of the Shares and with an exercise or conversion privilege related to the passage of time, the occurrence of one or more events, or the satisfaction of performance criteria or other conditions. Such awards may include, without limitation, Options, SARs, sales or bonuses of Restricted Stock, Restricted Stock Units, Cash-Based Awards or Dividend Equivalent Rights, and an Award may consist of one such security or benefit, or two (2) or more of them in any combination or alternative.

(b) Designation of Award. Each Award shall be designated in the Award Agreement. In the case of an Option, the Option shall be designated as either an Incentive Stock Option or a Non-Qualified Stock Option. However, notwithstanding such designation, an Option will qualify as an Incentive Stock Option under the Code only to the extent the $100,000 limitation of Section 422(d) of the Code is not exceeded. The $100,000 limitation of Section 422(d) of the Code is calculated based on the aggregate Fair Market Value of the Shares subject to Options designated as Incentive Stock Options which become exercisable for the first time by a Grantee during any calendar year (under all plans of the Company or any Parent or Subsidiary of the Company). For purposes of this calculation, Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares shall be determined as of the grant date of the relevant Option. In the event that the Code or the regulations promulgated thereunder are amended after the date the Plan becomes effective to provide for a different limit on the Fair Market Value of Shares permitted to be subject to Incentive Stock Options, then such different limit will be automatically incorporated herein and will apply to any Options granted after the effective date of such amendment.

(c) Conditions of Award. Subject to the terms of the Plan, the Administrator shall determine the provisions, terms, and conditions of each Award including, but not limited to, the Award vesting schedule (subject to Section 6(m) below), repurchase provisions, rights of first refusal, forfeiture provisions, form of payment (cash, Shares, or other consideration) upon settlement of the Award, payment contingencies and satisfaction of any performance criteria. The performance criteria established by the Administrator may be based on one or more objective or subjective criteria established by the Administrator. The performance criteria may be applicable to the Company, Related Entities and/or any individual business units of the Company or any Related Entity and may be measured over any specified period, including but not limited to quarterly, semi-annually, annually or cumulatively over a period of years, on an absolute basis or relative to a pre-established target, to previous years' results or to a designated comparison group, in each case as specified by the Administrator. Partial achievement of the specified criteria may result in a payment or vesting corresponding to the degree of achievement as specified in the Award Agreement.

(d) Acquisitions and Other Transactions. The Administrator may issue Awards under the Plan in settlement, assumption or substitution for outstanding awards or obligations to grant future awards in connection with the Company or a Related Entity acquiring another entity, an interest in another entity or an additional interest in a Related Entity whether by merger, stock purchase, asset purchase or other form of transaction.

(e) Deferral of Award Payment. The Administrator may establish one or more programs under the Plan to permit selected Grantees the opportunity to elect to defer receipt of consideration upon exercise of an Award, satisfaction of performance criteria, or other event that absent the election would entitle the Grantee to payment or receipt of Shares or other consideration under an Award. The Administrator may establish the election procedures, the timing of such elections, the mechanisms for payments of, and accrual of interest or other earnings, if any, on amounts, Shares or other consideration so deferred, and such other terms, conditions, rules and procedures that the Administrator deems advisable for the administration of any such deferral program.

(f) Separate Programs. The Administrator may establish one or more separate programs under the Plan for the purpose of issuing particular forms of Awards to one or more classes of Grantees on such terms and conditions as determined by the Administrator from time to time.

(g) Individual Limitations on Awards.

(i) Individual Limit for Options and SARs. The maximum number of Shares with respect to which Options and SARs may be granted to any Grantee in any calendar year shall be 500,000 Shares. In connection with a Grantee's commencement of Continuous Service, a Grantee may be granted Options and SARs for up to an additional 500,000 Shares which shall not count against the limit set forth in the previous sentence. The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization pursuant to Section 10 below.

(ii) Individual Limit for Restricted Stock and Restricted Stock Units. The maximum number of Shares with respect to which Restricted Stock and Restricted Stock Units may be granted to any Grantee in any calendar year shall be 500,000 Shares. The foregoing limitation shall be adjusted proportionately in connection with any change in the Company's capitalization pursuant to Section 10 below.

(iii) Individual Limit for Cash-Based Awards. With respect to each twelve (12) month period that constitutes or is part of each Performance Period, the maximum amount that may be paid to a Grantee pursuant to a Cash-Based Award shall be $1,000,000. In addition, the foregoing limitation shall be prorated for any Performance Period consisting of fewer than twelve (12) months by multiplying such limitation by a fraction, the numerator of which is the number of months in the Performance Period and the denominator of which is twelve (12).

(iv) Individual Limit for Awards to Members of the Board. The maximum number of Shares with respect to which Awards may be granted to any member of the Board (in consideration for such member's service as a member of the Board) in any calendar year shall be 200,000 Shares.

(h) Deferral. If the vesting or receipt of Shares or cash under an Award is deferred to a later date, any amount (whether denominated in Shares or cash) paid in addition to the original number of Shares or amount of cash subject to such Award will not be treated as an increase in the number of Shares or amount of cash subject to the Award if the additional amount is based either on a reasonable rate of interest or on one or more predetermined actual investments such that the amount payable by the Company at the later date will be based on the actual rate of return of a specific investment (including any decrease as well as any increase in the value of an investment).

(i) Early Exercise. The Award Agreement may, but need not, include a provision whereby the Grantee may elect at any time while an Employee, Director or Consultant to exercise any part or all of the Award prior to full vesting of the Award. Any unvested Shares received pursuant to such exercise may be subject to a repurchase right in favor of the Company or a Related Entity or to any other restriction the Administrator determines to be appropriate.

(j) Term of Award. The term of each Award shall be the term stated in the Award Agreement; provided, however, that the term of an Incentive Stock Option shall be no more than ten (10) years from the date of grant thereof. However, in the case of an Incentive Stock Option granted to a Grantee who, at the time the Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary of the Company, the term of the Incentive Stock Option shall be five (5) years from the date of grant thereof or such shorter term as may be provided in the Award Agreement. Notwithstanding the foregoing, the specified term of any Award shall not include any period for which the Grantee has elected to defer the receipt of the Shares or cash issuable pursuant to the Award.

(k) Transferability of Awards. Incentive Stock Options may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Grantee, only by the Grantee. Other Awards shall be transferable (i) by will and by the laws of descent and distribution and (ii) during the lifetime of the Grantee, to the extent and in the manner authorized by the Administrator but only to the extent such transfers are made to family members, to family trusts, to family controlled entities, to charitable organizations or pursuant to domestic relations orders or agreements, in all cases without payment for such transfers to the Grantee. Notwithstanding the foregoing, the Grantee may designate one or more beneficiaries of the Grantee's Award in the event of the Grantee's death on a beneficiary designation form provided by the Administrator.

(l) Time of Granting Awards. The date of grant of an Award shall for all purposes be the date on which the Administrator makes the determination to grant such Award, or such other later date as is determined by the Administrator.

(m) Minimum Vesting Periods. Awards granted under the Plan shall not vest for at least one year after the date of grant, except that up to a maximum of five percent (5%) of the maximum aggregate number of Shares that may be issued under the Plan set forth in Section 3(a) above may be issued pursuant to Awards without regard for any such minimum vesting period.

7. Award Exercise or Purchase Price, Consideration and Taxes.

(a) Exercise or Purchase Price. The exercise or purchase price, if any, for an Award shall be as follows:

(i) In the case of an Incentive Stock Option:

(A) granted to an Employee who, at the time of the grant of such Incentive Stock Option owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary of the Company, the per Share exercise price shall be not less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of grant; or

(B) granted to any Employee other than an Employee described in the preceding paragraph, the per Share exercise price shall be not less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Non-Qualified Stock Option, the per Share exercise price shall be not less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(iii) In the case of SARs, the base appreciation amount shall not be less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(iv) In the case of other Awards, such price as is determined by the Administrator.

(v) Notwithstanding the foregoing provisions of this Section 7(a), in the case of an Award issued pursuant to Section 6(d), above, the exercise or purchase price for the Award shall be determined in accordance with the provisions of the relevant instrument evidencing the agreement to issue such Award.

(b) Consideration. Subject to Applicable Laws, the consideration to be paid for the Shares to be issued upon exercise or purchase of an Award, including the method of payment, shall be determined by the Administrator. In addition to any other types of consideration the Administrator may determine, the Administrator is authorized to accept as consideration for Shares issued under the Plan the following, provided that the portion of the consideration equal to the par value of the Shares must be paid in cash or other legal consideration permitted by the Delaware General Corporation Law:

(i) cash;

(ii) check;

(iii) surrender of Shares or delivery of a properly executed form of attestation of ownership of Shares as the Administrator may require which have a Fair Market Value on the date of surrender or attestation equal to the aggregate exercise price of the Shares as to which said Award shall be exercised;

(iv) with respect to Options, if the exercise occurs when the Common Stock is listed on one or more established stock exchanges or national market systems, including without limitation the NASDAQ Stock Market, payment through a broker-dealer sale and remittance procedure pursuant to which the Grantee (A) shall provide written instructions to a Company designated brokerage firm to effect the immediate sale of some or all of the purchased Shares and remit to the Company sufficient funds to cover the aggregate exercise price payable for the purchased Shares and (B) shall provide written directives to the Company to deliver the certificates for the purchased Shares directly to such brokerage firm in order to complete the sale transaction;

(v) with respect to Options, payment through a "net exercise" such that, without the payment of any funds, the Grantee may exercise the Option and receive the net number of Shares equal to (i) the number of Shares as to which the Option is being exercised, multiplied by (ii) a fraction, the numerator of which is the Fair Market Value per Share (on such date as is determined by the Administrator) less the exercise price per Share, and the denominator of which is such Fair Market Value per Share (the number of net Shares to be received shall be rounded down to the nearest whole number of Shares); or

(vi) any combination of the foregoing methods of payment.

The Administrator may at any time or from time to time, by adoption of or by amendment to the standard forms of Award Agreement described in Section 4(b)(iv), or by other means, grant Awards which do not permit all of the foregoing forms of consideration to be used in payment for the Shares or which otherwise restrict one or more forms of consideration.

(c) Taxes. No Shares or cash shall be delivered under the Plan to any Grantee or other person until such Grantee or other person has made arrangements acceptable to the Administrator for the satisfaction of any non-U.S., federal, state, or local income and employment tax withholding obligations, including, without limitation, obligations incident to the receipt of Shares or cash. The Administrator may provide in any Award Agreement that, upon exercise or vesting of an Award, the Company shall, at the election of the Grantee, withhold or collect from the Grantee an amount sufficient to satisfy such tax obligations, including, but not limited to, by surrender of the whole number of Shares covered by the Award, if applicable, sufficient to satisfy the minimum applicable tax withholding obligations incident to the exercise or vesting of an Award (reduced to the lowest whole number of Shares if such number of Shares withheld would result in withholding a fractional Share with any remaining tax withholding settled in cash).

8. Exercise of Award.

(a) Procedure for Exercise; Rights as a Stockholder.

(i) Any Award granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator under the terms of the Plan and specified in the Award Agreement.

(ii) An Award shall be deemed to be exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Award by the person entitled to exercise the Award and full payment for the Shares with respect to which the Award is exercised has been made, including, to the extent selected, use of the broker-dealer sale and remittance procedure to pay the purchase price as provided in Section 7(b)(iv).

(b) Exercise of Award Following Termination of Continuous Service.

(i) An Award may not be exercised after the termination date of such Award set forth in the Award Agreement and may be exercised following the termination of a Grantee's Continuous Service only to the extent provided in the Award Agreement.

(ii) Where the Award Agreement permits a Grantee to exercise an Award following the termination of the Grantee's Continuous Service for a specified period, the Award shall terminate to the extent not exercised on the last day of the specified period or the last day of the original term of the Award, whichever occurs first.

(iii) Any Award designated as an Incentive Stock Option to the extent not exercised within the time permitted by law for the exercise of Incentive Stock Options following the termination of a Grantee's Continuous Service shall convert automatically to a Non-Qualified Stock Option and thereafter shall be exercisable as such to the extent exercisable by its terms for the period specified in the Award Agreement.

9. Conditions Upon Issuance of Shares.

(a) If at any time the Administrator determines that the delivery of Shares pursuant to the exercise, vesting or any other provision of an Award is or may be unlawful under Applicable Laws, the vesting or right to exercise an Award or to otherwise receive Shares pursuant to the terms of an Award shall be suspended until the Administrator determines that such delivery is lawful and shall be further subject to the approval of counsel for the Company with respect to such compliance. The Company shall have no obligation to effect any registration or qualification of the Shares under federal or state laws.

(b) As a condition to the exercise of an Award, the Company may require the person exercising such Award to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by any Applicable Laws.

10. Adjustments Upon Changes in Capitalization. Subject to any required action by the stockholders of the Company and Section 11 hereof, the number of Shares covered by each outstanding Award, and the number of Shares which have been authorized for issuance under the Plan but as to which no Awards have yet been granted or which have been returned to the Plan, the exercise or purchase price of each such outstanding Award and the numerical limits set forth in Section 6(g), as well as any other terms that the Administrator determines require adjustment, shall be proportionately adjusted for (i) any increase or decrease in the number of issued Shares resulting from a stock split, reverse stock split, stock dividend, recapitalization, combination or reclassification of the Shares, or similar transaction affecting the Shares, (ii) any other increase or decrease in the number of issued Shares effected without receipt of consideration by the Company, or (iii) any other transaction with respect to Common Stock including a corporate merger, consolidation, acquisition of property or stock, separation (including a spin-off or other distribution of stock or property), reorganization, liquidation (whether partial or complete) or any similar transaction; provided, however that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." In the event of any distribution of cash or other assets to stockholders other than a normal cash dividend, the Administrator shall also make such adjustments as provided in this Section 10 or substitute, exchange or grant Awards to effect such adjustments (collectively "adjustments"). Any such adjustments to outstanding Awards will be effected in a manner that precludes the enlargement of rights and benefits under such Awards. In connection with the foregoing adjustments, the Administrator may, in its discretion, prohibit the exercise of Awards or other issuance of Shares, cash or other consideration pursuant to Awards during certain periods of time. Except as the Administrator determines, no issuance by the Company of shares of any class, or securities convertible into shares of any class, shall affect, and no adjustment by reason hereof shall be made with respect to, the number or price of Shares subject to an Award.

11. Corporate Transactions and Changes in Control.

(a) Termination of Award to Extent Not Assumed in Corporate Transaction. Effective upon the consummation of a Corporate Transaction, all outstanding Awards under the Plan shall terminate. However, all such Awards shall not terminate to the extent they are Assumed in connection with the Corporate Transaction.

(b) Acceleration of Award Upon Corporate Transaction or Change in Control. In the event Awards are not Assumed or Replaced in connection with a Corporate Transaction or Change in Control, the Administrator shall have the authority (including at the time of the grant of an Award under the Plan or any time while an Award remains outstanding), subject to Section 11(c) below, to provide for the full or partial automatic vesting and exercisability of one or more outstanding unvested Awards under the Plan and the release from restrictions on transfer or forfeiture rights of such Awards, on such terms and conditions as the Administrator may specify. Any such Award vesting and exercisability or release from restrictions on transfer or forfeiture rights shall be conditioned upon the consummation of the Corporate Transaction or Change in Control. The Administrator also shall have the authority to condition any such Award vesting and exercisability or release from such limitations upon the subsequent termination of the Continuous Service of the Grantee within a specified period following the effective date of the Corporate Transaction or Change in Control. The Administrator may provide that any Awards so vested or released from such limitations in connection with a Corporate Transaction or Change in Control shall remain fully exercisable until the expiration or sooner termination of the Award.

(c) Treatment of Performance-Based Awards. With respect to any Award granted under the Plan that is earned or vested based upon achievement of performance criteria, any amount deemed earned or vested in connection with a Corporate Transaction or Change in Control shall be based upon the degree of performance attainment and/or the period of time elapsed in the Performance Period as of the applicable date.

(d) Effect of Acceleration on Incentive Stock Options. Any Incentive Stock Option accelerated under this Section 11 in connection with a Corporate Transaction or Change in Control shall remain exercisable as an Incentive Stock Option under the Code only to the extent the $100,000 dollar limitation of Section 422(d) of the Code is not exceeded.

12. Effective Date and Term of Plan. The Plan initially became effective upon the Company's initial public offering on June 13, 2017 (the "Prior Plan"). On May 23, 2019, the Board adopted the amended and restated Plan (this "Amended Plan"), subject to subsequent approval no later than the 2020 annual meeting of the stockholders of the Company. If approved by the Company's stockholders, this Amended Plan shall continue in effect for a term of ten (10) years from the date of the Board's adoption of the Amended Plan unless sooner terminated, and Incentive Stock Options may only be granted for ten (10) years from the Board's adoption of the Amended Plan . If the Company's stockholders do not approve the Amended Plan, (a) the Prior Plan shall continue in effect in accordance with its terms; and (b) any Conditional Awards granted pursuant to Section 4(d) of the Amended Plan shall be automatically cancelled and immediately become null and void.

13. Amendment, Suspension or Termination of the Plan.

(a) The Board may at any time amend, suspend or terminate the Plan; provided, however, that no such amendment shall be made without the approval of the Company's stockholders to the extent such approval is required by Applicable Laws or by Section 4(c) above.

(b) No Award may be granted during any suspension of the Plan or after termination of the Plan.

(c) No suspension or termination of the Plan (including termination of the Plan under Section 11 above) shall adversely affect any rights under Awards already granted to a Grantee.

14. Reservation of Shares.

(a) The Company, during the term of the Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

(b) The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

15. No Effect on Terms of Employment/Consulting Relationship. The Plan shall not confer upon any Grantee any right with respect to the Grantee's Continuous Service, nor shall it interfere in any way with his or her right or the right of the Company or any Related Entity to terminate the Grantee's Continuous Service at any time, with or without cause, including, but not limited to, Cause, and with or without notice. The ability of the Company or any Related Entity to terminate the employment of a Grantee who is employed at will is in no way affected by its determination that the Grantee's Continuous Service has been or has not been terminated for Cause for the purposes of this Plan.

16. No Effect on Retirement and Other Benefit Plans. Except as specifically provided in a retirement or other benefit plan of the Company or a Related Entity, Awards shall not be deemed compensation for purposes of computing benefits or contributions under any retirement plan of the Company or a Related Entity, and shall not affect any benefits under any other benefit plan of any kind or any benefit plan subsequently instituted under which the availability or amount of benefits is related to level of compensation. The Plan is not a "Pension Plan" or "Welfare Plan" under the Employee Retirement Income Security Act of 1974, as amended.

17. [Intentionally omitted.]

18. [Intentionally omitted.]

19. Unfunded Obligation. Grantees shall have the status of general unsecured creditors of the Company. Any amounts payable to Grantees pursuant to the Plan shall be unfunded and unsecured obligations for all purposes, including, without limitation, Title I of the Employee Retirement Income Security Act of 1974, as amended. Neither the Company nor any Related Entity shall be required to segregate any monies from its general funds, or to create any trusts, or establish any special accounts with respect to such obligations. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations hereunder. Any investments or the creation or maintenance of any trust or any Grantee account shall not create or constitute a trust or fiduciary relationship between the Administrator, the Company or any Related Entity and a Grantee, or otherwise create any vested or beneficial interest of any Grantee or the Grantee's creditors in any assets of the Company or a Related Entity. The Grantees shall have no claim against the Company or any Related Entity for any changes in the value of any assets that may be invested or reinvested by the Company with respect to the Plan.

20. Construction. Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of the Plan. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

21. Clawback/Recoupment. Each Award shall be subject to reduction, cancellation, forfeiture or recoupment to the extent necessary to comply with (i) any clawback, forfeiture or other similar policy adopted by the Board or the Administrator and as in effect from time to time, or (ii) Applicable Laws (including without limitation Section 304 of the Sarbanes Oxley Act and Section 954 of the Dodd Frank Act), whether such policy or Applicable Law becomes effective prior to or following the grant of such Award, and the Company may take such actions as may, in its discretion, be necessary to effectuate any such policy or comply with Applicable Law.

22. Compliance With Section 409A of the Code. To the extent applicable, Awards will be designed and operated in such a manner that they are either exempt from the application of, or comply with, the requirements of Section 409A of the Code. The Plan and each Award Agreement are intended to meet the requirements of Section 409A of the Code and will be construed and interpreted in accordance with such intent, except as otherwise determined in the Administrator's sole discretion. Notwithstanding the foregoing, the Company makes no representation with respect to the tax compliance of the Plan or any Award Agreement, including compliance with Section 409A of the Code.

23. Nonexclusivity of the Plan. Neither the adoption of the Plan by the Board, the submission of the Plan to the stockholders of the Company for approval, nor any provision of the Plan will be construed as creating any limitations on the power of the Board to adopt such additional compensation arrangements as it may deem desirable, including, without limitation, the granting of Awards otherwise than under the Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

Exhibit 10.5

SECOND SUPPLEMENTAL AGREEMENT
TO LICENSE AGREEMENT DATED DECEMBER 12, 2019

THIS SECOND SUPPLEMENTAL AGREEMENT (this "Supplement") is made and entered into effective as of June 30, 2020 (the "Effective Date"), by and among **ATHENEX, INC.**, a corporation organized and existing under the laws of the State of Delaware USA and having its principal office at Conventus Building, 1001 Main Street, Suite 600, Buffalo, New York 14203, USA ("Athenex"), **CHONGQING TAIHAO PHARMACEUTICAL CO. LTD.**, a company organized and existing under the laws of China and having its principal office at C-5 #105 C-5, Er Lang Chuang Ye Road, Jiulongpo District, Chongqing, China ("Taihao"), and **GUANGZHOU XIANGXUE PHARMACEUTICAL CO., LTD.**, a company organized and existing under the laws of China and having its principal office at 2 Jinfengyuan Road, Guangzhou, China ("XPH") Athenex, Taihao, and XPH are sometimes referred to herein individually as a "Party", and collectively as the "Parties."

RECITALS

A. Athenex and XPH entered into a License Agreement, dated as of December 12, 2019, as supplemented by a supplemental agreement dated as of March 31, 2020 by and among Athenex, Taihao and XPH (collectively, the "License Agreement"). Capitalized terms used but not defined in this Supplement have the meanings given to them in the License Agreement.

B. Taihao is a wholly-owned subsidiary of Athenex, which is incorporated and has an office and business operations in China, and Athenex has determined that it is in the best interests of Athenex and its subsidiaries for Taihao, under the framework of the License Agreement, to assist Athenex by providing oversight and management of such license arrangement in the Territory. Athenex acknowledges that Taihao has assisted Athenex in fulfilling its obligations in transferring the relevant license to XPH, and exercising its rights, as licensor under the License Agreement. Taihao shall collect the relevant License Payments (as defined below) from XPH, and make the payments to Athenex as set out in this Supplement.

NOW, THEREFORE, the Parties hereby agree as follows:

1. **Purpose**. The Parties are entering into this Supplement for purposes of (a) facilitating the settlement of License Payments (as defined below) by XPH pursuant to the terms of the License Agreement, and (b) clarifying certain matters relating to the payment of License Payments and the Parties respective obligations for Taxes with respect thereto. As used in this Supplement, "License Payments" means all payments due from XPH to Athenex under the License Agreement including, without limitation, all upfront fees, regulatory milestone fees, sales milestone fees, royalties, Change of Control Payments. Except as specifically modified or supplemented pursuant to this Supplement, the License Agreement shall continue in full force and effect in accordance with its terms, with XPH and Athenex being the key parties to the license arrangement set forth in the License Agreement

2. **Taihao's Services.** Athenex hereby retains Taihao to provide, and Taihao hereby agrees to provide to Athenex, services in connection with the management and administration of the license arrangement in China as assigned from time to time by Athenex. As part of its services, Taihao (a) has assisted Athenex in fulfilling its obligations in transferring the relevant license to XPH, and exercising its rights, as licensor under the License Agreement; (b) collects all License Payments from XPH; (c) shall provide management and oversight for the license arrangement in accordance with the License Agreement; and (d) according to the License Agreement, shall remit the License Payments (less (i) any Taxes required to be withheld by Taihao pursuant to the provisions of Section 3 (Payment of License Payments) of this Supplement and (ii) any fees and other amounts that Athenex agrees to pay to Taihao for performing its services) to Athenex, as directed by Athenex, by wire transfer of United States Dollars in immediately available funds to an account designated by Athenex. Except as otherwise agreed upon by Athenex and Taihao, in consideration for services performed by Taihao pursuant to this Supplement, Taihao shall remit 97% of the License Payments received from XPH (less any Taxes required to be withheld by Taihao) to Athenex.

3. **Payment of License Payments.**

a. Payments to Taihao. Unless and until Athenex otherwise directs XPH in writing, Athenex hereby authorizes and directs XPH to pay the License Payments to Taihao (on behalf of Athenex), pursuant to wire instructions that Athenex and Taihao delivers to XPH for such purposes. Upon XPH's payment of any License Payment to Taihao, XPH shall have satisfied in full its obligation to pay such License Payment to Athenex pursuant to the License Agreement.

b. Currency. Notwithstanding the provisions of Section 5.7(a) of the License Agreement (which requires payments in United States Dollars), XPH may make License Payments to Taihao, for the benefit of Athenex, in Renminbi ("RMB"). The amount of the License Payment payable in RMB shall be determined based on an exchange rate agreed upon by Athenex and XPH at the time the applicable License Payment becomes due.

c. Withholding. Notwithstanding the provisions of Section 5.7(c) of the License Agreement, XPH will not withhold from any License Payments any income Taxes or other Taxes. If and to the extent that any Taxes are required to be withheld from the License Payments under applicable Laws upon Taihao's remittance of payment to Athenex, Taihao shall withhold such amounts from the License Payments and shall pay such amounts to the proper Tax Authorities. If any Tax Authority notifies XPH that it should have withheld Taxes from the License Payments, or demands payment of any such Taxes from XPH, XPH shall notify Athenex in writing of such notification or demand, and XPH and Athenex shall coordinate efforts to pay, reduce or eliminate required withholding Taxes, in accordance with the provisions of Section 5.7(c) of the License Agreement. If, following demand by a Tax Authority (and following such efforts to reduce or eliminate such withholding Taxes), XPH is required to pay and does pay to any Tax Authority any withholding Taxes that were required to be withheld from the License Payments under applicable Law (and for which Athenex is responsible under Section 5.7(c) of the License Agreement, as modified by this Supplement), Athenex shall reimburse XPH for the amount of such payment within 30 days after receipt of evidence of such payment. If Athenex does not reimburse XPH for such payment, XPH shall have the right to deduct the corresponding amount from future License Payments.

d. Indirect Taxes. Notwithstanding the provisions of Section 5.7(c) of the License Agreement, Athenex and XPH agree that all Indirect Taxes in connection with License Payments under the License Agreement shall be borne by Athenex, rather than XPH; provided, however, that XPH shall be responsible for and shall pay all import duties and import fees arising as a result of the transactions contemplated by the License Agreement, which shall not constitute "Indirect Taxes" under the License Agreement.

4. **Binding Effect**. This Supplement shall be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns.

5. **Governing law** This Supplement shall be governed by and construed and enforced in accordance with the laws of Singapore without reference to any choice of law principles thereof that would cause the application of the laws of a different jurisdiction.

6. **Counterparts.** The Supplement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties. This Supplement may be executed by facsimile or .pdf signature and a facsimile or .pdf signature shall constitute an original for all purposes.

7. **Modifications**. No modification or amendment of this Supplement shall be effective unless in writing and signed by all Parties.

8. **Severability**. If any term or provision of this Supplement shall to any extent be invalid or unenforceable, the remainder of this Supplement shall not be affected thereby and each provision of this Supplement shall be valid and enforceable to the fullest extent permitted by law.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Supplement as of the Effective Date.

ATHENEX, INC.

By: /s/ Randoll Sze
Name: Randoll Sze
Title: Chief Financial Officer

CHONGQING TAIHAO PHARMACEUTICAL CO. LTD.

By: /s/ William Zuo
Name: William Zuo
Title: President

GUANGZHOU XIANGXUE PHARMACEUTICAL CO., LTD.

By: /s/ YongHui Wang
Name: YongHui Wang
Title: Chief Executive Officer

[signature page to Second Supplemental Agreement]

Exhibit 31.1

CERTIFICATION PURSUANT TO
SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002

I, Johnson Y.N. Lau, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Athenex, Inc. (the registrant);

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 6, 2020

/s/ Johnson Y.N. Lau
Name: Johnson Y.N. Lau
Title: Chief Executive Officer and Board Chairman
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION PURSUANT TO
SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002

I, Randoll Sze, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Athenex, Inc. (the registrant);

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 6, 2020

/s/ Randoll Sze
Name: Randoll Sze
Title: Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In accordance with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, Johnson Y.N. Lau, Chief Executive Officer and Board Chairman (Principal Executive Officer) of Athenex, Inc. (the "registrant"), and Randoll Sze, Chief Financial Officer of the registrant (Principal Financial and Accounting Officer), each hereby certifies that, to the best of their knowledge:

1. The registrant's Quarterly Report on Form 10-Q for the period ended June 30, 2020, to which this Certification is attached as Exhibit 32.1 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition of the registrant at the end of the period covered by the Report and results of operations of the registrant for the period covered by the Report.

Date: August 6, 2020

/s/ Johnson Y.N. Lau
Name: Johnson Y.N. Lau
Title: Chief Executive Officer and Board Chairman
(Principal Executive Officer)

/s/ Randoll Sze
Name: Randoll Sze
Title: Chief Financial Officer
(Principal Financial and Accounting Officer)