

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

FORM 8-K

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

Date of Report (Date of earliest event reported): June 19, 2020

ATHENEX, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-38112
(Commission
File Number)

43-1985966
(IRS Employer
Identification No.)

1001 Main Street, Suite 600, Buffalo, New York
(Address of principal executive offices)

14203
(Zip Code)

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

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

Securities registered pursuant to Section 12(b) of the 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 is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

On June 19, 2020 (the “Closing Date”), we entered into a \$225.0 million senior secured loan agreement (the “Loan Agreement”), with Oaktree Fund Administration, LLC (“Oaktree”) as administrative agent, and the lenders party thereto. The first tranche of loans borrowed by us is in an aggregate principal amount of \$100.0 million and consists of \$89,886,946 of term loans funded on the Closing Date and \$10,113,054 of term loans that will be funded ten days after the Closing Date. A portion of the proceeds of the first tranche of loans were used to repay in full our existing senior secured loan with Perceptive Credit Holdings II, L.P. The remaining term loan commitments under the Loan Agreement may be borrowed from time to time prior to the date that is either 24 or 36 months after the Closing Date, as applicable, subject to the satisfaction of certain regulatory and commercial milestones.

The senior secured loans under the Loan Agreement mature on the sixth anniversary from the Closing Date, and bear 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 Loan Agreement.

We may voluntarily prepay the Loan 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 Loan 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 Loan 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 Loan 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 Loan 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.

The Loan 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 Loan Agreement, in addition to other remedies available to it as a secured creditor of the company.

In connection with the Loan Agreement, we granted warrants to Oaktree to purchase up to 908,393 shares of our common stock at a purchase price of \$12.63 per share (the “Warrant”). The Warrants will expire on June 19, 2027 and may be net exercised at the holder’s election. We also agreed to file a registration statement on Form S-3 to register for resale the shares of common stock issuable upon exercise of the Warrants (“Warrant Shares”). The foregoing summary of the Warrants is not a complete description of the Warrants and is qualified in its entirety by the complete text of the Warrants, the form of which is filed as Exhibit 4.1 to this report.

The foregoing summary of the Loan Agreement is not a complete description of the Loan Agreement and is qualified in its entirety by the complete text of the actual agreement, a copy of which is filed as Exhibit 10.1 to this report.

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

The information provided in Item 1.01 of this report is incorporated by reference under this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

The information contained in Item 1.01 of this report with respect to the Warrants is incorporated by reference under this Item 3.02. The Warrants were issued, and the Warrant Shares will be issued unless covered by a registration statement, in reliance upon an exemption from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), contained in Section 4(a)(2) of the Securities Act.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
4.1	Form of Warrant to Purchase Common Stock
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

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 hereunto duly authorized.

ATHENEX, INC.

Date: June 22, 2020

/s/ Johnson Y.N. Lau

Name: Johnson Y.N. Lau

Title: Chief Executive Officer

WARRANT

NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON ITS EXERCISE OR CONVERSION HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY APPLICABLE STATE SECURITIES LAW AND MAY NOT BE TRANSFERRED EXCEPT (I) IN ACCORDANCE WITH THE SECURITIES ACT OR SUCH APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM, OR (II) WHERE, IN THE OPINION OF COUNSEL, REGISTRATION UNDER THE SECURITIES ACTS OR SUCH APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED IN CONNECTION WITH SUCH PROPOSED TRANSFER.

[•]Shares of Voting Common Stock

No. [•] WARRANT

This WARRANT (this "Warrant") is issued as of June 19, 2020 (the "Initial Issuance Date"), by ATHENEX, INC., a Delaware corporation (the "Company"), to [•], a [•] ("Purchaser" and, together with any assignee(s) or transferee(s), "Holder" or "Holders").

WHEREAS, the Company, certain subsidiaries of the Company as guarantors, the Purchaser as lender and the other lenders party thereto, and Oaktree Fund Administration, LLC as administrative agent are parties to that certain Credit Agreement and Guaranty, dated as of June 19, 2020 (the "Credit Agreement"), pursuant to which the Company may borrow from Purchaser, and Purchaser may loan to the Company, up to \$225,000,000 from the date of the Credit Agreement through the Maturity Date; and

WHEREAS, the Company is issuing this Warrant to Purchaser as a condition precedent to the making of the loans by Purchaser pursuant to the Credit Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Purchaser agree as follows:

Section 1. **Definitions.** Unless otherwise defined herein, capitalized terms have the meanings set forth in the Credit Agreement (as in effect on the date hereof), however, the following terms when used herein have the following meanings:

"**Aggregate Exercise Price**" means, in connection with any Exercise of this Warrant pursuant to **Section 4** (whether in whole or in part), an amount equal to the product of (i) the number of Underlying Shares in respect of which this Warrant is then being exercised pursuant to such **Section 4**, multiplied by (ii) the Exercise Price.

"**Fair Market Value**" means, with respect to any security or other property, the fair market value of such security or other property as determined by the independent members of the Board of Directors of the Company, acting in good faith. If the Holder objects in writing to the Board of Directors' calculation of Fair Market Value within ten (10) days of receipt of written notice thereof and the Holder and the Company are unable to agree on Fair Market Value during the five (5) day period following the delivery of the Holder's objection, the valuation dispute resolution procedure set forth in **Section 21** hereof shall be invoked to determine Fair Market Value.

“Market Price” means, with respect to a particular security, on any given day, the last reported sale price, regular way, or, in case no such reported sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case on the principal national securities exchange on which the applicable securities are listed or admitted to trading, or if not listed or admitted to trading on any national securities exchange, the last quoted bid price in the over-the-counter market as reported by Pink Sheets LLC or similar organization. “Market Price” shall be determined without reference to after hours or extended hours trading. If such security is not listed and traded in a manner that the quotations referred to above are available for the period required hereunder, the Market Price per share of Voting Common Stock shall be deemed to be the fair market value per share of such security as determined in good faith by the independent members of the Board of Directors in reliance upon an opinion of an accounting firm of nationally recognized standing retained by the Company for this purpose and reasonably acceptable to the Holder (or if there is more than one Holder, a majority in interest of Holders excluding any Holder that is an Affiliate of the Company). For the purposes of determining the Market Price of the Voting Common Stock on the Trading Day preceding, on or following the occurrence of an event, (i) that Trading Day shall be deemed to commence immediately after the regular scheduled closing time of trading on the Trading Market on which the Voting Common Stock is listed or, if trading is closed at an earlier time, such earlier time and (ii) that Trading Day shall end at the next regular scheduled closing time, or if trading is closed at an earlier time, such earlier time (for the avoidance of doubt, and as an example, if the Market Price is to be determined as of the last Trading Day preceding a specified event and the closing time of trading on a particular day is 4:00 p.m. and the specified event occurs at 5:00 p.m. on that day, the Market Price would be determined by reference to such 4:00 p.m. closing price).

“Trading Day” means a day on which the Voting Common Stock is traded on a Trading Market or, if the Voting Common Stock is not traded on a Trading Market, then on the principal securities exchange or securities market on which the Voting Common Stock is then traded.

“Trading Market” means any market or exchange of The Nasdaq Stock Market LLC or the New York Stock Exchange.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (i) if the Voting Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Voting Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Voting Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading day from 9:30 a.m. (New York City time) to 4:00 pm (New York City time)), (ii) if the Voting Common Stock is not then listed on a Trading Market or quoted for trading on the OTC Bulletin Board and if prices for the Voting Common Stock are then reported in the “Pink Sheets” published by OTC Markets Group Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Voting Common Stock so reported or (iii) in all other cases, the fair market value of a share of Voting Common Stock as determined by an independent nationally recognized investment banking, accounting or valuation firm selected in good faith by the Company and reasonably acceptable to the Holder, the fees and expenses of which shall be paid by the Company.

Section 2. **Issuance of Warrant; Term.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company hereby grants to Holder the right to purchase from the Company [•] fully paid and nonassessable shares of the Company's voting common stock having a par value \$0.001 per share (the "**Voting Common Stock**"). The shares of Voting Common Stock issuable upon exercise of this Warrant are hereinafter referred to as the "**Underlying Shares**." This Warrant shall be exercisable at any time and from time to time, in whole or in part, during the seven (7) year period commencing on the date hereof (the last day of this seven (7) year period is referred to as the "**Expiration Date**").

Section 3. **Exercise Price.** The exercise price per share of Voting Common Stock for which each Underlying Share may be purchased pursuant to this Warrant shall be \$12.63 (the "**Exercise Price**"), subject to adjustment pursuant to Section 7 hereof.

Section 4. **Exercise.**

(a) This Warrant may be exercised by the Holder hereof as to all or any portion of the Underlying Shares, upon delivery of written notice to the Company, together with this original Warrant and (x) payment to the Company of the Aggregate Exercise Price or (y) instruction to the Company to withhold a number of the Underlying Shares then issuable upon exercise of this Warrant with an aggregate value (determined on the basis of the average Market Price per share for the Voting Common Stock on the last five Trading Days for such stock immediately prior to the Exercise Date, as defined below) equal to (as nearly as possible without being less than) such Aggregate Exercise Price (collectively, the "**Exercise**", with the date of an Exercise being an "**Exercise Date**"). The Exercise Price (if paid pursuant to clause (x) above) shall be payable by delivery by the Holder of a certified or official bank check payable to the order of the Company or wire transfer of immediately available funds to an account designated by the Company. This Warrant shall be deemed to have been so exercised as of the applicable Exercise Date, and the Holder shall be entitled to receive the Underlying Shares issuable upon such Exercise and be treated for all purposes as the holder of record of the Underlying Shares as of such date. Upon the Exercise of this Warrant, the Company shall, within two (2) Business Days of the Exercise Date (the "**Underlying Share Delivery Date**"), execute and deliver to the Holder of this Warrant (a) a statement confirming the total number of Underlying Shares for which this Warrant is being exercised, and (b) (i) if the Underlying Shares are issued in certificate form, a certificate or certificates for the number of Underlying Shares issuable upon such Exercise, or (ii) if the Underlying Shares are issued in uncertificated form, a written confirmation evidencing the book-entry registration of such Underlying Shares in the Holder's name; provided that if the Company fails to deliver to Holder such certificate or certificates (in the case of Underlying Shares issued in certificate form) or written confirmation (in the case of Underlying Shares issued in uncertificated form) by the Underlying Share Delivery Date, the Holder will have the right to rescind such Exercise. Any rescission by the Holder pursuant to this **Section 4(a)** shall not affect any other remedies available to the Holder under applicable law or equity or pursuant to **Section 13** hereof as a result of the Company's failure to timely deliver the Underlying Shares. If this Warrant shall be exercised with respect to less than all of the Underlying Shares, the Company shall deliver a new Warrant covering the number of Underlying Shares in respect of which this Warrant shall not have been exercised, which new Warrant shall in all other respects be identical to this Warrant. The Company covenants and agrees that it will pay when due any and all state and federal issue taxes which may be payable in respect of the issuance of this Warrant or the issuance of any Underlying Shares upon exercise.

(b) In the event of any withholding of shares of Underlying Shares pursuant to **Section 4(a)(y)** above where the aggregate number of Underlying Shares equal to (as nearly as possible without being less than) the Aggregate Exercise Price is not a whole number, the number of the Underlying Shares withheld by or surrendered to the Company shall be rounded up to the nearest whole share, and the Company shall make a cash payment to the Holder (by delivery of a certified or official bank check or by wire transfer of immediately available funds) based on the incremental fraction of Underlying Shares being so withheld by or surrendered to the Company in an amount equal to the product of (x) such incremental fraction of Underlying Shares being so withheld or surrendered multiplied by (y) the value per share of Underlying Shares (determined on the basis of the Market Price per share for the Voting Common Stock immediately prior to the applicable Exercise).

(c) The Company shall not knowingly effect the exercise of this Warrant, and the Holder shall not have the right to exercise this Warrant to the extent that, after giving effect to such exercise, the Holder (together with such Person's Affiliates) would beneficially own in excess of 9.99% (the "**Maximum Percentage**") of the Voting Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Voting Common Stock beneficially owned by such Person and its Affiliates shall include the number of shares of Voting Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude shares of Voting Common Stock which would be issuable upon (i) exercise of the remaining, unexercised portion of this Warrant beneficially owned by such Person and its Affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by such Person and its Affiliates (including, without limitation, any convertible notes or convertible shares or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Warrant, in determining the number of outstanding shares of Voting Common Stock, a Holder of this Warrant may rely on the number of outstanding shares of Voting Common Stock as reflected in the most recent of (1) the Company's Form 10-K, Form 10-Q or other public filing with the Securities and Exchange Commission, as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or its transfer agent setting forth the number of shares of Voting Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall, within five (5) Business Days, confirm to such Holder the number of shares of its Voting Common Stock then outstanding. Furthermore, upon the written or oral request of the Company, a Holder shall confirm to the Company its then current beneficial ownership with respect to the Company's Voting Common Stock.

Section 5. No Fractional Shares. No fractional shares may be issued upon any exercise of this Warrant or as a consequence of any adjustment pursuant to **Section 7**, and any fractions shall be rounded upwards to the nearest whole number of shares. If upon any exercise or adjustment of this Warrant a fraction of a share results, the Company will pay to the Holder the cash value of any such fractional share, calculated on the basis of the Exercise Price.

Section 6. **Securities Laws.**

(a) Holder acknowledges that the Underlying Shares are being offered and sold by the Company in accordance with Regulation D under the Securities Act and that the Underlying Shares will constitute “restricted securities” as defined in Rule 144 under the Securities Act. Neither this Warrant nor the Underlying Shares have been registered under the Securities Act, or any state securities laws (“**Blue Sky Laws**”). This Warrant has been acquired for the Holder’s own account for investment purposes and not with a current view to distribution or resale and may not be sold or otherwise transferred (i) without an effective registration statement for such Warrant under the Securities Act and such applicable Blue Sky Laws, or (ii) unless Holder shall have delivered to the Company an opinion of counsel to the effect that the Warrant or such portion of the Warrant to be sold or transferred may be sold or transferred under an exemption from such registration.

(b) The Company covenants and agrees that all Underlying Shares will, upon issuance and payment therefor, be legally and validly issued and outstanding, free from all taxes, liens, charges and preemptive or similar rights, if any, with respect thereto or to the issuance thereof. The Company will take all such action as may be reasonably necessary or appropriate to assure that the Underlying Shares may be issued as provided herein without violating any applicable law or regulation, or any requirements of the Trading Market upon which the Voting Common Stock may be listed.

(c) The certificates representing the Underlying Shares will bear the following or similar legend, unless the Company determines otherwise in compliance with applicable law:

“THE SHARES OF COMMON STOCK REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE US SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) IN AN OFFSHORE TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, OR (3) PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS.”

Section 7. **Anti-Dilution Adjustments.**

(a) If the Company shall at any time prior to the expiration of this Warrant (i) pay a stock dividend or otherwise make a distribution or distributions on shares of Voting Common Stock or any other equity or equity securities, (ii) subdivide the Voting Common Stock (by stock split, recapitalization, or any other similar event) into a larger number of shares, (iii) combine the Voting Common Stock (by stock split or reverse stock split, recapitalization, combination of shares, or any other similar event) or (iv) issue by reclassification of shares of Voting Common Stock any shares of capital stock of the Company (with the exception of any reclassification that constitutes a Fundamental Change, as hereinafter defined), then in each such case the Exercise

Price shall be adjusted by multiplying the Exercise Price in effect immediately prior to (x) the record date for the determination of stockholders entitled to receive such dividend or distribution or (y) the effective date in the case of a subdivision, combination or re-classification by a fraction, the numerator of which shall be the number of shares of Voting Common Stock outstanding immediately before such event and the denominator of which shall be the number of shares of Voting Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the Aggregate Exercise Price shall remain unchanged. Before taking any action which would result in an adjustment in the number of Underlying Shares for which this Warrant is exercisable or to the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(b) If the Company shall at any time prior to the expiration of this Warrant (in each case, occurring after the date hereof) be a party to any merger, consolidation, exchange of shares of Voting Common Stock, sale of a majority of the Voting Common Stock, sale of all or substantially all of the assets of the Company, separation, reorganization, recapitalization, winding up or liquidation of the Company, or other similar event or transaction (each, a “**Fundamental Change**”), as a result of which shares of Voting Common Stock shall be changed into the same or a different number or class or classes of securities of the Company or another entity, or the holders of shares of Voting Common Stock are entitled to receive cash or other property, then, upon the Exercise of this Warrant by the Holder, such Holder shall receive, for the Aggregate Exercise Price as in effect immediately prior to such Fundamental Change (subject to all other adjustments under this Warrant), the aggregate number of shares or such other securities, cash or other property which such Holder would have received if this Warrant had been exercised immediately prior to such Fundamental Change (collectively, the “**Fundamental Change Receivable**”), which, upon the Holder’s election, may be received net of the Aggregate Exercise Price (for the avoidance of doubt, without payment by the Holder of any cash in an amount equal to the then Exercise Price). In the case of any Fundamental Change, the successor or purchasing party of such merger, consolidation, exchange of shares of Voting Common Stock, sale of all or substantially all of the Assets of the Company or reorganization (if other than the Company) shall duly execute and deliver to the Holder a supplement to this Warrant acknowledging the Company and such party’s obligations under this **Section 7(b)**. The terms of this Warrant shall be applicable to the Fundamental Change Receivable due to the Holder upon the consummation of any such Fundamental Change.

(c) If the Company, at any time while this Warrant is outstanding, shall otherwise distribute to all holders of Voting Common Stock (and not to the Holder or Holders) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security (for the avoidance of doubt, excluding in each such case any Fundamental Change Receivable), then in each such case the Exercise Price shall be adjusted by multiplying the Exercise Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction, the numerator of which shall be such VWAP on such record date less the then Fair Market Value at such record date of the portion of such assets or evidence of indebtedness so distributed applicable to one outstanding share of Voting Common Stock, and the denominator of which shall be the VWAP determined as of the record date mentioned above. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

(d) Not less than five (5) days prior to the record date or effective date, as the case may be, of any event which requires or might require an adjustment or readjustment pursuant to **Section 7(a) or Section 7(c)** (each, an “**Adjustment Event**”), and not less than ten (10) days prior to the record date or effective date, as the case may be, of any Fundamental Change, the Company shall give written notice of such Adjustment Event or Fundamental Change (as applicable) to the Holder or Holders, describing such Adjustment Event or Fundamental Change in reasonable detail and specifying the record date or effective date, as the case may be. Such notice shall additionally include the Company’s certification of the following computations, as applicable, each of which shall have been made by the Company in good faith: (i) in the case of an Adjustment Event, if determinable, the required adjustment and the computation thereof or, if the required adjustment is not determinable at the time of such notice, the Company shall give notice to the Holder or Holders of such adjustment and computation promptly after such adjustment becomes determinable, and (ii) in the case of a Fundamental Change, the number of shares or such other securities, cash or other property which is payable to the Holder or Holders upon the Fundamental Change, the computation thereof, and the computation of the then applicable Exercise Price. Except as otherwise prohibited by applicable laws, to the extent that any notice provided pursuant to this Section 7(d) contains material, non-public information regarding the Company, the Company shall disclose such information regarding the Company in a Current Report on Form 8-K and file such Current Report on Form 8-K with the SEC no later than the second Trading Day following the date such notice is delivered to the Holder.

(e) Notwithstanding any other provision hereof, if an exercise of all or any portion of this Warrant is to be made in connection with a Fundamental Change or a public offering, such exercise may, at the election of the Holder, be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the consummation of such transaction.

(f) At all times on and prior to the Expiration Date, the Company shall at all times reserve and keep available out of its authorized but unissued Voting Common Stock (or other equity interests then constituting Underlying Shares), solely for the purpose of issuance upon the exercise of this Warrant, the maximum number of Underlying Shares issuable upon the exercise of this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates or effectuating the book entry of uncertificated shares to execute and issue, or enter, the necessary certificates or book entries (as applicable) for the Underlying Shares upon the exercise of the purchase rights under this Warrant. The Company shall not increase the par value of any Underlying Shares receivable upon the exercise of this Warrant above the Exercise Price then in effect, and shall take all such actions within its power as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable Underlying Shares upon the exercise of this Warrant.

Section 8. **Transfer of Warrant.** Subject to compliance with applicable federal and state securities laws, the Holder may, from time to time, transfer this Warrant or the Underlying Shares, in each case, in whole or in part, by giving the Company a written notice of the portion of the Warrant or the shares of the Underlying Shares being transferred, such notice to set forth the name, address and taxpayer identification number of the transferee, the anticipated date of such transfer, and surrendering this Warrant or the certificates or book-entry records representing shares of the Underlying Shares, as applicable, to the Company for reissuance to the transferee(s). Upon surrender of this Warrant by a Holder to the Company for transfer, in whole or in part, the Company shall issue a new warrant to such Holder in such denomination as shall be requested by such Holder covering the number of Underlying Shares, if any, in respect of which this Warrant shall not have been transferred. Such new warrant shall be identical in all other respects to this Warrant. This Warrant may be divided or combined with other Warrants upon presentation hereof at the office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with this **Section 8** as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated as of the Initial Issuance Date and shall be identical with this Warrant except as to the number of Underlying Shares issuable pursuant thereto.

Section 9. **No Impairment.** The Company may not, including, without limitation, by amendment of its certificate of incorporation or bylaws, or through a Fundamental Change or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and the Company shall at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder or Holders against impairment. Without limiting the generality of the foregoing, the Company shall take (a) all such action as may be necessary or appropriate in order that the Company may duly and validly issue fully paid and non-assessable Underlying Shares, free from any taxes, liens, charges and preemptive rights, upon the exercise of this Warrant, and (b) use its best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be necessary to enable the Company to perform its obligations under this Warrant.

Section 10. **No Rights or Liabilities as a Stockholder.** This Warrant shall not entitle the Holder or Holders hereof to any voting rights or other rights as a stockholder of the Company with respect to the Underlying Shares prior to the exercise of the Warrant. No provision of this Warrant, in the absence of affirmative action by the Holder or Holders to purchase the Underlying Shares, and no mere enumeration herein of the rights or privileges of the Holder or Holders, shall give rise to any liability of such Holder or Holders for the Exercise Price or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

Section 11. **Representations and Warranties of the Company.** The Company hereby represents and warrants:

(a) As of the Initial Issuance Date, the Company (A) is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, (B) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as currently proposed to be conducted, to issue and enter into the Warrant and to carry out the

transactions contemplated thereby, and (C) except where the failure to do so, individually or in the aggregate, has not had, and could not be reasonably expected to have, a material adverse effect on the business, assets, financial condition or operations of the Company, is qualified to do business and, where applicable is in good standing, in every jurisdiction where such qualification is required.

(b) This Warrant is, and any Warrant issued in substitution for or replacement of this Warrant (including pursuant to **Section 15**) shall be, upon issuance, duly authorized and validly issued. This Warrant constitutes, and any Warrant issued in substitution for or replacement of this Warrant shall be, upon issuance, a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(c) As of the Initial Issuance Date, the execution, delivery and performance by the Company of the Warrant does not and will not (A) violate any material provision of applicable law or the organizational documents of the Company, (B) conflict with, result in a breach of, or constitute (with the giving of any notice, the passage of time, or both) a default under any material agreement of the Company or (C) result in or require the creation or imposition of any lien upon any assets of the Company.

Section 12. **Successors.** All the covenants and provisions of this Warrant by or for the benefit of the Company or the Holder or Holders shall bind and inure to the benefit of their respective successors and assigns.

Section 13. **Survival.** The rights of the Holder or Holders under this Warrant, and the covenants and agreements of the Company set forth in this Warrant for the benefit of the Holder or Holders, shall survive exercise of all or any portion of this Warrant and shall inure to the Holder or Holders of any Underlying Shares.

Section 14. **Remedies.** If the Company violates, breaches or defaults under this Warrant, the Holder may proceed to protect and enforce its rights by any action at law, suit in equity or other appropriate proceeding, whether for specific performance of any agreement contained in this Warrant, or for an injunction against a violation of any of the terms hereof, or in and of the exercise of any power granted hereby or by law, in each case without providing any bond or other security in connection with such action, suit or other proceeding. In case of any violation, breach or default under this Warrant, the Company shall pay to the Holder on demand all reasonable costs and expenses of enforcing the Holder's rights under this Warrant, including, without limitation, reasonable attorneys' fees and legal expenses.

Section 15. **Loss, Theft, Destruction or Mutilation of Warrant.** The Company covenants that upon its receipt of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Underlying Shares (and, in the case of mutilation, the surrender and cancellation of this Warrant or such stock certificate), the Company shall make and deliver to the Holder a new Warrant or stock certificate that is identical to this Warrant or to such stock certificate (as applicable).

Section 16. **Tax Treatment.** No later than sixty (60) days after the Initial Issuance Date, the Purchaser shall provide the Company with a valuation of the Warrant for tax purposes (the “**Proposed Valuation**”). If the Company disagrees with the Proposed Valuation, it shall propose reasonable comments to the Proposed Valuation within fifteen (15) days of receiving the Proposed Valuation, and the Purchaser shall consider such comments good faith. Within ninety (90) days after the Initial Issuance Date, the Purchaser shall provide the Company with a final valuation of the Warrant for tax purposes (the “**Final Valuation**”), and such Final Valuation shall be binding on Purchaser and the Company for all U.S. tax purposes.

Section 17. **Article and Section Headings.** Numbered and titled article and section headings are for convenience only and shall not be construed as amplifying or limiting any of the provisions of this Warrant.

Section 18. **Notice.** Any and all notices, elections or demands permitted or required to be made under this Warrant shall be in writing, signed by the party giving such notice, election or demand and shall be delivered in accordance with the notice provisions in the Credit Agreement.

Section 19. **Severability.** If any provisions(s) of this Warrant or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Warrant and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 20. **Entire Agreement.** This Warrant and between the Company and the Holder represents the entire agreement between the parties concerning the subject matter hereof, and all oral discussions and prior agreement are merged herein.

Section 21. **Valuation Dispute Resolution.** In the case of any dispute as to the determination of any amount or valuation hereunder or in connection with the amount or value of any Voting Common Stock or Underlying Shares to be issued, withheld or otherwise determined, the calculation of the Aggregate Exercise Price or any other computation or valuation required to be made hereunder or in connection herewith, in the event the Holder, on the one hand, and the Company, on the other hand, are unable to settle such dispute within five (5) Business Days, then either party may elect to submit the disputed matter(s) for resolution by KPMG LLP or another accounting firm of nationally recognized standing as may be mutually agreed upon by the Holder and the Company. Such firm’s determination of such disputed matter(s) shall be binding upon all parties absent demonstrable error, and the Company and the Holder shall each pay one half of the fees and costs of such firm.

Section 22. **Governing Law.** This Warrant and the rights and obligations of the parties hereunder, 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 Warrant and the transactions contemplated hereby shall be governed by, and construed in accordance with, the law of the State of New York.

Section 23. **Jurisdiction; Waiver of Venue; Service of Process.**

(a) Each party hereto irrevocably 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 in tort or otherwise, against any other party hereto in any way relating to this Warrant or the transactions relating hereto, 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.

(b) Each party hereto irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (a) of this **Section 22**. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party hereto irrevocably consents to service of process in the manner provided for notices in **Section 18**.

Section 24. **Amendment.** No amendment or modification hereof shall be effective except in a writing executed by the Company and the Holder.

Section 25. **Counterparts.** This Warrant may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Warrant.

Section 26. **Waiver of 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 WARRANT 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 WARRANT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 26**.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first above written.

COMPANY:

By: _____
Name:
Title:

PURCHASER:

[•]
By: [•]
By: _____
Name:
Title:

[Signature Page to Warrant]

CREDIT AGREEMENT AND GUARANTY

dated as of June 19, 2020

by and among

**ATHENEX, INC.,
as the Borrower,**

**THE SUBSIDIARY GUARANTORS FROM TIME TO TIME PARTY
HERETO,
as the Guarantors,**

**THE LENDERS FROM TIME TO TIME PARTY HERETO
as the**

Lenders,

and

**OAKTREE FUND ADMINISTRATION, LLC,
as the Administrative Agent**

U.S. \$225,000,000

TABLE OF CONTENTS

SECTION 1. DEFINITIONS	1
1.01 Certain Defined Terms	1
1.02 Accounting Terms and Principles	34
1.03 Interpretation	35
1.04 Division	36
SECTION 2. THE COMMITMENT AND THE LOANS	36
2.01 Loans	36
2.02 Borrowing Procedures	37
2.04 Notes	37
2.05 Use of Proceeds	38
2.06 Commitment Fees	38
SECTION 3. PAYMENTS OF PRINCIPAL AND INTEREST, ETC.	38
3.01 Scheduled Repayments and Prepayments Generally; Application	38
3.02 Interest	38
3.03 Prepayments	39
3.04 Commitment Termination	40
3.05 Exit Fee	41
SECTION 4. PAYMENTS, ETC.	41
4.01 Payments	41
4.02 Computations	42
4.03 Set-Off	42
SECTION 5. YIELD PROTECTION, TAXES, ETC.	43
5.01 Additional Costs	43
5.02 Illegality	44
5.03 Taxes	45
5.04 Mitigation Obligations	48
5.05 Survival	48
SECTION 6. CONDITIONS	48
6.01 Conditions to the Borrowing of the Tranche A Loans	48

TABLE OF CONTENTS
(continued)

6.02	Conditions to the Borrowing of All Other Loans	52
SECTION 7. REPRESENTATIONS AND WARRANTIES		53
7.01	Power and Authority	53
7.02	Authorization; Enforceability	53
7.03	Governmental and Other Approvals; No Conflicts	53
7.04	Financial Statements; Material Adverse Change	54
7.05	Properties	54
7.06	No Actions or Proceedings	56
7.07	Compliance with Laws and Agreements	57
7.08	Taxes	58
7.09	Full Disclosure	58
7.10	Investment Company Act and Margin Stock Regulation	58
7.11	Solvency	58
7.12	Subsidiaries	58
7.13	Indebtedness and Liens	59
7.14	Material Agreements	59
7.15	Restrictive Agreements	59
7.16	Real Property	59
7.17	Pension Matters	59
7.18	Regulatory Approvals	60
7.19	Transactions with Affiliates	61
7.20	OFAC; Anti-Terrorism Laws	61
7.21	Anti-Corruption	61
7.22	[Reserved]	61
7.23	Priority of Obligations	62
7.24	Royalty and Other Payments	62
7.25	Non-Competes	62
7.26	[Reserved]	62
7.27	Reimbursement from Medical Reimbursement Programs	62
SECTION 8. AFFIRMATIVE COVENANTS		62
8.01	Financial Statements and Other Information	62
8.02	Notices of Material Events	65

TABLE OF CONTENTS
(continued)

8.03	Existence	66
8.04	Payment of Obligations	66
8.05	Insurance	67
8.06	Books and Records; Inspection Rights	67
8.07	Compliance with Laws and Other Obligations	67
8.08	Maintenance of Properties, Etc.	68
8.09	Licenses	68
8.10	Debt Service Reserve Account	68
8.11	Use of Proceeds	68
8.12	Certain Obligations Respecting Subsidiaries; Further Assurances	68
8.13	Termination of Non-Permitted Liens	70
8.14	Board Materials; Oaktree Lender Board Observer	70
8.15	[Reserved]	71
8.16	Maintenance of Regulatory Approvals, Contracts, Intellectual Property, Etc.	71
8.17	ERISA Compliance	71
8.18	Cash Management	71
8.19	Post-Closing Obligations	72
SECTION 9. NEGATIVE COVENANTS		74
9.01	Indebtedness	74
9.02	Liens	76
9.03	Fundamental Changes and Acquisitions	78
9.04	Lines of Business	79
9.05	Investments	79
9.06	Restricted Payments	81
9.07	Payments of Indebtedness	82
9.08	Change in Fiscal Year	82
9.09	Sales of Assets, Etc.	82
9.10	Transactions with Affiliates	83
9.11	Restrictive Agreements	84
9.12	Modifications and Terminations of Material Agreements and Organic Documents	84
9.13	Outbound Licenses	85

TABLE OF CONTENTS
(continued)

9.14	Sales and Leasebacks	85
9.15	Hazardous Material	85
9.16	Accounting Changes	85
9.17	Compliance with ERISA	85
9.18	Sanctions; Anti-Corruption Use of Proceeds	86
SECTION 10. FINANCIAL COVENANTS		86
10.01	Minimum Liquidity	86
10.02	Minimum Revenue	86
10.03	Leverage Ratio Covenant	86
SECTION 11. EVENTS OF DEFAULT		87
11.01	Events of Default	87
11.02	Remedies	90
11.03	Additional Remedies	91
11.04	Minimum Revenue Covenant Cure	91
11.05	Leverage Ratio Cure Right	92
11.06	Payment of Prepayment Fee and Exit Fee	93
SECTION 12. THE ADMINISTRATIVE AGENT		94
12.01	Appointment and Duties	94
12.02	Binding Effect	95
12.03	Use of Discretion	95
12.04	Delegation of Rights and Duties	96
12.05	Reliance and Liability	96
12.06	Administrative Agent Individually	97
12.07	Lender Credit Decision	98
12.08	Expenses; Indemnities	98
12.09	Resignation of the Administrative Agent	99
12.10	Release of Collateral or Guarantors	99
12.11	Additional Secured Parties	100
12.12	Agent May File Proofs of Claim	101
12.13	Intercreditor Agreement	101
SECTION 13. GUARANTY		101
13.01	The Guaranty	101

TABLE OF CONTENTS
(continued)

13.02	Obligations Unconditional	102
13.05	Reinstatement	106
13.06	Subrogation	106
13.07	Remedies	106
13.08	Instrument for the Payment of Money	107
13.09	Continuing Guarantee	107
13.11	General Limitation on Guarantee Obligations	107
SECTION 14.	MISCELLANEOUS	108
14.01	No Waiver	108
14.02	Notices	108
14.03	Expenses, Indemnification, Etc.	108
14.04	Amendments, Etc.	109
14.05	Successors and Assigns	110
14.06	Survival	113
14.07	Captions	113
14.08	Counterparts, Effectiveness	113
14.09	Governing Law	113
14.10	Jurisdiction, Service of Process and Venue	113
14.11	Waiver of Jury Trial	114
14.12	Waiver of Immunity	114
14.13	Entire Agreement	114
14.14	Severability	114
14.15	No Fiduciary Relationship	115
14.16	Confidentiality	115
14.17	Interest Rate Limitation	115
14.18	Judgment Currency	116
14.19	USA PATRIOT Act	116
14.20	Acknowledgement and Consent to Bail-In of EEA Financial Institutions	116

TABLE OF CONTENTS

(continued)

SCHEDULES AND EXHIBITS

Schedule 1	-	Loans Schedule
Schedule 2	-	Products
Schedule 3		Target Revenue
Schedule 4		Permitted Licenses
Schedule 7.05(b)	-	Certain Intellectual Property
Schedule 7.06(b)		Environmental Matters
Schedule 7.08	-	Taxes
Schedule 7.12	-	Information Regarding Subsidiaries
Schedule 7.13(a)	-	Existing Indebtedness
Schedule 7.13(b)	-	Existing Liens
Schedule 7.14		Material Agreements
Schedule 7.15	-	Restrictive Agreements
Schedule 7.16	-	Real Property Owned or Leased by Obligors
Schedule 7.17	-	Pension Matters
Schedule 7.18(c)	-	Adverse Findings
Schedule 7.19	-	Transactions with Affiliates
Schedule 7.24	-	Royalties and Other Payments
Schedule 9.05	-	Existing Investments
Schedule 9.09	-	Sale of Assets
Schedule 9.14	-	Existing Sales and Leasebacks
Exhibit A	-	Form of Note
Exhibit B	-	Form of Borrowing Notice
Exhibit C	-	Form of Guarantee Assumption Agreement
Exhibit D-1	-	Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)
Exhibit D-2	-	Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)
Exhibit D-3	-	Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)
Exhibit D-4	-	Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)
Exhibit E	-	Form of Compliance Certificate
Exhibit F	-	Form of Assignment and Assumption
Exhibit G	-	Form of Landlord Consent
Exhibit H	-	[Reserved]
Exhibit I	-	Form of Intercompany Subordination Agreement
Exhibit J	-	Form of Warrant
Exhibit K	-	Form of Solvency Certificate
Exhibit L	-	Form of Funding Date Certificate
Exhibit M	-	Form of Tranche E Revenue Condition Certificate

CREDIT AGREEMENT AND GUARANTY

CREDIT AGREEMENT AND GUARANTY, dated as of June 19, 2020 (this “**Agreement**”), among **ATHENEX, INC.**, a Delaware corporation (the “**Borrower**”), certain Subsidiaries of the Borrower that may be required to provide Guarantees from time to time hereunder (each a “**Guarantor**” and collectively, the “**Guarantors**”), the lenders from time to time party hereto (each a “**Lender**” and collectively, the “**Lenders**”), and **OAKTREE FUND ADMINISTRATION, LLC**, as administrative agent for the Lenders (in such capacity, the “**Administrative Agent**”).

WITNESSETH:

WHEREAS, the Borrower has requested that the Lenders provide a senior secured term loan facility to the Borrower in an aggregate principal amount of \$225,000,000, consisting of (a) a \$89,886,946 Tranche A-1 Term Loan to be extended on the Closing Date, (b) a \$10,113,054 Tranche A-2 Term Loan to be extended on the Applicable Funding Date for the Tranche A-2 Term Loan, (c) a \$25,000,000 Tranche B Term Loan to be extended on the Applicable Funding Date for the Tranche B Term Loan, (d) a \$25,000,000 Tranche C Term Loan to be extended on the Applicable Funding Date for the Tranche C Term Loan; (e) a \$25,000,000 Tranche D Term Loan to be extended on the Applicable Funding Date for the Tranche D Term Loan; and (f) a \$50,000,000 Tranche E Term Loan to be extended on the Applicable Funding Date for the Tranche E Term Loan; and

WHEREAS, the Lenders are willing, on the terms and subject to the conditions set forth herein, to provide such senior secured term loan facility.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.01 Certain Defined Terms. As used herein, the following terms have the following respective meanings:

“**Account Control Agreement Completion Date**” has the meaning set forth in **Section 8.19(a)**.

“**Acquisition**” means any transaction, or any series of related transactions, by which any Person (for purposes of this definition, an “**acquirer**”) directly or indirectly, by means of amalgamation, merger, purchase of assets, purchase of Equity Interests, or otherwise, (i) acquires all or substantially all of the assets of any other Person, (ii) acquires an entire business line or unit or division of any other Person, (iii) with respect to any other Person that is managed or governed by a Board, acquires control of Equity Interests of such other Person representing more than fifty percent (50%) of the ordinary voting power (determined on a fully-diluted basis) for the election of directors of such Person’s Board, or (iv) acquires control of more than fifty percent (50%) of the Equity Interests in any other Person (determined on a fully-diluted basis) that is not managed by a Board.

“**Administrative Agent**” has the meaning set forth in the preamble hereto.

“**Affiliate**” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Agreement**” has the meaning set forth in the preamble hereto.

“**ANDA**” means (i) (x) an abbreviated new drug application (as defined in the FD&C Act) and (y) any similar application or functional equivalent relating to any new drug application applicable to or required by any non-U.S. Governmental Authority, and (ii) all supplements and amendments that may be filed with respect to any of the foregoing.

“**Applicable Availability Period**” has the meaning set forth in the Loans Schedule.

“**Applicable Funding Condition**” has the meaning set forth in the Loans Schedule.

“**Applicable Funding Date**” means (a) with respect to Tranche A-1 Term Loans, the Closing Date, (b) with respect to the Tranche A-2 Term Loans, ten days from the Closing Date and (c) with respect to the Tranche B Term Loans, Tranche C Term Loans, Tranche D Term Loans and Tranche E Term Loans, the date on or prior to the Applicable Availability Period on which all conditions precedent set forth in **Section 6.02** are satisfied or waived in accordance with the terms of this Agreement.

“**Anti-Terrorism Laws**” means any laws relating to terrorism or money laundering, including, without limitation, (i) the Money Laundering Control Act of 1986 (e.g., 18 U.S.C. §§ 1956 and 1957), (ii) the Bank Secrecy Act of 1970 (e.g., 31 U.S.C. §§ 5311 – 5330), as amended by the Patriot Act, (iii) the laws, regulations and Executive Orders administered by the United States Department of the Treasury’s Office of Foreign Assets Control (“**OFAC**”), (iv) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and implementing regulations by the United States Department of the Treasury, (v) any law prohibiting or directed against terrorist activities or the financing of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B), or (vi) any similar laws enacted in the United States, European Union or any other jurisdictions in which the parties to this agreement operate, and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war.

“**Asset Sale**” has the meaning set forth in **Section 9.09**.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an assignee of such Lender substantially in the form of **Exhibit F**, or such other form as agreed by the Administrative Agent.

“**Arm’s Length Transaction**” means, with respect to any transaction, the terms of such transaction shall not be less favorable to the Borrower or any of its Subsidiaries than commercially reasonable terms that would be obtained in a transaction with a Person that is an unrelated third party.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bailee Letter” means a bailee letter substantially in the form of Exhibit F to the Security Agreement.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy.” **“Benefit Plan”** means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Obligor or Subsidiary thereof incurs or otherwise has any obligation or liability, contingent or otherwise.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“BLA” means (i) (x) a biologics license application (as defined in the FD&C Act) to introduce, or deliver for introduction, a biologic product, including vaccines into commerce in the U.S., or any successor application or procedure and (y) any similar application or functional equivalent relating to biologics licensing applicable to or required by any non-U.S. Governmental Authority, and (ii) all supplements and amendments that may be filed with respect to the foregoing.

“Board” means, with respect to any Person, the board of directors or equivalent management or oversight body of such Person or any committee thereof authorized to act on behalf of such board (or equivalent body).

“Board Observer” has the meaning set forth in **Section 8.14(a)**.

“Borrower” has the meaning set forth in the preamble hereto.

“Borrower Party” has the meaning set forth in **Section 14.03(b)**.

“Borrowing” means the borrowing of the Loans on each Applicable Funding Date.

“Borrowing Notice” means a written notice substantially in the form of **Exhibit B**.

“Business Day” means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York City.

“Capital Lease Obligations” means, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal property, the amount of the liability in respect thereof that would at that time be required to be capitalized on a balance sheet in accordance with GAAP as in effect on December 31, 2018, subject to **Section 1.02**.

“**Casualty Event**” means the damage, destruction or condemnation, as the case may be, of property of the Borrower or any of its Subsidiaries in excess of \$2,000,000.

“**CFC**” means a Subsidiary that is a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“**CFC Holding Company**” means any Domestic Subsidiary that owns no material assets (directly or indirectly) other than Equity Interests and debt of one or more CFCs or Domestic Subsidiaries that are themselves CFC Holding Companies.

“**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, but excluding any of such person or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such Plan) 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 Equity Interests 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 Equity Interests of the Borrower entitled to vote for members of the Board of the Borrower on a fully-diluted basis (and taking into account all such Equity Interests that such person or group has the right to acquire pursuant to any option right); or (ii) as a result of which, during any period of twelve (12) consecutive months, a majority of the members of the Board of the Borrower cease to be composed of individuals (x) who were members of such Board on the first day of such period, (y) whose election or nomination to such Board was approved by individuals referred to in **clause (x)** above constituting at the time of such election or nomination at least a majority of such Board or equivalent governing body or (z) whose election or nomination to such Board was approved by individuals referred to in **clauses (x) and (y)** above constituting at the time of such election or nomination at least a majority of such Board; or (iii) that results in the sale of all or substantially all of the assets or businesses of the Borrower and its Subsidiaries, taken as a whole, or (iv) that results in the Borrower’s failure to own, directly or indirectly, beneficially and of record, one-hundred percent (100%) of all issued and outstanding Equity Interests of each Subsidiary Guarantor.

“**Claims**” means (and includes) any claim, demand, complaint, grievance, action, application, suit, cause of action, order, charge, indictment, prosecution, judgement or other similar process, whether in respect of assessments or reassessments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“**Closing Date**” means the date on which the conditions precedent specified in **Section 6.01** are satisfied (or waived in accordance with **Section 14.04**) and on which the Tranche A-1 Term Loans are to be made to the Borrower.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

“**Collateral**” means any real, personal and mixed property (including Equity Interests), whether tangible or intangible, in which Liens are granted or purported to be granted to the Administrative Agent as security for the Obligations under any Loan Document on or after the Closing Date, including future acquired or created assets or property (or collectively, all such real, personal and mixed property, as the context may require); provided, for the avoidance of doubt, “Collateral” shall not include Equity Interests of any Subsidiary representing, in the aggregate, more than sixty-five percent (65%) of the Equity Interests of any CFC or CFC Holding Company.

“**Commitment**” means, with respect to each Lender, the obligation of such Lender to make Loans to the Borrower on each Applicable Funding Date in accordance with the terms and conditions of this Agreement, which commitment is in the amount set forth opposite such Lender’s name on **Schedule 1** under the caption “Applicable Commitment”, as such Schedule may be amended from time to time pursuant to an Assignment and Assumption or otherwise. The aggregate amount of Commitments on the date of this Agreement equals \$225,000,000.

“**Commitment Fee**” has the meaning set forth in **Section 2.06**.

“**Commitment Termination Date**” means (i) with respect to the Applicable Commitments of the Tranche B Term Loans, the Tranche C Term Loans and the Tranche D Term Loans, June 20, 2022 and (ii) with respect to the Applicable Commitments of the Tranche E Term Loans, June 19, 2023.

“**Company Competitor**” means (i) any competitor of the Borrower or any of its Subsidiaries primarily operating in the same line of business as the Borrower or any of its Subsidiaries and (ii) any of such competitor’s Affiliates (other than any Person that is a bona fide debt fund primarily engaged in the making, purchasing, holding or other investing in commercial loans, notes, bonds or similar extensions of credit or securities in the Ordinary Course) that are either (x) identified by name in writing by the Borrower to the Administrative Agent from time to time or (y) clearly identifiable on the basis of such Affiliate’s name.

“**Compliance Certificate**” has the meaning set forth in **Section 8.01(c)**.

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Consolidated Debt**” shall mean, as of any date of determination, the aggregate principal amount of Indebtedness of the Borrower and its Subsidiaries outstanding on such date and determined on a consolidated basis in accordance with GAAP; provided that (i) Consolidated Debt shall not include (A) Indebtedness that is not for borrowed money incurred pursuant to paragraphs (c), (d), (k) (i) and (ii) (in the case of clause (k)(i), so long as such instruments are classified as equity), (q), (r), (s) and (t) of **Section 9.01**, (B) intercompany indebtedness permitted under **Section 9.01**, (C) Indebtedness under Permitted Convertible Debt and (ii) solely for purposes of calculating Consolidated Debt for any fiscal quarter of the Borrower following the Revenue Covenant Termination Date, Consolidated Debt shall exclude Indebtedness under the Royalty Interest Financing.

“Consolidated Interest Expense” shall mean, with respect to any person for any period, the sum, without duplication, of (a) the aggregate interest expense of such person and its subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP (including pay-in-kind interest payments, amortization of original issue discount, the interest component of Capital Lease Obligations and net payments and receipts (if any) pursuant to interest rate Hedge Agreements (other than in connection with the early termination thereof), plus (b) consolidated capitalized interest of the referent person and its subsidiaries for such period, whether paid or accrued, any amounts paid or payable in respect of interest on Indebtedness the proceeds of which have been contributed to the referent person and that has been guaranteed by the referent person.

“Consolidated Leverage Ratio” means, with respect to any four fiscal quarter period of the Borrower, the ratio of (a) Consolidated Debt as of the last day of such period to (b) EBITDA for such period.

“Consolidated Net Income” means, with respect to the Borrower and its Subsidiaries on a consolidated basis for any period, the net income (loss) of Borrower and its Subsidiaries for such period, determined on a consolidated basis and in accordance with GAAP, but excluding from the determination of Consolidated Net Income (without duplication) any non-cash gains or losses from Asset Sales for such period.

“Contracts” means any contract, license, lease, agreement, obligation, promise, undertaking, understanding, arrangement, document, commitment, entitlement or engagement under which a Person has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied, and whether in respect of monetary or payment obligations, performance obligations or otherwise).

“Control” means, in respect of a particular Person, the possession by one or more other Persons, directly or indirectly, of the power to direct or cause the direction of the management or policies of such particular Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Controlled Account” has the meaning set forth in **Section 8.18(a)**.

“Copyright” means all copyrights, copyright registrations and applications for copyright registrations, including all renewals and extensions thereof and all other rights whatsoever accruing thereunder or pertaining thereto throughout the world.

“Cure Amount” has the meaning set forth in **Section 11.05(a)**.

“Debt Service Reserve Account” has the meaning set forth in **Section 8.10**.

“Default” means any Event of Default and any event that, upon the giving of notice, the lapse of time or both, would constitute an Event of Default.

“Default Rate” has the meaning set forth in **Section 3.02(b)**.

“Deferred Acquisition Consideration” means any purchase price adjustments, royalty, earn-out, milestone payments, contingent or other deferred payment payments of a similar nature (including any non-compete payments and consulting payments) made in connection with any Permitted Acquisition or other acquisition or investment permitted under this Agreement.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory is the subject of country- or territory-wide Sanctions.

“Disqualified Equity Interests” means, with respect to any Person, any Equity Interest of such Person that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), including pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (iii) provides for the scheduled payments of dividends or other distributions in cash or other securities that would constitute Disqualified Equity Interests, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date.

“Disqualified Lender” means any Person designated by the Borrower as a “Disqualified Lender” by written notice delivered to the Administrative Agent on or prior to the date of this Agreement.

“Division” has the meaning set forth in **Section 1.04**.

“Dollars” and **“\$”** means lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary that is a corporation, limited liability company, partnership or similar business entity incorporated, formed or organized under the laws of the United States, any state of the United States or the District of Columbia.

“EBITDA” means, for any period, the Consolidated Net Income for such period:

- (a) increased, in each case to the extent deducted, and without duplication, by:
 - (i) provision for Taxes based on income paid or accrued during such period; plus
 - (ii) Consolidated Interest Expense for such period; plus
 - (iii) depreciation and amortization expense of such person for such period; plus

(iv) to the extent actually paid during such period, third-party fees and expenses related to the consummation of the transactions contemplated to be closed on the Closing Date; plus

(v) transaction costs related to Permitted Acquisitions, Permitted Investments, Permitted Convertible Debt or any offering by the Borrower of its Equity Interests during such period; plus

(vi) non-cash charges recorded in respect of purchase accounting and non-cash exchange, translation or performance losses relating to any foreign currency Hedging Agreements or currency fluctuations, and non-cash expenses, charges or losses reducing Consolidated Net Income (and not otherwise excluded thereunder) during such period in connection with royalty payments or expected future royalty payments; plus

(vii) any other non-cash items (except to the extent representing an accrual for future cash outlays), including non-cash compensation expenses recorded pursuant to FASB 123R or FASB 158 (codified under Accounting Standards Codification 715); plus

(viii) to the extent actually reimbursed, expenses incurred to the extent covered by indemnification provisions in any agreement in connection with any Permitted Acquisition; plus

(ix) all reserves taken during such period on account of contingent cash payments that may be required in future periods; plus

(x) any cost or expense in connection with fees paid under licenses during such period to the extent that such costs or expenses are non-cash or otherwise funded with cash proceeds of issuances of common stock of the Borrower; plus

(xi) restructuring charges or reserves during such period, including write-downs and write-offs, including any one-time costs incurred in connection with Permitted Acquisitions and other Investments and costs related to the closure, consolidation and integration of facilities, information technology infrastructure and legal entities, and severance and retention bonuses; provided that, when taken together with the amounts in item (xii) for the same period, such charges or reserves do not exceed, in the aggregate, 15% of the amount of EBITDA for such period after giving effect to this addback; plus

(xii) non-recurring litigation costs during such period; provided that, when taken together with the amounts in item (xi) for the same period, such costs do not exceed, in the aggregate, 15% of the amount of EBITDA for such period after giving effect to this addback; and

(b) decreased by (without duplication):

(i) net unrealized gains on Hedge Agreements; plus

(ii) non-cash gains relating to cash receipts or netting arrangement in a prior period to the extent such cash receipts or netting arrangement were included in the calculation of EBITDA in such prior period; plus

(iii) cash payments during such period on account of accruals or reserves added to EBITDA pursuant to clause (a)(ix) above; plus

(iv) non-cash gains increasing Consolidated Net Income for such period, excluding any non-cash gains that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that were deducted (and not added back) in the calculation of EBITDA for any prior period.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in **clause (a)** of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in **clauses (a)** or **(b)** of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Transferee” means and includes (i) any commercial bank, (ii) any insurance company, (iii) any finance company, (iv) any financial institution, (v) any Person that is a bona fide debt fund primarily engaged in the making, purchasing, holding or other investing in commercial loans, notes, bonds or similar extensions of credit or securities in the Ordinary Course, (vi) with respect to any Lender, any of its Affiliates or such Lender’s or Affiliate’s managed funds or accounts, and (vii) any other “accredited investor” (as defined in Regulation D of the Securities Act) that is principally in the business of managing investments or holding assets for investment purposes; provided that, an Eligible Transferee shall not include (x) any Company Competitor or Disqualified Lender, or (y) any Person that primarily invests in distressed debt or other distressed financial assets; provided; further that (A) neither **clause (x)** or **(y)** above shall apply retroactively to any Person that previously acquired an assignment or participation interest hereunder to the extent such Person was not a Company Competitor or a Person of the type described in **clause (y)** above at the time of the applicable assignment or participation, as the case may be, and (B) with respect to both **clauses (x)** and **(y)** above, the Administrative Agent shall not have any duty or obligation to carry out due diligence in order to identify or determine whether a Person would be excluded as an Eligible Transferee as a result of the application of either such clause.

“Environmental Claims” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, information request, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment, arising out of a violation of Environmental Law or any Hazardous Materials Activity.

“Environmental Law” means all laws (including common law and any federal, state, provincial or local governmental law), rule, regulation, order, writ, judgment, notice, requirement, binding agreement, injunction or decree, whether U.S. or non-U.S., relating in any way to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) to the extent related to Hazardous Materials Activity, occupational safety and health, industrial hygiene, land use, natural resources or the protection of human, plant or animal health or welfare, in any manner applicable to the Borrower or any of its Subsidiaries or any Facility.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Obligor or any of its Subsidiaries directly or indirectly resulting from or based upon (i) violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (iii) exposure to any Hazardous Materials, (iv) the release or threatened release of any Hazardous Materials into the environment or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means, with respect to any Person (for purposes of this defined term, an **“issuer”**), all shares of, interests or participations in, or other equivalents in respect of such issuer’s capital stock, including all membership interests, partnership interests or equivalent, whether now outstanding or issued after the Closing Date, and in each case, however designated and whether voting or non-voting. Notwithstanding the foregoing, in no event shall any Indebtedness convertible or exchangeable into Equity Interests constitute “Equity Interests” hereunder.

“Equivalent Amount” means, with respect to an amount denominated in one currency, the amount in another currency that could be purchased by the amount in the first currency determined by reference to the Exchange Rate at the time of determination.

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

“ERISA Affiliate” means, collectively, any Obligor, Subsidiary thereof, and any Person under common control, or treated as a single employer, with any Obligor or Subsidiary thereof, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“ERISA Event” means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event; (ii) the applicability of the requirements of Section 4043(b)

of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Title IV Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following thirty (30) days; (iii) a withdrawal by any Obligor or any ERISA Affiliate thereof from a Title IV Plan or the termination of any Title IV Plan resulting in liability under Sections 4063 or 4064 of ERISA; (iv) the withdrawal of any Obligor or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by any Obligor or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is insolvent pursuant to Section 4245 of ERISA; (v) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Title IV Plan or Multiemployer Plan; (vi) the imposition of liability on any Obligor or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the failure by any Obligor or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Title IV Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Title IV Plan or the failure to make any required contribution to a Multiemployer Plan; (viii) the determination that any Title IV Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (ix) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan; (x) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or any ERISA Affiliate thereof; (xi) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Title IV Plan; (xii) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Obligor or any Subsidiary thereof may be directly or indirectly liable; (xiii) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Code by any fiduciary or disqualified person for which any Obligor or any ERISA Affiliate thereof may be directly or indirectly liable; (xiv) the occurrence of an act or omission which could give rise to the imposition on any Obligor or any ERISA Affiliate thereof of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (xv) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Obligor or any Subsidiary thereof in connection with any such plan; (xvi) receipt from the IRS of notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; (xvii) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Obligor or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code; or (xviii) the establishment or amendment by any Obligor or any Subsidiary thereof of any "welfare plan", as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of any Obligor.

“ERISA Funding Rules” means the rules regarding minimum required contributions (including any installment payment thereof) to Title IV Plans, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Event of Default” has the meaning set forth in **Section 11.01**.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Exchange Rate” means, as of any date, the rate at which any currency may be exchanged into another currency, as set forth on the relevant Reuters screen at or about 11:00 a.m. (Eastern time) on such date. In the event that such rate does not appear on the Reuters screen, the “Exchange Rate” shall be determined by reference to such other publicly available service for displaying exchange rates as may be reasonably designated by the Administrative Agent.

“Excluded Accounts” means (i) deposit accounts exclusively used for payroll, payroll Taxes and other employee wage and benefit payments to or for the benefit of any Obligor’s employees, (ii) zero balance accounts that are swept no less frequently than weekly to a Controlled Account, (iii) accounts (including trust accounts) used exclusively for bona fide escrow purposes, insurance or fiduciary purposes, (iv) cash collateral for Permitted Liens, (v) collateral accounts in respect of the Royalty Interest Financing and (vi) any other deposit accounts established after the Closing Date only for so long as the amounts of deposit therein do not exceed \$500,000 in the aggregate.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (x) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivisions thereof) or (y) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (1) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under **Section 0**) or (2) such Lender changes its lending office, except in each case to the extent that, pursuant to **Section 5.03**, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to such Recipient’s failure to comply with **Section 5.03(f)**, and (iv) any U.S. federal withholding Taxes imposed under FATCA.

“**Exit Fee**” has the meaning assigned to such term in **Section 3.05**.

“**Facility**” means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased or operated by any Obligor or any of its Subsidiaries.

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“**FD&C Act**” means the U.S. Food, Drug and Cosmetic Act of 1938, 21 U.S.C. §§ 301 et seq. (or any successor thereto), as amended from time to time, and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder.

“**FDA**” means the U.S. Food and Drug Administration and any successor entity.

“**Federal Funds Effective Rate**” means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“**Fee Letter**” means the Fee Letter, dated as of the date of this Agreement, among the Borrower, the Lenders and the Administrative Agent.

“**Foreign Lender**” means a Lender that is not a U.S. Person.

“**Foreign Subsidiary**” means any Subsidiary that is not a Domestic Subsidiary.

“**Funding Date Certificate**” means a certificate substantially in the form of Exhibit L.

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination. All references to “GAAP” shall be to GAAP applied consistently with the principles used in the preparation of the financial statements delivered pursuant to **Section 6.1(f)(i)**.

“Governmental Approval” means any consent, authorization, approval, order, license, franchise, permit, certification, accreditation, registration, clearance or exemption that is issued or granted by or from (or pursuant to any act of) any Governmental Authority, including any application or submission related to any of the foregoing.

“Governmental Authority” means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including without limitation regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any state, territory, county, city or other political subdivision of any country, in each case whether U.S. or non-U.S.

“Guarantee” of or by any Person (the **“guarantor”**) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the **“primary obligor”**) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (iv) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; provided, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course.

“Guarantee Assumption Agreement” means a Guarantee Assumption Agreement substantially in the form of **Exhibit C** by an entity that, pursuant to **Section 8.12(a)**, is required to become a “Subsidiary Guarantor.”

“Guaranteed Obligations” has the meaning set forth in **Section 13.01**.

“Guaranty” means the Guaranty made by the Subsidiary Guarantors under **Section 13** in favor of the Secured Parties (including any Guaranty assumed by an entity that is required to become a “Subsidiary Guarantor” pursuant to a Guarantee Assumption Agreement).

“Hazardous Material” means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or would reasonably be expected to pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

“Hazardous Materials Activity” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, release, threatened release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, recycling, disposition or handling of any Hazardous Materials, and any investigation, monitoring, corrective action or response action with respect to any of the foregoing.

“Healthcare Laws” means, collectively, all Laws and Product Authorizations applicable to the business, any Product or the Product Commercialization and Development Activities of any Obligor, whether U.S. or non-U.S., regulating the distribution, dispensing, importation, exportation, quality, manufacturing, labeling, promotion and provision of and payment for drugs, medical or healthcare products, items and services, including, without limitation, 45 C.F.R. et seq. (“HIPAA”); Section 1128B(b) of the Social Security Act, as amended; 42 U.S.C. § 1320a-7b (Criminal Penalties Involving Medicare or State Health Care Programs), commonly referred to as the “Federal Anti-Kickback Statute”; § 1877 of the Social Security Act, as amended; 42 U.S.C. § 1395nn (Limitation on Certain Physician Referrals), commonly referred to as “Stark Statute”; the FD&C Act; all applicable Good Manufacturing Practice requirements addressed in the FDA’s Quality System Regulation (21 C.F.R. Part 820); all rules, regulations and guidance with respect to the provision of Medicare and Medicaid programs or services (42 C.F.R. Chapter IV et seq.); 10 U.S.C. §§1071 – 1110(b) (the “TRICARE Program”); 5 U.S.C. §§ 8901 – 8914 (“FEHB Plans”); the PDMA; and all rules, regulations and guidance promulgated under or pursuant to any of the foregoing, including any non-U.S. equivalents.

“Hedging Agreement” means any interest rate exchange agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement. Notwithstanding anything to the contrary in the foregoing, neither any Permitted Bond Hedge nor any Permitted Warrant Transaction shall be a Hedging Agreement.

“Immaterial Subsidiary” means any Subsidiary of the Borrower that (i) individually constitutes or holds less than five percent (5%) of the Borrower’s consolidated total assets or generates less than five percent (5%) of the Borrower’s consolidated total revenue, and (ii) when taken together with all then existing Immaterial Subsidiaries, such Subsidiary and such Immaterial Subsidiaries, in the aggregate, would constitute or hold less than fifteen percent (15%) of the Borrower’s consolidated total assets or generate less than fifteen percent (15%) of the Borrower’s consolidated total revenue, in each case as pursuant to the most recent fiscal period for which financial statements were required to have been delivered pursuant to **8.01(a)** or **(b)**.

“IND” means (i) (x) an investigational new drug application (as defined in the FD&C Act) that is required to be filed with the FDA before beginning clinical testing in human subjects, or any successor application or procedure and (y) any similar application or functional equivalent relating to any investigational new drug application applicable to or required by any non-U.S. Governmental Authority, and (ii) all supplements and amendments that may be filed with respect to the foregoing.

“Indebtedness” of any Person means, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (v) all obligations

of such Person in respect of the deferred purchase price of property or services (excluding deferred compensation and accounts payable incurred in the ordinary course of business and not overdue by more than ninety (90) days), (vi) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (vii) all Guarantees by such Person of Indebtedness of others, (viii) all Capital Lease Obligations of such Person, (ix) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (x) obligations under any Hedging Agreement, currency swaps, forwards, futures or derivatives transactions, (xi) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (xii) all guaranteed minimum milestone and other payments of such Person under any license or other agreements (but excluding any payments based on sales under any such license or other agreement), (xiii) any Disqualified Equity Interests of such Person, and (xiv) all other obligations required to be classified as indebtedness of such Person under GAAP; provided that, notwithstanding the foregoing, Indebtedness shall not include accrued expenses, deferred rent, deferred taxes, deferred compensation or customary obligations under employment agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Party" has the meaning set forth in **Section 14.03(b)**.

"Indemnified Taxes" means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any Obligation and (ii) to the extent not otherwise described in **clause (i)**, Other Taxes.

"Information Certificate" means the Information Certificate delivered pursuant to **Section 6.01(c)**.

"Insolvency Proceeding" means (i) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. federal, state or foreign law, including the Bankruptcy Code.

"Intellectual Property" means all Patents, Trademarks, Copyrights, and Technical Information, whether U.S. or non-U.S.

"Intercompany Subordination Agreement" means a subordination agreement to be executed and delivered by each Obligor and each of its Subsidiaries, pursuant to which all obligations in respect of any Indebtedness owing to any such Person by an Obligor shall be subordinated to the prior payment in full in cash of all Obligations, such agreement to be in substantially the form attached hereto as **Exhibit I**.

“Interest Period” means (a) the period commencing on and including the Closing Date and ending on but excluding the immediately subsequent Payment Date and (b) subsequently, each period commencing on and excluding the last day of the previous Interest Period for such Loan and ending on but excluding the immediately subsequent Payment Date.

“Interest Rate” means 11.0% per annum, as may be increased pursuant to **Section 3.02(b)**.

“Invention” means any novel, inventive or useful art, apparatus, method, process, machine (including any article or device), manufacture or composition of matter, or any novel, inventive and useful improvement in any art, method, process, machine (including article or device), manufacture or composition of matter.

“Investment” means, for any Person: (i) the acquisition (whether for cash, property, services or securities or otherwise) of any debt or Equity Interests, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any “short sale” or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (ii) the making of any deposit with, or advance, loan, assumption of debt or other extension of credit to, or capital contribution in any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days arising in connection with the sale of inventory or supplies by such Person in the Ordinary Course; or (iii) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person. The amount of an Investment shall be the amount actually invested (which, in the case of any Investment constituting the contribution of an asset or property, shall be based on such Person’s good faith estimate of the fair market value of such asset or property at the time such Investment is made), less the amount of cash received or returned for such Investment, without adjustment for subsequent increases or decreases in the value of such Investment or write-ups, write-downs or write-offs with respect thereto; provided that in no event shall such amount be less than zero or increase any basket or amount pursuant to **Section 9.05** above the fixed amount set forth therein. Notwithstanding anything to the contrary in the foregoing, the purchase of any Permitted Bond Hedge Transaction by the Borrower or any of its Subsidiaries and the performance of its obligations thereunder shall not be an Investment.

“IRS” means the U.S. Internal Revenue Service or any successor agency, and to the extent relevant, the U.S. Department of the Treasury.

“Landlord Consent” means a Landlord Consent substantially in the form of **Exhibit G**.

“Law” means, collectively, all U.S. or non-U.S. federal, state, provincial, territorial, municipal or local statute, treaty, rule, guideline, regulation, ordinance, code or administrative or judicial precedent or authority, including any interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“**Lenders**” has the meaning set forth in the preamble hereto.

“**Leverage Ratio Covenant**” has the meaning set forth in **Section 10.03**.

“**Leverage Ratio Cure Right**” has the meaning set forth in **Section 11.05**.

“**Lien**” means (a) any mortgage, lien, pledge, hypothecation, charge, security interest, or other encumbrance of any kind or character whatsoever, whether or not filed, recorded or otherwise perfected under applicable Law, or any lease, title retention agreement, mortgage, restriction, easement, right-of-way, option or adverse claim (of ownership or possession) (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any other encumbrance on title to real property, any option or other agreement to sell, or give a security interest in, such asset and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes of any jurisdiction)) or any preferential arrangement that has the practical effect of creating a security interest and (b) in the case of Equity Interests, any purchase option, call or similar right of a third party with respect to such Equity Interests.

“**Loan**” means each loan advanced by a Lender pursuant to **Section 2.01**.

“**Loan Documents**” means, collectively, this Agreement, the Notes, the Security Documents, the Warrant, the Fee Letter, any Guarantee Assumption Agreement, the Intercompany Subordination Agreement and any subordination agreement, intercreditor agreement or other present or future document, instrument, agreement or certificate delivered to the Administrative Agent (for itself or for the benefit of any other Secured Party) in connection with this Agreement or any of the other Loan Documents, in each case, as amended or otherwise modified.

“**Loss**” means judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any Claim or any proceeding relating to any Claim.

“**Majority Lenders**” means, at any time, Lenders having at such time in excess of fifty percent (50%) of the aggregate Commitments (or, if such Commitments are terminated, the outstanding principal amount of the Loans) then in effect.

“**Margin Stock**” means “margin stock” within the meaning of Regulations U and X.

“**Material Adverse Change**” and “**Material Adverse Effect**” mean a material adverse change in or effect on (i) the business, financial performance, operations, condition of the assets or liabilities of the Borrower and its Subsidiaries taken as a whole, (ii) the ability of any Obligor to perform its obligations under the Loan Documents, as and when due, or (iii) the legality, validity, binding effect or enforceability of the Loan Documents or the rights, remedies and benefits available to, or conferred upon, the Administrative Agent or the Secured Parties under any of the Loan Documents.

“Material Agreement” means any Contract required to be disclosed (including amendments thereto) under regulations promulgated under the Securities Act of 1933 or Securities Exchange Act of 1934, as may be amended. For the avoidance of doubt, employment and management contracts shall not be Material Agreements.

“Material Indebtedness” means, at any time, any Indebtedness of any Obligor or Subsidiary thereof, the outstanding principal amount of which, individually or in the aggregate, exceeds \$10,000,000 (or the Equivalent Amount in other currencies).

“Material Intellectual Property” means all Intellectual Property, whether currently owned by (or purported to be owned by) or licensed to (or purported to be licensed to) the Borrower or any of its Subsidiaries, or acquired, developed or obtained by or otherwise licensed to the Borrower or any of its Subsidiaries after the date hereof (i) the loss of which could reasonably be expected to result in a Material Adverse Effect, or (ii) that has a fair market value in excess of \$7,500,000 (or the Equivalent Amount in other currencies).

“Material Subsidiary” means any Subsidiary of the Borrower that is not an Immaterial Subsidiary.

“Maturity Date” means June 19, 2026.

“Medicaid” means that government-sponsored entitlement program under Title XIX, P.L. 89-97 of the Social Security Act, which provides federal grants to states for medical assistance based on specific eligibility criteria, as set forth on Section 1396, et seq. of Title 42 of the United States Code.

“Medicare” means that government-sponsored insurance program under Title XVIII, P.L. 89-97, of the Social Security Act, which provides for a health insurance system for eligible elderly and disabled individuals, as set forth at Section 1395, et seq. of Title 42 of the United States Code.

“Minimum Cash Balance” means an amount not less than \$100,000,000 in Cash or Cash Equivalents held by the Borrower.

“Minimum Liquidity Amount” means (i) from the Closing Date until the date on which the aggregate principal amount of Loans outstanding under this Agreement is greater than or equal to \$150,000,000 (the **“First Step-Up Date”**), \$20,000,000, (ii) from the First Step-Up Date until the date on which the aggregate principal amount of Loans outstanding under this Agreement is equal to \$225,000,000 (the **“Second Step-Up Date”**), \$25,000,000 and (iii) from the Second Step-Up Date until the Maturity Date, \$30,000,000.

“Minimum Revenue Covenant” has the meaning set forth in **Section 10.02**.

“Minimum Revenue Cure Right” has the meaning set forth in **Section 11.04(a)**.

“**Multiemployer Plan**” means any multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

“**NDA**” means (i) (x) a new drug application (as defined in the FD&C Act) and (y) any similar application or functional equivalent relating to any new drug application applicable to or required by any non-U.S. country, jurisdiction or Governmental Authority, and (ii) all supplements and amendments that may be filed with respect to any of the foregoing.

“**Net Cash Proceeds**” means, (i) with respect to any Casualty Event experienced or suffered by any Obligor or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) from time to time by or on behalf of such Person after deducting therefrom only (w) reasonable costs and expenses related thereto incurred by such Obligor or such Subsidiary in connection therewith, (x) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith, (y) reasonable reserves established for liabilities estimated to be payable in respect of such Casualty Event and deposited into escrow with a third party escrow agent on terms reasonably acceptable to the Administrative Agent or set aside in a separate Deposit Account that is subject to a Control Agreement in favor of the Administrative Agent and (z) any amounts required to be used to prepay Permitted Indebtedness pursuant to **Sections 9.01(j) and 9.01(l)** secured by the assets subject to such Casualty Event (other than (A) Indebtedness owing to the Administrative Agent or any Lender under this Agreement or the other Loan Documents and (B) Indebtedness assumed by the purchaser of such asset); and (ii) with respect to any Asset Sale by any Obligor or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) from time to time by or on behalf of such Person after deducting therefrom only (w) reasonable costs and expenses related thereto incurred by such Obligor or such Subsidiary in connection therewith, (x) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith, (y) reasonable reserves established for liabilities estimated to be payable in respect of such Asset Sale and deposited into escrow with a third party escrow agent on terms reasonably acceptable to the Administrative Agent or set aside in a separate Deposit Account that is subject to a Control Agreement in favor of the Administrative Agent and (z) any amounts required to be used to prepay Permitted Indebtedness pursuant to **Sections 9.01(j) and 9.01(l)** secured by the assets subject to such Asset Sale (other than (A) Indebtedness owing to the Administrative Agent or any Lender under this Agreement or the other Loan Documents and (B) Indebtedness assumed by the purchaser of such asset); provided that, in each case of **clauses (i) and (ii)**, costs and expenses shall only be deducted to the extent, that the amounts so deducted are (x) actually paid to a Person that is not an Affiliate of any Obligor or any of its Subsidiaries and (y) properly attributable to such Casualty Event or Asset Sale, as the case may be.

“**Note**” means a promissory note, in substantially the form of **Exhibit A** hereto, executed and delivered by the Borrower to any Lender in accordance with **Section 2.04**.

“**Notice of Intent to Cure Leverage Covenant**” has the meaning set forth in **Section 11.05(b)**.

“**Notice of Intent to Cure Revenue Covenant**” has the meaning set forth in **Section 11.04(b)**.

“**NY UCC**” means the UCC as in effect from time to time in New York.

“**Oaktree Lender**” means any Lender that is an Affiliate or managed fund or account of Oaktree Capital Management, L.P.

“**Obligations**” means, with respect to any Obligor, all amounts, obligations, liabilities, covenants and duties of every type and description owing by such Obligor to any Secured Party (including all Guaranteed Obligations and Warrant Obligations) any other indemnitee hereunder or any participant, arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (i) if such Obligor is the Borrower, all Loans, (ii) all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (iii) all other fees, expenses (including fees, charges and disbursement of counsel), interest, Commitment Fees, Prepayment Fee, Exit Fee, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to such Obligor under any Loan Document.

“**Obligors**” means, collectively, the Borrower and the Subsidiary Guarantors and their respective successors and permitted assigns.

“**OFAC**” has the meaning assigned to such term in the definition of “Anti-Terrorism Laws.”

“**Oral Paclitaxel**” means the Product oral paclitaxel and encequidar, together with any improvements or modifications thereto.

“**Ordinary Course**” means ordinary course of business or ordinary trade activities that are customary for similar businesses in the normal course of their ordinary operations and not while in financial distress.

“**Organic Document**” means, for any Person, such Person’s formation documents, including, as applicable, its certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, limited liability agreement, operating agreement and all shareholder agreements, voting trusts and similar arrangements applicable to such Person’s Equity Interests, or any equivalent document of any of the foregoing.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 5.03(g)**).

“**Parent Entity**” shall mean any direct or indirect parent of the Borrower.

“**Participant**” has the meaning set forth in **Section 14.05(e)**.

“**Participant Register**” has the meaning set forth in **Section 14.05(e)**.

“**Patents**” means all patents and patent applications, including (i) the Inventions and improvements described and claimed therein, (ii) the reissues, divisions, continuations, renewals, extensions, and continuations in part thereof, and (iii) all rights whatsoever accruing thereunder or pertaining thereto throughout the world.

“**Patriot Act**” has the meaning set forth in **Section 14.19**.

“**Payment Date**” means (i) March 31, June 30, September 30 and December 31 of each year, commencing on the first such date to occur after the Closing Date (provided, that if such date is not a Business Day, then on the immediately preceding Business Day); and (ii) the Maturity Date.

“**PBGC**” means the United States Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“**PDMA**” means the Prescription Drug Marketing Act of 1987, 21 U.S.C. §§ 331 et seq. (or any successor thereto), as amended from time to time, and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder.

“**Permitted Acquisition**” means any Acquisition by the Borrower or any of its Subsidiaries, whether by purchase, merger or otherwise; provided that:

(a) immediately prior to, and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or could reasonably be expected to result therefrom;

(b) such Acquisition shall comply in all material respects with all applicable Laws and all applicable Governmental Approvals;

(c) in the case of any Acquisition of Equity Interests of another Person, after giving effect to such Acquisition, all Equity Interests of such other Person acquired by the Borrower or any of its Subsidiaries shall be owned, directly or indirectly, beneficially and of record, by the Borrower or any of its Subsidiaries, and, the Borrower shall cause such acquired Person to satisfy each of the actions set forth in **Section 8.12** as required by such Section;

(d) on a *pro forma* basis after giving effect to such Acquisition, the Borrower and its Subsidiaries shall be in compliance with the financial covenants set forth in **Section 10**;

(e) to the extent that the purchase price for any such Acquisition is paid in cash, the amount thereof does not exceed \$10,000,000 (or the Equivalent Amount in other currencies) in any fiscal year (excluding any Deferred Acquisition Consideration consisting of milestone and royalty payments that are calculated on the basis of future revenues pursuant to an agreement entered as an Arm's Length Transaction);

(f) to the extent that the purchase price for any such Acquisition is paid in Equity Interests, all such Equity Interests shall be Qualified Equity Interests;

(g) in the case of any such Acquisition that has a purchase price (including reasonable estimates of any Deferred Acquisition Compensation) in excess of \$35,000,000 (and excluding any Deferred Acquisition Consideration consisting of milestone and royalty payments that are in each case calculated on the basis of future revenues pursuant to an agreement entered as an Arm's Length Transaction), (A) the Borrower shall provide to the Administrative Agent (i) at least ten (10) Business Day's prior written notice of any such Acquisition, together with summaries, prepared in reasonable detail, of all due diligence conducted by or on behalf of the Borrower or the applicable Subsidiary, as applicable, prior to such Acquisition, in each case subject to customary confidentiality restrictions, (ii) subject to customary confidentiality restrictions, a copy of the draft purchase agreement related to the proposed Acquisition (and any related documents requested by the Administrative Agent), (iii) pro forma financial statements of the Borrower and its Subsidiaries (as of the last day of the most recently ended fiscal quarter prior to the date of consummation of such Acquisition for which financial statements are required to be delivered pursuant to **8.01(a)** or **(b)**) after giving effect to such Acquisition, and (iv) subject to customary confidentiality restrictions, any other information reasonably requested (to the extent available), by the Administrative Agent and available to the Obligor and (B) to the extent the cash purchase price exceeds \$35,000,000 (excluding any Deferred Acquisition Consideration consisting of milestone and royalty payments that are calculated on the basis of future revenues pursuant to an agreement entered as an Arm's Length Transaction), the Administrative Agent shall have consented to in writing to such Acquisition (such consent not to be unreasonably delayed, withheld or conditioned); and

(h) no Obligor or any of its Subsidiaries (including any acquired Person) shall, in connection with any such Acquisition, assume or remain liable with respect to (x) any Indebtedness of the related seller or the business, Person or assets acquired, except to the extent permitted pursuant to **Section 9.01(I)**, (y) any Lien on any business, Person or assets acquired, except to the extent permitted pursuant to **Section 9.02**, (z) any other liabilities (including Tax, ERISA and environmental liabilities), except to the extent the assumption of such liability could not reasonably be expected to result in a Material Adverse Effect. Any other such Indebtedness, liabilities or Liens not permitted to be assumed, continued or otherwise supported by any Obligor or Subsidiary thereof hereunder shall be paid in full or released within sixty (60) days of the acquisition date as to the business, Persons or properties being so acquired on or before the consummation of such Acquisition.

“Permitted Bond Hedge Transaction” means any call or capped call option (or substantively equivalent derivative transaction) relating to the Borrower’s common stock (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower) that is (A) purchased by the Borrower in connection with the issuance of any Permitted Convertible Debt, (B) settled in common stock of the Borrower (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower’s common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower and (C) on terms and conditions customary for bond hedge transactions in respect of broadly distributed 144A convertible bond transactions as reasonably determined by the Borrower.

“Permitted Cash Equivalent Investments” means (i) marketable direct obligations issued or unconditionally guaranteed by the United States or any member states of the European Union or any agency or any state thereof having maturities of not more than one (1) year from the date of acquisition, (ii) commercial paper maturing no more than two hundred seventy (270) days after the date of acquisition thereof and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., (iii) certificates of deposit maturing no more than one (1) year after issue that are issued by any bank organized under the Laws of the United States, or any state thereof, or the District of Columbia, or any U.S. branch of a foreign bank having, at the date of acquisition thereof, combined capital and surplus of not less than \$500,000,000 and (iv) any money market or similar funds that exclusively hold any of the foregoing.

“Permitted Convertible Debt” means unsecured Indebtedness of the Borrower that (i) contains customary conversion rights for broadly distributed 144A convertible bond transactions as of the date of issuance and (ii) is convertible into shares of common stock of the Borrower, cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower’s common stock or such other securities or property), or cash in lieu of fractional shares of common stock of the Borrower; provided that any such indebtedness shall (A) mature, and not be subject to mandatory repurchase or redemption (other than in connection with a customary change of control or “fundamental change” provision), at least 180 days after the Maturity Date, (B) have recourse only to the Borrower and (C) not have an all-in-yield greater than 550 basis points as determined in good faith by the Administrative Agent (with any original issue discount equated to interest based on the convertible debt maturity date and excluding any additional or special interest that may become payable from time to time).

“Permitted Cure Securities” means common Equity Interests of the Borrower.

“Permitted Hedging Agreement” means a Hedging Agreement entered into by any Obligor in such Obligor’s Ordinary Course for the purpose of hedging currency risks or interest rate risks (and not for speculative purposes) and (x) with respect to hedging currency risks, in an aggregate notional amount for all such Hedging Agreements not in excess of \$10,000,000 (or the Equivalent Amount in other currencies) and (y) with respect to hedging interest rate risks, in an aggregate notional amount for all such Hedging Agreements in excess of 50%, but not more than 100%, of the aggregate principal amount of Loans outstanding at such time.

“Permitted Indebtedness” means any Indebtedness permitted under **Section 9.01**.

“Permitted Intercreditor Agreement” has the meaning set forth in **Section 12.13**.

“Permitted Licenses” are: (A) licenses of over-the-counter software that is commercially available to the public; (B) non-exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the Ordinary Course, (C) development, co-promotion, distribution and other collaborative arrangements where such arrangements provide for the licenses or disclosure of Patents, Trademarks, Copyrights or other Intellectual Property rights in the ordinary course of business and consistent with general market practices where such license requires periodic payments based on per unit sales of a product over a period of time; provided that each such license does not effect a legal transfer of title to such Intellectual Property rights and that each such license must be a true license as opposed to a license that is a sales transaction in substance; (D) exclusive licenses for the use of the Intellectual Property of any Obligor or any Subsidiaries, provided, that, with respect to each such license described in this clause (D), the license (i) constitutes an Arm’s Length Transaction, the terms of which (x) do not provide for a sale or assignment of any Intellectual Property, (y) do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise dispose of any Intellectual Property and (z) are commercially reasonable and (ii) (x) is limited in territory with respect to a specific geographic country or region (i.e. Japan, Germany, northern China) outside of the United States or (y) is to a top 25 pharmaceutical company by global revenue; (E) in-licenses of Intellectual Property, (F) licenses in connection with the Royalty Interest Financing, (G) exclusive licenses for the use of the Intellectual Property of any Obligor or any Subsidiaries, provided, that with respect to each such license described in this clause (G), such license (w) constitutes an Arm’s Length Transaction, (x) relates solely to non-oncology indications, (y) is on commercially reasonable terms and (z) the proceeds of such license are subject to mandatory prepayment pursuant to **Section 3.03(b)(i)** and (H) licenses set forth on **Schedule 4**.

“Permitted Liens” means any Liens permitted under **Section 9.02**.

“Permitted Refinancing” means, with respect to any Indebtedness permitted to be refinanced, extended, renewed or replaced hereunder, any refinancings, extensions, renewals and replacements of such Indebtedness; provided that such refinancing, extension, renewal or replacement shall not (i) increase the outstanding principal amount of the Indebtedness being refinanced, extended, renewed or replaced, except by an amount equal to accrued interest and a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred in connection therewith, (ii) contain terms relating to outstanding principal amount, amortization, maturity, collateral security (if any) or subordination (if any), or other material terms that, taken as a whole, are less favorable in any material respect to the Obligors and their respective Subsidiaries or the Secured Parties than the terms of any agreement or instrument governing such existing Indebtedness, (iii) have an applicable interest rate which does not exceed the greater of (A) the rate of interest of the Indebtedness being replaced and (B) the then applicable market interest rate, (iv) contain any new requirement to grant any Lien or to give any Guarantee that was not an existing requirement of such Indebtedness and (v) after giving effect to such refinancing, extension, renewal or replacement, no Default shall have occurred (or could reasonably be expected to occur) as a result thereof.

“Permitted Warrant Transaction” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to the Borrower’s common stock (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower) sold by the Borrower and with recourse to the Borrower only, substantially concurrently with any purchase by the Borrower of a Permitted Bond Hedge Transaction and settled in common stock of the Borrower, cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower’s common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower.

“Person” means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Pledged Entity” means any Subsidiary of the Borrower, Equity Interests of which have been or, pursuant to **Section 8.19** are required to be, pledged to the Administrative Agent pursuant to the Security Documents.

“Prepayment Fee” means with respect to any prepayment of all or any portion of the Loans, whether by optional or mandatory prepayment, acceleration or otherwise (in each case, other than any scheduled amortization payment or any cure payment made pursuant to **Section 11.04** and **11.05**), occurring (i) on or prior to the second anniversary of the Closing Date, an amount equal to the amount of interest that would have been paid on the principal amount of the Loans being so repaid or prepaid for the period from and including the date of such repayment or prepayment to but excluding the date that is the two (2) year anniversary of the Closing Date, *plus* three percent (3%) of the principal amount of the Loans being so repaid or prepaid and the Commitments being so terminated, (ii) at any time after the second anniversary of the Closing Date but on or prior to the third anniversary of the Closing Date, an amount equal to three percent (3%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, (iii) at any time after the third anniversary of the Closing Date but on or prior to the fourth anniversary of the Closing Date, an amount equal to two percent (2%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid and (iv) if the prepayment is made after the fourth anniversary of the Closing Date, 0%.

“Prepayment Price” has the meaning set forth in **Section 3.03(a)(i)**.

“Principal Payment Date” means (i) the first Payment Date to occur after the second (2nd) anniversary of the Closing Date, (ii) thereafter, each Payment Date and, if applicable, (iii) the Maturity Date.

“Pro Forma Basis” shall mean, with respect to the calculation of any financial ratio, as of any date, that *pro forma* effect will be given to the Transactions, any Permitted Acquisition, any issuance, incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction and for which any such financial ratio is being calculated), all sales, transfers and other dispositions or discontinuance of any subsidiary, line of business or division, or any conversion of a Subsidiary Guarantor to Subsidiary or of a Subsidiary to a Subsidiary Guarantor, in each case that have occurred during the four consecutive fiscal quarter period of the Borrower being used to calculate such financial ratio (the “Reference Period”), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a person who became a Restricted Subsidiary after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period. Whenever *pro forma* effect is given to any of the foregoing, pro forma calculations shall be made in good faith by a Responsible Officer of the Borrower giving effect to any synergies that the Borrower in good faith reasonably anticipates to be realized within 12 months of the date of any relevant transaction that could then be reflected in pro forma financial statements in accordance with Regulation S-X and not exceeding 15% of EBITDA, in the aggregate, for such period after giving effect thereof and (b) any cost savings that could then be reflected in pro forma financial statements in accordance with Regulation S-X promulgated under the Securities Act or any other regulation or policy of the SEC, in each case, as though such cost savings and synergies had been realized on the first day of the applicable Reference Period and net of the amount of actual benefits realized during such period from such action.

“Product” means (i) those pharmaceutical or biological products (and described in reasonable detail) on **Schedule 2** attached hereto, and (ii) any current or future pharmaceutical or biological product developed, distributed, dispensed, imported, exported, labeled, promoted, manufactured, licensed, marketed, sold or otherwise commercialized by any Obligor or any of its Subsidiaries, including any such product in development or which may be developed.

“Product Authorizations” means any and all Governmental Approvals, whether U.S. or non-U.S. (including all applicable ANDAs, NDAs, BLAs, INDs, Product Standards, supplements, amendments, pre- and post- approvals, governmental price and reimbursement approvals and approvals of applications for regulatory exclusivity) of any Regulatory Authority, in each case, necessary to be held or maintained by, or for the benefit of, any Obligor or any of its Subsidiaries for the ownership, use or commercialization of any Product or for any Product Commercialization and Development Activities with respect thereto in any country or jurisdiction.

“Product Commercialization and Development Activities” means, with respect to any Product, any combination of research, development, manufacture, import, use, sale, licensing, importation, exportation, shipping, storage, handling, design, labeling, marketing, promotion, supply, distribution, testing, packaging, purchasing or other commercialization activities, receipt of payment in respect of any of the foregoing (including, without limitation, in respect of licensing, royalty or similar payments), or any similar or other activities the purpose of which is to commercially exploit such Product.

“Product Related Information” means, with respect to any Product, all books, records, lists, ledgers, files, manuals, correspondence, reports, plans, drawings, data and other information of every kind (in any form or medium), and all techniques and other know-how, owned or possessed by the Obligor or any of their respective Subsidiaries that are necessary or useful for any Product Commercialization and Development Activities relating to such Product, including (i) brand materials and packaging, customer targeting and other marketing, promotion and sales materials and information, referral, customer, supplier and other contact lists and information, product, business, marketing and sales plans, research, studies and reports, sales, maintenance and production records, training materials and other marketing, sales and promotional information and (ii) clinical data, information included or supporting any Product Authorization, any regulatory filings, updates, notices and correspondence (including adverse event and other pharmacovigilance and other post-marketing reports and information, etc.), technical information, product development and operational data and records, and all other documents, records, files, data and other information, used in connection with the Product Commercialization Development Activities for such Product.

“Product Standards” means all safety, quality and other specifications and standards applicable to any Product, including all pharmaceutical, biological and other standards promulgated by Standards Bodies.

“Prohibited Payment” means any bribe, rebate, payoff, influence payment, kickback or other payment or gift of money or anything of value (including meals or entertainment) to any officer, employee or ceremonial office holder of any government or instrumentality thereof, political party or supra-national organization (such as the United Nations), any political candidate, any royal family member or any other person who is connected or associated personally with any of the foregoing that is prohibited under any Law for the purpose of influencing any act or decision of such payee in his official capacity, inducing such payee to do or omit to do any act in violation of his lawful duty, securing any improper advantage or inducing such payee to use his influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

“Proportionate Share” means, with respect to any Lender, the percentage obtained by dividing (i) the sum of the Commitment (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of such Lender then in effect by (ii) the sum of the Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of all Lenders then in effect.

“Qualified Equity Interest” means, with respect to any Person, any Equity Interest of such Person that is not a Disqualified Equity Interest.

“Qualified Plan” means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (ii) that is intended to be tax qualified under Section 401(a) of the Code.

“Real Property Security Documents” means any Landlord Consents or Bailee Letters.

“Recipient” means any Lender or any other recipient of any payment to be made by or on account of any Obligation.

“Referral Source” has the meaning set forth in **Section 7.07(b)**.

“Refinanced Facility” means the Indebtedness incurred under that certain Credit Agreement and Guaranty, dated as of June 30, 2018, by and among the Borrower, the Guarantor, Perceptive Credit Holdings II, LP and the lenders party thereto, as amended by Amendment No. 1 to Credit Agreement dated as of April 22, 2019 and Amendment No. 2 to Credit Agreement dated as of August 5, 2019.

“Register” has the meaning set forth in **Section 14.05(d)**.

“Regulation T” means Regulation T of the Board of Governors of the Federal Reserve System, as amended.

“Regulation U” means Regulation U of the Board of Governors of the Federal Reserve System, as amended.

“Regulation X” means Regulation X of the Board of Governors of the Federal Reserve System, as amended.

“Regulatory Authority” means any Governmental Authority, whether U.S. or non-U.S., that is concerned with or has regulatory or supervisory oversight with respect to any Product or any Product Commercialization and Development Activities relating to any Product, including the FDA and all equivalent Governmental Authorities, whether U.S. or non-U.S.

“Reinvestment Period” has the meaning set forth in **Section 3.03(b)(i)**.

“Related Parties” has the meaning set forth in **Section 14.16**.

“Resignation Effective Date” has the meaning set forth in **Section 12.09**.

“Responsible Officer” of any Person means each of the president, chief executive officer, chief financial officer and similar officer of such Person.

“Restricted Payment” means any dividend or other distribution (whether in cash, Equity Interests or other property) with respect to any Equity Interests of any Obligor or any of its Subsidiaries, or any payment (whether in cash, Equity Interests or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests of any Obligor or any of its Subsidiaries, or any option, warrant or other right to acquire any such Equity Interests of any Obligor or any of its Subsidiaries; provided, that any payments on Indebtedness convertible or exchangeable into Equity Interests shall not be Restricted Payments.

“Restrictive Agreement” means any Contract or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of any Obligor or any of its Subsidiaries to create, incur or permit to exist any Lien upon any of its properties or assets (other than (x) customary provisions in Contracts (including without limitation leases and in-bound licenses of Intellectual Property) restricting the assignment thereof and (y) restrictions or conditions imposed by any Contract governing secured Permitted Indebtedness permitted under **Section 9.01(j)**, to the extent that such restrictions or conditions apply only to the property or assets securing such Indebtedness), or (ii) the ability of any Obligor or any of its Subsidiaries to make Restricted Payments with respect to any of their respective Equity Interests or to make or repay loans or advances to any other Obligor or any of its Subsidiaries or such other Obligor or to Guarantee Indebtedness of any other Obligor or any of its Subsidiaries thereof or such other Obligor.

“Revenue” means, for any relevant fiscal period, the consolidated total revenues of the Borrower and its Subsidiaries for such fiscal period, as recognized on the income statement of the Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP.

“Revenue Covenant Termination Date” means the last day of the two consecutive fiscal quarters of the Borrower where the Consolidated Leverage Ratio does not exceed 4.50:1.00.

“Revenue Cure Payment” means, with respect to any fiscal quarter of the Borrower to which the Minimum Revenue Covenant applies, (i) if the Revenue Shortfall Percentage for such fiscal quarter is less than 50% but equal to or greater than 40%, \$10,000,000 and (ii) if (A) the Revenue Shortfall Percentage of that fiscal quarter is less than 40%, \$20,000,000 or (B) the Revenue Shortfall Percentage for the preceding three fiscal quarters was less than 50% but equal to or greater than 40%, \$10,000,000; provided that in order to cure any breaches of the Minimum Revenue Covenant occurred in any calendar year, the Borrower shall not be required to make more than one Revenue Cure Payment in such calendar year, except for any calendar year where (x) the Borrower has exercised the Revenue Cure Right once pursuant to clause (i) of this definition and, thereafter, (z) the Revenue Shortfall Percentage described in clause (ii) of this definition occurs; provided, further that in no event shall the aggregate amount of Revenue Cure Payments in any calendar year exceed \$20,000,000.

“Revenue Shortfall Percentage” means, with respect to any fiscal quarter of the Borrower to which the Minimum Revenue Covenant applies, the ratio (expressed as a percentage) between (i) the Revenue for such fiscal quarter and (ii) the Target Revenue for such fiscal quarter.

“Royalty Interest Financing” means any sale of, or other financing transaction based on, revenues and other proceeds arising out of or relating to Oral Paclitaxel and related Intellectual Property, that is secured by Liens on (i) proceeds resulting from sales of Oral Paclitaxel in an amount not exceeding 5% of such proceeds and (ii) subject to **Section 12.13**, the Intellectual Property, Accounts (as defined in the UCC), payment intangibles arising therefrom and Proceeds (as defined in the UCC) thereof relating to Oral Paclitaxel, and which are subject to a Permitted Intercreditor Agreement.

“**Sanction**” means any international economic or financial sanction or trade embargo imposed, administered or enforced from time to time by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union or its Member States, Her Majesty’s Treasury or other relevant sanctions authority where the Borrower is located or conducts business.

“**Secured Parties**” means the Lenders, the Administrative Agent and any of their respective permitted transferees or assigns.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Security Agreement**” means the Security Agreement, delivered pursuant to **Section 6.01(h)**, among the Obligor and the Administrative Agent, granting a security interest in the Obligor’s personal property in favor of the Administrative Agent, for the benefit of the Secured Parties.

“**Security Documents**” means, collectively, the Security Agreement, each Short-Form IP Security Agreement, each Real Property Security Document, and each other security document, control agreement or financing statement required or recommended to perfect Liens in favor of the Secured Parties for purposes of securing the Obligations.

“**Short-Form IP Security Agreements**” means short-form copyright, patent or trademark (as the case may be) security agreements, dated as of the Closing Date and substantially in the form of Exhibit C, D and E to the Security Agreement, entered into by one or more Obligor in favor of the Secured Parties, each in form and substance satisfactory to the Administrative Agent (and as amended, modified or replaced from time to time).

“**Solvent**” means, as to any Person as of any date of determination, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (ii) the present fair saleable value of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature and (iv) such Person is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such Person’s property would constitute an unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“**Specified Assets**” means the following assets of the Borrower and its Subsidiaries, whether tangible or intangible, or real, personal or mixed:

(i) Intellectual Property (A) registered or subject of an application for registration with the U.S. Patent and Trademark Office (“USPTO”) or the U.S. Copyright Office (“USCO”) or (B) otherwise subsisting under the Laws of the United States that is specifically related to the Orascovey platform or the use thereof;

(ii) Intellectual Property (A) registered or subject of an application for registration with the USPTO or the USCO or (B) otherwise subsisting under the Laws of the United States that is specifically related to Tirbanibulin or the use of Tirbanibulin as an ointment or for oral indications; and

(iii) leasehold interests or real property located at the following addresses:

(A) 3178 Lakeshore Drive East, Dunkirk, NY 14048;

(B) 11342 Main Street, Clarence, NY 14031;

(C) C-5, 105 Erlang Chuangye Road, Jiulongpo District, Chongqing, China; and

(D) 600 Liuqing Road, Maliuzui Town, Ba'nan District, Chongqing.

“Specified Products” has the meaning set forth in **Section 11.01(m)**.

“Standard Bodies” means any of the organizations that create, sponsor or maintain safety, quality or other standards, including ISO, ANSI, CEN and SCC and the like.

“Subsidiary” means, with respect to any Person (the **“parent”**) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (i) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, directly or indirectly, or (ii) that is, as of such date, otherwise Controlled, by the parent or one or more direct or indirect subsidiaries of the parent or by the parent and one or more direct or indirect subsidiaries of the parent. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantors” means each Subsidiary of the Borrower identified under the caption “SUBSIDIARY GUARANTORS” on the signature pages hereto and each Subsidiary of the Borrower that becomes, or is required to become, a “Subsidiary Guarantor” after the date hereof pursuant to **Section 8.12(a)** or **8.12(b)**.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Technical Information” means all Product Related Information and, with respect to any Products or Product Commercialization and Development Activities, all related know-how, trade secrets and other proprietary or confidential information, any information of a scientific, technical, or business nature in any form or medium, Invention disclosures, all documented research, developmental, demonstration or engineering work, and all other technical data and information related thereto.

“Termination Conditions” has the meaning set forth in **Section 13.03**.

“Title IV Plan” means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

“Trademarks” means all trade names, trademarks and service marks, logos, trademark and service mark registrations, and applications for trademark and service mark registrations, including (i) all renewals of trademark and service mark registrations and (ii) all rights whatsoever accruing thereunder or pertaining thereto throughout the world, together, in each case, with the goodwill of the business connected with the use thereof.

“Tranche A-1 Term Loans” has the meaning assigned to such term in **Section 2.01(a)(i)**.

“Tranche A-2 Term Loans” has the meaning assigned to such term in **Section 2.01(a)(i)**.

“Tranche A Term Loans” means the Tranche A-1 Term Loans and the Tranche A-2 Term Loans.

“Tranche B Term Loans” has the meaning assigned to such term in **Section 2.01(a)(ii)(iii)** .

“Tranche C Term Loans” has the meaning assigned to such term in **Section 2.01(a)(iv)**.

“Tranche D Term Loans” has the meaning assigned to such term in **Section 2.01(a)(v)**.

“Tranche E Term Loans” has the meaning assigned to such term in **Section 2.01(a)(vi)**.

“Transactions” means (a) the negotiation, preparation, execution, delivery and performance by each Obligor of this Agreement and the other Loan Documents to which such Obligor is (or is intended to be) a party, the making of the Loans hereunder, and all other transactions contemplated pursuant to this Agreement and the other Loan Documents, including the creation of the Liens pursuant to the Security Documents, (b) the repayment in full and termination of the Refinanced Facility and (c) the payment of all fees and expenses incurred or paid by the Obligors in connection with the foregoing.

“UCC” means, with respect to any applicable jurisdictions, the Uniform Commercial Code as in effect in such jurisdiction, as may be modified from time to time.

“**United States**” or “**U.S.**” means the United States of America, its fifty states and the District of Columbia.

“**U.S. Person**” means a “United States Person” within the meaning of Section 7701(a)(30) of the Code.

“**U.S. Tax Compliance Certificate**” has the meaning set forth in **Section 5.03(f)(ii)(B)(3)**.

“**Warrant**” means that certain Warrant, dated as of the Closing Date and delivered pursuant to **Section 6.01(j)**, evidenced by an instrument substantially the form of **Exhibit J** hereto, as amended, replaced or otherwise modified pursuant to the terms thereof.

“**Warrant Obligations**” means all Obligations of Borrower arising out of, under or in connection with the Warrant.

“**Withdrawal Liability**” means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

“**Withholding Agent**” means the Borrower and the Administrative Agent.

“**Write-Down and Conversion Powers**” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

“**XPH License Agreement**” means that certain license agreement dated as of December 12, 2019 by and between the Borrower and Guangzhou Xiangxue Pharmaceutical Co., Ltd. (as amended, restated, amended and restated, supplemented or otherwise modified from time to time).

1.02 Accounting Terms and Principles. Unless otherwise specified, all accounting terms used in each Loan Document shall be interpreted, and all accounting determinations and computations thereunder (including under **Section 10** and any definitions used in such calculations) shall be made, in accordance with GAAP. Unless otherwise expressly provided, all financial covenants and defined financial terms shall be computed on a consolidated basis for the Borrower and its Subsidiaries, in each case without duplication. If the Borrower requests an amendment to any provision hereof to eliminate the effect of (a) any change in GAAP or the application thereof or (b) the issuance of any new accounting rule or guidance or in the application thereof, in each case, occurring after the date of this Agreement, then the Lenders and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such change or issuance with the intent of having the respective positions of the Lenders and Borrower after such change or issuance conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, (i) the provisions in this Agreement shall be calculated as if no such change or issuance has occurred and (ii) the Borrower shall provide to the Lenders a written reconciliation in form and substance reasonably satisfactory to the Lenders, between calculations of any baskets and other requirements hereunder before and after giving effect to

such change or issuance. For purposes of the definition of Indebtedness and related covenants, GAAP will be deemed to treat any operating lease as an operating lease and not a capital lease, regardless of any change in GAAP as a result of ASU 2016-02, Leases (Topic 842) by the Financial Accounting Standards Board to the extent such operating lease was so treated under GAAP as in effect for any fiscal year of Borrower beginning before December 15, 2018.

1.03 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires,

- (a) the terms defined in this Agreement include the plural as well as the singular and vice versa;
- (b) words importing gender include all genders;
- (c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement;
- (d) any reference to “this Agreement” refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision;
- (e) references to days, months and years refer to calendar days, months and years, respectively;
- (f) all references herein to “include” or “including” shall be deemed to be followed by the words “without limitation”;
- (g) the word “from” when used in connection with a period of time means “from and including” and the word “until” means “to but not including”;
- (h) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer broadly to any and all assets and properties, whether tangible or intangible, real or personal, including cash, securities, rights under contractual obligations and permits and any right or interest in any such assets or property;
- (i) accounting terms not specifically defined herein (other than “property” and “asset”) shall be construed in accordance with GAAP, subject to Section 1.02;
- (j) the word “will” shall have the same meaning as the word “shall”;
- (k) where any provision in this Agreement or any other Loan Document refers to an action to be taken by any Person, or an action which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or, to the knowledge of such Person, indirectly; and

(l) references to any Lien granted or created hereunder or pursuant to any other Loan Document securing any Obligations shall be deemed to be a Lien for the benefit of the Secured Parties.

Unless otherwise expressly provided herein, references to organizational documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto permitted by the Loan Documents. Any definition or reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

If any payment required to be made pursuant to the terms and conditions of any Loan Document falls due on a day which is not a Business Day, then such required payment date shall be extended to the immediately following Business Day. For purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Obligors and their Subsidiaries will be deemed to be equal to 100% of the outstanding principal amount thereof or payment obligations with respect thereto at the time of determination thereof, or with respect to any Hedging Agreements, the amount that would be payable if the agreement governing such Hedging Agreements were terminated on the date of termination.

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

SECTION 2. THE COMMITMENT AND THE LOANS

2.01 Loans.

- (a) On the terms and subject to the conditions of this Agreement, each Lender agrees:
- (i) to make Loans to the Borrower in a principal amount equal to the amount of such Lender's Tranche A-1 Commitment on the Closing Date ("**Tranche A-1 Term Loans**");
 - (ii) to make Loans to the Borrower in a principal amount equal to the amount of such Lender's Tranche A-2 Commitment on the Applicable Funding Date for the Tranche A-2 Term Loans ("**Tranche A-2 Term Loans**");
 - (iii) to make Loans to the Borrower in a principal amount equal to the amount of such Lender's Tranche B Commitment ("**Tranche B Term Loans**"), on a date specified by the Borrower in accordance with **Section 2.02** during the Applicable Availability Period for the Tranche B Loans;

- (iv) to make Loans to the Borrower in a principal amount equal to the amount of such Lender's Tranche C Commitment ("**Tranche C Term Loans**"), on a date specified by the Borrower in accordance with **Section 2.02** during the Applicable Availability Period for the Tranche C Loans;
- (v) to make Loans to the Borrower in a principal amount equal to the amount of such Lender's Tranche D Commitment ("**Tranche D Term Loans**"), on a date specified by the Borrower in accordance with **Section 2.02** during the Applicable Availability Period for the Tranche D Loans; and
- (vi) to make Loans to the Borrower in a principal amount equal to the amount of such Lender's Tranche E Commitment ("**Tranche E Term Loans**"), on a date specified by the Borrower in accordance with **Section 2.02** during the Applicable Availability Period for the Tranche E Loans.

(b) No amounts paid or prepaid with respect to any Loan may be reborrowed.

(c) Any term or provision hereof (or of any other Loan Document) to the contrary notwithstanding, Loans made to the Borrower will be denominated solely in Dollars and will be repayable solely in Dollars and no other currency.

2.02 Borrowing Procedures. At least five (5) Business Days prior to any Applicable Funding Date (or such shorter period agreed by the Administrative Agent), the Borrower shall deliver to the Administrative Agent an irrevocable Borrowing Notice in the form of **Exhibit B** signed by a duly authorized representative of the Borrower (which notice, if received by the Administrative Agent on a day that is not a Business Day or after 10:00 A.M. (Eastern time) on a Business Day, shall be deemed to have been delivered on the next Business Day); provided that the Tranche A-2 Term Loans shall be deemed to have been requested by delivery of a Borrowing Notice with respect to the Tranche A-1 Term Loans. Each Borrowing Notice shall be for the full amount of each of the Applicable Commitments and no Borrowing Notice for less than such full amount shall be permitted.

2.03 Funding of Borrowings. Promptly following receipt of any written Borrowing Request the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof solely by wire transfer of immediately available funds, by 2:00 p.p. New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. Upon receipt of all funds the Administrative Agent will make such Loans available to the Borrower promptly by wire transfer of the amounts so received, in like funds, to an account designated by the Borrower in the applicable Borrowing Request.

2.04 Notes. If requested by any Lender, the Loan of such Lender shall be evidenced by one or more Notes. The Borrower shall prepare, execute and deliver to the Lender such promissory note(s) substantially in the form attached hereto as **Exhibit A**.

2.05 Use of Proceeds. The Borrower shall use the proceeds of the Loans (i) for repaying the Refinanced Facility and (ii) for working capital and general corporate purposes, including the payment of fees and expenses associated with this Agreement.

2.06 Commitment Fees. The Borrower shall pay to the Administrative Agent for the account of the Lenders a commitment fee (the “Commitment Fee”) on the full amount of each Applicable Commitment (other than the Tranche A-1 Commitment and the Tranche A-2 Commitment) at a rate per annum equal to 0.60% for the period from and including the day that is ninety (90) days after the Closing Date to (but excluding) the earlier of (i) the date such Applicable Commitment terminates pursuant to **Section 3.04** and (ii) the Applicable Funding Date. Accrued Commitment Fees shall be payable on the termination date of the Applicable Commitment or the Applicable Funding Date, as the case may be.

SECTION 3. PAYMENTS OF PRINCIPAL AND INTEREST, ETC.

3.01 Scheduled Repayments and Prepayments Generally; Application. The Borrower hereby promises to pay to the Administrative Agent for the account of each Lender (as such amounts may in each case be reduced from time to time in accordance with **Section 3.03**): (a) on each Principal Payment Date other than the Maturity Date, an amount equal to \$2,812,500 and (b) on the Maturity Date, all outstanding Obligations in full (together with the Exit Fee, accrued and unpaid interest and any other accrued and unpaid charges thereon and all other obligations due and payable by the Borrower under this Agreement). Except as otherwise provided in this Agreement, each payment (including each repayment and prepayment) by the Borrower (other than fees payable pursuant to the Fee Letter) will be deemed to be made ratably in accordance with the Lenders’ Proportionate Shares. On any date occurring prior to the Maturity Date that payment or prepayment in full of the Loans hereunder occurs, the Borrower shall pay in full all outstanding Obligations, which shall include the Prepayment Fee, if applicable, and the Exit Fee.

3.02 Interest.

(a) **Interest Generally.** The outstanding principal amount of the Loans shall accrue interest from the date made to repayment (whether by acceleration or otherwise and whether voluntary or mandatory) at the Interest Rate.

(b) **Default Interest.** Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the Interest Rate shall increase automatically by two percent (2.0%) *per annum* (the Interest Rate, as increased pursuant to this **Section 3.02(b)**, being the “**Default Rate**”). If any Obligation (other than Warrant Obligations but including, without limitation, fees, costs and expenses payable hereunder) is not paid when due (giving effect to any applicable grace period) under any applicable Loan Document, the amount thereof shall accrue interest at the Default Rate.

(c) **Interest Payment Dates.** Accrued interest on the Loans shall be payable in arrears on each Payment Date in cash, and upon the payment or prepayment of the Loans (on the principal amount being so paid or prepaid); provided that interest payable at the Default Rate shall also be payable in cash from time to time on demand by the Administrative Agent.

3.03 Prepayments.

(a) Optional Prepayments.

(i) Subject to prior written notice pursuant to **clause (ii)** below, the Borrower shall have the right to optionally prepay in whole or in part the outstanding principal amount of the Loans on any Business Day for an amount equal to the sum of (A) the aggregate principal amount of the Loans being prepaid, (B) any accrued but unpaid interest on the principal amount of the Loans being prepaid, (C) any applicable Prepayment Fee and (D) if applicable, the Exit Fee and other unpaid amounts then due and owing pursuant to this Agreement and the other Loan Documents (such aggregate amount, the “**Prepayment Price**”); provided that each partial prepayment of principal of Loans shall be in an aggregate amount at least equal to \$5,000,000 and integral multiples of \$1,000,000 in excess thereof.

(ii) A notice of optional prepayment shall be effective only if received by the Administrative Agent not later than 2:00 p.m. (Eastern time) on a date not less than three (3) (nor more than five (5)) Business Days prior to the proposed prepayment date; provided that a notice of optional prepayment may state that such notice is conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable event or condition, in which case such notice of prepayment may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified date of prepayment) if such condition is not satisfied. Each notice of optional prepayment shall specify the proposed prepayment date, the Prepayment Price, the principal amount to be prepaid and any conditions to prepayment (if applicable).

(b) Mandatory Prepayments.

(i) **Mandatory Prepayments for Casualty Events or Asset Sales.** Upon the occurrence of any Casualty Event or Asset Sale (that is not otherwise permitted by **Section 9.09** (other than pursuant to (A) clause (l) thereof or (B) relating to any Permitted License described in clause (G) of the definition thereof)), the Borrower shall make a mandatory prepayment of the Loans in an amount equal to the sum of (i) one hundred percent (100%) of the Net Cash Proceeds received by the Borrower or any of its Subsidiaries with respect to such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event, as the case may be, (ii) any accrued but unpaid interest on any principal amount of the Loans being prepaid and (iii) any applicable Prepayment Fee and Exit Fee; provided that, so long as no Default has occurred and is continuing or shall result therefrom, if, within fifteen (15) Business Days following the occurrence of any such Casualty Event or Asset Sale as a result of which the Borrower or any of its Subsidiaries receives Net Cash Proceeds in an aggregate amount less than \$10,000,000 (or, with respect to any Permitted License described in clause (G) of the definition thereof, \$30,000,000 in the aggregate over the term of this Agreement), a Responsible Officer of the Borrower delivers to the Administrative Agent a notice to the effect that the Borrower or the applicable Subsidiary intends to apply the Net Cash Proceeds from such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event, to reinvest in the business of the Borrower or any of its Subsidiaries (a “**Reinvestment**”), then such Net Cash Proceeds of such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event may be applied for such purpose in lieu of such mandatory prepayment to the extent such Net

Cash Proceeds of such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event are actually applied for such purpose; provided, further, that, if such Casualty Event or Asset Sale occurs with respect to any Obligor, such Reinvestment shall be made in the business of an Obligor; provided, further, that, in the event that Net Cash Proceeds have not been so applied within three hundred sixty-five (365) days (the "**Reinvestment Period**") following the occurrence of such Casualty Event or Asset Sale (or, if the Borrower or any of its Subsidiaries has entered into a binding commitment prior to the last day of such Reinvestment Period to reinvest such proceeds no later than one hundred eighty (180) days following the last day of the Reinvestment Period, one hundred eighty (180) days after the expiry of the Reinvestment Period), the Borrower shall no later than the end of such period make a mandatory prepayment of the Loans in an aggregate amount equal to the sum of (i) one hundred percent (100%) of the unused balance of such Net Cash Proceeds received by any Obligor or any of its Subsidiaries with respect to such Asset Sale or insurance proceeds or condemnation awards in respect of such Casualty Event, (ii) any accrued but unpaid interest on any principal amount of the Loans being prepaid and (iii) any applicable Prepayment Fee and Exit Fee.

(ii) **Mandatory Prepayments for Debt Issuances.** Immediately upon receipt by any Obligor or any of its Subsidiaries of proceeds from any issuance, incurrence or assumption of Indebtedness other than Indebtedness permitted by **Section 9.01**, on or after the Closing Date, the Borrower shall prepay the Loans and other Obligations in an amount equal to 100% of the cash proceeds received, *plus* the Prepayment Fee, if applicable, and the Exit Fee.

(iii) **Notice.** A notice of mandatory prepayment shall be effective only if received by the Administrative Agent not later than 2:00 p.m. (New York City time) on a date not less than one (1) Business Day (or such shorter period agreed by the Administrative Agent) prior to the proposed prepayment date. Each notice of mandatory prepayment shall specify the proposed prepayment date, the Prepayment Price, the principal amount to be prepaid and the subsection under which the prepayment is required.

(c) **Application.** All prepayments of the Loans shall be applied to principal installments on the Loans in the inverse order of maturity.

(d) **Prepayment Fee.** Without limiting the foregoing, whenever the Prepayment Fee is in effect and payable pursuant to the terms hereof or any other Loan Document, such Prepayment Fee shall be payable on each prepayment of all or any portion of the Loans, whether by optional or mandatory prepayment, acceleration or otherwise (other than any prepayment pursuant to **Section 5.02** or any scheduled amortization payment).

(e) **Partial Prepayments.** Prepayments shall be accompanied by accrued interest to the extent required by **Section 3.02**.

3.04 Commitment Termination. Each Applicable Commitment shall terminate automatically without further action upon the earlier of (i) the making by the Lenders of the Loans to which such Applicable Commitment relates on the Applicable Funding Date and (ii) the last day of the Applicable Availability Period. The Borrower shall have the right at any time or from time to time to terminate in full (but not in part) all the then outstanding Applicable Commitments; provided that the Borrower shall give the Lender at least five (5) Business Days' notice of each such termination. The termination of any Applicable Commitment shall be permanent.

3.05 Exit Fee. Upon any payment or prepayment in full of the Loans hereunder, whether voluntary or involuntary, prior to, on or after the Maturity Date or following the acceleration of the Obligations hereunder, including as a result of the commencement of any Insolvency Proceeding, the Borrower shall pay to each of the Lenders for its own account a fee equal to 2.0% of the aggregate principal amount of Loans provided to the Borrower hereunder on or after the Closing Date and through the date of such payment or prepayment (the “**Exit Fee**”). The Exit Fee shall be earned, due and payable immediately upon any such payment or prepayment, and shall be in addition to any accrued and unpaid interest, reimbursement obligations, Prepayment Fee or other amounts payable in connection therewith.

SECTION 4. PAYMENTS, ETC.

4.01 Payments.

(a) **Payments Generally.** Each payment of principal, interest and other amounts to be made by the Obligors under this Agreement or any other Loan Document shall be made (i) in Dollars, in immediately available funds, without deduction, set off or counterclaim, to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, to the deposit account of the Administrative Agent designated by the Administrative Agent by notice to the Borrower, and (ii) not later than 2:00 p.m. (Eastern time) on the date on which such payment is due (each such payment made after such time on such due date may, in the Administrative Agent’s discretion, be deemed to have been made on the next succeeding Business Day).

(b) **Application of Payments.** Notwithstanding anything herein to the contrary, following the occurrence and continuance of an Event of Default, all payments shall be applied as follows:

(A) first, to the payment of that portion of the Obligations constituting unpaid fees, indemnities, expenses or other amounts (including fees and disbursements and other charges of counsel payable under **Section 14.03**) payable to the Administrative Agent in its capacity as such;

(B) second, to the payment of that portion of the Obligations constituting unpaid fees, indemnities, costs, expenses and other amounts (other than principal and interest, but including fees and disbursements and other charges of counsel payable under **Section 14.03**, any Commitment Fees, Prepayment Fees and any Exit Fees) payable to the Lenders arising under the Loan Documents (other than the Warrant), ratably among them in proportion to the respective amounts described in this **clause (B)** payable to them;

(C) third, to the payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this **clause (C)** payable to them;

(D) fourth, to the payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this **clause (D)** payable to them;

(E) fifth, in reduction of any other Obligation then due and owing, ratably among the Administrative Agent and the Lenders based upon the respective aggregate amount of all such Obligations owing to them in accordance with the respective amounts thereof then due and payable; and

(F) sixth, the balance, if any, after all Obligations have been indefeasibly paid in full, to the Borrower or such other Person as may be lawfully entitled to or directed by the Borrower to receive the remainder.

(c) **Non-Business Days.** If the due date of any payment under this Agreement (whether in respect of principal, interest, fees, costs or otherwise) would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall continue to accrue and be payable for the period of such extension; provided that if such next succeeding Business Day would fall after the Maturity Date, payment shall be made on the immediately preceding Business Day.

4.02 Computations. All computations of interest and fees hereunder shall be computed on the basis of a year of three hundred and sixty (360) days and actual days elapsed during the period for which payable.

4.03 Set-Off.

(a) **Set-Off Generally.** Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent, each of the Lenders and each of their Affiliates 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 deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Administrative Agent, any Lender and any of their Affiliates to or for the credit or the account of any Obligor against any and all of the Obligations, whether or not such Person shall have made any demand and although such obligations may be unmatured. Any Person exercising rights of set off hereunder agrees promptly to notify the Borrower after any such set-off and application; provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Administrative Agent, the Lenders and each of their Affiliates under this **Section 4.03** are in addition to other rights and remedies (including other rights of set-off) that such Persons may have.

(b) **Exercise of Rights Not Required.** Nothing contained in **Section 4.03(a)** shall require the Administrative Agent, any Lender or any of their Affiliates to exercise any such right or shall affect the right of such Persons to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of any Obligor.

(c) **Payments Set Aside.** To the extent that any payment by or on behalf of any Obligor is made to the Administrative Agent or any Lender, or the Administrative Agent, any Lender or any Affiliate of the foregoing exercises its right of setoff pursuant to this **Section 4.03**, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such Lender or such Affiliate in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (i) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (ii) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect.

SECTION 5. YIELD PROTECTION, TAXES, ETC.

5.01 Additional Costs.

(a) **Change in Law Generally.** If, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), the adoption of any Law, or any change in any Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or administration thereof, or compliance by the Administrative Agent or any of the Lenders (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, shall impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement, in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office) or shall impose on a Lender (or its lending office) any other condition affecting the Loans or the Commitment, and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or any other Loan Document, or subject any Lender to any Taxes on its Loan, Commitment or other obligations, or its deposits, reserves, other liabilities or capital (if any) attributable thereto by an amount reasonably deemed by such Lender in good faith to be material (other than (i) Indemnified Taxes, (ii) Taxes described in **clauses (ii)** through **(iv)** of the definition of Excluded Taxes and (iii) Connection Income Taxes), then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender for such increased cost or reduction.

(b) **Change in Capital Requirements.** If a Lender shall have determined that, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), the adoption of any Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request

or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

(c) **Notification by Lender.** Each Lender promptly will notify the Borrower of any event of which it has knowledge, occurring after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), which will entitle such Lender to compensation pursuant to this **Section 5.01**. Before giving any such notice pursuant to this **Section 5.01(c)** such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of such Lender claiming compensation under this **Section 5.01**, setting forth the additional amount or amounts to be paid to it hereunder, shall be conclusive and binding on the Borrower in the absence of manifest error.

(d) Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to constitute a change in Law for all purposes of this **Section 5.01**, regardless of the date enacted, adopted or issued.

5.02 Illegality. Notwithstanding any other provision of this Agreement, in the event that on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement) the adoption of or any change in any Law or in the interpretation or application thereof by any competent Governmental Authority shall make it unlawful for a Lender or its lending office to make or maintain the Loans (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify the Borrower thereof, following which if such Law shall so mandate, the Loans shall be prepaid by the Borrower on or before such date as shall be mandated by such Law in an amount equal to the Prepayment Price (notwithstanding anything herein to the contrary, without any Prepayment Fee or Exit Fee) applicable on such prepayment date in accordance with **Section 3.03(a)**.

5.03 Taxes.

(a) **Payments Free of Taxes.** Any and all payments by or on account of any Obligation shall be made without deduction or withholding for any Taxes, except as required by any Law. If any Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Laws and, if such Tax is an Indemnified Tax, then the sum payable by such Obligor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 5**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by the Borrower.** The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Administrative Agent or each Lender, timely reimburse it for the payment of any Other Taxes.

(c) **Evidence of Payments.** As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this **Section 5**, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment.

(d) **Indemnification by the Borrower.** The Borrower shall reimburse and indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(e) **Indemnification by the Lender.** Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), and (ii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this **Section 5.03(e)**.

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Law as reasonably requested by the Borrower as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two (2) sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 5.03(f)(ii)(A), (ii)(B), and (ii)(D)**) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI (or successor form);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit D-1** to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY (or successor form), accompanied by IRS Form W-8ECI (or successor form), IRS Form W-8BEN or IRS Form W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate, substantially in the form of **Exhibit D-2** or **D-3**, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit D-4** on behalf of each such direct and indirect partner.

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this **clause (D)**, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) **Treatment of Certain Tax Benefits.** If any party to this Agreement determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 5** (including by the payment of additional amounts pursuant to this **Section 5**), it shall pay to the indemnifying party an amount equal to

such refund (but only to the extent of indemnity payments made under this **Section 5** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this **Section 5.03(g)** (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 5.03(g)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 5.03(g)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This **Section 5.03(g)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

5.04 Mitigation Obligations. If the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to **Section 5.01** or this **Section 5.03**, then such Lender shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the sole reasonable judgment of such Lender, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to **Section 5.01** or this **Section 5.03**, as the case may be, in the future, (ii) not subject such Lender to any unreimbursed cost or expense and (iii) not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment and delegation.

5.05 Survival. Each party's obligations under this **Section 5** shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Loan Document.

SECTION 6. CONDITIONS

6.01 Conditions to the Borrowing of the Tranche A Loans. Subject to Section 8.19, the obligation of each Lender to make its Tranche A Loans shall be subject to the delivery of a Borrowing Notice as required pursuant to **Section 2.02**, and the prior or concurrent satisfaction or waiver of each of the conditions precedent set forth below in this **Section 6.01**.

(a) **Loan Documents.** The Administrative Agent shall have received each Loan Document required to be executed by the appropriate Obligor on the Closing Date and delivered by each applicable Obligor in such number as reasonably requested by the Administrative Agent (which may be delivered by facsimile or other electronic means for the purposes of satisfying this clause (a) on the Closing Date) and such Loan Documents shall be in form and substance satisfactory to the Administrative Agent and the Lenders and their respective counsels.

(b) **Secretary's Certificate, Etc.** The Administrative Agent shall have received from each Obligor (x) a copy of a good standing certificate, dated a date reasonably close to the Closing Date, for each such Person and (y) a certificate, dated as of the Closing Date, duly executed and delivered by such Person's Responsible Officer, as to:

(i) resolutions of each such Person's Board then in full force and effect authorizing the execution, delivery and performance of each Loan Document to be executed by such Person and the Transactions;

(ii) the incumbency and signatures of Responsible Officers authorized to execute and deliver each Loan Document to be executed by such Person; and

(iii) the full force and validity of each Organic Document of such Person and copies thereof;

upon which certificates shall be in form and substance reasonably satisfactory to the Administrative Agent and upon which the Administrative Agent and the Lenders may conclusively rely until they shall have received a further certificate of the Responsible Officer of any such Person cancelling or amending the prior certificate of such Person.

(c) **Information Certificate.** The Administrative Agent shall have received a fully completed Information Certificate in form and substance reasonably satisfactory to the Administrative Agent, dated as of the Closing Date, duly executed and delivered by a Responsible Officer of the Borrower. All documents and agreements required to be appended to the Information Certificate, shall be in form and substance reasonably satisfactory to the Administrative Agent, shall have been executed and delivered by the requisite parties and shall be in full force and effect.

(d) **Funding Date Certificate.** The Administrative Agent shall have received a Funding Date Certificate, dated as of the Closing Date and in form and substance reasonably satisfactory to the Administrative Agent, duly executed and delivered by a Responsible Officer of the Borrower.

(e) **Delivery of Notes.** The Administrative Agent shall have received a Note to the extent requested by any Lender pursuant to **Section 2.04** for the Tranche A Loans duly executed and delivered by a Responsible Officer of the Borrower.

(f) **Financial Information, Etc.** The Administrative Agent shall have received, or such information shall be publicly available on "EDGAR":

(i) audited consolidated financial statements of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2019; and

(ii) unaudited consolidated balance sheets of the Borrower and its Subsidiaries for the fiscal quarter ended March 31, 2020 together with the related consolidated statement of operations, shareholder's equity and cash flows for such fiscal quarter.

(g) **Solvency.** The Administrative Agent shall have received a solvency certificate, substantially in the form of **Exhibit K**, duly executed and delivered by the chief accounting officer of the Borrower, dated as of the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent.

(h) **Security Documents.** The Administrative Agent shall have received executed counterparts of a Security Agreement, in form and substance reasonably acceptable to the Administrative Agent, dated as of the Closing Date, duly executed and delivered by each Obligor, together with all documents (including share certificates, transfers and stock transfer forms, notices or any other instruments) required to be delivered or filed under the Security Documents and evidence satisfactory to it that arrangements have been made with respect to all registrations, notices or actions required under the Security Documents to be effected, given or made in order to establish a valid and perfected first priority security interest in the Collateral in accordance with the terms of the Security Documents, including:

(i) delivery of all certificates (in the case of Equity Interests that are certificated securities (as defined in the UCC)) evidencing the issued and outstanding capital securities owned by each Obligor that are required to be pledged and so delivered under the Security Agreement, which certificates in each case shall be accompanied by undated instruments of transfer duly executed in blank, or, in the case of Equity Interests that are uncertificated securities (as defined in the UCC), confirmation and evidence reasonably satisfactory to the Administrative Agent and the Lenders that the security interest required to be pledged therein under the Security Agreement has been transferred to and perfected by the Administrative Agent and the Lenders in accordance with Articles 8 and 9 of the NY UCC and all laws otherwise applicable to the perfection of the pledge of such Equity Interests;

(ii) financing statements naming each Obligor as a debtor and the Administrative Agent as the secured party, or other similar instruments or documents, in each case suitable for filing, filed under the UCC (or equivalent law) of all jurisdictions as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Liens of the Secured Parties pursuant to the Security Agreement;

(iii) UCC-3 termination statements, if any, necessary to release all Liens and other rights of any Person in any collateral described in the Security Agreement previously granted by any Person; and

(iv) all applicable Short-Form IP Agreements required to be provided under the Security Agreement, each dated as of the Closing Date, duly executed and delivered by each applicable Obligor.

(i) **Lien Searches.** The Administrative Agent shall be satisfied with Lien searches regarding the Borrower and the Subsidiary Guarantors made as of a date reasonably close to the Closing Date.

- (j) **Warrant.** The Administrative Agent shall have received an executed counterpart of the Warrant.
- (k) **Opinions of Counsel.** The Administrative Agent shall have received a duly executed legal opinion of counsel to the Obligors dated as of the Closing Date, in form and substance reasonably acceptable to the Administrative Agent.
- (l) **Fee Letter.** The Administrative Agent shall have received an executed counterpart of the Fee Letter, duly executed and delivered by the Borrower.
- (m) **Closing Fees, Expenses, Etc.** Each of the Administrative Agent and each Lender shall have received for its own account, (i) the upfront fee as set forth in the Fee Letter, which shall be paid by way of the Administrative Agent retaining such amount from the proceeds of the Loan and (ii) all fees, costs and expenses due and payable to it pursuant to the Fee Letter and **Section 14.03**, including all reasonable closing costs and fees and all unpaid reasonable expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent's and the Lenders' legal fees and expenses) in an amount not to exceed \$350,000, in each case, to the extent invoiced (or as to which a good faith estimate has been provided to the Borrower) at least two (2) Business Days prior to the Closing Date.
- (n) **Material Adverse Change.** Since December 31, 2019, no Material Adverse Change shall have occurred, both before and after giving effect to the Loans to be made on the Closing Date.
- (o) **Know Your Customer.** The Administrative Agent shall have received, as applicable, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and Anti-Terrorism Laws.
- (p) **No Default.** No event shall have occurred or be continuing or would result from the making of the Tranche A Loans that would constitute a Default or Event of Default.
- (q) **Representations and Warranties.** The representations and warranties contained in this Agreement and in the other Loan Documents delivered pursuant to 6.01(a) shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Closing Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all respects on and as of such earlier date.
- (r) **Payoff of Existing Credit Facility.** The Refinanced Facility (other than contingent obligations (including indemnification obligations) that by their terms are to survive the termination of the relevant loan documentation and debt instruments evidencing the Refinanced Facility) shall have been (or substantially concurrently with the making of the Tranche A Loans on the Closing Date shall be) repaid or satisfied and discharged, and in connection therewith all guarantees and liens shall have been released, on or prior to the Closing Date.

(s) **Beneficial Ownership Certificate.** To the extent requested by any Lender or the Administrative Agent, the Borrower shall have provided to such Lender and the Administrative Agent all documentation and other information so requested, including a duly executed W-9 of the Borrower (or such other applicable tax form), in connection with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, and if the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a Beneficial Ownership Certification, in each case prior to the Closing Date.

6.02 Conditions to the Borrowing of All Other Loans. The obligation of each Lender to make all Loans (other than the Tranche A Term Loans) shall be subject to the delivery of a Borrowing Notice as required pursuant to **Section 2.02**, and the prior or concurrent satisfaction or waiver of each of the conditions precedent set forth below in this **Section 6.02**:

(a) **Applicable Funding Date Certificate.** The Administrative Agent shall have received a Funding Date Certificate dated as of the Applicable Funding Date, duly executed and delivered by a Responsible Officer of the Borrower.

(b) **Delivery of Notes.** The Administrative Agent shall have received a Note to the extent requested by any Lender pursuant to **Section 2.04** for the Loans made on such Applicable Funding Date duly executed and delivered by a Responsible Officer of the Borrower.

(c) **Solvency.** The Administrative Agent shall have received a solvency certificate, substantially in the form of **Exhibit K**, duly executed and delivered by the chief accounting officer of the Borrower, dated as of the Applicable Funding Date, in form and substance reasonably satisfactory to the Administrative Agent.

(d) **Fees, Expenses, Etc.** Each of the Administrative Agent and each Lender shall have received for its own account all Commitment Fees and other fees, costs and expenses due and payable to it on or prior to the Applicable Funding Date pursuant to the Fee Letter, **Section 2.06** and **Section 14.03**, including all reasonable closing costs and fees and all unpaid reasonable expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent’s and the Lenders’ legal fees and expenses) in each case, to the extent invoiced (or as to which a good faith estimate has been provided to the Borrower) at least two (2) Business Days prior to the Applicable Funding Date.

(e) **No Default.** No event shall have occurred or be continuing or would result from the making of the Loans on the Applicable Funding Date that would constitute a Default or Event of Default.

(f) **Representations and Warranties.** The representations and warranties contained in this Agreement and in the other Loan Documents delivered pursuant to **Section 6.016.01(a)** shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Applicable Funding Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all respects on and as of such earlier date.

(g) **Applicable Funding Condition.** The Applicable Funding Condition shall have been satisfied in form and substance reasonably satisfactory to the Administrative Agent and the Oaktree Lender.

(h) **Applicable Availability Period.** The Loans shall be borrowed on or prior to the last day of the Applicable Availability Period.

SECTION 7. REPRESENTATIONS AND WARRANTIES

The Borrower and each other Obligor hereby jointly and severally represents and warrants to the Administrative Agent and each Lender on the Closing Date and each date on which a Loan is advanced pursuant to Section 2.01, and any other date such representation and warranty is required to be made under the Loan Documents, as set forth below:

7.01 Power and Authority. Each Obligor and each of its Subsidiaries (i) is duly organized and validly existing under the laws of its jurisdiction of organization, (ii) has all requisite corporate or other power, and has all Governmental Approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted, except to the extent that failure to have the same could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary except where failure so to qualify could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and (iv) has full power, authority and legal right to enter into and perform its obligations under each of the Loan Documents to which it is a party and, in the case of the Borrower, to borrow the Loans hereunder.

7.02 Authorization; Enforceability. Each Transaction to which an Obligor is a party (or to which it or any of its assets or properties is subject) are within such Obligor's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational action including, if required, approval by all necessary holders of Equity Interests. This Agreement has been duly executed and delivered by each Obligor and constitutes, and each of the other Loan Documents to which it is a party when executed and delivered by such Obligor will constitute, a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.03 Governmental and Other Approvals; No Conflicts. None of the execution, delivery and performance by each Obligor of the Loan Documents to which it is a party or the consummation by each Obligor of the Transactions (i) requires any Governmental Approval of, registration or filing with, or any other action by, any Governmental Authority or any other Person, except for (x) such as have been obtained or made and are in full force and effect and (y) filings and recordings in respect of perfecting or recording the Liens created pursuant to the Security Documents, (ii) will violate (1) any Law, (2) any Organic Document of any Obligor or

any of its Subsidiaries or (3) any order of any Governmental Authority, that in the case of **clause (ii)(1)** or **clause (ii)(3)**, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (iii) will violate or result in a default under any Material Agreement binding upon any Obligor or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect or (iv) will result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of any Obligor or any of its Subsidiaries.

7.04 Financial Statements; Material Adverse Change.

(a) **Financial Statements.** The Borrower has heretofore furnished to the Administrative Agent (who shall forward to the Lenders) consolidated financial statements required to be delivered pursuant to this Agreement. Such financial statements present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements of the type described in **Section 8.01(a)**.

(b) **No Material Adverse Change.** Since December 31, 2019, there has been no Material Adverse Change; provided, that for purposes of this **Section 7.04(b)**, the impacts of the COVID-19 pandemic on the business, operations or financial condition of the Borrower and its Subsidiaries that (x) occurred prior to the Closing Date and (y) were disclosed in public filings made with the SEC or in writing to the Administrative Agent and the Lenders, in each case prior to the Closing Date, shall be disregarded.

7.05 Properties.

(a) **Property Generally.** Each Obligor and each of its Subsidiaries has good and marketable fee simple title to, or valid leasehold interests in, all its real and personal property material to its business, including all properties and assets, whether tangible or intangible, relating to its Products or Product Commercialization and Development Activities and all Material Intellectual Property, subject only to Permitted Liens and except for minor defects in title that (i) do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes and (ii) could not reasonably be expected to prevent or interfere with the ability of any Obligor or any of its Subsidiaries to conduct any Product Commercialization and Development Activities with respect to any of its Products in any material respect.

(b) Intellectual Property.

(i) The Obligors are the sole and exclusive beneficial owners of all right, title and interest in and to all Material Intellectual Property and all other Intellectual Property that is owned or purported to be owned by the Obligors, free and clear of any Liens or Claims other than Permitted Liens. Without limiting the foregoing, and except as set forth in **Schedule 7.05(b)(i)**:

(A) other than (1) customary restrictions in in-bound licenses of Intellectual Property and non-disclosure agreements, or (2) as would have been or is permitted by **Section 9.09**, there are no judgments, covenants not to sue, grants, Liens (other than Permitted Liens), or other Claims, agreements or arrangements relating to any Material Intellectual Property, which materially restrict any Obligor or any of its Subsidiaries with respect to its use, enforcement, or other exploitation of any Material Intellectual Property in connection with such Person's Product Commercialization and Development Activities;

(B) the operation and conduct of the business of by the Borrower or any of its Subsidiaries, including their use of their respective Material Intellectual Property in such Person's Ordinary Course does not, in any material respect, violate, infringe or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person;

(C) (1) there are no material pending Claims, or Claims threatened in writing against any Obligor or any of its Subsidiaries asserted by any other Person relating to any of such Person's Intellectual Property, including any Claims of adverse ownership, invalidity, infringement, misappropriation, or violation of such Person's Intellectual Property in any material respect; and (2) neither any Obligor nor any of their Subsidiaries has received any notice from, or Claim by, any Person that the operation and conduct of the business of the Borrower or any of its Subsidiaries (including their use of Material Intellectual Property), or any Product Commercialization and Development Activities with respect to any Product, infringes upon, violates or constitutes a misappropriation of, any Intellectual Property of any other Person in any material respect, other than in the case of clause (1) and (2) Claims and notices of infringement, misappropriation, or violation of Intellectual Property arising out of the ordinary course of Borrower's generics business and not material to the Borrower's businesses, as a whole;

(D) no Obligor has knowledge that any Material Intellectual Property is being infringed, violated, or misappropriated by any other Person in any material respect; and neither such Obligor nor any of its Subsidiaries has put any other Person on notice of such actual or potential infringement, violation or misappropriation of any such Material Intellectual Property, and neither any Obligor nor any of their Subsidiaries has not initiated the enforcement of any Claim with respect to any such Material Intellectual Property;

(E) to the knowledge of the Obligors and their Subsidiaries, all current and former employees and contractors that have developed Material Intellectual Property for or on behalf of any Obligor or any of its Subsidiaries have executed written confidentiality and invention assignment Contracts with such Obligor or Subsidiary, as applicable, that irrevocably and presently assign to such Obligor or Subsidiary, as applicable, or its designee all rights of such employees and contractors to any such Material Intellectual Property, except as would vest initially in the Obligor or its Subsidiary by operation of Law;

(F) each Obligor and each of its Subsidiaries has taken reasonable precautions to protect the secrecy, confidentiality and value of its Material Intellectual Property consisting of trade secrets and confidential information; and

(ii) With respect to Material Intellectual Property consisting of Patents, except as set forth in **Schedule 7.05(b)(ii)**, and without limiting the representations and warranties in **Section 7.05(b)(i)**:

(A) each of the issued claims in such Patents is valid and enforceable;

(B) subsequent to the issuance of such Patents, no Obligor nor any of its Subsidiaries or predecessors-in-interest, has filed any disclaimer or made or permitted any other voluntary reduction in the scope of the Inventions claimed in such Patents;

(C) to the knowledge of the Obligor, no allowable or allowed subject matter of such Patents is subject to any competing conception claims of allowable or allowed subject matter of any patent applications or patents of any third party and have not been the subject of any interference, and are not and have not been the subject of any re-examination, opposition or any other post-grant proceedings, nor is any Obligor or its Subsidiaries aware of any basis for any such interference, re-examination, opposition, *inter partes* review, post grant review, or any other post-grant proceedings;

(D) no such Patents have ever been finally adjudicated to be invalid, unpatentable or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding, and, with the exception of publicly available documents in the applicable patent office with respect to any such Patents, no Obligor nor any of its Subsidiaries has received any written notice asserting that such Patents are invalid, unpatentable or unenforceable;

(E) all maintenance fees, annuities, and the like due or payable on or with respect to any such Patents have been timely paid or the failure to so pay could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

(iii) The Obligors own or hold rights to use all Intellectual Property necessary to conduct the ongoing Product Commercialization and Development Activities relating to the Products, in all material respects (and provided that the foregoing will not be construed as a representation or warranty with respect to non-infringement of Intellectual Property).

7.06 No Actions or Proceedings.

(a) **Litigation.** There is no litigation, investigation or proceeding pending or, to the knowledge of any Obligor or any of its Subsidiaries threatened in writing, with respect to such Obligor or any such Subsidiaries by or before any Governmental Authority or arbitrator that, (i) if adversely determined, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or (ii) involves this Agreement or any other Loan Document.

(b) **Environmental Matters.** Except with respect to any matters that (either individually or in the aggregate) could not reasonably be expected to result in a Material Adverse Effect and as set forth on Schedule 7.06(b), no Obligor nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received any Environmental Claim, or has knowledge that any is threatened, (iv) has entered into any agreement in which such Obligor or any Subsidiary has assumed or undertaken responsibility or obligations of any other person with respect to any Environmental Liability or (v) has knowledge of any basis for any other Environmental Liability.

(c) **Labor Matters.** No Obligor or any of its Subsidiaries has engaged in unfair labor practices as defined in 29 U.S.C. § §152(8) and 158 of the National Labor Relations Act and there are no pending or threatened in writing labor actions, disputes, grievances, arbitration proceedings, or similar Claims or actions involving the employees of any Obligor or any of its Subsidiaries, in each case that could reasonably be expected to have a Material Adverse Effect. There are no strike or work stoppages in existence or threatened in writing against any Obligor ant to the knowledge of such Obligor, no union organizing activity is taking place. There are no collective bargaining agreements covering employees of any Obligor or any of its Subsidiaries.

7.07 Compliance with Laws and Agreements.

(a) Each Obligor is in compliance with all Laws and all Contracts binding upon it or its property, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing. The Obligors and their Subsidiaries are, and all Product Commercialization and Development Activities of such Persons are being conducted, in material compliance with all applicable Healthcare Laws.

(b) To the knowledge of the Obligors and their respective Subsidiaries, any physician, other licensed healthcare professional, or any other Person who is in a position to refer patients or other business to the Borrower, any other Obligor or any Subsidiaries (collectively, a “**Referral Source**”) who has a direct ownership, investment, or financial interest in the Borrower, any other Obligor or any such Subsidiary paid fair market value for such ownership, investment or financial interest; any ownership or investment returns distributed to any Referral Source is in proportion to such Referral Source’s ownership, investment or financial interest; and no preferential treatment or more favorable terms were or are offered to such Referral Source compared to investors or owners who are not in a position to refer patients or other business. No Obligor, nor any of its Subsidiaries, directly or indirectly, has or will guarantee a loan, make a payment toward a loan or otherwise subsidize a loan for any Referral Source including, without limitation, any loans related to financing the Referral Source’s ownership, investment or financial interest in the Borrower, any other Obligor or any such Subsidiary.

(c) Without limiting the generality of the foregoing:

(i) To the knowledge of the Obligors and their respective Subsidiaries (after due inquiry), on the one hand, and any Referral Source, on the other hand (a) comply, in all material respects, with all applicable Healthcare Laws including, without limitation, the Federal Anti-Kickback Statute, the Stark Law and other applicable anti-kickback and self-referral laws, whether U.S. or non-U.S.; (b) reflect fair market value, have commercially reasonable terms, and were negotiated at arm’s length; and (c) do not obligate the Referral Source to purchase, use, recommend or arrange for the use of any products or services of any Obligor or any of its Subsidiaries; and

(ii) each Obligor and each of its Subsidiaries have implemented policies and procedures to monitor, collect, and report any payments or transfers of value to certain healthcare providers and teaching hospitals, in accordance, in all material respects, with industry standards and the Affordable Care Act of 2010 and the Physician Payments Sunshine Act and their implementing regulations and state disclosure and transparency laws.

7.08 Taxes. Except as set forth on **Schedule 7.08**, each Obligor and its Subsidiaries has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all taxes required to have been paid by it, except (a) taxes that are being contested in good faith by appropriate proceedings and for which such Obligor or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) to the extent that the failure to do so would not reasonably be expected to have an Material Adverse Effect.

7.09 Full Disclosure. None of the reports, financial statements, certificates or other written information furnished by or on behalf of the Obligors or any of their Subsidiaries to the Administrative Agent (on behalf of itself and the Lenders) in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time, and it being understood that such projected financial information and all other forward looking information are not to be viewed as facts and that actual results during the period or periods covered thereby may differ from such projected results and that the differences may be material.

7.10 Investment Company Act and Margin Stock Regulation.

(a) **Investment Company Act.** No Obligor is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

(b) **Margin Stock.** No Obligor is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of the Loans will be used to buy or carry any Margin Stock in violation of Regulation T, U or X.

7.11 Solvency. The Obligors, on a consolidated basis, are and, immediately after giving effect to the making of the Loans, the use of proceeds thereof, and the consummation of the Transactions, will be, Solvent.

7.12 Subsidiaries. Set forth on **Schedule 7.12** is a complete and correct list of all direct and indirect Subsidiaries of the Borrower. Each such Subsidiary is duly organized and validly existing under the jurisdiction of its organization shown in said **Schedule 7.12**, and the percentage ownership by each Obligor of each such Subsidiary thereof is as shown in said **Schedule 7.12**.

7.13 Indebtedness and Liens. Set forth on **Schedule 7.13(a)** is a complete and correct list of all Indebtedness of each Obligor and each of its Subsidiaries outstanding as of the Closing Date. Set forth on **Schedule 7.13(b)** is a complete and correct list of all Liens granted by the Obligors and each of their respective Subsidiaries with respect to their respective property and outstanding as of the Closing Date.

7.14 Material Agreements. Except as set forth on **Schedule 7.14**, no Obligor or any of its Subsidiaries is in material default under any Material Agreement, nor does any Obligor have knowledge of (i) any Claim against it or any of its Subsidiaries for any material breach of any such Material Agreement or (ii) any material default by any party to any such Material Agreement.

7.15 Restrictive Agreements. Except as set forth in **Schedule 7.15**, as of the Closing Date, no Obligor or any of its Subsidiaries is subject to any Restrictive Agreement, except (i) those permitted under **Section 9.11**, (ii) restrictions and conditions imposed by Law or by this Agreement, (iii) any stockholder agreement, charter, by-laws, or other organizational documents of an Obligor or any of its Subsidiaries as in effect on the date hereof and (iv) limitations associated with Permitted Liens.

7.16 Real Property. **Schedule 7.16** correctly sets forth all real property that is owned or leased by the Obligors, indicating in each case whether the respective property is owned or leased, the identity of the owner and lessee (if applicable) and the location of the respective property. Except as set forth in **Schedule 7.16**, no Obligor owns or leases (as tenant thereof) any real property as of the Closing Date.

7.17 Pension Matters. **Schedule 7.17** sets forth, as of the Closing Date, a complete and correct list of, and that separately identifies, (i) all Title IV Plans, (ii) all Multiemployer Plans and (iii) all material Benefit Plans. Each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Laws so qualifies. Except for those that could not, in the aggregate, reasonably be expected to result in a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Laws, (y) there are no existing or pending (or to the knowledge of any Obligor or any of its Subsidiaries, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Obligor or Subsidiary thereof incurs or otherwise has or could have an obligation or any liability or Claim and (z) no ERISA Event is reasonably expected to occur. The Borrower and each of its ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained. As of the most recent valuation date for any Title IV Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least sixty percent (60%), and neither any Obligor nor any of its ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below sixty percent (60%) as of the most recent valuation date. As of the Closing Date, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. No ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

7.18 Regulatory Approvals.

(a) Each Obligor and each of its Subsidiaries holds, and will continue to hold, either directly or through licensees and agents, all Product Authorizations necessary or required for the Borrower and each of its Subsidiaries to conduct, in all material respects, their respective operations and businesses in the manner currently conducted and to conduct its Product Commercialization and Development Activities.

(b) No Obligor or its Subsidiaries has received any written notice from the FDA or any Governmental Authority that (i) it is considering suspending, revoking or materially limiting any Product Authorization or (ii) it is not likely to approve any applications made to such Governmental Authority with respect to any of the Products or any Material Agreement. The Obligors and their Subsidiaries have made all material required and notices, registrations and reports (including field alerts or other reports of adverse experiences) and other filings with respect to each such Person's Products and Product Commercialization and Development Activities.

(c) Except as set forth on **Schedule 7.18(c)**, and without limiting the generality of any other representation or warranty made by any Obligor hereunder or under any other Loan Document: (i) no Obligor, nor any of its Subsidiaries nor, to the knowledge of any Obligor, any of their respective agents, suppliers, licensors or licensees have received any inspection reports, warning letters or notices or similar documents with respect to any Product or any Product Commercialization and Development Activities from any Regulatory Authority within the last two (2) years that asserts material lack of compliance with any applicable Healthcare Laws or Product Authorizations; (ii) no Obligor, nor any of its Subsidiaries nor, to the knowledge of any Obligor, any of their respective agents, suppliers, licensors or licensees have received any material notification from any Regulatory Authority within the last two (2) years, asserting that any Product or any Product Commercialization and Development Activities lacks a required Product Authorization; (iii) there is no pending regulatory action, investigation or inquiry (other than non-material routine or periodic inspections or reviews) against any Obligor, any of its Subsidiaries or, to the knowledge of any Obligor, any of their respective suppliers, licensors or licensees with respect to any Product or any Product Commercialization and Development Activities, and, to the knowledge of any Obligor, there is no basis in fact for any material adverse regulatory action against such Obligor or any of its Subsidiaries or, to the knowledge of any Obligor, any of their respective suppliers agents, licensors or licensees with respect to any Product or any Product Commercialization and Development Activities; and (iv) without limiting the foregoing, (A) (1) there have been no material product recalls, safety alerts, corrections, withdrawals, marketing suspensions, removals or the like conducted, undertaken or issued by any Obligor or any of its Subsidiaries, whether voluntary, at the request, demand or order of any Regulatory Authority or otherwise, with respect to any Product, any Product Commercialization and Development Activities or any Product Authorization within the last two (2) years, (2) no such product recall, safety alert, correction, withdrawal, marketing suspension, removal or the like has been requested, demanded or ordered by any Regulatory Authority within the last two (2) years, and, to the knowledge of any Obligor, there is no basis in fact for the issuance of any such product recall, safety alert, correction, withdrawal, marketing suspension, removal or the like with respect to any Product or any Product Commercialization and Development Activities, and (B) no criminal, injunctive, seizure, detention or civil penalty action

has been commenced or threatened in writing by any Regulatory Authority within the last two (2) years with respect to or in connection with any Product or any Product Commercialization and Development Activities, and there are no consent decrees (including plea agreements) that relate to any Product or any Product Commercialization and Development Activities, and, to the knowledge of each Obligor, there is no basis in fact for the commencement of any criminal injunctive, seizure, detention or civil penalty action by any Regulatory Authority relating to any Product or any Product Commercialization and Development Activities or for the issuance of any consent decree. No Obligor nor any of its Subsidiaries, nor, to the knowledge of any Obligor, any of their respective agents, suppliers, licensees or licensors, is employing or utilizing the services of any individual, in connection with Product Commercialization and Development Activities, who has been debarred from any federal healthcare program.

7.19 Transactions with Affiliates. Except as set forth on **Schedule 7.19**, no Obligor nor any of its Subsidiaries has entered into, renewed, extended or been a part to, any transaction (including the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate.

7.20 OFAC; Anti-Terrorism Laws.

(a) Neither the Borrower nor any of its Subsidiaries is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the Anti-Terrorism Laws.

(b) Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers, or employees (i) is currently the target of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction in violation of Sanctions, or (iii) is or has been (within the previous five (5) years) engaged in any transaction with, or for the benefit of, any Person who is now or was then the target of Sanctions or who is located, organized or residing in any Designated Jurisdiction, in violation of Sanctions. No Loan, nor the proceeds from any Loan, has been or will be used, directly or, to the knowledge of the Borrower, indirectly, to lend, contribute or provide to, or has been or will be otherwise made available for the purpose of funding, any activity or business in any Designated Jurisdiction in violation of Sanctions or for the purpose of funding any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, in violation of Sanctions, or in any other manner that will result in any violation by any party to this Agreement of Sanctions.

7.21 Anti-Corruption. Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers or employees, directly or, to the knowledge of the Borrower, indirectly, has (i) materially violated or is in material violation of any applicable anti-corruption Law, or (ii) made, offered to make, promised to make or authorized the payment or giving of, directly or, to the knowledge of the Borrower, indirectly, any Prohibited Payment.

7.22 [Reserved].

7.23 Priority of Obligations. The Obligations constitute unsubordinated obligations of the Obligor, and except for any obligations which have priority under applicable Law, rank at least pari passu in right of payment with all other unsubordinated Indebtedness of the Obligor.

7.24 Royalty and Other Payments. Except as set forth on **Schedule 7.24**, no Obligor, nor any of its Subsidiaries, is obligated to pay any royalty, milestone payment, deferred payment or any other contingent payment in respect of any Product.

7.25 Non-Competes. Neither the Borrower, any other Obligor, nor any of their respective Subsidiaries, nor any of their respective directors, officers or employees, is subject to a non-compete agreement that prohibits or will interfere with any of the Product Commercialization and Development Activities, including the development, commercialization or marketing of any Product.

7.26 [Reserved].

7.27 Reimbursement from Medical Reimbursement Programs. Each Obligor has the requisite provider number to bill Medicare (to the extent such Person participates in Medicare), the respective Medicaid program in the state or states in which such Person operates (to the extent such Person participates in the Medicaid program in such state or states), and all other commercial payor programs currently bills. There is no investigation, audit, claim review, or other action pending with respect to any Obligor or, to the knowledge of any Obligor, threatened in writing which could reasonably be expected to result in a revocation, suspension, termination, probation, restriction, limitation, or non-renewal of any provider number issued to any Obligor or result in the exclusion of any Obligor from Medicare or Medicaid, nor is there any action pending or, to any Obligor's knowledge, threatened in writing, pursuant to which any Governmental Authority seeks to impose material sanctions with respect to such Obligor's business.

SECTION 8. AFFIRMATIVE COVENANTS

Each Obligor covenants and agrees with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made) have been indefeasibly paid in full in cash:

8.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent:

(a) as soon as available and in any event within forty-five (45) days after the end of the first three (3) fiscal quarters of each fiscal year (i) the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal quarter and (ii) the related consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such fiscal quarter, in each case prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year, together with (iii) a certificate of a Responsible Officer of the Borrower stating that (x) such

financial statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as at such date and (y) the results of operations of the Borrower and its Subsidiaries for the period ended on such date have been prepared in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes; provided that documents required to be furnished pursuant to this Section **8.01(a)** shall be deemed furnished on the date that such documents are publicly available on “EDGAR” (with the related certificate separately delivered);

(b) as soon as available and in any event within ninety (90) days after the end of each fiscal year (i) the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal year and (ii) the related consolidated statements of income, shareholders’ equity and cash flows of the Borrower and its Subsidiaries for such fiscal year, in each case prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, accompanied by a report and opinion thereon of Deloitte & Touche LLP or another firm of independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and, commencing with the first such financial statements required to be delivered under this Section 8.01(b) in which the Borrower reports revenue in respect of sales of Oral Paclitaxel, such report and opinion shall not be subject to any “going concern” or like qualification or exception or emphasis of matter of going concern footnote or any qualification or exception as to the scope of such audit, and in the case of such consolidated financial statements, certified by a Responsible Officer of the Borrower; provided that documents required to be furnished pursuant to this Section **8.01(b)** shall be deemed furnished on the date that such documents are publicly available on “EDGAR”;

(c) together with the financial statements required pursuant to **8.01(a)** and **(b)**, a compliance certificate signed by the chief financial or accounting Responsible Officer of the Borrower as of the end of the applicable accounting period (which delivery may be by electronic communication including fax or email and shall be deemed to be an original, authentic counterpart thereof for all purposes) substantially in the form of **Exhibit E** (a “**Compliance Certificate**”) including (i) details of any issues that are material that are raised by auditors and any occurrence or existence of any event, circumstance, act or omission that would cause any representation or warranty contained in **Section 7.07**, **Section 7.18** or **Section 7.23** to be incorrect in any material respect (or in any respect if such representation or warranty is qualified by materiality or by reference to Material Adverse Effect or Material Adverse Change) if such representation or warranty were to be made at the time of delivery of a Compliance Certificate and (ii) (A) prior to the Revenue Covenant Termination Date, (x) the calculation of the Consolidated Leverage Ratio as of the last day of the fiscal period to which the financial statements so delivered relate and (y) a certification as to whether or not the Borrower is in compliance with the Minimum Revenue Covenant as of the last day of such period, and (B) beginning with the first fiscal quarter of the Borrower following the Revenue Covenant Termination Date, a certification as to whether or not the Borrower is in compliance with the Leverage Ratio Covenant. For the avoidance of doubt, no representation or warranty contained in **Section 7** (including **Section 7.07**, **Section 7.18** or **Section 7.23**) is required to be, shall be or shall be deemed to be made in connection with a delivery of any Compliance Certificate;

(d) after being prepared by the Borrower and approved by its Board, and promptly following the Administrative Agent's request therefor, a consolidated financial forecast for the Borrower and its Subsidiaries for the fiscal year to which such forecast relates; provided that, for each fiscal year, on or before the sixtieth (60th) day following the beginning of such fiscal year, the Borrower shall prepare, and its Board shall approve such consolidated financial forecast for such fiscal year, and the Borrower shall notify the Administrative Agent promptly after the Board has given such approval;

(e) promptly after the same are released, copies of all press releases; provided that documents required to be furnished pursuant to this Section **8.01(e)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(f) promptly, and in any event within five (5) Business Days after receipt thereof by an Obligor thereof, copies of each notice or other correspondence received from any securities regulator or exchange to the authority of which the Borrower may become subject from time to time concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of such Obligor; provided that documents required to be furnished pursuant to this Section **8.01(f)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(g) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of each Obligor and its Subsidiaries, and copies of all annual, regular, periodic and special reports and registration statements which any Obligor or its Subsidiaries may file or be required to file with any securities regulator or exchange to the authority of which such Obligor or such Subsidiary, as applicable, may become subject from time to time; provided that documents required to be furnished pursuant to this Section **8.01(g)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(h) the information regarding insurance maintained by the Borrower and its Subsidiaries as required under **Section 8.05**;

(i) as soon as possible and in any event within five (5) Business Days after the Borrower obtains knowledge of any Claim related to any Product or inventory involving more than \$2,500,000 (or the Equivalent Amount in other currencies), written notice thereof from a Responsible Officer of the Borrower which notice shall include a statement setting forth details of such return, recovery, dispute or claim;

(j) together with the delivery of the Compliance Certificate, evidence satisfactory to the Administrative Agent, based upon the Borrower's bank account statements that the Borrower has met its minimum liquidity requirement set out in **Section 10.01**; and

(k) such other information respecting the businesses, financial performance, operations condition of the assets or liabilities of the Obligors (including with respect to the Collateral), taken as a whole, as the Administrative Agent may from time to time reasonably request.

8.02 Notices of Material Events. The Borrower will furnish to the Administrative Agent written notice of the following (x) with respect to **clause (a)** below within three (3) Business Days and (y) with respect to **clause (b)** through **(m)** below, within five (5) Business Days, in each case, after a Responsible Officer of the Borrower first learns of or acquires knowledge with respect to:

(a) the occurrence of any Default or Event of Default;

(b) the occurrence of any event with respect to the property or assets of the Borrower or any of its Subsidiaries resulting in a Loss aggregating \$2,500,000 (or the Equivalent Amount in other currencies) or more;

(c) (i) any proposed acquisition of stock, assets or property by the Borrower or any of its Subsidiaries that could reasonably be expected to result in material Environmental Liability, and (ii) any spillage, leakage, discharge, disposal, leaching, migration or release of any Hazardous Material by the Borrower or any of its Subsidiaries required to be reported to any Governmental Authority and that would reasonably be expected to result in material Environmental Liability;

(d) the assertion of any Claim under any Environmental Law by any Person against, or with respect to the activities of, the Borrower or any of its Subsidiaries and any alleged liability or non-compliance with any Environmental Laws or any permits, licenses or authorizations issued pursuant to Environmental Laws which could reasonably be expected to involve damages in excess of \$2,500,000 (or the Equivalent Amount in other currencies) other than any such Claim or alleged violation that would not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect;

(e) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any of its Affiliates that would reasonably be expected to result in a Material Adverse Effect;

(f) (i) the intention of any ERISA Affiliate to file any notice of intent to terminate any Title IV Plan, a copy of such notice and (ii) the filing by any ERISA Affiliate of a request for a minimum funding waiver under Section 412 of the Code with respect to any Title IV Plan or Multiemployer Plan, in each case in writing and in reasonable detail (including a description of any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto);

(g) (i) the termination of any Material Agreement or any Permitted License in clause (D) or (G) of the definition thereof other than in accordance with its terms and not as a result of a breach or default, (ii) the receipt by the Borrower or any of its Subsidiaries of any notice of a material breach or default under any Material Agreement (and a copy thereof) or any Permitted License in clause (D) or (G) of the definition thereof asserting a default by such Obligor or any of its Subsidiaries where such alleged default would permit such counterparty to terminate such Material Agreement, (iii) the entering into of (A) any new Material Agreement by any Obligor (and a copy thereof) or (B) any Permitted License in clause (D) or (G) of the definition thereof or (iv) any material amendment to a Material Agreement or any Permitted License in clause (D) or

(G) of the definition thereof that would be adverse in any material respect to the Lenders (and a copy thereof); provided, that the Borrower shall not be required to provide such notice if such documents become publicly available on “EDGAR” within the time period notice would otherwise be required pursuant to this **Section 8.02**;

(h) any material change in accounting policies or financial reporting practices by the Borrower or any of its Subsidiaries;

(i) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving an Obligor;

(j) any licensing agreement or arrangement entered into by the Borrower or any of its Subsidiaries in connection with any Claim of infringement or alleged infringement by or against the Borrower or any of its Subsidiaries of any Intellectual Property of another Person; provided that such agreement or arrangement would otherwise qualify as a Material Agreement hereunder;

(k) the creation, development or other acquisition (including any in-bound exclusive licenses) of any Material Intellectual Property by the Borrower or any Subsidiary after the Closing Date that is registered or becomes registered or the subject of an application for registration with any Governmental Authority; provided that, with respect to any such Material Intellectual Property created, developed or acquired (including through any in-bound exclusive license) in any fiscal year, notice thereof pursuant to this **Section 8.02(k)** shall be made in accordance with the timing of the financial statements for such fiscal year required pursuant to **Section 8.01(b)**;

(l) any change to any Obligor’s or any of its Subsidiaries’ ownership of any Controlled Account, by delivering the Administrative Agent a notice setting forth a complete and correct list of all such accounts as of the date of such change; and

(m) any other development that results in a Material Adverse Effect.

Each notice delivered under this **Section 8.02** shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto. Nothing in this **Section 8.02** is intended to waive, consent to or otherwise permit any action or omission that is otherwise prohibited by this Agreement or any other Loan Document.

8.03 Existence. Such Obligor shall, and shall cause each of its Subsidiaries to, preserve, renew and maintain in full force and effect its legal existence; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03**.

8.04 Payment of Obligations. Such Obligor will, and will cause each of its Subsidiaries to, pay and discharge its obligations, including (i) all material Taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful claims for labor, materials and supplies which, if unpaid, might become a Lien upon any properties or assets of the Borrower or any of its Subsidiaries, except to the extent such Taxes, fees, assessments or governmental charges or levies or such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP and (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien.

8.05 Insurance. Such Obligor will, and will cause each of its Subsidiaries to maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses. Upon the request of the Administrative Agent, the Borrower shall furnish the Administrative Agent from time to time with (i) material information as to the insurance carried by it and, if so requested, copies of all such insurance policies and (ii) a certificate from the Borrower's insurance broker or other insurance specialist stating that all premiums then due on the policies relating to insurance on the Collateral have been paid and that such policies are in full force and effect. Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder shall entitle the Secured Parties to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to the first sentence of this **Section 8.05** or otherwise to obtain similar insurance in place of such policies, in each case, the Borrower will be responsible for the reasonable and documented cost of such insurance (to be payable on demand). The amount of any such reasonable and documented expenses shall accrue interest at the Default Rate if not paid on demand and shall constitute "Obligations."

8.06 Books and Records; Inspection Rights. Such Obligor will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct (in all material respects) entries are made of all dealings and transactions in relation to its business and activities. Such Obligor will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or the Lenders, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition (financial or otherwise) with its officers and independent accountants, during normal business hours (but not more often than once per quarter unless an Event of Default has occurred and is continuing) as the Administrative Agent or the Lenders may request; provided that such representative shall use its commercially reasonable efforts to minimize disruption to the business and affairs of the Borrower as a result of any such visit, inspection, examination or discussion. Notwithstanding anything to the contrary contained herein, no Obligor nor any of its Subsidiaries will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes trade secrets or proprietary information, (ii) in respect of which disclosure to any Lender (or their respective representatives or contractors) is prohibited by any applicable Law or any binding agreement with a third party (so long as such agreement is not entered into in contemplation of this Agreement) or (iii) that is subject to attorney-client or similar privilege, which could reasonably be expected to be lost or forfeited if disclosed to the Administrative Agent or any Lender. The Borrower shall pay all reasonable and documented costs of all such inspections.

8.07 Compliance with Laws and Other Obligations. Such Obligor will, and will cause each of its Subsidiaries to, (i) comply with all Laws (including Anti-Terrorism Laws, Sanctions and Environmental Laws) applicable to it and its business activities, (ii) comply in all material respects with all Healthcare Laws and Governmental Approvals (including Product

Authorizations) applicable to it and its business activities and (iii) maintain in full force and effect, remain in compliance with, and perform all obligations under all Material Agreement to which it is a party, except, in the case of **clause (i)** and **(iii)** above, where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Within 60 days after the Closing Date, each Obligor shall institute (if not already in effect) and thereafter maintain in effect and enforce policies and procedures reasonably designed to promote compliance by such Obligor, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Terrorism Laws and Sanctions.

8.08 Maintenance of Properties, Etc. Such Obligor shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its assets and properties, including all assets and properties, whether tangible or intangible, relating to its Products or Product Commercialization and Development Activities, necessary or useful in the conduct of its business in good working order and condition in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from casualty or condemnation excepted and except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

8.09 Licenses. Such Obligor shall, and shall cause each of its Subsidiaries to, obtain and maintain all Governmental Approvals necessary in connection with the execution, delivery and performance of the Loan Documents, the consummation of the Transactions or the operation and conduct of its business and ownership of its properties (including its Product Commercialization and Development Activities), except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

8.10 Debt Service Reserve Account. From the Closing Date until the Maturity Date, the Borrower shall at all times fund and maintain cash in a segregated debt service reserve account (the "Debt Service Reserve Account"), in an amount equal to at least the amount required to pay interest on the Loans for a period of the next twelve (12) months; provided that from the Closing Date until the earlier of (x) the Account Control Agreement Completion Date and (y) the date on which a control agreement in respect of the Debt Service Reserve Account is executed, the Borrower may satisfy this requirement by designating such amount of cash on its balance sheet as a reserved amount. Subject to **Section 8.19(a)**, the Debt Service Reserve Account shall at all times be a Controlled Account.

8.11 Use of Proceeds. The proceeds of the Loans will be used only as provided in **Section 2.05**. No part of the proceeds of the Loans will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X.

8.12 Certain Obligations Respecting Subsidiaries; Further Assurances.

(a) **Subsidiary Guarantors, etc.** Subject to **clauses (c)** and **(d)** below, in the event that the Borrower or any of its Subsidiaries shall form or acquire any new Subsidiary, the Borrower shall promptly (and in any event within thirty (30) calendar days):

(i) cause such new Subsidiary to become a “Subsidiary Guarantor” hereunder pursuant to a Guarantee Assumption Agreement and a “Grantor” under the Security Agreement;

(ii) take such action or cause such Subsidiary to take such action (including joining the Security Agreement and delivering shares of stock together with undated transfer powers executed in blank, applicable control agreements and other instruments) as shall be reasonably necessary or desirable or reasonably requested by the Administrative Agent in order to create and perfect, in favor of the Administrative Agent, for the benefit of the Secured Parties, valid and enforceable first priority Liens on substantially all of the personal property of such new Subsidiary as collateral security for the Obligations hereunder; provided that any such security interest or Lien shall be subject to the relevant requirements of the Security Documents and the Intercompany Subordination Agreement;

(iii) to the extent that the parent of such Subsidiary is not a party to the Security Agreement or has not otherwise pledged Equity Interests in its Subsidiaries in accordance with the terms of the Security Agreement and this Agreement, cause the parent (if possible) of such Subsidiary to execute and deliver a pledge agreement in favor of the Administrative Agent, for the benefit of the Secured Parties, in respect of all outstanding issued shares of such Subsidiary;

(iv) deliver such proof of corporate action, incumbency of officers, and other applicable documents as is consistent with those delivered by each Obligor pursuant to **Section 6.01** or as the Administrative Agent shall reasonably request; and

(v) cause each new Subsidiary (other than any Subsidiary that is neither an Obligor nor a Pledged Entity) to become a party to the Intercompany Subordination Agreement.

(b) **Further Assurances.** Subject to **clauses (c) and (d)** below:

(i) such Obligor will take such action from time to time as shall reasonably be requested by the Administrative Agent to effectuate the purposes and objectives of this Agreement and the Security Agreement; and

(ii) in the event that such Obligor acquires Intellectual Property during the term of this Agreement, then the provisions of this Agreement and the Security Agreement shall and hereby does automatically apply thereto and any such Intellectual Property shall automatically constitute part of the Collateral under the Security Documents, without further action by any party, in each case from and after the date of such acquisition; and

(iii) without limiting the generality of the foregoing, each Obligor will, and will cause each Person that is required to be a Subsidiary Guarantor to, take such action from time to time (including joining the Security Agreement and delivering shares of stock together with undated transfer powers executed in blank, applicable control agreements and other instruments) as shall be reasonably requested by the Administrative Agent to create, in favor of the Secured Parties, perfected security interests and Liens in substantially all of the personal property (other than Excluded Assets (as defined in the Security Agreement)) of such Obligor as collateral security for the Obligations; provided that any such security interest or Lien shall be

subject to the relevant requirements of the Security Documents; provided, further that, without limiting the right of the Administrative Agent to require a Lien or security interest in any newly acquired or created Subsidiary or asset, upon the prior written request of the Borrower, the Borrower and the Administrative Agent shall consult, in good faith, as to whether the cost of obtaining a Lien or security interest thereon would be unreasonably excessive relative to the benefit thereof.

(c) **CFCs, etc.** Notwithstanding any term or provision of this Agreement to the contrary notwithstanding, (x) no Subsidiary that is a (i) CFC, (ii) CFC Holding Company or (iii) Domestic Subsidiary of either of the foregoing, shall be required to become a Subsidiary Guarantor, and (y) the Obligors shall not be required to pledge (or cause to be pledged) to the Administrative Agent, for the benefit of the Secured Parties, Equity Interests of any Subsidiary representing, in the aggregate, more than sixty-five percent (65%) of the Equity Interests of any CFC or CFC Holding Company.

(d) **Limitations on Certain Obligations.** Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, no Obligor shall be required to enter into or obtain any mortgage, deed of trust, leasehold mortgage or any similar agreement in respect to any fee interest or leasehold interest in real property.

8.13 Termination of Non-Permitted Liens. In the event that any Obligor shall become aware of, or be notified by the Administrative Agent or any Lender of the existence of, any outstanding Lien against any assets or property of such Obligor or any of its Subsidiaries, which Lien is not a Permitted Lien, such Obligor shall use its commercially reasonable efforts to promptly terminate or cause the termination of such Lien.

8.14 Board Materials; Oaktree Lender Board Observer.

(a) (i) The Borrower shall deliver to the Administrative Agent copies of any agenda and other written materials provided to the board of directors (or any committee thereof) of the Borrower prior to any meeting of the board of directors (or such committee thereof), at or reasonably promptly after such materials are furnished to the members of the board of directors (or such committee thereof), (ii) copies of all minutes of meetings of the board of directors (or any committee thereof) of the Borrower at or promptly after such minutes are furnished to the members of the board of directors (or such committee thereof), (iii) copies of all material written consents duly passed by the board of directors (or any committee thereof) of the Borrower and (iv) promptly upon presentation of any regular periodic materials to the board of directors (or any committee thereof) of the Borrower reporting on the current, past or future financial performance and business and operations of the Borrower or any of its Subsidiaries (which shall include, among other things, development updates with respect to material Products, and updates with respect to material events relating to other Material Agreements), copies of such materials shall be delivered to the Administrative Agent; provided that any such material may be redacted by the Borrower to (A) exclude information pertaining to the Borrower's strategy regarding the Loans, (B) preserve attorney-client privilege or (C) protect individually identifiable health information (as defined under HIPAA) or other confidential information relating to healthcare patients; provided, further that such redactions are restricted so as to be only as extensive as is reasonably necessary in order to exclude information described in clauses (A), (B) or (C).

(b) Upon the request of the Oaktree Lender, the Borrower shall permit a single designee of the Oaktree Lender to be a board observer to the Borrower or any committee thereof performing such functions (the “**Board Observer**”). In such capacity, the Board Observer shall be entitled to attend all meetings of the board of directors of the Borrower and any committee thereof. The Borrower shall ensure that the Board Observer is invited to each such meeting at the same time as each other member of the board of directors and that such Board Observer receives all board materials at the same time as each other member of the board of directors; provided that any such material may be redacted by Borrower, and Borrower may exclude the Board Observer from meetings of the board of directors or any committee thereof, in order to (i) prevent the Board Observer from receiving or learning information relating to the Borrower’s strategy regarding the Loans, (ii) preserve attorney-client privilege or (iii) protect individually identifiable health information (as defined under HIPAA) or other confidential information relating to healthcare patients; provided, further, that such redactions and the exclusion of the Board Observer are restricted so as to be only as extensive as is reasonably necessary in order to exclude or prevent access to the Board Observer to information described in clauses (i), (ii) or (iii). If appointed, the Board Observer may resign or withdraw at any time, or, at the request of the Oaktree Lender, be replaced by a designee of the Oaktree Lender that is reasonably acceptable to the Borrower.

8.15 [Reserved].

8.16 Maintenance of Regulatory Approvals, Contracts, Intellectual Property, Etc.. With respect to the Products and all Product Commercialization and Development Activities, such Obligor will, and will cause each of its Subsidiaries (to the extent applicable) to, (i) maintain in full force and effect all Regulatory Approvals, Material Agreements, Material Intellectual Property and other rights, interests or assets (whether tangible or intangible) reasonably necessary for the operations of such Person’s business, except as would not reasonably be expected to have a Material Adverse Effect, (ii) maintain in full force and effect, and pay all costs and expenses relating to, such Regulatory Approvals, Material Agreements and Material Intellectual Property owned, used or controlled by such Obligor or any such Subsidiary that are used in or necessary for any related Product Commercialization and Development Activities, except as would not be reasonably expected to have a Material Adverse Effect, (iii) promptly after obtaining knowledge thereof, notify the Administrative Agent of any infringement or other violation by any Person of such Obligor’s or any such Subsidiaries’ Material Intellectual Property, and use commercially reasonable efforts to stop, curtail or abate such infringement if determined appropriate by the Borrower in the exercise of its business judgment and (iv) promptly after obtaining knowledge thereof, notify the Administrative Agent of any Claim by any Person that the conduct of the business of any Obligor or any of its Subsidiaries, including in connection with any Product Commercialization and Development Activities, has infringed upon any Intellectual Property of such Person, where such Claim could reasonably be expected to have a Material Adverse Effect.

8.17 ERISA Compliance. Such Obligor shall comply, and shall cause each of its Subsidiaries to comply, with the provisions of ERISA with respect to any Plans to which such Obligor or such Subsidiary is a party as an employer in all material respects.

8.18 Cash Management. Such Obligor shall, and shall cause each of its Subsidiaries to:

(a) maintain at all times after the Account Control Agreement Completion Date both (i) an aggregate amount of cash of the Borrower and its Subsidiaries at least equal to the Minimum Liquidity Amount and (ii) no less than 70% of the aggregate amount of cash of the Borrower and its Subsidiaries (deeming any cash paid pursuant to the XHP License Agreement being held in China that is due to be repatriated to the United States as cash held in a deposit account in the U.S. subject to the Administrative Agent's control solely to the extent (A) the amount of such deemed cash does not exceed at any time 10% of such aggregate amount, (B) the Borrower or one of its Subsidiaries is diligently pursuing any necessary or advisable applications with relevant Governmental Authorities to enable the repatriation of the funds to the United States, as evidenced to the reasonable satisfaction of the Administrative Agent and (C) such cash is repatriated to the United States within 20 Business Days of the receipt thereof), in each case, in deposit accounts, disbursement accounts, investment accounts (and other similar accounts) and lockboxes with a bank or financial institution within the U.S. which, subject to **Section 8.19(a)**, has executed and delivered to the Administrative Agent an account control agreement, in form and substance reasonably acceptable to the Administrative Agent (each such deposit account, disbursement account, investment account (or similar account) and lockbox, a "**Controlled Account**"); each such Controlled Account shall be a cash collateral account, with all cash, checks and other similar items of payment in such account securing payment of the Obligations, and each Obligor shall have granted a Lien to the Administrative Agent, for the benefit of the Secured Parties, over such Controlled Accounts;

(b) deposit promptly, and in any event no later than five (5) Business Days after the date of receipt thereof, all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all accounts and other rights and interests into Controlled Accounts; and

(c) at any time after the occurrence and during the continuance of an Event of Default, at the request of the Administrative Agent, each Obligor shall cause all payments constituting proceeds of accounts to be directed into lockbox accounts under agreements in form and substance satisfactory to the Administrative Agent

8.19 Post-Closing Obligations.

(a) **Controlled Accounts.** Within sixty (60) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion) (the "**Account Control Agreement Completion Date**"), the Administrative Agent shall have received evidence that (i) all deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts (other than Excluded Accounts) of each Obligor located within the U.S. are Controlled Accounts and (ii) such Controlled Accounts are subject to one or more account control agreements, in favor of, and satisfactory in form and substance to, the Administrative Agent that (A) ensures, to the extent necessary under applicable Law, the perfection of a first priority security interest in favor of the Administrative Agent on such Controlled Account, (B) provides that, upon written notice from the Administrative Agent, such bank or financial institution shall comply with instructions originated by the Administrative Agent directing disposition of the funds in such Controlled Account without further consent by the applicable Obligor, and (C) may not be terminated without prior written consent of Agent.

(b) **Financial Covenant Compliance.** On the Account Control Agreement Completion Date, the Administrative Agent shall have received written evidence reasonably satisfactory to it that, as of the Account Control Agreement Completion Date, the Borrower is in compliance with **Section 10.01** and **Section 8.18(a)**.

(c) **Real Property Security Documents.** Within sixty (60) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), the Borrower shall use commercially reasonable efforts to obtain (i) Landlord Consents with respect to (w) the lease of Athenex Pharma Solutions, LLC for property located at 11342 Main Street, Clarence, New York 14031, (x) the lease of the Borrower for property located at Coventus Building, 1001 Main Street, Suite 600, Buffalo, New York 14203 and (y) the lease of the Borrower for property located at 20 Commerce Drive, Suite 100, Cranford, NJ 07016 and (z) the lease of by Athenex Pharma Solutions LLC for property located at 1953 Kenmore Ave., Building # 7, Buffalo, NY 14217 and (ii) Bailee Letters from (x) Dohmen Life Science Services in respect of inventory of Athenex Pharmaceutical Division, LLC at 4580 S. Mendenhall Road, Memphis, Tennessee 38141 and from the lessor of the property located 10 N. Martingale Road, Suite 230, Shaumburg, IL 60173 and (y) Speed Global Services in respect of inventory of Athenex, Inc. located at 1953 Kenmore Ave., Building # 7, Buffalo, NY 14217.

(d) **Intercompany Subordination Agreement.** Within thirty (30) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), the Obligors shall, and shall cause its Subsidiaries to, duly execute and deliver the Intercompany Subordination Agreement or such other subordination agreement in form and substance reasonably satisfactory to the Administrative Agent.

(e) **Insurance.** Within thirty (30) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), all such insurance policies required pursuant to each Loan Document shall name the Administrative Agent (for its benefit and the benefit of the Lenders) loss payee or additional insured, as applicable, and provide that no cancellation of the policies will be made without at least ten (10) days prior written notice to the Administrative Agent and the Administrative Agent shall have received certified copies of such insurance policies (or binders in respect thereof).

(f) **Foreign Law Security Documents.** Within sixty (60) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), the Borrower shall (i) duly execute and deliver foreign law Security Documents in form and substance reasonably satisfactory to the Administrative Agent pursuant to which 65% of the Equity Interests of all directly owned Foreign Subsidiaries of the Borrower shall be pledged to the Administrative Agent for the benefit of the Secured Parties, together with proof of corporate action, incumbency of officers, customary opinions of counsel and other applicable documents as is consistent with those delivered by each Obligor pursuant to **Section 6.01**.

(g) **Share Certificates.** Within seventy-five (75) days following the Closing Date (or such longer period of time as may be agreed by the Administrative Agent, which consent shall not be unreasonably denied (it being understood and agreed that the Administrative Agent shall appropriately take into account any request to extend such deadline due to the inability of Perceptive Credit Holdings II, LP to deliver such Pledged Collateral to the Borrower due to the

COVID-19 pandemic after its use of commercially reasonable efforts), the Borrower shall deliver, or cause to be delivered, to the Administrative Agent, each of the certificates representing all the Pledged Collateral (as defined in the Security Agreement) to the extent such Pledged Collateral are certificated, accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Administrative Agent.

SECTION 9. NEGATIVE COVENANTS

Each Obligor covenants and agrees with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made), have been indefeasibly paid in full in cash:

9.01 Indebtedness. Such Obligor will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except:

(a) the Obligations;

(b) Indebtedness existing on the date hereof and set forth on **Schedule 7.13(a)** and Permitted Refinancings thereof; provided that, if such Indebtedness is intercompany Indebtedness, such Indebtedness shall be subject to the Intercompany Subordination Agreement;

(c) accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of such Obligor's or such Subsidiary's business in accordance with customary terms and paid within the specified time, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP;

(d) Indebtedness consisting of guarantees resulting from the endorsement of negotiable instruments for collection in the ordinary course of business;

(e) Indebtedness of an Obligor owing to any other Obligor or a Pledged Entity owing to any other Pledged Entity, in each case subject to the Intercompany Subordination Agreement;

(f) Indebtedness of any Subsidiary that is neither an Obligor nor a Pledged Entity owing to any other Subsidiary that is neither an Obligor nor a Pledged Entity;

(g) Indebtedness of any Obligor or any Pledged Entity owing to any Subsidiary that is not an Obligor, subject to the Intercompany Subordination Agreement; provided any Indebtedness owing by an Obligor to a Pledged Entity shall not exceed \$2,000,000 in the aggregate outstanding at any one time;

(h) Indebtedness of any Subsidiary owing to any Obligor or Pledged Entity in connection with any Product Commercialization and Development Activities in an aggregate outstanding principal amount not to exceed an amount (without double counting Indebtedness pursuant to this **Section 9.01(h)**) incurred using proceeds of other Indebtedness incurred pursuant

to this **Section 9.01(h)** equal to (i) \$80,000,000, plus (ii) the amount of any net cash proceeds received by the Borrower from the issuance of Qualified Equity Interests (other than Permitted Cure Securities) of the Borrower since the Closing Date (in each case, or the Equivalent Amount in other currencies); provided that any Subsidiary that is neither an Obligor nor a Pledged Entity may only incur Indebtedness pursuant to this **Section 9.01(h)** (without double counting Indebtedness pursuant to this **Section 9.01(h)** incurred using proceeds of other Indebtedness incurred pursuant to this **Section 9.01(h)**) in an aggregate outstanding principal amount not to exceed \$30,000,000 (or the Equivalent Amount in other currencies);

(i) Guarantees by any Obligor of Permitted Indebtedness of any other Obligor;

(j) Ordinary Course equipment and software financing and leasing; provided that (i) if secured, the collateral therefor consists solely of the assets being financed, the products and proceeds thereof and books and records related thereto, and (ii) (A) the aggregate outstanding principal amount of such Indebtedness incurred with respect to such financing in relation to the manufacturing facility of the Borrower located in Dunkirk, NY does not exceed \$10,000,000 (or the Equivalent Amount in other currencies) at any time and (B) the aggregate outstanding principal amount of such Indebtedness incurred with respect to such financing in relation to the active pharmaceutical ingredient manufacturing facility of the Borrower located in Chongqing, China does not exceed \$18,000,000 (or the Equivalent Amount in other currencies) at any time;

(k) Indebtedness under (i) Permitted Hedging Agreements and (ii) Permitted Bond Hedge Transactions not exceeding, net of the proceeds of any Permitted Warrant Transactions entered in connection therewith, 15% of the proceeds obtained in the related Permitted Convertible Debt issuance;

(l) Indebtedness assumed pursuant to any Permitted Acquisition; provided that (i) no such Indebtedness (individually) shall exceed 15% of the total purchase price paid in connection with such Permitted Acquisition, (ii) the aggregate outstanding principal amount of Indebtedness permitted pursuant to this **Section 9.01(l)** shall not exceed \$10,000,000 (or the Equivalent Amount in other currencies) at any time outstanding and (iii) no such Indebtedness was created or incurred in connection with, or in contemplation of, such Permitted Acquisition;

(m) Indebtedness in respect of working capital facilities of the Borrower or any of its Subsidiaries in an aggregate outstanding principal amount not to exceed \$15,000,000 (or the Equivalent Amount in other currencies); provided that the documentation governing such Indebtedness shall be in form and substance reasonably satisfactory to the Administrative Agent in its sole discretion;

(n) Indebtedness in an aggregate outstanding principal amount not to exceed \$50,000,000 pursuant to any Royalty Interest Financing;

(o) other Indebtedness in an aggregate outstanding principal amount not to exceed \$10,000,000 (or the Equivalent Amount in other currencies);

(p) Permitted Convertible Debt in aggregate principal amount not to exceed \$250,000,000 in principal amount at any time outstanding;

(q) Indebtedness in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created, or related to obligations or liabilities incurred, in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, leases, commercial contracts, Indebtedness permitted pursuant to Section 9.01(s), casualty or liability insurance or self-insurance or other reimbursement-type obligations regarding workers compensation claims;

(r) Indebtedness arising in connection with the financing of insurance premiums in the ordinary course of business;

(s) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations arising in the ordinary course of business;

(t) Indebtedness in respect of netting services, overdraft protections, business credit cards, purchasing cards, payment processing, automatic clearinghouse arrangements, arrangements in respect of pooled deposit or sweep accounts, check endorsement guarantees, and otherwise in connection with deposit accounts or cash management services;

(u) Indebtedness in respect of Investments permitted pursuant to **Section 9.05(o)**;

(v) purchase price adjustments, indemnity payments and other Deferred Acquisition Consideration in connection with any Permitted Acquisition, in each case that are permitted pursuant to the definition of "Permitted Acquisition";

(w) Permitted Refinancings of any items of Permitted Indebtedness (a) through (v) above; and

(x) Permitted Warrant Transactions that constitute Indebtedness.

9.02 Liens. Such Obligor will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any property now owned by it or such Subsidiary, except:

(a) Liens securing the Obligations;

(b) any Lien on any property or asset of such Obligor or any of its Subsidiaries existing on the date hereof and set forth on **Schedule 7.13(b)** and renewals and extensions thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien; provided that (i) no such Lien (including any renewal or extension thereof) shall extend to any other property or asset of such Obligor or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the date hereof and renewals, extensions and replacements thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien that do not increase the outstanding principal amount thereof;

(c) Liens securing Indebtedness permitted under **Section 9.01(j)**; provided that such Liens are restricted solely to the collateral described in **Section 9.01(j)**;

(d) Liens imposed by any Law arising in the ordinary course of business, including (but not limited to) carriers', warehousemen's, landlords', and mechanics' liens, liens relating to leasehold improvements and other similar Liens arising in the ordinary course of business and which (x) do not in the aggregate materially detract from the value of the property subject thereto or materially impair the use thereof in the operations of the business of such Person or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property subject to such Liens and for which adequate reserves have been made if required in accordance with GAAP;

(e) pledges or deposits made in the Ordinary Course in connection with bids, contract leases, appeal bonds, workers' compensation, unemployment insurance or other similar social security legislation;

(f) Liens securing Taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made;

(g) servitudes, easements, rights of way, restrictions and other similar encumbrances on real property imposed by any Law and Liens consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors or any of their Subsidiaries; and

(h) with respect to any real property, (i) such defects or encroachments as might be revealed by an up-to-date survey of such real property; (ii) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real property pursuant to all applicable Laws; and (iii) rights of expropriation, access or user or any similar right conferred or reserved by or in any Law, which, in the aggregate for **clauses (i), (ii) and (iii)**, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors or its Subsidiaries;

(i) Bankers liens, rights of setoff and similar Liens incurred on deposits made in the Ordinary Course;

(j) Liens securing Indebtedness permitted under **Section 9.01(l)**; provided that (i) such Lien is not created in contemplation of or in connection with such Permitted Acquisition pursuant to which such Indebtedness was assumed, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations that it secured immediately prior to the consummation of such Permitted Acquisition and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(k) Liens securing Indebtedness permitted under **Sections 9.01(q), (r), (s), (t), and (w)**.

- (l) Any judgment lien or lien arising from decrees or attachments not constituting an Event of Default;
- (m) Liens arising from precautionary UCC financing statement filings regarding operating leases of personal property and consignment arrangements entered into in the Ordinary Course;
- (n) other Liens which secure obligations in an aggregate amount not to exceed \$5,000,000 (or the Equivalent Amount in other currencies) at any time outstanding;
- (o) Liens on (i) proceeds resulting from sales of Oral Paclitaxel in an amount not exceeding 5% of such proceeds and (ii) subject to **Section 12.13**, the Intellectual Property, Accounts (as defined in the UCC), payment intangibles arising therefrom and Proceeds (as defined in the UCC) thereof relating to Oral Paclitaxel, in each case, securing Indebtedness permitted under clause (n) of **Section 9.01** and which are subject to a Permitted Intercreditor Agreement;
- (p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods and incurred in the ordinary course of business;
- (q) Permitted Licenses; provided that the written consent of the Administrative Agent (not to be unreasonably withheld, delayed or conditioned) shall be obtained prior to Borrower (or any of its Subsidiaries) entering into any Permitted License described in clause (D)(ii)(y) of the definition thereof;
- (r) Liens on cash and Cash Equivalents securing obligation under Permitted Hedging Agreements; and
- (s) (i) Liens to secure payment of workers' compensation, employment insurance, old age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA) and (ii) deposits in respect of letters of credit, bank guarantees or similar instruments issued for the account of any Obligor or any Subsidiary in the Ordinary Course supporting obligations of the type set forth in clause (i) above;

provided that no Lien otherwise permitted under any of the foregoing **clauses (b), (c), (d), (e) and (g) through (q)** of this **Section 9.02** shall apply to any Material Intellectual Property, except for (x) Liens securing Indebtedness permitted under clause **(o)** of this **Section 9.02** and (y) Permitted Licenses incurred pursuant to the terms of the definition thereof with the consent of the Administrative Agent if so required pursuant to this **Section 9.02**.

9.03 Fundamental Changes and Acquisitions. Such Obligor will not, and will not permit any of its Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation, (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), (iii) sell or issue any of its Disqualified Equity Interests or (iv) other than Permitted Acquisitions, make any Acquisition or otherwise acquire any business or substantially all the property from, or Equity Interests of, or be a party to any Acquisition of, any Person, except:

(a) the merger, amalgamation or consolidation or liquidation of any (i) Subsidiary with or into any Obligor or Pledged Entity; provided that with respect to any such transaction involving (x) the Borrower, the Borrower must be the surviving or successor entity of such transaction, (y) any other Obligor, such Obligor must be the surviving or successor entity of such transaction (unless such transaction involves more than one Obligor, then an Obligor must be the surviving or successor entity of such transaction) and (z) any Pledged Entity (but not a transaction involving the Borrower or another Obligor, which is subject to **clauses (x) and (y)** above, respectively), such Pledged Entity must be the surviving or successor entity of such transaction (unless such transaction involves more than one Pledged Entity, then a Pledged Entity must be the surviving or successor entity of such transaction) or (ii) any Subsidiary that is not an Obligor nor a Pledged Entity with or into any other Subsidiary that is not an Obligor nor a Pledged Entity;

(b) the sale, lease, transfer or other disposition by (i) any Subsidiary of any or all of its property (upon voluntary liquidation or otherwise) to any Obligor, (ii) any Subsidiary that is not an Obligor of any or all of its property (upon voluntary liquidation or otherwise) to any Pledged Entity or (iii) any Subsidiary that is neither an Obligor nor a Pledged Entity of any or all of its property (upon voluntary liquidation or otherwise) to any other Subsidiary that is neither an Obligor nor a Pledged Entity; and

(c) the sale, transfer or other disposition of the Equity Interests of (i) any Subsidiary to any Obligor, (ii) any Subsidiary that is not an Obligor to any Pledged Entity or (iii) any Subsidiary that is neither an Obligor nor a Pledged Entity to any other Subsidiary that is neither an Obligor nor a Pledged Entity.

9.04 Lines of Business. Such Obligor will not, and will not permit any of its Subsidiaries to, engage in any business other than the business engaged in on the date hereof by such Persons or a business reasonably related, incidental or complementary thereto or reasonable extensions thereof.

9.05 Investments. Such Obligor will not, and will not permit any of its Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except:

(a) Investments (but without giving effect to the cash return provision contained in the definition thereof) outstanding on the date hereof and identified in **Schedule 9.05** and any renewals, amendments and replacements thereof that do not increase the amount thereof of any such Investment, net of cash returns thereon, or require that any additional Investment be made (unless otherwise permitted hereunder);

(b) operating deposit accounts with banks (or similar deposit-taking institutions) that, in the case maintained by Obligors, are Controlled Accounts;

(c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the Ordinary Course;

(d) Permitted Cash Equivalent Investments ;

(e) Investments by an Obligor (i) in another Obligor, (ii) in connection with a Permitted Acquisition, or (iii) in a Subsidiary that is not an Obligor; provided that Investments made pursuant to this **clause (iii)** shall not exceed an amount permitted under **Section 9.01(h)**;

(f) Investments by a Subsidiary that is not an Obligor in any other Subsidiary that is not an Obligor;

(g) Permitted Hedging Agreements;

(h) Investments consisting of prepaid expenses, negotiable instruments held for collection or deposit, security deposits with utilities, landlords and other like Persons and deposits in connection with workers' compensation and similar deposits, in each case, made in the Ordinary Course;

(i) employee loans, travel advances and guarantees in accordance with the Borrower's usual and customary practices with respect thereto (if permitted by applicable Laws) which in the aggregate shall not exceed \$2,500,000 outstanding at any time (or the Equivalent Amount in other currencies);

(j) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;

(k) the increase in value of any Investment otherwise permitted pursuant to this **Section 9.05**;

(l) other Investments in an aggregate amount not to exceed \$25,000,000 (or the Equivalent Amount in other currencies) in any fiscal year;

(m) Investments of any Person in existence at the time such Person becomes a Subsidiary; provided such Investment was not made in connection with or anticipation of such Person becoming a Subsidiary and any modification, replacement, renewal or extension thereof; and

(n) Investments permitted under **Section 9.03**; and

(o) Investments consisting of cash payments due to the Borrower in connection with the XPH License Agreement being held by a Subsidiary of the Borrower that is not an Obligor subject to the conditions specified in **Section 8.18(a)(i)(B)** and **(C)**.

Notwithstanding anything in this Agreement to the contrary, (i) the Borrower shall not, and shall not permit any of its Subsidiaries to (x) directly or indirectly transfer, by means of contribution, sale, assignment, lease or sublease, license or sublicense, or other disposition (which in the case of leasehold interests set forth in clause (iii) of the definition of Specified Assets, to the extent such disposition is voluntary) of any kind, any Material Intellectual Property or any Specified Asset held by the Borrower or any other Obligor to any Person other than the Borrower or a Subsidiary Guarantor, pursuant to Permitted Licenses or as permitted pursuant to **Section 9.09(g), (m)** or **(n)** or (y) permit any Person other than the Borrower or a Subsidiary

Guarantor to hold any interest in such Material Intellectual Property or any Specified Asset (other than (A) pursuant to non-exclusive intercompany licenses or Permitted Licenses, (B) any Material Intellectual Property or Specified Asset held by a Subsidiary that is not an Obligor on the Closing Date or (C) as permitted by **Section 9.10(g) or (n)**), and (ii) no Material Intellectual Property or Specified Asset held by the Borrower or a Subsidiary Guarantor shall be contributed as an Investment to any Subsidiary other than a Subsidiary Guarantor (other than Permitted Licenses).

9.06 Restricted Payments. Such Obligor will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment; provided that the following Restricted Payments shall be permitted so long as no Event of Default has occurred and is continuing or could reasonably be expected to occur or result from such Restricted Payment:

- (a) dividends with respect to the Borrower's Equity Interests payable solely in shares of its Qualified Equity Interests (or the equivalent thereof);
- (b) the Borrower's purchase, redemption, retirement, or other acquisition of shares of its Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its Qualified Equity Interests;
- (c) dividends paid by any Subsidiary to any Obligor;
- (d) any purchase, redemption, retirement or other acquisition of Equity Interests of the Borrower held by officers, directors and employees or former officers, directors or employees (or their transferees, estates, or beneficiaries under their estates) of Borrower and its Subsidiaries not to exceed \$2,500,000 (or the Equivalent Amount in other currencies) in any fiscal year;
- (e) cashless exercises of options and warrants;
- (f) cash payments made by the Borrower to redeem, purchase, repurchase or retire its obligations under warrants issued by it (in the nature of cash payments in lieu of fractional shares) in accordance with the terms thereof;
- (g) Borrower may acquire (or withhold) its Equity Interests pursuant to any employee stock option or similar plan to pay withholding taxes for which Borrower is liable in respect of a current or former officer, director, employee, member of management or consultant upon such grant or award (or upon vesting or exercise thereof); and
- (h) other Restricted Payments in an aggregate amount not to exceed \$2,500,000 (or the Equivalent Amount in other currencies) in any fiscal year.

Notwithstanding anything to the contrary in the foregoing, the issuance of, entry into (including any payments of premiums in connection therewith), performance of obligations under (including any payments of interest), and conversion, exercise, repurchase, redemption, settlement or early termination or cancellation of (whether in whole or in part and including by netting or set-off) (in each case, whether in cash, common stock of the Borrower or, following a

merger event or other change of the common stock of Borrower, other securities or property), or the satisfaction of any condition that would permit or require any of the foregoing, any Permitted Convertible Debt, any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction, in each case, shall not constitute a Restricted Payment by the Borrower.

9.07 Payments of Indebtedness. Such Obligor will not, and will not permit any of its Subsidiaries to, make any payments in respect of any Indebtedness other than (i) payments of the Obligations, (ii) scheduled payments of other Indebtedness (including the Royalty Interest Financing) to the extent permitted pursuant to the terms, if any, of any applicable subordination or intercreditor agreement in respect of the Obligations, (iii) intercompany indebtedness permitted under Section 9.01, (iv) Indebtedness permitted to be incurred under **Sections 9.01(b), (j), (k), (l), (m), (o), (q), and (t)**, (v) Indebtedness permitted to be incurred under **Sections 9.01(p) and (x)**; provided that any such payments shall only be made in Equity Interests and cash in lieu of fractional shares (as well as cash to pay any accrued interest on the date of any payment made in Equity Interests), (vi) scheduled payments of interest on such Indebtedness permitted pursuant to **Section 9.01(p)** and (vii) Permitted Refinancings permitted hereunder.

9.08 Change in Fiscal Year. Such Obligor will not, and will not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the date hereof, except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to that of the Borrower.

9.09 Sales of Assets, Etc. Such Obligor will not, and will not permit any of its Subsidiaries to, sell, lease or sublease (as lessor or sub-lessor), sale and leaseback, assign, convey, exclusively license (in terms of geography or field of use), transfer, or otherwise dispose of any of its businesses, assets or property of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired (including accounts receivable and Equity Interests of Subsidiaries), or forgive, release or compromise any amount owed to such Obligor or Subsidiary, in each case, in one transaction or series of transactions (any thereof, an “**Asset Sale**”), except:

(a) sales, transfers and other dispositions of receivables in connection with the compromise, settlement or collection thereof in the Ordinary Course;

(b) sales of inventory in the Ordinary Course in an Arm’s-Length Transaction;

(c) the forgiveness, release or compromise of any amount owed to any Obligor or Subsidiary in the Ordinary Course;

(d) Permitted Licenses;

(e) transfers of assets, rights or property by any Subsidiary Guarantor to any other Obligor;

(f) dispositions (including by way of abandonment or cancellation) of any equipment and other tangible property that is obsolete or worn out or no longer used or useful in the Business disposed of in the Ordinary Course;

- (g) dispositions resulting from Casualty Events;
- (h) the unwinding of any Hedging Agreements permitted by **Section 9.05** pursuant to its terms;
- (i) in connection with any transaction permitted under **Section 9.03** or **9.05**;
- (j) dispositions identified in **Schedule 9.09**;
- (k) so long as no Event of Default has occurred and is continuing, other Asset Sales with a fair market value not in excess of \$5,000,000 (or the Equivalent Amount in other currencies) in the aggregate in any fiscal year;
- (l) other Asset Sales not in excess of \$15,000,000 (or the Equivalent Amount in other currencies) in the aggregate in any fiscal year in which any Obligor or any Subsidiary will receive cash proceeds in an amount equal to no less than seventy-five percent (75%) of the total consideration (fixed or contingent) paid or payable to such Obligor or Subsidiary, but only so long as, unless otherwise waived by Administrative Agent in its sole discretion, the net cash proceeds of such Asset Sale are utilized to repay or prepay, in whole or in part, Indebtedness under and in accordance with this Agreement and the other Loan Documents;
- (m) dispositions in the ordinary course of business consisting of the abandonment of intellectual property rights (other than Material Intellectual Property) which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Obligors and the Subsidiaries; and
- (n) any sublease or manufacturing agreement with respect to the manufacturing facility of the Borrower located in Dunkirk that is an Arm's-Length Transaction and does not exceed 50% of the capacity of the facility.

9.10 Transactions with Affiliates. Such Obligor will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction to sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, unless such arrangement or transaction (i) is an Arm's-Length Transaction, (ii) is of the kind which would be entered into by a prudent Person in the position of the Borrower with another Person that is not an Affiliate, (iii) is between or among (x) one or more Obligors, on the one hand, and, on the other hand, one or more Obligors, (y) one or more Subsidiaries of the Obligors that are not Obligors, on the one hand, and, on the other hand, one or more Subsidiaries of the Obligors that are not Obligors and (z) one or more Obligors or their Subsidiaries that are not Obligors, on the one hand, and, on the other hand, one or more Obligors or their Subsidiaries that are Obligors (*provided* that, with respect to **clause (z)** only, the terms thereof are no less favorable than those that would be obtained in a comparable arm's-length transaction with a non-affiliated Person), (iv) is permitted under **Section 9.01, 9.03, 9.05, 9.06, 9.07** or **9.09**, (v) constitutes customary compensation and indemnification of, and other employment arrangements with, directors, officers, and employees of any Obligor or its Subsidiaries in the ordinary course of business, (vi) constitutes payment of customary fees, reimbursement of expenses, and payment of indemnification to officers and directors and customary payment of insurance premiums on behalf of officers and directors by the Obligors or their Subsidiaries, in each case, in the ordinary course of business and (vii) are the transactions set forth on **Schedule 7.19**.

9.11 Restrictive Agreements. Such Obligor will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any Restrictive Agreement other than (i) restrictions and conditions imposed by applicable Laws or by the Loan Documents, (ii) Restrictive Agreements listed on **Schedule 7.15**, (iii) limitations associated with Permitted Liens or any document or instrument governing any Permitted Lien, (iv) any documentation governing Indebtedness referenced in clauses (l), (n) or (p) of **Section 9.01** (or any Permitted Refinancing thereof), (v) customary provisions in leases, Permitted Licenses and other Contracts restricting the assignment thereof or restricting the assignment or sublease or sublicense of the property leased, licensed or otherwise the subject thereof; (vi) any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Subsidiary (but not any modification or amendment expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Subsidiary; (vii) restrictions or conditions in any Indebtedness permitted pursuant to **Section 9.01** that is incurred or assumed by Subsidiaries that are not Obligors to the extent such restrictions or conditions are no more restrictive in any material respect than the restrictions and conditions in the Loan Documents; (viii) restrictions or conditions imposed by any agreement relating to purchase money Indebtedness and other secured Indebtedness or to leases and licenses permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness or the property leased or licensed; (ix) customary provisions in contracts for the disposition of any assets; *provided* that the restrictions in any such contract shall apply only to the assets or Subsidiary that is to be disposed of and such disposition is permitted hereunder; and (x) customary provisions regarding confidentiality or restricting assignment, pledges or transfer of any Permitted License or any other agreement entered into in the ordinary course of business

9.12 Modifications and Terminations of Material Agreements and Organic Documents. Such Obligor will not, and will not permit any of its Subsidiaries to:

(a) waive, amend, terminate, replace or otherwise modify any term or provision of any Organic Document in any way or manner adverse to the interests of the Administrative Agent and the Lenders; or

(b) waive, amend, replace or otherwise modify any term or provision of any Permitted License in clause (D) or (G) of the definition thereof in a manner materially adverse to the rights and remedies the Administrative Agent and the Lenders hereunder; or

(c) (x) take or omit to take any action that results in the termination of, or permits any other Person to terminate, any Material Agreement or Material Intellectual Property or (y) take any action that permits any Material Agreement or Material Intellectual Property to be terminated by any counterparty thereto prior to its stated date of expiration, in each such case if such action or omission could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

9.13 Outbound Licenses. No Obligor will, nor will it permit any of its Subsidiaries to, enter into or become or remain bound by any outbound exclusive license of Intellectual Property relating to U.S. commercialization rights to the Product Oral Paclitaxel, except for Permitted Licenses.

9.14 Sales and Leasebacks. Except as disclosed on **Schedule 9.14**, except as otherwise consented to in writing by the Administrative Agent (such consent not to be unreasonably delayed, withheld or denied), such Obligor will not, and will not permit any of its Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a Capital Lease Obligation, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which such Person has sold or transferred or is to sell or transfer to any other Person and (ii) which such Obligor or Subsidiary intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

9.15 Hazardous Material(a) . Such Obligor will not, and will not permit any of its Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. If the Administrative Agent at any time has a reasonable basis to believe that there is any material violation by an Obligor of any Environmental Law or the presence or release of any Hazardous Material which could result in an Environmental Liability that would be reasonably expected to result in a Material Adverse Effect, each Obligor shall, and shall cause each Subsidiary to, (i) prepare an environmental assessment of such condition, including where appropriate environmental testing, and the preparation of such environmental report, at the Borrower's sole cost and expense, as the Administrative Agent may reasonably request with respect to any affected parcel of real property subject to a Collateral Document that is a mortgage, deed of trust or similar instrument, which shall be conducted by Persons reasonably acceptable to the Administrative Agent and shall be in form and substance reasonably acceptable to the Administrative Agent, and (ii) if such report is not delivered within thirty (30) days, permit the Administrative Agent or its representatives to have access to all such real property for the purpose of conducting, at the Borrower's sole cost and expense, such environmental audits and testing as the Administrative Agent shall reasonably deem appropriate.

9.16 Accounting Changes. Such Obligor will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP.

9.17 Compliance with ERISA. No ERISA Affiliate shall cause or suffer to exist (i) any event that could result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (ii) any other ERISA Event that could, in the aggregate, reasonably be expected to result in a Material Adverse Effect. No Obligor or any of its Subsidiaries shall cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Benefit Plan.

9.18 Sanctions; Anti-Corruption Use of Proceeds.

(a) Neither the Borrower or any of its Subsidiaries or their respective agents shall (i) conduct any business or engage in any transaction or dealing with any Sanctioned Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person; (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to any Sanctions; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth any Sanctions, the Patriot Act or any other Anti-Terrorism Law.

(b) The Borrower will not, directly or, to the knowledge of the Borrower, indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable anti-corruption Law, or (ii) (A) for the purpose of funding any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of country- or territory-wide Sanctions, in violation of Sanctions or (B) in any other manner that would result in a violation of Sanctions by any party to this Agreement.

SECTION 10. FINANCIAL COVENANTS

10.01 Minimum Liquidity. The Borrower shall at all times after the Account Control Agreement Completion Date, maintain the Minimum Liquidity Amount in cash or Permitted Cash Equivalent Investments in one or more Controlled Accounts that is free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent. For the avoidance of doubt, any cash in the Debt Service Reserve Account shall count toward the Minimum Liquidity Amount.

10.02 Minimum Revenue. Beginning with the fiscal quarter of the Borrower ended on December 31, 2020 and with respect to each such subsequent fiscal quarter prior to the Revenue Covenant Termination Date, as of the last day of each such fiscal quarter where the Consolidated Leverage Ratio exceeds 4.50 to 1.00, the Revenue of the Borrower and its Subsidiaries for the twelve (12) consecutive month period ending on the last day of such fiscal quarter shall not be less than 50% of the Target Revenue for such quarter (the “**Minimum Revenue Covenant**”).

10.03 Leverage Ratio Covenant. Beginning with the first fiscal quarter of the Borrower following the Revenue Covenant Termination Date, the Borrower shall not permit the Consolidated Leverage Ratio to exceed 4.50 to 1.00 as of the last day of any fiscal quarter of the Borrower (the “**Leverage Ratio Covenant**”).

**SECTION 11.
EVENTS OF DEFAULT**

11.01 Events of Default. Each of the following events shall constitute an “*Event of Default*”:

(a) **Principal Payment Default.** The Borrower shall fail to pay any principal of the Loan, when and as the same shall become due and payable, whether at the due date thereof, at a date fixed for prepayment thereof or otherwise.

(b) **Other Payment Defaults.** Any Obligor shall fail to pay interest or any other Obligation (other than an amount referred to in **Section 11.01(a)**) when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) **Representations and Warranties.** Any representation or warranty made or deemed made by or on behalf of any Obligor or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall: (i) prove to have been incorrect when made or deemed made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier; or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier.

(d) **Certain Covenants.** Any Obligor shall fail to observe or perform any covenant, condition or agreement contained in **8.02, 8.03** (with respect to the Borrower’s existence), **8.11, 8.12, 8.16, 8.18, 8.19, Section 9** or **Section 10**; *provided* that any Event of Default under **Sections 10.01 and 10.02** is subject to cure as provided in **Sections 11.04 and 11.05** and an Event of Default with respect to such Section shall not occur until the expiration of the 15th Business Day subsequent to the date on which the financial statements with respect to the applicable fiscal quarter (or the fiscal year ended on the last day of such fiscal quarter) are required to be delivered pursuant to **Section 8.01(a)** or **8.01(b)**, as applicable.

(e) **Other Covenants.** Any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a), (b)** or **(d)**) or any other Loan Document, and, in the case of any failure that is capable of cure, such failure shall continue unremedied for a period of thirty (30) or more days.

(f) **Payment Default on Other Indebtedness.** Any Obligor or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness.

(g) Other Defaults on Other Indebtedness. (i) Any material breach of, or “event of default” or similar event under, any Contract governing any Material Indebtedness shall occur and such breach or “event of default” or similar event shall continue unremedied, uncured or unwaived after the expiration of any grace or cure period thereunder, or (ii) any event or condition occurs (x) that results in any Material Indebtedness becoming due prior to its scheduled maturity or (y) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this **Section 11.01(g)** shall not apply to (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness, (y) any conversion of any convertible Indebtedness or satisfaction of any condition giving rise to or permitting a conversion of any convertible Indebtedness; provided that the Borrower has the right to settle any such Indebtedness into Equity Interests of the Borrower (and nominal cash payments in respect of fractional shares and cash payments in respect of accrued and unpaid interest) in accordance with the express terms or conditions thereof) and (z) with respect to any Material Indebtedness consisting of Hedging Agreements, termination events or equivalent events pursuant to the terms of such Hedging Agreements and not as a result of any default thereunder by any Obligor or any Subsidiary.

(h) Insolvency, Bankruptcy, Etc.

(i) Any Obligor or any of its Material Subsidiaries becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement or deed of company arrangement between it and any class of its creditors.

(ii) Any Obligor or any of its Material Subsidiaries commits an act of bankruptcy or makes an assignment of its property for the general benefit of its creditors or makes a proposal (or files a notice of its intention to do so).

(iii) Any Obligor or any of its Material Subsidiaries institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any Law, whether U.S. or non-U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding.

(iv) Any Obligor or any of its Material Subsidiaries applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property.

(v) Any Obligor or any of its Material Subsidiaries takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this **Section 11.01(h)**, or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manner in defense thereof.

(vi) Any petition is filed, application made or other proceeding instituted against or in respect of any Obligor or any of its Material Subsidiaries:

(A) seeking to adjudicate it as insolvent;

(B) seeking a receiving order against it;

(C) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), deed of company arrangement or composition of it or its debts or any other relief under any Law, whether U.S. or non-U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity; or

(D) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property, and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of forty-five (45) days after the institution thereof; provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against such Obligor or such Subsidiary thereunder in the interim, such grace period will cease to apply; provided, further, that if such Obligor or Material Subsidiary files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply.

(vii) Any other event occurs which, under the Laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in **Section 11.01(h)**.

(i) **Judgments.** One or more judgments for the payment of money in an aggregate amount in excess of \$10,000,000 (or the Equivalent Amount in other currencies) (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) shall be rendered against any Obligor or any of its Subsidiaries or any combination thereof and the same shall remain undischarged for a period of forty-five (45) calendar days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Obligor to enforce any such judgment.

(j) **ERISA.** An ERISA Event shall have occurred that when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount in excess of \$10,000,000 (or the Equivalent Amount in other currencies).

(k) **Change of Control.** A Change of Control shall have occurred.

(l) **[Reserved].**

(m) **Regulatory Matters, Etc.** If any of the following occurs: (i) the FDA or any other Regulatory Authority initiates enforcement action against, or issues a warning letter with respect to, any Obligor, any Product or any manufacturing facilities for the Product Oral Paclitaxel or “Tirbanibulin” (the “**Specified Products**”) that causes any Obligor to discontinue or withdraw, or could reasonably be expected to cause any Obligor to discontinue or withdraw, marketing or sales of any Specified Product, or causes a delay in the manufacture or sale of any Specified Product, which discontinuance or delay could reasonably be expected to last for more than thirty (30) days, (ii) a recall of any Specified Product that has generated or is expected to generate at least \$15,000,000 (or the Equivalent Amount in other currencies) in revenue for the Borrower and its Subsidiaries for sales or licenses to third parties over any period of twelve (12) consecutive months or (iii) any Obligor enters into a settlement agreement with the FDA or any other Regulatory Authority in respect of the Specified Products that results in aggregate liability as to any single or related series of transactions, incidents or conditions, in excess of \$10,000,000 (or the Equivalent Amount in other currencies).

(n) **[Reserved]**.

(o) **Impairment of Security, Etc.** Subject in all respects to any applicable post-closing periods and certain other time periods under the Loan Documents for any Obligor or Subsidiary to take perfection actions, if any of the following events occurs: (i) Any Lien created by any of the Security Documents shall at any time not constitute a valid and perfected Lien on the applicable Collateral in favor of the Secured Parties, free and clear of all other Liens (other than Permitted Liens) except due to the action or inaction of the Administrative Agent, (ii) except for expiration in accordance with its terms, any of the Security Documents or any Guarantee of any of the Obligations (including that contained in **Section 13**) shall for whatever reason cease to be in full force and effect, (iii) any Obligor shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability of any such Lien or any Loan Document, or (iv) any injunction, whether temporary or permanent, shall be rendered against any Obligor that prevents the Obligors from selling or manufacturing the Products or their commercially available successors, or any of their other material and commercially available products in the United States for more than forty-five (45) calendar days.

11.02 Remedies.

(a) **Defaults Other Than Bankruptcy Defaults.** Upon the occurrence of any Event of Default, then, and in every such event (other than an Event of Default described in **Section 11.01(h)**), and at any time thereafter during the continuance of such event, the Administrative Agent may, by notice to the Borrower, declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations, including any applicable Prepayment Fee and the Exit Fee, shall become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

(b) **Bankruptcy Defaults.** In case of an Event of Default described in **Section 11.01(h)**, the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations, including any applicable Prepayment Fee and the Exit Fee, shall automatically become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

11.03 Additional Remedies. If an Event of Default has occurred and is continuing, if any Obligor shall be in default under a Material Agreement, the Administrative Agent shall have the right (but not the obligation) to cause the default or defaults under such Material Agreement to be remedied (including without limitation by paying any unpaid amount thereunder) and otherwise exercise any and all rights of such Obligor, as the case may be, thereunder, as may be necessary to prevent or cure any default. Without limiting the foregoing, upon any such default, each Obligor shall promptly execute, acknowledge and deliver to the Administrative Agent such instruments as may reasonably be required of such Obligor to permit the Administrative Agent to cure any default under the applicable Material Agreement or permit the Administrative Agent to take such other action required to enable the Administrative Agent to cure or remedy the matter in default and preserve the interests of the Administrative Agent. Any amounts paid by the Administrative Agent pursuant to this **Section 11.03** shall be payable in accordance with **Section 14.03(a)**, shall accrue interest at the Default Rate if not paid when due, and shall constitute "Obligations."

11.04 Minimum Revenue Covenant Cure.

(a) Notwithstanding anything to the contrary contained in **Section 11.02**, in the event the Borrower fails to comply with the requirements of the Minimum Revenue Covenant, during the period from the end of the relevant fiscal quarter until the expiration of the fifteenth Business Day subsequent to the date the financial statements are required to be delivered pursuant to **Section 8.018.01(a)** or **8.01(b)**, the Borrower shall have the right to (A) make a Revenue Cure Payment or (B) apply cash then held by the Borrower in excess of the Minimum Cash Balance so long as, immediately after giving effect to the Minimum Revenue Cure Right, the Borrower continues to hold at least the Minimum Cash Balance (the "**Minimum Revenue Cure Right**"). Upon the Administrative Agent's receipt of the applicable Revenue Cure Payment or application of such cash amounts, the Borrower shall then be in compliance with the requirements of the Minimum Revenue Covenant and the Borrower shall be deemed to have satisfied the requirements of the Minimum Revenue Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Minimum Revenue Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement. Any Revenue Cure Payment shall be applied to the prepayment of the Loans. To the extent the Borrower has made no less than \$20,000,000 in Revenue Cure Payments in any calendar year, no breach of the Minimum Revenue Covenant in such calendar year shall constitute an Event of Default hereunder.

(b) Upon the Administrative Agent's receipt of a notice from the Borrower that it intends to exercise the Minimum Revenue Cure Right (a "**Notice of Intent to Cure Revenue Covenant**"), until the fifteenth Business Day subsequent to the date the financial statements are required to be delivered pursuant to **Section 8.01(a)** or **8.01(b)** to which such Notice of Intent to Cure Revenue Covenant relates, no Lender shall be required to extend any credit pursuant to its Commitment during such period. If within such fifteen Business Day period, the Oaktree Lender declines the exercise by the Borrower of the Minimum Revenue Cure Right by written notice to the Administrative Agent and the Borrower to that effect, then the Borrower shall be deemed to have satisfied the requirements of the Minimum Revenue Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Minimum Revenue Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement.

11.05 Leverage Ratio Cure Right.

(a) Notwithstanding anything to the contrary contained in **Section 11.02**, in the event the Borrower fails to comply with the requirements of the Leverage Ratio Covenant, during the period from the end of the relevant fiscal quarter until the expiration of the fifteenth Business Day subsequent to the date the financial statements are required to be delivered pursuant to **Section 8.018.01(a)** or **8.01(b)** (the “**Leverage Cure Applicable Time**”), the Borrower shall have the right to (A) issue Permitted Cure Securities for cash or (B) apply cash then held by the Borrower in excess of the Minimum Cash Balance so long as, immediately after giving effect to the Leverage Ratio Cure Right, the Borrower continues to hold at least the Minimum Cash Balance (the “**Leverage Ratio Cure Right**”) and, upon the receipt by the Borrower of any such cash proceeds or application of such cash amounts (the “**Cure Amount**”) pursuant to the exercise of such Leverage Ratio Cure Right, (i) the Cure Amount shall be applied to the prepayment of the Loans, (ii) the Leverage Ratio Covenant shall be recalculated giving effect to a *pro forma* adjustment by which EBITDA shall be increased with respect to such applicable fiscal quarter and any four-quarter period that contains such quarter, solely for the purpose of measuring the Leverage Ratio Covenant and not for any other purpose under this Agreement, by an amount equal to the Cure Amount and (iii) any reduction in Indebtedness (or cash netting) from the proceeds of the Cure Amount shall not be given *pro forma* effect when measuring compliance with the Leverage Ratio Covenant for such fiscal quarter. The resulting increase to EBITDA from the application of a Cure Amount shall not result in any adjustment to EBITDA or any other financial definition for any purpose under this Agreement other than for purposes of calculating the Leverage Ratio Covenant and, except to the extent of any reduction in Indebtedness (or cash netting) from the proceeds of the Cure Amount, the proceeds of the Cure Amount shall be disregarded for other purposes of this Agreement (including determining pricing, financial ratio-based conditions (subject to clause (ii) of the foregoing sentence) or basket amounts). The Cure Amount shall be no greater than the amount required for purposes of complying with the Leverage Ratio Covenant. If, after giving effect to the adjustments in this **Section 11.05**, the Borrower shall then be in compliance with the requirements of the Leverage Ratio Covenant, the Borrower shall be deemed to have satisfied the requirements of the Leverage Ratio Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Leverage Ratio Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement.

(b) Upon the Administrative Agent’s receipt of a notice from the Borrower that it intends to exercise the Leverage Ratio Cure Right (a “**Notice of Intent to Cure Leverage Covenant**”), until the fifteenth Business Day subsequent to the date the financial statements are required to be delivered pursuant to **Section 8.018.01(a)** or **8.01(b)** to which such Notice of Intent to Cure Leverage Covenant relates, no Lender shall be required to extend any credit pursuant to its Commitment during such period. If within such fifteen Business Day period, the

Oaktree Lender declines the exercise by the Borrower of the Minimum Revenue Cure Right by written notice to the Administrative Agent and the Borrower to that effect, then the Borrower shall be deemed to have satisfied the requirements of the Leverage Ratio Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Leverage Ratio Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement.

11.06 Payment of Prepayment Fee and Exit Fee. Notwithstanding anything in this Agreement to the contrary, the Prepayment Fee and the Exit Fee shall automatically be due and payable at any time the Obligations become due and payable prior to the Maturity Date in accordance with the terms hereof as though such Indebtedness was voluntarily prepaid and shall constitute part of the Obligations, whether due to acceleration pursuant to the terms of this Agreement (in which case it shall be due immediately, upon the giving of notice to Borrower in accordance with **Section 11.02(a)**), or automatically, in accordance with **Section 11.02(b)**), by operation of law or otherwise (including, without limitation, on account of any bankruptcy filing), in view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such acceleration, and by mutual agreement of the parties as to a reasonable estimation and calculation of the lost profits or damages of the Lenders as a result thereof. Any Prepayment Fee or Exit Fee (or, if required, both the Prepayment Fee and the Exit Fee) payable pursuant to this Agreement shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination, acceleration or prepayment and each Obligor agrees that such Prepayment Fee or Exit Fee is reasonable under the circumstances currently existing. The Prepayment Fee and Exit Fee shall also be payable in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. EACH OBLIGOR HEREBY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE PREPAYMENT FEE OR EXIT FEE AND ANY DEFENSE TO PAYMENT, WHETHER SUCH DEFENSE MAY BE BASED IN PUBLIC POLICY, AMBIGUITY, OR OTHERWISE. The Obligors, the Administrative Agent and the Lenders acknowledge and agree that any Prepayment Fee and the Exit Fee due and payable in accordance with this Agreement shall not constitute unmatured interest, whether under Section 5.02(b)(3) of the Bankruptcy Code or otherwise. Each Obligor further acknowledges and agrees, and waives any argument to the contrary, that payment of such amount does not constitute a penalty or an otherwise unenforceable or invalid obligation. Each Obligor expressly agrees that (i) the Prepayment Fee and Exit Fee are each reasonable and each is the product of an arm's-length transaction between sophisticated business people, ably represented by counsel, (ii) the Prepayment Fee and Exit Fee shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between the Lenders and the Obligors giving specific consideration in this transaction for such agreement to pay the Prepayment Fee and Exit Fee, (iv) the Obligors shall be estopped hereafter from claiming differently than as agreed to in this **Section 11.06**, (v) their agreement to pay the Prepayment Fee and Exit Fee is a material inducement to the Lenders to make the Loans, and (vi) the Prepayment Fee and Exit Fee represent a good faith, reasonable estimate and calculation of the lost profits, losses or other damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such event.

SECTION 12.
THE ADMINISTRATIVE AGENT

12.01 Appointment and Duties. Subject in all cases to clause (c) below:

(a) **Appointment of the Administrative Agent.** Each of the Lenders hereby irrevocably appoints Oaktree Fund Administration, LLC (together with any successor Administrative Agent pursuant to **Section 12.09**) as the Administrative Agent hereunder and authorizes the Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Obligor or any of its Subsidiaries, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Administrative Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto. Except as expressly set forth herein, the provisions of this **Section 12** are solely for the benefit of the Administrative Agent and the Lenders, and no Obligor or any Affiliate thereof shall have rights as a third-party beneficiary of any such provisions.

(b) **Duties as Collateral and Disbursing Agent.** Without limiting the generality of **Section 12.01(a)**, the Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to the Administrative Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of acquiring, holding, enforcing and perfecting all Liens created by the Loan Documents and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Laws or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided that the Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Administrative Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by a Obligor with, and cash and Cash Equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) **Limited Duties.** The Lenders and the Obligors hereby each acknowledge and agree that the Administrative Agent (i) has undertaken its role hereunder purely as an accommodation to the parties hereto and the Transactions, (ii) is receiving no compensation for undertaking such role and (iii) subject only to the notice provisions set forth in **Section 12.09**, may resign from such role at any time for any reason or no reason whatsoever. Without limiting the foregoing, the parties hereto further acknowledge and agree that under the Loan Documents, the Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in **Section 12.11**), with duties that are entirely administrative in nature, notwithstanding the use of the defined term “the Administrative Agent”, the terms “agent”, “administrative agent” and “collateral agent” and similar terms in any Loan Document to refer to the Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any duty or obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document (fiduciary or otherwise), in each case, regardless of whether a Default has occurred and is continuing, and each Lender hereby waives and agrees not to assert any claim against the Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in this **clause (c)**. Without in any way limiting the foregoing, the Administrative Agent shall not, except as expressly set forth in this Agreement and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Obligor or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

12.02 Binding Effect. Each Lender agrees that (i) any action taken by the Administrative Agent or the Majority Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by the Administrative Agent in reliance upon the instructions of the Majority Lenders (or, where so required, such greater proportion) and (iii) the exercise by the Administrative Agent or the Majority Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

12.03 Use of Discretion.

(a) **No Action without Instructions.** The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except (subject to **clause (b)** below) any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to written instructions from the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) **Right Not to Follow Certain Instructions.** Notwithstanding **Section 12.03(a)** or any other term or provision of this **Section 12**, the Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Administrative Agent, any other Secured Party) against all Liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent

or any Related Person thereof or (ii) that is, in the opinion of the Administrative Agent, in its sole and absolute discretion, contrary to any Loan Document, Law or the best interests of the Administrative Agent or any of its Affiliates or Related Persons, including, for the avoidance of doubt, any action that may be in violation of the automatic stay in connection with any Insolvency Proceeding..

12.04 Delegation of Rights and Duties. The Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). The Administrative Agent and any such Person may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. Any such Person and its Related Parties shall benefit from this **Section 12** to the extent provided by the Administrative Agent; provided, however, that the exculpatory provisions of this **Section 12** shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and of any such sub-agent, and shall apply to their respective activities in connection with their activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

12.05 Reliance and Liability.

(a) the Administrative Agent may, without incurring any liability hereunder, (i) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Obligor) and (ii) rely and act upon any notice, request, certificate, consent, statement, instrument, document or other writing (including and electronic message, Internet or intranet website posting or other distribution), telephone message or conversation or oral conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan.

(b) Neither the Administrative Agent nor any of its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and the Borrower hereby waive and shall not assert (and the Borrower shall cause each other Obligor to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the fraudulent conduct or behavior of the Administrative Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment or order by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, the Administrative Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of, or with the consent of, the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in **Section 14.04**) or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of the Administrative Agent, when acting on behalf of the Administrative Agent);

(ii) shall not be responsible to any Secured Party for the (a) validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (b) due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for, and shall not have any duty to ascertain or inquire into, any statement, document, information, certificate, report, representation or warranty made or furnished by or on behalf of any Related Person, in or in connection with any Loan Document or any transaction contemplated therein, whether or not transmitted by the Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Administrative Agent in connection with the Loan Documents, including, for the avoidance of doubt, the satisfaction of any condition set forth in **Section 6** of this Agreement or elsewhere herein (other than to confirm receipt of items expressly required to be delivered to the Administrative Agent); and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document or whether any condition set forth in any Loan Document is satisfied or waived, including, without limiting the generality of the foregoing, as to the financial condition of any Obligor or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower, any Lender describing such Default or Event of Default clearly labeled "notice of default" (in which case the Administrative Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in **clauses (i) through (iv)** above, each Lender and the Borrower hereby waives and agrees not to assert (and the Borrower shall cause each other Obligor to waive and agree not to assert) any right, claim or cause of action it might have against the Administrative Agent based thereon.

12.06 Administrative Agent Individually. The Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, accept deposits from, act as the financial advisor for or in any other advisory capacity for, or engage in any kind of business with, any Obligor or Affiliate thereof as though it were not acting as the Administrative Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be

subject to the same obligations and liabilities as any other Lender and the terms “Lender”, “Majority Lender”, and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, the Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Majority Lenders, respectively.

12.07 Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any Lender or any of their Related Persons or upon any document (including the Disclosure Documents) solely or in part because such document was transmitted by the Administrative Agent or any of its Related Persons, conducted its own independent investigation of the financial condition and affairs of each Obligor and has made and continues to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate.

12.08 Expenses; Indemnities.

(a) Each Lender agrees to reimburse the Administrative Agent and each of its Related Persons (to the extent not reimbursed by any Obligor) promptly upon demand for such Lender’s Proportionate Share of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Obligor) that may be incurred by the Administrative Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify the Administrative Agent (or any sub-agent thereof) and any Related Persons of the Administrative Agent (or any such sub-agent) (to the extent not indefeasibly paid by any Obligor), from and against such Lender’s aggregate Proportionate Share of the liabilities (including taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against the Administrative Agent (or any sub-agent thereof) or any Related Persons of the Administrative Agent (or any such sub-agent) in any matter relating to or arising out of, in connection with or as a result of any Loan Document, any Related Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by the Administrative Agent (or any sub-agent thereof) or any Related Persons of the Administrative Agent (or any such sub-agent) under or with respect to any of the foregoing; provided that no Lender shall be liable to the Administrative Agent (or any sub-agent thereof) or any Related Persons of the Administrative Agent (or any such sub-agent) to the extent such liability has resulted primarily from the gross negligence or willful misconduct of the Administrative Agent (or any sub-agent thereof) or, as the case may be, such Related Person of the Administrative Agent (or any sub-agent thereof), as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

12.09 Resignation of the Administrative Agent.

(a) At any time upon not less than 30 days prior written notice, the Administrative Agent may resign as the “the Administrative Agent” hereunder, in whole or in part (in the sole and absolute discretion of the Administrative Agent). If the Administrative Agent delivers any such notice, the Majority Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be (i) a Lender holding at least thirty percent (30%) of the outstanding principal amount of the Loans or any Affiliate thereof or (ii) any other financial institution consented to by the Borrower (provided that the consent of the Borrower shall not be required to the extent an Event of Default has occurred and is continuing). If a successor Administrative Agent has not been appointed on or before the effectiveness of the resignation of the resigning Administrative Agent (or such earlier date as shall be agreed by the Majority Lenders) (the “**Resignation Effective Date**”), then the resigning Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint any Person reasonably chosen by it as the successor Administrative Agent, notwithstanding whether the Majority Lenders have appointed a successor or the Borrower has consented to such successor. Whether or not a successor has been appointed, such resignation shall become effective on the Resignation Effective Date.

(b) Effective from the Resignation Effective Date, (i) the resigning Administrative Agent shall be discharged from its duties and obligations under the Loan Documents to the extent set forth in the applicable resignation notice, (ii) the Lenders shall assume and perform all of the duties of the Administrative Agent until a successor Administrative Agent shall have accepted a valid appointment hereunder, (iii) the resigning Administrative Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to (x) any actions taken or omitted to be taken while such resigning Administrative Agent was, or because the Administrative Agent had been, validly acting as the Administrative Agent under the Loan Documents or (y) any continuing duties such resigning Administrative Agent will continue to perform, and (iv) subject to its rights under **Section 12.04**, the resigning Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as the Administrative Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as the Administrative Agent, a successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the resigning Administrative Agent under the Loan Documents.

12.10 Release of Collateral or Guarantors. Each Lender hereby consents to the release and hereby directs the Administrative Agent to release, and the Administrative Agent hereby agrees, (or, in the case of **Section 12.10(b)**, release or subordinate) the following:

(a) any Subsidiary of the Borrower from its guaranty of any Obligation of any Obligor (i) if all of the Equity Interests in such Subsidiary owned by any Obligor or any of its Subsidiaries are disposed of in an Asset Sale permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such Asset Sale, such Subsidiary would not be required to guaranty any Obligations pursuant to **Section 8.12(a)** and (ii) upon (x) termination of the Commitments and (y) payment and satisfaction in full of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made); and

(b) any Lien held by the Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is disposed of by an Obligor in an Asset Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent), (ii) any property subject to a Lien described in **Section 9.02(c)** and (iii) all of the Collateral and all Obligors, upon (x) termination of the Commitments and (y) payment and satisfaction in full of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made).

Each Lender hereby directs the Administrative Agent, and the Administrative Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guarantees and Liens when and as directed in this **Section 12.10** and deliver to the Borrower, at the expense of the Borrower, any portion of such Collateral so released pursuant to this **Section 12.10** that is in possession of the Administrative Agent. In addition, in connection with any Permitted Licenses, each Lender hereby authorizes Administrative Agent to, and at the request of the Borrower, the Administrative Agent shall, negotiate and enter into a non-disturbance agreement and other similar agreements in form and substance reasonably satisfactory to Administrative Agent.

12.11 Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender as long as, by accepting such benefits, such Secured Party agrees, as among the Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to the Administrative Agent) this **Section 12** and the decisions and actions of the Administrative Agent and the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; provided that, notwithstanding the foregoing, (i) such Secured Party shall be bound by **Section 12.08** only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of Pro Rata Share or similar concept, (ii) each of the Administrative Agent and each Lender shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (iii) such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

12.12 Agent May File Proofs of Claim. In case of the pendency of any Insolvency Proceeding or any other judicial proceeding relating to any Obligor, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower or any other Obligor) shall be entitled and empowered (but not obligated) by intervention or such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under **Section 14.03**) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due to the Administrative Agent under **Section 14.03**.

12.13 Intercreditor Agreement. In connection with the incurrence by the Borrower of any Permitted Indebtedness pursuant to clause **(n)** of **Section 9.01**, the Administrative Agent shall use commercially reasonable efforts to enter into an intercreditor agreement with respect to such Permitted Indebtedness in form and substance satisfactory to the Administrative Agent in its sole discretion, such intercreditor agreement shall in any event provide that (i) such debt financing provider shall have a silent second lien on the Intellectual Property relating to Oral Paclitaxel (except as specifically provided in clause (ii)), (ii) such debt financing provider shall be entitled to a senior Lien on proceeds resulting from sales of Oral Paclitaxel in an amount not exceeding 5% of such proceeds, but such Lien shall be subject to the same restrictions on enforcement and other conditions as the silent second lien (except with respect to the payment on its 5% royalty interest on proceeds resulting from sales of Oral Paclitaxel), which shall be subject to a customary waterfall and (iii) to the extent such debt financing provider becomes a Lender hereunder, such debt financing provider shall be required to support any debt restructuring, restructuring, or enforcement action or agreement supported by the Oaktree Lender so long as such Lender's Loans hereunder are treated pro rata with the Loans held by the Oaktree Lender (such intercreditor agreement, a "**Permitted Intercreditor Agreement**").

SECTION 13. GUARANTY

13.01 The Guaranty. The Subsidiary Guarantors hereby unconditionally jointly and severally guarantee to the Administrative Agent and the Lenders, and their successors and assigns, the full and punctual payment in full or performance (whether at stated maturity, by acceleration or otherwise) of the Obligations, including (i) principal of and interest on the Loans, (ii) all fees and

other amounts and Obligations from time to time owing to the Administrative Agent and the Lenders by the Borrower and each other Obligor under this Agreement or under any other Loan Document, in each case strictly in accordance with the terms hereof and thereof and (iii) the punctual and faithful performance, keeping, observance and fulfillment by the Borrower and Subsidiary Guarantors of all the agreements, conditions, covenants and obligations of the Borrower and Subsidiary Guarantors contained in the Loan Documents (such obligations being herein collectively called the "**Guaranteed Obligations**"). The Subsidiary Guarantors hereby further jointly and severally agree that if the Borrower or any other Obligor shall fail to pay any amount in full when due or perform any such obligation (whether at stated maturity, by acceleration or otherwise), the Subsidiary Guarantors will promptly pay the same or perform such obligation at the place and in the manner specified herein or in the relevant Loan Document, as the case may be, without any demand or notice whatsoever, and that in the case of any extension of time of payment or performance or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full or performed when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

13.02 Obligations Unconditional. The obligations of the Subsidiary Guarantors under **Section 13.01** shall constitute a guaranty of payment and performance and not of collection and are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations under this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by all applicable Laws, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this **Section 13.02** that the obligations of the Subsidiary Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Subsidiary Guarantors hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to the Subsidiary Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be extended, modified, supplemented or amended in any respect, or any right under this Agreement or any other agreement or instrument referred to herein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(d) any lien or security interest granted to, or in favor of, the Secured Parties as security for any of the Guaranteed Obligations shall fail to be perfected or preserved;

(e) any modification or amendment of or supplement to this Agreement or any other Loan Document, including any such amendment which may increase the amount of, or the interest rates applicable to, any of the Guaranteed Obligations guaranteed hereby;

(f) any change in the corporate, partnership, limited liability company or other existence, structure or ownership of the Borrower, any Subsidiary Guarantor or any other guarantor of any of the Guaranteed Obligations, or any Insolvency Proceeding or other similar proceeding affecting the Borrower, any Subsidiary Guarantor or any other guarantor of the Guaranteed Obligations, or any of their respective assets, or any resulting release or discharge of any obligation of the Borrower, any Subsidiary Guarantor or any other guarantor of any of the Guaranteed Obligations;

(g) the existence of any claim, setoff or other rights which any Subsidiary Guarantor may have at any time against the Borrower, any other Subsidiary Guarantor or any other guarantor of any of the Guaranteed Obligations, the Administrative Agent, any Secured Party or any other Person, whether in connection herewith or in connection with any unrelated transactions; *provided that*, notwithstanding any other provisions in this Guaranty, nothing in this Guaranty shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(h) the unenforceability or invalidity of the Guaranteed Obligations or any part thereof or the lack of genuineness, enforceability or validity of any agreement relating thereto or with respect to the collateral, if any, securing the Guaranteed Obligations or any part thereof, or any other invalidity or unenforceability relating to or against the Borrower, any Subsidiary Guarantor or any other guarantor of any of the Guaranteed Obligations, for any reason, related to this Agreement or any other Loan Document, or any provision of applicable Law, decree, order or regulation of any jurisdiction purporting to prohibit the payment of any of the Guaranteed Obligations by the Borrower, any Subsidiary Guarantor or any other guarantor of the Guaranteed Obligations;

(i) the disallowance, under any state or federal bankruptcy, insolvency or similar law, of all or any portion of the claims of the Secured Parties or the Administrative Agent for repayment of all or any part of the Guaranteed Obligations;

(j) the failure of any other guarantor to sign or become party to this Agreement or any amendment, change, or reaffirmation hereof;

(k) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of any collateral securing the Guaranteed Obligations or any part thereof, any other guaranties with respect to the Guaranteed Obligations or any part thereof, or any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof, or any nonperfection or invalidity of any direct or indirect security for the Guaranteed Obligations; or

(l) any other act or omission to act or delay of any kind by the Borrower, such Guarantor, any other guarantor of the Guaranteed Obligations, the Administrative Agent, any Secured Party or any other Person or any other circumstance whatsoever which might, but for the provisions of this **Section 13.02**, constitute a legal or equitable discharge of any Guarantor's obligations hereunder.

The Subsidiary Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Administrative Agent or any Lender exhaust any right, power or remedy or proceed against the Borrower or any other Subsidiary Guarantor under this Agreement or any other agreement or instrument referred to herein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

13.03 Discharge Only Upon Payment in Full. Subject to any prior release herefrom of any Subsidiary Guarantor by the Administrative Agent in accordance with (and pursuant to authority granted to the Administrative Agent under) the terms of this Agreement, each Subsidiary Guarantor's obligations hereunder shall remain in full force and effect until all of the Guaranteed Obligations shall have been indefeasibly paid in full in cash (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made) and all other financing arrangements among the Borrower or any Subsidiary Guarantor and the Secured Parties under or in connection with this Agreement and each other Loan Document shall have terminated (herein, the "**Termination Conditions**"), and until the prior and complete satisfaction of the Termination Conditions all of the rights and remedies under this Guaranty and the other Loan Documents shall survive. Notwithstanding the foregoing, the Administrative Agent hereby agrees to release any Subsidiary of the Borrower from its guaranty of any Obligation of any Obligor if all of the Equity Interests in such Subsidiary owned by any Obligor or any of its Subsidiaries are disposed of in an Asset Sale permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such Asset Sale, such Subsidiary would not be required to guarantee any Obligations pursuant to **Section 8.12(a)**.

13.04 Additional Waivers; General Waivers.

(a) *Additional Waivers.* Notwithstanding anything herein to the contrary, each of the Subsidiary Guarantors hereby absolutely, unconditionally, knowingly, and expressly waives:

(i) any right it may have to revoke this Guaranty as to future indebtedness or notice of acceptance hereof;

(ii) (A) notice of acceptance hereof; (B) notice of any other financial accommodations made or maintained under the Loan Documents or the creation or existence of any Guaranteed Obligations; (C) notice of the amount of the Guaranteed Obligations, subject, however, to each Subsidiary Guarantor's right to make inquiry of the Administrative Agent and the Secured Parties to ascertain the amount of the Guaranteed Obligations at any reasonable time; (D) notice of any adverse change in the financial condition of the Borrower or of any other fact that might increase such Subsidiary Guarantor's risk hereunder; (E) notice of presentment for payment, demand, protest, and notice thereof as to any instruments among the Loan Documents; (F) notice of any Event of Default; and (G) all other notices (except if such notice is specifically required to be given to such Subsidiary Guarantor under this Guaranty or under the other Loan Documents) and demands to which each Subsidiary Guarantor might otherwise be entitled;

(iii) its right, if any, to require the Administrative Agent and the Secured Parties to institute suit against, or to exhaust any rights and remedies which the Administrative Agent and the Secured Parties now have or may hereafter have against, any other guarantor of the Guaranteed Obligations or any third party, or against any collateral provided by such other guarantors or any third party; and each Subsidiary Guarantor further waives any defense arising by reason of any disability or other defense (other than the defense that the Guaranteed Obligations shall have been fully and finally performed and indefeasibly paid) of any other guarantor of the Guaranteed Obligations or by reason of the cessation from any cause whatsoever of the liability of any other guarantor of the Guaranteed Obligations in respect thereof;

(iv) (A) any rights to assert against the Administrative Agent and the Secured Parties any defense (legal or equitable), set-off, counterclaim, or claim which such Subsidiary Guarantor may now or at any time hereafter have against any other guarantor of the Guaranteed Obligations or any third party liable to the Administrative Agent and the Secured Parties; (B) any defense, set-off, counterclaim or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity or enforceability of the Guaranteed Obligations or any security therefor; (C) any defense such Subsidiary Guarantor has to performance hereunder, and any right such Subsidiary Guarantor has to be exonerated, arising by reason of: (1) the impairment or suspension of the Administrative Agent's and the Secured Parties' rights or remedies against any other guarantor of the Guaranteed Obligations; (2) the alteration by the Administrative Agent and the Secured Parties of the Guaranteed Obligations; (3) any discharge of the obligations of any other guarantor of the Guaranteed Obligations to the Administrative Agent and the Secured Parties by operation of law as a result of the Administrative Agent's and the Secured Parties' intervention or omission; or (4) the acceptance by the Administrative Agent and the Secured Parties of anything in partial satisfaction of the Guaranteed Obligations; and (D) the benefit of any statute of limitations affecting such Subsidiary Guarantor's liability hereunder or the enforcement thereof, and any act which shall defer or delay the operation of any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to such Subsidiary Guarantor's liability hereunder; and

(v) any defense arising by reason of or deriving from (A) any claim or defense based upon an election of remedies by the Administrative Agent and the other Secured Parties; or (B) any election by the Administrative Agent and the other Secured Parties under any provision of any state or federal bankruptcy, insolvency or similar law to limit the amount of, or any collateral securing, its claim against the Subsidiary Guarantors.

(b) *General Waivers.* Each Subsidiary Guarantor irrevocably waives, to the fullest extent permitted by law, any notice not provided for herein.

13.05 Reinstatement. The obligations of the Subsidiary Guarantors under this **Section 13** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Guaranteed Obligations is at any time rescinded, annulled, avoided, set aside, invalidated, declared to be fraudulent or must be otherwise restored or repaid by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization, equitable cause or otherwise, and the Subsidiary Guarantors jointly and severally agree that they will indemnify the Secured Parties on demand for all reasonable costs and expenses (including fees of counsel) incurred by such Persons in connection with such rescission, repayment or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any state or federal bankruptcy, insolvency or similar law. The provisions of this **Section 13.05** shall survive termination of this Guaranty.

13.06 Subrogation. The Subsidiary Guarantors hereby jointly and severally agree that, until the prior and complete satisfaction of all Termination Conditions, they (i) shall have no right of subrogation with respect to the Guaranteed Obligations and (ii) (ii) waive any right to enforce any remedy which the Secured Parties or the Administrative Agent now have or may hereafter have against the Borrower, any endorser or any other guarantor of all or any part of the Guaranteed Obligations or any other Person, and each Subsidiary Guarantor waives any benefit of, and any right to participate in, any security or collateral that may from time to time be given to the Secured Parties and the Administrative Agent to secure the payment or performance of all or any part of the Guaranteed Obligations or any other liability of the Borrower to the Secured Parties. Should any Subsidiary Guarantor have the right, notwithstanding the foregoing, to exercise its subrogation rights prior to complete satisfaction of the Termination Conditions, each Subsidiary Guarantor hereby expressly and irrevocably (A) subordinates any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set-off that such Subsidiary Guarantor may have prior to the complete satisfaction of the Termination Conditions, and (B) waives any and all defenses available to a surety, guarantor or accommodation co-obligor until all Termination Conditions are satisfied in full. Each Subsidiary Guarantor acknowledges and agrees that this subordination is intended to benefit the Administrative Agent and the Secured Parties and shall not limit or otherwise affect such Subsidiary Guarantor's liability hereunder or the enforceability of this Guaranty, and that the Administrative Agent, the Secured Parties and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this **Section 13.06**.

13.07 Remedies. The Subsidiary Guarantors jointly and severally agree that, as between the Subsidiary Guarantors, on one hand, and the Administrative Agent and the Lenders, on the other hand, the obligations of the Borrower under this Agreement and under the other Loan Documents may be declared to be forthwith due and payable as provided in **Section 11** (and shall be deemed to have become automatically due and payable in the circumstances provided in **Section 11**) for purposes of **Section 13.01** notwithstanding any stay, injunction or other prohibition, including any such stay upon an Insolvency Proceeding, preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Subsidiary Guarantors for purposes of **Section 13.01**.

13.08 Instrument for the Payment of Money. Each Subsidiary Guarantor hereby acknowledges that the guarantee in this **Section 13** constitutes an instrument for the payment of money, and consents and agrees that the Administrative Agent and the Lenders, at their sole option, in the event of a dispute by such Subsidiary Guarantor in the payment of any moneys due hereunder, shall have the right to proceed by motion for summary judgment in lieu of complaint pursuant to N.Y. Civ. Prac. L&R § 3213.

13.09 Continuing Guarantee. The guarantee in this **Section 13** is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

13.10 Contribution with Respect to Guaranteed Obligations.

(a) To the extent that any Subsidiary Guarantor shall make a payment under this Guaranty (a "**Guarantor Payment**") which, taking into account all other Guarantor Payments then previously or concurrently made by any other Subsidiary Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Subsidiary Guarantor if each Subsidiary Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Subsidiary Guarantor's "**Allocable Amount**" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Subsidiary Guarantors as determined immediately prior to the making of such Guarantor Payment, *then*, following the prior and complete satisfaction of the Termination Conditions, such Subsidiary Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Subsidiary Guarantor for the amount of such excess, *pro rata* based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the "**Allocable Amount**" of any Subsidiary Guarantor shall be equal to the maximum amount of the claim which could then be recovered from such Subsidiary Guarantor under this Agreement without rendering such claim voidable or avoidable under any state or federal bankruptcy, insolvency or similar law or other applicable Law.

(c) This **13.10** is intended only to define the relative rights of the Subsidiary Guarantors, and nothing set forth in this **13.10** is intended to or shall impair the obligations of the Subsidiary Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Subsidiary Guarantor or Subsidiary Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Subsidiary Guarantors against other Subsidiary Guarantors under this **Section 13.10** shall be exercisable only upon the prior and complete satisfaction of the Termination Conditions.

13.11 General Limitation on Guarantee Obligations. In any action or proceeding involving any provincial, territorial or state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under **Section 13.01** would otherwise be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the

amount of its liability under **Section 13.01**, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, the Administrative Agent, any Lender or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

SECTION 14. MISCELLANEOUS

14.01 No Waiver. No failure on the part of the Administrative Agent or the Lenders to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

14.02 Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) or in the other Loan Documents shall be given or made in writing (including by telecopy or email) delivered, if to the Borrower, another Obligor, the Administrative Agent or any Lender, to its address specified on the signature pages hereto or its Guarantee Assumption Agreement, as the case may be, or at such other address as shall be designated by such party in a written notice to the other parties. 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).

14.03 Expenses, Indemnification, Etc.

(a) **Expenses.** Each Obligor, jointly and severally, agrees to pay or reimburse (i) the Administrative Agent and the Lenders and their respective Affiliates for all of their reasonable and documented out of pocket costs and expenses (including the reasonable and documented out of pocket fees, expenses, charges and disbursements of Sullivan & Cromwell LLP, counsel to the Lenders, the fees (if necessary) of local counsel for both of the Administrative Agent and the Lenders in each relevant material jurisdiction, and any sales, goods and services or other similar taxes applicable thereto, and reasonable and documented printing, reproduction, document delivery, communication and travel costs) in connection with (x) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the making of the Loans (exclusive of post-closing costs), (y) post-closing costs (including, without limitation, costs of the administration of this Agreement and the other Loan Documents) and (z) the negotiation or preparation of any modification, supplement or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated); *provided*, that, in the case of such expenses on the Closing Date, the amount of such expenses obligated to be paid by the Obligors shall not exceed \$350,000 and (ii) each of the Administrative Agent and the Lenders for all of their documented out of pocket costs and expenses (including the fees and expenses of any legal counsel) in connection with the enforcement, exercise or protection of their rights in connection with this Agreement and the other Loan Documents, including their rights under this **Section 14.03**, or in connection with the Loans made hereunder, including such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) **Indemnification.** Each Obligor, jointly and severally, hereby indemnifies the Administrative Agent (and any sub-agent thereof), the Lenders and their respective Affiliates, directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an “**Indemnified Party**”) from and against, and agrees to hold them harmless against, any and all Claims and Losses of any kind including reasonable and documented out of pocket fees and disbursements of any counsel for each Indemnified Party (limited to one legal counsel in each relevant jurisdiction), that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to (i) Agreement or any of the other Loan Documents or the Transactions, (ii) any use made or proposed to be made with the proceeds of the Loans, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Obligor or any of its Subsidiaries, or (iv) any actual or prospective claim, investigation, litigation or proceeding relating to any of the foregoing, whether based on contract, tort, or any other theory, whether or not such investigation, litigation or proceeding is brought by any Obligor, any of its Subsidiaries, shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence or willful misconduct. No Obligor shall assert any claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. The Borrower, its Subsidiaries and Affiliates and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties are each sometimes referred to in this Agreement as a “**Borrower Party**”. No Lender shall assert any claim against any Borrower Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. This Section shall not apply to Taxes other than Taxes relating to a non-Tax Claim or Loss governed by this **Section 14.03(b)**.

14.04 Amendments, Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement and any other Loan Document (except for the Warrant, which may be amended, waived or supplemented in accordance with the terms thereof) may be modified or supplemented only by an instrument in writing signed by the Borrower, the Administrative Agent and the Majority Lenders; provided that:

(a) any such modification or supplement that is disproportionately adverse to any Lender as compared to other Lenders or subjects any Lender to any additional obligation shall not be effective without the consent of such affected Lender;

(b) the consent of all of the Lenders shall be required to:

(i) amend, modify, discharge, terminate or waive any of the terms of this Agreement or any other Loan Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans or Commitment, reduce the fees payable hereunder, reduce interest rates or other amounts payable with respect to the Loans, extend any date fixed for payment of principal (it being understood that the waiver of any prepayment of Loans shall not constitute an extension of any date fixed for payment of principal), interest or other amounts payable relating to the Loans or extend the repayment dates of the Loans; provided, for the avoidance of doubt, that any waiver or amendment relating to an Event of Default or Default arising out of breach or prospective breach of the Minimum Revenue Covenant or the Leverage Ratio Covenant shall only require the consent of the Majority Lenders;

(ii) amend, modify, discharge, terminate or waive any Security Document if the effect is to release all or substantially all of the Collateral subject thereto other than pursuant to the terms hereof or thereof; or

(iii) amend this **Section 14.04** or the definition of "Majority Lenders".

14.05 Successors and Assigns.

(a) **General.** The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto or thereto and their respective successors and assigns permitted hereby or thereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder (except in connection with an event permitted under **Section 9.03**) without the prior written consent of the Administrative Agent. Any Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any of the other Loan Documents (i) to an assignee in accordance with the provisions of **Section 14.05(b)**, (ii) by way of participation in accordance with the provisions of **Section 14.05(e)**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 14.05(f)**. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 14.05(e)** and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lender.** Any Lender may at any time assign to one or more Eligible Transferees (or, if an Event of Default has occurred and is continuing, to any Person) all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) and the other Loan Documents; provided that (i) no such assignment shall be made to any Obligor, any Affiliate of any Obligor, any employees or directors of any Obligor at any time and (ii) no such assignment shall be made without the prior written consent of the Administrative Agent. The consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) a Default or Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to an Eligible Transferee described in clause (vi) of the definition thereof; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto

by written notice to the Administrative Agent within five (5) Business Days after having received written notice thereof. At the request of the Borrower, the Oaktree Lender agrees to assign to any Person identified to the Administrative Agent in writing prior to the Closing Date (or, with respect to any other Person (such Person to be reasonably acceptable to the Oaktree Lender), to use its commercially reasonable efforts to assign) within forty-five (45) days from the date hereof (subject to applicable Law) no more than \$40,000,000 aggregate principal amount of Loans and Commitments pro rata across the respective Tranches of Loans and Applicable Commitments then outstanding to a party who has provided the Royalty Interest Financing for a purchase price equal to the Oaktree Lender's valuation of the Loans plus accrued and unpaid interest on the Loans so assigned to the date of such assignment and such assignment shall be on customary LSTA terms (except such assignment shall be on a non-recourse basis to the Oaktree Lender). Subject to the recording thereof by the Administrative Agent pursuant to **Section 14.05(d)**, and to receipt by the Administrative Agent of a processing and recordation fee in the amount of \$3,500 (provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment) from and after the date such Assignment and Assumption is recorded in the Register, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the Lender under this Agreement and the other Loan Documents, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) and the other Loan Documents but shall continue to be entitled to the benefits of **Section 5** and **Section 14.03**. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this **Section 14.05(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 14.05(e)**.

(c) **Amendments to Loan Documents.** Each of the Administrative Agent, the Lenders and the Obligors agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably acceptable to the Administrative Agent, the Lenders and the Obligors, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 14.05**.

(d) **Register.** The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior written notice. Notwithstanding anything to the contrary, any assignment of any Loan shall be effective only upon appropriate entries with respect thereto being made in the Register.

(e) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Eligible Transferee (other than a natural person or any Obligor or any of its Affiliates or Subsidiaries) (each, a “**Participant**”) in all or a portion of the Lender’s rights and/or obligations under this Agreement (including all or a portion of the Commitment and/or the Loans owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with such Lender in connection therewith. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that would (i) increase or extend the term of such Lender’s Commitment, (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest. Subject to **Section 14.05(f)**, the Borrower agrees that each Participant shall be entitled to the benefits of **Section 5.01** or **5.03** (subject to the requirements and limitations therein, including the requirements under **Section 5.03(f)** (it being understood that the documentation required under **Section 5.03(f)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 14.05(b)**; provided that such Participant (i) agrees to be subject to the provisions of **Section 5.04** as if it were an assignee under **Section 14.05(b)** and (ii) shall not be entitled to receive any greater payment under **Section 5.01** or **5.03**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by Law, each Participant also shall be entitled to the benefits of **Section 4.03(a)** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “**Participant Register**”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) **Limitations on Rights of Participants.** A Participant shall not be entitled to receive any greater payment under **Section 5.01** or **5.03** than such Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(g) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under the Loan Documents to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

14.06 Survival. The obligations of the Borrower under **5.01, 5.02, 5.03, 14.03, 14.05, 14.06, 14.09, 14.10, 14.11, 14.12, 14.13, 14.14** and the obligations of the Subsidiary Guarantors under **Section 13** (solely to the extent guaranteeing any of the obligations under the foregoing Sections) shall survive the repayment of the Obligations and the termination of the Commitments and, in the case of the Lenders' assignment of any interest in the Commitments or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be "Lenders" hereunder. In addition, each representation and warranty made, or deemed to be made by a Borrowing Notice, herein or pursuant hereto shall survive the making of such representation and warranty.

14.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

14.08 Counterparts, Effectiveness. 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. This Agreement shall become effective when counterparts hereof executed on behalf of the Obligor, the Administrative Agent and the Lender shall have been received by the Administrative Agent.

14.09 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.

14.10 Jurisdiction, Service of Process and Venue.

(a) **Submission to Jurisdiction.** Each party hereby irrevocably 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 any Loan Document 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.

(b) [Reserved].

(c) **Waiver of Venue, Etc.** 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 party is or may be subject, by suit upon judgment.

14.11 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.

14.12 Waiver of Immunity. To the extent that any Obligor may be or become entitled to claim for itself or its property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), such Obligor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement and the other Loan Documents.

14.13 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including any confidentiality (or similar) agreements. EACH OBLIGOR 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 ADMINISTRATIVE AGENT OR THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

14.14 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.

14.15 No Fiduciary Relationship. The Borrower acknowledges that the Administrative Agent and the Lenders have no fiduciary relationship with, or fiduciary duty to, the Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and the Borrower is solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties.

14.16 Confidentiality. The Administrative Agent and each Lender agree to keep confidential all non-public information provided to them by any Obligor pursuant to this Agreement that is designated by such Obligor as confidential in accordance with its customary procedures for handling its own confidential information; provided that nothing herein shall prevent the Administrative Agent or any Lender from disclosing any such information (i) to the Administrative Agent, any other Lender, any Affiliate of a Lender or any Eligible Transferee or other assignee permitted under **Section 14.05(b)**, (ii) subject to an agreement to comply with the provisions of this Section, to any actual or prospective direct or indirect counterparty to any Hedging Agreement (or any professional advisor to such counterparty), (iii) to its employees, officers, directors, agents, attorneys, accountants, trustees and other professional advisors or those of any of its affiliates (collectively, its “**Related Parties**”), (iv) upon the request or demand of any Governmental Authority or any Regulatory Authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (v) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Law, (vi) if requested or required to do so in connection with any litigation or similar proceeding, (vii) that has been publicly disclosed (other than as a result of a disclosure in violation of this **Section 14.16**), (viii) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender’s investment portfolio in connection with ratings issued with respect to such Lender, (ix) in connection with the exercise of any remedy hereunder or under any other Loan Document, (x) on a confidential basis to (A) any rating agency in connection with rating the Borrower or its Subsidiaries or the Loans or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the Loans or (xi) to any other party hereto; provided that, in the case of disclosure pursuant to **clause (iv), (v) and (vi)** above, the Administrative Agent or applicable Lender, as applicable, shall promptly provide notice to the Borrower to the extent reasonable and not prohibited by Law or any applicable Governmental Authority.

14.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable Law (collectively, “**charges**”), shall exceed the maximum lawful rate (the “**Maximum Rate**”) that may be contracted for, charged, taken, received or reserved by the Administrative Agent and the Lender holding such Loan in accordance with applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan so that at no time shall the interest and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

14.18 Judgment Currency.

(a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent permitted by Law, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase Dollars with such other currency at the buying spot rate of exchange in the New York foreign exchange market on the Business Day immediately preceding that on which any such judgment, or any relevant part thereof, is given.

(b) The obligations of the Obligors in respect of any sum due to the Administrative Agent hereunder and under the other Loan Documents shall, notwithstanding any judgment in a currency other than Dollars, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in such other currency the Administrative Agent may, in accordance with normal banking procedures, purchase Dollars with such other currency. If the amount of Dollars so purchased is less than the sum originally due to the Administrative Agent in Dollars, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent against such loss. If the amount of Dollars so purchased exceeds the sum originally due to the Administrative Agent in Dollars, the Administrative Agent shall remit such excess to the Borrower.

14.19 USA PATRIOT Act. The Administrative Agent and the Lenders hereby notify the Obligors that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**"), they are required to obtain, verify and record information that identifies the Obligors, which information includes the name and address of each Obligor and other information that will allow such Person to identify such Obligor in accordance with the Patriot Act.

14.20 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(i) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

ATHENEX, INC.

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

Address for Notices:
1001 Main Street
Suite 600
Buffalo, NY 14203
Attn: Teresa Bair
Tel.: 716-427-2868
Fax: 716-800-6816
Email: tbair@athenex.com

SUBSIDIARY GUARANTORS:

ATHENEX PHARMACEUTICAL DIVISION, LLC

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

Address for Notices:
1001 Main Street
Suite 600
Buffalo, NY 14203
Attn: Teresa Bair
Tel.: 716-427-2868
Fax: 716-800-6816
Email: tbair@athenex.com

[Signature Page to Credit Agreement and Guaranty]

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

Address for Notices:

1001 Main Street

Suite 600

Buffalo, NY 14203

Attn: Teresa Bair

Tel.: 716-427-2868

Fax: 716-800-6816

Email: tbair@athenex.com

SUBSIDIARY GUARANTORS:

ATHENEX PHARMA SOLUTIONS, LLC

By: /s/ Teresa Bair

Name: Teresa Bair

Title: Vice President

Address for Notices:

1001 Main Street

Suite 600

Buffalo, NY 14203

Attn: Teresa Bair

Tel.: 716-427-2868

Fax: 716-800-6816

Email: tbair@athenex.com

[Signature Page to Credit Agreement and Guaranty]

ADMINISTRATIVE AGENT:

OAKTREE FUND ADMINISTRATION, LLC

By: Oaktree Capital Management, L.P.
Its: Managing Member

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

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

Address for Notices:
Oaktree Fund Administration, LLC
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Oaktree Agency
Email: Oaktreeagency@alterdomus.com

With a copy to:
Oaktree Capital Management, L.P.
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Aman Kumar
Email: AmKumar@oaktreecapital.com

[Signature Page to Credit Agreement and Guaranty]

LENDERS:

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

Address for Notices:
Oaktree Fund Administration, LLC
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Oaktree Agency
Email: Oaktreeagency@alterdomus.com

With a copy to:
Oaktree Capital Management, L.P.
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Aman Kumar
Email: AmKumar@oaktreecapital.com

[Signature Page to Credit Agreement and Guaranty]

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

Address for Notices:

Oaktree Fund Administration, LLC

333 S. Grand Avenue, 28th Fl.

Los Angeles, CA 90071

Attn: Oaktree Agency

Email: Oaktreeagency@alterdomus.com

With a copy to:

Oaktree Capital Management, L.P.

333 S. Grand Avenue, 28th Fl.

Los Angeles, CA 90071

Attn: Aman Kumar

Email: AmKumar@oaktreecapital.com

[Signature Page to Credit Agreement and Guaranty]

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

Address for Notices:

Oaktree Fund Administration, LLC

333 S. Grand Avenue, 28th Fl.

Los Angeles, CA 90071

Attn: Oaktree Agency

Email: Oaktreeagency@alterdomus.com

With a copy to:

Oaktree Capital Management, L.P.

333 S. Grand Avenue, 28th Fl.

Los Angeles, CA 90071

Attn: Aman Kumar

Email: AmKumar@oaktreecapital.com

[Signature Page to Credit Agreement and Guaranty]

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

Address for Notices:

Oaktree Fund Administration, LLC

333 S. Grand Avenue, 28th Fl.

Los Angeles, CA 90071

Attn: Oaktree Agency

Email: Oaktreeagency@alterdomus.com

With a copy to:

Oaktree Capital Management, L.P.

333 S. Grand Avenue, 28th Fl.

Los Angeles, CA 90071

Attn: Aman Kumar

Email: AmKumar@oaktreecapital.com

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**OAKTREE-FORREST MULTI-STRATEGY LLC –
SERIES A**

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

Address for Notices:
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Email: Oaktreeagency@alterdomus.com

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Los Angeles, CA 90071
Attn: Aman Kumar
Email: AmKumar@oaktreecapital.com

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**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

Address for Notices:
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Email: Oaktreeagency@alterdomus.com

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Los Angeles, CA 90071
Attn: Aman Kumar
Email: AmKumar@oaktreecapital.com

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**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

Address for Notices:
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333 S. Grand Avenue, 28th Fl.
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Attn: Oaktree Agency
Email: Oaktreeagency@alterdomus.com

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333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Aman Kumar
Email: AmKumar@oaktreecapital.com

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**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

Address for Notices:
Oaktree Fund Administration, LLC
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
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Email: Oaktreeagency@alterdomus.com

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333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Aman Kumar
Email: AmKumar@oaktreecapital.com

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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

Address for Notices:

Oaktree Fund Administration, LLC

333 S. Grand Avenue, 28th Fl.

Los Angeles, CA 90071

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Email: Oaktreeagency@alterdomus.com

With a copy to:

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333 S. Grand Avenue, 28th Fl.

Los Angeles, CA 90071

Attn: Aman Kumar

Email: AmKumar@oaktreecapital.com

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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

Address for Notices:

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333 S. Grand Avenue, 28th Fl.

Los Angeles, CA 90071

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Email: Oaktreeagency@alterdomus.com

With a copy to:

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Los Angeles, CA 90071

Attn: Aman Kumar

Email: AmKumar@oaktreecapital.com

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**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: 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

Address for Notices:
Oaktree Fund Administration, LLC
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Oaktree Agency
Email: Oaktreeagency@alterdomus.com

With a copy to:
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333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Aman Kumar
Email: AmKumar@oaktreecapital.com

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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

Address for Notices:

Oaktree Fund Administration, LLC

333 S. Grand Avenue, 28th Fl.

Los Angeles, CA 90071

Attn: Oaktree Agency

Email: Oaktreeagency@alterdomus.com

With a copy to:

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333 S. Grand Avenue, 28th Fl.

Los Angeles, CA 90071

Attn: Aman Kumar

Email: AmKumar@oaktreecapital.com

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OAKTREE SPECIALTY LENDING CORPORATION

By: Oaktree Fund Advisors, LLC
Its: Investment Adviser

By: /s/ Jessica Dombroff

Name: Jessica Dombroff

Title: Vice President

By: /s/ Brian Price

Name: Brian Price

Title: Senior Vice President

Address for Notices:

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Los Angeles, CA 90071

Attn: Oaktree Agency

Email: Oaktreeagency@alterdomus.com

With a copy to:

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333 S. Grand Avenue, 28th Fl.

Los Angeles, CA 90071

Attn: Aman Kumar

Email: AmKumar@oaktreecapital.com

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OAKTREE STRATEGIC INCOME CORPORATION

By: Oaktree Fund Advisors, LLC
Its: Investment Adviser

By: /s/ Jessica Dombroff

Name: Jessica Dombroff

Title: Vice President

By: /s/ Brian Price

Name: Brian Price

Title: Senior Vice President

Address for Notices:

Oaktree Fund Administration, LLC

333 S. Grand Avenue, 28th Fl.

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Attn: Oaktree Agency

Email: Oaktreeagency@alterdomus.com

With a copy to:

Oaktree Capital Management, L.P.

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Los Angeles, CA 90071

Attn: Aman Kumar

Email: AmKumar@oaktreecapital.com

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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

Address for Notices:

Oaktree Fund Administration, LLC

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Los Angeles, CA 90071

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Email: Oaktreeagency@alterdomus.com

With a copy to:

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Los Angeles, CA 90071

Attn: Aman Kumar

Email: AmKumar@oaktreecapital.com

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Schedule 1

Loans Schedule

Tranche A-1 Term Loans

Lenders and their respective Applicable Commitments:

<u>Lender</u>	<u>Applicable Commitment</u>
Oaktree-TCDRS Strategic Credit, LLC	\$ 5,539,374
Exelon Strategic Credit Holdings LLC	\$ 3,295,651
Oaktree-NGP Strategic Credit, LLC	\$ 5,559,652
Oaktree-Minn Strategic Credit, LLC	\$ 2,686,860
Oaktree-Forrest Multi-Strategy, LLC - Series A	\$ 4,583,440
Oaktree-TBMR Strategic Credit Fund C, LLC	\$ 2,624,056
Oaktree-TBMR Strategic Credit Fund F, LLC	\$ 4,095,190
Oaktree-TBMR Strategic Credit Fund G, LLC	\$ 6,705,759
Oaktree-TSE 16 Strategic Credit, LLC	\$ 5,127,189
INPRS Strategic Credit Holdings, LLC	\$ 1,496,606
Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P.	\$ 1,348,407
Oaktree Strategic Income II, Inc.	\$10,700,785
Oaktree Specialty Lending Corporation	\$29,288,074
OAKTREE STRATEGIC INCOME CORPORATION	\$ 6,835,903
Tranche A-1 Commitment	<u>\$89,886,946</u>

Tranche A-2 Term Loans

Lenders and their respective Applicable Commitments:

<u>Lender</u>	<u>Applicable Commitment</u>
Oaktree Gilead Investment Fund, L.P.	\$10,113,054
Tranche A-2 Commitment	<u>\$10,113,054</u>

“*Applicable Funding Condition*” means that the Closing Date shall have occurred.

The aggregate amount of the Tranche A-1 Commitment and the Tranche A-2 Commitment is the “*Tranche A Commitment*”. For the avoidance of doubt, the Tranche A-1 Term Loans and the Tranche A-2 Term Loans are in each case Tranche A Term Loans subject to the same terms and conditions, except that each shall be funded on different Applicable Funding Dates.

Tranche B Term Loans

Lenders and their respective Applicable Commitments:

<u>Lender</u>	<u>Applicable Commitment</u>
Oaktree-TCDRS Strategic Credit, LLC	\$ 1,384,843
Exelon Strategic Credit Holdings LLC	\$ 823,913
Oaktree-NGP Strategic Credit, LLC	\$ 1,389,913
Oaktree-Minn Strategic Credit, LLC	\$ 671,715
Oaktree-Forrest Multi-Strategy, LLC - Series A	\$ 1,145,860
Oaktree-TBMR Strategic Credit Fund C, LLC	\$ 656,014
Oaktree-TBMR Strategic Credit Fund F, LLC	\$ 1,023,798
Oaktree-TBMR Strategic Credit Fund G, LLC	\$ 1,676,440
Oaktree-TSE 16 Strategic Credit, LLC	\$ 1,281,797
INPRS Strategic Credit Holdings, LLC	\$ 374,151
Oaktree Gilead Investment Fund, L.P.	\$ 2,528,263
Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P.	\$ 337,102
Oaktree Strategic Income II, Inc.	\$ 2,675,196
Oaktree Specialty Lending Corporation	\$ 7,322,019
OAKTREE STRATEGIC INCOME CORPORATION	\$ 1,708,976
Tranche B Commitment	<u>\$25,000,000</u>

The following defined terms apply to the Tranche B Term Loans:

“Applicable Availability Period” means the period starting on the date of the Oral Paclitaxel and Encequidar Filing Acceptance and ending on the Commitment Termination Date.

“Applicable Funding Condition” means that (i) the Closing Date shall have occurred and (ii) the Oral Paclitaxel and Encequidar Filing Acceptance shall have been received and the Administrative Agent shall have received evidence thereof in form and substance satisfactory to the Administrative Agent and the Oaktree Lender.

“Oral Paclitaxel and Encequidar Filing Acceptance” means acceptance by the FDA of an NDA filing relating to Oral Paclitaxel.

Tranche C Term Loans

Lenders and their respective Applicable Commitments:

<u>Lender</u>	<u>Applicable Commitment</u>
Oaktree-TCDRS Strategic Credit, LLC	\$ 1,384,843
Exelon Strategic Credit Holdings LLC	\$ 823,913
Oaktree-NGP Strategic Credit, LLC	\$ 1,389,913
Oaktree-Minn Strategic Credit, LLC	\$ 671,715
Oaktree-Forrest Multi-Strategy, LLC - Series A	\$ 1,145,860
Oaktree-TBMR Strategic Credit Fund C, LLC	\$ 656,014
Oaktree-TBMR Strategic Credit Fund F, LLC	\$ 1,023,798
Oaktree-TBMR Strategic Credit Fund G, LLC	\$ 1,676,440
Oaktree-TSE 16 Strategic Credit, LLC	\$ 1,281,797
INPRS Strategic Credit Holdings, LLC	\$ 374,151
Oaktree Gilead Investment Fund, L.P.	\$ 2,528,263
Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P.	\$ 337,102
Oaktree Strategic Income II, Inc.	\$ 2,675,196
Oaktree Specialty Lending Corporation	\$ 7,322,019
OAKTREE STRATEGIC INCOME CORPORATION	\$ 1,708,976
Tranche C Commitment	<u>\$25,000,000</u>

The following defined terms apply to the Tranche C Term Loans:

“Applicable Availability Period” means the period starting on the date of the Oral Paclitaxel and Encequidar FDA Approval and ending on the Commitment Termination Date.

“Applicable Funding Condition” means that (i) the Closing Date shall have occurred and (ii) the Oral Paclitaxel and Encequidar FDA Approval shall have been received and the Administrative Agent shall have received evidence thereof in form and substance satisfactory to the Administrative Agent and the Oaktree Lender.

“Oral Paclitaxel and Encequidar FDA Approval” means the receipt of approval from the FDA of an NDA in respect of the use of Oral Paclitaxel permitting the marketing of oral paclitaxel and encequidar in interstate commerce in the United States to treat metastatic breast cancer.

Tranche D Term Loans

Lenders and their respective Applicable Commitments:

<u>Lender</u>	<u>Applicable Commitment</u>
Oaktree-TCDRS Strategic Credit, LLC	\$1,384,843
Exelon Strategic Credit Holdings LLC	\$ 823,913

Oaktree-NGP Strategic Credit, LLC	\$ 1,389,913
Oaktree-Minn Strategic Credit, LLC	\$ 671,715
Oaktree-Forrest Multi-Strategy, LLC - Series A	\$ 1,145,860
Oaktree-TBMR Strategic Credit Fund C, LLC	\$ 656,014
Oaktree-TBMR Strategic Credit Fund F, LLC	\$ 1,023,798
Oaktree-TBMR Strategic Credit Fund G, LLC	\$ 1,676,440
Oaktree-TSE 16 Strategic Credit, LLC	\$ 1,281,797
INPRS Strategic Credit Holdings, LLC	\$ 374,151
Oaktree Gilead Investment Fund, L.P.	\$ 2,528,263
Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P.	\$ 337,102
Oaktree Strategic Income II, Inc.	\$ 2,675,196
Oaktree Specialty Lending Corporation	\$ 7,322,019
OAKTREE STRATEGIC INCOME CORPORATION	\$ 1,708,976
Tranche D Commitment	<u>\$25,000,000</u>

The following defined terms apply to the Tranche D Term Loans:

“Applicable Availability Period” means the period starting on the date of the Tirbanibulin FDA Approval and ending on the Commitment Termination Date.

“Applicable Funding Condition” means that (i) the Closing Date shall have occurred and (ii) the Tirbanibulin FDA Approval shall have been received and the Administrative Agent shall have received evidence thereof in form and substance satisfactory to the Administrative Agent and the Oaktree Lender.

“Tirbanibulin FDA Approval” means the receipt of approval from the FDA of an NDA in respect of the use of the Product “Tirbanibulin” permitting the marketing of Tirbanibulin in interstate commerce in the United States to treat actinic keratosis.

Tranche E Term Loans

Lenders and their respective Applicable Commitments:

<u>Lender</u>	<u>Applicable Commitment</u>
Oaktree-TCDRS Strategic Credit, LLC	\$2,769,687
Exelon Strategic Credit Holdings LLC	\$1,647,826
Oaktree-NGP Strategic Credit, LLC	\$2,779,826
Oaktree-Minn Strategic Credit, LLC	\$1,343,430

Oaktree-Forrest Multi-Strategy, LLC - Series A	\$ 2,291,720
Oaktree-TBMR Strategic Credit Fund C, LLC	\$ 1,312,028
Oaktree-TBMR Strategic Credit Fund F, LLC	\$ 2,047,595
Oaktree-TBMR Strategic Credit Fund G, LLC	\$ 3,352,879
Oaktree-TSE 16 Strategic Credit, LLC	\$ 2,563,595
INPRS Strategic Credit Holdings, LLC	\$ 748,303
Oaktree Gilead Investment Fund, L.P.	\$ 5,056,527
Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P.	\$ 674,204
Oaktree Strategic Income II, Inc.	\$ 5,350,392
Oaktree Specialty Lending Corporation	\$14,644,037
OAKTREE STRATEGIC INCOME CORPORATION	\$ 3,417,952
Tranche E Commitment	<u>\$50,000,000</u>

The following defined terms apply to the Tranche E Term Loans:

“Applicable Availability Period” means the period starting on the first Business Day following receipt by the Administrative Agent of the Tranche E Revenue Condition Certificate and ending on the Commitment Termination Date.

“Applicable Funding Condition” means that (i) the Closing Date shall have occurred and (ii) the Administrative Agent shall have received the Tranche E Revenue Condition Certificate.

“Tranche E Revenue Condition Certificate” means a certificate substantially in the form of **Exhibit M** signed by a Responsible Officer of the Borrower as of the end of the applicable quarter indicating that (A) net sales of the Borrower for the twelve (12) consecutive month period ending on the last day of such fiscal quarter exceed \$200,000,000 and (B) net sales of the Borrower attributable to sales of the Product Oral Paclitaxel for such quarter exceed \$40,000,000.