UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2020

OR

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

For the transition period from _____ to _____

Commission File Number: 001-38112

ATHENEX, INC.

(Exact Name of Registrant as Specified in its Charter)

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

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

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

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

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

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

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

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Small reporting company	☐
Emerging growth company	☐		

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

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

As of October 30, 2020, the registrant had 93,339,242 shares of common stock, $0.001 par value per share, outstanding.

Table of Contents

PART I—FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements.

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

	September 30, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents	$ 143,559	$ 127,674
Restricted cash	13,750	—
Short-term investments	84,751	33,139
Accounts receivable, net of chargebacks and other deductions of $13,500 and $14,394, respectively, and provision for credit losses of $959 and $124, respectively	42,993	16,689
Inventories	29,605	32,630
Prepaid expenses and other current assets	9,547	20,794
Total current assets	324,205	230,926
Property and equipment, net	28,867	23,153
Goodwill	38,692	38,513
Intangible assets, net	9,556	8,522
Operating lease right-of-use assets, net	7,443	8,818
Other assets	877	—
Total assets	$ 409,640	$ 309,932
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 14,869	$ 23,331
Accrued expenses	47,106	44,307
Current portion of operating lease liabilities	2,703	3,010
Current portion of long-term debt	1,874	880
Total current liabilities	66,552	71,528
Long-term liabilities:		
Long-term operating lease liabilities	6,431	7,620
Long-term debt and finance lease obligations	121,740	52,366
Deferred tax liabilities	53	—
Other long-term liabilities	2,629	2,563
Total liabilities	197,405	134,077
Commitments and contingencies (See Note 16)		
Stockholders' equity:		
Common stock, par value $0.001 per share, 250,000,000 shares authorized at September 30, 2020 and December 31, 2019; 94,959,662 and 83,231,063 shares issued at September 30, 2020 and December 31, 2019, respectively; 93,286,742 and 81,558,143 shares outstanding at September 30, 2020 and December 31, 2019, respectively	95	83
Additional paid-in capital	898,250	763,648
Accumulated other comprehensive loss	(1,030)	(635)
Accumulated deficit	(664,151)	(567,465)
Less: treasury stock, at cost; 1,672,920 shares at September 30, 2020 and December 31, 2019	(7,406)	(7,406)
Total Athenex, Inc. stockholders' equity	225,758	188,225
Non-controlling interests	(13,523)	(12,370)
Total stockholders' equity	212,235	175,855
Total liabilities and stockholders' equity	$ 409,640	$ 309,932

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

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Revenue:				
Product sales, net	$ 24,780	$ 19,237	$ 83,494	$ 66,433
License and other revenue	10,696	127	39,089	435
Total revenue	35,476	19,364	122,583	66,868
Cost of sales	24,510	17,071	77,088	53,915
Gross Profit	10,966	2,293	45,495	12,953
Operating expenses:				
Research and development expenses	18,390	19,588	57,597	62,570
Selling, general, and administrative expenses	22,220	16,283	65,454	48,640
Total operating expenses	40,610	35,871	123,051	111,210
Operating loss	(29,644)	(33,578)	(77,556)	(98,257)
Interest income	112	650	710	1,408
Interest expense	3,595	1,745	6,833	5,254
Loss on extinguishment of debt	3,048	—	10,278	—
Loss before income tax expense	(36,175)	(34,673)	(93,957)	(102,103)
Income tax expense	1,093	114	4,080	1,019
Net loss	(37,268)	(34,787)	(98,037)	(103,122)
Less: net loss attributable to non-controlling interests	(462)	(29)	(1,351)	(1,100)
Net loss attributable to Athenex, Inc.	$ (36,806)	$ (34,758)	$ (96,686)	$ (102,022)
Unrealized (loss) gain on investment, net of income taxes	(48)	1	1	(79)
Foreign currency translation adjustment, net of income taxes	85	(310)	(396)	312
Comprehensive loss	$ (36,769)	$ (35,067)	$ (97,081)	$ (101,789)
Net loss per share attributable to Athenex, Inc. common stockholders, basic and diluted (See Note 13)	$ (0.44)	$ (0.45)	$ (1.17)	$ (1.41)
Weighted-average shares used in computing net loss per share attributable to Athenex, Inc. common stockholders, basic and diluted (See Note 13)	83,712,060	77,297,555	82,314,802	72,552,248

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

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

	Common Stock		Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive income (loss)	Treasury Stock		Total Athenex, Inc. stockholders' equity	Non-controlling interests	Total stockholders' equity
	Shares	Amount				Shares	Amount			
Balance at January 1, 2019	68,668,986	$ 69	$ 591,064	$ (443,716)	$ (656)	(1,672,920)	$ (7,406)	$ 139,355	$ (10,586)	$ 128,769
Stock-based compensation cost	—	—	1,693	—	—	—	—	1,693	—	1,693
Stock options and warrants exercised	49,632	—	278	—	—	—	—	278	—	278
Net loss	—	—	—	(35,233)	—	—	—	(35,233)	(997)	(36,230)
Other comprehensive income, net of tax	—	—	—	—	1,071	—	—	1,071	—	1,071
Balance at March 31, 2019 (unaudited)	68,718,618	69	593,035	(478,949)	415	(1,672,920)	(7,406)	107,164	(11,583)	95,581
Sale of common stock, net of costs of $54	10,033,362	10	100,309	—	—	—	—	100,319	—	100,319
Stock-based compensation cost	92,723	—	3,382	—	—	—	—	3,382	—	3,382
Stock options exercised	92,442	—	559	—	—	—	—	559	—	559
Net loss	—	—	—	(32,031)	—	—	—	(32,031)	(74)	(32,105)
Other comprehensive loss, net of tax	—	—	—	—	(529)	—	—	(529)	—	(529)
Balance at June 30, 2019 (unaudited)	78,937,145	79	697,285	(510,980)	(114)	(1,672,920)	(7,406)	178,864	(11,657)	167,207
Stock-based compensation cost	130,000	—	2,148	—	—	—	—	2,148	—	2,148
Stock options exercised	75,160	—	567	—	—	—	—	567	—	567
Net loss	—	—	—	(34,758)	—	—	—	(34,758)	(29)	(34,787)
Other comprehensive loss, net of tax	—	—	—	—	(309)	—	—	(309)	—	(309)
Balance at September 30, 2019 (unaudited)	79,142,305	$ 79	$ 700,000	$ (545,738)	$ (423)	(1,672,920)	$ (7,406)	$ 146,512	$ (11,686)	$ 134,826

	Common Stock		Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive income (loss)	Treasury Stock		Total Athenex, Inc. stockholders' equity	Non-controlling interests	Total stockholders' equity
	Shares	Amount				Shares	Amount			
Balance at January 1, 2020	83,231,063	$ 83	$ 763,648	$ (567,465)	$ (635)	(1,672,920)	$ (7,406)	$ 188,225	$ (12,370)	$ 175,855
Stock-based compensation cost	—	—	1,864	—	—	—	—	1,864	—	1,864
Restricted stock expense	(3,000)	—	397	—	—	—	—	397	—	397
Stock options exercised	70,200	—	344	—	—	—	—	344	—	344
Net loss	—	—	—	(19,429)	—	—	—	(19,429)	(289)	(19,718)
Other comprehensive loss, net of tax	—	—	—	—	(506)	—	—	(506)	—	(506)
Balance at March 31, 2020 (unaudited)	83,298,263	83	766,253	(586,894)	(1,141)	(1,672,920)	(7,406)	170,895	(12,659)	158,236
Sale of common stock and issuance of stock in connection with acquisition	51,691	—	269	—	—	—	—	269	—	269
Stock-based compensation cost	—	—	2,640	—	—	—	—	2,640	—	2,640
Restricted stock expense	—	—	413	—	—	—	—	413	—	413
Stock options exercised	12,500	—	125	—	—	—	—	125	—	125
Issuance of warrants, net	—	—	5,342	—	—	—	—	5,342	—	5,342
Non-controlling interests	—	—	—	—	—	—	—	—	198	198
Net loss	—	—	—	(40,451)	—	—	—	(40,451)	(600)	(41,051)
Other comprehensive income, net of tax	—	—	—	—	74	—	—	74	—	74
Balance at June 30, 2020 (unaudited)	83,362,454	83	775,042	(627,345)	(1,067)	(1,672,920)	(7,406)	139,307	(13,061)	126,246
Sale of common stock and issuance of stock in connection with acquisition	11,522,598	11	118,619	—	—	—	—	118,630	—	118,630
Stock-based compensation cost	—	—	2,513	—	—	—	—	2,513	—	2,513
Restricted stock expense	(7,820)	—	178	—	—	—	—	178	—	178
Stock options exercised	82,430	1	696	—	—	—	—	697	—	697
Issuance of warrants, net	—	—	1,202	—	—	—	—	1,202	—	1,202
Net loss	—	—	—	(36,806)	—	—	—	(36,806)	(462)	(37,268)
Other comprehensive income, net of tax	—	—	—	—	37	—	—	37	—	37
Balance at September 30, 2020 (unaudited)	94,959,662	$ 95	$ 898,250	$ (664,151)	$ (1,030)	(1,672,920)	$ (7,406)	$ 225,758	$ (13,523)	$ 212,235

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

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

	Nine Months Ended September 30,	
	2020	2019
Cash flows from operating activities:		
Net loss	$ (98,037)	$ (103,122)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	3,207	2,808
Stock-based compensation expense	8,005	7,223
Amortization of debt discount	1,185	770
Loss on disposal of assets and impairment charges	222	224
Loss on extinguishment of debt	10,278	—
Deferred income taxes	53	486
Changes in operating assets and liabilities:		
Receivables, net	(26,304)	(4,217)
Prepaid expenses and other assets	11,017	(17,086)
Inventories	3,025	336
Accounts payable and accrued expenses	(9,739)	38,458
Net cash used in operating activities	(97,088)	(74,120)
Cash flows from investing activities:		
Purchase of property and equipment	(6,710)	(8,513)
Payments for licenses	(83)	(4,175)
Purchases of short-term investments	(97,956)	(57,014)
Sales and maturities of short-term investments	46,345	72,290
Net cash (used in) provided by investing activities	(58,404)	2,588
Cash flows from financing activities:		
Proceeds from sale of stock	126,769	100,373
Proceeds from issuance of debt	119,897	6,464
Proceeds from issuance of warrants	7,039	—
Costs incurred related to the sale of stock	(7,590)	(54)
Costs incurred related to the issuance of debt and warrants	(7,187)	—
Proceeds from exercise of stock options	1,165	1,404
Investment from non-controlling interest	198	—
Deposits for long-term debt	(648)	—
Repayment of finance lease obligations and long-term debt	(54,315)	(136)
Net cash provided by financing activities	185,328	108,051
Net increase in cash, cash equivalents, and restricted cash	29,836	36,519
Cash, cash equivalents, and restricted cash, beginning of period	127,674	49,794
Effect of exchange rate changes on cash, cash equivalents, and restricted cash	(201)	592
Cash, cash equivalents, and restricted cash, end of period (See Note 3)	$ 157,309	$ 86,905
Supplemental cash flow disclosures		
Interest paid	$ 3,081	$ 4,415
Non-cash investing and financing activities:		
Accrued purchases of property and equipment	$ 948	$ 1,106
Accrued purchases of licenses	$ 2,500	$ —
Equipment purchased with capital lease obligation	$ 581	$ —
Accrued cost of debt issuance	$ 1,425	$ —
Accrued cost of stock offering	$ 280	$ —
ROU assets derecognized from modification of operating lease obligations	$ (468)	$ —

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

1. Company and Nature of Business

Organization and Description of Business

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

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

Public Offering of Stock

In September 2020, the Company completed an underwritten follow-on public offering in which it sold 11,500,000 shares of its common stock, including 1,500,000 shares of common stock pursuant to underwriters' option to purchase additional shares, at a public offering price of $11.00 per share and received net proceeds of $118.7 million, after deducting underwriting discounts and commissions and offering expenses of $7.9 million.

Revenue Interest Financing Agreement and Detachable Warrants

On August 4, 2020, the Company entered into a Revenue Interest Financing Agreement with Sagard Healthcare Royalty Partners, LP ("Sagard"), pursuant to which Sagard agreed to pay the Company $50.0 million (the "Product Payment") to provide funding for the Company's development and commercialization of oral paclitaxel and encequidar ("Oral Paclitaxel") upon receipt of marketing authorization for Oral Paclitaxel by the U.S. Food and Drug Administration (FDA) for the treatment of metastatic breast cancer. In exchange for the Product Payment, the Company agreed to make payments to Sagard (the "Payments") equal to 5.0% of its world-wide net sales of Oral Paclitaxel, subject to a hard cap equal to the lesser of 170% of the Product Payment and the Put/Call Price set forth in the Revenue Interest Financing Agreement (the "Hard Cap"). The Company is required to make certain additional payments to Sagard to the extent Sagard has not received Payments equaling at least $20.0 million by September 30, 2024 and at least $50.0 million by August 4, 2026, in the amount of the applicable shortfall, and, subject to the Hard Cap, if Sagard has not received Payments equaling at least $85.0 million by the tenth anniversary of the date the Product Payment is funded, in an amount such that Sagard will have obtained a 6.0% internal rate of return on the Product Payment.

Sagard and its co-investors OPB SHRP Co-Invest Credit Limited and SIMCOE SHRP Co-Invest Credit Ltd. (the "IMCO Investors") also acquired by assignment (the "Assignment") term loans and commitments equal to $50.0 million under the Senior Credit Agreement, as further discussed below. In connection with the Assignment, the Company granted warrants to Sagard and the IMCO Investors to purchase up to an aggregate of 201,865 shares of its common stock at a purchase price of $12.63 per share (the "Sagard Warrants"). As a result of the issuance of the additional warrants, the Company evaluated the debt modification in accordance with ASC 470 and concluded that the assigned debt qualified for a partial debt extinguishment of the existing Senior Secured Credit Agreement with Oaktree. Therefore, the Company recorded a loss on partial extinguishment of debt in the amount of $3.0 million for the three months ended September 30, 2020.

Senior Secured Loan Agreement and Detachable Warrants

On June 19, 2020, the Company entered into a senior secured loan agreement and related security agreements (the "Senior Credit Agreement") with Oaktree Fund Administration, LLC as administrative agent, and the lenders party thereto (collectively "Oaktree") to borrow up to $225.0 million in five tranches with a maturity date of June 19, 2026, bearing interest at a fixed annual rate of 11.0%. The first tranche of $100.0 million was drawn by the Company prior to June 30, 2020, with the proceeds used in part to repay in full the outstanding loan and fees under the credit agreement with Perceptive Advisors LLC and its affiliates ("Perceptive").

The second tranche of $25.0 million was drawn by the Company prior to September 30, 2020. Additional debt tranches of $100.0 million in aggregate are available subject to the Company's achievement of certain regulatory and commercial milestones. The Company is required to make quarterly interest-only payments until June 19, 2022, after which the Company is required to make quarterly amortizing payments, with the remaining balance of the principal plus accrued and unpaid interest due at maturity.

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

Significant Risks and Uncertainties

The Company has incurred operating losses since its inception and, as a result, as of September 30, 2020 and December 31, 2019 had an accumulated deficit of $664.2 million and $567.5 million, respectively. In September 2020, the Company successfully raised $118.7 million through public offering of its shares, thus alleviated the substantial doubt about the Company's ability to continue as a going concern as of June 30, 2020. As of September 30, 2020, the Company had cash and cash equivalents of $143.6 million, restricted cash of $13.8 million, and short-term investments of $84.8 million. The Company believes that the existing cash and cash equivalents, restricted cash, and short-term investments will fund operations into the second quarter of 2022. This cash runway does not reflect additional funding available to the Company through its existing Senior Credit Agreement with Oaktree, as administrative agent, or the Revenue Interest Financing Agreement with Sagard. Achieving prescribed funding milestones within such arrangements would extend the Company's anticipated cash runway into 2023. The Company has based these estimates on assumptions that may prove to be wrong, and it could spend the available financial resources much faster than expected and need to raise additional funds sooner than anticipated. Operations have been funded primarily through the sale of common stock, senior secured loans, and to a lesser extent, from convertible bond financing, revenue, and grant funding. Although the Company plans to raise additional funds or access additional funding via the Senior Credit Agreement and Revenue Interest Financing, these plans are subject to market conditions which are outside of its control and based on the satisfaction of future milestone funding conditions, and therefore cannot be deemed to be probable.

The Senior Credit Agreement contains various affirmative, negative, and financial covenants customary to agreements of this type. A breach of any of these covenants could result in a default. If a default under the Senior Credit Agreement is not cured or waived, the default could result in the acceleration of debt, which could require the Company to repay the outstanding debt in full prior to the date it is otherwise due together with exit fees and any applicable prepayment fees. If the Company defaults, the lenders may seek repayment through the Company's subsidiary guarantors or by executing on the security interest granted pursuant to the Senior Credit Agreement. The Company was in compliance with all applicable covenants as of September 30, 2020.

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

2. Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

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

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

Use of Estimates

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

Credit Losses

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

To determine the provision for credit losses for accounts receivable, the Company has disaggregated its accounts receivable by class of customer, as the Company determined that risk profile of its customers is consistent based on the type and industry in which they operate. These customer classes include pharmaceutical wholesalers for specialty product sales, drug manufacturers for active pharmaceutical ingredient (API) sales, and hospitals and end-users for 503B sales. Each class of customer is analyzed for estimated credit losses individually. In doing so, the Company establishes a historical loss matrix, based on the previous collections of accounts receivable by the age of such receivables, and evaluates the current and forecasted financial position of its customers, as available. Further, the Company considers macroeconomic factors and the status of the pharmaceutical industry, including unemployment rates, industry indices, and other factors, to estimate if there are current expected credit losses within its trade receivables based on the trends and the Company's expectation of the future status of such economic and industry-specific factors. The Company believes that its customers, the majority of which are in the pharmaceutical industries with sound financial condition, and therefore, the Company's evaluation of macroeconomic and industry-specific factors did not have a significant impact on the provision for credit losses. As of September 30, 2020, the Company recorded a provision for credit losses of $1.0 million for accounts receivable related to the customer classes of pharmaceutical wholesalers, drug manufacturers, and hospitals and end users.

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

Concentration of Credit Risk, Other Risks and Uncertainties

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

Recent Adopted Accounting Pronouncements

In June 2016, the Financial Accounting Standards Board issued ASU No. 2016-13, "*Measurement of Credit Losses on Financial Instruments"* to improve reporting requirements specific to loans, receivables, and other financial instruments. The new standard requires that credit losses on financial assets, including trade receivables and held-to-maturity debt securities, measured at amortized cost be determined using an expected loss model, instead of the current incurred loss model. In addition, ASC 326 requires that credit losses related to available-for-sale debt securities be recorded through an allowance for credit losses if the Company does not intend to

sell or believes that it is more likely than not they will be required to sell, and limited to the amount by which carrying value exceeds fair value. The new standard also requires enhanced disclosure of credit risk associated with financial assets.

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

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

3. Restricted Cash

The Company has a restricted cash balance of $13.8 million as of September 30, 2020 held in a controlled bank account in connection with the Senior Credit Agreement, which requires the Company to maintain, in a debt service reserve account, a minimum cash balance equal to twelve months of interest on the outstanding loans under the Senior Credit Agreement.

4. Inventories

Inventories consist of the following (in thousands):

	September 30, 2020	December 31, 2019
Raw materials and purchased parts	$ 5,174	$ 4,176
Work in progress	203	1,870
Finished goods	24,228	26,584
Total inventories	$ 29,605	$ 32,630

5. Intangible Assets, net

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

	September 30, 2020			
	Cost/Fair Value	Accumulated Amortization	Impairments	Net
Amortizable intangible assets:				
Licenses	$ 11,518	$ 4,757	$ —	$ 6,761
Polymed customer list	1,593	1,355	—	238
Polymed technology	3,712	1,547	—	2,165
Indefinite-lived intangible assets:				
CDE in-process research and development (IPR&D)	723	—	—	723
Effect of currency translation adjustment	(331)	—	—	(331)
Total intangible assets, net	$ 17,215	$ 7,659	$ —	$ 9,556

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

As of September 30, 2020, licenses at cost include an Orascovery license of $0.4 million, licenses purchased from Gland Pharma Limited ("Gland") of $4.4 million, a license purchased from MAIA Pharmaceuticals, Inc. ("MAIA") for $4.0 million, a license purchased from Ingenus Pharmaceuticals, LLC ("Ingenus") for $2.0 million, and licenses of other specialty products of $0.7 million. The Orascovery license with Hanmi Pharmaceuticals Co. Ltd. ("Hanmi") was purchased directly from Hanmi and is being amortized on a straight-line basis over a period of 12.75 years, the remaining life of the license agreement at the time of purchase. The licenses purchased from Gland are being amortized on a straight-line basis over a period of 5 years, the remaining life of the license agreement at the time of purchase. The license purchased from MAIA is being amortized over a period of 7 years, the remaining life of the license agreement at the time of purchase. The license purchased from Ingenus is being amortized over a period of 5 years, the estimated useful life of the license agreement.

The remaining intangible assets were acquired in connection with the acquisitions of Polymed Therapeutics, Inc. ("Polymed") and Comprehensive Drug Enterprises ("CDE"). Intangible assets are amortized using an economic consumption model over their useful lives. The Polymed customer list and technology are amortized on a straight-line basis over 6 and 12 years, respectively. The CDE in-process research and development, ("IPR&D"), will not be amortized until the related projects are completed. IPR&D is tested annually for impairment, unless conditions exist causing an earlier impairment test (e.g., abandonment of project). The Company recorded no impairments of IPR&D during the nine months ended September 30, 2020. The weighted-average useful life for all intangible assets was 7.37 years as of September 30, 2020.

The Company recorded $0.5 million of amortization expense for both the three-month periods ended September 30, 2020 and 2019, and $1.4 million of amortization expense for both the nine-month periods ended September 30, 2020 and 2019.

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

6. Fair Value Measurements

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

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

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

Level 2—Inputs to the valuation methodology include:

- Quoted prices for similar assets or liabilities in active markets;
- Quoted prices for identical or similar assets or liabilities in inactive markets;

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

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

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

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

	Fair Value Measurements at September 30, 2020 Using:			
	Total	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Financial assets included within cash and cash equivalents				
Money market funds	$ 5,860	$ 5,860	$ —	$ —
Short-term investments - certificates of deposit	14,198	—	14,198	—
Short-term investments - commercial paper	87,088	—	87,088	—
Financial assets included within short-term investments				
Short-term investments - certificates of deposit	10,560	—	10,560	—
Short-term investments - U.S. government bonds	9,996	—	9,996	—
Short-term investments - commercial paper	63,959	—	63,959	—
Available-for-sale investment	235	235	—	—
Total assets	$ 191,897	$ 6,095	$ 185,802	$ —

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

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

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

7. Acquisitions and Business Combinations

CIDAL

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

The operating results of CIDAL have been included within the Company's Oncology Innovation Platform operating segment from the closing date of the acquisition. CIDAL incurred a net loss of $1.0 million for the three months ended September 30, 2020 and added $0 of revenue and incurred a net loss of $3.0 million for the nine months ended September 30, 2020. During the nine months ended September 30, 2020, CIDAL achieved four of its six clinical milestones associated with the contingent equity consideration from the acquisition. The Company had issued 22,598 shares of its common stock to CIDAL during the nine months ended September 30, 2020.

8. Accrued Expenses

Accrued expenses consist of the following (in thousands):

	September 30, 2020	December 31, 2019
Accrued wages and benefits	$ 12,219	$ 7,541
Accrued construction costs	9,001	22,811
Accrued selling fees and rebates	7,357	1,577
Accrued inventory purchases	3,465	7,194
Accrued costs for product launch	3,312	—
Accrued operating expenses	3,155	1,885
Accrued clinical expenses	3,071	2,510
Accrued tax withholdings	2,814	187
Accrued licensing fees	2,384	384
Deferred revenue	328	218
Total accrued expenses	$ 47,106	$ 44,307

The accrued construction costs relate to the building of the manufacturing facility in Dunkirk, NY. This amount, plus an additional $0.4 million paid by the Company is expected to be funded by New York State. Therefore, $9.4 million is recorded within prepaid expenses and other current assets on the Company's condensed consolidated balance sheet as of September 30, 2020.

9. Income Taxes

The Company did not record a provision for U.S. federal income taxes for the nine months ended September 30, 2020 because it expects to generate a loss for the year ending December 31, 2020 and the Company's net deferred tax assets continue to be fully offset by a valuation allowance. Tax expense to date is the result of tax withheld or to be withheld in China and Taiwan, in the amount of $3.9 million, on milestone payments in connection with various out-license agreements and recording a deferred tax liability, in the amount of $0.1 million, against indefinite lived intangible assets.

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

10. Debt and Lease Obligations

Debt

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

	September 30, 2020	December 31, 2019
Current portion of mortgage	$ 702	$ 686
Current portion of bank loan	734	—
Current portion of senior secured loan	70	—
Current portion of finance and capital lease obligations	368	194
Current portion of operating lease obligations	2,703	3,010
Long-term portion of finance and capital lease obligations	439	227
Long-term portion of operating lease obligations	6,431	7,620
Chongqing Maliu Credit Agreement	7,125	5,731
Senior secured loan, net of debt discount and financing fees of $10,824 and $3,592, respectively	114,176	46,408
Total	$ 132,748	$ 63,876

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

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

During the second quarter of 2019, the Company entered into a credit agreement which amended the existing partnership agreement with Chongqing Maliu Riverside Development and Investment Co., LTD ("CQ"), for a Renminbi ¥50.0 million (USD $7.3 million at September 30, 2020) line of credit to be used for the construction of the new API plant in China. The Company is required to repay the principal amount with accrued interest within three years after the plant receives the U.S. Current Good Manufacturing Practices ("cGMP") certification, with 20% of the total loan with accrued interest due within the first twelve months following receiving the certification, 30% of the total loan with accrued interest due within twenty-four months, and the remaining balance with accrued interest due within thirty-six months. Interest accrues at the three-year loan interest rate by the People's Bank of China for the same period on the date of the deposit of the full loan amount. If the Company fails to obtain the cGMP certification within three years upon the acceptance of the plant, it shall return all renovation costs with the accrued interest to CQ in a single transaction within the first ten business days. The Company draws on this debt as needed and received $0.5 million during the nine months ended September 30, 2020. As of September 30, 2020, the balance due to CQ was $7.1 million.

On May 15, 2020, the Company entered into a credit agreement with China Merchants Bank, enabling the Company to draw up to a Renminbi ¥5.0 million (USD $0.7 million at September 30, 2020) during the period through May 14, 2021. The Company drew the entire available credit in July 2020. This loan has a maturity date of May 14, 2021 and bears interest at a fixed rate of 4.35% annually. The Company is required to make interest and principal payment at maturity.

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

On June 19, 2020 ("Closing Date"), the Company entered into the Senior Credit Agreement to borrow up to $225.0 million in five tranches, with a maturity date of June 19, 2026. The first tranche ("Tranche A") of term loans with an aggregate principal amount of $100.0 million and the second tranche of $25.0 million ("Tranche B") were drawn by the Company as of September 30, 2020. A portion of the proceeds of the first tranche was used to repay in full the existing senior secured loan with Perceptive, including related prepayment fees, unpaid interest, and legal fees. The third tranche of $25.0 million ("Tranche C"), and the fourth tranche of $25.0 million ("Tranche D") will be available to the Company from 90 days after the Closing Date through June 20, 2022, subject to the Company's satisfaction of certain regulatory and commercial milestones; and the fifth tranche of $50.0 million ("Tranche E") will be available to the Company from 90 days after the Closing Date through June 19, 2023, also subject to the Company's satisfaction of certain regulatory and commercial milestones. The loan bears interest at a fixed annual rate of 11.0%. The Company is required to make quarterly interest-only payments until June 19, 2022, after which the Company is required to make quarterly amortizing payments, with the remaining balance of the principal plus accrued and unpaid interest due at maturity. Beginning on September 17, 2020, the Company was required to pay a commitment fee on any undrawn commitments equal to 0.6% per annum, payable on each subsequent funding date or the commitment termination date. Prepayments of the loan, in whole or in part, will be subject to early

prepayment fee which declines each year until the fourth anniversary date of the Closing Date, after which no prepayment fee is required. Upon the final payment, the Company must also pay an exit fee calculated based on a percentage of the aggregate principal amount of all tranches advanced to the Company, and as of September 30, 2020, the Company has reflected a long-term exit fee liability of $2.0 million within long-term debt and finance lease obligations on the unaudited condensed consolidated balance sheet.

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

On August 4, 2020, the Company entered into a Revenue Interest Financing Agreement with Sagard, pursuant to which Sagard agreed to pay the Company $50.0 million to provide funding for the Company's development and commercialization of Oral Paclitaxel upon receipt of marketing authorization for Oral Paclitaxel by the U.S. FDA for the treatment of metastatic breast cancer. In exchange for the Product Payment, the Company agreed to make payments to Sagard equal to 5.0% of its world-wide net sales of Oral Paclitaxel, subject to a hard cap equal to the lesser of 170% of the Product Payment and the Put/Call Price as discussed below and further set forth in the Revenue Interest Financing Agreement. The Company is required to make certain additional payments to Sagard to the extent Sagard has not received Payments equaling at least $20.0 million by September 30, 2024 and at least $50.0 million by August 4, 2026, in the amount of the applicable shortfall, and, subject to the Hard Cap, if Sagard has not received Payments equaling at least $85.0 million by the tenth anniversary of the date the Product Payment is funded, in an amount such that Sagard will have obtained a 6.0% internal rate of return on the Product Payment.

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

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

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

The Company has evaluated the terms of the Revenue Interest Financing Agreement and concluded that the features of the Product Payment are similar to those of a debt instrument. Accordingly, the Company will account for the transaction as long-term debt. In connection with the debt, the Company granted warrants to Sagard and the IMCO Investors to purchase up to 201,865 shares of its common stock at a purchase price of $12.63 per share. As a result of the issuance of the additional warrants, the Company evaluated the debt modification in accordance with ASC 470 and concluded that the assigned debt qualified for a partial debt extinguishment of the existing Senior Secured Credit Agreement with Oaktree. Therefore, the Company recorded a loss on partial extinguishment of debt in the amount of $3.0 million for the three months ended September 30, 2020. The Company will subsequently measure the transaction pursuant to ASC 835 using the effective interest rate method. The Company has elected to apply the prospective method to address changes in the estimated cash flows.

Lease Obligations

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Operating lease cost	774	$ 793	2,300	$ 2,365
Finance lease cost:				
Amortization of assets	66	21	164	46
Interest on lease liabilities	20	7	46	24
Total net lease cost	$ 860	$ 821	$ 2,510	$ 2,435

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

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

	September 30, 2020
Finance leases:	
Property and equipment, at cost	$ 1,270
Accumulated amortization, net	(273)
Property and equipment, net	$ 997
Current obligations of finance leases	$ 368
Long-term portion of finance leases	439
Total finance lease obligations	$ 807
Weighted average remaining lease term (in years):	
Operating leases	4.70
Finance leases	3.08
Weighted average discount rate:	
Operating leases	12.9%
Finance leases	9.7%

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

	Nine Months Ended September 30, 2020
Cash paid for amount included in the measurements of lease liabilities:	
Operating cash flows from operating leases	$ (2,419)
Operating cash flows from finance leases	(46)
Financing cash flows from finance leases	(195)
ROU assets derecognized from modification of operating lease obligations	(468)
ROU assets recognized in exchange for operating lease obligations	$ -

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

Year ending December 31:	Operating Leases	Finance Leases
2020 (remaining three months)	$ 706	$ 98
2021	2,901	394
2022	2,622	187
2023	2,096	152
2024	2,002	114
Thereafter	1,950	—
Total lease payments	12,277	945
Less: Imputed interest	(3,143)	(138)
Total lease obligations	9,134	807
Less: Current obligations	(2,703)	(368)
Long-term lease obligations	$ 6,431	$ 439

Pursuant to the public-private partnership agreements with the State of New York and CQ, the Company will rent the manufacturing facilities in Dunkirk, NY and Chongqing, China, respectively. Both facilities are in the final stage of completion. However, neither lease term had commenced as of September 30, 2020, as neither of the facilities were operational and the Company could not direct the use of the facilities. No lease costs were incurred related to the manufacturing facilities during the nine-month period ended September 30, 2020.

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

11. Related Party Transactions

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

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

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

b. The Company earns licensing revenue from PharmaEssentia, an entity in which the Company has an investment classified as available-for-sale (see Note 6—*Fair Value Measurements*). During the three months ended September 30,2020, the Company recorded $1.0 million milestone fee earned. Funds paid to PharmaEssentia under the license and cost-sharing agreements amounted to $0.1 million and $0.2 million for the three months ended September 30, 2020 and 2019, respectively, and $0.4 million and $0.2 million for the nine months ended September 30, 2020, and 2019, respectively.

In September 2020, Axis Therapeutics ("Axis"), a majority-owned subsidiary of the Company, entered into a collaboration agreement with PharmaEssentia, pursuant to which Axis granted to PharmaEssensia an exclusive, non-transferrable and revocable sublicense of TCR-engineered T Cell therapy for the development of the technology in Taiwan.

c. The Company receives certain clinical development services from ZenRx Limited and its affiliate (collectively, "ZenRx"), a company for which one of the Company's executive officers serves on the board of directors. In connection with such services, the Company made payments to ZenRx of $0 and $1.8 million for the three months ended September 30, 2020 and 2019, respectively, and $0.6 million and $2.4 million for the nine months ended September 30, 2020 and 2019, respectively. In April 2013, the Company entered into a license agreement with ZenRx pursuant to which the Company granted an exclusive, sublicensable license to use certain of the Company's IP to develop and commercialize oral irinotecan and encequidar ("Oral Irinotecan"), and Oral Paclitaxel in Australia and New Zealand, and a non-exclusive license to manufacture a certain compound, but only for use in Oral Irinotecan and Oral Paclitaxel. ZenRx is responsible for all development, manufacturing and commercialization, and the related costs and expenses, of any product candidates resulting from the agreement. No revenue was earned from this license agreement in the periods presented in these consolidated financial statements.

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

12. Stock-Based Compensation

Common Stock Option Plans

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

Stock Options

The total fair value of stock options vested and recorded as compensation expense during the three months ended September 30, 2020 and 2019, and nine months ended September 30, 2020 and 2019 was $2.5 million, $2.0 million, $7.0 million, and $5.8 million, respectively. As of September 30, 2020, $14.8 million of unrecognized cost related to non-vested stock options was expected to be recognized over a weighted-average period of approximately 1.72 years. The total intrinsic value of options exercised was approximately $1.1 million and $1.8 million for the nine months ended September 30, 2020 and 2019, respectively.

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

	Stock Options	Weighted-Average Exercise price	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding at December 31, 2019	10,916,936	$ 8.88	5.68	$ 69,785
Granted	1,941,222	11.46	—	—
Exercised	(165,130)	7.00	—	—
Forfeited and expired	(105,940)	13.82	—	—
Outstanding at September 30, 2020	12,587,088	$ 9.26	5.67	$ 35,768
Vested and exercisable at September 30, 2020	9,102,047	$ 7.87	4.50	$ 38,485

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

	Nine Months Ended September 30,	
	2020	2019
Weighted average grant date fair value	$ 6.93	$ 8.04
Expected dividend yield	—%	—%
Expected stock price volatility	67%	64%
Risk-free interest rate	0.92%	2.61%
Expected life of options (in years)	6.2	6.3

Restricted Stock Awards

The Company granted 131,000 restricted stock awards to employees during 2019. No restricted stock awards were granted during the nine months ended September 30, 2020. Stock-based compensation related to the restricted stock awards amounted to $0.2 million for the three months ended September 30, 2020 and $1.0 million for the nine months ended September 30, 2020. Stock-based compensation related to the restricted stock awards amounted to $0.1 million for the three and nine months ended September 30, 2019. As of September 30, 2020, $0.3 million of unrecognized cost related to non-vested restricted stock awards were expected to be recognized over a weighted-average period of approximately 1.5 years.

Employee Stock Purchase Plan

The ESPP is available to eligible employees (as defined in the plan document). Under the ESPP, shares of the Company's common stock may be purchased at a discount (15%) of the lesser of the closing price of the Company's common stock on the first trading or the last trading day of the offering period. The current offering period extends from June 1, 2020 to November 30, 2020. The Company expects to offer six-month offering periods after the current period. The ESPP reserved 1,000,000 shares of common stock for issuance under the ESPP. Stock-based compensation related to the ESPP amounted to $0.1 million for each of the three months ended September 30, 2020 and 2019, and $0.3 million and $0.2 million for the nine months ended September 30, 2020 and 2019, respectively.

Stock-Based Compensation Cost

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Stock options	$ 2,513	$ 2,008	$ 7,017	$ 5,808
Restricted stock expense	178	140	988	140
Stock grants to officers and employees	—	—	—	1,105
Employee stock purchase plan	169	82	239	250
Total stock-based compensation expense	$ 2,860	$ 2,230	$ 8,244	$ 7,303
Cost of sales	$ 64	$ 62	$ 173	$ 189
Research and development expenses	934	746	2,892	2,251
Selling, general, and administrative expenses	1,862	1,422	5,179	4,863
Total stock-based compensation expense	$ 2,860	$ 2,230	$ 8,244	$ 7,303

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

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

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Stock options and other common stock equivalents	13,039,431	11,634,810	12,400,738	11,004,831
Unvested restricted shares	50,750	49,457	76,750	16,667
Total potential dilutive shares	13,090,181	11,684,267	12,477,488	11,021,498

14. Business Segment, Geographic, and Concentration Risk Information

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

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

Global Supply Chain Platform— This operating segment includes APS and Polymed and the construction of the manufacturing facilities in Chongqing, China and Dunkirk, NY. APS is a manufacturing company that supplies sterile injectable drugs to hospital pharmacies across the United States. APS manufactures products under Section 503B of the Compounding Quality Act within the Federal Food, Drug & Cosmetic Act ("FDCA"). Additionally, APS provides products for the development and manufacturing of the Company's proprietary drug candidates as well as providing the Company with a cGMP analytical services function. Polymed is primarily in the business of marketing and selling API in North America, Europe, and Asia from its locations in Texas and China. Polymed also develops new compounds and processing techniques and is in the final phase of completion of the new API manufacturing facility in Chongqing, China. The 440,000-square-foot facility is expected to commence operations in the fourth quarter of 2020. The Company has an existing API manufacturing facility in Chongqing, China, where operations were suspended as a result of the COVID-19 outbreak in China but resumed producing API primarily for internal use in March 2020 in accordance with local regulatory guidance.

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

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

Segment information is as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Total revenue:				
Oncology Innovation Platform	$ 10,440	$ 115	$ 38,832	$ 421
Global Supply Chain Platform	3,808	7,969	12,505	30,714
Commercial Platform	21,729	12,006	73,484	38,279
Total revenue for reportable segments	35,977	20,090	124,821	69,414
Intersegment revenue	(501)	(726)	(2,238)	(2,546)
Total consolidated revenue	$ 35,476	$ 19,364	$ 122,583	$ 66,868

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Total revenue by product group:				
Commercial product sales	$ 24,484	$ 15,497	$ 80,868	$ 53,743
License fees	10,434	—	38,815	—
API sales	296	3,647	2,547	12,308
Contract manufacturing revenue	—	93	79	382
Other revenue	262	127	274	435
Total consolidated revenue	$ 35,476	$ 19,364	$ 122,583	$ 66,868

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Net loss attributable to Athenex, Inc.:				
Oncology Innovation Platform	$ (21,024)	$ (29,732)	$ (57,006)	$ (87,127)
Global Supply Chain Platform	(5,249)	(3,376)	(16,980)	(3,829)
Commercial Platform	(10,533)	(1,650)	(22,700)	(11,066)
Total consolidated net loss attributable to Athenex, Inc.	$ (36,806)	$ (34,758)	$ (96,686)	$ (102,022)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Total depreciation and amortization:				
Oncology Innovation Platform	$ 201	$ 227	$ 565	$ 626
Global Supply Chain Platform	469	376	1,391	1,012
Commercial Platform	416	398	1,251	1,170
Total consolidated depreciation and amortization	$ 1,086	$ 1,001	$ 3,207	$ 2,808

	September 30, 2020	December 31, 2019
Total assets:		
Oncology Innovation Platform	$ 248,963	$ 194,183
Global Supply Chain Platform	105,506	63,598
Commercial Platform	55,171	52,151
Total consolidated assets	$ 409,640	$ 309,932

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Total revenue:				
United States	$ 18,123	$ 15,624	$ 61,646	$ 54,119
China	10,963	563	39,601	1,837
United Kingdom	6,357	—	19,289	1,023
South Korea	—	513	1,693	513
Austria	—	476	33	4,423
India	—	1,684	—	3,066
Germany	—	398	—	602
Other foreign countries	33	106	321	1,285
Total consolidated revenue	$ 35,476	$ 19,364	$ 122,583	$ 66,868

	September 30, 2020	December 31, 2019
Total property and equipment, net:		
United States	$ 16,798	$ 11,486
China	12,069	11,667
Total consolidated property and equipment, net	$ 28,867	$ 23,153

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Percentage of total revenue by customer:				
Customer A	27%	0%	31%	0%
Customer B	18%	0%	16%	0%
Customer C	15%	22%	9%	17%
Customer D	12%	17%	8%	20%
Customer E	8%	17%	5%	16%

	September 30, 2020	December 31, 2019
Percentage of total accounts receivable by customer:		
Customer A	22%	0%
Customer B	19%	0%
Customer C	12%	45%
Customer D	10%	31%
Customer E	3%	10%

15. Revenue Recognition

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

1. Oncology Innovation Platform

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

The Company's contracts may contain one or multiple promises, including the license of IP and development services. The licensed IP is capable of being distinct from the other performance obligations identified in the contract and is distinct within the context of the contract, as upon transfer of the IP, the customer is able to use and benefit from it, and the customer could obtain the development services from other parties. The Company also considers the economic and regulatory characteristics of the licensed IP and other promises in the contract to determine if it is a distinct performance obligation. The Company considers if the IP is modified or enhanced by other performance obligations through the life of the agreement and whether the customer is contractually or practically required to use updated IP. The IP licensed by the Company has been determined to be functional IP. The IP is not modified during the license period and therefore, the Company recognizes revenues from any portion of the transaction price allocated to the licensed IP when the license is transferred to the customer and they can benefit from the right to use the IP. For the nine-month period ended September 30, 2020, the Company recognized revenue of $37.7 million, net of $2.3 million value added tax ("VAT") collected on behalf of the counterparty, upon transferring certain IP to the customer. The Company recognized $9.4 million in license revenue, net of $0.6 million value added tax ("VAT"), and $1.0 million in license revenue from two of the Company's out-license arrangements for the three months ended September 30, 2020. No license revenue was recognized for the same three and nine-month periods ended September 30, 2019.

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

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

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

2. Global Supply Chain Platform

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

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

3. Commercial Platform

The Company's Commercial Platform generates revenue by distributing specialty products through independent pharmaceutical wholesalers. The wholesalers then sell to an end-user, normally a hospital, alternative healthcare facility, or an independent pharmacy, at a lower price previously established by the end-user and the Company. Upon the sale by the wholesaler to the end-user, the wholesaler will chargeback the difference, if any, between the original list price and price at which the product was sold to the end-user. The Company also offers cash discounts, which approximate 2.3% of the gross sales price, as an incentive for prompt customer payment, and, consistent with industry practice, the Company's return policy permits customers to return products within a window of time before and after the expiration of product dating. Further, the Company offers contractual allowances, generally in the form of rebates or administrative fees, to certain wholesale customers, group purchasing organizations ("GPOs"), and end-user customers, consistent with pharmaceutical industry practices. Revenues are recorded net of provisions for variable consideration, including discounts, rebates, GPO allowances, price adjustments, returns, chargebacks, promotional programs and other sales allowances. Accruals for these provisions are presented in the consolidated financial statements as reductions in determining net sales and as a contra asset in accounts receivable, net (if settled via credit) and other current liabilities (if paid in cash). As of September 30, 2020, and December 31, 2019, the Company's total provision for chargebacks and other deductions included as a reduction of accounts receivable totaled $13.5 million and $14.4 million, respectively. The Company's total provision for chargebacks and other revenue deductions was $21.3 million, and $20.4 million for the three months ended September 30, 2020, and 2019, respectively, and $66.4 million, and $59.8 million for the nine months ended September 30, 2020.

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

Disaggregation of revenue

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

	For the Three Months Ended September 30, 2020 (In Thousands)			
	Oncology Innovation Platform	Global Supply Chain Platform	Commercial Platform	Consolidated Total
United States	$ —	$ 2,751	$ 15,372	$ 18,123
China	10,440	523	—	10,963
United Kingdom	—	—	6,357	6,357
Other foreign countries	—	33	—	33
Total revenue	$ 10,440	$ 3,307	$ 21,729	$ 35,476

	For the Three Months Ended September 30, 2019 (In Thousands)			
	Oncology Innovation Platform	Global Supply Chain Platform	Commercial Platform	Consolidated Total
United States	$ —	$ 3,618	$ 12,006	$ 15,624
India	—	1,684	—	1,684
China	115	448	—	563
South Korea	—	513	—	513
Austria	—	476	—	476
Germany	—	398	—	398
Other foreign countries	—	106	—	106
Total revenue	$ 115	$ 7,243	$ 12,006	$ 19,364

	For the Nine Months Ended September 30, 2020 (In Thousands)			
	Oncology Innovation Platform	Global Supply Chain Platform	Commercial Platform	Consolidated Total
United States	$ —	$ 7,451	$ 54,195	$ 61,646
China	38,753	848	—	39,601
United Kingdom	—	—	19,289	19,289
South Korea	—	1,693	—	1,693
Other foreign countries	79	275	—	354
Total revenue	$ 38,832	$ 10,267	$ 73,484	$ 122,583

	For the Nine Months Ended September 30, 2019 (In Thousands)			
	Oncology Innovation Platform	Global Supply Chain Platform	Commercial Platform	Consolidated Total
United States	$ —	$ 15,840	$ 38,279	$ 54,119
Austria	—	4,423	—	4,423
India	—	3,066	—	3,066
China	421	1,416	—	1,837
United Kingdom	—	1,023	—	1,023
Germany	—	602	—	602
South Korea	—	513	—	513
Other foreign countries	—	1,285	—	1,285
Total revenue	$ 421	$ 28,168	$ 38,279	$ 66,868

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

Contract balances

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

	September 30, 2020	December 31, 2019
	(In Thousands)	
Accounts receivable, gross	$ 57,452	$ 31,207
Chargebacks and other deductions	(13,500)	(14,394)
Provision for credit losses	(959)	(124)
Accounts receivable, net	$ 42,993	$ 16,689
Deferred revenue	328	218
Total contract liabilities	$ 328	$ 218

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

	September 30, 2020 (In Thousands)			
	Oncology Innovation Platform	Global Supply Chain Platform	Commercial Platform	Consolidated Total
Accounts receivable, gross	$ 22,112	$ 1,432	$ 33,908	$ 57,452
Chargebacks and other deductions	—	(1)	(13,499)	(13,500)
Provision for credit losses	—	(167)	(792)	(959)
Accounts receivable, net	22,112	1,264	19,617	42,993

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

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

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

16. Commitments and Contingencies

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

Year ending December 31:	Minimum payments
2020 (remaining three months)	$ 706
2021	2,901
2022	2,622
2023	2,096
2024	2,002
Thereafter	1,950
	$ 12,277

Legal Proceedings

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

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

The following discussion contains management's discussion and analysis of our financial condition and results of operations and should be read together with the unaudited condensed consolidated financial statements and the notes thereto included in Part I, Item 1 of this Quarterly Report on Form 10-Q and with our audited consolidated financial statements and related notes thereto for the year ended December 31, 2019 included in our Annual Report on Form 10-K for the year ended December 31, 2019. Unless the context indicates otherwise, as used in this Quarterly Report, the terms "Athenex," the "Company," "we," "us," and "our" refer to Athenex, Inc., a Delaware corporation, and its subsidiaries taken as a whole, unless otherwise noted. This discussion and other parts of this Quarterly Report contain forward-looking statements that involve risks and uncertainties, such as our plans, objectives, expectations, intentions and beliefs. Our actual results could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below and those discussed in the section entitled "Risk Factors" included in our Annual Report on Form 10-K for the year ended December 31, 2019 and our Quarterly Report on Form 10-Q for the quarter ended June 30, 2020.

NOTE ABOUT FORWARD-LOOKING STATEMENTS

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

We have based these forward-looking statements largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in the "Risk Factors" section included in our Annual Report on Form 10-K for the year ended December 31, 2019 and our Quarterly Report on Form 10-Q for the quarter ended June 30, 2020. Moreover, we operate in a very competitive and rapidly changing environment, and new risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business. In light of these risks, uncertainties and assumptions, actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

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

Overview and Recent Developments

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

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

Significant developments in our Orascovery platform include the following:

On September 8, 2020, we and Quantum Leap Healthcare Collaborative ("Quantum Leap") jointly announced the launch of two new study arms of the I-SPY 2 TRIAL to evaluate oral paclitaxel and encequidar ("Oral Paclitaxel," formerly known as Oraxol) in combination with GlaxoSmithKline's ("GSK") dostarlimab, an investigational antibody binding PD-1, in the neoadjuvant chemotherapy setting, targeting stage 2/3 HER2+ and HER2- breast cancers. The I-SPY 2 TRIAL, sponsored by Quantum Leap, is a standing Phase 2 randomized, controlled, multicenter platform with a Bayesian adaptive randomization design aimed to rapidly screen and identify promising new treatments in specific subgroups of adults with newly-diagnosed, high-risk (high likelihood of recurrence), locally-advanced breast cancer that is either Stage II or Stage III. GSK will provide dostarlimab. We will provide Oral Paclitaxel. Quantum Leap will be responsible for running the trial.

On September 1, 2020, we announced that the U.S. FDA has accepted for filing our New Drug Application (NDA) for Oral Paclitaxel for the treatment of metastatic breast cancer ("MBC") and has granted the application Priority Review. Under the Prescription Drug User Fee Act (PDUFA), the FDA has set a target action date of February 28, 2021. We had announced topline results in August 2019 for our Phase 3 study of Oral Paclitaxel for the treatment of MBC and presented further data of the Phase 3 study in an oral presentation at the 2019 San Antonio Breast Cancer Symposium in December 2019. Results demonstrated that the study met its primary endpoint showing statistically significant improvement in overall response rate for Oral Paclitaxel compared to intravenous ("IV") paclitaxel and neuropathy was less frequent with Oral Paclitaxel compared to IV paclitaxel. In addition, ongoing analysis of secondary endpoints of survival showed a strong trend favoring Oral Paclitaxel. In particular, Oral Paclitaxel showed a statistically significant improvement in overall survival compared to IV paclitaxel in the prespecified modified intention-to-treat population.

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

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

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

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

- quantitative and qualitative market research, including on health outcomes and qualitative pricing, to understand our customers, patients, and the market;
- examining our competitive landscape;
- developing brand strategy;
- developing key opinion leader relationships;

- attending priority medical virtual conferences to increase awareness of the Company and Oral Paclitaxel;
- creating a market access strategy;
- developing and executing a scientific publication plan;
- developing our patient and patient advocacy strategy;
- completing account, physician and patient segmentation in order to prioritize and target commercial efforts effectively;
- developing our distribution and patient support plans;
- developing our patient adherence to therapy strategy;
- completing our organizational design to determine the overall size of our go-to-market commercial team based on our market opportunity;
- continuing to hire key commercial and medical affairs leadership roles;
- completing a life cycle plan for Oral Paclitaxel; and
- preliminary marketing and launching forecasts.

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

On June 13, 2020, Athenex Oncology, one of our U.S. based divisions, launched Facing MBC Together – a public education and patient support campaign that addresses isolation for people living with MBC. In addition to providing a unique digital resource that enables the provision of practical and emotional support to individuals with MBC, the campaign highlights the stories of nine people of diverse ages and backgrounds who share their insights about the challenges they face, their sources of support, and words of encouragement for others living with this advanced form of breast cancer. On October 9, 2020, Athenex Oncology launched *Your Guide to Facing Metastatic Breast Cancer*, a free, first-of-its-kind resource offering comprehensive lifestyle guidance to people living with MBC.

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

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

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

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

Other Platforms

The other technologies in our Oncology Innovation Platform are our TCR-T immunotherapy technology under which we are advancing TCR affinity-enhancing specific T-cell (TAEST) therapy with our first T cell therapy product, TCRT-ESO-A2, and our Arginine Deprivation therapy technology under which we are advancing PT01, also known as Pegtomarginase.

In September 2020, we announced that the FDA allowed our Investigational New Drug (IND) application for TCRT-ESO-A2, an autologous T cell receptor (TCR)-T cell therapy targeting solid tumors that are NY-ESO-1 positive in HLA-A*02:01 positive patients. TCRT-ESO-A2 is being developed by Axis Therapeutics Limited, a joint venture between Athenex and Xiangxue Life Sciences Limited ("XLifeSc"). TCRT-ESO-A2 is similar to TAEST16001, an autologous cell-based therapy being developed simultaneously by XLifeSc for clinical application in China in that both therapies express the same affinity-enhanced TCR.

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

Recent business updates and *COVID-19 related measures*

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

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

We also put in place a number of measures intended to adjust/allocate resources towards prioritizing key business operations such as clinical and regulatory activities for later-stage product candidates and pre-launch commercial activities, and to delay or defray compensation costs in order to preserve our cash on hand and liquidity during a volatile period in the U.S. and global capital markets.

On March 31, 2020, we entered into a letter agreement with Xiangxue to amend certain provisions of the license agreement entered into with Xiangxue in December 2019 (the "2019 Xiangxue License Agreement"). On June 30, 2020, we entered into a second supplemental agreement to amend certain provisions of the 2019 Xiangxue License Agreement to facilitate our receipt of payment from Xiangxue, providing, among other things, that notwithstanding the provisions of the 2019 Xiangxue License Agreement to the contrary, Xiangxue shall be entitled to make the USD $30 million upfront payment in Chinese Renminbi to Chongqing Taihao Pharmaceutical Co. Ltd. ("Taihao"), our wholly owned subsidiary in China, and we would bear the responsibility for indirect taxes in connection with license payments made under the 2019 Xiangxue License Agreement rather than Xiangxue.

In order to strengthen our short-term liquidity and to ensure financial flexibility, on June 19, 2020, we entered into a senior secured loan agreement and related security agreements Senior Credit Agreement with Oaktree Fund Administration, LLC, as administrative agent, and the lenders party thereto (collectively, "Oaktree") to borrow up to $225.0 million in five tranches with a maturity date of June 19, 2026, bearing interest at a fixed annual rate of 11.0%. The first and second tranches of $125.0 million were funded, with a portion of the upfront loan proceeds being used to repay in full our existing credit facility with Perceptive Advisors LLC and its affiliates ("Perceptive"). Additional debt tranches of $100.0 million in aggregate are available, subject to our achievement of certain regulatory and commercial milestones (see *Liquidity and Capital Resources - Recent Debt Financings - Oaktree Facility*). In connection with our entry into the Senior Credit Agreement, we granted warrants to Oaktree to purchase up to an aggregate of 908,393 shares of our common stock at a purchase price of $12.63 per share and entered into a registration rights agreement with Oaktree on June 19, 2020, pursuant to which, among other things, we agreed to register for resale the shares of common stock issuable upon exercise of the warrants. On August 6, 2020, we filed with the Securities and Exchange Commission (the "SEC") a Registration Statement on Form S-3 (File No. 333-241665) registering for resale the shares of common stock issuable upon exercise of the warrants.

On August 4, 2020, we entered into a Revenue Interest Financing Agreement with Sagard Healthcare Royalty Partners, LP ("Sagard"), pursuant to which Sagard has agreed to pay us $50.0 million (the "Product Payment") to provide funding for our development and commercialization of Oral Paclitaxel upon receipt of marketing authorization for Oral Paclitaxel by the U.S. FDA for the treatment of metastatic breast cancer. In exchange for the Product Payment, we have agreed to make payments to Sagard equal to 5.0% of our world-wide net sales of Oral Paclitaxel, subject to a hard cap equal to the lesser of 170% of the Product Payment and the Put/Call Price set forth in the Revenue Interest Financing Agreement (the "Hard Cap"). We are required to make certain additional payments to Sagard to the extent Sagard has not received Payments equaling at least $20.0 million by September 30, 2024 and at least $50.0 million by August 4, 2026, in the amount of the applicable shortfall, and, subject to the Hard Cap, if Sagard has not received payments equaling at least $85.0 million by the tenth anniversary of the date the Product Payment is funded, in an amount such that Sagard will have obtained a 6.0% internal rate of return on the Product Payment (see *Note 10 - Debt and Lease Obligations*).

Sagard and its co-investors OPB SHRP Co-Invest Credit Limited and SIMCOE SHRP Co-Invest Credit Ltd. (the "IMCO Investors") also acquired by assignment (the "Assignment") term loans and commitments equal to $50.0 million under the Senior Credit Agreement. In connection with the Assignment, we granted warrants to Sagard and the IMCO Investors to purchase up to an aggregate of 201,865 shares of our common stock at a purchase price of $12.63 per share. As a result of the issuance of the additional warrants, we evaluated the debt modification in accordance with ASC 470 and concluded that the assigned debt qualified for a partial debt extinguishment of the existing Senior Secured Credit Agreement with Oaktree. Therefore, we recorded a loss on partial extinguishment of debt in the amount of $3.0 million for the three months ended September 30, 2020.

In September 2020, we completed an underwritten follow-on public offering in which we sold 11,500,000 shares of our common stock, including 1,500,000 shares of common stock pursuant to the underwriters' option to purchase additional shares, at a public offering price of $11.00 per share and received net proceeds of $118.7 million, after deducting underwriting discounts and commissions and offering expenses of $7.9 million.

As a result of the dramatic change in the macroeconomic environment since we last performed a goodwill impairment test in the fourth quarter of 2019, we evaluated as of March 2020, in accordance with ASC 350 - Goodwill and Other and Accounting Standards Codification ("ASC") 360 - Property, Plant, and Equipment, whether the economic impacts of the ongoing COVID-19 pandemic constitute triggering events requiring impairment or recoverability analysis to be performed. We considered the current and expected future economic and market conditions surrounding the COVID-19 pandemic and its impact on each of the reporting units and asset groups. Further, we assessed our current market capitalization, forecasts and the amount of excess fair value above book value as calculated in our 2019 impairment test. We determined that no assets were impaired. Despite challenges to our operating environment, net revenues for the second and third quarters of 2020 were strong. Based on the qualitative assessment, we determined that it was more likely than not that the estimated fair value of each of the reporting units exceeded its respective estimated carrying value, and that the impact of the COVID-19 pandemic through the end of the third quarter of 2020 was not a triggering event to perform a quantitative test.

However, a lack of sustained recovery or further deterioration in market conditions related to the general economy and the industries in which we operate, a sustained trend of weaker than anticipated financial performance, further decline in our share price for a sustained period of time, or an increase in the market-based weighted average cost of capital, among other factors, could significantly impact the impairment analysis and may result in future impairment charges that, if incurred, could have a material adverse effect on our financial condition and results of operations.

While the disruptions to our business caused by the pandemic are currently expected to be temporary, there is uncertainty regarding the pandemic's overall duration and the severity of any future outbreaks. COVID-19 has impacted, and we expect will continue to impact, our results of operations, financial position, and liquidity.

Financial Summary and Outlook

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

For the nine months ended September 30, 2020, our net loss was $96.7 million, compared to $102.1 million for the same period in 2019. As of September 30, 2020 and December 31, 2019, we had an accumulated deficit of $664.2 million and $567.5 million, respectively. We expect to incur significant expenses and increasing operating losses for the foreseeable future. We anticipate that our expenses will increase substantially as we:

- Continue to advance our lead programs, Orascovery and Src Kinase Inhibition technology platforms, through clinical development;
- Continue to invest in further developing our Commercial Platform ahead of our intended proprietary drug launch;
- Continue our current preclinical and clinical research program and development activities;

- Continue to invest in our manufacturing facilities;
- Advance the preclinical and clinical research program and development activities of our in-licensed technology platforms, TCR-T Immunotherapy and Arginine Deprivation Therapy;
- Seek to identify additional research programs and product candidates within existing platform technologies;
- Attain new drugs and technologies through acquisitions or in-licensing opportunities;
- Hire additional research, development and business personnel;
- Maintain, expand and protect our intellectual property ("IP") portfolio; and
- Incur additional costs associated with operating as a public company.

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

We have funded our operations to date primarily from the issuance and sale of our common stock through public offerings, senior secured loans, private placements, and to a lesser extent, from convertible bond financing, revenue, and grant funding. As of September 30, 2020, we had cash and cash equivalents of $143.6 million, restricted cash of $13.8 million, and short-term investments of $84.8 million.

Key Components of Results of Operations

Revenue

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

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

Cost of Sales

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

Research and Development Expenses

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

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

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

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

A change in the outcome of any of these variables with respect to the development of a drug candidate, including delays caused by the ongoing COVID-19 pandemic, could mean a significant change in the costs and timing associated with the development of that drug candidate.

R&D activities are central to our business model. We expect our R&D expenses to continue to increase for the foreseeable future as we continue to support the clinical trials of Oral Paclitaxel, Oral Irinotecan, Oral Docetaxel, Oral Topotecan, Oral Eribulin, tirbanibulin ointment, tirbanibulin oral and KX2-361, as well as initiate and prepare for additional clinical and preclinical studies, including TCR-T Immunotherapy and Arginine Deprivation Therapy program activities. We also expect spending to increase in the R&D for API, 503B and specialty products. There are numerous factors associated with the successful commercialization of any of our drug candidates, including future trial design and various regulatory requirements, many of which cannot be determined with accuracy at this time based on our stage of development. Additionally, future commercial, regulatory and public health, including the ongoing COVID-19 pandemic, factors beyond our control will likely impact our clinical development programs and plans.

Selling, General and Administrative Expenses

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

Results of Operations

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

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

	Three Months Ended September 30,			
	2020	2019	Change	
	(in thousands)	(in thousands)	(in thousands)	%
Revenue				
Product sales, net	$ 24,780	$ 19,237	$ 5,543	29%
License fees and other revenue	10,696	127	10,569	NM
Total revenue	35,476	19,364	16,112	
Cost of sales	(24,510)	(17,071)	(7,439)	44%
Gross profit	10,966	2,293	8,673	
Research and development expenses	(18,390)	(19,588)	1,198	-6%
Selling, general, and administrative expenses	(22,220)	(16,283)	(5,937)	36%
Interest income	112	650	(538)	-83%
Interest expense	(3,595)	(1,745)	(1,850)	106%
Loss on extinguishment of debt	(3,048)	—	(3,048)	NM
Income tax expense	(1,093)	(114)	(979)	859%
Net loss	(37,268)	(34,787)	(2,481)	
Less: net loss attributable to non-controlling interests	(462)	(29)	(433)	NM
Net loss attributable to Athenex, Inc.	$ (36,806)	$ (34,758)	$ (2,048)	

Revenue

Revenue from product sales increased to $24.8 million for the three months ended September 30, 2020, from $19.2 million for the three months ended September 30, 2019, an increase of $5.6 million or 29%. This increase was primarily attributable to a significant increase in specialty product sales of $9.7 million, driven by the impact of the global health pandemic which led to the increased demand for COVID-19 related drugs. We continued to experience an increase in purchases from our existing customers as well as obtaining large, and non-recurring orders of specialty products. Fluctuations in the infection rate and the spread of the global health pandemic and market demand can significantly affect our product sales in the future. If and when the COVID-19 pandemic recedes temporarily or is quelled, we expect to see a significant softening in demand for these products. This increase was partially offset by a decrease in API and 503B products sales of $3.3 million, and $0.8 million, respectively, due to the suspension of production of commercial batches at our API facility and the discontinued vasopressin sales. Pursuant to the 2019 Xiangxue License Agreement and an out-licensing agreement with PharmaEssentia, we recognized $9.4 million in license revenue, net of $0.6 million value added tax (“VAT”), and $1.0 million in license revenue, respectively, for the three months ended September 30, 2020.

Cost of Sales

Cost of sales for the three months ended September 30, 2020 totaled $24.5 million, an increase of $7.4 million, or 44%, as compared to $17.1 million for the three months ended September 30, 2019. Increase in cost of specialty product sales was in-line with the increase in revenue and we continued to incur fixed costs despite decreased production at our API and APS facilities. Changes in the availability of products and market demand could increase or decrease our revenue and gross profit related to these products in the future. Additionally, we incurred sublicense fees of $2.4 million on our license revenue for the three months ended September 30, 2020.

Research and Development Expenses

R&D expenses for the three months ended September 30, 2020 totaled $18.4 million, a decrease of $1.2 million, or 6%, as compared to $19.6 million for the three months ended September 30, 2019. This was primarily due to a decrease in clinical operations, drug licensing costs, regulatory costs, and preclinical operations, and included the following:

- $2.2 million decrease in clinical studies costs related to the supply of clinical studies and patient costs on Oral Paclitaxel, and tirbanibulin ointment, as all Phase 3 studies wound down;

- $1.2 million decrease in drug licensing costs related to specialty drug product in-licenses and an in-license milestone payment due in 2019;
- $0.6 million decrease in regulatory costs, as our NDA's were prepared and filed in previous quarters for our late-stage drug candidates; and
- $0.2 million decrease in preclinical costs.

The decrease in these R&D expenses was partially offset by a $1.8 million increase in medical affairs and API development costs, and a $1.2 million increase in compensation expenses.

Selling, General, and Administrative Expenses

SG&A expenses for the three months ended September 30, 2020 totaled $22.2 million, an increase of $5.9 million, or 36%, as compared to $16.3 million for the three months ended September 30, 2019. This was primarily due to an increase of $5.4 million related to the costs of preparing to commercialize our proprietary drugs, if approved, and an increase of $0.5 million of general and administrative costs related to professional fees, IT costs, and other operational costs.

Interest Income and Interest Expense

Interest income consisted of interest earned on our short-term investments totaled $0.1 million and $0.7 million for the three months ended September 30, 2020 and 2019, respectively. Interest expense totaled $3.6 million and $1.7 million for the three months ended September 30, 2020 and 2019, respectively. The majority of the interest expense in the current period was incurred from the Senior Credit Agreement with Oaktree, while the majority of the interest expense in the prior period was incurred from the variable-rate, long-term debt with Perceptive.

Loss on extinguishment of debt

We recognized a $3.0 million loss on the partial extinguishment of debt related to the assignment of a portion of the senior secured loan from Oaktree's co-investors to Sagard during the three months ended September 30, 2020.

Income Tax Expense

For the three months ended September 30, 2020, we incurred income tax expense of $1.1 million, compared to $0.1 million for the same period in 2019. The increase was primarily attributable to foreign income tax withholdings on our revenue earned under our our-license arrangements.

Nine Months Ended September 30, 2020 Compared to Nine Months Ended September 30, 2019

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

	Nine Months Ended September 30,			
	2020	2019	Change	
	(in thousands)	(in thousands)	(in thousands)	%
Revenue				
Product sales, net	$ 83,494	$ 66,433	$ 17,061	26%
License fees and other revenue	39,089	435	38,654	NM
Total revenue	122,583	66,868	55,715	
Cost of sales	(77,088)	(53,915)	(23,173)	43%
Gross profit	45,495	12,953	32,542	
Research and development expenses	(57,597)	(62,570)	4,973	-8%
Selling, general, and administrative expenses	(65,454)	(48,640)	(16,814)	35%
Interest income	710	1,408	(698)	-50%
Interest expense	(6,833)	(5,254)	(1,579)	30%
Loss on extinguishment of debt	(10,278)	—	(10,278)	NM
Income tax expense	(4,080)	(1,019)	(3,061)	300%
Net loss	(98,037)	(103,122)	5,085	
Less: net loss attributable to non-controlling interests	(1,351)	(1,100)	(251)	23%
Net loss attributable to Athenex, Inc.	$ (96,686)	$ (102,022)	$ 5,336	

Revenue

Revenue from product sales increased to $83.5 million for the nine months ended September 30, 2020, from $66.4 million for the nine months ended September 30, 2019, an increase of $17.1 million or 26%. This increase was primarily attributable to a significant increase in specialty product sales of $35.2 million as the result of increased demand for COVID-19 related drugs due to the global health pandemic and the launch of additional products. We experienced an increase in purchases from our existing customers as well as obtaining large, non-recurring orders of specialty products from new customers.

Fluctuations in the infection rate and the spread of the global health pandemic and market demand can significantly affect our product sales in the future. If and when the COVID-19 pandemic recedes temporarily or is quelled, we expect to see a significant softening in demand for these products. This increase was partially offset by a decrease in API and 503B products sales of $9.8 million, and $8.1 million, respectively, due to the suspension of production of commercial batches at our API facilities and the discontinued vasopressin sales. Pursuant to the 2019 Xiangxue License Agreement and an out-licensing agreement with PharmaEssentia, we recognized $37.7 million in license revenue, net of $2.3 million VAT, and $1.0 million in license revenue, respectively, for the nine months ended September 30, 2020.

Cost of Sales

Cost of sales for the nine months ended September 30, 2020 totaled $77.1 million, an increase of $23.2 million, or 43%, as compared to $53.9 million for the nine months ended September 30, 2019. The increase in our cost of specialty product sales was in-line with the increase in revenue and we continued to incur fixed costs despite decreased production at our API and APS facilities. Changes in the availability of products and market demand could increase or decrease our revenue and gross profit related to these products in the future. Additionally, we incurred sublicense fees of $5.6 million on our license revenue for the nine months ended September 30, 2020.

Research and Development Expenses

R&D expenses for the nine months ended September 30, 2020 totaled $57.6 million, a decrease of $5.0 million, or 8%, as compared to $62.6 million for the nine months ended September 30, 2019. This was primarily due to a decrease in clinical operations, drug licensing fees, and preclinical operations and included the following:

- $6.9 million decrease in clinical studies costs related to the supply of clinical studies and patient costs on Oral Paclitaxel, and tirbanibulin ointment, as all Phase 3 studies wound down;
- $6.3 million decrease in preclinical development costs related to the Arginine Deprivation Therapy and TCR-T Immunotherapy platforms incurred during the prior year; and
- $0.3 million decrease primarily due to an impairment charge of in-process research and development during the prior year.

The decrease in these R&D expenses was partially offset by an increase in compensation expenses of $3.9 million, an increase of $3.1 million in regulatory costs in connection with our NDA preparations, and an increase in $1.5 million in medical affairs and other product development.

Selling, General, and Administrative Expenses

SG&A expenses for the nine months ended September 30, 2020 totaled $65.4 million, an increase of $16.8 million, or 35%, as compared to $48.6 million for the nine months ended September 30, 2019. This was primarily due to an increase of $12.8 million related to the costs of preparing to commercialize our proprietary drugs, if approved, and an increase of $4.0 million of general administrative expense, including professional service fees, IT, insurance, and other operating expenses.

Interest Income and Interest Expense

Interest income consisted of interest earned on our short-term investments totaled $0.7 million and $1.4 million for the nine months ended September 30, 2020 and 2019, respectively. Interest expense totaled $6.8 million and $5.3 million for the nine months ended September 30, 2020 and 2019, respectively. Interest expense in 2020 was related to the Senior Credit Agreement with Oaktree, and the variable-rate, long-term debt with Perceptive which was entered into in June 2018 and terminated in June 2020. The majority of interest expense in the prior period was incurred from the Perceptive debt.

Loss on extinguishment of debt

We recognized a $7.2 million loss on the extinguishment of debt related to the termination of the senior secured loan agreement with Perceptive and a $3.0 million loss on the partial extinguishment of debt related to the assignment of a portion of the senior secured loan from Oaktree’s co-investors to Sagard during the nine months ended September 30, 2020.

Income Tax Expense

For the nine months ended September 30, 2020, we incurred income tax expense of $4.1 million, compared to $1.0 million for the same period in 2019. The increase in income tax expenses was primarily attributable to $3.9 million foreign tax withholding in relation to license revenue recognized in the nine months ended September 30, 2020.

Liquidity and Capital Resources

Capital Resources

Since our inception, we have incurred net losses and negative cash flows from our operations. Substantially all of our losses have resulted from funding our R&D programs, SG&A costs associated with our operations, and the development of our specialty drug operations in our Commercial Platform and 503B operations and the investment we are making in our pre-launch activities in anticipation of commercializing our proprietary drugs. We incurred net losses of $96.7 million and $102.1 million for the nine months ended September 30, 2020 and 2019, respectively. As of September 30, 2020, we had an accumulated deficit of $664.2 million. Our operating activities used $97.1 million and $74.1 million of cash during the nine months ended September 30, 2020 and 2019, respectively. We intend to continue to advance our various clinical and pre-clinical programs which we expect will lead to increased cash outflow of R&D costs and increase our investments in commercialization activities for our proprietary drugs, if approved. In addition, we can provide no assurance that our funding requirements to diversify our product portfolio for specialty drug products in our Commercial Platform and 503B operations will decline in the future.

In September 2020, we successfully raised $118.7 million through public offering of our shares, thus alleviated the substantial doubt about our ability to continue as a going concern as of June 30, 2020. As of September 30, 2020 we had cash and cash equivalents of $143.6 million, restricted cash of $13.8 million, and short-term investments of $84.8 million, which will fund operations into the second quarter of 2022. This cash runway does not reflect additional funding available to us through the existing Senior Credit Agreement with Oaktree, or the Revenue Interest Financing Agreement with Sagard. Achieving prescribed funding milestones within such arrangements would extend our anticipated cash runway into 2023.

Debt and Equity Financings

Public Offering of Stock

In September 2020, we completed an underwritten public offering of 10,000,000 shares of its common stock. We granted the underwriters a 30-day option to purchase up to an additional 1,500,000 shares of common stock, which was exercised in full in September 2020. All shares were offered at a price of $11.00 per share. Net proceeds were $118.7 million, after deducting underwriting discounts and commissions and offering expenses of $7.9 million.

Revenue Interest Financing Agreement

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

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

At any time after August 4, 2022, we will have the right, but not the obligation (the "Call Option"), to buy out Sagard's interest in the Payments at a repurchase price (the "Put/Call Price") equal to (a) on or before August 4, 2023, a payment sufficient to generate an internal rate of return of 18.0% of the Product Payment, (b) after August 4, 2023 and on or before August 4, 2024, a payment sufficient to generate an internal rate of return of 16.0% of the Product Payment, (c) after August 4, 2024 and on or before August 4, 2025, a payment sufficient to generate an internal rate of return of 15.0% of the Product Payment, and (d) thereafter, the greater of (i) an amount that, when paid to Sagard, would generate an internal rate of return of 13.0% of the Product Payment, and (ii) an amount

equal to the product of the Product Payment and 165%, in the case of each foregoing clause (a) through (d), taking into account all other payments received by Sagard from us under the Revenue Interest Financing Agreement.

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

Sagard and the IMCO Investors also acquired by the Assignment term loans and commitments equal to $50.0 million under the Senior Credit Agreement. In connection with the Assignment, we granted warrants to Sagard and the IMCO Investors to purchase up to an aggregate of 201,865 shares of our common stock at a purchase price of $12.63 per share. As a result of the issuance of the additional warrants, we evaluated the debt modification in accordance with ASC 470 and concluded that the assigned debt qualified for a partial debt extinguishment of the existing Senior Secured Credit Agreement with Oaktree. Therefore, we recorded a loss on partial extinguishment of debt in the amount of $3.0 million for the three months ended September 30, 2020.

Oaktree Facility

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

The first tranche of $100.0 million was drawn prior to June 30, 2020, with $54.1 million of the proceeds used in part to repay in full the outstanding loan and fees under the credit agreement with Perceptive and an additional $11.0 million of the upfront loan proceeds held by us as restricted cash in a debt service reserve account, and $6.4 million in fees and expenses incurred in connection with the financing, leaving $28.5 million in available proceeds from the first tranche. The second tranche of $25.0 million was drawn prior to September 30, 2020. An additional three debt tranches of $100.0 million in the aggregate are available for borrowing from time to time prior to the date that is either 24 or 36 months after the Closing Date, subject to our achievement of certain regulatory and commercial milestones, each as further set forth below:

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

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

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

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

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

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

In connection with our entry into the Senior Credit Agreement, we granted warrants to Oaktree to purchase up to an aggregate of 908,393 shares of our common stock at a purchase price of $12.63 per share and entered into a registration rights agreement with Oaktree on June 19, 2020, pursuant to which, among other things, we agreed to register for resale the shares of common stock issuable upon exercise of the warrants of no later than the 45th day following the issuance of the warrants. On August 6, 2020, we filed with the SEC a Registration Statement on Form S-3 (File No. 333-241665) registering for resale the shares of common stock issuable upon exercise of the warrants.

Private Placements

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

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

Outlook

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

As of September 30, 2020, we had cash and cash equivalents of $143.6 million, restricted cash of $13.8 million, and short-term investments of $84.8 million. We believe that the existing cash and cash equivalents, restricted cash, and short-term investments will fund operations into the second quarter of 2022. This conclusion does not contemplate the additional funding we may receive through the Senior Credit Agreement and Revenue Interest Financing Agreement. We have based these estimates on assumptions that may prove to be wrong, and it could spend the available financial resources much faster than expected and need to raise additional funds sooner than anticipated.

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

Our future capital requirements will depend on many factors, some or all of which may be impacted by the COVID-19 pandemic, including:

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

To the extent that we raise additional capital through the sale of equity or convertible debt securities, the ownership interest of our existing stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect rights of holders of common stock. Additional debt financing, if available, may involve agreements that include covenants further limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends and might require the issuance of warrants, which could potentially dilute the ownership interest of holders of common stock. If we raise additional funds through collaborations, strategic alliances or licensing arrangements with third parties, we might have to relinquish valuable rights to our technologies, future revenue streams or research programs or to grant licenses on terms that might not be favorable to us. If we are unable to raise additional funds through equity or debt financings when needed, we might be required to delay, limit, reduce, or terminate our product development or future commercialization efforts or grant rights to develop and market products or drug candidates that we would otherwise prefer to develop and market ourselves.

Cash Flows

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

	Nine Months Ended September 30,	
	2020	2019
	(in thousands)	
Net cash used in operating activities	$ (97,088)	$ (74,120)
Net cash (used in) provided by investing activities	(58,404)	2,588
Net cash provided by financing activities	185,328	108,051
Net effect of foreign exchange rate changes	(201)	592
Net increase in cash, cash equivalents, and restricted cash	$ 29,635	$ 37,111

Net Cash Used in Operating Activities

The use of cash in our operating activities resulted primarily from our net loss adjusted for non-cash charges and changes in components of working capital. The primary use of our cash in the periods presented was to fund our R&D, regulatory and other clinical trial costs, drug licensing costs, inventory purchases, pre-launch commercialization activities, and other expenditures related to sales, marketing and administration. Net cash used in operating activities increased $23.0 million or 31% for the nine months ended September 30, 2020. The increase is primarily attributable to increases in cost of sales, SG&A costs, and losses related to the extinguishment of debt.

Net cash used in operating activities was $97.1 million for the nine months ended September 30, 2020. This resulted primarily from our net loss of $98.0 million, adjusted for non-cash charges of $22.9 million, and by cash used by our operating assets and liabilities of $22.0 million. Our operating assets increased $26.3 million for accounts receivable mainly related to the contract asset recognized from license revenue in the current period and the increased sales of specialty products during the nine-months ended September 30, 2020, and decreased by $11.0 million for prepaids related to the Dunkirk construction and other assets, and $3.0 million for inventory of all drug products. Our operating liabilities decreased by $9.7 million mainly due to a decrease in accrued construction costs and accrued inventory purchases, offset by an increase in accrued selling costs and rebates, and an increase in accrued wages and benefits, and other operating liabilities. Our net non-cash charges during the nine months ended September 30, 2020 primarily consisted of $10.3 million of loss on extinguishment of debt, $8.0 million of stock-based compensation expense, $3.2 million depreciation and amortization expense, and $1.2 million amortization of debt discount.

Net cash used in operating activities was $74.1 million for the nine months ended September 30, 2019. This resulted primarily from our net loss of $103.1 million, adjusted for non-cash charges of $11.5 million, and by cash used by our operating assets and liabilities of $17.5 million. Our operating assets increased $4.2 million for accounts receivable mainly related to the increased sales of specialty products during the nine months ended September 30, 2019, and less than $0.1 million for inventory of all drug products, while prepaid expenses and other assets increased by $17.1 million primarily related to the Dunkirk construction. Our operating liabilities increased by $38.5 million mainly due to an increase of $16.3 million related to the Dunkirk construction, and $20.0 million of deferred revenue related to a milestone payment received from Almirall. Our net non-cash charges during the nine months ended September 30, 2019 primarily consisted of $7.2 million of stock-based compensation expense, and $2.8 million depreciation and amortization expense.

Net Cash (Used in) Provided by Investing Activities

Net cash used in investing activities was $58.4 million for the nine months ended September 30, 2020, compared to $2.6 million provided by investing activities in the nine months ended September 30, 2019. The difference was primarily due to more cash being used in the purchase of short-term investments and a decrease in the sales and maturities of short-term investments and a decrease in cash paid for in-licenses.

Net Cash Provided by Financing Activities

Net cash provided by financing activities was $185.3 million for the nine months ended September 30, 2020, which primarily consisted of $126.8 million from the sale of common stock and $118.0 million from the draw downs of debt from our credit facility with Oaktree and $1.9 million to fund our new API plant in China, $7.0 million from the issuance of warrants to Oaktree and Sagard, and $1.2 million from the exercise of stock options, partially offset by $54.3 million repayment of Perceptive debt, and $7.6 million and $7.2 million issuance costs related to our underwritten follow-on public offering and the new Oaktree debt, respectively.

Net cash provided by financing activities was $108.1 million for the nine months ended September 30, 2019, which primarily consisted of net proceeds of $99.9 million from the issuance of common stock from the private placement and $6.5 million from the issuance of debt to fund our new API plant in China.

Contractual Obligations

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

	Payments Due by Period				
	Within 1 Year	1 to 3 years	3 to 5 years	More than 5 years	Total Amounts Committed
	(in thousands)				
Operating leases	$ 2,895	$ 4,908	$ 3,816	$ 660	$ 12,279
Long-term debt	1,637	19,704	27,558	88,159	137,058
Finance lease obligations	394	400	152	—	946
Licensing fees	2,384	—	—	—	2,384
	$ 7,310	$ 25,012	$ 31,526	$ 88,819	$ 152,667

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

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

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

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

Off-Balance Sheet Arrangements

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

Critical Accounting Policies and Significant Judgments and Estimates

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

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

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

Recent Accounting Pronouncements

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

Item 3. Quantitative and Qualitative Disclosures about Market Risk.

Foreign Currency Exchange Risk

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

Currency Convertibility Risk

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

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

Interest Rate Sensitivity

We had cash, cash equivalents, restricted cash, and short-term investments of $242.1 million as of September 30, 2020. Our primary exposure to market risk is interest income sensitivity, which is affected by changes in the general level of U.S. interest rates. However, because of the short-term nature of the instruments in our portfolio, a sudden change in U.S. market interest rates is not expected to have a material impact on our condensed consolidated financial condition or results of operations. We do not believe that our cash or cash equivalents have significant risk of default or illiquidity.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

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

Changes in Internal Control over Financial Reporting

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

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

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

Item 1A. Risk Factors.

For a discussion of the Company's potential risks or uncertainties, please see "Part I—Item 1A—Risk Factors" and "Part II—Item 7—Management's Discussion and Analysis of Financial Condition and Results of Operations" in the Company's Annual Report on Form 10-K for the year ended December 31, 2019 filed with the SEC, and "Part I—Item 2—Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Part I—Item 1A—Risk Factors" in the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2020. There have been no material changes to our previously disclosed risk factors.

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

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

On August 4, 2020 the Company granted warrants to Sagard Healthcare Royalty Partners, LP and its co-investors OPB SHRP Co-Invest Credit Limited and SIMCOE SHRP Co-Invest Credit Ltd. to purchase up to an aggregate of 201,865 shares of its common stock at a purchase price of $12.63 per share. The warrants will expire on June 19, 2027 and may be net exercised at the holder's election. The warrants were issued, and the shares of common stock issuable upon exercise of the warrants, will be issued unless covered by a registration statement, in reliance upon an exemption from the registration under the Securities Act of 1933, as set forth in Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder.

Item 3. Defaults Upon Senior Securities.

Not applicable.

Item 4. Mine Safety Disclosures.

Not applicable

Item 5. Other Information.

None.

Item 6. Exhibits.

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

Exhibit Number	Exhibit Title	Incorporated by Reference (Unless Otherwise Indicated)			
		Form	File	Exhibit	Filing Date
4.1	Form of Warrant to Purchase Common Stock (Sagard and IMCO Investors)	Form 8-K	001-38112	4.1	August 6, 2020
10.1	Revenue Interest Financing Agreement dated as of August 4, 2020, by and between Athenex, Inc. and Sagard Healthcare Royalty Partners, LP	Form 8-K	001-38112	10.1	August 6, 2020
10.2	Security Agreement dated as of August 4, 2020, by and between Athenex, Inc. and Sagard Healthcare Royalty Partners, LP	—	—	—	Filed herewith
10.3	Intercreditor Agreement dated as of August 4, 2020, by and among Oaktree Fund Administration, LLC, as administrative agent, and Sagard Healthcare Royalty Partners, LP, and as acknowledged by Athenex, Inc.	—	—	—	Filed herewith
10.4	Assignment and Assumption dated as of August 4, 2020, by and among Athenex, Inc, as the borrower, Sagard Healthcare Royalty Partners, LP, OPB SHRP Co-Invest Credit Limited and SIMCOE SHRP Co-Invest Credit Ltd., as assignees, and the affiliates of Oaktree Capital Management, L.P. party thereto as assignors, and the other assignees party thereto.	—	—	—	Filed herewith
31.1	Certification of the Chief Executive Officer and Board Chairman (Principal Executive Officer) pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	—	—	—	Filed herewith
31.2	Certification of the Chief Financial Officer (Principal Financial and Accounting Officer) pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	—	—	—	Filed herewith
32.1	Certification of the Chief Executive Officer and Board Chairman (Principal Executive Officer) and the Chief Financial Officer (Principal Financial and Accounting Officer) pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	—	—	—	Filed herewith
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.	—	—	—	Filed herewith
101.SCH	Inline XBRL Taxonomy Extension Schema Document.	—	—	—	Filed herewith
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.	—	—	—	Filed herewith
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.	—	—	—	Filed herewith
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.	—	—	—	Filed herewith
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.	—	—	—	Filed herewith
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)	—	—	—	Filed herewith

SIGNATURES

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

Athenex, Inc.

Date: November 5, 2020

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

Date: November 5, 2020

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

Exhibit 10.2

SECURITY AGREEMENT

by and between

ATHENEX, INC.,

a Delaware corporation

and

SAGARD HEALTHCARE ROYALTY PARTNERS, LP,

a Cayman Islands exempted limited partnership

Dated as of August 4, 2020

TABLE OF CONTENTS

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "***Agreement***"), dated as of August 4, 2020, is made by and between Athenex, Inc., a Delaware corporation (the "***Grantor***") and Sagard Healthcare Royalty Partners, LP, a Cayman Islands exempted limited partnership ("***Purchaser***").

WHEREAS, the Grantor and Purchaser are parties to that certain Revenue Interest Financing Agreement, dated as of August 4, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "***RIFA***");

WHEREAS, the RIFA provides that Grantor has agreed to assign to Purchaser, and Purchaser has agreed to acquire from Grantor, the Assigned Interests (as defined in the RIFA); and

WHEREAS, Grantor has agreed pursuant to the terms of the RIFA to enter into this Agreement, under which the Grantor grants to Purchaser a valid continuing, perfected lien on, and security interest in, the Collateral (as defined below) as security for the due performance and payment of all of Grantor's obligations to Purchaser under the RIFA;

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 Definitions; Interpretation.

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

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

"***Books***" means all books, records and other written, electronic or other documentation in whatever form maintained now or hereafter by or for Grantor, in each case solely to the extent such material evidences or contains information relating to the Collateral.

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

"***Existing Intercreditor Agreement***" means that certain Intercreditor Agreement, dated as of the date hereof, between the Purchaser and Oaktree and acknowledged by the Grantor.

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

"***Intercreditor Agreement***" means the Existing Intercreditor Agreement and any other intercreditor agreement entered into by the Purchaser pursuant to Section 22.

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

"***Oaktree***" means Oaktree Fund Administration, LLC in its capacity as administrative agent under the Oaktree Term Loan Facility.

"***Product Intellectual Property Collateral***" means all Intellectual Property that is claiming or covering (i) the Product itself or (ii) any method of using, making or manufacturing the Product; provided, however that the Product Intellectual Property Collateral shall not include any Platform Intellectual Property, except to the extent that such Platform Intellectual Property is directed solely to the Product or the use or manufacture thereof and does not have applications or uses covering products that are not the Product. Notwithstanding the foregoing, Product Intellectual Property Collateral excludes any intent-to-use trademark application solely to the extent that and solely during the period in which the grant of such security interest would impair the validity or enforceability, or result in the cancellation, of such intent-to-use trademark application under federal law.

"***Purchaser Priority Collateral***" means, at any date of determination, the portion of Rights to Payment equal to the Applicable Percentage.

"***Rights to Payment***" means any and all of Grantor's Accounts that constitute Collateral and any and all of Grantor's rights and claims to the payment or receipt of money or other forms of consideration of any kind in, to and under or with respect to such Accounts.

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

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

(d) **Interpretation**. The rules of interpretation set forth in Section 7.11 of the RIFA shall be applicable to this Agreement and are incorporated herein by this reference.

SECTION 2 Security Interest.

(a) **Grant of Security Interest**. As security for the payment or performance, as the case may be, in full in cash of the Secured Obligations, Grantor hereby grants to Purchaser a security interest (the "***Security Interest***") in and lien on all of Grantor's right, title and interest in, to and under the following property (collectively, the "***Collateral***"): (i) any and all Accounts arising from Net Sales of the Product and (ii) all Product Intellectual Property Collateral.

(b) **Grantor Remains Liable**. The Security Interest is granted as security only and shall not subject Purchaser to, or in any way alter or modify, any obligation or liability of Grantor with respect to or arising out of the Collateral. Anything herein to the contrary notwithstanding, (i) Grantor shall remain liable under any contracts included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by Purchaser of any of the rights

granted to Purchaser hereunder shall not release Grantor from any of its duties or obligations under any such contracts included in the Collateral, and (iii) Purchaser shall not have any obligation or liability under any such contracts included in the Collateral by reason of this Agreement, nor shall Purchaser be obligated to perform any of the obligations or duties of Grantor thereunder or to take any action to collect or enforce any such Contract included in the Collateral.

(c) **Continuing Security Interest.** Grantor agrees that this Agreement shall create a continuing security interest in the Collateral in favor of Purchaser which shall remain in effect until terminated in accordance with **Section 20**.

SECTION 3 Perfection and Priority.

(a) **Financing Statements, Etc**. Grantor hereby authorizes Purchaser to file at any time and from time to time in any relevant jurisdiction in the United States (including any jurisdiction within or of the United States) any financing statements with respect to the Collateral or any part thereof and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement or amendment, including whether Grantor is an organization, the type of organization and any organizational identification number issued to Grantor. Grantor agrees to provide such information to Purchaser promptly (and in any case within five (5) Business Days) upon its reasonable request. Purchaser is further authorized to file with the United States Patent and Trademark Office or United States Copyright Office (or any successor office) such documents as may be necessary or advisable for the purpose of perfecting, confirming, continuing, enforcing or protecting the Security Interest granted by Grantor, without the signature of Grantor, and naming Grantor as debtor and Purchaser as secured party. Grantor shall execute and deliver to Purchaser, and Grantor hereby authorizes Purchaser to file, at any time and from time to time, all amendments to financing statements, continuation financing statements, termination statements, Intellectual Property Security Agreements, assignments, affidavits, reports, notices and all other documents and instruments, in form reasonably satisfactory to Purchaser, as Purchaser may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of Purchaser's security interest in the Collateral and to accomplish the purposes of this Agreement. Without limiting the generality of the foregoing, Grantor shall from time to time take the actions specified in **subsections** Error! Reference source not found. through **(e)** below.

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

(ii) Following the creation or other acquisition of any Product Intellectual Property Collateral by Grantor after the date hereof which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the

U.S. Patent and Trademark Office, as applicable, Grantor shall include details of such newly created or acquired Product Intellectual Property Collateral on the next Quarterly Report provided under Section 5.01(f) of the RIFA, and take actions as Purchaser may reasonably request to ensure perfection of Purchaser's security interest in such U.S. Product Intellectual Property Collateral.

(c) **Rights to Payment**. At the request of the Purchaser, Grantor shall deliver to Purchaser, or an agent designated by it, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, all Rights to Payment representing amounts in excess of $1,000,000 at any time evidenced by promissory notes, trade acceptances or other instruments, not already delivered hereunder pursuant to this **Section 3**.

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

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

SECTION 4 **Representations and Warranties**. Grantor represents and warrants to Purchaser as of the date of this Agreement that:

(a) **Location of Chief Executive Office and Collateral**. Grantor's chief executive office and principal place of business (as of the date of this Agreement) is located at the address set forth in Error! Reference source not found., and all other locations (as of the date of this Agreement) where Grantor conducts business or Collateral is kept are set forth in Error! Reference source not found..

(b) **Locations of Books**. All Books are kept at Grantor's chief executive office, principal place of business or other place where Grantor conducts business.

(c) **Jurisdiction of Organization and Names**. Grantor's jurisdiction of organization is set forth in Error! Reference source not found.; and Grantor's exact legal name is

as set forth in the signature pages of this Agreement. All trade names and trade styles under which Grantor presently conducts its business operations are set forth in Error! Reference source not found., and, except as set forth in Error! Reference source not found., Grantor has not, at any time in the past: (i) been known as or used any other corporate, trade or fictitious name or (ii) changed its name; (iii) been the surviving or resulting corporation in a merger or consolidation; or (iv) acquired through asset purchase or otherwise any business of any Person.

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

(e) **Enforceability; Priority of Security Interest**. (i) This Agreement creates a valid security interest in the Collateral which is enforceable against the Collateral in which Grantor now has rights and will create a valid security interest which is enforceable against the Collateral in which Grantor hereafter acquires rights at the time Grantor acquires any such rights; and (ii) upon the completion of the filing of the UCC Financing Statements, the Purchaser will have a perfected security interest in the Collateral in which Grantor now has rights, and will have a perfected security interest in the Collateral in which Grantor hereafter acquires rights at the time Grantor acquires any such rights, in each case, subject to Permitted Liens and securing the payment and performance of the Secured Obligations.

(f) **Other Financing Statements**. Other than (i) financing statements disclosed to Purchaser, (ii) financing statements in favor of Purchaser or (iii) financing statements in respect of Permitted Liens, no effective financing statement naming Grantor as debtor, assignor, grantor, mortgagor, pledgor or the like and covering all or any part of the Collateral is on file in any filing or recording office in any jurisdiction.

(g) **Rights to Payment.** Except for Permitted Liens, Grantor has not assigned any of its rights under any of its Rights to Payment except to Oaktree in accordance with the Intercreditor Agreement, as provided in this Agreement or as set forth in the other Transaction Documents.

(h) **Control Agreements**. No deposit account control agreements or securities account control agreements exist with respect to any Collateral held or received by Grantor from time to time other than any control agreements in favor of Oaktree.

SECTION 5 Covenants. So long as any of the Secured Obligations remain unsatisfied, Grantor agrees that:

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

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

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

(d) **Location of Books and Chief Executive Office**. Grantor will: (i) keep all Books at Grantor's chief executive office, principal place of business or other place where Grantor conducts business that is set forth in Schedule 1 (or specified in writing by the Grantor to the Purchaser after the date of this Agreement) and (ii) promptly notify Purchaser of any changes in the location of Grantor's chief executive office or principal place of business.

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

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

(g) **Disposition of Collateral**. Grantor will not surrender or lose possession of, sell, lease, rent, or otherwise dispose of or transfer any of the Collateral held by Grantor or any right or interest therein, except in connection with Permitted Liens or otherwise in compliance with the RIFA and the Intercreditor Agreement.

(h) **Rights to Payment**. Grantor will:

(i) until the Purchaser exercises its rights hereunder to collect any Rights to Payment, endeavor in the first instance diligently to collect all amounts due or to become due on or with respect to the Rights to Payment;

(ii) with such frequency as Purchaser may reasonably require or as may be required under the RIFA, furnish to Purchaser full and complete reports, in form and substance reasonably satisfactory to Purchaser, with respect to Accounts of Grantor constituting Collateral;

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

(iv) upon the occurrence and during the continuation of a Put Option Event and upon the request of the Purchaser (A) notify all or any designated portion of the account debtors and other obligors on the Rights to Payment of the security interest hereunder, (B) notify the account debtors and other obligors on the Rights to Payment or any designated portion thereof

that payment shall be made directly to the Purchaser or to such other Person or location as the Purchaser shall specify, and (C) hold all remittances received by Grantor in connection with the Rights to Payment in trust for the Purchaser and, in accordance with the Purchaser's instructions, remit such amounts to the Purchaser or deposit them to an account with the Purchaser in the form received (with any necessary endorsements or instruments of assignment or transfer); and

(v) upon the occurrence and during the continuation of a Put Option Event, establish such lockbox or similar arrangements for the payment of the Rights to Payment as the Purchaser shall require.

(i) **Product Intellectual Property Collateral**. Grantor will:

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

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

(iii) use commercially reasonable efforts to prosecute all applications for patents, copyrights and trademarks, and file and prosecute any and all continuations, continuations-in-part, divisionals, applications for reissue, applications for certificate of correction, re-examinations, re-issues, other post-grant review procedures and like matters as shall be reasonable and appropriate in accordance with prudent business practice, and promptly and timely pay any and all maintenance, license, registration and other fees, taxes and expenses incurred in connection with any Product Intellectual Property Collateral, except as shall be reasonable and appropriate in accordance with prudent business practice; and

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

(j) **Notices, Reports and Information**. Grantor will, upon the reasonable request of Purchaser, make such demands and requests for information and reports as Grantor is entitled to make in respect of the Collateral.

SECTION 6 Authorization; Appointment of Attorney-in-Fact. In addition to (and not in limitation of) any other right or remedy provided to Purchaser hereunder, Purchaser shall have the right to, in the name of Grantor, or in the name of Purchaser or otherwise, without notice to or assent by Grantor, and Grantor hereby constitutes and appoints Purchaser (and any of Purchaser's officers or employees or agents designated by Purchaser) as Grantor's true and lawful attorney-in-fact, with full power and authority to:

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

(b) take possession of and endorse any notes, acceptances, checks, drafts, money orders or other forms of payment or security and collect any Proceeds, in each case solely to the extent constituting Collateral;

(c) sign and endorse any invoice or other document relating to any of the Collateral;

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

(e) receive, open and dispose of all mail addressed to Grantor relating to the Collateral;

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

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

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

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

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

(k) execute any and all applications, documents, papers and instruments necessary for Purchaser to use the Product Intellectual Property Collateral and grant or issue any exclusive or non-exclusive license with respect to any Product Intellectual Property Collateral;

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

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

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

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

Purchaser agrees that, except upon the occurrence and during the continuation of a Put Option Event, it shall not exercise the power of attorney, or any rights granted to Purchaser, pursuant to **clauses (b)** through **(o)**. The foregoing power of attorney is coupled with an interest and irrevocable so long as the Secured Obligations have not been paid and performed in full. Grantor hereby ratifies, to the extent permitted by applicable law, all that Purchaser shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this **Section 6**.

SECTION 7 Secured Party Performance of Grantor Obligations. Upon the occurrence and continuation of a Put Option Event, Purchaser shall have the right (but not any obligation) to perform or pay any obligation which Grantor has agreed to perform or pay under or in connection with this Agreement, and Grantor shall reimburse Purchaser on demand for all documented out of pocket costs and expenses by Purchaser pursuant to this Section 7.

SECTION 8 Secured Party's Duties. Notwithstanding any provision contained in this Agreement, Purchaser shall have no duty to exercise any of the rights, privileges or powers afforded to it and shall not be responsible to Grantor or any other Person for any failure to do so or delay in doing so. Without limiting the generality of the foregoing, nothing herein contained shall be construed as requiring or obligating Purchaser to make any commitment or to make any inquiry as to the nature of sufficiency of any payment received by Purchaser, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. With the exception of the exercise of reasonable care to assure the safe custody of Collateral in Purchaser's possession and the accounting for moneys actually received by Purchaser hereunder, Purchaser and its officers, directors, employees, agents or sub-agents shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Collateral.

SECTION 9 Remedies.

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

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

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

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

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

(v) Purchaser may sell, resell, lease, use, assign, transfer or otherwise dispose of any or all of the Collateral in its then condition or following any commercially reasonable preparation or processing (utilizing in connection therewith any of Grantor's assets, without charge or liability to Purchaser therefor) at public or private sale or at any broker's board or any securities exchange, by one or more contracts, in one or more parcels, at the same or different times, for cash or credit or for future delivery without assumption of any credit risk, all as Purchaser deems advisable; provided that Grantor shall be credited with the net proceeds of a sale only when such proceeds are finally collected by Purchaser. Purchaser shall have the right upon any such public sale, and, to the extent permitted by applicable law, upon any such private sale, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption, which right or equity of redemption Grantor hereby releases, to the extent permitted by applicable law. Purchaser shall give Grantor such notice of any public or private sale as may be required by the NY UCC or other applicable law.

Purchaser shall give each applicable Grantor not less than 10 days' written notice (which Grantor agrees is reasonable notice within the meaning of Section 9-611 of the NY UCC or its equivalent in other jurisdictions) of its intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and

the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as Purchaser may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, and by Purchaser in its own right or by one or more agents or contractors, upon any premises owned, leased or occupied by Grantor, Purchaser or any such agent or contractor, and any such sale may include any other property, in each case, as Purchaser may (in its sole and absolute discretion) determine. Purchaser shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. Purchaser may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by Purchaser until the sale price is paid by the purchaser or purchasers thereof, but Purchaser shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by law, private) sale made pursuant to this Agreement, the Purchaser may bid for or purchase, free (to the extent permitted by applicable law) from any right of redemption, stay, valuation or appraisal on the part of Grantor (all said rights being also hereby waived and released to the extent permitted by applicable law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to Purchaser from Grantor as a credit against the purchase price, and Purchaser may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; Purchaser shall be free to carry out such sale pursuant to such agreement and Grantor shall not be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after Purchaser shall have entered into such an agreement all Events of Default shall have been remedied and the Obligations shall have been indefeasibly paid in full in cash. As an alternative to exercising the power of sale herein conferred upon it, Purchaser may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this **Section 9(a)** shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the NY UCC or its equivalent in other jurisdictions. Purchaser shall not be required to marshal any present or future Collateral or to resort to such Collateral in any particular order.

(vi) Purchaser shall not have any obligation to clean up or otherwise prepare the Collateral for sale. Purchaser has no obligation to attempt to satisfy the Secured Obligations by collecting them from any other Person liable for them and Purchaser may release, modify or waive any Collateral provided by any other Person to secure any of the Secured Obligations, all without affecting Purchaser's rights against Grantor. Grantor waives any right it may have to require Purchaser to pursue any third Person for any of the Secured Obligations. Purchaser may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the

commercial reasonableness of any sale of the Collateral. Purchaser may sell the Collateral without giving any warranties as to the Collateral. Purchaser may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Purchaser sells any of the Collateral upon credit, Grantor will be credited only with payments actually made by the purchaser, received by Purchaser and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Purchaser may resell the Collateral and the Grantor shall be credited with the proceeds of the sale.

(b) **License**. For the purpose of enabling Purchaser to exercise its rights and remedies under this **Section 9** or otherwise in connection with this Agreement, and solely during the continuance of a Put Option Event, Grantor hereby grants to Purchaser: (a) an irrevocable, non-exclusive license (exercisable without payment or royalty or other compensation to Grantor) to use, license or sublicense any Product Intellectual Property Collateral and (b) a non-exclusive license (exercisable without payment or royalty or other compensation to Grantor) to use, license or sublicense the Platform Intellectual Property to extent reasonably necessary to permit the use, manufacture, sell, offer for sale, import, and other exploitation of the Product or the exploitation of the Product Intellectual Property Collateral, including, in each case of (a)-(b), all access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof for the purpose of practicing the foregoing licenses; provided, however, that nothing in this **Section 9(b)** shall require Grantor to grant any license that (i) violates the express terms of any agreement between Grantor and a third party governing Grantor's use of such Product Intellectual Property Collateral or Platform Intellectual Property, or gives such third party any right of acceleration, modification or cancellation therein, or (ii) is prohibited by any applicable law; provided, further, that such licenses to be granted hereunder with respect to Trademarks shall be subject to maintenance of quality standards with respect to the goods and services on which such Trademarks are used sufficient to preserve the validity of such Trademarks.

(c) **Application of Proceeds**. Except as expressly provided elsewhere in this Agreement, all cash proceeds actually received from the sale or other disposition or collection of Collateral, and any other amounts received in respect of Collateral the application of which is not otherwise provided for herein, shall be applied in good faith to satisfy (to the extent of the net proceeds received by Purchaser) such item or part of the Secured Obligations as Purchaser may designate. Any surplus thereof which exists after payment and performance in full of the Secured Obligations shall be promptly paid over to Grantor or otherwise disposed of in accordance with the NY UCC or other applicable law. Grantor shall remain liable to Purchaser for any deficiency which exists after any sale or other disposition or collection of Collateral.

SECTION 10 Certain Waivers. Grantor waives, to the fullest extent permitted by applicable law, (i) any right of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshalling of the Collateral or other collateral or security for the Secured Obligations; (ii) any right to require Purchaser (w) to proceed against any Person, (x) to exhaust any other collateral or security for any of the Secured Obligations, (y) to pursue any remedy in Purchaser's power, or (z) to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protests or notices of dishonor in connection with

any of the Collateral; and (iii) all claims, damages, and demands against Purchaser arising out of the repossession, retention, sale or application of the proceeds of any sale of the Collateral.

SECTION 11 Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) shall be given or made in writing (including by telecopy or email) delivered, if to any of the parties hereto, as specified in the RIFA. Except as otherwise provided in this Agreement or therein, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication).

SECTION 12 No Waiver; Cumulative Remedies.

(a) No failure on the part of Purchaser to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Any waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on Grantor in any case shall entitle Grantor to any other or further notice or demand in similar or other circumstances. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

(b) Grantor waives any and all other defenses, set-offs or counterclaims (other than a defense of payment or performance in full hereunder) which may at any time be available to or be asserted by it or any other Person against Purchaser, including, without limitation, failure of consideration, breach of warranty, statute of frauds, statute of limitations, accord and satisfaction and usury.

(c) Grantor waives diligence, presentment, protest, marshaling, demand for payment, notice of dishonor, notice of default and notice of nonpayment to or upon Grantor with respect to the Secured Obligations. Except for notices provided for herein, Grantor hereby waives notice (to the extent permitted by applicable law) of any kind in connection with this Agreement or any collateral securing the Secured Obligations, including, without limitation, the Collateral. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against Grantor, Purchaser may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto, and any failure by Purchaser to make any such demand, to pursue such other rights or remedies or to collect any payments from the Grantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of Grantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Purchaser against any Grantor. For the purposes hereof “demand” shall include the commencement and continuance of any legal proceedings.

SECTION 13 **Binding Effect**. This Agreement shall be binding upon, inure to the benefit of and be enforceable by Grantor, Purchaser and their respective successors and assigns. Grantor shall not assign or delegate this Agreement, any of its rights or obligations hereunder or any interest herein or in the Collateral (in each case, except as expressly contemplated by this Agreement or the RIFA) without the prior written consent of Purchaser, and any attempted assignment without such consent shall be null and void.

SECTION 14 **Governing Law; Jurisdiction; Waiver of Jury Trial**. Sections 7.16 and 7.17 of the RIFA are incorporated herein by reference, *mutandis mutandis*.

SECTION 15 **Entire Agreement; Amendment**. This Agreement and the other Transaction Documents constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements (including the Term Sheet), understandings and negotiations, both written and oral, between the parties with respect to the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth herein (or in other Transaction Documents) has been made or relied upon by either party hereto. None of this Agreement, nor any provision hereof, is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

SECTION 16 **Severability**. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall nevertheless be given full force and effect.

SECTION 17 **Counterparts; Effectiveness**. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other parties hereto. Any counterpart may be executed by facsimile or pdf signature and such facsimile or pdf signature shall be deemed an original.

SECTION 18 **Incorporation of Provisions of the RIFA**. To the extent the RIFA contains provisions of general applicability to the Transaction Documents, such provisions are incorporated herein by this reference.

SECTION 19 **No Inconsistent Requirements**. Grantor acknowledges that this Agreement and the other Transaction Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms.

SECTION 20 **Termination.** Upon the termination of the RIFA and payment and performance in full of all Secured Obligations, the security interests created by this Agreement shall automatically terminate and Purchaser shall promptly execute and deliver to Grantor such documents and instruments reasonably requested by Grantor as shall be necessary to evidence the termination of all security interests given by Grantor to Purchaser hereunder. Any execution and delivery of such documents pursuant to this Section 20 shall be without recourse to or representation or warranty by Purchaser. The Grantor shall reimburse Purchaser upon demand for all reasonable and documented costs and out of pocket expenses, including the reasonable fees,

charges and expenses of counsel, incurred by it in connection with any action contemplated by this Section 20.

Upon any sale, lease, transfer or other disposition by Grantor of any Collateral that is permitted under the RIFA, the security interest in such Collateral shall be automatically released.

In addition, in connection with the entry into any license by the Grantor concerning any Collateral, Purchaser shall, at the request of Grantor, negotiate and enter into a non-disturbance agreement and other similar agreements in form and substance reasonably satisfactory to Purchaser and the Grantor.

SECTION 21 Right of Set-Off. If a Put Option Event shall have occurred and is continuing, Purchaser is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all Collateral (including any deposits (general or special, time or demand, provisional or final)) at any time held and other obligations at any time owing by Purchaser to or for the credit or the account of Grantor against any and all of the obligations of Grantor now or hereafter existing under this Agreement and the other Transaction Documents, irrespective of whether or not Purchaser shall have made any demand under this Agreement or any other Transaction Document and although such obligations may be unmatured. The rights of Purchaser under this Section 21 are in additional to any other rights and remedies (including other rights of setoff) which Purchaser may have.

SECTION 22 Intercreditor Agreement.

(a) Concurrently herewith, the Purchaser shall enter into the Existing Intercreditor Agreement. In connection with any Permitted Refinancing of the Oaktree Term Loan Facility or other incurrence of any Permitted Indebtedness, the Purchaser shall enter into an Intercreditor Agreement on terms and conditions consistent with the Existing Intercreditor Agreement or otherwise reasonably satisfactory to the Purchaser providing for the subordination of the Liens of the Purchaser on the Collateral (other than Purchaser Priority Collateral) to the Liens of the lender(s) (or agent(s) for such lender(s)) of such Permitted Indebtedness.

(b) Notwithstanding anything herein to the contrary, the priority of the lien and security interest granted to the Purchaser pursuant to this Agreement and the exercise of any right or remedy by the Purchaser hereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement with respect to the priority of any liens or the exercise of any rights or remedies, the terms of the Intercreditor Agreement shall govern. The requirement under this Agreement to deliver Collateral to the Purchaser (or any representation or warranty having the effect of requiring the same) shall be deemed satisfied (or any such representation or warranty shall be deemed true) by delivery of such Collateral to Oaktree (or other senior creditor under the Intercreditor Agreement from time to time) as bailee of, and behalf of, the Purchaser pursuant to the Intercreditor Agreement).

(c) Notwithstanding anything herein to the contrary, to the extent the Grantor is required hereunder to deliver Collateral to, or the possession or control by, the Purchaser for purposes of possession and/or “control” (as such term is used herein) and is unable to do so as a result of having previously delivered such Collateral to Oaktree (or other authorized representative

in accordance with the terms of any then applicable Intercreditor Agreement), such Grantor's obligations hereunder with respect to such delivery shall be deemed complied with and satisfied by the delivery to such representative, as gratuitous bailee and/or gratuitous agent for the benefit of the Purchaser.

(d) Any reference in this Agreement to a "first priority security interest" or words of similar effect in describing the security interests created hereunder shall be understood to refer to such priority subject to the terms of the Intercreditor Agreement.

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

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

GRANTOR:

ATHENEX, INC.

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

SAGARD HEALTHCARE ROYALTY PARTNERS, LP, by its general partner, SAGARD HEALTHCARE ROYALTY PARTNERS GP LLC

By: /s/ Adam Vigna
Name: Adam Vigna
Title: Chief Investment Officer

By: /s/ Andrew Dean
Name: Andrew Dean
Title: Manager

Schedule 1*

Grantor Information

* Schedule 1 has been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant will provide a copy of any omitted exhibit or schedule to the Securities and Exchange Commission or its staff upon request.

EXHIBIT A

TO THE SECURITY AGREEMENT

FORM OF COPYRIGHT SECURITY AGREEMENT

This COPYRIGHT SECURITY AGREEMENT, dated as of [_____], 20[__] ("***Copyright Security Agreement***"), made by Athenex, Inc. (the "***Grantor***"), is in favor of Sagard Healthcare Royalty Partners, LP ("***Purchaser***").

W I T N E S S E T H:

WHEREAS, the Grantor is party to a Security Agreement dated as of [●], 2020 (the "***Security Agreement***") in favor of Purchaser, pursuant to which the Grantor is required to execute and deliver this Copyright Security Agreement (capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Security Agreement);

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

NOW, THEREFORE, in consideration of the premises and to induce Purchaser to enter into the RIFA and extend credit to Grantor thereunder, Grantor hereby grants to Purchaser a security interest in all of the following property now owned or at any time hereafter acquired by Grantor or in which Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "***Copyright Collateral***"), as collateral security for the complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of all Secured Obligations:

(a) all Copyrights of such Grantor listed on **Schedule 1** attached hereto;

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

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

The security interest granted pursuant to this Copyright Security Agreement is granted in conjunction with the security interest granted to Purchaser pursuant to the Security Agreement, and the Grantor hereby acknowledges and affirms that the rights and remedies of Purchaser with respect to the security interest in the Copyright Collateral made and granted hereby are more fully set forth in the Security Agreement. In the event that any provision of this Copyright Security Agreement is deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

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

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

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

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

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

ATHENEX, INC.

By: _____
Name:
Title:

Address: _____

Accepted and Agreed:
SAGARD HEALTHCARE ROYALTY PARTNERS, LP

By _____
Name:
Title:

Address:

Schedule 1

COPYRIGHTS

Copyright Registrations

Title of Work	Reg. No.	Reg. Date	Owner

EXHIBIT B

TO THE SECURITY AGREEMENT

FORM OF TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT, dated as of [_____], 20[__] ("***Trademark Security Agreement***"), made by Athenex, Inc. (the "***Grantor***"), is in favor of Sagard Healthcare Royalty Partners, LP ("***Purchaser***").

W I T N E S S E T H:

WHEREAS, the Grantor is party to a Security Agreement, dated as [●], 2020 (the "***Security Agreement***") in favor of Purchaser, pursuant to which the Grantor is required to execute and deliver this Trademark Security Agreement (capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Security Agreement);

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

NOW, THEREFORE, in consideration of the premises and to induce Purchaser to enter into the RIFA and extend credit to the Grantor thereunder, Grantor hereby grants to Purchaser a security interest in all of the following property now owned or at any time hereafter acquired by Grantor or in which Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "***Trademark Collateral***"), as collateral security for the complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of all Secured Obligations:

(a) all registered and applied-for Trademarks of Grantor listed on **Schedule 1** attached hereto;

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

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

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

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

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

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

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

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

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

ATHENEX, INC.

By: _____
Name:
Title:

Address: _____

Accepted and Agreed:
SAGARD HEALTHCARE ROYALTY PARTNERS, LP

By _____
Name:
Title:

Address:

Schedule 1

TRADEMARKS

Trademark Registrations and Applications

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

EXHIBIT C

TO THE SECURITY AGREEMENT

FORM OF PATENT SECURITY AGREEMENT

This PATENT SECURITY AGREEMENT, dated as of [_____], 20[_] ("***Patent Security Agreement***"), made by Athenex, Inc. (the "***Grantor***"), is in favor of Sagard Healthcare Royalty Partners, LP ("***Purchaser***").

W I T N E S S E T H:

WHEREAS, the Grantor is party to a Security Agreement dated as of [●], 2020 (the "***Security Agreement***") in favor of Purchaser, pursuant to which the Grantor is required to execute and deliver this Patent Security Agreement (capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Security Agreement);

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

NOW, THEREFORE, in consideration of the premises and to induce Purchaser to enter into the RIFA and extend credit to the Grantor thereunder, the Grantor hereby grants to Purchaser a security interest in all of the following property now owned or at any time hereafter acquired by Grantor or in which Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "***Patent Collateral***"), as collateral security for the complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of all Secured Obligations:

(a) all registered and applied-for Patents of Grantor listed on **Schedule 1** attached hereto;

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

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

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

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

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

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

[Remainder of This Page Intentionally Left Blank.]

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

ATHENEX, INC.

By: _____
Name:
Title:

Address: _____

Accepted and Agreed:
SAGARD HEALTHCARE ROYALTY PARTNERS, LP

By _____
Name:
Title:

Address:

Schedule 1

PATENTS

Patents and Patent Applications

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

Exhibit 10.3

INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT is made as of August 4, 2020 (this **"Agreement"**), by and among **OAKTREE FUND ADMINISTRATION, LLC,** in its capacity as administrative agent for the holders of the First Lien Obligations (as defined herein) (in such capacity, the **"First Lien Agent"**), and **SAGARD HEALTHCARE ROYALTY PARTNERS, LP** ("**SHRP**"), and as acknowledged by **ATHENEX, INC.**, a Delaware corporation (the **"Borrower"**).

RECITALS

WHEREAS, the Borrower, the Subsidiary Guarantors, the First Lien Agent and certain lenders have entered into the First Lien Credit Agreement, dated as of June 19, 2020, providing for term loans;

WHEREAS, the Borrower and SHRP have entered into the Revenue Interest Financing Agreement, dated as of the date hereof, providing for revenue interest financing;

WHEREAS, the First Lien Obligations are secured by Liens on substantially all the assets of the Grantors, and the Second Lien Obligations are secured by Liens on the Collateral (as such term is defined in this Agreement); and

WHEREAS, as an inducement to the consummation of the transactions contemplated by the First Lien Debt Documents and the Second Lien Debt Documents, in order to set forth the relative rights and priorities of the First Lien Claimholders and the Second Lien Claimholders with respect to the Collateral securing the First Lien Obligations and the Second Lien Obligations, the parties hereto desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the above recitals and the provisions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1 DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. For purpose of this Agreement, the following terms used herein shall have the following meanings:

"**Accounts**" as defined in Article 9 of the UCC.

"**Affiliate**" as defined in the First Lien Credit Agreement.

"**Agreement**" as defined in the preamble hereto.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Bankruptcy Law**" means the Bankruptcy Code and any similar federal, state, or foreign bankruptcy, insolvency, receivership, or similar law affecting creditors' rights generally.

"**Borrower**" as defined in the preamble hereto.

"**Business Day**" as defined in the First Lien Credit Agreement.

"**Catch-Up Payments**" means the payments required pursuant to Section 2.02(c) of the Revenue Interest Financing Agreement, provided that the aggregate amount of all Catch-Up Payments and Revenue Interest Payments shall not exceed the Hard Cap.

"**Collateral**" means (i) any and all Accounts arising from Net Sales of the Secured Product and (ii) all Product Intellectual Property Collateral.

"**DIP Financing**" means the obtaining of credit or incurring of debt by any Grantor secured by a Lien on the Collateral pursuant to section 364 of the Bankruptcy Code (or similar Bankruptcy Law).

"**Discharge of First Lien Obligations**" means, except to the extent otherwise expressly provided in Section 6.7:

(a) (i) payment in full in cash of the principal of, and interest (including any Prepayment Fee, Exit Fee, interest, fees, expenses and costs accruing in accordance with the First Lien Debt Documents on or after the commencement of an Insolvency Proceeding, regardless of whether such interest and/or fees, expenses and costs would be allowed or allowable in such Insolvency Proceeding) on, all outstanding Indebtedness constituting First Lien Obligations and (ii) payment in full in cash or other consideration as consented to by each of the First Lien Claimholders of all other First Lien Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (other than contingent indemnification for which no claim or demand has been made); and

(b) termination or expiration of all commitments, if any, to extend credit that would constitute First Lien Obligations.

"**Discharge of Second Lien Obligations**" means:

(a) payment in full in cash of all Revenue Interest Payments, all Catch-Up Payments and any Put/Call Price (including interest, fees, expenses and costs accruing in accordance with the Second Lien Debt Documents on or after the commencement of an Insolvency Proceeding, regardless of whether such interest and/or fees, expenses and costs would be allowed or allowable in such Insolvency Proceeding), constituting Obligations under the Second Lien Obligations; and

(b) payment in full in cash or other consideration as consented to by each of the Second Lien Claimholders of all other Second Lien Obligations that are due and payable or otherwise accrued and owing at or prior to the time such amounts in clause (a) are paid (other than contingent indemnification obligations for which no claim or demand has been made).

"**Enforcement Action**" means any action to, directly or indirectly:

(a) foreclose, execute, levy, or collect on, take possession or control of, sell or otherwise realize upon (judicially or non-judicially), or lease, license, or otherwise dispose of (whether publicly or privately), Collateral, or exercise of cash dominion or a cash sweep under any deposit account control agreement or securities account control agreement covering any Collateral or otherwise exercise or enforce remedial rights with respect to Collateral under the First Lien Debt Documents or the Second Lien Debt Documents (including by way of set-off, recoupment, notification of a public or private sale or other disposition pursuant to the UCC or other applicable law or notification to account debtors, if applicable);

(b) receive a transfer of Collateral in satisfaction of Indebtedness or any other Obligation secured thereby; provided that this clause (b) shall not be construed to apply to payment of the Second Lien Obligations in accordance with the Second Lien Debt Documents and this Agreement;

(c) compel or commence an Insolvency Proceeding of any Grantor; or

(d) otherwise enforce a security interest or exercise another right or remedy, as a secured creditor (including the solicitation of bids from third persons to conduct the liquidation or disposition of Collateral), in each case pertaining to the Collateral at law, in equity, or pursuant to the First Lien Debt Documents or Second Lien Debt Documents (including the commencement of an involuntary Insolvency Proceeding or any other legal proceedings or other actions with respect to all or any portion of the Collateral to facilitate the actions described in the preceding clauses); provided, that the Second Lien Claimholders may exercise any monitoring or inspection rights that they may have under the Second Lien Debt Documents not otherwise in contravention of this Agreement.

"**Exit Fees**" as defined in the First Lien Credit Agreement.

"**First Lien Agent**" as defined in the preamble hereto.

"**First Lien Claimholder**" means the First Lien Agent and all holders of the First Lien Obligations at any given time.

"**First Lien Credit Agreement**" means that certain Credit Agreement and Guaranty, dated as of June 19, 2020 (as replaced or refinanced from time to time), among the Borrower, the Subsidiary Guarantors, certain lenders party thereto and the First Lien Agent, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance herewith.

"**First Lien Debt Documents**" means the First Lien Credit Agreement and the Loan Documents (as defined in the First Lien Credit Agreement), the First Lien Security Documents and each of the other agreements, documents and instruments providing for or evidencing any other First Lien Obligation, and any other document or instrument executed or delivered at any time in connection with any First Lien Obligations, including any intercreditor or joinder agreement among holders of First Lien Obligations, to the extent such are effective at the relevant time, as each may be renewed, extended, amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof.

"**First Lien Obligations**" means all Obligations outstanding under the First Lien Debt Documents, including all interest, fees, costs and expenses accrued or accruing (or which would, absent commencement of an Insolvency Proceeding, accrue) after commencement of an Insolvency Proceeding in accordance with any rate specified in the relevant First Lien Debt Document regardless of whether the claim for such interest, fees, costs and expenses is allowed or allowable as a claim in such Insolvency Proceeding and shall include all "Obligations," as such term is defined in the First Lien Credit Agreement.

"**First Lien Recovery**" as defined in Section 6.7(a).

"**First Lien Refinancing**" as defined in Section 5.1(a).

"**First Lien Security Agreement**" means that certain Security Agreement, dated as of June 19, 2020, among the Borrower, the Subsidiary Guarantors, and the First Lien Agent, as the same may be

amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance herewith.

"**First Lien Security Documents**" means the First Lien Security Agreement and the other Security Documents (as defined in the First Lien Credit Agreement) and any other agreement, document, or instrument pursuant to which a Lien is granted securing First Lien Obligations or under which rights or remedies with respect to such Liens are governed, in each case to the extent relating to Collateral.

"**Grantor**" means the Borrower, each of the Subsidiary Guarantors and each other person that has executed and delivered or may from time to time hereafter execute and deliver a First Lien Debt Document or a Second Lien Debt Document as a "grantor" or "pledgor" or the equivalent thereof.

"**Hard Cap**" as defined in the Revenue Interest Financing Agreement as in effect on the date hereof.

"**Indebtedness**" as defined in the First Lien Credit Agreement as in effect on the date hereof, or the Revenue Interest Financing Agreement, as in effect on the date hereof, as applicable.

"**Insolvency Proceeding**" means:

(a) a voluntary or involuntary case or proceeding under the Bankruptcy Code or similar Bankruptcy Law with respect to a Grantor;

(b) any other voluntary or involuntary insolvency, reorganization, or bankruptcy case or proceeding, or any receivership, liquidation, reorganization, or other similar case or proceeding with respect to a Grantor or a material portion of its property;

(c) a liquidation, dissolution, reorganization, or winding up of a Grantor, whether voluntary or involuntary and regardless of whether involving insolvency or bankruptcy; or

(d) an assignment for the benefit of creditors or other marshaling of assets and liabilities of a Grantor.

"**Intellectual Property**" as defined in the First Lien Credit Agreement as in effect on the date hereof.

"**Intellectual Property Collateral**" as defined in the First Lien Security Agreement as in effect on the date hereof.

"**Intercreditor Agreement Joinder**" means an agreement substantially in the form of Exhibit A (subject to changes approved as expressly contemplated hereby).

"**Lien**" as defined in the First Lien Credit Agreement as in effect on the date hereof.

"**Net Sales**" as defined in the Revenue Interest Financing Agreement as in effect on the date hereof.

"**New First Lien Representative**" as defined in Section 5.1(c).

"**Obligations**" means all obligations of every nature owed to any obligee under an agreement whether for principal, interest (including interest, fees, costs and expenses accruing after the commencement of an Insolvency Proceeding, regardless of whether any claim therefor is allowed or

allowable as a claim in such Insolvency Proceeding), or payments for early termination, fees, costs and expenses, indemnification, or otherwise, and all guaranties of any of the foregoing, whether absolute or contingent, due or to become due, now existing or hereafter arising.

"**Original Grantors**" as defined in Section 8.21.

"**person**" as defined in the First Lien Credit Agreement.

"**Pledged Collateral**" as defined in Section 8.9(a).

"**Prepayment Fees**" as defined in the First Lien Credit Agreement.

"**Proceeds**" means:

(a) all "proceeds," as defined in Article 9 of the UCC, of the Collateral; and

(b) whatever is recovered when Collateral is sold, exchanged, collected, or disposed of, whether voluntarily or involuntarily, including any additional or replacement Collateral provided during an Insolvency Proceeding and any payment or property received in an Insolvency Proceeding on account of any "secured claim" (within the meaning of section 506(b) of the Bankruptcy Code or similar Bankruptcy Law).

"**Product Intellectual Property Collateral**" as defined in the Second Lien Security Agreement as in effect on the date hereof.

"**Put/Call Price**" as defined in the Revenue Interest Financing Agreement as in effect on the date hereof.

"**Refinanced First Lien Obligations**" as defined in Section 5.1(b).

"**Revenue Interest Financing Agreement**" means that certain Revenue Interest Financing Agreement, dated as of the date hereof, between the Borrower and SHRP, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance herewith.

"**Revenue Interest Payments**" means five percent (5.0%) of the Secured Product Revenues, provided that the aggregate amount of all Revenue Interest Payments and Catch-Up Payments shall not exceed the Hard Cap.

"**Revenue Interest Period**" as defined in the Revenue Interest Financing Agreement as in effect on the date hereof.

"**SHRP**" as defined in the preamble hereto.

"**Second Lien Claimholder**" means SHRP and all other holders of the Second Lien Obligations at any given time.

"**Second Lien Debt Documents**" means the Revenue Interest Financing Agreement and the Transaction Documents (as defined in the Revenue Interest Financing Agreement), the Second Lien Security Documents, each of the other agreements, documents and instruments providing for or evidencing any other Second Lien Obligation and any other document or instrument executed or delivered at any time in connection with any Second Lien Obligations, including any intercreditor or joinder agreement among

holders of Second Lien Obligations to the extent such are effective at the relevant time, as each may be renewed, extended, amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof.

"**Second Lien Obligations**" means all Obligations outstanding under the Second Lien Debt Documents, including all interest, fees, costs and expenses accrued or accruing (or which would, absent commencement of an Insolvency Proceeding, accrue) after commencement of an Insolvency Proceeding in accordance with any rate specified in the relevant Second Lien Debt Document regardless of whether the claim for such interest, fees, costs and expenses is allowed or allowable as a claim in such Insolvency Proceeding and shall include all "Obligations," as such term is defined in the Revenue Interest Financing Agreement.

"**Second Lien Priority Collateral**" means, at any date of determination, the Grantors' rights, title and interest in, to and under, five percent (5.0%) of all Net Sales.

"**Second Lien Recovery**" as defined in Section 6.7(b).

"**Second Lien Security Agreement**" means Security Agreement as such term is defined in the Revenue Interest Financing Agreement as in effect on the date hereof.

"**Second Lien Security Documents**" means the Second Lien Security Agreement and any other agreement, document, or instrument pursuant to which a Lien is granted securing Second Lien Obligations or under which rights or remedies with respect to such Liens are governed, in each case to the extent related to the Collateral.

"**Secured Product**" means Product as such term is defined in the Revenue Interest Financing Agreement as in effect on the date hereof.

"**Secured Product Revenues**" means Net Sales during the Revenue Interest Period.

"**Standstill Period**" means the period commencing on the date of the occurrence of a Put Option Event (as defined in the Revenue Interest Financing Agreement as of the date hereof) and terminating on the date 120 days after the First Lien Agent has received written notice from the Second Lien Claimholders that a Put Option Event has occurred and is continuing in accordance with the terms of the Second Lien Debt Documents; provided that (i) the Standstill Period shall be tolled during the pendency of any Insolvency Proceeding of any Grantor or if the First Lien Agent is stayed by any court order pursuant to which the First Lien Agent is effectively stayed from enforcing its rights and remedies with respect to the Collateral and (ii) the Standstill Period shall not terminate if the First Lien Agent or any other First Lien Claimholder shall have commenced prior to the expiration of the Standstill Period (or thereafter but prior to the commencement of any Enforcement Action by the Second Lien Claimholders with respect to all or any material portion of the Collateral) and are diligently pursuing in good faith an Enforcement Action with respect to all or any material portion of the Collateral.

"**Subsidiary**" as defined in the First Lien Credit Agreement.

"**Subsidiary Guarantor**" as defined in the First Lien Credit Agreement.

"**UCC**" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, if by reason of mandatory provisions of law, the perfection, the effect of perfection or non-perfection or the priority of the security interests of the First Lien Agent or the Second Lien Claimholders in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction

other than New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

Section 1.2 Interpretation. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), unless otherwise indicated in this Agreement, (b) any reference herein to any person shall be construed to include such person's permitted successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections shall be construed to refer to Sections of this Agreement, (e) any reference to any law herein shall, unless otherwise specified, refer to such law as amended, modified or supplemented from time to time, and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 2 LIEN PRIORITY

Section 2.1 Seniority of First Lien Obligations.

(a) The Liens on Collateral securing the First Lien Obligations will at all times be senior and prior for all purposes and in all respects to the Liens on Collateral (other than Second Lien Priority Collateral) securing the Second Lien Obligations.

(b) The priority of the Liens securing the First Lien Obligations to the Liens securing the Second Lien Obligations and the rights and obligations of the First Lien Claimholders will, in each case, remain in full force and effect irrespective of:

(1) how a Lien was acquired (whether by grant, possession, statute, operation of law, subrogation, or otherwise);

(2) the time, manner, or order of the grant, attachment, or perfection of a Lien;

(3) any conflicting provision of the UCC or other applicable law;

(4) any defect in, or non-perfection, setting aside, or avoidance of, a Lien or a First Lien Debt Document or a Second Lien Debt Document;

(5) the amendment, modification, supplement, extension, renewal, restatement, replacement or refinancing of a First Lien Obligation or a Second Lien Obligation;

(6) the amendment, modification, supplement or restatement of a First Lien Debt Document or a Second Lien Debt Document in accordance with Section 7;

(7) the subordination of a Lien on Collateral securing a First Lien Obligation to a Lien (i) securing another obligation of a Grantor or other person that arises by operation of law or, if voluntary, is permitted under the First Lien Debt Documents, or (ii) securing a DIP Financing contemplated by Section 6.1;

(8) the avoidance or invalidation of the Liens on Collateral securing the First Lien Obligations;

(9) the exchange of a security interest in any Collateral for a security interest in other Collateral in accordance with Section 2.2;

(10) by any other action or inaction which any First Lien Claimholder or Second Lien Claimholder, as applicable, may take or fail to take with respect to the Collateral or the Liens on Collateral securing the First Lien Obligations or the Second Lien Obligations, as applicable;

(11) the commencement of any Insolvency Proceeding; or

(12) any other circumstance whatsoever, including a circumstance that might be a defense available to, or a discharge of, a Grantor in respect of a First Lien Obligation or a Second Lien Obligation or holder of such Obligation.

Section 2.2 Identification of Collateral.

(a) The parties hereto agree, subject to the other provisions of this Agreement, to cooperate in good faith (and to direct their counsel to cooperate in good faith) to determine the specific items included in the Collateral and the Second Lien Priority Collateral, the steps taken to perfect the Liens thereon, and the identity of the persons having First Lien Obligations or Second Lien Obligations.

(b) Until the Discharge of First Lien Obligations, regardless of whether an Insolvency Proceeding has commenced, the Grantors agree not to grant an additional Lien to secure the Second Lien Obligations on any asset or property from any Grantor unless the First Lien Agent shall have consented in writing to the granting of such Lien.

Notwithstanding the foregoing, if any Second Lien Claimholder shall (nonetheless and in breach hereof) acquire or hold any Lien on any assets of the Borrower or any other Grantor securing any Second Lien Obligations that are not also subject to a Lien securing the First Lien Obligations under the First Lien Debt Documents, then such Second Lien Claimholder shall, without the need for any further consent of any party and notwithstanding anything to the contrary in any other document, (i) notify the First Lien Agent promptly upon becoming aware thereof and, unless such Grantor shall promptly grant a similar Lien on such assets or property to the First Lien Agent as security for the First Lien Obligations, shall assign such Lien to the First Lien Agent as security for all First Lien Obligations for the benefit of the First Lien Claimholders (but may retain a junior lien on such assets or property subject to the terms hereof) and (ii) until such assignment to the First Lien Agent or such grant of a similar Lien to the First Lien Agent, shall be deemed to also hold and have held such Lien for the benefit of the First Lien Agent and the other First Lien Claimholders as security for the First Lien Obligations, subject to the relative priorities set forth in Section 2.1. To the extent that the provisions of the immediately preceding sentence are not complied with for any reason, without limiting any other right or remedy available to the First Lien Agent or any other First Lien Claimholder, the Second Lien Claimholders agree that any amounts received by or distributed to any Second Lien Claimholder pursuant to or as a result of any Lien granted in contravention of this Section 2.2 shall be subject to Section 4.1 and Section 4.4.

Section 2.3 Prohibition on Contesting Liens; No Marshaling.

(a) The Second Lien Claimholders will not (and hereby waive any right to), directly or indirectly, contest in any proceeding (including an Insolvency Proceeding) the validity, enforceability, perfection, or priority of any Lien securing, or the allowability of any claim asserted with respect to, a First Lien Obligation, but nothing in this Section 2.3(a) will limit or otherwise affect the rights of any Second Lien Claimholder to (i) enforce this Agreement, including the priority of the Liens securing the Second Lien Obligations or the provisions for exercise of remedies or (ii) vote on any plan of reorganization, arrangement, compromise or liquidation in accordance with Section 6.12 of this Agreement.

(b) The First Lien Claimholders will not (and hereby waive any right to), directly or indirectly, contest in any proceeding (including an Insolvency Proceeding) the validity, enforceability, perfection, or priority of any Lien securing, or the allowability of any claim asserted with respect to, a Second Lien Obligation, but nothing in this Section 2.3(b) will limit or otherwise affect the rights of any First Lien Claimholder to (i) enforce this Agreement, including the priority of the Liens securing the First Lien Obligations or the provisions for exercise of remedies or (ii) vote on any plan of reorganization, arrangement, compromise or liquidation in accordance with Section 6.12 of this Agreement.

(c) Until the Discharge of First Lien Obligations, the Second Lien Claimholders will not assert any marshaling, appraisal or other similar right that may otherwise be available to a junior secured creditor.

Section 2.4 Confirmation of Subordination in Second Lien Debt Documents. Each Grantor and Second Lien Claimholder agrees that each Second Lien Security Document will include the following clause (or a clause to similar effect approved by the First Lien Agent) and any other clause that the First Lien Agent requests to reflect the subordination of the Liens granted to the Second Lien Claimholders:

> "Notwithstanding anything herein to the contrary, the Lien and security interest granted to the Second Lien Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Second Lien Collateral Agent or any Second Lien Claimholder hereunder are subject to the provisions of the Intercreditor Agreement, dated August 4, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Intercreditor Agreement"), among Oaktree Fund Administration, LLC, as First Lien Agent, Sagard Healthcare Royalty Partners, LP, and acknowledged by the Grantors (as defined therein) and other persons from time to time party thereto. If there is a conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement will control."

Section 2.5 Release of Liens and Guaranties.

(a) Except as provided for in subsection (b) below, if in connection with (1) a First Lien Agent's Enforcement Action in respect of the Collateral or (2) a sale or other disposition of Collateral not prohibited by the terms of the First Lien Debt Documents, the First Lien Agent, for itself or on behalf of any of the First Lien Claimholders that it represents, releases any of its Liens on any part of the Collateral (other than the Second Lien Priority Collateral) or releases any Grantor from its obligations under its guaranty of the First Lien Obligations in connection with the sale or other disposition of all of the stock of such Grantor or otherwise, then the Liens, if any, of the Second Lien Claimholders, on such Collateral, and the obligations of such Grantor under its guaranty of the Second Lien Obligations, shall be automatically, unconditionally and simultaneously released to the same extent as the Liens of such First Lien Agent, or the obligations of such Grantor under its guaranty of the First Lien Obligations, as applicable, are released (but shall apply, to the extent forming a part of the Collateral, to any remaining Proceeds of such sale or other disposition that are not otherwise utilized to repay the First Lien Obligations). Each Second Lien

Claimholder promptly shall execute and deliver to the First Lien Agent or such Grantor such termination statements, releases and other documents as the First Lien Agent or such Grantor may request to confirm such release.

(b) The Second Lien Claimholder hereby appoints the First Lien Agent and any officer or agent of the First Lien Agent, with full power of substitution, as its true and lawful attorney-in-fact with full power and authority in the place and stead of such Second Lien Claimholder or in the First Lien Agent's own name, in the First Lien Agent's discretion to take any action and to execute any and all documents and instruments that may be reasonable and appropriate for the limited purpose of carrying out the terms of this Section 2.5, including any endorsements or other instruments of transfer or release. This appointment is coupled with an interest and is irrevocable until the Discharge of First Lien Obligations or such time as this Agreement is terminated in accordance with its terms.

(c) Until the Discharge of First Lien Obligations, to the extent that the First Lien Agent (1) releases a Lien on Collateral or a Grantor from its First Lien Obligations under its guaranty, which Lien or guaranty is reinstated, or (2) obtains a new Lien on Collateral or additional guaranty from a Grantor, then the Second Lien Claimholder will be granted a Lien on such Collateral and an additional guaranty, as the case may be, subject to the other provisions of this Agreement, including Section 2.2, in each case, to the extent required pursuant to the terms of the Revenue Interest Financing Agreement.

Section 2.6 Nature of First Lien Obligations. The Second Lien Claimholder acknowledges that (a) subject to Article 7 hereof, the terms of the First Lien Debt Documents and the First Lien Obligations may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, and the First Lien Obligations, or a portion thereof, may be refinanced from time to time, and (b) the aggregate amount of the First Lien Obligations may be increased, in each case without notice to or consent by the Second Lien Claimholders and without affecting the provisions hereof. As between the Borrower and the other Grantors and the Second Lien Claimholders, the foregoing provisions will not limit or otherwise affect the obligations of the Borrower and the Grantors contained in any Second Lien Debt Document with respect to the incurrence of additional First Lien Obligations.

SECTION 3 ENFORCEMENT

Section 3.1 Exercise of Remedies.

(a) The First Lien Agent or other First Lien Claimholders shall, subject to subsections (b) and (c) below, have the exclusive right to:

(1) commence and maintain an Enforcement Action (including the rights to set-off their debt), or to forbear from commencing an Enforcement Action;

(2) make determinations regarding the release or disposition of, or restrictions with respect to, the Collateral in connection with any Enforcement Action; and

(3) otherwise enforce (or not enforce) the rights and remedies of a secured creditor under the UCC, the Bankruptcy Code and any other applicable law.

(b) Notwithstanding Section 3.1(a), the Second Lien Claimholders may take the actions described in Section 3.1(a)(1) through (3) above, commence an Enforcement Action with respect to a Lien securing a Second Lien Obligation or otherwise exercise rights under applicable law, except as specifically contemplated in Section 6, if:

(1) the Discharge of First Lien Obligations has occurred; or

(2) (i)the Standstill Period has elapsed; and

(ii) the Second Lien Claimholders shall have provided prior written notice of the taking of such actions or the exercising of such rights to the First Lien Agent

provided, any credit bid under section 363(k) of the Bankruptcy Code (or similar Bankruptcy Law) by the Second Lien Claimholders must comply with the requirements set forth in Section 3.1(c)(3), as applicable.

(c) The Second Lien Claimholders may:

(1) take action to create, perfect, preserve, or protect (but not enforce) its Lien on the Collateral, so long as such actions are not adverse to the priority status in accordance with this Agreement of Liens on the Collateral securing the First Lien Obligations or First Lien Claimholders' rights to exercise remedies;

(2) join (but not exercise any control over) a judicial foreclosure or Lien enforcement proceeding with respect to the Collateral initiated by the First Lien Agent or other First Lien Claimholder, to the extent that such action does not interfere with the Enforcement Action by the First Lien Agent or such other First Lien Claimholder, but no Second Lien Claimholder may receive any Proceeds thereof unless expressly permitted herein;

(3) bid for or purchase Collateral at any public, private, or judicial foreclosure upon such Collateral initiated by any other person; provided, such bid may not include a credit bid, under section 363(k) of the Bankruptcy Code (or similar Bankruptcy Law), in respect of any Second Lien Obligations unless and to the extent such credit bid provides cash for the payment in full of the First Lien Obligations and otherwise complies with the lien priorities set forth in Section 2.1 and the payment priorities set forth in Section 4.1;

(4) file a claim or proof of claim or statement of interest with respect to the Second Lien Obligations and vote on any chapter 11 plan, in each case, in a manner consistent with Section 6.12; or

(5) file any necessary or appropriate pleadings in opposition to a claim objecting to or otherwise seeking the disallowance of a Second Lien Obligation or a Lien securing any Second Lien Obligation.

Section 3.2 Manner of Exercise.

(a) The First Lien Agent or other First Lien Claimholder may, without any objection from or interference by any Second Lien Claimholder, take (or forbear from taking) any Enforcement Action or other action permitted by Section 3.1(a):

(1) in any manner in its sole discretion in compliance with applicable law and this Agreement;

(2) without consultation or the consent of any Second Lien Claimholder, and each Second Lien Claimholder hereby waives any and all rights it may have as a junior lien creditor (whether arising under the UCC or under any other law) to object to the manner in which the First Lien Agent or the First Lien Claimholders seek to enforce or collect the First Lien Obligations or the Liens granted in any of the Collateral;

(3) regardless of whether an Insolvency Proceeding has been commenced;

(4) regardless of any covenant, agreement, restriction, or other provision of any Second Lien Debt Document (other than this Agreement); and

(5) regardless of whether such exercise is adverse to the interest of any Second Lien Claimholder, but consistent with this Agreement.

(b) The rights of the First Lien Agent or other First Lien Claimholder to enforce any provision of any First Lien Debt Document, including such provision permitting enforcement of this Agreement, will not be prejudiced or impaired by:

(1) any act or failure to act of, or forbearance or waiver by, any Grantor, the First Lien Agent, or other First Lien Claimholder; or

(2) noncompliance by any person other than such First Lien Claimholder with any provision of any First Lien Debt Document, regardless of any knowledge thereof that the First Lien Agent or other First Lien Claimholder may have or may otherwise be charged with.

(c) Prior to the expiration of the Standstill Period (which, for the avoidance of doubt, shall include the extension of such period for so long as (i) a First Lien Claimholder is diligently pursuing in good faith an Enforcement Action against all or a material portion of the Collateral or diligently attempting in good faith to vacate any stay or prohibition on such exercise, or (ii) any Grantor is then the subject of an Insolvency Proceeding), the Second Lien Claimholders will not (and hereby waive any right to), directly or indirectly, (x) contest in any proceeding (including an Insolvency Proceeding) and will not otherwise protest, object to, or take any action to hinder, delay, limit, or otherwise interfere with, and each waives any and all claims with respect to, the First Lien Agent or other First Lien Claimholder taking any Enforcement Action (or forbearing from taking any Enforcement Action) or other action permitted by Section 3.1(a) in compliance with this Agreement and applicable law or (y) commence or join with any person (other than First Lien Agent) in commencing, or filing a petition for, any Insolvency Proceeding against any Grantor.

Section 3.3 Specific Performance. The First Lien Agent and other First Lien Claimholders may demand specific performance of this Agreement, and each Second Lien Claimholder waives any defense based on the adequacy of a remedy at law and any other defense that might be asserted to bar the remedy of specific performance.

SECTION 4 PAYMENTS

Section 4.1 Application of Payments.

(a) Subject to Section 6.8, until the Discharge of First Lien Obligations and the Discharge of Second Lien Obligations, and regardless of whether an Insolvency Proceeding has been commenced, the Collateral (other than the Second Lien Priority Collateral), Proceeds or other distributions with respect to the Collateral (other than the Second Lien Priority Collateral) received in connection with an Enforcement Action or an Insolvency Proceeding, will be applied:

(1) ***first*,** to the First Lien Obligations;

(2) ***second*,** upon the Discharge of First Lien Obligations, to the Second Lien Obligations; and

(3) ***third*****,** upon the Discharge of First Lien Obligations and the Discharge of Second Lien Obligations, to the applicable Grantor or as otherwise required by applicable law.

(b) Subject to Section 6.8, until the Discharge of First Lien Obligations and the Discharge of Second Lien Obligations, and regardless of whether an Insolvency Proceeding has been commenced, the Second Lien Priority Collateral, Proceeds or other distributions with respect to the Second Lien Priority Collateral received in connection with an Enforcement Action or an Insolvency Proceeding, will be applied:

(1) ***first*****,** to the Second Lien Obligations;

(2) ***second*****,** upon the Discharge of Second Lien Obligations, to the First Lien Obligations; and

(3) ***third*****,** upon the Discharge of First Lien Obligations and the Discharge of Second Lien Obligations, to the applicable Grantor or as otherwise required by applicable law.

(c) Notwithstanding the foregoing, if any Enforcement Action with respect to the Collateral (other than any non-cash proceeds received on account of any Second Lien Priority Collateral) produces non-cash proceeds, then such non-cash proceeds shall be held by the First Lien Agent as additional collateral and, at such time as such non-cash proceeds are monetized, shall be applied or distributed as set forth above. First Lien Agent shall have no duty or obligation to dispose of such non-cash proceeds and may dispose of such non-cash proceeds or continue to hold such non-cash proceeds, in each case, in its sole discretion; provided, that any non-cash proceeds received by First Lien Agent (other than any non-cash proceeds received on account of any Second Lien Priority Collateral) may be distributed by First Lien Agent to the First Lien Claimholders in full or partial satisfaction of First Lien Obligations in an amount equal to the fair market value of such non-cash proceeds or as a court of competent jurisdiction may direct, including an order confirming a plan of reorganization in an Insolvency Proceeding.

Section 4.2 Manner of Payment. Payments with respect to the First Lien Obligations and the Second Lien Obligations shall be made in the manner and in such order as specified in the First Lien Debt Documents or the Second Lien Debt Documents, as applicable.

Section 4.3 Insurance.

(a) Until the Discharge of First Lien Obligations, subject to the rights of the Grantors under the First Lien Debt Documents, the First Lien Agent may, and will have the exclusive right, to adjust settlement for any losses covered by an insurance policy covering the Collateral, and to approve an award granted in a condemnation or similar proceeding (or a deed in lieu of condemnation) affecting the Collateral, as the case may be; and

(b) all Proceeds of such policy, award, or deed will be applied as set forth in Section 4.1.

Section 4.4 Payment Turnover.

(a) Subject to Section 6.8, until the Discharge of First Lien Obligations, regardless of whether an Insolvency Proceeding has commenced, Collateral or Proceeds thereof (including insurance proceeds or property or Proceeds subject to Liens securing the First Lien Obligations or the Second Lien Obligations but other than any non-cash proceeds received on account of any Second Lien Priority

Collateral) that are received by a Second Lien Claimholder in connection with an Enforcement Action, otherwise in contravention of this Agreement, or in connection with an Insolvency Proceeding, will be:

(1) segregated and held in trust; and

(2) promptly paid over to the First Lien Agent in the form received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The First Lien Agent is authorized to make such endorsements as agent for any such Second Lien Claimholder. This authorization is coupled with an interest and is irrevocable until the Discharge of First Lien Obligations.

(b) Collateral or Proceeds thereof that are paid over to the First Lien Agent pursuant to Section 4.4(a) will be applied as set forth in Section 4.1.

Section 4.5 Payment Subordination.

(a) Each Second Lien Claimholder agrees that all payments in respect of the Second Lien Obligations shall be subordinate and junior in right to payment and all other respects to the First Lien Obligations, and that it shall not accept any payment in respect of the Second Lien Obligations (whether optional, voluntary, mandatory, or otherwise or by set-off, redemption, defeasance, or other payment or distribution) prior to the Discharge of First Lien Obligations; provided, however, that the Second Lien Claimholders may receive (x) payments constituting Revenue Interest Payments, (y) so long as no default or event of default under any First Lien Debt Document has occurred and is continuing or would result therefrom, payments constituting (A) the Put/Call Price, any Catch-Up Payments and any indemnification amount payable pursuant to the Revenue Interest Financing Agreement and (B) expense reimbursement to the extent required pursuant to the Revenue Interest Financing Agreement, in each case, to the extent such payments are otherwise permitted pursuant to the terms of the First Lien Debt Documents, and (z) debt or equity securities that are issued by a reorganized debtor pursuant to a plan of reorganization or similar dispositive restructuring plan in connection with an Insolvency Proceeding to any Second Lien Claimholder on account of the Second Lien Obligations that are subordinated at least to the same extent as the Second Lien Obligations are subordinated to the First Lien Obligations pursuant to the terms of this Agreement. If any payments are received in contravention of the foregoing at any time before the Discharge of First Lien Obligations by one or more of the Second Lien Claimholders, they shall be held in trust for the benefit of the First Lien Claimholders and forthwith paid over to First Lien Agent for the benefit of the First Lien Claimholders.

(b) Subject to Section 4.1(b), the subordination of Liens on Second Lien Priority Collateral securing First Lien Obligations to Liens on Second Lien Priority Collateral securing Second Lien Obligations set forth in this Agreement affects only the relative priority of those Liens as set forth in this Agreement and does not otherwise subordinate the First Lien Obligations in right of payment to the Second Lien Obligations. Nothing in this Agreement will affect the obligation of each Grantor to make and the entitlement of any First Lien Claimholder to demand, receive and retain payments of interest, principal, and other amounts due pursuant to the First Lien Debt Documents and constituting First Lien Obligations.

SECTION 5 OTHER RIGHTS

Section 5.1 First Lien Refinancing.

(a) The Grantors may commence a refinancing of any First Lien Obligations without prior notice to, or the consent of the Second Lien Claimholders, all without affecting the lien subordination or the other provisions of this Agreement ("**First Lien Refinancing**").

(b) The Obligations resulting from the First Lien Refinancing (the "**Refinanced First Lien Obligations**") will automatically be treated as First Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein.

(c) The Second Lien Claimholders will promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as the First Lien Agent and the new agent with respect to the Refinanced First Lien Obligations (the "**New First Lien Representative**") reasonably request to document the New First Lien Representative's rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement.

SECTION 6 INSOLVENCY PROCEEDINGS

Section 6.1 DIP Financing.

(a) Until the Discharge of First Lien Obligations, if the Borrower or any other Grantor shall be subject to an Insolvency Proceeding, the Second Lien Claimholders will not contest, protest, or object to, and each Second Lien Claimholder will be deemed to have consented to, the Borrower or any other Grantor obtaining DIP Financing consented to by the First Lien Agent in its sole discretion on behalf of the First Lien Claimholders.

(b) No Second Lien Claimholder may provide or offer to provide any DIP Financing without the consent of the First Lien Agent on behalf of the First Lien Claimholders.

Section 6.2 Use of Cash Collateral. Until the Discharge of First Lien Obligations, if the Borrower or any other Grantor shall be subject to an Insolvency Proceeding, the Second Lien Claimholders will not, directly or indirectly, contest, protest, or object to, and each Second Lien Claimholder will be deemed to have consented to any use of "cash collateral" (as such term is defined in section 363(a) of the Bankruptcy Code) consented to by the First Lien Agent in its sole discretion on behalf of the First Lien Claimholders.

Section 6.3 Sale of Collateral. The Second Lien Claimholders will not, directly or indirectly, contest, protest, or object, and will be deemed to have consented pursuant to section 363(f) of the Bankruptcy Code (or similar Bankruptcy Law), to a disposition of Collateral free and clear of its Liens or other interests under section 363 of the Bankruptcy Code (or similar Bankruptcy Law) in connection with such disposition if the First Lien Agent consents in its sole discretion in writing to the disposition.

Section 6.4 Relief from the Automatic Stay. Until the Discharge of First Lien Obligations, each Second Lien Claimholder agrees that it shall not, directly or indirectly, (1) seek relief from the automatic stay set forth in section 362 of the Bankruptcy Code or any other stay in an Insolvency Proceeding in respect of the Collateral, without the prior written consent of the First Lien Agent in its sole discretion on behalf of the First Lien Claimholders that it represents, or (2) object to any motion by the First Lien Agent seeking relief from the automatic stay set forth in section 362 of the Bankruptcy Code or any other stay in an Insolvency Proceeding in respect of the Collateral. Each of the Second Lien Claimholders waives any claim it may now or hereafter have against any First Lien Claimholder arising out of the election of any First Lien Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code or out of any cash collateral or financing arrangement or out of any grant of a security interest in connection with the Collateral in any Insolvency Proceeding. Each Second Lien Claimholder further agrees that it will not seek to participate on any creditor's committee without the prior written consent of the First Lien Agent.

Section 6.5 Adequate Protection.

(a) Except as provided in Section 6.5(b), each Second Lien Claimholder agrees that it shall not, directly or indirectly, contest:

(1) any request by the First Lien Agent or the First Lien Claimholders for adequate protection under any Bankruptcy Law in any form; or

(2) any objection by the First Lien Agent or the First Lien Claimholders to any motion, relief, action or proceeding based on such First Lien Agent or the First Lien Claimholders claiming a lack of adequate protection.

(b) Second Lien Claimholders, without the consent of First Lien Agent, shall not seek any adequate protection with respect to their rights in the Collateral.

Section 6.6 First Lien Claimholders Retains Right to Object. Nothing contained herein shall prohibit or in any way limit the First Lien Agent or any other First Lien Claimholder from objecting in an Insolvency Proceeding or otherwise to any action taken by a Second Lien Claimholder, including the seeking by a Second Lien Claimholder of adequate protection or the assertion by a Second Lien Claimholder of any of its rights and remedies under the Second Lien Debt Documents or otherwise.

Section 6.7 Avoidance Issues.

(a) If any First Lien Claimholder is required in an Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of the Borrower or any other Grantor any amount paid in respect of First Lien Obligations (a "**First Lien Recovery**"), then such First Lien Claimholders shall be entitled to a reinstatement of First Lien Obligations with respect to all such recovered amounts. If this Agreement shall have been terminated prior to such First Lien Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Upon any such reinstatement of any First Lien Obligations (unless, after giving effect to such First Lien Recovery, there has been a Discharge of First Lien Obligations), each Second Lien Claimholder will deliver to the First Lien Agent any Collateral (other than Second Lien Priority Collateral) or net Proceeds thereof received between the Discharge of First Lien Obligations and their reinstatement in accordance with Section 4.4.

(b) If any Second Lien Claimholder is required in an Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of the Borrower or any other Grantor any amount paid in respect of Second Lien Obligations secured by Second Lien Priority Collateral (a "**Second Lien Recovery**"), then such Second Lien Claimholders shall be entitled to a reinstatement of Second Lien Obligations with respect to all such recovered amounts. If this Agreement shall have been terminated prior to such Second Lien Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Upon any such reinstatement of any Second Lien Obligations (unless, after giving effect to such Second Lien Recovery, there has been a Discharge of Second Lien Obligations), each First Lien Claimholder will deliver to the Second Lien Claimholders any Collateral constituting Second Lien Priority Collateral or net Proceeds thereof received between the Discharge of Second Lien Obligations and their reinstatement in accordance with Section 4.4.

Section 6.8 Reorganization Securities. If, in an Insolvency Proceeding, debt Obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of First Lien

Obligations and on account of Second Lien Obligations, then, to the extent the debt Obligations distributed on account of the First Lien Obligations and on account of the Second Lien Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt Obligations pursuant to such plan and will apply with like effect to the Liens securing such debt Obligations.

Section 6.9 Post-Petition Claims. No Second Lien Claimholder shall, directly or indirectly, oppose or seek to challenge any claim by the First Lien Agent or other First Lien Claimholder for allowance in an Insolvency Proceeding of First Lien Obligations consisting of post-petition interest, fees or expenses to the extent of the value of any First Lien Claimholder's Lien, without regard to the existence of the Lien of the Second Lien Claimholders on the Collateral.

Section 6.10 Waiver of Claims. Each Second Lien Claimholder waives:

(a) any claim it may hereafter have against any First Lien Claimholder arising out of any cash collateral usage and/or DIP Financing or out of any grant of a security interest in connection with the Collateral in an Insolvency Proceeding, so long as such actions are not in contravention of the terms of this Agreement;

(b) any right to assert or enforce any claim under section 506(c) or 552 of the Bankruptcy Code (or similar Bankruptcy Law) as against any First Lien Claimholders or any of the Collateral to the extent securing the First Lien Obligations;

(c) any claim it may have against any First Lien Claimholder arising out of the election by such First Lien Claimholder of the application of section 1111(b)(2) of the Bankruptcy Code (or similar Bankruptcy Law) with respect to the Collateral; and

(d) any claim it may have against any First Lien Claimholder arising out of the non-payment in full of the Second Lien Obligations.

Section 6.11 Separate Grants of Security and Separate Classification. The grants of Liens pursuant to the First Lien Debt Documents and the Second Lien Debt Documents constitute two separate and distinct grants. Because of, among other things, their differing rights in the Collateral, the Second Lien Obligations are fundamentally different from the First Lien Obligations and must be separately classified in any chapter 11 plan in an Insolvency Proceeding. Second Lien Claimholders will not, directly or indirectly, seek in an Insolvency Proceeding to be treated as part of the same class of creditors as First Lien Claimholders and will not, directly or indirectly, oppose or contest any pleading by First Lien Claimholders seeking separate classification of their respective secured claims. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the First Lien Claimholders and the Second Lien Claimholders in respect of the Collateral constitute only one secured claim or a single class of claims (rather than separate classes of senior and junior secured claims), then each of the parties hereto hereby acknowledges and agrees that all distributions shall be made as if there were separate classes of senior and junior secured claims against the Grantors in respect of the Collateral (with the effect being that, to the extent that the aggregate value of the Collateral is sufficient (for this purpose ignoring all claims held by the Second Lien Claimholders), the First Lien Claimholders shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees, and expenses (whether or not allowed or allowable) before any distribution is made from the Collateral in respect of the Second Lien Obligations, with each Second Lien Claimholder hereby acknowledging and agreeing to turn over to the First Lien Agent amounts otherwise received or receivable by them from the Collateral to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Second Lien Claimholders.

Section 6.12 Plan Proposal and Voting. The Second Lien Claimholders shall vote in favor of any debt restructuring, restructuring, chapter 11 plan or Enforcement Action or agreement supported by the First Lien Agent.

Section 6.13 Proof of Claim; Statements of Interest. Each Second Lien Claimholder is expressly permitted to file a claim or proof of claim or statements of interest in an Insolvency Proceeding with respect to the Second Lien Obligations and to comply with any applicable notice requirements, in a manner otherwise consistent with this Agreement, and agree to execute, verify, deliver and file any proofs of claim in respect of Second Lien Obligations requested by any First Lien Agent in connection with any Insolvency Proceeding. Each Second Lien Claimholder hereby grants to the First Lien Agent the right to file claim or proofs of claim on account of the Second Lien Obligations in any Insolvency Proceedings in the event that such Second Lien Claimholder fails to do so within five days of any claims bar date pertaining thereto, *provided*, however, that neither the First Lien Agent nor any First Lien Claimholder shall have any obligation to execute, verify, deliver, and/or file any such claim. In the event that the First Lien Agent votes any claim in accordance with the authority granted hereby, no Second Lien Claimholder shall be entitled to change or withdraw such vote.

Section 6.14 Second Lien Claimholders' Rights. Notwithstanding any provision of this Agreement, Second Lien Claimholders may exercise any rights and remedies that could be exercised by an unsecured creditor against a Borrower or any other Grantor in accordance with the terms of the Second Lien Loan Documents and applicable law, provided that any judgment Lien obtained by a Second Lien Claimholder as a result such exercise of rights will be included in the Second Lien Collateral and be subject to this Agreement for all purposes (including in relation to the First Lien Obligations).

Section 6.15 Effectiveness in Insolvency Proceedings. The parties hereto acknowledge that this Agreement is a "subordination agreement" under section 510(a) of the Bankruptcy Code, which will be effective before, during, and after the commencement of an Insolvency Proceeding. All references in this Agreement to any Grantor will include such person as a debtor-in-possession and any receiver or trustee for such person in an Insolvency Proceeding. In the event that this Agreement is deemed inapplicable to any extent with respect to the confirmation of a proposed chapter 11 plan in an Insolvency Proceeding, this Agreement will remain effective in all other respects, including with respect to the application of distributions received in connection with such plan of reorganization as set forth in Section 4.1.

SECTION 7 MODIFICATION OF OBLIGATIONS

Section 7.1 Modification of First Lien Debt Documents. The First Lien Debt Documents may be amended, restated, amended and restated, replaced, supplemented, waived or otherwise modified from time to time in accordance with their terms without prior notice to, or the consent of the Second Lien Claimholders, all without affecting the lien subordination or the other provisions of this Agreement; provided, any such amendment, restatement, amendment and restatement, replacement, supplement, waiver or other modification shall not, without the consent of the Second Lien Claimholders (acting in accordance with the Second Lien Debt Documents) amend the First Lien Debt Documents (i) in a manner that is in violation of this Agreement, or (ii) to make any modification of the First Lien Debt Documents that restricts the Borrower's ability to make mandatory payments under the Second Lien Debt Documents as in effect on the date hereof.

Section 7.2 Modification of Second Lien Debt Documents. The Second Lien Debt Documents may be amended, restated, amended and restated, replaced, supplemented, waived or otherwise modified in accordance with their terms without prior notice to, or the consent of the First Lien Claimholders, all without affecting the lien subordination or the other provisions of this Agreement; provided, any such amendment, restatement, amendment and restatement, replacement, supplement, waiver

or other modification shall not, without the consent of the First Lien Agent (acting in accordance with the First Lien Debt Documents) amend the Second Lien Debt Documents (i) in a manner that is in violation of this Agreement or (ii) (A) to make any modification of the Revenue Interest Financing Agreement as in effect on the date hereof that restricts the Borrower's ability to make required or voluntary payments in respect of the First Lien Obligations; (B) to shorten the Term (as defined in the Revenue Interest Financing Agreement as of the date hereof), require that any payment on the Second Lien Obligations be made earlier than the date originally scheduled for such payment (in each case, other than as a result of a Put Option Event as defined in the Revenue Interest Financing Agreement as of the date hereof) or add or make more restrictive any mandatory payment or similar requirement except for periods beyond the latest Maturity Date (as defined in the First Lien Credit Agreement); or (C) to increase the amount of the Hard Cap, Revenue Interest Payments, the Put/Call Price, the Catch-up Payments or other fees or amounts owed to the Second Lien Claimholders pursuant to the terms of the Second Lien Debt Documents.

Section 7.3 Modifications to Security Documents. So long as the Discharge of First Lien Obligations has not occurred, in the event that the First Lien Agent or the First Lien Claimholders enter into any amendment, waiver or consent in respect of or replace any of the First Lien Security Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any First Lien Security Document or changing in any manner the rights of the First Lien Agent, the First Lien Claimholders, the Borrower or any other Grantor thereunder (including the release of any Liens on Collateral in accordance with Section 2.5), in each case to the extent relating to or affecting the Collateral (excluding the Second Lien Priority Collateral), then such amendment, waiver or consent shall apply automatically to any comparable provision of each comparable Second Lien Security Document without the consent of the Second Lien Agent or any Second Lien Claimholder and without any action by the Second Lien Agent, the Borrower or any other Grantor. The First Lien Agent or the Borrower shall give written notice of such amendment, waiver or consent (along with a copy thereof) to the Second Lien Agent no later than ten Business Days following the effective date of such amendment, waiver or consent; provided that the failure to give such notice shall not affect the effectiveness of such amendment with respect to the provisions of any Second Lien Security Document as set forth in this Section 7.3.

SECTION 8 MISCELLANEOUS PROVISIONS

Section 8.1 Conflicts. If this Agreement conflicts with any First Lien Debt Document or Second Lien Debt Document, this Agreement will control.

Section 8.2 No Waivers; Remedies Cumulative. No failure or delay on the part of the First Lien Agent or the Second Lien Claimholders in the exercise of any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to the First Lien Agent hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other First Lien Debt Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

Section 8.3 Integration; Severability. This Agreement constitutes the entire agreement between the parties hereto with respect to the relative priorities of the Liens securing the First Lien Obligations and Second Lien Obligations and supersedes all prior agreements, oral or written, relating to its subject matter. In case any provision in or obligation hereunder shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 8.4 **Effectiveness.** This Agreement will become effective when executed and delivered by the parties hereto. Each First Lien Claimholder and each Second Lien Claimholder waives any right it may have under applicable law to revoke this Agreement or any provision thereunder. This Agreement will survive, and continue in full force and effect, in any Insolvency Proceeding.

Section 8.5 **Termination.** This Agreement shall terminate and be of no further force and effect:

(a) with respect to the First Lien Agent, the First Lien Claimholders and the First Lien Obligations, on the date of Discharge of First Lien Obligations with respect to the applicable First Lien Obligations, subject to the rights of the First Lien Claimholders under Section 6.7; and

(b) with respect to the Second Lien Agent, the Second Lien Claimholders and the Second Lien Obligations, (i) on the date of Discharge of Second Lien Obligations with respect to the applicable Second Lien Obligations and/or (ii) on the date of Discharge of First Lien Obligations, subject to the rights of the First Lien Claimholders under Section 6.7.

Section 8.6 **Information Concerning Financial Condition of Borrower.** The First Lien Claimholders and Second Lien Claimholders will each be responsible for keeping themselves informed of (a) the financial condition of the Grantors, and (b) all other circumstances bearing upon the risk of nonpayment of the First Lien Obligations and Second Lien Obligations. No First Lien Claimholder will have any duty to advise any Second Lien Claimholder, and no Second Lien Claimholder will have any duty to advise any First Lien Claimholder, of information known to it regarding any such condition or circumstances or otherwise.

Section 8.7 **No Reliance**.

(a) The First Lien Agent acknowledges that it and each other First Lien Claimholder has, independently and without reliance on any Second Lien Claimholder, and based on documents and information the First Lien Claimholder deemed appropriate, made its own credit analysis and decision to enter into the First Lien Debt Documents and this Agreement, and will continue to make its own credit decisions in taking or not taking any action under the First Lien Debt Documents or this Agreement.

(b) The Second Lien Claimholders acknowledge that it has, independently and without reliance on any First Lien Claimholder, and based on documents and information the Second Lien Claimholder deemed appropriate, made its own credit analysis and decision to enter into the Second Lien Debt Documents and this Agreement, and will continue to make its own credit decisions in taking or not taking any action under the Second Lien Debt Documents or this Agreement.

Section 8.8 **No Warranties; Independent Action**.

(a) Except as otherwise expressly provided herein:

(1) no Second Lien Claimholder has made any express or implied representation or warranty to any First Lien Claimholder, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any Second Lien Debt Document, the ownership of any Collateral, or the perfection or priority of any Liens thereon; and

(2) each Second Lien Claimholder may manage and supervise its loans and extensions of credit under the Second Lien Debt Documents in accordance with applicable law and as it may otherwise, in its sole discretion, deem appropriate.

(b) Except as otherwise expressly provided herein:

(1) no First Lien Claimholder has made any express or implied representation or warranty to any Second Lien Claimholder, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any First Lien Debt Document, the ownership of any Collateral, or the perfection or priority of any Liens thereon; and

(2) each First Lien Claimholder may manage and supervise its loans and extensions of credit under the First Lien Debt Documents in accordance with applicable law and as it may otherwise, in its sole discretion, deem appropriate.

(c) No Second Lien Claimholder will have any duty to any First Lien Claimholder, and no First Lien Claimholder will have any duty to any Second Lien Claimholder, to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Borrower or any other Grantor (including the First Lien Debt Documents and the Second Lien Debt Documents), regardless of any knowledge thereof that it may have or be charged with.

Section 8.9 Pledged Collateral.

(a) Except as otherwise specifically provided herein, until the Discharge of First Lien Obligations has occurred, the First Lien Agent shall be entitled to manage, administer, or otherwise deal with that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to perfect a Lien thereon under the UCC (the "**Pledged Collateral**") in accordance with the terms of the First Lien Debt Documents as if the Liens under the Second Lien Debt Documents did not exist. The rights of the Second Lien Claimholders with respect to such Pledged Collateral shall at all times be subject to the terms of this Agreement.

(b) The First Lien Agent shall not have any obligation whatsoever to the First Lien Claimholders or any Second Lien Claimholder to ensure that the Pledged Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any person. The duties or responsibilities of the First Lien Agent under this Section 8.9 shall be limited solely to holding the Pledged Collateral as collateral agent and taking such other action with respect to such Pledged Collateral as permitted by the First Lien Debt Documents and this Agreement.

(c) The First Lien Agent shall not have by reason of the Second Lien Debt Documents or this Agreement or any other document a fiduciary relationship in respect of any Second Lien Claimholder, and each Second Lien Claimholder hereby waives and releases the First Lien Agent from all claims and liabilities with respect to the Collateral.

(d) Upon the Discharge of First Lien Obligations, the First Lien Agent shall deliver the remaining Pledged Collateral (if any) together with any necessary endorsements to the Second Lien Claimholders to the extent Second Lien Obligations remain outstanding as confirmed in writing by the Second Lien Agent.

Section 8.10 Subrogation. If a Second Lien Claimholder pays or distributes cash, property, or other assets to a First Lien Claimholder under this Agreement, the Second Lien Claimholder will be subrogated to the rights of the First Lien Claimholder with respect to the value of the payment or distribution; provided, the Second Lien Claimholder agrees not to assert such right of subrogation until the Discharge of First Lien Obligations. Such payment or distribution by the Second Lien Claimholder will not reduce the Second Lien Obligations. If a First Lien Claimholder pays or distributes cash, property, or other

assets to a Second Lien Claimholder under this Agreement, the First Lien Claimholder will be subrogated to the rights of the Second Lien Claimholder with respect to the value of the payment or distribution. Such payment or distribution by the First Lien Claimholder will not reduce the First Lien Obligations.

Section 8.11 Applicable Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

Section 8.12 Consent to Jurisdiction.

Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in the Borough of Manhattan in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that (except as permitted below) all claims in respect of any such action or proceeding shall be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action 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. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

Section 8.13 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY 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 PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.13.

Section 8.14 Notices. Any notice to a First Lien Claimholder or a Second Lien Claimholder under this Agreement shall be given to the First Lien Agent and Second Lien Agent, respectively. Unless otherwise expressly provided herein, notices and consents must be in writing and will be deemed to have been given (1) when delivered in person or by courier service and signed for against receipt thereof, (2) upon receipt of pdf document via electronic mail, or (3) five Business Days after deposit in the United States mail with first-class postage prepaid and properly addressed. For the purposes hereof, the address of each party hereto on the date hereof will be as set forth below and the address of each party that becomes a party hereto after the date hereof shall be as set forth in the applicable Intercreditor Agreement Joinder or, in each case, as otherwise designated to the other parties hereto in writing:

If to First Lien Agent:

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

With a copy to (which copy shall not constitute notice):
Oaktree Capital Management, L.P.
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Aman Kumar
Email: [***]

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

Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
Attn: Ari B. Blaut, Esq.
Facsimile: [***]
Email: [***]

If to Second Lien Claimholder:

Maples Corporate Services Limited
PO Box 309
Ugland House, Grand Cayman
KY1-1104, Cayman Islands
[***]

with a copy to:

Sagard Holdings Manager LP
161 Bay Street,
Suite 5000,
Toronto, Ontario
M5J 2S1
Canada
Attention: Sacha Haque, General Counsel, Chief Compliance Officer & Secretary
[***]
[***]

If to any Grantor:

Athenex, Inc.
1001 Main Street
Suite 600
Buffalo, NY 14203
Attention: Teresa Bair
Email: [***]

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

Cooley LLP
55 Hudson Yards
New York, New York 10001

Attention: Mischi a Marca
Phone No. [***]
Email: [***]

Section 8.15 Further Assurances. The First Lien Agent, the Second Lien Claimholders and the Grantors will each take such further action and will execute and deliver such additional documents and instruments (in recordable form, if requested) as the First Lien Agent or the Second Lien Claimholders may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement.

Section 8.16 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby.

(b) This Agreement shall survive any sale, assignment, disposal or other transfer of all or any portion of any First Lien Obligations or any Second Lien Obligations to any transferee thereof, and the terms of this Agreement shall be binding upon the permitted successors and assigns of the First Lien Claimholders and the Second Lien Claimholders as provided in Section 8.16(a).

Section 8.17 Authorization. By its signature hereto, each person signing this Agreement on behalf of each party hereto represents and warrants to the other parties hereto that such person is duly authorized to execute this Agreement.

Section 8.18 Third-Party Beneficiaries.

(a) Each First Lien Claimholder and Second Lien Claimholder constitutes a third-party beneficiary of this Agreement.

(b) Except as provided in subsection (a) above or subsection (c) below, no person is a third-party beneficiary of this Agreement and no trustee in bankruptcy for, or bankruptcy estate of, or unsecured creditor of, any Grantor will have or acquire or be entitled to exercise any right of a First Lien Claimholder or Second Lien Claimholder under this Agreement, whether upon an avoidance or equitable subordination of a Lien of a First Lien Claimholder or a Second Lien Claimholder, or otherwise.

(c) None of the Borrower, any other Grantor, or any other creditor thereof has any rights hereunder, and neither the Borrower nor any Grantor may rely on the terms hereof; provided, that (A) no waiver, amendment or modification of this Agreement, without the prior written consent of the Borrower, shall have the effect of increasing the obligations of, reducing the rights of, imposing duties on, or otherwise adversely affecting the Borrower or any other Grantor and (B) the Borrower and each other Grantor shall be a third-party beneficiary to this Agreement to the extent necessary to enforce this proviso. For the avoidance of any doubt, no waiver, amendment or modification of this Agreement shall alter this Section 8.18(c) without the prior written consent of the Borrower.

(d) Nothing in this Agreement impairs the Obligations of the Borrower and the other Grantors to pay principal, interest, fees, and other amounts as provided in the First Lien Debt Documents and the Second Lien Debt Documents.

Section 8.19 No Indirect Actions. Unless otherwise expressly stated, if a party hereto may not take an action under this Agreement, then it may not take that action indirectly, or assist or support any other person in taking that action directly or indirectly. "Taking an action indirectly" includes taking an

action that is not expressly prohibited for the party hereto but is intended to have substantially the same effects as the prohibited action.

Section 8.20 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require the Administrative Agent to accept electronic signatures in any form or format without its prior written consent.

Section 8.21 Original Grantors; Subsidiary Guarantors. The Borrower and each other Grantor, on the date of this Agreement, will constitute the original Grantors party hereto (the "**Original Grantors**"). The Original Grantors will cause each Subsidiary Guarantor that becomes a Grantor after the date hereof to acknowledge the terms of this Agreement by executing and delivering an Intercreditor Agreement Joinder substantially in the form of Exhibit A (with such changes as may be reasonably approved by the First Lien Agent).

Section 8.22 Waivers; Amendments. Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the First Lien Agent (acting in accordance with the First Lien Debt Documents) and the Second Lien Claimholders (acting in accordance with the Second Lien Debt Documents), and, if required by Section 8.18(c), the Borrower.

Section 8.23 Expenses. Pursuant to Section 14.03(a) of the First Lien Credit Agreement, each Grantor, jointly and severally, agrees to pay or reimburse the First Lien Agent, the other First Lien Claimholders and their Affiliates for all of their reasonable and documented out of pockets costs and expenses (including the reasonable and documented out of pocket fees, expenses, charges and disbursements of Sullivan & Cromwell LLP) incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and all other post-closing matters in connection with the First Lien Credit Agreement.

Section 8.24 First Lien Collateral. Each Second Lien Claimholder acknowledges and agrees that the (x) First Lien Obligations are secured by a first priority (except as otherwise provided for in the First Lien Debt Documents and the Second Lien Priority Collateral) perfected security interest in all of the now existing and hereafter acquired real and personal property of any Grantor pledged or purported to be pledged to secure the First Lien Obligations pursuant to the First Lien Security Documents and (y) Liens granted to the Second Lien Claimholders to secure the Second Lien Obligations do not extend to any now existing or hereafter acquired real or personal property of any Grantor other than the Collateral. Except as otherwise expressly set forth herein, nothing in this Agreement is intended to alter the priority or seniority of any Liens granted by the Grantors to secure the First Lien Obligations.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

OAKTREE FUND ADMINISTRATION, LLC,
as First Lien Agent

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

SAGARD HEALTHCARE ROYALTY PARTNERS, LP,
as Second Lien Claimholder

By: **SAGARD HEALTHCARE ROYALTY PARTNERS GP LLC, its general partner**

By: /s/ Adam Vigna
Name: Adam Vigna
Title: Chief Investment Officer

By: /s/ Andrew Dean
Name: Andrew Dean
Title: Manager

ACKNOWLEDGED BY:

ATHENEX, INC.

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

[Subsidiary Guarantors]

EXHIBIT A*
Joinder Agreement

INTERCREDITOR AGREEMENT JOINDER

* Exhibit A has been omitted pursuant to Item 601(a)(5) of Regulation S-K. The registrant will provide a copy of any omitted exhibit or schedule to the Securities and Exchange Commission or its staff upon request.

Exhibit 10.4

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "***Assignment and Assumption***") is dated as of the Effective Date set forth below and is entered into by and between Oaktree-TCDRS Strategic Credit, LLC; Exelon Strategic Credit Holdings LLC; Oaktree-NGP Strategic Credit, LLC; Oaktree-Minn Strategic Credit, LLC; Oaktree-Forrest Multi-Strategy, LLC - Series A; Oaktree-TBMR Strategic Credit Fund C, LLC; Oaktree-TBMR Strategic Credit Fund F, LLC; Oaktree-TBMR Strategic Credit Fund G, LLC; Oaktree-TSE 16 Strategic Credit, LLC; INPRS Strategic Credit Holdings, LLC; Oaktree Gilead Investment Fund AIF (Delaware), L.P.; Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P.; Oaktree Strategic Income II, Inc.; Oaktree Specialty Lending Corporation; and Oaktree Strategic Income Corporation (each, an "***Assignor***" and collectively, the "***Assignors***") and Sagard Healthcare Royalty Partners, LP; OPB SHRP Co-Invest Credit Limited; and Simcoe SHRP Co-Invest Credit Ltd. (each, an "***Assignee***" and collectively, the "***Assignees***"). Capitalized terms used herein and not otherwise defined herein are used herein as defined in the Credit Agreement and Guaranty, dated as of June 19, 2020 (as amended or otherwise modified from time to time, the "***Credit Agreement***"), among Athenex, Inc., a Delaware corporation (the "***Borrower***"), the Subsidiary Guarantors from time to time party thereto, the lenders from time to time party thereto (the "***Lenders***") and Oaktree Fund Administration, LLC, as administrative agent for the Lenders (in such capacity, together with its successors and assigns, the "***Administrative Agent***"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in **Annex 1** attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignors hereby irrevocably sell and assign to the Assignees, and the Assignees hereby irrevocably purchase and assume from the Assignors, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignors' rights and obligations in their capacity as Lenders under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignors under the Credit Agreement and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignors (in their capacity as Lenders) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignors to the Assignees pursuant to clauses (i) and (ii) above being referred to herein collectively as the "***Assigned Interest***"). Such sale and assignment is without recourse to the Assignors and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignors.

The Borrower and the Administrative Agent agree that, for purposes of the Credit Agreement, an Affiliate of OPB SHRP Co-Invest Credit Limited and Simcoe SHRP Co-Invest Credit Ltd. shall be deemed to include (i) any Person in which Workplace Safety and Insurance Board in any capacity ("***WSIB***"), Trustees of the Workplace Safety and Insurance Board Employees' Pension Plan Trust (the "***Trustees***") or the Ontario Pension Board ("***OPB***") holds a direct or indirect majority beneficial ownership interest such as a trust of which WSIB or an Affiliate of WSIB is the sole beneficiary, (ii) any other Person through which the assets of only the Workplace Safety and Insurance Board Employees' Pension Plan, Workplace Safety and Insurance Board Insurance Fund and/or the Workplace Safety and Insurance Board Loss of Retirement Income Fund are, directly or indirectly, invested, (iii) WSIB, the Trustees or OPB, (iv) an Affiliate of WSIB, the Trustees or OPB, (v) any member of IMCO (as contemplated by the Investment

Management Corporation of Ontario Act, 2015) (an "***IMCO Client***"), (vi) any Affiliate of any IMCO Client, and (vii) any Person in which one or more IMCO Clients holds a direct or indirect majority beneficial ownership interest (including, without limiting the generality of the foregoing, any trust or limited partnership of which one or more IMCO Clients or Affiliates of IMCO Clients are directly or indirectly invested); provided such Person's assets are managed directly or indirectly by IMCO on behalf of such IMCO Clients.

Each party hereto agrees that no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney or representative of the Assignors shall have any liability (whether in contract or in tort) to the Assignees arising under, in connection with or related to this Assignment and Assumption and the Assigned Interests including, without limitation, any alleged non-disclosure or misrepresentations made by any such Persons.

1. Assignors: Oaktree-TCDRS Strategic Credit, LLC; Exelon Strategic Credit Holdings LLC; Oaktree-NGP Strategic Credit, LLC; Oaktree-Minn Strategic Credit, LLC; Oaktree-Forrest Multi-Strategy, LLC - Series A; Oaktree-TBMR Strategic Credit Fund C, LLC; Oaktree-TBMR Strategic Credit Fund F, LLC; Oaktree-TBMR Strategic Credit Fund G, LLC; Oaktree-TSE 16 Strategic Credit, LLC; INPRS Strategic Credit Holdings, LLC; Oaktree Gilead Investment Fund AIF (Delaware), L.P.; Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P.; Oaktree Strategic Income II, Inc.; Oaktree Specialty Lending Corporation; and Oaktree Strategic Income Corporation

2. Assignees: Sagard Healthcare Royalty Partners, LP; OPB SHRP Co-Invest Credit Limited; and Simcoe SHRP Co-Invest Credit Ltd.

3. Borrower: Athenex, Inc.

4. Administrative Agent: Oaktree Fund Administration, LLC

5. Credit Agreement: Credit Agreement and Guaranty, dated as of June 19, 2020, among the Borrower, certain Subsidiaries of the Borrower that may be required to provide Guarantees from time to time thereunder, the Lenders from time to time party thereto and the Administrative Agent.

6. Assignee's jurisdiction of tax residence:

Assignee	Jurisdiction of Tax Residence
Sagard Healthcare Royalty Partners, LP	Cayman Islands
OPB SHRP Co-Invest Credit Limited	Canada
Simcoe SHRP Co-Invest Credit Ltd.	Canada

7. Assigned Interests:

Loans/ Commitments	Assignors	Aggregate Amount of Commitment/ Loans for all Lenders	Amount of Commitment/ Loans Assigned[1]	Assignees	Percentage Assigned of Commitment/ Loans
Tranche A Loans	1. Oaktree-TCDRS Strategic Credit, LLC;	1. $5,539,374	1. $1,230,971.93	A. Sagard Healthcare Royalty Partners, LP	A. 16.66666668% (75% of total assigned)
	2. Exelon Strategic Credit Holdings LLC	2. $3,295,651	2. $732,366.91	B. OPB SHRP Co-Invest Credit Limited	B. 2.77777778% (12.5% of total assigned)
	3. Oaktree-NGP Strategic Credit, LL	3. $5,559,652	3. $1,235,478.13	C. Simcoe SHRP Co-Invest Credit Ltd.	C. 2.77777778% (12.5% of total assigned)
	4. Oaktree-Minn Strategic Credit, LLC;	4. $2,686,860	4. $597,079.96		
	5. Oaktree-Forrest Multi-Strategy, LLC - Series A;	5. $4,583,440	5. $1,018,542.26		
	6. Oaktree-TBMR Strategic Credit Fund C, LLC;	6. $2,624,056	6. $583,123.51		
	7. Oaktree-TBMR Strategic Credit Fund F, LLC;	7. $4,095,190	7. $910,042.28		
	8. Oaktree-TBMR Strategic Credit Fund G, LLC;	8. $6,705,759	8. $1,490,168.66		
	9. Oaktree-TSE 16 Strategic Credit, LLC;	9. $5,127,189	9. $1,139,375.44		
	10. INPRS Strategic Credit Holdings, LLC;	10. $1,496,606	10. $332,579.07		
	11. Oaktree Gilead Investment Fund AIF (Delaware), L.P.;	11. $10,113,054	11. $2,247,345.28		
	12. Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P.;	12. $1,348,407	12. $299,646.04		
	13. Oaktree Strategic Income II, Inc.;	13. $10,700,785	13. $2,377,952.19		
	14. Oaktree Specialty Lending Corporation; and	14. $29,288,074	14. $6,508,460.95		
	15. Oaktree Strategic Income Corporation	15. $6,835,903	15. $1,519,089.61		
Total Tranche A		$100,000,000	$22,222,222.22		22.22222224%
Tranche B Commitments	16. Oaktree-TCDRS Strategic Credit, LLC;	1. $1,384,843	1. $307,742.89	A. Sagard Healthcare Royalty Partners, LP	A. 16.66666668% (75% of total assigned)
	17. Exelon Strategic Credit Holdings LLC;	2. $823,913	2. $183,091.78	B. OPB SHRP Co-Invest	B. 2.77777778% (12.5% of total
	18. Oaktree-NGP Strategic Credit, LLC;	3. $1,389,913	3. $308,869.56	C. Simcoe SHRP Co-Invest Credit Ltd.	C. 2.77777778% (12.5% of total
	19. Oaktree-Minn Strategic Credit, LLC;	4. $671,715	4. $149,270.00		
	20. Oaktree-Forrest Multi- Strategy, LLC - Series A;	5. $1,145,860	5. $254,635.56		
	21. Oaktree-TBMR Strategic Credit Fund C, LLC;	6. $656,014	6. $145,780.89		
	22. Oaktree-TBMR Strategic Credit Fund F, LLC;	7. $1,023,798	7. $227,510.67		
	23. Oaktree-TBMR Strategic Credit Fund G, LLC;	8. $1,676,440	8. $372,542.22		
	24. Oaktree-TSE 16 Strategic Credit, LLC;	9. $1,281,797	9. $284,843.78		
	25. INPRS Strategic Credit Holdings, LLC;	10. $374,151	10. $83,144.67		
	26. Oaktree Gilead Investment Fund AIF (Delaware), L.P.;	11. $2,528,263	11. $561,836.22		
	27. Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P.;	12. $337,102	12. $74,911.55		
	28. Oaktree Strategic Income II, Inc.;	13. $2,675,196	13. $594,488.00		
	29. Oaktree Specialty Lending Corporation; and	14. $7,322,019	14. $1,627,115.33		
	30. Oaktree Strategic Income Corporation	15. $1,708,976	15. $379,772.44		
Total Tranche B		$25,000,000	$5,555,555.56		22.22222224%

[1] Set forth, to at last 9 decimals, as a percentage of the Loans of all Lenders thereunder.

Tranche C Commitments	1. Oaktree-TCDRS Strategic Credit, LLC; 2. Exelon Strategic Credit Holdings LLC; 3. Oaktree-NGP Strategic Credit, LLC; 4. Oaktree-Minn Strategic Credit, LLC; 5. Oaktree-Forrest Multi-Strategy, LLC - Series A; 6. Oaktree-TBMR Strategic Credit Fund C, LLC; 7. Oaktree-TBMR Strategic Credit Fund F, LLC; 8. Oaktree-TBMR Strategic Credit Fund G, LLC; 9. Oaktree-TSE 16 Strategic Credit, LLC; 10. INPRS Strategic Credit Holdings, LLC; 11. Oaktree Gilead Investment Fund AIF (Delaware), L.P.; 12. Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P.; 13. Oaktree Strategic Income II, Inc.; 14. Oaktree Specialty 15. Lending Corporation; and Oaktree Strategic Income Corporation	1. $1,384,843 2. $823,913 3. $1,389,913 4. $671,715 5. $1,145,860 6. $656,014 7. $1,023,798 8. $1,676,440 9. $1,281,797 10. $374,151 11. $2,528,263 12. $337,102 13. $2,675,196 14. $7,322,019 15. $1,708,976	1. $307,742.89 2. $183,091.78 3. $308,869.56 4. $149,270.00 5. $254,635.56 6. $145,780.89 7. $227,510.67 8. $372,542.22 9. $284,843.78 10. $83,144.67 11. $561,836.22 12. $74,911.55 13. $594,488.00 14. $1,627,115.33 15. $379,772.44	A. Sagard Healthcare Royalty Partners, LP B. OPB SHRP Co-Invest Credit Limited C. Simcoe SHRP Co-Invest Credit Ltd.	A. 16.66666668% (75% of total assigned) B. 2.77777778% (12.5% of total assigned) C. 2.77777778% (12.5% of total assigned)
Total Tranche C		$25,000,000	$5,555,555.56		22.22222224%
Tranche D Commitments	1. Oaktree-TCDRS Strategic Credit, LLC; 2. Exelon Strategic Credit Holdings LLC; 3. Oaktree-NGP Strategic Credit, LLC; 4. Oaktree-Minn Strategic Credit, LLC; 5. Oaktree-Forrest Multi-Strategy, LLC - Series A; 6. Oaktree-TBMR Strategic Credit Fund C, LLC; 7. Oaktree-TBMR Strategic Credit Fund F, LLC; 8. Oaktree-TBMR Strategic Credit Fund G, LLC; 9. Oaktree-TSE 16 Strategic Credit, LLC; 10. INPRS Strategic Credit Holdings, LLC; 11. Oaktree Gilead Investment Fund AIF (Delaware), L.P.; 12. Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P.; 13. Oaktree Strategic Income II, Inc.; 14. Oaktree Specialty Lending Corporation; and 15. Oaktree Strategic Income Corporation	1. $1,384,843 2. $823,913 3. $1,389,913 4. $671,715 5. $1,145,860 6. $656,014 7. $1,023,798 8. $1,676,440 9. $1,281,797 10. $374,151 11. $2,528,263 12. $337,102 13. $2,675,196 14. $7,322,019 15. $1,708,976	1. $307,742.89 2. $183,091.78 3. $308,869.56 4. $149,270.00 5. $254,635.56 6. $145,780.89 7. $227,510.67 8. $372,542.22 9. $284,843.78 10. $83,144.67 11. $561,836.22 12. $74,911.55 13. $594,488.00 14. $1,627,115.33 15. $379,772.44	A. Sagard Healthcare Royalty Partners, LP B. OPB SHRP Co-Invest Credit Limited C. Simcoe SHRP Co-Invest Credit Ltd.	A. 16.66666668% (75% of total assigned) B. 2.77777778% (12.5% of total assigned) C. 2.77777778% (12.5% of total assigned)
Total Tranche D		$25,000,000	$5,555,555.56		22.22222224%

Tranche E Commitments	1. Oaktree-TCDRS Strategic Credit, LLC; 2. Exelon Strategic Credit Holdings LLC; 3. Oaktree-NGP Strategic Credit, LLC; 4. Oaktree-Minn Strategic Credit, LLC; 5. Oaktree-Forrest Multi-Strategy, LLC - Series A; 6. Oaktree-TBMR Strategic Credit Fund C, LLC; 7. Oaktree-TBMR Strategic Credit Fund F, LLC; 8. Oaktree-TBMR Strategic Credit Fund G, LLC; 9. Oaktree-TSE 16 Strategic Credit, LLC; 10. INPRS Strategic Credit Holdings, LLC; 11. Oaktree Gilead Investment Fund AIF (Delaware), L.P.; 12. Oaktree Huntington-GCF Investment Fund (Direct Lending AIF), L.P.; 13. Oaktree Strategic Income II, Inc.; 14. Oaktree Specialty Lending Corporation; and 15. Oaktree Strategic Income Corporation	1. $2,769,687 2. $1,647,826 3. $2,779,826 4. $1,343,430 5. $2,291,720 6. $1,312,028 7. $2,047,595 8. $3,352,879 9. $2,563,595 10. $748,303 11. $5,056,527 12. $674,204 13. $5,350,392 14. $14,644,037 15. $3,417,952	1. $615,486.00 2. $366,183.55 3. $617,739.11 4. $298,540.00 5. $509,271.11 6. $291,561.78 7. $455,021.11 8. $745,084.22 9. $569,687.78 10. $166,289.55 11. $1,123,672.67 12. $149,822.89 13. $1,188,976.00 14. $3,254,230.44 15. $759,544.89	A. Sagard Healthcare Royalty Partners, LP B. OPB SHRP Co-Invest Credit Limited C. Simcoe SHRP Co-Invest Credit Ltd.	A. 16.66666668% (75% of total assigned) B. 2.77777778% (12.5% of total assigned) C. 2.77777778% (12.5% of total assigned)
Total E Tranche		$50,000,000	$11,111,111.10		22.22222224%

[*Signature Page Follows*]

Effective Date: August 4, 2020

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNORS:

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

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

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

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

OAKTREE-FORREST MULTI-STRATEGY 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

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

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

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

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

INPRS STRATEGIC CREDIT HOLDINGS, LLC

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

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

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

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 Partner

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

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

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

OAKTREE SPECIALTY LENDING CORPORATION

By: Oaktree Fund Advisors, LLC
Its: Investment Advisor

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

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

OAKTREE STRATEGIC INCOME CORPORATION

By: Oaktree Fund Advisors, LLC
Its: Investment Advisor

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

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

OAKTREE GILEAD INVESTMENT FUND, L.P.

By: Oaktree Gilead Investment Fund, 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

ASSIGNEE

Sagard Healthcare Royalty Partners, LP, by its general partner Sagard Healthcare Royalty Partners GP LC

By: /s/ Adam Vigna
Name: Adam Vigna
Title: Chief Investment Officer

By: /s/ Andrew Dean
Name: Andrew Dean
Title: Manager

OPB SHRP CO-INVEST CREDIT LIMITED

By: /s/ Jennifer Hartviksen
Name: Jennifer Hartviksen
Title: Vice President

SIMCOE SHRP CO-INVEST CREDIT LTD.

By: /s/ Jennifer Hartviksen
Name: Jennifer Hartviksen
Title: Vice President

Consented to and Accepted:

OAKTREE FUND ADMINISTRATION, LLC,
as Administrative Agent

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

Consented to:

Athenex, Inc.

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

ANNEX 1
STANDARD TERMS AND CONDITIONS

1. **Representations and Warranties.**

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it is an Eligible Transferee, and it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to **Sections 8.01(a)** and **(b)** thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender and (vi) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. **Payments**. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

3. **General Provisions**. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile or other electronic transmission (PDF format) shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

Exhibit 31.1

CERTIFICATION PURSUANT TO
SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002

I, Johnson Y.N. Lau, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Athenex, Inc. (the registrant);

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 5, 2020

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

Exhibit 31.2

CERTIFICATION PURSUANT TO
SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002

I, Randoll Sze, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Athenex, Inc. (the registrant);

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 5, 2020

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

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In accordance with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, Johnson Y.N. Lau, Chief Executive Officer and Board Chairman (Principal Executive Officer) of Athenex, Inc. (the "registrant"), and Randoll Sze, Chief Financial Officer of the registrant (Principal Financial and Accounting Officer), each hereby certifies that, to the best of their knowledge:

1. The registrant's Quarterly Report on Form 10-Q for the period ended September 30, 2020, to which this Certification is attached as Exhibit 32.1 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition of the registrant at the end of the period covered by the Report and results of operations of the registrant for the period covered by the Report.

Date: November 5, 2020

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

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