

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

FORM 8-K

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

Date of Report (Date of earliest event reported): February 6, 2020

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

Virginia
(state or other jurisdiction
of incorporation)

001-37372
(Commission
File Number)

03-0416362
(I.R.S. Employer
Identification No.)

100 Technology Center Drive
Suite 300
Stoughton, MA
(Address of principal executive offices)

02072
(Zip Code)

Registrant's telephone number, including area code: (781) 713-3699

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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

Indicated by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.001 per share	COLL	The NASDAQ Global Select Market

Item 1.01. Entry into a Material Definitive Agreement.

Asset Purchase Agreement

On February 6, 2020, Collegium Pharmaceutical, Inc., a Virginia corporation (the “Company”) entered into an Asset Purchase Agreement (the “Purchase Agreement”) with Assertio Therapeutics, Inc., a Delaware corporation (f/k/a Depomed, Inc.) (“Assertio”), pursuant to which the Company will acquire from Assertio certain of assets related to NUCYNTA® franchise of pharmaceutical products (the “Products”) for an aggregate purchase price of \$375,000,000 (the “Purchase Price”), subject to certain closing and post-closing adjustments as described in the Purchase Agreement (the “Transaction”). In connection with the Transaction, the Company will also assume certain contracts, liabilities and obligations related to the Products.

The Company previously entered into a Commercialization Agreement (as amended, the “Commercialization Agreement”) with Assertio, pursuant to which the Company acquired the right to commercialize the Products in the United States in exchange for Assertio’s right to receive, among other things, certain variable royalty payments associated with the commercialization of the Products. Upon the closing of the transactions contemplated by the Purchase Agreement (the “Closing”), the Commercialization Agreement will be terminated with the exception of certain provisions thereof which will survive pursuant to the terms of the Purchase Agreement, and the Company’s payment obligations to Assertio thereunder will cease. Following the Closing, the Company will pay royalties directly to Grünenthal GmbH at a rate of 14% of net sales of the Products; such royalty payment obligation will replace the Company’s previous obligation to pay a royalty rate of 14% of net sales of the Products to Grünenthal, subject to a guaranteed royalty of \$34 million when net sales are between \$180 million and \$243 million.

The Purchase Agreement contains customary representations, warranties and covenants, and indemnification provisions subject to specified limitations. The Closing is expected to occur by February 14, 2020.

The Purchase Agreement provides for certain termination rights for each of the parties. In the event that the Purchase Agreement is terminated because the Company fails to consummate the Transaction due to a failure to obtain financing for the Purchase Price, the Company will generally be required to pay Assertio a termination fee in an amount equal to \$7,500,000. Additionally, in the event that the Purchase Agreement is terminated because the Closing has not occurred on or before an “outside date” of March 13, 2020 due to the failure of certain conditions to have been satisfied or waived, the Company shall be entitled to receive a termination fee in an amount equal to \$7,500,000.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by the full text of the Purchase Agreement, a copy of which is attached hereto as Exhibit 10.1, and which is incorporated by reference herein.

Term Loan Financing

On February 6, 2020, in connection with the execution of the Purchase Agreement, the Company entered into a Loan Agreement by and among the Company; its subsidiary, Collegium Securities Corporation; BioPharma Credit PLC, as collateral agent and lender; and BioPharma Credit Investments V (Master) LP, as lender (the “Loan Agreement”). The Loan Agreement provides for a \$200 million secured term loan (the “Term Loan”), the proceeds of which will be used to finance a portion of the Purchase Price payable pursuant to the Purchase Agreement. Funding of the Term Loan is conditioned upon the consummation of the Closing.

The Term Loan will mature on the 48 month anniversary of the Closing and is guaranteed by the Company’s material domestic subsidiaries. The Term Loan is also secured by substantially all of the assets of the Company and its material domestic subsidiaries. The Term Loan will bear interest at a rate based upon LIBOR (subject to a LIBOR floor of 2.0%), plus a margin of 7.5% per annum. The Company is required to repay the Term Loan by making equal quarterly payments of principal commencing on the 3-month anniversary of the Closing.

The Loan Agreement contains certain covenants and obligations of the parties, including, without limitation, covenants that require the Company and its subsidiaries to maintain \$200 million in annual net sales and covenants that limit the Company’s ability to incur additional indebtedness or liens, make acquisitions or other investments or dispose of assets outside the ordinary course of business. Failure to comply with these covenants would constitute an event of default under the Loan Agreement, notwithstanding the Company’s ability to meet its debt service obligations. The Loan Agreement also includes various customary remedies for the lenders following an event of default, including the acceleration of repayment of outstanding amounts under the Loan Agreement and execution upon the collateral securing obligations under the Loan Agreement.

The foregoing description of the Loan Agreement does not purport to be complete and is qualified in its entirety by the full text of the Loan Agreement, a copy of which is attached hereto as Exhibit 10.2, and which is incorporated by reference herein.

The representations, warranties, covenants and other agreements set forth in the Purchase Agreement and in the Loan Agreement have been made only for the purposes of the Purchase Agreement or Loan Agreement, as applicable, and solely for the benefit of the parties thereto and may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to each such agreement instead of establishing these matters as facts. In addition, such representations and warranties were made only as of the dates specified in each such agreement and information regarding the subject matter thereof may change after the date thereof. Accordingly, the Purchase Agreement and the Loan Agreement are included with this filing only to provide investors with information regarding their respective terms and not to provide investors with any other factual information regarding the Products, the Company or its business as of the date thereof or as of any other date.

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

The information set forth under Item 1.01 of this Current Report on Form 8-K under the heading “Term Loan Financing” is incorporated herein by reference.

Forward Looking Statements

This Current Report on Form 8-K contains forward-looking statements that involve risks and uncertainties. Such forward-looking statements reflect the Company’s expectations about its future events, performance and opportunities that involve substantial risks and uncertainties. When used herein, the words “anticipate,” “believe,” “estimate,” “upcoming,” “plan,” “target,” “intend” and “expect” and similar expressions, as they relate to the Company or its management, are intended to identify such forward-looking statements. These forward-looking statements are based on information available to the Company as of the date of hereof and are subject to a number of risks, uncertainties, and other factors that could cause actual events to differ materially from those expressed in the forward-looking statements set forth in this report including, without limitation: the parties’ ability to satisfy the Purchase Agreement closing conditions and closing conditions under the Loan Agreement. In addition, the forward-looking statements should be considered together with the risks and uncertainties that may affect the Company’s business and future results included in the Company’s filings with the Securities and Exchange Commission at www.sec.gov. The Company assumes no obligation to update any such forward looking statements.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits. The following exhibits are furnished as exhibits to this Current Report on Form 8-K:

<u>Exhibit Number</u>	<u>Description</u>
10.1	Purchase Agreement, dated as of February 6, 2020, by and between Collegium Pharmaceutical, Inc. and Assertio Therapeutics, Inc.
10.2	Loan Agreement, dated as of February 6, 2020, by and among the Company, its subsidiaries, BioPharma Credit PLC, as collateral agent and lender, and BioPharma Credit Investments V (Master) LP, as lender.
104	Cover Page Interactive Data File – the cover page XBLR tags are embedded within Inline XBRL document.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Current Report on Form 8-K to be signed on its behalf by the undersigned hereunto duly authorized.

COLLEGIUM PHARMACEUTICAL, INC.
(Registrant)

Date: February 10, 2020

By: /s/ Paul Brannelly
Name: Paul Brannelly
Title: Executive Vice President and Chief Financial Officer

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement, dated as of February 6, 2020 (the “Effective Date”), by and between Assertio Therapeutics, Inc., a Delaware corporation (“Seller”) and Collegium Pharmaceutical, Inc., a Virginia corporation (“Purchaser”).

RECITALS:

WHEREAS, Seller, directly and indirectly through certain of its Affiliates, is in the business of researching, developing, manufacturing or having made, marketing, distributing and selling, as the case may be, products (including pharmaceutical drugs) for use by professional health care providers;

WHEREAS, Seller has an exclusive royalty bearing license to commercialize the products set forth on Section 1(a) of the Disclosure Schedules (the “Products”) in the United States, a non-exclusive royalty bearing license to manufacture the Products for commercialization in the United States and a non-exclusive royalty bearing license to conduct certain activities necessary to obtain, and to seek to obtain, regulatory approval of the Products in the United States pursuant to that certain License Agreement (U.S.), effective as of January 13, 2015, by and among Grünenthal GmbH (“Grünenthal”), Janssen Research & Development, LLC (“Janssen”) and Seller (the “License”);

WHEREAS, Seller and Purchaser are parties to that certain Commercialization Agreement, by and among Seller, Purchaser and Collegium NF, LLC, dated as of December 4, 2017, as amended (the “Commercialization Agreement”), pursuant to which, among other things, Seller granted to Purchaser certain commercialization rights with respect to the Products and Purchaser acquired from Seller certain assets and assumed certain liabilities with respect to the Products;

WHEREAS, Purchaser and Seller now desire to terminate the Commercialization Agreement in accordance with the terms set forth herein and Seller desires to sell (or to cause to be sold), and Purchaser desires to purchase, certain rights and assets related to the Products, including Seller’s rights under the License, and Purchaser is willing to assume certain duties, liabilities and obligations related to the Products, including certain duties, liabilities and obligations under the License, in each case, upon the terms and subject to the conditions set forth herein; and

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained herein, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS AND TERMS

Section 1.01 Definitions. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

“Accounts Payable” shall mean all invoices, bills, accounts payable or other trade payables due and owed to any third party arising out of or in connection with the Products by Seller and the Divesting Entities and any of their respective Affiliates at or prior to the Cutoff Time.

“Accounts Receivable” shall mean all accounts receivable, notes receivable and other indebtedness due and owed to Seller and its Affiliates, including amounts owed by Purchaser or any of its Affiliates arising or held in connection with the sale of the Products at or prior to the Cutoff Time.

“Affiliate” shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person at any time during the period for which the determination of affiliation is being made. For purposes of this definition, “control” of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise and, in any event and, without limitation of the previous sentence, any Person owning more than fifty percent (50%) or more of the voting securities of another Person shall be deemed to control that Person.

“Agreement” shall mean this Asset Purchase Agreement, including all Disclosure Schedules and Exhibits attached hereto, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof.

“API” shall mean the active pharmaceutical ingredient of the Products.

“Business” shall mean the business, activities and operations of Seller and the Divesting Entities solely with respect to the Products, as conducted by Seller and the Divesting Entities since January 9, 2018. For the avoidance of doubt, “Business” shall not include any activities and operations with respect to the Business conducted exclusively by Purchaser pursuant to the Commercialization Agreement.

“Business Day” shall mean any day other than a Saturday, a Sunday or a day on which banks in New York City, New York are authorized or obligated by law or executive order to close.

“Closing” shall mean the consummation of the Transactions pursuant to the terms of this Agreement.

“Code” shall mean the Internal Revenue Code of 1986.

“Commercialization Agreement Assumed Liabilities” means the Assumed Liabilities (as defined in the Commercialization Agreement).

“Commercialization Agreement Retained Liabilities” means the Retained Liabilities as defined in Section 1.174 of the Commercialization Agreement, but excluding Sections 1.174(a) (Retained Post-Marketing Commitments) and 1.174(b) (ANDA Litigation) of such definition for purposes hereunder.

“Competition Laws” shall mean Laws of any jurisdiction that are designed or intended to prohibit, restrict or regulate actions that may have the purpose or effect of creating a monopoly, lessening competition or restraining trade, including the HSR Act.

“Confidential Information” shall mean all confidential or proprietary information in the possession of Seller or its Affiliates relating to Purchaser or its Affiliates, the Business, the Products, the Purchased Assets or the Assumed Liabilities, including (a) information and data relating to sales, advertising, manufacturing, packaging, distribution, detailing, marketing, strategic plans, costs, development, commercialization, technology or formulae, (b) without limiting the generality of the foregoing, copies of any Product Books and Records retained pursuant to Section 2.01(d) and (c) Know-How. “Confidential Information” shall not include any information that (i) was publicly available prior to the date of this Agreement or hereafter becomes publicly available not as a result of any breach of this Agreement by Seller or any of its Affiliates (or their Representatives) or (ii) becomes available on a non-confidential basis to Seller or its Affiliates from a Person (other than Seller or any of its Affiliates) that is not subject to any legally binding obligation to keep such information confidential.

“Contract” shall mean all legally binding contracts, agreements, arrangements, leases and subleases (including leases and subleases of real property), licenses, commitments, notes, bonds, mortgages, indentures, sales and purchase orders, other instruments and other undertakings of any kind, whether written or oral.

“Control” shall mean ownership or possession (including through control of an Affiliate or through an agreement with an Affiliate or third party) of the right or ability to assign or to grant a license or sublicense of specified intellectual property rights (such as know-how) without violating the terms of any agreement or other arrangement with any third party.

“Cutoff Time” shall mean 12:01 a.m. on the Closing Date.

“DEA” shall mean the United States Drug Enforcement Agency.

“Deerfield Facility” means that certain Note Purchase Agreement (as amended), dated March 12, 2015, among Seller and Deerfield Private Design Fund III, L.P., Deerfield Partners, L.P., Deerfield International Master Fund, L.P., Deerfield Special Situations Fund, L.P., Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., BioPharma Secured Investments III Holdings Cayman LP, Inteligo Bank Ltd. and Phemus Corporation (collectively, the Purchasers) and Deerfield Private Design Fund III, L.P., as collateral agent.

“Divesting Entities” shall mean, collectively, all Affiliates of Seller that have any right, title or interest in, to or under the Purchased Assets.

“Environmental Laws” shall mean all Laws related to the protection of the environment or human health and safety or the release, presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, monitoring, reuse, treatment, generation, discharge, transportation, processing, production, disposal, leaching, migration, emission or remediation of any contaminant or pollutant, toxic, radioactive or hazardous waste, chemical, substance, material or constituent.

“Estimated Purchase Price” shall mean (a) the Base Purchase Price plus (b) the Estimated Inventories Value, and minus (c) the Estimated Commercialization Agreement Payment Value.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” shall mean any other person or entity under common control with Seller within the meaning of Section 414(b), (c), (m) or (o) of the Code and the regulations issued thereunder.

“FDA” shall mean the United States Food and Drug Administration, and any successor agency having substantially the same functions.

“Financing Sources” means the Notes Offering Commitment Party and other Persons that have committed to provide or arrange, or have otherwise entered into agreements in connection with the Financing or alternative notes offering or debt financings in connection with the Transactions contemplated hereby, including the parties named in the Notes Offering Commitment Letter and the Loan Agreement, respectively, as underwriters, placement agents, purchasers and lenders, and any joinder agreements or other credit agreements entered into pursuant thereto or related thereto, in each case together with their respective Affiliates and their and their Affiliates’ respective officers, directors, employees, partners, controlling parties, advisors, agents.

“Food and Drugs Act” shall mean Federal Food, Drug and Cosmetic Act of 1938.

“Fundamental Representations” shall mean the representations and warranties (a) of Seller contained in Section 4.01 (Organization), Section 4.02 (Authority; Binding Effect), Section 4.03 (Non-Contravention) (solely with respect to clause (a) thereof), Section 4.10 (Purchased Assets; Sufficiency of Assets) and Section 4.13 (Brokers) and (b) of Purchaser contained in Section 5.01 (Organization), Section 5.02 (Authority; Binding Effect), Section 5.03 (Non-Contravention) (solely with respect to clause (a) thereof) and Section 5.08 (Brokers).

“GAAP” shall mean accounting principles and practices generally accepted in the United States of America, as in effect on the Effective Date.

“Governmental Authority” shall mean any supranational, national, federal, provincial, state or local judicial (including any arbitration panel), legislative, executive or regulatory authority, agency, commission, body or instrumentality, including the FDA, DEA and any comparable agency in any jurisdiction other than the United States, or quasi-governmental, self-regulatory organization, commission, body, authority or agency.

“Governmental Authorizations” shall mean all licenses, permits, clearances, variances, exemptions, Governmental Orders, registrations, certificates and other authorizations, consents and approvals owned or controlled by Seller and the Divesting Entities relating to the Products.

“Governmental Order” shall mean any order, writ, judgment, injunction, decree, consent decree, decision, ruling, subpoena, verdict, injunction, stipulation, determination, agreement or award entered, issued, made or rendered by or with any Governmental Authority, which for the avoidance of doubt excludes any regulations or rule-making.

“Health Laws” shall mean any Law the stated purpose of which is to ensure the safety, efficacy and quality of medicines by regulating the quality, identity, strength, purity, safety, efficacy, testing, sale or distribution, sale, import or export, good laboratory practices, good clinical practices, investigational use, product marketing authorization, manufacturing compliance and approval, good manufacturing practices, labeling, advertising, safety surveillance, including the relevant provisions of the CDAPCA, CSA, PPACA, Food and Drugs Act, and applicable regulations promulgated thereunder by the FDA, DEA or other applicable Governmental Authority.

“HSR Act” shall mean the U.S. Hart-Scott-Rodino Antitrust Improvements Act of 1976.

“IND” shall mean an Investigational New Drug Application as defined by the FDA.

“Income Tax” or “Income Taxes” shall mean all Taxes based upon, measured by, or calculated with respect to (a) gross or net income or gross or net receipts of profits (including, but not limited to, any capital gains, minimum taxes and any Taxes on items of tax preference, but not including sales, use, goods and services, real or personal property transfer or other similar Taxes), (b) multiple bases (including, but not limited to, corporate franchise, doing business or occupation Taxes) if one or more of the bases upon which such Tax may be based upon, measured by, or calculated with respect to, is described in clause (a) above, or (c) withholding taxes measured by, or calculated with respect to, any payments or distributions (other than wages).

“Infringement” shall mean direct or indirect infringement, misappropriation or other unauthorized use (including unfair trade practice or unfair competition under applicable Law) by any Person.

“Inventories” shall mean the active pharmaceutical ingredient, work-in-process, components, packaging, and finished goods inventory of the Products for sale or non-commercial use (e.g., validation) in the United States owned or held for use by Seller or any of its Affiliates and as of the Cutoff Time, as described in general terms on Section 1.01(b) of the Disclosure Schedules.

“IP Rights” shall mean all (a) utility and design patents, design registrations, industrial designs, utility models, invention disclosures, certificates of invention and statutory invention registrations, including any and all applications and registrations, provisionals, divisions, continuations, continuations in part, extensions, substitutions, renewals, registrations, revalidations, reversions, reexaminations, reissues or additions, of or to any of the foregoing items, and all rights and priorities afforded under any applicable Laws with respect thereto (collectively, “Patents”); (b) Trademarks; (c) copyrights, all applications, registrations and renewals therefor, and all code, technical or nontechnical documentation, schematics, drawings, hardware designs, diagrams, or implementations, as well as any original works of authorship, including any modifications, additions, or derivative works from an existing work (collectively, “Copyrights”); and (d) trade secrets, information, marketing know-how, knowledge, data, designs, ideas, concepts, methods, techniques, inventions, discoveries, formulae, compositions, expertise, experimental (whether clinical or not) data and other results of trials, studies or investigations, and processes, whether patented or unpatented, whether copyrighted or copyrightable, and whether or not capable of separate or precise definition or identification, whether acquired through trial and error, experience or other means, including regulatory information submitted to Governmental Authorities, Product specifications, and information relating to the testing (including quality control standards, assay methods and stability studies), storage, manufacturing and use of the Products, or the manufacturing, marketing or sale of the Products (collectively, “Know-How”).

“Knowledge of Seller” shall mean the actual knowledge of any of the individuals listed on Section 1.01(c) of the Disclosure Schedules, in each case, after due inquiry of such named individual’s files and records and of those employees of Seller who are such named individuals’ direct reports.

“Laws” shall include any federal, state, foreign or local law, common law, statute, ordinance, rule, regulation, code or Governmental Order.

“Legal Proceeding” shall mean any claim, action, suit, case, litigation, proceeding, investigation, charge, criminal prosecution, judicial, governmental or regulatory investigation, or arbitration, mediation or alternative dispute resolution proceeding.

“Liabilities” shall mean any and all debts, liabilities, costs, guarantees, commitments, assessments, expenses, claims, losses, damages, deficiencies and obligations, whether accrued or fixed, known or unknown, liquidated or unliquidated, asserted or unasserted, absolute or contingent, matured or unmatured, determined or determinable, accrued or not accrued, due or to become due, direct or indirect, whenever or however arising (including whether arising out of any contract, common law or tort based on negligence or strict liability) and whether or not the same would be required by GAAP to be reflected in financial statements or disclosed in the notes thereto.

“Licensed Seller Know-How” shall mean, collectively, all Know-How that is owned or Controlled by Seller, its Affiliates or a Divesting Entity and that is related to the Business, Products, the Purchased Assets or the Assumed Liabilities or otherwise used or held for use in the conduct of the Business (including the manufacture of the Products).

“Lien” shall mean, with respect to any property or asset, any lien, security interest, mortgage, pledge, assessment, restriction, adverse claim, levy, charge, hypothecation, easement, restriction, title retention clause, encumbrance, license or other similar claim of any kind, character or description, whether of record or not, or any contract to give any of the foregoing, in respect of such property or asset.

“Losses” shall mean any losses, liabilities, claims, damages, deficiencies, costs, expenses, penalties, assessments, fines, fees, suits, actions, causes of action, judgments, Taxes and awards directly incurred or suffered (including any reasonable attorneys’ fees associated therewith).

“Material Adverse Effect” shall mean, with respect to Seller, any Divesting Entity or any of their respective Affiliates, any change, effect, event, circumstance, occurrence or state of facts that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on (a) the Purchased Assets, or (b) the ability of Seller and the other Divesting Entities to timely consummate the Transactions, provided that no changes, effects, events, circumstances, occurrences or states of facts that arise out of or relate to any of the following circumstances shall be deemed, either alone or in combination, to constitute a Material Adverse Effect, or be taken into account in determining whether there has been or would reasonably be expected to be a Material Adverse Effect: (i) the general business, economic, social, political or legal conditions or the securities, syndicated loan, credit or financial markets; (ii) changes or proposed changes in GAAP (or any applicable accounting standards in any jurisdiction outside the United States) or the enforcement thereof, in each case, after the date hereof; (iii) changes or proposed changes to Law, that generally affect or may affect the industries in which Seller or its Affiliates operate, or any change in governmental or private third party payor reimbursement rules or policies, in each case, after the date hereof; (iv) the commencement, occurrence, continuation or intensification of any war, sabotage, armed hostilities or acts of terrorism; (v) earthquakes, hurricanes or other natural disasters; (vi) failure to meet projections, estimates, plans or forecasts (it being understood that the facts or occurrences giving rise or contributing to any such failure may be deemed to constitute, or be taken into account in determining whether there has been a Material Adverse Effect to the extent such facts or occurrences are not otherwise set forth in clauses (i) through (xii)); (vii) the negotiation, execution, announcement or pendency of the Transactions or the performance of and compliance with the terms of this Agreement; (viii) changes with respect to, including in the number of, competing products in the market(s) in which the Products are sold; (ix) any labor strikes, labor stoppages or loss of employees; (x) currency fluctuations; (xi) actions or omissions of Purchaser or any of its Affiliates or actions or omissions of Seller or any of its Affiliates and consented to or directed by Purchaser or any of its Affiliates; or (xii) any matter disclosed in the Disclosure Schedules to this Agreement; except in the cases of clauses (i), (ii) and (iii) above, to the extent such change, effect, event, circumstance, occurrence or state of facts has a disproportionate adverse effect on the Business relative to other participants carrying on a similar business in the industry in which the Business operates.

“Marketing Period” means the first period of five (5) consecutive Business Days following the date hereof.

“NDA” shall mean a New Drug Application as defined by the FDA.

“Notes Offering Commitment Party” means Jefferies LLC, in its capacity as sole underwriter, sole initial purchaser and sole placement agent under the Notes Offering Commitment Letter.

“Outside Date” shall mean March 13, 2020.

“Party” shall mean Seller or Purchaser individually, as the context so requires, and the term “Parties” shall mean, collectively, Seller and Purchaser.

“Permitted Liens” shall mean (a) all Liens set forth on Section 1.01(d) of the Disclosure Schedules; (b) statutory Liens arising out of operation of Law with respect to a Liability incurred in the ordinary course of business and which is not delinquent; (c) Liens, other than Liens securing indebtedness for borrowed money, that, individually and in the aggregate, do not and would not reasonably be expected to materially detract from the value or impair the use of the property subject thereto or make such property unmarketable; (d) Liens for Taxes not yet due, payable, delinquent or subject to penalties for nonpayment, or which are being contested in good faith through proper proceedings, in each case, with sufficient reserves maintained in accordance with GAAP; (e) mechanics’, materialmens’, carriers’, workmens’, warehousemens’, repairmens’, landlords’ or other like Liens and security obligations that are incurred in the ordinary course of business and are not delinquent; and (f) Liens in favor of Purchaser arising under the Commercialization Agreement.

“Person” shall mean an individual, a limited liability company, a joint venture, a corporation, a partnership, an association, a trust, a division, unincorporated organization, or an operating group of any of the foregoing or any other entity or organization, whether governmental or otherwise.

“Plan” shall mean any “pension plans” (as defined under Section 3(2) of ERISA), “welfare plans” (as defined under Section 3(1) of ERISA) or any other employee benefit plan, program or arrangement that is currently or has previously been sponsored, maintained or contributed to by Seller or its ERISA Affiliates.

“PPACA” shall mean the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care Education and Reconciliation Act of 2010.

“Purchaser FDA Transfer Letters” shall mean the letters from Purchaser to the FDA, duly executed by Purchaser, notifying the FDA of the transfer of the rights to the applicable Governmental Authorizations to Purchaser.

“Regulatory Information” shall mean (a) all correspondence and submissions between Seller or any of the Divesting Entities and any United States Governmental Authority, including the FDA and the DEA, with respect to the Transferred Governmental Authorizations, including any reports, filings, or notices submitted to any Governmental Authority to support, maintain or obtain such Transferred Governmental Authorizations; and (b) records and data from all clinical and pre-clinical studies and trials conducted or being conducted by or on behalf of Seller or any of the Divesting Entities, which concern the Products and are (i) described in the Governmental Authorizations, (ii) the subject of a post-marketing requirement as imposed by the FDA or the subject of a post-marketing commitment to the FDA, or (iii) listed on Section 1.01(e) of the Disclosure Schedules; in each case of (a) and (b) to the extent not already in the possession or control of Purchaser. For the avoidance of doubt, Regulatory Information shall include a complete copy of the Product NDAs.

“Representatives” shall mean, with respect to either Party, such Party’s Affiliates and their respective parents, directors, officers, employees, attorneys, accountants, representatives, financial advisors, lenders, consultants and other agents.

“Seller Debt Documents” shall mean (i) the Deerfield Facility and (ii) the indentures and other instruments governing the terms of Seller’s outstanding 2.50% Convertible Senior Notes Due 2021 and Seller’s 5.00% Convertible Senior Notes Due 2024.

“Seller FDA Transfer Letters” shall mean the letters from Seller to the FDA, duly executed by Seller (and any Affiliate of Seller, as applicable), notifying the FDA of the transfer of the rights to the applicable Governmental Authorizations to Purchaser.

“Seller Names” shall mean the names and logos of Seller, the Divesting Entities and all of its and their Affiliates.

“Seller SEC Reports” means all current and periodic reports filed by Seller under the Securities Exchange Act of 1934 from January 1, 2019 through the date of this Agreement.

“Services Agreement” shall mean the Services Agreement between Purchaser and Seller, to be entered into at the Closing in substantially the form attached hereto as Exhibit C.

“Subject Condition” shall mean the condition to Purchaser’s obligation to consummate the Transactions set forth in Section 7.01(a) (solely with respect to any failure of the representations and warranties of Seller set forth in the last sentence of Section 4.02(a) to be true and correct as of the date hereof or as of the Closing Date).

“Tax” or “Taxes” shall mean all taxes, including income, corporation, gross receipts, transfer, excise, property, sales, use, value-added, goods and services, license, payroll, withholding, social security and franchise or other governmental taxes, imposed by any Taxing Authority (including any interest, penalties or additional tax attributable thereto).

“Tax Return” shall mean any return, report, declaration, information return, statement or other document filed or required to be filed with any Taxing Authority in connection with the determination, assessment or collection of any Tax or the administration of any Laws relating to any Tax.

“Taxing Authority” shall mean any Governmental Authority, exercising any authority to impose, regulate or administer the imposition of Taxes.

“Trademarks” shall mean, collectively, trademarks, service marks, trade names, slogans, logos, other distinctive brand features, trade dress or other similar source or origin identifiers (whether statutory or common law, whether registered or unregistered), together with all (a) registrations and applications for any of the foregoing, (b) extensions or renewals thereof, (c) goodwill (if any) connected with use thereof or symbolized thereby, (d) rights and privileges arising under applicable Law with respect to any of the foregoing and (e) all rights corresponding thereto.

“Transaction Documents” shall mean this Agreement and the certificates and other documents and agreements entered into or delivered pursuant hereto, including the Services Agreement.

“Transactions” shall mean, collectively, the transactions contemplated by this Agreement, including the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities.

“Transfer Taxes” shall mean any federal, state, county, local, foreign and other sales, use, transfer, value added, conveyance, documentary transfer, stamp duty, recording or other similar Tax, fee or charge imposed in connection with the Transactions or the recording of any sale, transfer or assignment of property (or any interest therein) effected pursuant to this Agreement.

“Transferred IP Rights” shall mean (i) the Transferred Trademark Rights and (ii) solely for purposes of Section 4.09, the IP Rights licensed or granted under the License.

“Transferred Trademark Rights” shall mean the Trademarks set forth on Section 1.01(f) of the Disclosure Schedules.

“UPC” shall mean Universal Product Code.

Section 1.02 Other Definitional Provisions.

(a) The words “hereof”, “herein”, “hereto” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless the context otherwise requires.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) The terms “U.S. Dollars” and “\$” shall mean lawful currency of the United States of America.

(d) The terms “include,” “includes” and “including” shall mean “including, without limitation.”

(e) When a reference is made in this Agreement to an Article, a Section, an Exhibit or a Schedule, such reference shall be to an Article or a Section of, or an Exhibit or a Schedule to, this Agreement unless otherwise indicated.

(f) Time periods based on a number of days within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and, if applicable, by extending the period to the next Business Day following if the last day of the period is not a Business Day.

(g) The term “United States” shall refer to the United States of America and its territories, including Puerto Rico.

(h) Any Law defined or referred to herein or in any agreement or instrument that is referred to herein shall mean such Law as from time to time amended, modified or supplemented, including by succession of comparable successor Laws and references to all attachments thereto and instruments incorporated therein.

ARTICLE II
PURCHASE AND SALE

Section 2.01 Purchase and Sale of Assets. Upon the terms and subject to the conditions set forth herein, at the Closing, Seller shall, and shall cause the Divesting Entities to, sell, convey, assign and transfer to Purchaser, and Purchaser shall purchase, acquire and accept from Seller and the Divesting Entities, free and clear of all Liens (other than Permitted Liens), all of Seller's and the Divesting Entities' rights, titles and interests in, to or under the properties, rights, interests and assets set forth below (collectively, the "Purchased Assets"):

(a) the Inventories;

(b) the Transferred IP Rights;

(c) the Governmental Authorizations set forth on Section 2.01(c) of the Disclosure Schedules (collectively, the "Transferred Governmental Authorizations");

(d) the equipment and materials set forth on Section 2.01(d) of the Disclosure Schedules;

(e) subject to Section 6.07 and Section 6.08 (and other than the items set forth in Section 2.02(f)), the following current and historical records and files (whether in hard copy format, electronic format or otherwise) primarily relating to the Products, the Purchased Assets, or the Assumed Liabilities, and in the possession of Seller or any of its Affiliates (but excluding records or files not reasonably separable from documents or databases that do not relate exclusively to the Product or the Purchased Assets) and solely to the extent relating to the Business (including, if applicable, supporting Governmental Authorizations in the United States): (i) development, quality control, quality assurance, regulatory, and pharmacovigilance records, and (ii) other business records and information relating exclusively to the Purchased Assets (the foregoing records and documents, in each case to the extent not already in the possession or control of Purchaser, being referred to herein collectively as the "Product Books and Records"); provided, however, that Seller may retain copies of the Product Books and Records (x) to the extent necessary to demonstrate compliance with applicable Law or pursuant to internal compliance or document retention procedures in the ordinary course of business consistent in all material respects with past practice or (y) to the extent related to any Excluded Assets or Retained Liabilities;

(f) the Regulatory Information; provided, however, that Seller may retain copies of the Regulatory Information (i) to the extent necessary to demonstrate compliance with applicable Law or pursuant to internal compliance or document retention procedures in the ordinary course of business consistent in all material respects with past practice or (ii) to the extent related to any Excluded Assets or Retained Liabilities;

(g) each Contract set forth on Section 2.01(g) of the Disclosure Schedules (collectively, the “Transferred Contracts”);

(h) all goodwill associated with the Transferred Trademark Rights;

(i) other than any Excluded Assets set forth in Section 2.02(n), all guarantees, indemnities, claims, counterclaims, defenses, causes of action, rights under express or implied warranties, rights of recovery, rights of set-off, rights of subrogation and all other similar rights against any third party, to the extent relating to any Assumed Liabilities or arising from the use, ownership, possession, operation, management, business integration, sale or lease of the Purchased Assets, including with respect to past, present and future Infringement or misappropriation of any Transferred IP Rights, in each case, whether before, at or after the Cutoff Time; and

(j) any refunds related to the prepaid 2020 Prescription Drug User Fee Amendments (PDUFA) fees, to the extent actually paid to Seller.

Section 2.02 Excluded Assets. Purchaser acknowledges and agrees that it is not acquiring any right, title or interest in, to or under any of the following assets (collectively, the “Excluded Assets”):

(a) any cash, checks, money orders, marketable securities, short-term instruments and other cash equivalents, funds in time and demand deposits or similar accounts, and any evidence of indebtedness issued or guaranteed by any Governmental Authority;

(b) any Accounts Receivable;

(c) any Contracts of Seller or the Divesting Entities (including all Contracts and arrangements with third party suppliers for the supply of materials, components, processing supplies and packaging obtained for use in the manufacture of the Products), or rights therein or thereunder, other than the Transferred Contracts;

(d) any Governmental Authorizations, other than the Transferred Governmental Authorizations;

(e) any deposits or advance payments with respect to Taxes; any claims, rights and interest in and to any refund or credit of Taxes (x) relating to the Purchased Assets or operation of the Business in each case, relating to taxable periods (or portion thereof) ending on or prior to the Closing Date or (y) of Seller and the Divesting Entities for any period;

(f) (i) the corporate books and records of Seller and its Affiliates that are not Product Books and Records, (ii) all personnel records, (iii) any attorney work product, attorney-client communications and other items protected by attorney-client or similar privilege, (iv) Tax Returns, Tax information, and Tax records related to Seller or its Affiliates, and (v) any documents (other than any non-disclosure or confidentiality agreements that constitute Transferred Contracts) that were received from third parties in connection with their proposed acquisition of the Purchased Assets or the Products or that were prepared by Seller or any of its Affiliates in connection therewith;

- (g) any current and prior insurance policies of Seller and its Affiliates and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;
- (h) any intellectual property or similar rights of Seller or its Affiliates, including Trademarks, domain names, telephone numbers, UPCs or similar rights or properties, other than the Transferred IP Rights;
- (i) subject to the terms of any other written agreement between Purchaser and Seller (or any of their respective Affiliates), any intellectual property or similar rights used to manufacture the API, in each case, other than the Transferred IP Rights;
- (j) any real estate owned or leased by Seller or any of its Affiliates;
- (k) any rights, claims and credits of Seller or any of its Affiliates relating to any Excluded Asset or any Retained Liability, including any guarantees, warranties, indemnities and similar rights in favor of Seller or any of its Affiliates to the extent relating to any Excluded Asset or any Retained Liability;
- (l) all Plans and all employees of Seller, any Divesting Entity or any of their Affiliates;
- (m) that certain Bill of Sale dated November 29, 2019 by and between Patheon Pharmaceuticals Inc. and Seller;
- (n) that certain Non-Exclusive License Agreement dated August 24, 2012 by and between Seller and Janssen Pharmaceuticals, Inc.;
- (o) any other assets, properties or rights of Seller or any of its Affiliates other than the Purchased Assets; and
- (p) all claims, counterclaims, defenses, causes of action, rights under express or implied warranties, rights of recovery, rights of set-off, rights of subrogation and all other rights of any kind against any third party, to the extent related to any Retained Liabilities or Excluded Assets, including rights to sue or recover and retain damages, costs and attorneys' fees for past, present and future infringement or misappropriation of any IP Rights that are not (i) Transferred IP Rights or (ii) IP Rights licensed or granted under the License, including those claims set forth on Section 2.02(p) of the Disclosure Schedules.

Section 2.03 Assumption of Certain Obligations. Upon the terms and subject to the conditions set forth herein, Purchaser agrees, effective at the Closing, to assume and to timely satisfy and discharge the (x) Commercialization Agreement Assumed Liabilities and (y) the following Liabilities of Seller and its Affiliates to the extent relating to the Purchased Assets or the Business, in each case other than the Retained Liabilities (all of the foregoing Liabilities being collectively referred to hereinafter as the "Assumed Liabilities"), in each case except to the extent Seller or its Affiliates indemnify Purchaser and its Affiliates under provisions of the Commercialization Agreement that survive termination pursuant to Section 10.05 hereof:

(a) subject to Section 2.03(b), all Liabilities arising solely out of or relating to Legal Proceedings commenced after the Closing, irrespective of the legal theory asserted, solely to the extent arising from the development, commercialization, manufacture, packaging, import, marketing, distribution, sale or use of the Products or the use of the Purchased Assets, in each case, after the Cutoff Time;

(b) all Liabilities arising solely out of or relating to products liability claims relating to the Products, including claims alleging defects in the Products and claims involving the death of or injury to any individual relating to the Products, solely to the extent arising from the sale or use of the Products after the Cutoff Time;

(c) all Liabilities to third-party customers, third-party suppliers or other third parties, solely to the extent relating to the Products or the Purchased Assets and ordered in the ordinary course of business (or at the express request of Purchaser) after the Cutoff Time;

(d) all Liabilities arising out of or relating to any Transferred Contract after the Cutoff Time, to the extent relating to the period of time after the Cutoff Time (provided that, notwithstanding the foregoing to the contrary, for Transferred Contracts set forth on Section 2.03(d) of the Disclosure Schedules, the Assumed Liabilities include all Liabilities irrespective of when such Liabilities arose or relate);

(e) all other Liabilities (excluding Liabilities related to Taxes described in Section 2.04(d) or apportioned to Seller or the Divesting Entity pursuant to Section 2.10) arising out of or relating to the Products, the Business, or the Purchased Assets, including the use, ownership, possession, operation, management, business integration, sale or lease of the Purchased Assets, operation of the Business, and the sale of any of the Products by Purchaser or its Affiliates, after the Cutoff Time;

(f) All Liabilities arising out of acts or omissions of Purchaser in respect of Purchaser's obligations under the Commercialization Agreement to act as an agent for regulatory activities relating to the Product or with respect to the Governmental Authorizations or pharmacovigilance relating to the Products, in each case, after January 9, 2018;

(g) all Taxes apportioned to Purchaser pursuant to Section 2.10;

(h) all obligations under applicable Law relating to the performance of, and all Liabilities arising out of or relating to any post-marketing commitments, including any post-marketing studies, pediatric study requirements (including PREA and PWR), and clinical development costs, arising out of or relating to the Products or the Purchased Assets, in each case, after the Cutoff Time; and

(i) all Liabilities arising out of or relating to the return of the Products sold by Purchaser after the Cutoff Time.

References to the assumption of Assumed Liabilities arising after the Closing Date shall not imply that Seller actually has any such Liabilities arising from its ownership of the Purchased Assets prior to the Closing Date, nor shall anything in this Section 2.03 limit or modify the obligations of Purchaser under the Commercialization Agreement with respect to the Commercialization Agreement Assumed Liabilities for the period beginning on January 9, 2018 and ending at the Cutoff Time.

Section 2.04 Retained Liabilities. Seller and its Affiliates shall retain responsibility for (x) the Commercialization Agreement Retained Liabilities and (y) the following Liabilities, to the extent relating to the Business (collectively, the “Retained Liabilities”), in each case except to the extent Purchaser or its Affiliates indemnify Seller and its Affiliates under provisions of the Commercialization Agreement that survive termination pursuant to Section 10.05 hereof:

- (a) all Liabilities to the extent related to the Excluded Assets;
- (b) all Liabilities arising out of or relating to any Transferred Contract prior to the Cutoff Time, to the extent relating to the period of time prior to the Cutoff Time, except to the extent Purchaser is liable for such Liabilities under the Commercialization Agreement;
- (c) all Liabilities with respect to (i) any current or former employee or contractor of Seller or any Divesting Entity, or any of their Affiliates, provided such Liabilities relate to such current or former employee or contractor’s service with Seller or any Divesting Entity or (ii) any Plan;
- (d) all Liabilities (i) of Income Taxes of Seller or its Affiliates for any period (other than amounts payable pursuant to agreements that constitute Assumed Liabilities), (ii) any sales, use, value added or other similar Taxes that Seller was required to collect and remit to a Taxing Authority prior to the Cutoff Time, arising from Seller’s (or an Affiliate of Seller’s) use of the Purchased Assets or operation of the Business prior to the Cutoff Time, or (iii) for Taxes apportioned to Seller under Section 2.10;
- (e) all Liabilities related to any Accounts Payable except as expressly set forth in this Agreement or to the extent Purchaser is liable for such Liabilities under the Commercialization Agreement;
- (f) all Liabilities for any indebtedness of Seller or its Affiliates;
- (g) all intragroup Liabilities of Seller or any Divesting Entity to any of its Affiliates;
- (h) other than the Assumed Liabilities and the Commercialization Agreement Assumed Liabilities, all other Liabilities (excluding Liabilities relating to Taxes, which shall be governed by Section 2.04(d)) arising out of or relating to the Business or the Purchased Assets, to the extent such Liabilities relate to the period of time prior to the Cutoff Time; and

- (i) all Liabilities set forth on Section 2.04(i) of the Disclosure Schedule.

References to the retention of Retained Liabilities shall not imply that Seller actually has any such Liabilities arising from its ownership of the Purchased Assets prior to the Closing Date, nor shall anything in this Section 2.04 limit or modify the obligations of Seller under the Commercialization Agreement with respect to the Commercialization Agreement Retained Liabilities for the period beginning on January 9, 2018 and ending at the Cutoff Time.

Section 2.05 Purchase Price.

(a) In consideration of the sale and transfer of the Purchased Assets, Purchaser agrees (i) to pay to Seller, in accordance with this Article II, an aggregate amount equal to (x) \$375,000,000 (the "Base Purchase Price") plus (y) the Final Inventories Value minus (z) the Final Commercialization Agreement Payment Value (collectively, as finally determined pursuant to Section 2.07, the "Purchase Price") and (ii) to assume, satisfy and discharge when due all Assumed Liabilities. The Purchase Price shall be allocated as described in Section 2.09.

(b) At the Closing, Purchaser shall pay (or cause to be paid), in immediately available funds by wire transfer, in accordance with written instructions given by Seller to Purchaser not less than two (2) Business Days prior to the Closing Date in cash in U.S. Dollars:

(i) the amount specified in the Payoff Letter (the "Debt Payoff Amount") to the applicable obligee(s) set forth therein;
and

(ii) an aggregate amount equal to (x) the Estimated Purchase Price minus (y) the Debt Payoff Amount, to Seller (or its designees)).

Section 2.06 Purchase Price Adjustments. For purposes of determining the amount of the Purchase Price under this Article II:

(a) The "Final Inventories Value" shall mean the aggregate value of the Inventories as of the Cutoff Time, as finally determined in accordance with Section 2.07, valuing such Inventories for purposes of this definition at Seller's actual cost.

(b) The "Final Commercialization Agreement Payment Value" shall mean the total amounts paid by Purchaser to Seller pursuant to Article 7 of the Commercialization Agreement solely with respect to swept deposits from gross sales of Payment-Bearing Products (as determined under the Commercialization Agreement) (the "Commercialization Agreement Payments") during the period commencing on January 1, 2020 and ending at 12:01 a.m. (Eastern Time) on February 14, 2020 .

(c) For the avoidance of doubt, this Article II shall not be interpreted so as to provide a double payment or double credit to Seller or Purchaser, as applicable, in respect of any item in the calculation of the Purchase Price or set forth in the Purchased Assets, the Excluded Assets, the Assumed Liabilities or the Retained Liabilities.

Section 2.07 Post-Closing Adjustment.

(a) Purchaser shall propose any changes to the Estimated Commercialization Agreement Payment Value set forth in the Preliminary Commercialization Agreement Payment Schedule by delivering to Seller a final statement (the "Final Commercialization Agreement Payment Statement") setting forth Purchaser's proposed good faith calculations of the Final Commercialization Agreement Payment Value and describing such proposed changes within thirty (30) days following the Closing Date, in each case including the components thereof and determined in a manner consistent with the definitions thereof and together with reasonable supporting back-up documentation. Seller shall propose any changes to the Estimated Inventories Value set forth in the Preliminary Inventories Statement by delivering to Purchaser a final statement (the "Final Inventories Statement") setting forth Seller's proposed good faith calculations of the Final Inventories Value and describing such proposed changes within ten (10) days following the receipt of the Final Commercialization Agreement Payment Statement (the "Adjustment Deadline"), in each case including the components thereof and determined in a manner consistent with the definitions thereof and together with reasonable supporting back-up documentation. The Final Inventories Statement shall set forth Seller's proposed good faith calculations of the Purchase Price, based on the Final Inventories Value set forth in the Final Inventories Statement and the Final Commercialization Agreement Payment Value set forth in the Final Commercialization Agreement Payment Statement. The Final Inventories Statement shall also set forth Seller's proposed calculation of the amount by which the Purchase Price exceeds, or is less than, the Estimated Purchase Price (such amount, as finally determined in accordance with this Section 2.07, the "Final Adjustment Amount").

(b) The Parties shall be entitled to dispute the proposed adjustments to the Estimated Inventories Value and the Estimated Commercialization Agreement Payment Value, and the calculation of the Final Adjustment Amount, in each case, as set forth in the Final Inventories Statement if either Party delivers a written notice of such dispute (the "Dispute Notice") to the other Party within thirty (30) days after Purchaser's timely receipt of the Final Inventories Statement. The Dispute Notice shall describe the nature of any disagreement in reasonable detail and identify the specific line items involved and the dollar amount of each such disagreement. If either Party does not deliver a Dispute Notice within the time period specified in this Section 2.07(b), the Parties shall be deemed to have accepted and agreed with the Final Inventories Statement, Seller's calculation of the Final Adjustment Amount and the Purchase Price shall be final, binding and conclusive on the Parties and the payment provided for in Section 2.08 shall be based on such amount. For the avoidance of doubt, any items on the Final Inventories Statement as to which either Party has not provided a reasonably detailed objection and provided an alternative calculation in the Dispute Notice delivered within the time period specified in this Section 2.07(b) shall be final, binding and conclusive on the Parties.

(c) If a Dispute Notice is delivered within the time period specified in Section 2.07(b), Purchaser and Seller shall attempt in good faith to resolve any disputes set forth in the Dispute Notice during the thirty (30) day period commencing on the date of receipt of such Dispute Notice (or such longer period as may be agreed between the Parties) (the "Negotiation Period").

(d) If Purchaser and Seller agree in writing prior to the expiration of the Negotiation Period on the calculation of the Final Inventories Value, the Final Commercialization Agreement Payment Value (or one or more components thereof), and the resulting Final Adjustment Amount (whether such amount is the same as or different from the amount calculated based upon the Final Inventories Statement), the payment provided for in Section 2.08 shall be based upon such agreed upon amount.

(e) If Purchaser and Seller do not agree in writing prior to the expiration of the Negotiation Period on the Final Adjustment Amount, then Purchaser and Seller shall engage, and the remaining items in dispute that remain unresolved following the Negotiation Period (but no other matters) (the “Disputed Items”) shall be submitted immediately to, a nationally recognized independent accounting firm to be mutually agreed upon by Seller and Purchaser (the “Independent Accountant”), acting as an expert and not as an arbitrator. The Independent Accountant shall consider only the Disputed Items. The Independent Accountant shall make a final determination as to each such Disputed Item, and the resulting amount of the Purchase Price and the Final Adjustment Amount in accordance with the guidelines and procedures set forth in this Agreement. The determination of value made by the Independent Accountant with respect to the applicable Disputed Items submitted to the Independent Accountant (i) shall not be greater than the greatest value for such items claimed by Purchaser or Seller or less than the smallest value for such items claimed by Purchaser or Seller in the Final Inventories Statement or the Dispute Notice, as applicable and (ii) shall be based solely upon the written submissions of Purchaser and Seller and the terms of this Agreement, including the definitions set forth herein (and not upon an independent review). The determination of the Disputed Items submitted to the Independent Accountant, and the calculation of the Final Inventories Value and Final Commercialization Agreement Payment Value based on such determination and, if applicable, any amounts finally agreed upon between the Parties pursuant to Section 2.07(b) and Section 2.07(d), together with a calculation of the Purchase Price and the Final Adjustment Amount that results from such determination, shall become final and binding on the Parties on the date the Independent Accountant delivers its final resolution to the Parties of the Disputed Items submitted to the Independent Accountant, absent fraud or manifest error. The terms of appointment and engagement of the Independent Accountant shall be as agreed upon between Purchaser and Seller, and any associated engagement fees shall be borne based on the inverse of the percentage that the Independent Accountant’s determination bears to the total amount of the total items in dispute as originally submitted to the Independent Accountant, which proportionate allocations shall also be determined by the Independent Accountant at the time it renders its determination on the merits of the matters in dispute. For example, should the items in dispute total in amount to \$1,000 and the Independent Accountant awards \$600 in favor of Seller, then 60% of the costs of its review would be borne by Purchaser and 40% of the costs would be borne by Seller.

Section 2.08 Payment of Final Adjustment Amount. No later than five (5) Business Days after the Purchase Price and Final Adjustment Amount is finally determined in accordance with Section 2.07:

(a) If the Purchase Price as finally determined pursuant to Section 2.07 exceeds the Estimated Purchase Price, then Purchaser shall pay (or cause an Affiliate to pay) to Seller an aggregate amount in cash equal to the Final Adjustment Amount by wire transfer of immediately available funds to such account or accounts as designated in writing by Seller.

(b) If the Estimated Purchase Price exceeds the Purchase Price as finally determined pursuant to Section 2.07, then Seller shall pay (or cause an Affiliate to pay) to Purchaser an aggregate amount in cash equal to the Final Adjustment Amount by wire transfer of immediately available funds to such account or accounts as designated in writing by Purchaser.

(c) If the Purchase Price as finally determined pursuant to Section 2.07 equals the Estimated Purchase Price, then no Final Adjustment Amount will be paid to either Party.

Section 2.09 Allocation of Purchase Price For Tax Purposes. Purchaser and Seller will allocate the Purchase Price (including Assumed Liabilities treated as purchase price for Tax purposes) among the Purchased Assets pursuant to this Section 2.09. Seller shall prepare and deliver a draft allocation of the Purchase Price (including the Assumed Liabilities) for Tax purposes among the Purchased Assets (the "Allocation") to Purchaser within thirty (30) days following the date hereof. The Allocation will reflect a percentage of the Purchase Price (including Assumed Liabilities) that is to be allocated to each Purchased Asset, other than Inventory, in accordance with section 1060 of the Code. Inventory shall be valued as set forth in 2.07(a). The amount of the Purchase Price (including Assumed Liabilities) as finally determined pursuant to Section 2.07, less the Final Inventory Value, shall be allocated among the other assets in the percentage set forth on the Allocation. The Parties shall promptly provide each other with any reasonably requested information for purposes of preparing or reviewing the Allocation. Purchaser shall be deemed to agree with such draft Allocation unless Purchaser delivers a written dispute notice to Seller within thirty (30) days from the receipt thereof (setting forth in reasonable detail the reason for any objections and any proposed adjustments to the Allocation). Seller and Purchaser shall, in good faith, cooperate to timely resolve any such dispute. If Seller and Purchaser are unable to resolve any such dispute within forty five (45) days, the Parties shall refer such dispute to the Independent Accountant for resolution and the decision of the Independent Accountant shall be binding on the Parties. In such event, the Parties shall each use reasonable best efforts to cause the Independent Accountant to resolve such dispute within forty five (45) days of the date such dispute is referred to the Independent Accountant. The Independent Accountant shall not take any position that it does not believe is not more likely than not to be sustained if challenged by a Taxing Authority. Any amendments to the Allocation will be completed in a manner consistent with the preceding sentences of this Section 2.09. The Parties covenant and agree (a) to report for Tax purposes, including on IRS form 8954, the allocation of the Purchase Price (including the Assumed Liabilities) among the Purchased Assets in a manner entirely consistent with the Allocation, as it may be amended upon any adjustment to the calculation of the Purchase Price (including the Assumed Liabilities), (b) that the Parties will cooperate with each other in connection with the preparation, execution and filing of all Tax Returns related to the Allocation and will take no position inconsistent with the Allocation in the filing of any Tax Return, except upon a final determination within the meaning of Section 1313(a) of the Code by an applicable Taxing Authority and (c) that the Parties will use commercially reasonable efforts to advise each other regarding the existence of any Tax audit, controversy or litigation related to the Allocation.

Section 2.10 Transfer Taxes; Proration of Prepaid Expenses.

(a) All Transfer Taxes payable in connection with the transfer of the Purchased Assets to Purchaser under this Agreement and the Transactions shall be borne and paid by Purchaser. Such Transfer Taxes shall be paid when due in compliance with applicable Transfer Tax laws by Purchaser.

(b) For all purposes under this Agreement, Taxes (or any Tax refund or amount credited against any Tax) for any taxable period that includes but does not end as of the Cutoff Time (each, a "Straddle Period"), shall be allocated between the portion of the Straddle Period ending at the Cutoff Time (the "Pre-Closing Tax Period") and the portion of the Straddle Period commencing after the Cutoff Time (the "Post-Closing Tax Period") (i) in the case of property Taxes, similar ad valorem obligations and other Taxes (or Tax refund or amount credited against Tax) imposed on or calculated by reference to a periodic basis, multiplying the amount of such Taxes for the entire Straddle Period by a fraction the numerator of which is the number of days in the Pre-Closing Tax Period or the Post-Closing Tax Period, as applicable, and the denominator of which is the number of days in the entire Straddle Period and (ii) in the case of all other Taxes (including Taxes based on receipts or expenses), determined as though the taxable year terminated at the end of the day on the Closing Date. Sellers shall be liable for the amount of such Taxes that is apportioned to the Pre-Closing Tax Period, and Purchaser shall be liable for the amount of such Taxes that is apportioned to the Post-Closing Tax Period. Within a reasonable period, Seller, on the one hand, and Purchaser, on the other hand, shall present a statement to the other setting forth the amount of reimbursement to which each is entitled under this Section 2.10(b), together with such supporting evidence as is reasonably necessary to calculate the proration amount. The proration amount shall be paid by the party owing it to the other party within 10 days after delivery of such statement.

(c) The Party required by applicable Law to file each Tax Return required to be filed with respect to Transfer Taxes shall file such Tax Return, provided that if such Party fails to file such Tax Returns, the other Party shall have the right to prepare such Tax Returns. Purchaser and Seller shall cooperate in making and timely filing all Tax Returns as may be required to comply with the provisions of applicable Transfer Tax laws.

(d) The credits, accrued rebates, prepaid expenses, deferred charges, advance payments, security deposits and prepaid items including those set forth on Section 2.08(c) of the Disclosure Schedules, shall, to the extent allocable on a pre-Closing and post-Closing basis, be apportioned to Seller based upon the number of days occurring prior to (and including) the Closing Date and be apportioned to Purchaser following the Closing Date during the billing period for each such charge; provided that the foregoing shall not apply with respect to any Tax items or payments.

Section 2.11 Risk of Loss; Casualty. Prior to the Closing, any loss or damage to the Purchased Assets from fire, casualty or otherwise shall be the sole responsibility of Seller. Thereafter, any such loss or damage shall be the sole responsibility of Purchaser.

Section 2.12 Certain Costs.

(a) All out-of-pocket costs and fees payable to a Governmental Authority associated with transferring to Purchaser or one of its Affiliates the Transferred IP Rights and the Transferred Governmental Authorizations for the Products conveyed to Purchaser hereunder shall be borne and paid solely by Purchaser when due; provided, however, that if any such amount shall be incurred by Seller, Purchaser shall, subject to receipt of satisfactory evidence of Seller's payment thereof, promptly reimburse Seller such out-of-pocket costs and fees.

(b) All out-of-pocket costs and expenses associated with removing and moving any Purchased Asset to a location designated by Purchaser shall be borne and paid by Purchaser when due and all Liabilities arising in connection therewith shall be borne by Purchaser; provided, however, that if any amount or Liability should be incurred by Seller in connection with such removing and moving, Purchaser shall, subject to receipt of satisfactory evidence of Seller's incurrence thereof, promptly pay Seller its reasonable, customary and documented out-of-pocket costs, expenses and Liabilities.

(c) In addition to the expenses subject to reimbursement as set forth in Section 2.12(a) and Section 2.12(b), Purchaser shall reimburse Seller for the expenses set forth on Section 2.12(c) of the Disclosure Schedules. All undisputed amounts of such reimbursement shall be made within thirty (30) days of Seller's presentation of documentation of the payment of such expenses.

**ARTICLE III
CLOSING**

Section 3.01 Closing.

(a) The Closing shall take place no later than three (3) Business Days after the satisfaction or waiver of the conditions precedent to Closing specified in Article VII (other than those conditions that, by their nature, cannot be satisfied until the Closing Date, but subject to such satisfaction or waiver at the Closing) at the offices of Gibson, Dunn & Crutcher, LLP, 555 Mission Street, San Francisco, California (including any Persons connected by remote access to the Closing) or at such other time and place as the Parties may mutually agree in writing; provided, however, that in no event shall Purchaser be obligated to consummate the Closing unless and until (a) the first Business Day immediately following the day that the Marketing Period expires, or (b) Purchaser has provided two Business Days' written notice to Seller specifying a Closing Date prior to the date specified in the preceding clause (a) (a "Closing Date Notice"), in which case, on such specified date (provided, that (i) any Closing Date Notice may be withdrawn and a new Closing Date Notice may be delivered with respect to a later Closing Date to occur prior to the date in clause (a) of this proviso on no less than two Business Days' notice, and (ii) the Closing Date specified in any Closing Date Notice may be conditioned upon the simultaneous completion of the Financing; provided, further, that if such Financing is not completed for any reason at any time, such Closing Date Notice shall automatically be deemed withdrawn). The date on which the Closing occurs is referred to as the "Closing Date". The Closing shall be deemed to occur and be effective as of 12:01 a.m. Eastern Standard Time on the Closing Date.

(b) At the Closing, Seller shall deliver, or cause to be delivered, to Purchaser the instruments and documents set forth on Exhibit A.

(c) At the Closing, Purchaser shall (i) make the payments specified in Section 2.05(b) in accordance with the terms thereof and (ii) deliver to Seller the instruments and documents set forth on Exhibit B.

Section 3.02 Pre-Closing Statements. At least three (3) Business Days prior to the Closing Date, Purchaser shall deliver to Seller a statement (the "Preliminary Commercialization Agreement Payment Statement") setting forth its good faith estimate of the Final Commercialization Agreement Payment Value (the "Estimated Commercialization Agreement Payment Value"). At least two (2) Business Days prior to the Closing Date, Seller shall deliver to Purchaser (a) a statement (the "Preliminary Inventories Statement") setting forth Seller's good faith statement of the Final Inventory Value (the "Estimated Inventories Value"); (b) a statement setting forth its good faith estimate, as of the Cutoff Time, of all Liabilities described in Section 2.03(c); and (c) a calculation of the Estimated Purchase Price using the Estimated Inventories Value and the Estimated Commercialization Agreement Payment Value. Nothing in this Section 3.02 or in any statement delivered pursuant to this Section 3.02 shall be deemed to limit the rights or obligations of the Parties under Section 2.01(h), Section 2.03(c)(i) or Section 6.01. Prior to the Closing, the Parties shall use commercially reasonable efforts to communicate regularly with each other regarding the completion of the conditions hereunder to the Closing. The obligations of Seller pursuant to this Section 3.02 to deliver a calculation of the Estimated Purchase Price within the specified time frames shall be subject to Seller receiving the Preliminary Commercialization Agreement Payment Statement, provided, that Seller shall deliver such calculation to Purchaser as soon as practicable thereafter, but prior to the Closing.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser, as of the date hereof and as of the Closing Date, as follows:

Section 4.01 Organization. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Each Divesting Entity is a corporation duly organized, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its organization. Seller and each Divesting Entity is authorized to do business under the Laws of all jurisdictions in which it is required to be so authorized, except as would not, individually or in the aggregate, have a Material Adverse Effect.

Section 4.02 Authority; Binding Effect.

(a) Seller and each Divesting Entity has all requisite corporate power and authority to own and operate its properties and assets and to carry on its business as it is now being conducted and as it is related to the Purchased Assets and the Business. Seller has all requisite corporate power and authority to execute and deliver this Agreement, and to carry out, or to cause to be carried out, the Transactions. The execution and delivery by Seller of this Agreement and each of the Transaction Documents, and the performance by Seller and each Divesting Entity of its obligations hereunder and thereunder, have been duly authorized by all requisite corporate action on the part of Seller and such Divesting Entity and do not require any further board, stockholder or other corporate authorization or consent on the part of Seller, any Divesting Entity or any of their respective stockholders.

(b) This Agreement and each of the Transaction Documents has been duly executed and delivered by Seller and, assuming the valid execution and delivery by Purchaser, constitutes a legal, valid and binding obligation of Seller, each enforceable against Seller in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or law).

Section 4.03 Non-Contravention. The execution, delivery and performance of this Agreement and the other Transaction Documents by Seller, and the consummation of the Transactions, do not and will not (a) violate any provision of the certificate of incorporation or bylaws of Seller and the comparable organizational documents of any Divesting Entity; (b) subject to obtaining the consents referred to in Section 4.03(b) of the Disclosure Schedules, materially conflict with, violate, result in the breach of, constitute a default under or result in the termination, cancellation or acceleration (whether after the giving of notice or the lapse of time or both) of any right or obligation of Seller or any Divesting Entity under any Transferred Contract, Transferred Governmental Authorization or the Seller Debt Documents, or to a material loss of any benefit with respect to the Business to which Seller or any Divesting Entity is entitled under, any Transferred Contract, Transferred Governmental Authorization or the Seller Debt Documents, or result in the creation of any Lien (other than Permitted Liens) upon any of the Purchased Assets; or (c) assuming compliance with the matters set forth in Section 4.04 and Section 5.03, materially violate or result in a breach of, or constitute a default under any Law or other restriction of any Governmental Authority to which Seller or any Divesting Entity is subject, except, with respect to clauses (b) and (c), for any violations, breaches, conflicts, defaults, losses, Liens, terminations, cancellations, accelerations or other inaccuracies that would not, individually or in the aggregate, reasonably be expected to be materially adverse to the Purchased Assets or to the conduct of the Business, taken as a whole.

Section 4.04 Governmental Authorization. Except as set forth on Section 4.04 of the Disclosure Schedules or in connection with the filings required by the Competition Laws, the execution and delivery of this Agreement and the other Transaction Documents by Seller, and the consummation of the Transactions, do not require any consent or approval of, or any notice to or other filing with, any Governmental Authority, except for consents, approvals, notices and filings the failure of which to obtain would not, individually or in the aggregate, reasonably be expected to be materially adverse to the Purchased Assets or to the conduct of the Business, taken as a whole.

Section 4.05 No Litigation.

(a) Except as set forth on Section 4.05(a) of the Disclosure Schedules, no Legal Proceeding or Governmental Order that (i) is material to the Business, the Purchased Assets or the Assumed Liabilities, taken as a whole, or (ii) would enjoin, restrict or prohibit the transfer of all or any part of the Purchased Assets, or the performance by Seller or any of the Divesting Entities, as contemplated by this Agreement, or (iii) seeks to impose any material limitation on the ability of Seller or any of its Affiliates to operate the Business or would impose any material limitation on the ability of Purchaser to operate the Business, is pending or outstanding against or, to the Knowledge of Seller, threatened in writing against Seller or any Divesting Entity. This Section 4.05 does not relate to Legal Proceedings relating solely to Transferred IP Rights, which are the subject of Section 4.09.

(b) Except as set forth in the Seller SEC Reports, from January 9, 2018, no Legal Proceeding related to product liability, product defect, fraud, misrepresentation, unjust enrichment, conspiracy or economic loss has been initiated against Seller or any of the Divesting Entities or their agents and, to the Knowledge of Seller, no such Legal Proceeding has been threatened in writing or filed against Seller or any of the Divesting Entities relating to any of the Products, the Business, the Purchased Assets or the Assumed Liabilities.

Section 4.06 Compliance with Laws. Except as to matters set forth in Section 4.06 of the Disclosure Schedules:

(a) Seller and each Divesting Entity is, and since January 9, 2018 has been, in compliance in all material respects with all Laws, including all Health Laws, applicable to the conduct of the Business.

(b) Seller and each Divesting Entity possesses, and is in compliance with, all Governmental Authorizations necessary for the conduct of the Business as it is currently conducted, except where the failure to possess or comply with any such Governmental Authorization would not, individually or in the aggregate, be materially adverse to the operation of the Business, and all such Governmental Authorizations are valid and in full force and effect. Seller and the Divesting Entities, as applicable, have completed and filed all reports, documents, claims, permits and notices required by any Governmental Authority in order to maintain the Governmental Authorizations, except where failure to file such reports would not be materially adverse to the Business. To the Knowledge of Seller, all such reports, documents, claims, permits and notices were complete and accurate in all material respects on the date filed (or were corrected in or supplemented by a subsequent filing). To the Knowledge of Seller, no event has occurred that would reasonably be expected to result in a penalty under or the revocation, cancellation, non-renewal or adverse modification of any Governmental Authorization, except as has not been and would not, individually or in the aggregate, reasonably be expected to be materially adverse to the Business.

Section 4.07 Regulatory Matters.

(a) Section 1.01(a) of the Disclosure Schedules sets forth, as of the Effective Date, a list of all NDAs and INDs relating to NUCYNTA.

(b) With respect to the Business, neither Seller nor any of the Divesting Entities, nor, to the Knowledge of Seller, any officer or employee of Seller or any of the Divesting Entities, has made an untrue statement of a material fact or a fraudulent statement to the FDA or other Governmental Authority, failed to disclose a material fact required to be disclosed to the FDA or other Governmental Authority or committed an act, made a statement, or failed to make a statement that, at the time such disclosure was made, would reasonably be expected to provide a basis for the FDA to invoke its Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities policy set forth in the FDA's Compliance Policy Guide Sec. 120.100 (CPG 7150.09).

(c) With respect to the Business, neither Seller nor any of the Divesting Entities, nor, to the Knowledge of Seller, their respective officers or employees, has been debarred, pursuant to Section 306 of the US Federal Food, Drug, and Cosmetic Act, or has been the subject of a conviction described in such section.

(d) With the respect to the Business, neither Seller nor any of the Divesting Entities has received from the FDA or any other Governmental Authority a written notification alleging or asserting a failure to comply with applicable Health Laws.

(e) All clinical trials and studies for the Products that have been or are being conducted by or on behalf of Seller or its Affiliates since January 9, 2018, were conducted, and are being conducted, in all material respects in accordance with all applicable Laws, including Health Laws. To the Knowledge of Seller, there is no Legal Proceeding pending or threatened by any Governmental Authority to suspend, investigate or terminate any ongoing clinical trials or studies for any Product.

Section 4.08 Contracts.

(a) Seller has made available to Purchaser true and complete copies of all Transferred Contracts. The Transferred Contracts constitute all of the material Contracts owned or controlled by Seller and the Divesting Entities related to the Business, and neither Seller nor any Divesting Entity is party to any material Contract related to the Business that does not constitute a Transferred Contract. Except as disclosed on Section 4.08(a) of the Disclosure Schedules, (i) each Transferred Contract is valid and binding on Seller or the Divesting Entity that is a party thereto and, to the Knowledge of Seller, the other party thereto, and is in full force and effect in accordance with its terms, subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar Laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or law), (ii) neither Seller nor any Divesting Entity or, to the Knowledge of Seller, any other party thereto, is in material breach of or material default under, or has provided notice of its intent to terminate or, to the extent applicable, not renew, any Transferred Contract, and no event has occurred that, with the giving of notice or lapse of time or both, would constitute a material breach or material default thereunder and (iii) no Transferred Contract limits or restricts the ability of any party thereto to conduct any particular line of business (other than restrictions set forth in the License) that would be binding on Purchaser following the Closing

(b) A true, complete and correct list of the top ten (10) vendors (by amount actually paid or payable to such vendors) in respect of the Business, in each case, for the twelve (12)-month period ended December 31, 2019 (the "Top Vendors") is set forth on Section 4.08(b) of the Disclosure Schedules.

(c) Except as set forth on Section 4.08(c) of the Disclosure Schedules, each Transferred Contract is assignable or transferable to Purchaser without (i) the written consent of, or prior notice to, any other party thereto and (ii) the making of any payment or grant of any other consideration, rights or license to any other party thereto or Person.

(d) As of the Effective Date, Grünenthal has consented, in writing, to the assignment of the License to Purchaser pursuant to the Consent Agreement and in accordance with the terms of the License and such consent has not been rescinded, revoked, modified or conditioned in any manner.

(e) Except as set forth on Section 4.08(e) of the Disclosure Schedules, since August 1, 2019, Seller has received no written notice of any material adverse change in the price or availability of any material supplies or services provided under the Transferred Contracts that are used in the manufacture, distribution or sale of the Products as such activities are conducted by Seller as of the date of this Agreement.

Section 4.09 Intellectual Property.

(a) Except as set forth on Section 4.09(a) of the Disclosure Schedules:

(i) To the Knowledge of Seller, the Transferred IP Rights are enforceable, valid and subsisting and there is no objection or claim being asserted or threatened in writing by any Person challenging the scope, ownership, inventorship, validity or enforceability of any Transferred IP Rights; provided that the foregoing "Knowledge of Seller" qualifier shall not apply with respect to the Transferred Trademark Rights;

(ii) on the Effective Date, one or more of Seller or the Divesting Entities is, and at the Closing, Seller or one or more of Seller or the Divesting Entities will be, (A) the sole and exclusive beneficial and, with respect to applications and registrations, record owner of, and hold good, saleable and sole title to the Transferred IP Rights other than the Transferred IP Rights that are licensed to Seller or one or more of the Divesting Entities, in which case, Seller or one or more of the Divesting Entities is the holder of an assignable valid right or license to such licensed Transferred IP Rights, and (B) the beneficial owner of the Licensed Seller Know-How (other than Licensed Seller Know-How that are licensed or granted to Seller under the License);

(iii) other than pursuant to the Commercialization Agreement, no license of any kind relating to any Transferred IP Right has been granted by Seller or any Divesting Entity to any third parties (except for immaterial, non-exclusive licenses to use Transferred IP Rights to customers and suppliers in the ordinary course of business);

(iv) the Transferred IP Rights are, to the Knowledge of Seller, free and clear of any Liens, other than Permitted Liens or pursuant to the License, except as would not, individually or in the aggregate, reasonably be expected to be materially adverse to the Purchased Assets or the conduct of the Business; provided that the foregoing "Knowledge of Seller" qualifier shall not apply with respect to the Transferred Trademark Rights;

(v) there are no Legal Proceedings or other claims pending or threatened by Seller or any of its Affiliates against any Person, and none of Seller or any of its Affiliates has provided notice of any Person's Infringement of any Transferred IP Right or Licensed Seller Know-How, in each case, except as would not, individually or in the aggregate, reasonably be expected to be materially adverse to the Purchased Assets or the operation of the Business;

(vi) there are no Legal Proceedings or other claims pending, or to the Knowledge of Seller, threatened against Seller or any of its Affiliates by any Person, and none of Seller or, to the Knowledge of Seller, any of its Affiliates received written notice (including in the form of offers, invitations to obtain a license or cease-and-desist letters) from any Person that the conduct of the Business (including the use of Licensed Seller Know-How), including the marketing and sale of the Products in the United States, constitutes Infringement of any IP Right of such Person, in each case, except as would not, individually or in the aggregate, reasonably be expected to be materially adverse to the Purchased Assets or to the operation of the Business;

(b) Except as set forth on Section 4.09(b) of the Disclosure Schedules, the Transferred IP Rights constitute all of the IP Rights owned or licensed to or by Seller and its Affiliates at the Closing relating to the Products, except in respect of the manufacture and packaging of the Products. To the Knowledge of Seller, all assignments, declarations and powers of attorney (collectively, "Formalities") with respect to the Transferred IP Rights have been properly obtained and recorded.

(c) The License is valid and binding on Seller or the Divesting Entity that is a party thereto and, to the Knowledge of Seller, Grünenthal, and is in full force and effect, subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or law), and neither Seller nor any of the Divesting Entities nor, to the Knowledge of Seller, Grünenthal is in material breach thereof or in material default thereunder, and no event has occurred that, with the giving of notice or lapse of time or both, would constitute a material breach thereof or material default thereunder.

(d) Seller, and each Divesting Entity, has taken and currently takes commercially reasonable measures to protect the confidentiality of confidential information material to the conduct of the Business and owned, used or held for use in the conduct of the Business by Seller or any Divesting Entity, and to the Knowledge of Seller, there has not been any disclosure of any material trade secret or confidential information owned, used or held for use in the conduct of the Business to any Person in a manner that has resulted in the loss of such trade secret or other rights in and to such information.

(e) To the Knowledge of Seller, the development, sale, distribution or other commercial exploitation (as currently marketed by Purchaser) of Products as of the date hereof do not infringe upon or misappropriate and have not infringed upon or misappropriated, any United States IP Rights of any Person; provided that the foregoing "Knowledge of Seller" qualifier shall not require due inquiry.

(f) Section 4.09(f) of the Disclosure Schedules lists all of the U.S. Patents licensed from Grünenthal under the terms of the License that relate to the Products.

(g) Other than pursuant to the Commercialization Agreement, or pursuant to the Transferred Contracts, Seller has not licensed or sublicensed IP Rights licensed to Seller under the License to any third party other than for immaterial, non-exclusive licenses incidental to development, manufacturing, sale, marketing or distribution of the Product.

(h) Nucynta® ER constitutes a Grünenthal–ADF-Formulation (as defined in the License).

Section 4.10 Purchased Assets. Except as set forth on Section 4.10 of the Disclosure Schedule, Seller and Divesting Entities (a) own, lease or have the legal right to use all of the Purchased Assets, and (b) have good title to all the Purchased Assets (other than those Purchased Assets that are licensed) free and clear of all Liens, except for Permitted Liens. Other than the Divesting Entities, no Affiliate of Seller has any right, title or interest in, to or under the Purchased Assets. Following the Closing, neither Seller nor any of its Affiliates will own any right, title or interest in or to any of the Purchased Assets, except as otherwise expressly set forth in Section 6.10, Section 6.12, or Section 6.24. The Purchased Assets comprise all of the material rights, properties and assets owned, operated or controlled by Seller and the Divesting Entities related to the Business, and neither Seller nor any Divesting Entity owns, operates or controls any material rights, properties or assets related to the Business that do not constitute Purchased Assets. The material tangible assets included in the Purchased Assets are (i) maintained in accordance with normal industry practice and (ii) are in good operating condition and repair (subject to normal wear and tear). This Section 4.10 does not relate to intellectual property, which is the subject of Section 4.09.

Section 4.11 Inventories. The Inventories are of usable or saleable quality in the ordinary course of business consistent in all material respects with past practice and have the expiration dates set forth on the Preliminary Inventories Statement (except for such inaccuracies with respect to such expiration dates as would not be material). All of the Inventories are free of material defects (including defects in packaging, labelling and storage) and systematic or chronic problems and comply in all material respects with all applicable specifications and all applicable Laws, including all Health Laws and Environmental Laws. All Inventories that have been returned, have expired or have been deemed unusable or not fit for sale, have been or will be destroyed in accordance with the policies of Seller and applicable Law.

Section 4.12 Taxes. Except as set forth on Section 4.12 of the Disclosure Schedules: (a) all material Tax Returns required to be filed by Seller or its Affiliates with respect to the ownership or use of the Purchased Assets have been duly and timely filed; (b) all material Taxes due and payable by Seller or its Affiliates with respect to the ownership or use of the Purchased Assets have been timely paid; (c) none of the Purchased Assets is subject to any Liens as a result of a failure to pay any Tax (excluding, for clarity, any Permitted Liens); and (d) other than as relates to Income Taxes, Seller has not received written notice from a Taxing Authority relating to ongoing or pending Tax audits or administrative or similar proceedings with respect to any Tax Returns relating to the ownership or use of the Purchased Assets. Notwithstanding any provisions of this Agreement to the contrary, Section 4.05 and the foregoing provisions of this Section 4.12 constitute the sole representations and warranties of Seller and its Affiliates relating to Taxes.

Section 4.13 Brokers. Except for the Persons set forth in Section 4.13 of the Disclosure Schedules, whose fees with respect to the transactions contemplated by this Agreement will not be borne by Purchaser, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Transaction Document based upon arrangements made by or on behalf of Seller or any of its Affiliates.

Section 4.14 Opinion. Prior to the date hereof, Seller received the written opinion of Greenberg Traurig LLP that, subject to the assumptions, exceptions, limitations and qualifications set forth therein, the authorization of the Transaction by the stockholders of Seller is not required under Section 271 of the DGCL.

Section 4.15 Exclusivity of Representations and Warranties. Neither Seller nor any of the Divesting Entities, or any of their Affiliates or Representatives are making any representation or warranty of any kind or nature whatsoever, oral or written, express or implied, relating to the Business or the Purchased Assets (including, but not limited to, any relating to financial condition or results of operations of the Business or maintenance, repair, condition, design, performance, value, merchantability or fitness for any particular purpose of the Purchased Assets), except as otherwise expressly set forth in this Article IV or in the certificate delivered to Purchaser pursuant to Section 7.01(c), and Seller hereby disclaims any such other representations or warranties.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller, as of the date hereof and as of the Closing Date, as follows:

Section 5.01 Organization. Purchaser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Virginia. Purchaser is authorized to do business under the Laws of all jurisdictions in which it is required to be so authorized, except as would not, individually or in the aggregate, have a Purchaser Material Adverse Effect.

Section 5.02 Authority; Binding Effect.

(a) Purchaser has all requisite power and authority to own and operate its properties and assets, to carry on its business as it is now being conducted and to execute and deliver this Agreement, and to carry out or cause to be carried out, the Transactions. The execution and delivery by Purchaser of this Agreement and each of the Transaction Documents, and the performance by Purchaser of its obligations hereunder and thereunder, have been duly authorized by all requisite corporate action on the part of Purchaser. No approval of Purchaser's equity interest holders is necessary for Purchaser to execute and deliver this Agreement or any related agreements or perform the Transactions and do not require any further board, stockholder or other authorization or consent on the part of Purchaser or any of its stockholders.

(b) This Agreement and each of the Transaction Documents has been duly executed and delivered by Purchaser and, assuming the valid execution and delivery by Seller, constitutes a legal, valid and binding obligation of Purchaser, each enforceable against Purchaser in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or law).

Section 5.03 Non-Contravention. The execution, delivery and performance by Purchaser of this Agreement and the other Transaction Documents, and the consummation of the Transactions, do not and will not (a) violate any provision of the certificate of incorporation, bylaws or other organizational documents of Purchaser; (b) materially conflict with, or result in a breach of, constitute a default under or result in the termination, cancellation or acceleration (whether after the giving of notice or the lapse of time or both) of any right or obligation of Purchaser or any of its Affiliates under, or to a loss of any benefit to which Purchaser or any of its Affiliates is entitled under, any agreement, lease of real estate or license of intellectual property to which Purchaser or any of its Affiliates is a party or to which its properties or assets are subject; or (c) assuming compliance with the matters set forth in Section 4.04 and Section 5.03, materially violate or result in a breach of or constitute a default under any Law or other restriction of any Governmental Authority to which Purchaser is subject, except, with respect to clauses (b) and (c), for any violations, breaches, defaults, conflicts, losses, Liens, terminations, cancellations or accelerations that would not, individually or in the aggregate, reasonably be expected to have a material and adverse effect on the ability of Purchaser to consummate the Transactions (a "Purchaser Material Adverse Effect").

Section 5.04 Governmental Authorization. Except as set forth on Section 5.04 of the Disclosure Schedules and in connection with the filings required by the Competition Laws, the execution and delivery of this Agreement and the other Transaction Documents, and the consummation of the Transactions, do not require any consent or approval of, or any notice to or other filing with, any Governmental Authority, except for consents, approvals, notices and filings the failure of which to obtain or make would not, individually or in the aggregate, have a Purchaser Material Adverse Effect.

(a) Purchaser has received (i) an executed commitment letter and a fee letter, each dated as of the date hereof, true and correct copies of which have been provided to Seller (with only the fee amounts and other customary terms (none of which would adversely affect the conditions, amount or availability of the Notes Offering Financing) redacted from the fee letter), from the parties identified therein committing, subject to the terms and conditions set forth therein (including in the term sheets and attachments thereto), to purchase senior unsecured notes yielding gross proceeds of not less than \$125,000,000 from Purchaser for purposes of funding the consummation of the transactions contemplated by this Agreement (such commitment letter and fee letter, together with all term sheets and other attachments thereto, the "Notes Offering Commitment Letter" and the financing committed pursuant to the Notes Offering Commitment Letter, the "Notes Offering Financing") and (ii) an executed loan agreement, dated as of the date hereof, a true and correct copy of which has been provided to Seller (with only the fee amounts and other customary terms (none of which would adversely affect the conditions, amount or availability of the Debt Financing) redacted therefrom), from the lenders (or agents thereof) identified therein committing, subject to the terms and conditions set forth therein, to provide up to \$200,000,000 in the aggregate of debt financing to Purchaser (such loan agreement, the "Loan Agreement," and together with the Notes Offering Commitment Letter, the "Commitment Documents"; the debt financing committed pursuant to the Loan Agreement, the "Debt Financing," and together with the Notes Offering Financing, the "Financing"). The Commitment Documents have been duly executed by Purchaser and, to Purchaser's knowledge, each other party thereto, and the Commitment Documents are in full force and effect and constitute the legal, valid and binding obligations of Purchaser and, to the knowledge of Purchaser, the other parties thereto, except as enforcement may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or law). As of the date of this Agreement, there are no side letters or other contracts to which Purchaser is a party related to the funding of the commitment amounts set forth in the Commitment Documents, other than the Notes Offering Commitment Letter and the Loan Agreement. There are no conditions precedent or other contingencies related to the funding of the full amount of the Financing (including any "flex" provisions), other than as expressly set forth in the Commitment Documents. As of the date of this Agreement, none of the Commitment Documents have been amended or modified, no such amendment or modification is presently contemplated, and the respective obligations and commitments in each such document have not been withdrawn or rescinded in any respect and no such withdrawal is presently contemplated. As of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, would constitute a default or event of default or breach on the part of Purchaser of any Commitment Document, or (to the knowledge of Purchaser) on the part of any other party under any Commitment Document.

(b) As of the date of this Agreement, assuming the accuracy of Seller's representations and warranties set forth in Article IV, Purchaser has no reason to believe that it will be unable to satisfy on a timely basis any term or condition to be satisfied by it and contained in the Commitment Documents. Purchaser has fully paid any and all commitment fees or other fees required by the terms of the Commitment Documents to be paid on or before the date of this Agreement, As of the Closing, subject to the terms and conditions of the Commitment Documents and satisfaction of the conditions contained in Section 7.01, the aggregate proceeds contemplated by the Financing Commitments, together with such monies available from Purchaser and its Affiliates, will be sufficient for Purchaser to pay the Purchase Price on the terms and conditions contemplated by this Agreement and to pay Purchaser's fees and expenses related thereto.

(c) As of the Effective Date, Purchaser is eligible to file a registration statement on Form S-3 under the Securities Act.

Section 5.06 Financing. Reserved.

Section 5.07 Solvency. As of the Effective Date, after giving effect to all of the Transactions, including the payment of the Purchase Price, and assuming for these purposes the satisfaction of the conditions set forth in Section 7.01(a) and Section 7.01(b) (in respect of compliance in all material respects by Seller with the covenants set forth in Section 6.01(c)), Purchaser shall be Solvent. For the purposes of this Section 5.07, the term "Solvent" when used with respect to any Person, means that, as of any date of determination, (a) the "fair saleable value" of the assets of such Person will, as of such date, exceed (i) the value of all "liabilities of such Person, including contingent and other liabilities," as of such date, as such quoted terms are generally determined in accordance with applicable federal laws governing determinations of the insolvency of debtors, and (ii) the amount that will be required to pay the probable liabilities of such Person on its existing debts (including contingent liabilities) as such debts become absolute and matured, (b) such Person will not have, as of such date, unreasonably small capital for the operation of the businesses in which it is engaged or proposed to be engaged following such date and (c) such Person will be able to pay its liabilities as they become due.

Section 5.08 Brokers. Except for the Persons set forth on Section 5.08 of the Disclosure Schedules, whose fees with respect to the transactions contemplated by this Agreement will not be borne by Purchaser, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Transaction Document based upon arrangements made by or on behalf of Seller or any of its Affiliates.

Section 5.09 Purchaser's Investigation and Reliance. Purchaser acknowledges that, other than as set forth in Article IV of this Agreement and the certificate delivered by Seller pursuant to Section 7.01(c), neither Seller nor any of its Affiliates or Representatives makes or has made any representation or warranty, either express or implied, (x) as to the accuracy or completeness of any of the information provided to Purchaser or any of its Affiliates or Representatives or (y) with respect to any projections, forecasts, estimates, plans or budgets of future revenues, expenses or expenditures, future results of operations, future cash flows or future financial condition of the Business provided to Purchaser or any of its Affiliates or Representatives, except, in each case, as expressly provided in a representation or warranty set forth in in Article IV of this Agreement and the certificate delivered by Seller pursuant to Section 7.01(c). Purchaser acknowledges that there are inherent uncertainties in attempting to make such projections, forecasts, estimates, plans or budgets and that it takes full responsibility for making its own evaluation of the adequacy and accuracy of any such projections, forecasts, estimates, plans or budgets (including the reasonableness of the assumptions underlying any such projections, forecasts, estimates, plans or budgets). In entering into this Agreement, except as expressly provided herein, Purchaser has relied solely upon its independent investigation and analysis of the Business and Purchaser acknowledges and agrees that it has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Seller or any other Person that are not expressly set forth in Article IV of this Agreement, whether or not such representations, warranties or statements were made in writing or orally. Nothing in this Section 5.08 is intended to modify or limit any of the representations or warranties of Seller set forth in Article IV.

**ARTICLE VI
COVENANTS**

Section 6.01 Conduct of Business.

(a) From the Effective Date through the Closing, except as otherwise contemplated by this Agreement or the Commercialization Agreement or consented to by Purchaser in writing, Seller agrees that it will conduct the Business, and will cause the Business to be conducted, in the ordinary course of business consistent in all material respects with past practice since January 1, 2019 and in compliance in all material respects with all applicable Laws, pay or perform all material obligations relating to the Business as they become due and owing in the ordinary course of business consistent in all material respects with past practice since January 1, 2019, and will use, and cause the Divesting Entities to use, commercially reasonable efforts to preserve intact the Business and related relationships with suppliers, manufacturers, Governmental Authorities and other third parties relevant to the conduct of the Business.

(b) From the Effective Date through the Closing, except as otherwise contemplated by this Agreement or consented to by Purchaser in writing, Seller shall, and shall cause each Divesting Entity to:

- (i) maintain in effect all Transferred IP Rights and applications and registrations included in the Transferred IP Rights, to the extent owned or controlled by Seller or its Affiliates;
- (ii) maintain in effect and perform its obligations in all material respects under the Transferred Contracts, including the License; and
- (iii) without limiting the generality of the foregoing clauses (i) and (ii), timely perform its obligations with respect to the matters set forth on Section 6.01(b)(iii) of the Disclosure Schedules.

(c) From the Effective Date through the Closing, except (i) as set forth on Section 6.01(c) of the Disclosure Schedules or as otherwise contemplated by the Transaction Documents, or (ii) as Purchaser shall otherwise consent in writing (which consent shall not be unreasonably withheld or delayed), Seller covenants and agrees that, with respect to the Business, it shall not, and shall cause the Divesting Entities not to:

(i) sell, assign, pledge, dispose of, transfer, lease, license, encumber or authorize the sale, pledge, disposition, transfer, lease, license or encumbrance of any assets, including the Transferred IP Rights, that are (or would otherwise be) Purchased Assets, other than (A) sales of Products in the ordinary course of business consistent in all material respects with past practice or (B) Permitted Liens;

(i) waive any material claims or rights of material value that relate to the Purchased Assets;

(ii) acquire any material properties or assets (including IP Rights) that would constitute Purchased Assets other than in the ordinary course of business consistent in all material respects with past practice;

(iii) settle any Legal Proceeding or waive or satisfy any material claims or rights of material value in a manner that would constitute an Assumed Liability;

(iv) terminate, cancel, permit to lapse, amend, waive or modify any Governmental Authorizations, except as required by any Governmental Authority;

(v) enter into any new Contract that would be a Transferred Contract if entered into prior to the date hereof or renew any Transferred Contract, other than (A) any Contract set forth on Section 6.01(c) of the Disclosure Schedules, (B) any Contract that is cancelable upon sixty (60) days or less notice without any liability, or (C) any Contract renewed in the ordinary course of business consistent in all material respects with past practice;

(vi) terminate or waive any material provision of, or accelerate any benefits or obligations under, or amend or otherwise modify in any material respect, any Transferred Contract;

(vii) make or commit to make any capital expenditures or incur any other payment obligation outside the ordinary course of business that would require payment by Purchaser following the Closing and that would constitute an Assumed Liability;

(viii) abandon, dispose of or permit to lapse any material Transferred IP Rights;

(ix) fail to take any material action necessary to protect or maintain the Transferred IP Rights or to prosecute any pending applications for Transferred Trademark Rights or file any documents or other information or pay any maintenance or other fees related thereto;

- (x) transfer, assign or grant any license or sublicense of any rights under or with respect to any Transferred IP Rights;
- (xi) disclose or agree to disclose to any Person, other than representatives of Purchaser or Seller in accordance with the terms of the Confidentiality Agreement, any Confidential Information; or
- (xii) agree, commit to or authorize any of the foregoing actions.

(d) Notwithstanding the foregoing, nothing herein will prevent Seller or any of its Affiliates from taking actions, including (i) contributions, transfers, assignments and acceptances of assets and liabilities; (ii) the repayment of indebtedness and the extinguishment of Liens; and (iii) the cancellation of any intercompany Contracts and any Contracts that will not constitute Transferred Contracts, in each case in order to facilitate the consummation of the Transactions; provided, that none of such actions would reasonably be expected to result in any Assumed Liability.

Section 6.02 Commercialization Agreement. From the Effective Date to the Closing Date, each Party agrees that it will continue to comply with its obligations under the Commercialization Agreement, including, with respect to Purchaser, its obligation to commercialize and sell the Products in the ordinary course of business consistent in all material respects with past practice.

Section 6.03 Condition of the Purchased Assets.

(a) Purchaser acknowledges and agrees that (i) it is purchasing the Purchased Assets based on the results of its inspections and investigations, and on the representations and warranties of Seller and its Affiliates that are expressly set forth in this Agreement and (ii) except as otherwise set forth in this Agreement, the Purchased Assets are sold "as is, where is" and Purchaser accepts the Purchased Assets in the condition they are in and at the place where they are located on the Closing Date, subject to the terms and conditions hereof. PURCHASER AGREES THAT THE REPRESENTATIONS AND WARRANTIES GIVEN HEREIN BY SELLER ARE IN LIEU OF, AND PURCHASER HEREBY EXPRESSLY WAIVES ALL RIGHTS TO, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARISING UNDER THE UNIFORM COMMERCIAL CODE (OR SIMILAR APPLICABLE LAWS) ARE HEREBY WAIVED BY PURCHASER.

(b) Any claims Purchaser may have for breach of representation or warranty of Seller under this Agreement shall be based solely on the representations and warranties of Seller expressly set forth in this Agreement or in the certificate delivered to Purchaser pursuant to Section 7.01(c).

Section 6.04 Information and Documents. From and after the Effective Date and for a period of three (3) years following the Closing Date, upon reasonable advance notice in writing and to the extent permitted by applicable Law, Seller shall, and shall cause the Divesting Entities to, permit Purchaser and its Representatives to have reasonable access, during normal business hours, to properties, assets, books, records, agreements, documents, data, files and personnel of Seller or such Divesting Entity, as applicable, in each case to the extent relating to the Purchased Assets, the Assumed Liabilities or the Business, as may reasonably be requested by Purchaser; provided, however, that such access shall not unreasonably interfere with Seller's or any Divesting Entity's operation of their respective businesses, including the Business; provided, further, that Seller may restrict the foregoing access to the extent that (i) in the reasonable judgment of Seller (after consulting with counsel), such access or provision of information would result in a violation of confidentiality obligations to a third party, (ii) disclosure of any such information would result in disclosure of any proprietary information or trade secrets of Seller or any other Person (other than with respect to Confidential Information or otherwise in respect of the Business) or (iii) disclosure of any such information would result in the loss or waiver of any attorney-client privilege, in which case Seller shall use commercially reasonable efforts to provide Purchaser with an acceptable alternative means of obtaining such information; provided, further, that Seller may redact any material provided under this Section 6.04 to the extent such material relates to any assets or products other than such reasonable financial and operating data and other information that is available with respect to the Purchased Assets, the Assumed Liabilities the Business or sale of the Products (or consent to authorize Purchaser to obtain appropriate records from any Governmental Authority) as Purchaser may from time to time reasonably request.

Section 6.05 Publicity; Public Disclosure.

(a) Notwithstanding anything herein to the contrary, each Party hereby agrees with the other Party, except as may be required to comply with the requirements of any applicable Laws or the rules and regulations of each stock exchange upon which the securities of such Party are listed, if any (in which case such Party shall notify without delay the other Party and provide the other Party with a copy of the contemplated disclosure prior to submission or release, as the case may be, unless notifying is impracticable due to circumstances beyond such Party's control, and such Party shall give due consideration to any comments provided by the other Party or its counsel), that no press release or similar public announcement shall, at any time, be made by it or caused to be made by it concerning the execution or performance of this Agreement unless it shall have consulted the other Party in advance with respect thereto and such other Party consents in writing to such release or announcement; provided, however, that this Section 6.05(a) shall not apply to any disclosures required by the rules and regulations of the United States Securities and Exchange Commission ("SEC"), including in connection with the Financing.

(b) Notwithstanding the foregoing, the Parties acknowledge that this Agreement and other Transaction Documents may need to be filed with the SEC by both Seller and Purchaser. Accordingly, each Party agrees, prior to making any such filing, to provide the other Party and its counsel with a redacted version of this Agreement (and any other Transaction Document) that it intends to file, and to give due consideration to any comments provided by such Party or its counsel and use reasonable efforts to ensure the confidential treatment by the SEC of those sections.

Section 6.06 Commercially Reasonable Efforts; Regulatory Approvals; Access. Subject to any obligation imposed by Law, including all Competition Laws:

(a) Subject to the terms and conditions of this Agreement, each of Seller and Purchaser shall cooperate, and shall use its commercially reasonable efforts, to (i) take, or cause to be taken, all actions and (ii) do, or cause to be done, all things necessary for it to do, under applicable Laws to consummate and make effective the Transactions, including all actions and all things necessary for it to (A) comply promptly with all legal requirements which may be imposed on it with respect to this Agreement and the Transactions (which actions shall include furnishing all information required by applicable Law in connection with approvals of or filings with any Governmental Authority), (B) satisfy the conditions precedent to the obligations of such Party hereto and (C) obtain any consent, authorization, order or approval of, or any exemption by, any Governmental Authority or other public or private third party required to be obtained or made by Seller or Purchaser in connection with the Transactions, in each case, as soon as reasonably practicable following the Effective Date; provided, however, that except as otherwise set forth in this Agreement, neither Party shall have any obligation to pay any material amount of money or make any material concessions to obtain such consents. Subject to appropriate confidentiality protections, each Party will furnish to the other Party such necessary information and reasonable assistance as such other Party may reasonably request in connection with the foregoing. In addition, Purchaser agrees, subject to any obligations of confidentiality, to provide such evidence as to financial capability, resources and creditworthiness as may be reasonably requested by any third party whose consent or approval is sought hereunder.

(b) Subject to applicable Law relating to the exchange of information, Purchaser and Seller and their respective counsel shall (i) have the right to review in advance and, to the extent practicable, consult the other on, any filing made with, or written materials to be submitted to, any Governmental Authority in connection with the Transactions; (ii) promptly inform each other of any communication (or other correspondence or memoranda) received from, or given to, any Governmental Authority in connection with the Transactions; (iii) consult with the other Party, and consider in good faith the views of the other Party, prior to entering into any agreement with any Governmental Authority with respect to the Transactions; and (iv) furnish each other with copies of all correspondence, filings and written communications between them, or their respective counsel or Affiliates, on the one hand, and any Governmental Authority or its respective staff, on the other hand, with respect to the Transactions. Purchaser and Seller shall, to the extent practicable, provide each other and their respective counsel with advance notice of and the opportunity to participate in any discussion, telephone call or meeting with any Governmental Authority in respect of any filing, investigation or other inquiry in connection with the Transactions and to participate in the preparation for such discussion, telephone call or meeting.

(c) To the extent necessary, Purchaser and Seller shall file any notification and report form and related material required under any Competition Laws, as soon as practicable after the Effective Date. Purchaser and Seller shall promptly file any additional information properly requested by any competent Governmental Authority whose consent has been requested to the Transactions as soon as practical after receipt of any proper request for additional information. The Parties shall use their reasonable best efforts to obtain early termination of the applicable waiting period, to the extent required, from the applicable Governmental Authority.

Section 6.07 Books and Records. Seller shall transfer to Purchaser on the Closing Date (or as soon as reasonably practicable after the Closing Date) the Product Books and Records and the Regulatory Information that are (a) accessible by Seller or an Affiliate, and (b) reasonably identifiable and reasonably separable from other books and records of Seller. To the extent that Seller is unable to transfer any such Product Books and Records and Regulatory Information on the Closing Date, Seller shall use commercially reasonable efforts to deliver such Product Books and Records and Regulatory Information to Purchaser (i) with respect to any such Product Books and Records and Regulatory Information that are in hard copy format, within thirty (30) days following the Closing Date and (ii) with respect to any such Product Books and Records and/or Regulatory Information that are in an electronic format, within thirty (30) days following the date on which Purchaser has established systems that are compatible with the relevant electronic format to facilitate such delivery; provided, however, that if Purchaser fails to establish such systems within twelve (12) months of the Closing, Seller's obligation to transfer such Product Books and Records to Purchaser in electronic format shall expire. Seller may transfer copies or originals of the Product Books and Records and Regulatory Information at its election, unless Purchaser reasonably requests an original copy of any such Product Books and Records and Regulatory Information.

Section 6.08 Regulatory Matters.

(a) Transfer of Governmental Authorizations. Seller shall use commercially reasonable efforts to assign to Purchaser all of Seller's right, title, obligations and interest existing in and to the Transferred Governmental Authorizations on the Closing Date, and Purchaser shall assume such right, title, obligations and interest from Seller upon Seller's assignment of the Transferred Governmental Authorizations. On the Closing Date, each Party shall execute and deliver to the FDA the Seller FDA Transfer Letters and the Purchaser FDA Transfer Letters, as the case may be, and to other appropriate Governmental Authorities in the United States such documents and instruments of conveyance as necessary and sufficient to effectuate the transfer of each Transferred Governmental Authorization to Purchaser under applicable Law on the Closing Date or as soon as possible if the Transferred Governmental Authorizations are assigned after the Closing.

(b) Governmental Authority Contacts. Purchaser and Seller shall promptly give written notice to the other upon becoming aware of any action by, or notification or other information which it receives (directly or indirectly) from, any Governmental Authority in the United States (together with copies of correspondence related thereto), which (A) raises any material concerns regarding the safety or efficacy of the Products, (B) which indicates or suggests potential material liability for either party to third parties arising in connection with the Products, or (C) which indicates a reasonable potential for a need to initiate a recall, market withdrawal or similar action; in each case with respect to the Products sold by Seller on or prior to the Closing Date or Products sold by Purchaser using any of the Seller Names.

(c) **Product Complaints.** From and after the Closing, Purchaser shall be solely responsible for responding to any complaint regarding the Products that is received by either Purchaser or Seller after the Closing Date from any source and for investigating and analyzing such complaint and making required reports to FDA, regardless of whether the Products involved were sold by Seller or Purchaser.

Section 6.09 **Further Assurances.** From time to time after the Closing, and for no further consideration (other than reimbursement for out of pocket expenses incurred in packing or shipping any Purchased Asset), each of the Parties shall, and shall cause its Affiliates to, execute, acknowledge and deliver such assignments, transfers, consents, assumptions and other documents and instruments (including such assignments and other documents, certificates and instruments for Purchaser's filing with the applicable Governmental Authorities, registries and other recording authorities to record the transfer of the Transferred IP Rights in accordance with applicable Law) and take such other commercially reasonable actions as may reasonably be requested to more effectively assign, convey or transfer to or vest in: (a) Purchaser and its designated Affiliates, (i) all rights, title and interests in, to and under the Purchased Assets and the Assumed Liabilities contemplated by this Agreement to be transferred or assumed at the Closing, and (ii) any Contracts, properties, rights, interests or other assets not included in the Purchased Assets that exclusively relate to the Products (other than the agreement set forth on Section 6.17(b) of the Disclosure Schedules (the "Excluded Contract")) and are necessary to the Business; and (b) Seller, any rights, title or interests in, to or under any Excluded Asset that may have been transferred to Purchaser at Closing. Purchaser agrees that, following the Closing, Purchaser shall prepare any such additional instruments or documents necessary to assign, convey or transfer the Transferred IP. Seller agrees to use commercially reasonable efforts to obtain the Formalities after Closing to the extent they were not obtained prior to Closing.

Section 6.10 **Bulk Transfer Laws.** Purchaser acknowledges that Seller and its Affiliates have not taken, and do not intend to take, any action required to comply with any applicable bulk sale or bulk transfer Laws or similar Laws and hereby waives compliance therewith.

Section 6.11 **Insurance.** As of the Closing Date, the coverage under all insurance policies of Seller and its Affiliates shall continue in force only for the benefit of Seller and its Affiliates, and not for the benefit of Purchaser or any of its Representatives. As of the Closing Date, Purchaser agrees to arrange for its own insurance policies with respect to the Purchased Assets covering all periods and agrees not to seek, through any means, to benefit from any of Seller's or its Affiliates' insurance policies which may provide coverage for claims relating in any way to the Purchased Assets.

Section 6.12 Support. Following the Closing, Purchaser and its Affiliates, on the one hand, and Seller and the Divesting Entities, on the other hand, shall reasonably cooperate with each other in conducting recalls and/or in the defense or settlement of any Liabilities or lawsuits involving the Purchased Assets, the Products, the Agreement, the Transaction Documents, or the Services Agreement, in each case for which the other Party has responsibility under this Agreement, the Transaction Documents or the Services Agreement, by providing the other Party and such other Party's legal counsel reasonable access to employees, records, documents, data, equipment, facilities, products, parts, prototypes and other information relating primarily to the Purchased Assets or the Products, as such other Party may reasonably request, to the extent maintained or under the possession or control of the requested Party; provided, however, that such access shall not unreasonably interfere with the business of Purchaser or Seller, or any of their respective Affiliates; provided, further, that either Party may restrict the foregoing access to the extent that (a) such restriction is required by applicable Law, (b) such access or provision of information would reasonably be expected to result in a violation of confidentiality obligations to a third party or (c) disclosure of any such information would result in the loss or waiver of the attorney-client privilege. The requesting Party shall reimburse the other Party for reasonable out-of-pocket expenses paid by the other Party to third parties in performing its obligations under this Section 6.12.

Section 6.13 Payments from Third Parties. In the event that, on or after the Closing Date, either Party shall receive any payments or other funds due to the other pursuant to the terms of this Agreement or any of the other Transaction Documents, then the Party receiving such funds shall promptly forward such funds to the proper Party. The Parties acknowledge and agree that there is no right of offset regarding such payments and a Party may not withhold funds received from third parties for the account of the other Party in the event there is a dispute regarding any other issue under any of the Transaction Documents.

Section 6.14 Resale Exemption Certificates. At the Closing (or within such reasonable time thereafter as may be necessary to perfect the resale or other exemption certificates), Purchaser shall deliver to Seller fully completed and executed resale exemption certificates or other applicable exemption certificates for all jurisdictions identified by Seller prior to Closing as jurisdictions in which inventory is to be transferred and for which resale exemption certificates are necessary to comply with applicable Law. To the extent that any jurisdiction refuses to accept any resale exemption certificate or other applicable exemption certificate provided by Purchaser, Seller and Purchaser agree that any Transfer Taxes (and related interest and penalty) assessed by such jurisdiction shall be borne by Purchaser as provided in Section 2.10 herein.

Section 6.15 Financing.

(a) Subject to the terms and conditions of this Section 6.15, Purchaser shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to arrange the Financing as promptly as practicable and in a timely fashion on the terms and conditions described in the Commitment Documents, including using its reasonable best efforts to (a) maintain in effect the commitment for the Financing set forth in the Commitment Documents and comply with all covenants or agreements of Purchaser (and cause its Affiliates to comply with any covenant or agreement of any of its Affiliates) set forth in the Commitment Documents or any definitive documentation relating to the Financing, (b) negotiate and execute definitive agreements with respect thereto on the terms and conditions contemplated by the Commitment Documents (including any flex terms in the Commitment Documents) and otherwise on terms acceptable to Purchaser and its Financing Sources, (c) satisfy or obtain a waiver of (and cause its Affiliates to satisfy or obtain such waiver), on a timely basis, all conditions applicable to Purchaser and its Affiliates in such Commitment Documents and the definitive agreements related thereto that are within its or its Affiliates' control, (d) in the event that all conditions to the commitment of any counterparty to the Commitment Documents providing such Financing have been satisfied (or waived, as applicable), consummate the Financing on or prior to the Closing Date, and (e) use commercially reasonable efforts to cause the lenders and the other Person(s) providing the Financing to fund when required hereunder the Financing required to consummate the Transaction. Purchaser shall not permit any amendment or modification to be made to, or any waiver of any provision or remedy under the Commitment Documents (except in compliance with the flex provisions of the fee letters as in effect as of the date hereof), if such amendment, modification or waiver (i) reduces the aggregate amount of the Financing (including by changing the amount of fees to be paid or original issue discount), to an amount below the amount required, together with all other financial resources by Purchaser, to consummate the transactions contemplated hereby on the terms set forth in this Agreement, (ii) amends the existing, or imposes additional, conditions precedent to the Financing, (iii) would reasonably be expected to delay or prevent the Closing Date or make the funding of the Financing less likely to occur, (iv) imposes additional material obligations on Seller, or its Subsidiaries prior to the Closing Date or (v) adversely impact the ability of Purchaser or any of its Affiliates, as applicable, to enforce its rights against the other parties to the Commitment Documents or the definitive agreements with respect to the Financing (the amendments described in the foregoing clauses (i) through (v), "Prohibited Amendments"). Purchaser shall deliver to Seller true and complete copies of any amendment, modification, supplement, consent or waiver to or under any of the Commitment Documents or the definitive agreements relating to the Financing promptly upon execution thereof other than amendments or modifications solely for the purpose of joining additional arrangers or financing sources following the date hereof to the extent effected pursuant to the terms of the Notes Offering Commitment Letter or the Loan Agreement, as applicable. Purchaser shall keep Seller informed on a current basis and in reasonable detail of the status of its efforts to arrange, and of any material developments concerning the timing of, the closing of the Financing. Purchaser shall give Seller notice (i) promptly after obtaining knowledge thereof, of any actual or likely material breach, violation, default, termination or repudiation by any party to any of the Commitment Documents or definitive documents related to the Financing, (ii) of its receipt of any written notice from any of its Financing Sources alleging a breach, violation default, termination or repudiation by any party to the Commitment Documents or any definitive document related to the Financing of any provisions of the Commitment Documents or any definitive document related to the Financing, (iii) the occurrence of an event or development that Purchaser expects to have a material and adverse impact on the ability of Purchaser to obtain all or any material portion of the Financing contemplated by the Commitment Documents, (iv) of any material dispute or disagreement between or among any parties to any of the Commitment Documents or any definitive document relating to the Financing with respect to the conditionality or amount of the Financing or the obligation to fund the Financing or the amount of the Financing to be funded at the Closing (but excluding ordinary course negotiations) or (iv) otherwise, if the Financing contemplated by the Commitment Documents becomes unavailable on the terms and conditions (including any "flex" provisions) contemplated therein, in whole or in part, for any reason (each of the foregoing clauses, a "Financing Failure Event"). As soon as reasonably practicable, but in any event within two Business Days of the date Seller delivers to Purchaser a written request, Purchaser shall provide to Seller any information reasonably requested by Seller relating to any Financing Failure Event. If any portion of the Financing becomes unavailable on the terms and conditions (including any applicable market flex provisions) contemplated by the Commitment Documents and alternative financing (so long as the terms thereof are of the type that would not constitute a Prohibited Amendment) is not then made available in an amount equal to such portion, and such portion is required to pay the Purchase Price on the terms and conditions contemplated by this Agreement and to pay Purchaser's fees and expenses related thereto, Purchaser shall promptly notify Seller in writing and Purchaser shall use its reasonable best efforts to arrange and obtain in replacement thereof, and negotiate and enter into definitive agreements with respect to, alternative financing from alternative sources in an amount sufficient to consummate the Transactions with terms and conditions (including market flex provisions) not materially less favorable, taken as a whole, to Purchaser than the terms and conditions set forth in the Commitment Documents, as promptly as practicable following the occurrence of such event but no later than the final day of the Marketing Period; provided, that in no event will the reasonable best efforts of Purchaser be deemed or construed to require Purchaser to (A) pay fees materially in excess of those contained in the Commitment Documents (including the market flex provisions) or agree to "market flex" terms, materially less favorable to Purchaser than the corresponding market flex terms contained in or contemplated by the Commitment Documents or (B) enter into any alternative financing terms the terms of which are materially less favorable to Purchaser than the terms contained in the Commitment Documents on the date hereof (taken as a whole).

(b) Notwithstanding anything contained in this Section 6.15 or in any other provision of this Agreement, in no event shall Purchaser be required to amend or waive any of the terms or conditions hereof.

(c) Subject, in each case, to the rights of the parties to the Commitment Documents under the terms thereof and the definitive documentation with respect to the Financing, none of the parties hereto in their capacities hereunder shall have any rights or claims against any Financing Source in connection with this Agreement, the Commitment Documents, the Financing, the definitive documentation in connection thereto or any of the transactions contemplated thereby, and, without prejudice to the rights of each Financing Source pursuant to the Commitment Documents and the definitive documentation with respect to the Financing, each Financing Source, solely in its capacity as an agent, underwriter, purchaser, lender or arranger, shall not have any rights or claims against any party hereto or any related Person thereof, in connection with this Agreement, whether at law or equity, in contract, in tort or otherwise (other than with respect to enforcing their rights as third party beneficiaries of this Agreement). In furtherance and not in limitation of the foregoing waiver, it is acknowledged and agreed that no Financing Sources shall have any liability for any claims or damages to any Seller or any of its Subsidiaries in connection with this Agreement, the Commitment Documents, the Financing or the transactions contemplated hereby or thereby.

(d) Notwithstanding anything in Section 10.10 to the contrary, each of the parties hereto agrees that it will not bring or support any action (whether at law, in equity, in contract, in tort or otherwise) against any Financing Sources or any other Persons that have committed to provide or otherwise entered into agreements in connection with the Financing or other financings in connection with the transactions contemplated hereby in any way relating to this Agreement or any of the transactions contemplated by this Agreement, including any dispute arising out of or in any way relating to the Commitment Documents or the performance thereof, in any forum other than the Supreme Court of the State of New York, County of New York, or, if under applicable law exclusive jurisdiction is vested in the federal courts, the United States District Court for the Southern District of New York in the County of New York (and appellate courts thereof). The provisions of this Section 6.15(d) shall be enforceable by each Financing Source, its Affiliates and their respective successors and permitted assigns.

Section 6.16 Tax Matters. Notwithstanding Section 2.02(f), Seller and Purchaser shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return, amended Tax Return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes or participating in or conducting any audit or other proceeding in respect of Taxes, in each case, relating to the ownership or use of the Purchased Assets. Seller and Purchaser shall make themselves (and their respective employees) reasonably available on a mutually convenient basis to provide explanations of any documents or information provided under this Section 6.16.

Section 6.17 Licenses and Additional Rights and Actions.

(a) Effective as of the Closing, Seller hereby grants to Purchaser a perpetual, irrevocable, transferable, sublicensable, non-exclusive, paid-up, royalty-free right and license to use the Licensed Seller Know-How for the research, development, manufacture, packaging, importation, distribution, commercialization, marketing, use and sale of the Products and the Inventory in the United States and the use of the Purchased Assets in the United States.

(b) Promptly after the Closing, Purchaser shall take the action set forth on Section 6.17(b)(i) of the Disclosure Schedule.

Section 6.18 Notice of Certain Events. Seller shall promptly notify Purchaser of any of the following:

(a) any written notice from any Person alleging that the consent of such Person is or may be required in connection with the Transactions, if the failure to obtain such consent would, individually or in the aggregate, reasonably be expected to be materially adverse to the Business or to the ability of Seller to timely consummate the Transactions;

(b) any written notice communication from any Governmental Authority in connection with the Transactions;

(c) any Legal Proceeding commenced or, to the Knowledge of Seller, threatened against, relating to or involving or otherwise affecting Seller, any Divesting Entity or the Business that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.05 or that relate to the consummation of the Transactions;

(d) any (i) debarment or proposed debarment under to 21 U.S.C. Section 335a(a) or 335a(b) or (ii) engagement in any conduct that would reasonably be expected to result in debarment or exclusion under 21 U.S.C. Section 335a(a) or 335a(b) or under 42 U.S.C. Section 1320a-7, or sanction by, suspension, debarment, exclusion or ineligibility to participate in any federal or state health care program, including Medicare and Medicaid or in any federal procurement or non-procurement programs, in each case, of or by Seller, any Divesting Entity or, to the Knowledge of Seller, any director, officer, agent, or employee of Seller or any Divesting Entity; and

(e) any damage or destruction by fire or other casualty of any material Purchased Asset or part thereof.

provided, however, that the delivery of any notice pursuant to this Section 6.18 shall not limit or otherwise affect the remedies available hereunder to Purchaser.

Section 6.19 Confidentiality. After the Closing Date, Seller shall keep confidential and not disclose to any third party or use, and shall cause its Affiliates, the Divesting Entities and Representatives to keep confidential and not disclose to any third party or use, the Confidential Information, except (a) as expressly permitted by this Agreement; (b) as necessary to perform this Agreement; (c) as required by Law; provided, that with respect to disclosure pursuant to this clause (c), Seller shall notify Purchaser promptly of the request or requirement so that Purchaser may, at its expense, seek an appropriate protective order or waive compliance with this Section 6.19, and in the absence of a protective order or receipt of a waiver hereunder, Seller is, on the advice of counsel, compelled to disclose such Confidential Information, Seller may so disclose only that portion of such Confidential Information that is required based on advice of counsel to be disclosed in connection therewith; provided, further, that Seller shall use commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to such Confidential Information and shall otherwise maintain such Confidential Information in confidence in accordance with the provisions of this Section 6.19; (d) as necessary to defend, prosecute, arbitrate any indemnification claim or any litigation or dispute relating to this Agreement; or (e) with respect to Confidential Information relating to the Business, the Purchased Assets or the Assumed Liabilities, as reasonably necessary to operate Seller's Business as conducted as of the Effective Date and without limitation of any of Seller's rights or obligations under this Agreement, provided, that Seller shall not disclose any Confidential Information to a third party unless such third party is subject to a confidentiality obligation in favor of Seller no less restrictive than this Section 6.19.

Section 6.20 Covenant Not to Sue. Seller shall not, and Seller shall cause its Affiliates not to sue, bring claims or initiate other Legal Proceeding against Purchaser or any of its Affiliates and their respective Representatives, sublicensees and customers based on, or in connection with, the Infringement or misappropriation of any IP Rights owned or licensed by Seller, the Divesting Entities or their Affiliates as a result of Purchaser's operation of the Business, Purchaser's ownership and use of the Purchased Assets or Purchaser's assumption of the Assumed Liabilities, in each case, in the same or substantially similar manner as conducted immediately prior to the Effective Date, except for any Legal Proceeding contemplated by Article VIII of this Agreement. Purchaser shall not, and Purchaser shall cause its Affiliates not to sue, bring claims or initiate other Legal Proceeding against Seller or any of its Affiliates and their respective Representatives, sublicensees and customers based on, or in connection with, Seller's operation of its business with respect to the Products, except for any Legal Proceeding contemplated by Article VIII of this Agreement.

Section 6.21 No Negotiation. Between the Effective Date and the Closing Date, Seller shall not, and shall not permit any of its Affiliates or Representatives to, directly or indirectly, solicit, initiate, encourage or entertain any inquiries or proposals, discuss or negotiate with, provide any information to, consider the merits of any inquires or proposals from any Person (other than Purchaser) to enter into any Contract or instrument relating to any transaction involving, in whole or in part, the Purchased Assets or that would otherwise compromise the ability of Seller or any Divesting Entity to consummate the Transactions. Seller shall promptly advise Purchaser, orally and in writing, of any such inquiry or proposal received from a third party. Seller shall immediately terminate access of any Person (other than Purchaser, its Affiliates and Representatives) to any data room (virtual or actual) containing any non-public information concerning the business, the Product, the Assumed Liabilities or the Purchased Assets, and shall require such Person to return or destroy such materials in accordance with the terms of the applicable confidentiality agreement(s) with respect thereto. Seller agrees that the rights and remedies for noncompliance with this Section 6.21 shall include having such provision specifically enforced by a court having equity jurisdiction, it being acknowledged that any such breach or threatened breach may cause irreparable injury to Purchaser and that money damages will not provide an adequate remedy to Purchaser.

Section 6.22 Cooperation in Litigation.

(a) Subject to Section 6.19, from the Closing Date until the date that is eighteen (18) months after the Closing Date, Seller and Purchaser shall, subject to the terms of this Section 6.22, cooperate with each other in the defense or prosecution of any Legal Proceedings, examination or audit instituted prior to the Closing or that may be instituted thereafter against or by either Party relating to or arising out of the conduct of the Business prior to or after the Closing (other than Legal Proceedings (i) between Seller and Purchaser or their respective Affiliates arising out of the Transactions, the Transaction Documents, the Services Agreement, or the Commercialization Agreement, (ii) between Purchaser and any counterparty to a settlement agreement in which Seller executed prior to the Closing, including the Excluded Contract, or (iii) in which, based on the advice of counsel, a conflict of interest exists between Seller and Purchaser with respect to such cooperation). In connection therewith, from and after the Closing Date, each of Seller and Purchaser shall make available to the other during normal business hours and upon reasonable prior written notice, but without unreasonably disrupting its business, all records to the extent relating to the Purchased Assets, the Assumed Liabilities and the Retained Liabilities held by it and reasonably necessary to permit the defense or investigation of any such Legal Proceedings, examination or audit (other than Legal Proceedings between Seller and Purchaser or their respective Affiliates arising out of the Transactions, the Transaction Documents or the Services Agreement, with respect to which applicable rules of discovery shall apply), and shall preserve and retain all such records for the length of time contemplated by its standard record retention policies and schedules, provided that neither Seller nor Purchaser shall be obligated pursuant to this Section 6.22 to disclose any document or information, the disclosure of which would violate the terms of any binding confidentiality agreements the disclosing party is subject to. The Party requesting such cooperation shall pay the reasonable out-of-pocket costs and expenses of providing such cooperation (including legal fees and disbursements, and including the reasonably necessary costs of any redactions required in the event requested materials are mixed with other sensitive information of the disclosing party) incurred by the Party providing such cooperation and by its officers, directors, employees and agents, and any applicable Taxes in connection therewith.

(b) From and after the Effective Date, Seller shall not settle or compromise any Legal Proceeding (other than Legal Proceedings between Seller and Purchaser or their respective Affiliates arising out of the Transactions, the Transaction Documents or the Services Agreement) arising directly from the development, commercialization or manufacture of the Products, in each case, by Seller or its Affiliates after January 9, 2018 and prior to the Closing without the prior written consent of Purchaser (which consent will not be unreasonably withheld, delayed or conditioned), if such settlement or compromise would (i) materially and adversely limit or restrict Purchaser's rights to commercialize the Products in the United States following the Closing or (ii) directly impose any Liability on Purchaser or its Affiliates.

Section 6.23 License Assignment and Consent. Seller and Grünenthal entered into the Consent Agreement, dated January 30, 2020, by and between Grünenthal and Seller (the "Consent Agreement"). Simultaneous with the execution of this Agreement, Purchaser shall execute and deliver to Seller a joinder to the Consent Agreement substantially in the form of the joinder agreement attached as Exhibit A to the Consent Agreement (the "Consent Agreement Joinder"), upon which Purchaser shall become a party to the Consent Agreement and shall be fully bound by, and subject to, all of the terms and conditions of the Consent Agreement as though Purchaser was an original party thereto (including with respect to Purchaser's rights and obligations under the Assignment Agreement).

Section 6.24 Use of Proceeds. Following the Closing, Seller shall make a tender or other offer of one hundred percent (100%) of Seller's outstanding 2.50% Convertible Senior Notes Due 2021 and Seller's 5.00% Convertible Senior Notes Due 2024 (the "Note Redemption"). The Note Redemption will be commenced as soon as practicable following the Closing but in any event not later than thirty (30) days following the Closing Date. Seller shall provide Purchaser with draft documentation in respect of the Note Redemption at least five (5) Business Days prior to the commencement of the Notes Redemption.

Section 6.25 Filing of Resale Registration Statement. Within thirty (30) days following the Closing, Purchaser shall file a resale registration statement on Form S-3 (the "Resale Registration Statement") for the purpose of registering under the Securities Act of 1933, the sale of the shares underlying the common stock warrant issued to Seller under the Commercialization Agreement. Purchaser will use reasonable best efforts to cause the Resale Registration Statement to be declared effective as soon as practicable following filing with the SEC, and in any event within three (3) Business Days following oral confirmation from the Staff of the SEC that they have no comments (or no further comments) on such filing. Purchaser's out of pocket costs and expenses not to exceed \$50,000 in complying with the provisions of this Section 6.25 shall be borne by Seller and Seller shall promptly reimburse Purchaser for any such amounts following receipt of an invoice therefor.

Section 6.26 Services Agreement. At the Closing, the Parties shall, and shall cause their respective Affiliates, as applicable, to, enter into the Services Agreement. To the extent there is a conflict between any of the provisions of this Agreement and the Services Agreement, the provisions of the Services Agreement shall control with respect to the subject matter thereof.

Section 6.27 Non-Competition. Except in accordance with the terms and conditions of the Transaction Documents and subject to applicable Law, for a period commencing on the Closing Date and ending on the third (3rd) anniversary of the Effective Date (the "Restricted Period"), Seller shall not, and shall cause its Affiliates not to, manufacture, market, exploit, promote, sell or distribute any pharmaceutical product for which tapentadol is the primary ingredient (such activities, "Competitive Activity"); provided, however, that notwithstanding the foregoing, this Section 6.27 shall not restrict Seller or its Affiliates from (a) acquiring (including by merger or consolidation) a Person or substantially all of the assets of a Person engaged in Competitive Activity, provided that such Person's Competitive Activity represents less than 25% of such Person's total assets or gross sales, (b) continuing the operation of a Person or assets acquired pursuant to clause (a) above and (c) beneficially owning up to 10%, on a fully-diluted basis, of the total equity interests outstanding of any Person engaged in Competitive Activity. Seller acknowledges that (i) the agreements set forth in this Section 6.27 (the "Restrictive Covenants") impose a reasonable restraint in light of the activities and business of Seller and its Affiliates as of the Effective Date and the current business of Purchaser, Seller and their respective Affiliates and (ii) monetary damages would not be an adequate remedy for any breach of the Restrictive Covenants and that Purchaser shall therefore be entitled to specific performance of the Restrictive Covenants (but subject to Section 10.14) to prevent any violations thereof. In addition, during the Restricted Period, Seller and its Affiliates will not facilitate or assist any third party in the filing of an abbreviated new drug application with respect to the Products. Purchaser acknowledges and agrees that notwithstanding the foregoing, the Restrictive Covenants shall not apply to any Person who succeeds (by purchase, merger, consolidation, change of control, operation of Law or otherwise) to all, substantially all or a majority of the capital stock, assets or business of Seller or its Affiliates that may already manufacture, develop, distribute, market, use or sell a product that may compete, directly or indirectly, with any of the Products. For the avoidance of doubt, the Parties agree that no portion of the Purchase Price shall be allocated to the covenants set forth in this Section 6.27.

Section 6.28 Release of Liens. Effective as of the Closing, Seller hereby acknowledges and agrees that any and all Liens in favor of Seller or any of its Affiliates encumbering the assets of Purchaser or any of its Affiliates pursuant to the Collateral Agreements (as defined in the Commercialization Agreement) shall be released and terminated at the Closing. Seller shall use commercially reasonable efforts to deliver to Purchaser any collateral releases, lien terminations and instruments of discharge reasonably satisfactory to Purchaser and its Financing Sources providing for the discharge of any such Liens as of the Closing Date. At least two (2) Business Days prior to the Closing, Seller shall deliver or cause to be delivered to Purchaser (or any Person designated by Purchaser, including any Financing Source) the original unit certificate or certificates evidencing Purchaser's equity interests in Collegium NF LLC and held by Seller or its Affiliates as collateral pursuant to the Collateral Agreements (as defined in the Commercialization Agreement). Seller authorizes Purchaser or any of its counsel, representatives or designees on behalf of Purchaser to prepare and file any UCC-3 termination statements or other documents necessary to evidence the discharge and release of Seller's or its Affiliates' security interests in and any Liens on the assets of Purchaser or any of its Affiliates pursuant to the Collateral Agreements.

ARTICLE VII
CLOSING CONDITIONS

Section 7.01 Conditions Precedent to Purchaser's Obligations on the Closing Date. All of the obligations of Purchaser hereunder to consummate the Transactions are subject to fulfillment, prior to or at the Closing, of the following conditions (compliance with which or the occurrence of which may be waived in whole or in part by Purchaser in writing):

(a) The representations and warranties of Seller contained herein shall be true and correct on and as of the Closing Date as though made on and as of the Closing Date (other than representations and warranties made as of a specified date, which shall be true and correct as of the date specified), except for breaches and inaccuracies of such representations and warranties (without giving effect to any limitation as to "materiality," "material adverse effect" or "Material Adverse Effect" set forth therein, but giving effect to any dollar threshold specified therein) that would not reasonably be expected to have a Material Adverse Effect; provided, that the Fundamental Representations shall be true and correct in all respects as of the Closing Date as though made on and as of the Closing Date.

(b) Seller shall have performed and complied in all material respects with all of its covenants and agreements under this Agreement and the other Transaction Documents to be complied with and performed by Seller at or before the Closing.

(c) Seller shall have delivered to Purchaser a certificate in the form attached hereto as Exhibit E, dated as of the Closing Date and executed by an authorized officer of Seller, certifying to the effect that each of the conditions specified above in Section 7.01(a), Section 7.01(b), and Section 7.01(g) is satisfied in all respects (the "Seller's Officer's Certificate").

(d) Seller shall have delivered to Purchaser a certificate of a Secretary or an Assistant Secretary of Seller in the form attached hereto as Exhibit F enclosing a copy of (i) its certificate of incorporation certified by the Secretary of State of the State of Delaware, (ii) its by-laws and (iii) if applicable, board of director resolutions authorizing Seller to enter into this Agreement and the other Transaction Documents and to consummate the Transactions (the "Seller's Secretary's Certificate").

(e) No Law or Governmental Order enacted, entered, promulgated, enforced, issued or otherwise in effect by any Governmental Authority or other legal restraint or prohibition preventing, enjoining, restraining or otherwise prohibiting the performance of this Agreement or the consummation of any of the Transactions (each, a "Closing Legal Impediment") shall be in effect.

(f) Seller shall have received and delivered to Purchaser (i) a payoff letter (the “Payoff Letter”) in customary form, which Payoff Letter shall (A) indicate the total amount required to be paid to fully satisfy all principal, interest, prepayment premiums, penalties, breakage costs and any other monetary obligations then due and payable under the Deerfield Facility as of the anticipated Closing Date (and the daily accrual thereafter) (the “Payoff Amount”), (B) state that upon receipt of the Payoff Amount under such payoff letter, all such indebtedness under the Deerfield Facility and all related loan documents shall be terminated and (C) provide that all Liens and guarantees in connection with the Deerfield Facility relating to the assets and properties of the Business securing the obligations under the Deerfield Facility shall be released and terminated upon payment of the Payoff Amount on the Closing Date and (ii) collateral releases, Lien terminations and instruments of discharge in customary form providing for the discharge of any such Liens under the Deerfield Facility as of the Closing Date.

(g) Since the Effective Date, there shall have been no events or occurrences that have resulted or would reasonably be expected to result in a Material Adverse Effect.

(h) Seller shall have signed and delivered, or caused one or more of its Affiliates, to sign and deliver the documents set forth on Exhibit A.

Section 7.02 Conditions Precedent to Seller’s Obligations on the Closing Date. All of the obligations of Seller hereunder to consummate the Transactions are subject to the fulfillment, prior to or at the Closing, of the following conditions (compliance with which or the occurrence of which may be waived in whole or in part by Seller in writing):

(a) The representations and warranties of Purchaser contained herein shall be true and correct on and as of the Closing Date as though made on and as of the Closing Date (other than representations and warranties made as of a specified date, which shall be true and correct as of the date specified), except for breaches and inaccuracies of such representations and warranties (without giving effect to any limitation as to “materiality,” “material adverse effect” or “Purchaser Material Adverse Effect” set forth therein, but giving effect to any dollar threshold specified therein) that would not reasonably be expected to have a Purchaser Material Adverse Effect; provided, that the Fundamental Representations made by Purchaser shall be true and correct in all respects as of the Closing Date as though made on and as of the Closing Date.

(b) Purchaser shall have performed and complied in all material respects with all of its covenants and agreements under this Agreement and the other Transaction Documents to be complied with and performed by Purchaser at or before the Closing.

(c) Purchaser shall have delivered to Seller a certificate in the form attached hereto as Exhibit G dated as of the Closing Date and executed by an authorized officer of Purchaser certifying to the effect that each of the conditions specified above in Section 7.02(a) and Section 7.02(b) is satisfied in all respects (the “Purchaser’s Officer’s Certificate”).

(d) Purchaser shall have delivered to Seller a certificate of a Secretary or an Assistant Secretary of Purchaser in the form attached hereto as Exhibit H enclosing a copy of (i) its articles of incorporation certified by the Secretary of State of the Commonwealth of Virginia, (ii) its by-laws and (iii) board of director resolutions authorizing Purchaser to enter into this Agreement and the other Transaction Documents and to consummate the Transactions (the "Purchaser's Secretary's Certificate").

(e) No Closing Legal Impediment shall be in effect.

(f) Purchaser shall have signed and delivered, or caused one or more of its Affiliates to sign and deliver the documents set forth on Exhibit B.

ARTICLE VIII INDEMNIFICATION

Section 8.01 Indemnification by Seller. Subject to the provisions of this Article VIII, Seller agrees to, from and after the Closing, defend, indemnify and hold harmless Purchaser and its Affiliates and, if applicable, their respective directors, officers, agents, representatives, employees, successors and assigns (collectively, the "Purchaser Indemnitees"), from and against any and all Losses suffered or incurred by Purchaser or any Purchaser Indemnitee to or to which Purchaser or any Purchaser Indemnitee may be or become subject, to the extent arising from or relating to (a) any Retained Liability; (b) any Excluded Asset; (c) any breach by Seller of any of its covenants or agreements contained in this Agreement or any instruments of assignment delivered on or prior to Closing in accordance therewith; (d) any breach of any warranty or representation of Seller contained in this Agreement or in any certificate delivered by Seller pursuant to Section 7.01 or (e) any of the matters set forth on Section 8.01(e) of the Disclosure Schedules.

Section 8.02 Indemnification by Purchaser. Subject to the provisions of this Article VIII, Purchaser agrees to, from and after the Closing, defend, indemnify and hold harmless Seller and its Affiliates and, if applicable, their respective directors, officers, agents, representatives, employees, successors and assigns (collectively, the "Seller Indemnitees"), from and against any and all Losses suffered or incurred by Seller or any Seller Indemnitee or to which Seller or any Seller Indemnitee may be or become subject to the extent arising from or relating to (a) any Assumed Liability; (b) any Purchased Asset; (c) any breach by Purchaser of any of its covenants or agreements contained in this Agreement or any instruments of assumption delivered on or prior to Closing in accordance therewith; (d) any breach of any warranty or representation of Purchaser contained in this Agreement or in any certificate delivered by Purchaser pursuant to Section 7.02 or (e) any of the matters set forth on Section 8.02(e) of the Disclosure Schedules.

Section 8.03 Notice of Claims. Any Purchaser Indemnitee or Seller Indemnitee claiming that it has suffered or incurred any Loss for which it may be entitled to indemnification under this Article VIII (the "Indemnified Party") shall give prompt written notice to the Party from whom indemnification is sought (the "Indemnifying Party") of the matter, action, cause of action, claim, demand, fact or other circumstances upon which a claim for indemnification under this Article VIII (each, a "Claim") may be based. Such notice shall contain, with respect to each Claim, such facts and information as are then reasonably available with respect to such Claim, including a description of the Losses suffered or incurred by the Indemnified Party, the amount or estimated amount of such Losses (if known or reasonably capable of estimation) and the method of computation of such Losses, and a reference to the provisions of this Agreement in respect of which such Loss shall have occurred. If any Claim is based on any Legal Proceeding instituted by a third party with respect to which the Indemnified Party intends to claim any Loss under this Article VIII (a "Third Party Claim"), the Indemnified Party shall promptly notify (the "Third Party Claim Notice"), in writing, the Indemnifying Party of such Third Party Claim and offer to tender to the Indemnifying Party the defense of such Third Party Claim. A failure by the Indemnified Party to give written notice of and to offer to tender the defense of any Third Party Claim in a timely manner pursuant to this Section 8.03 shall not limit the obligation of the Indemnifying Party under this Article VIII, except (a) to the extent such Indemnifying Party is actually prejudiced thereby or (b) as provided in Section 8.05.

Section 8.04 Third Party Claims.

(a) The Indemnifying Party shall have the right, but not the obligation, exercisable by written notice to the Indemnified Party within thirty (30) days of receipt of a Third Party Claim Notice from the Indemnified Party with respect to a Third Party Claim, to assume the conduct and control, at the expense of the Indemnifying Party and through counsel of its choosing that is reasonably acceptable to the Indemnified Party, of such Third Party Claim; provided, however, that the Indemnifying Party shall not be entitled to assume or maintain control of the defense of such Third Party Claim and shall pay the fees and expenses of counsel retained by the Indemnified Party if (i) such Third Party Claim relates to or arises in connection with any criminal Legal Proceeding, (ii) such Third Party Claim seeks an injunction or equitable relief against the Indemnified Party or any of its Affiliates, (iii) such Third Party Claim seeks monetary damages and the sum of the amount of the monetary damages is greater than twice the maximum amount from which the Indemnifying Party is required to indemnify the Indemnified Party under this Agreement, (iv) the Indemnified Party reasonably concludes, based on the advice of counsel, that there is an irreconcilable conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of such defense, (v) such Third Party Claim would reasonably be expected to impair, in any material respect, any Indemnified Party's or its Affiliate's business or relationships with any of such Person's material customers, suppliers or other business relations; or (vi) after assuming control of such defense, the Indemnifying Party withdraws from such defense or fails to diligently pursue and maintain such defense.

(b) If the Indemnifying Party is controlling the defense of a Third Party Claim, the Indemnifying Party may compromise or settle such Third Party Claim; provided, however, that the Indemnifying Party shall give the Indemnified Party advance written notice of any proposed compromise or settlement and shall not, without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, consent to or enter into any compromise or settlement that commits the Indemnified Party to take, or to forbear to take, any action or does not provide for a full and complete written release by the applicable third party of the Indemnified Party. No Indemnified Party may compromise or settle any Third Party Claim for which it is seeking indemnification hereunder without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld. No Indemnifying Party may consent to the entry of any judgment that does not relate solely to monetary damages arising from any such Third Party Claim without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld.

(c) Subject to Section 8.04(a), the Indemnifying Party shall permit the Indemnified Party to participate in, but not control, the defense of any such Third Party Claim through counsel chosen by the Indemnified Party, provided that the fees and expenses of such counsel shall be borne by the Indemnified Party. If the Indemnifying Party elects not to, or is not permitted to pursuant to Section 8.04(a), control or conduct the defense of a Third Party Claim, the Indemnifying Party nevertheless shall have the right to participate in the defense of any Third Party Claim and, at its own expense, to employ counsel of its own choosing for such purpose.

(d) The Parties shall cooperate in the defense of any Third Party Claim, with such cooperation to include (i) the retention and the provision to the Indemnifying Party of records and information that are reasonably relevant to such Third Party Claim and (ii) reasonable access to employees on a mutually convenient basis for providing additional information and explanation of any material provided hereunder.

Section 8.05 Expiration. If the Closing shall have occurred, all covenants, agreements, warranties and representations made herein or in any certificate delivered in accordance herewith shall survive the Closing. Notwithstanding the foregoing, all representations, warranties, covenants and agreements made herein or in any certificate delivered in accordance herewith, and all indemnification obligations under Section 8.01(c), Section 8.01(d), Section 8.02(c) and Section 8.02(d) with respect to any such representations, warranties, covenants or agreements shall (a) in the case of such representations and warranties other than the Fundamental Representations, terminate and expire on, and no Legal Proceeding seeking damages or other relief for breach of any thereof or for any misrepresentation or inaccuracy with respect thereto, shall be commenced after, the date that is twelve (12) months after the Closing Date, (b) in the case of the Fundamental Representations, terminate and expire on, and no Legal Proceeding seeking damages or other relief for breach of any thereof or for any misrepresentation or inaccuracy with respect thereto, shall be commenced after, the date that is three (3) years after the Closing Date, or (c) in the case of any covenants or agreements, survive indefinitely or for such shorter period of time specified therein, in each case, unless prior to such date a claim for indemnification with respect thereto shall have been made, with reasonable specificity, by written notice given in accordance with Section 8.03.

Section 8.06 Certain Limitations. Notwithstanding the other provisions of this Article VIII, neither Seller nor Purchaser shall have any indemnification obligations for Losses under Section 8.01(d) or Section 8.02(d), as applicable, (a) for any individual item where the Loss relating thereto is less than \$37,500 (the "De Minimis Amount") and (b) in respect of each individual item where the Loss relating thereto is equal to or greater than the De Minimis Amount, unless the aggregate amount of all such Losses exceeds \$3,125,000 (the "Threshold Amount"), in which event Seller or Purchaser, as applicable, shall be required to pay the amount of such Losses that exceeds the Threshold Amount, but only to a maximum amount equal to \$28,125,000 (the "Cap"); provided, however, that the De Minimis Amount, the Threshold Amount and the Cap shall not apply to any Losses arising or resulting from any breach of any Fundamental Representation; provided, further, however, that the maximum amount of Losses for which Seller or Purchaser, as applicable, shall be liable under Section 8.01(d) or Section 8.02(d) for any breach of any Fundamental Representation shall in no event exceed the Purchase Price. For purposes of determining the amount of any Loss (but not for determining the existence of any breach, misrepresentation or inaccuracy with respect to any representation or warranty of Seller), any qualification as to materiality or Material Adverse Effect set forth in any such representation or warranty shall be disregarded. Notwithstanding anything to the contrary in this Agreement, any indemnity for Taxes arising by reason of breach of a representation or warranty and any Taxes relating to the Purchased Assets or the Business shall be limited solely to Taxes due and payable for any taxable period ending on or before the Cutoff Time or any portion of any Straddle Period ending on the Cutoff Time (determined in accordance with Section 2.10(b)).

Section 8.07 Sole Remedy/Waiver. Except as set forth in the penultimate sentence of this Section 8.07 and in Section 10.15, this ARTICLE VIII provides the sole recourse and exclusive means from and after the Closing by which a Party may assert and remedy any Losses arising under or with respect to this Agreement or any certificate or instrument of transfer, assignment or assumption delivered under this Agreement (or the Financing, the Commitment Documents, the performance thereof and the transactions contemplated thereby). Notwithstanding the foregoing, nothing herein shall limit the liability of any Party hereto for intentional or willful misrepresentation of material facts which constitutes common law fraud under applicable Laws. With respect to any Losses arising under or with respect to this Agreement or any certificate or instrument of transfer, assignment or assumption delivered under this Agreement (or the Financing, the Commitment Documents, the performance thereof and the transactions contemplated thereby), each Party agrees that it shall only seek such Losses from the other Party, and each Party hereby waives the right to seek Losses from or equitable remedies, such as injunctive relief, against any Affiliate of the other Party or any director, officer or employee of the other Party, or any Financing Source or lender to of the other Party (or any of its Affiliates).

Section 8.08 Indemnity Payments. In the event that either Party agrees to, or is determined to have an obligation to, reimburse the other Party for Losses as provided in this Article VIII, the Indemnifying Party shall promptly pay such amount to the Indemnified Party in U.S. Dollars via wire transfer of immediately available funds to the accounts specified in writing by the Indemnified Party.

Section 8.09 Calculation of Damages. Except as otherwise provided in this Article VIII, in any case where the Indemnified Party subsequently recovers from its insurance provider(s) or other Person any insurance recovery or other amount in respect of a matter with respect to which an Indemnifying Party has indemnified it pursuant to this Article VIII (which, for the avoidance of doubt, shall not include an amount recovered as a Tax benefit), such Indemnified Party shall promptly pay over to the Indemnifying Party the amount so recovered (after deducting therefrom the full amount of the expenses incurred by it in procuring such recovery and any taxes payable thereon), but not in excess of any amount previously so paid by the Indemnifying Party to or on behalf of the Indemnified Party in respect of such matter.

Section 8.10 Tax Treatment of Indemnity Payments. Any indemnity payment under this Agreement shall be treated as an adjustment to the purchase price for Tax purposes unless otherwise required by applicable Law.

Section 8.11 No Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, WITH THE EXCEPTION OF RELIEF MANDATED BY STATUTE OR ANY BREACH OF SECTION 6.19, NO PARTY SHALL BE LIABLE TO OR OTHERWISE RESPONSIBLE TO THE OTHER PARTY OR ANY AFFILIATE OF THE OTHER PARTY FOR LOST REVENUES OR PROFITS DAMAGES OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR MULTIPLIED DAMAGES THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF OR ANY LIABILITY RETAINED OR ASSUMED HEREUNDER; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT BE CONSTRUED TO PRECLUDE RECOVERY IN RESPECT OF ANY LOSS DIRECTLY INCURRED OR SUFFERED FROM THIRD PARTY CLAIMS.

ARTICLE IX TERMINATION

Section 9.01 Termination.

(a) Mutual Termination. This Agreement may be terminated at any time prior to the Closing by mutual written agreement of Purchaser and Seller.

(b) Termination by Purchaser.

(i) This Agreement may be terminated by Purchaser at any time prior to the Closing, if (A) Seller shall have breached or failed to comply, in any material respect, with any of Seller's covenants or agreements contained in this Agreement or (B) there shall have been a breach of or inaccuracy in any material respect when made with one or more of the representations or warranties of Seller contained in this Agreement and, in the case of clauses (A) and (B) above, such breach, failure or inaccuracy would give rise to the failure of a condition set forth in Section 7.01 to be satisfied, which breach, failure or inaccuracy is not cured (if capable of being cured prior to the Closing) within thirty (30) days (or by the Outside Date, if sooner) after receiving notice thereof from Purchaser; provided, that Purchaser may terminate this Agreement pursuant to this Section 9.01(b)(ii) only if at the time of termination (x) Purchaser is not in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement and (y) Purchaser has satisfied those conditions set forth in Section 7.02 required to be satisfied by it (other than those conditions that by their terms are to be satisfied by actions taken at the Closing, each of which is capable of being satisfied at the Closing).

(ii) This Agreement may be terminated by Purchaser if the Closing shall not have occurred on or before the Outside Date; provided, however, that (A) Purchaser may terminate this Agreement pursuant to this Section 9.01(b)(ii) only if at the time of termination (x) Purchaser is not in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement and (y) Purchaser has satisfied those conditions set forth in Section 7.02 required to be satisfied by it (other than those conditions that by their terms are to be satisfied by actions taken at the Closing, each of which is capable of being satisfied at the Closing) and (B) Purchaser may not terminate this Agreement pursuant to this Section 9.01(b)(ii) during the pendency of any Legal Proceeding brought by Seller for specific performance of Purchaser's obligation to consummate the Closing pursuant to Section 10.15.

(iii) This Agreement may be terminated by Purchaser at any time prior to the Closing, if a final, non-appealable Closing Legal Impediment shall be in effect; provided, that Purchaser may not rely upon this Section 9.01(b)(iii) to terminate this Agreement if Purchaser's failure to fulfill any obligation or condition under this Agreement materially contributed to the cause of such Closing Legal Impediment.

(c) Termination by Seller.

(i) This Agreement may be terminated by Seller at any time prior to the Closing, if (A) Purchaser shall have breached or failed to comply, in any material respect, with any of Purchaser's covenants or agreements contained in this Agreement or (B) there shall have been a breach of or inaccuracy in any material respect when made with one or more of the representations or warranties of Purchaser contained in this Agreement, in the case of clauses (A) and (B), such breach, failure or inaccuracy would give rise to the failure of a condition set forth in Section 7.02 to be satisfied, and Seller shall have given Purchaser a reasonable opportunity to cure (if capable of being cured prior to the Closing) any such failure or inaccuracy to so comply before the Closing, which breach, failure or inaccuracy is not cured (if capable of being cured prior to the Closing) within thirty (30) days (or by the Outside Date, if sooner) after receiving notice thereof from Seller; provided, that Seller may terminate this Agreement pursuant to this Section 9.01(b)(ii) only if at the time of termination (x) Seller is not in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement and (y) Seller has satisfied those conditions set forth in Section 7.01 required to be satisfied by it (other than those conditions that by their terms are to be satisfied by actions taken at the Closing, each of which is capable of being satisfied at the Closing).

(ii) This Agreement may be terminated by Seller if the Closing shall not have occurred on or before the Outside Date; provided, that (A) Seller may terminate this Agreement pursuant to this Section 9.01(c)(ii) only if at the time of termination (x) Seller is not in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement and (y) Seller has satisfied those conditions set forth in Section 7.01 required to be satisfied by it (other than those conditions that by their terms are to be satisfied by actions taken at the Closing, each of which is capable of being satisfied at the Closing) and (B) Seller may not terminate this Agreement pursuant to this Section 9.01(c)(ii) during the pendency of any Legal Proceeding brought by Purchaser for specific performance of Seller's obligation to consummate the Closing pursuant to Section 10.15.

(iii) This Agreement may be terminated by Seller if (i) all of the conditions set forth in Section 7.01 shall have been satisfied or waived (other than those conditions that by their nature are to be satisfied by actions taken at the Closing, provided that each of which is capable of being satisfied at the Closing if the Closing were to occur at such time), (ii) Purchaser shall not have received the proceeds of the Financing, (iii) Purchaser shall have failed to consummate the Closing by the date the Closing is required to have occurred pursuant to Section 3.01 and, in the event such failure occurs more than five (5) Business Days prior to the Outside Date, such failure shall not have been cured within five (5) Business Days after written notice thereof has been given by Seller to Purchaser, (iv) at the time of termination, Seller is not in material breach of any representations, warranties, covenants or agreements contained in this Agreement, and (v) Seller is ready, willing and able to consummate the Closing; provided, that Seller may not rely upon this Section 9.01(c)(iii) to terminate this Agreement if Seller's material breach of any representations, warranties, covenants or agreements contained in this Agreement, even if subsequently cured, directly caused Purchaser's failure to receive the proceeds of the Financing within the time period specified by this Section 9.01(c)(iii).

(iv) This Agreement may be terminated by Seller at any time prior to the Closing, if a final, non-appealable Closing Legal Impediment shall be in effect; provided, that Seller may not rely upon this Section 9.01(c)(iv) to terminate this Agreement if Seller's failure to fulfill any obligation or condition under this Agreement materially contributed to the cause of such Closing Legal Impediment.

Section 9.02 Effect of Termination.

(a) In the event of the valid termination of this Agreement in accordance with Section 9.01, and with the exception of this Section 9.02, Section 6.05, Section 6.19 and Article X, this Agreement shall become void and have no effect and neither Party shall have any liability to the other Party or to such other Party's Affiliates or Representatives in respect of this Agreement except, for the avoidance of doubt, for the obligations of the Parties contained in this Section 9.02, Section 6.05, Section 6.19 and in Article X; provided, however, that nothing herein shall limit the liability of any Party hereto for intentional or willful misrepresentation of material facts which constitutes common law fraud under applicable Laws or for any willful breach whereby the breaching Party both intended to take or fail to take the action giving rise to the breach and had knowledge that such action or inaction would constitute a breach of this Agreement.

(b) In the event that (x) Seller exercises its right to terminate this Agreement pursuant to Section 9.01(c)(iii) or (y) Purchaser exercises its right to terminate this Agreement pursuant to Section 9.01(b)(ii) at a time when Seller would otherwise have been entitled to terminate this Agreement pursuant to Section 9.01(c)(iii) but for such termination by Purchaser, Seller shall be entitled to receive an amount equal to \$7,500,000 (the "Purchaser Termination Fee"), payable by Purchaser no later than five (5) Business Days after notice of such termination, by wire transfer of immediately available funds (it being understood that in no event shall Seller be entitled to receive the Purchaser Termination Fee on more than one occasion or at all if Purchaser consummates the Transactions). Each of the Parties acknowledges and agrees that (A) the agreements contained in this Section 9.02(b) are an integral part of the Transactions and that, without these agreements, Seller would not enter into this Agreement and (B) the payment by Purchaser of the Purchaser Termination Fee is not a penalty. If Purchaser fails to promptly pay the Purchaser Termination Fee when due, and in order to obtain such payment, Seller commences a Legal Proceeding against Purchaser for payment of the Purchaser Termination Fee, (i) Purchaser shall reimburse Seller for any reasonable, customary and documented out-of-pocket legal and other third party fees and expenses (the "Additional Expenses") incurred by Seller in connection with such Legal Proceeding within thirty (30) days of a final non-appealable judgment in such Legal Proceeding that Purchaser is required to pay the Purchaser Termination Fee to Seller or (ii) Seller shall reimburse Purchaser for any Additional Expenses incurred by Purchaser in connection with such Legal Proceeding within thirty (30) days of a final non-appealable judgment in such Legal Proceeding that Purchaser is not required to pay the Purchaser Termination Fee to Seller.

(c) In the event that either Purchaser or Seller exercises its right to terminate this Agreement pursuant to Section 9.01(b)(ii) or Section 9.01(c)(ii), as applicable, and at the time of such termination, the Subject Condition shall not have been satisfied or waived, Purchaser shall be entitled to receive an amount equal to \$7,500,000 (the "Seller Termination Fee"), payable by Seller no later than five (5) Business Days after notice of such termination, by wire transfer of immediately available funds (it being understood that in no event shall Purchaser be entitled to receive the Seller Termination Fee on more than one occasion or at all if the Transactions are consummated). Each of the Parties acknowledges and agrees that (A) the agreements contained in this Section 9.02(c) are an integral part of the Transactions and that, without these agreements, Purchaser would not enter into this Agreement and (B) the payment by Seller of the Seller Termination Fee is not a penalty. If Seller fails to promptly pay the Seller Termination Fee when due, and in order to obtain such payment, Purchaser commences a Legal Proceeding against Seller for payment of the Seller Termination Fee, (i) Seller shall reimburse Purchaser for any Additional Expenses incurred by Purchaser in connection with such Legal Proceeding within thirty (30) days of a final non-appealable judgment in such Legal Proceeding that Seller is required to pay the Seller Termination Fee to Purchaser or (ii) Purchaser shall reimburse Seller for any Additional Expenses incurred by Seller in connection with such Legal Proceeding within thirty (30) days of a final non-appealable judgment in such Legal Proceeding that Seller is not required to pay the Seller Termination Fee to Purchaser.

(d) Notwithstanding anything to the contrary in this Agreement or otherwise, if Seller exercises its right to terminate the Agreement pursuant to Section 9.01(c)(iii) or is otherwise entitled to payment of the Purchaser Termination Fee pursuant to Section 9.02(b), the sole and exclusive remedy of Seller against Purchaser or any Financing Source in respect of this Agreement shall be to collect the Purchaser Termination Fee (and, if applicable, the Additional Expenses), and upon payment of such amount by Purchaser, (i) Purchaser shall have no further liability or obligation to Seller (whether at law, in equity, in contract, in tort or otherwise) relating to or arising out of this Agreement and (ii) Seller shall not be entitled to bring or maintain any Legal Proceeding against Purchaser or any Financing Source arising out of or in connection with this Agreement (or the abandonment or termination thereof). For the avoidance of doubt, no Financing Source will have any liability to Seller or its Affiliates relating to or arising out of this Agreement or the Financing or in respect of any oral representations made or alleged to be made in connection herewith or therewith, whether at law or in equity, in contract, in tort or otherwise.

(e) In the event this Agreement shall be terminated in accordance with Section 9.01 (other than a termination giving rise to Seller's right to receive the Purchaser Termination Fee pursuant to Section 9.02(b)) and, at such time, a Party is in material breach of or default under any term or provision hereof, such termination shall be without prejudice to, and shall not affect, any and all rights to damages that the other Party may have hereunder.

ARTICLE X MISCELLANEOUS

Section 10.01 Notices. All notices or other communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the Party for whom it is intended, delivered by registered or certified mail, return receipt requested, or by a national overnight courier service, or sent by facsimile (provided that notice by facsimile is promptly confirmed by telephone confirmation thereof and receipt is confirmed by the sending facsimile machine), to the Person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such Person:

to Seller and any Divesting Entity:

Assertio Therapeutics, Inc.
100 South Saunders Rd., Suite 300
Lake Forest, IL 60045
Attention: Legal Department
Telephone: 224.419.7106
Facsimile: 510.744.8001

with copies to:

Gibson, Dunn & Crutcher LLP
555 Mission St.
San Francisco, CA 94105
Attention: Ryan Murr
Email: rmurr@gibsondunn.com
Telephone: 415.393.8200

to Purchaser:

Collegium Pharmaceutical, Inc.
100 Technology Center Drive, Suite 300
Stoughton, MA 02072
Attention: Shirley Kuhlmann
Executive Vice President and General Counsel
Email: skuhlmann@collegiumpharma.com
Telephone: (781) 232-0774

with a copy to:

Pepper Hamilton LLP
3000 Two Logan Square
Philadelphia, PA 19103
Attention: Jennifer Porter
Email: porterj@pepperlaw.com
Telephone: (215) 981-4339
Facsimile: (215) 689-4692

All notices and other communications under this Agreement shall be deemed to have been received (a) when delivered by hand, if personally delivered; (b) one (1) Business Day after being sent, if delivered to a national overnight courier service; or (c) when sent, if sent by facsimile or email, with a confirmation of receipt or transmittal.

Section 10.02 Amendment; Waiver. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed (a) in the case of an amendment, by Purchaser and Seller and (b) in the case of a waiver, by the Party against whom the waiver is to be effective provided, that Section 8.07, Section 9.02(d), Section 10.02, Section 10.03, this Section 10.07, Section 10.10 and Section 10.15 (and the related definitions) shall not be amended in a manner that is materially adverse to the Financing Sources without the prior written consent of all Financing Sources. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

Section 10.03 Assignment. Neither Party may assign any of its rights or obligations under this Agreement, without the prior written consent of the other Party, except that (a) each Party may, without consent of the other Party, assign this Agreement and its rights or obligations under this Agreement, in whole or in part, (i) to one or more of its Affiliates, (ii) in connection with any transaction the primary purpose of which is to change its domicile, (iii) after the Closing (or the termination of this Agreement), in connection with a sale, merger, consolidation, change of control or similar transaction of such Party, whether by sale of stock, merger, sale of all or substantially all of such Party's assets, operation of Law or otherwise, or (iv) to any lender of such Party or purchaser of securities used to finance the Transactions as collateral security to secure the obligations of any indebtedness of Purchaser and (b) Purchaser may assign this Agreement and its rights or obligations under this Agreement, in whole or in part, with the prior written consent of Seller (which such consent shall not be unreasonably withheld, conditioned or delayed), to a third party at least as creditworthy as Purchaser, in connection with the transfer or sale of all or substantially all of the Purchased Assets or the Business, whether by sale of stock, merger, sale of assets, operation of Law or otherwise; provided, however, that no such assignment by either Party shall relieve such Party of any of its obligations hereunder and no assignment shall be made by Purchaser to the extent that it results in any incremental Taxes for Seller (or its Affiliates) in respect of the transactions contemplated by this Agreement. Any permitted assignee shall assume all obligations of its assignor under this Agreement. Any purported assignment in violation of this Section 10.03 shall be null and void.

Section 10.04 Entire Agreement. This Agreement, together with the Exhibits and Schedules expressly contemplated hereby and attached hereto (which are hereby incorporated by reference), and the other agreements and certificates delivered in connection herewith (including the other Transaction Documents and the Confidentiality Agreement), contains the entire agreement between the Parties with respect to the Transactions and supersedes all prior agreements or understandings between the Parties. Other than the Confidentiality Agreement, the Transaction Documents are intended to define the full extent of the legally enforceable agreements, covenants, undertakings, representations and warranties of the Parties, and no promise, representation or warranty, written or oral, which is not set forth explicitly in such agreements is intended by either Party to be legally binding. Each of the Parties acknowledges that, in deciding to enter into this Agreement and the other Transaction Documents and to consummate the Transactions, none of them has relied upon any statements or representations, written or oral, other than those explicitly set forth herein or therein.

Section 10.05 Commercialization Agreement. Effective as of the Closing, the Commercialization Agreement shall be terminated, provided that the following articles and sections of the Commercialization Agreement shall survive such termination: Article I (Definitions); Section 2.1(a)(i) and Section 2.1(a)(ii) (Depomed Acuform Patents Licenses); Section 2.3(Transfers) (solely with respect to the Transferred Assets (as defined in the Commercialization Agreement), the Commercialization Agreement Assumed Liabilities and the Commercialization Agreement Retained Liabilities); Section 2.8 (Allocation of Purchase Price); Section 2.9 (Certain Taxes); Section 3.2(c)(v) and Section 3.2(c)(vi) (Financial Responsibility for CMO Supply Agreements); Section 3.2(e)(iv) (Limitation of Liability under CMO Supply Agreements); Section 7.3 (Payments on Annual Net Sales) (solely with respect to obligations of Purchaser with respect to any amounts to be swept from gross sales and paid to Seller or to Grünenthal under the Commercialization Agreement in respect of the period through the Closing); Section 7.4 (Maintenance of Records) (with respect to the time period therein); Section 7.6 (Payments); Section 8.3 (Product Returns, Rebates and Chargebacks); Section 10.3 (Warranty Disclaimer), Section 11.1 (Acuform Patent Prosecution and Maintenance), Section 11.2 (Acuform Patent Infringement), Article 12 (Indemnification) (including, for the avoidance of doubt, with respect to the indemnification obligations of either Party in respect of any breach of a Fundamental Representation (as defined in the Commercialization Agreement)), Article 13 (Confidentiality and Publicity), Article 15 (Notices), and Article 17 (Miscellaneous). Notwithstanding the foregoing termination, Purchaser shall continue to be liable and responsible to satisfy its payment and expense reimbursement obligations to Seller and any third parties under the Commercialization Agreement that arose prior to the Closing in accordance with the terms thereof. Termination of the Commercialization Agreement shall not relieve either party of any obligations that accrued prior to such termination, including accrued payment obligations, to the extent such obligations remain unsatisfied. For clarification, this Section 10.05 is the sole provision that governs the survival of articles and sections of the Commercialization Agreement after its termination, and the Parties agree that Section 9.7 (Effects of Termination) of the Commercialization Agreement, or any other section therein that purports to address survival thereunder, shall not govern articles and sections of the Commercialization Agreement after its termination. Termination of the Commercialization Agreement shall be without prejudice to (A) any remedies which any party may then or thereafter have thereunder or at law or in equity, (B) a party's right to receive any payment accrued under the Commercialization Agreement prior to the termination date but which becomes payable thereafter and (C) either party's right to obtain performance of any obligations provided for in this Section 10.05. in each of clauses (A), (B) and (C), with respect to the provisions which expressly survive termination pursuant to this Section 10.05. Notwithstanding anything to the contrary herein, the Long Term Collaboration Agreement (as defined in the Commercialization Agreement) shall survive termination of the Commercialization Agreement.

Section 10.06 Fulfillment of Obligations. Any obligation of a Party to the other Party under this Agreement, which obligation is performed, satisfied or fulfilled by an Affiliate of such Party, shall be deemed to have been performed, satisfied or fulfilled by such Party.

Section 10.07 Parties in Interest. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than Purchaser, Seller, the Divesting Entities and the Indemnified Parties, or their successors or permitted assigns, any rights or remedies under or by reason of this Agreement. The Financing Sources are intended third-party beneficiaries of, and may enforce, the provisions of Section 8.07, Section 9.02(d), Section 10.02, Section 10.03, this Section 10.07, Section 10.10 and Section 10.15.

Section 10.08 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the Transactions are consummated, all other costs and expenses incurred in connection with this Agreement and the Transactions shall be borne by the Party incurring such expenses.

Section 10.09 Schedules. The disclosure of any matter in any Schedule to this Agreement shall be deemed to be a disclosure for the purposes of the Section or subsection of this Agreement to which it corresponds in number and each other Section and subsection of this Agreement to the extent such disclosure is reasonably apparent on the face thereof to be relevant to such other Section or subsection. The disclosure of any matter in any Schedule to this Agreement shall expressly not be deemed to constitute an admission by any Party, or to otherwise imply, that any such matter is material for the purposes of this Agreement, could reasonably be expected to have a Material Adverse Effect or a Purchaser Material Adverse Effect, as applicable, or is required to be disclosed under this Agreement.

Section 10.10 Governing Law; Jurisdiction; No Jury Trial.

(a) This Agreement and all matters relating to the interpretation, construction, validity and enforcement of this Agreement, including any Legal Proceeding arising under or related in any way to this Agreement, the relationship of the Parties or the Transactions shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflicts of law, principles or rules of such state, to the extent such principles or rules are not mandatorily applicable by statute and would permit or require the application of the laws of another jurisdiction provided, that any action, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against any Financing Source in any way relating to this Agreement or any of the transactions contemplated hereby, or any dispute arising out of or relating in any way to the Financing, the Commitment Documents, the performance thereof or the transactions contemplated thereby shall be governed by, and construed in accordance with, the law of the State of New York.

(b) Each of the Parties irrevocably agrees that any Legal Proceeding arising out of or relating to this Agreement brought by any Party or its successors or assigns against any other Party shall be brought and determined in the Court of Chancery of the State of Delaware, provided that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then any such Legal Proceeding may be brought in any federal court located in the State of Delaware or any other Delaware state court. Each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such Legal Proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the Parties agrees not to commence any Legal Proceeding relating thereto except in the courts described above in Delaware, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Delaware as described herein. Each of the Parties further agrees that notice as provided herein shall constitute sufficient service of process and the parties further waive any argument that such service is insufficient. Each of the Parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any Legal Proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the Legal Proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such Legal Proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Notwithstanding anything to the contrary in this Section 10.10(b), each of the parties hereto agrees that it will not bring or support any action, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against any Financing Source in any way relating to this Agreement or any of the transactions contemplated by this Agreement, including any dispute arising out of or relating in any way to the Financing, the Commitment Documents, the performance thereof or the transactions contemplated thereby, in any forum other than the Supreme Court of the State of New York, County of New York, or, if under applicable law exclusive jurisdiction is vested in the federal courts, the United States District Court for the Southern District of New York (and appellate courts thereof).

(c) Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (INCLUDING ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM INVOLVING ANY FINANCING SOURCE (AND THEIR RESPECTIVE AFFILIATES)).

Section 10.11 Prevailing Party. If there shall occur any dispute or proceeding among the Parties relating to this Agreement or the transactions contemplated hereby, the non-prevailing Party shall pay all reasonable costs and expenses (including reasonable attorneys' fees and expenses) of the prevailing Party.

Section 10.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party, it being understood that both Parties need not sign the same counterpart. This Agreement, following its execution, may be delivered via telecopier machine or other form of electronic delivery, which shall constitute delivery of an execution original for all purposes.

Section 10.13 Headings. The heading references herein and the table of contents hereto are for convenience purposes only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

Section 10.14 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any term or other provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid, illegal or unenforceable, (a) a suitable and equitable provision shall be substituted therefore in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity, illegality or unenforceability, nor shall such invalidity, illegality or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 10.15 Specific Performance.

(a) The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties shall be entitled to specific performance of the terms hereof, including an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Court of Chancery of the State of Delaware, provided, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then in any state or federal court located in the State of Delaware, this being in addition to any other remedy to which such Party is entitled at law or in equity. Each of the parties hereby further waives (a) any defense in any action for specific performance that a remedy at law would be adequate and (b) any requirement under any law to post security as a prerequisite to obtaining equitable relief.

(b) Notwithstanding anything to the contrary herein, Seller shall only be entitled to seek specific performance of Purchaser's obligation to consummate the Closing in the event that (i) all of Seller's conditions in Section 7.01 have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing, each of which is capable of being satisfied assuming a Closing would occur) at the time when the Closing would have occurred, (ii) the Financing shall (x) have been consummated upon the terms set forth in the Commitment Documents and the proceeds of the Financing shall be available to fulfill Purchaser's obligations under this Agreement with respect to the Purchase Price or (y) the Financing Sources shall have confirmed in writing that the Financing will be available to be consummated substantially contemporaneously with the Closing as confirmed in writing by the Financing Sources, (iii) Seller has irrevocably confirmed that if specific performance is granted and the Purchase Price is funded in accordance with Section 2.05(a), then the Closing will occur and (iv) Purchaser fails to consummate the Closing on the date the Closing was required to have occurred within five (5) Business Days following delivery of written notice from Seller certifying as to the foregoing. For the avoidance of doubt, while Seller may pursue both a grant of specific performance of the type provided in the preceding sentence and monetary damages or the payment of the Purchaser Termination Fee under Section 9.02(b), under no circumstances shall Seller be permitted or entitled to receive both a grant of specific performance of the type contemplated by the preceding sentence and monetary damages, including all or any portion of the Purchaser Termination Fee.(c)

[remainder of page intentionally blank]

IN WITNESS WHEREOF, the Parties have executed or caused this Asset Purchase Agreement to be executed as of the Effective Date.

ASSERTIO THERAPEUTICS, INC.

By: /s/ Arthur J. Higgins

Name: Arthur J. Higgins

Title: President and Chief Executive Officer

IN WITNESS WHEREOF, the Parties have executed or caused this Asset Purchase Agreement to be executed as of the Effective Date.

COLLEGIUM PHARMACEUTICAL, INC.

By: /s/ Joseph Ciaffoni

Name: Joseph Ciaffoni

Title: President & Chief Executive Officer

SELLER CLOSING DELIVERABLES

- (a) A receipt for payment of the Purchase Price at Closing;
 - (b) A good standing certificate for Seller;
 - (c) Seller's Officer's Certificate;
 - (d) Seller's Secretary's Certificate;
 - (e) An executed bill of sale in the form attached hereto as Exhibit J (the "Bill of Sale"), dated as of the Closing Date;
 - (f) An executed instrument of assignment and assumption in the form attached hereto as Exhibit K (the "Assignment and Assumption") dated as of the Closing Date;
 - (g) Executed trademark assignment in the forms attached hereto as Exhibit L (with assignments in recordable form to be delivered after the Closing) (the "IP Assignments"), dated as of the Closing Date;
 - (h) The Seller FDA Transfer Letters, dated as of the Closing Date;
 - (i) The Payoff Letters; and
 - (j) A duly executed counterpart to the Services Agreement;
-

Exhibit B

PURCHASER CLOSING DELIVERABLES

- (a) The Purchase Price;
 - (b) A good standing certificate for Purchaser;
 - (c) Purchaser's Officer Certificate;
 - (d) Purchaser's Secretary Certificate;
 - (e) The executed Bill of Sale, dated as of the Closing Date;
 - (f) The executed Assignment and Assumption, dated as of the Closing Date;
 - (g) The executed IP Assignments, dated as of the Closing Date;
 - (h) The Purchaser FDA Transfer Letters, dated as of the Closing Date;
 - (i) Executed exemption certificates identified by Seller prior to the Closing;
 - (j) The Consent Agreement Joinder; and
 - (k) A duly executed counterpart to the Services Agreement.
-

LOAN AGREEMENT

Dated as of February 6, 2020

among

COLLEGIUM PHARMACEUTICAL, INC.

(as *Borrower*),

THE GUARANTORS PARTY HERETO

(as additional *Credit Parties*),

BIOPHARMA CREDIT PLC

(as *Collateral Agent* and a *Lender*),

and

BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP

(as a *Lender*)

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EXHIBITS:

- EXHIBIT A: Form of Loan Payment/Advance Request
- EXHIBIT B: Form of Term Loan Note
- EXHIBIT C: Form of Guaranty and Security Agreement
- EXHIBIT D: Form of Compliance Certificate
- EXHIBIT E: Commitments; Notice Addresses

LOAN AGREEMENT

THIS LOAN AGREEMENT (this “**Agreement**”), dated as of February 6, 2020 (the “**Effective Date**”) by and among COLLEGIUM PHARMACEUTICAL, INC., a Virginia corporation (as “**Borrower**”), the Guarantors from time to time party hereto, BIOPHARMA CREDIT PLC, a public limited company incorporated under the laws of England and Wales (as the “**Collateral Agent**” and a “**Lender**”) and BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP, a Cayman Islands exempted limited partnership (as a “**Lender**”), provides the terms on which each Lender shall make, and Borrower shall repay, the Credit Extensions (as hereinafter defined). The parties hereto agree as follows:

1. ACCOUNTING AND OTHER TERMS

Except as otherwise expressly provided herein, all accounting terms not otherwise defined in this Agreement shall have the meanings assigned to them in conformity with Applicable Accounting Standards. Calculations and determinations must be made following Applicable Accounting Standards. If at any time any change in Applicable Accounting Standards would affect the computation of any financial requirement set forth in any Loan Document, and either Borrower or the Collateral Agent shall so request, the Collateral Agent and Borrower shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in Applicable Accounting Standards; provided, that, until so amended, such requirement shall continue to be computed in accordance with Applicable Accounting Standards prior to such change therein. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts referred to herein, including in Article V and Article VI shall be made, without giving effect to any (a) election under ASC 825-10 (or any other Financial Accounting Standards Board Accounting Standards Codification (“**ASC**”) or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Credit Party or any Subsidiary of any Credit Party at “fair value” and (b) any treatment of Indebtedness in respect of convertible debt instruments under ASC 470-20 (or any other ASC or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. Notwithstanding anything to the contrary above or in the definition of “Capital Lease Obligations”, all obligations of any Person that are or would have been treated as operating leases for purposes of Applicable Accounting Standards prior to the effectiveness of ASC 842 shall continue to be accounted for as operating leases for all purposes hereunder or under any other Loan Documents (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with ASC 842 (on a prospective or retroactive basis or otherwise) to be treated as Capital Leases. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to “Dollars” or “\$” are United States Dollars, unless otherwise noted.

2. LOANS AND TERMS OF PAYMENT

2.1. Promise to Pay. Borrower hereby unconditionally promises to pay Lenders the outstanding principal amount of the Term Loans advanced to Borrower by Lenders and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

2.2. Term Loans.

(a) Availability. Subject to the terms and conditions of this Agreement (including Sections 3.1 and 3.2), each Lender severally agrees to make a term loan to Borrower on the Closing Date in an original principal amount equal to such Lender’s Term Loan Commitment (collectively, the “**Term Loans**”). After repayment or prepayment (in whole or in part), no Term Loan (or any portion thereof) may be re-borrowed.

(b) Repayment.

(i) Subject to clause (ii) below, with respect to each Term Loan, Borrower shall make equal quarterly payments of principal of such Term Loan commencing on the first Payment Date on the 3rd-month anniversary of the Closing Date and continuing on each subsequent Payment Date; provided, that if any such Payment Date is not a Business Day, the applicable payment shall be due and payable on the first Business Day immediately after such date.

(ii) The amount of the outstanding aggregate principal amount of the Term Loans to prepaid with the Equity Proceeds Prepayment, if any, shall be applied to reduce the remaining amortization payments in the inverse order of maturity starting with the quarterly amortization payment payable on the Payment Date that is the 48th-month anniversary of the Closing Date; or if such date is not a Business Day, on the first Business Day immediately after such date.

(iii) All unpaid principal with respect to the Term Loans (and, for the avoidance of doubt, all accrued and unpaid interest, all due and unpaid Lender Expenses and any and all other amounts payable under the Loan Documents) is due and payable in full on the Term Loan Maturity Date. The Term Loans may be prepaid only in accordance with Section 2.2(c), except as provided in Section 8.1.

(c) Prepayment of Term Loans.

(i) Borrower shall have the option, at any time after the Closing Date, to prepay, in whole but not in part, the Term Loans advanced by Lenders under this Agreement; provided that (A) Borrower provides written notice to the Collateral Agent of its election (which shall be irrevocable unless the Collateral Agent otherwise consents in writing) to prepay all of the Term Loans, which notice shall include the amount of the outstanding aggregate principal amount of the Term Loans to be prepaid, at least five (5) Business Days prior to such prepayment, and (B) the prepayment of such principal shall be accompanied by any and all accrued and unpaid interest thereon through the date of prepayment and any amounts payable in connection with such prepayment pursuant to Section 2.2(e) and Section 2.2(f) (as applicable), together with any and all other amounts payable or accrued and not yet paid under this Agreement and the other Loan Documents. The Collateral Agent will promptly notify each Lender of its receipt of such notice and the amount of such Lender's Applicable Percentage of such prepayment.

(ii) Upon a Change in Control, Borrower shall promptly, and in any event no later than ten (10) days after the consummation of such Change in Control, notify the Collateral Agent in writing of the occurrence of a Change in Control, which notice shall include reasonable detail as to the nature, timing and other circumstances of such Change in Control (such notice, a "**Change in Control Notice**"). Borrower shall prepay in full the Term Loans advanced by Lenders under this Agreement, no later than ten (10) Business Days after delivery to the Collateral Agent of the Change in Control Notice, in an amount equal to the sum of (A) the outstanding aggregate principal amount of the Term Loans and any and all accrued and unpaid interest with respect to the Term Loans to the date of prepayment, (B) any applicable amounts payable solely with respect to the prepayment of such principal amount under this Section 2.2(c)(ii) pursuant to Section 2.2(e) and Section 2.2(f) (as applicable) and (C) all other amounts payable or accrued and not yet paid under this Agreement and the other Loan Documents. The Collateral Agent will promptly notify each Lender of its receipt of the Change in Control Notice and the amount of such Lender's Applicable Percentage of such prepayment.

(d) Prepayment Application. Any prepayment of the Term Loans pursuant to Section 2.2(c) (together with the applicable Makewhole Amount and Prepayment Premium, if any, that is payable pursuant to Section 2.2(e) and Section 2.2(f)) shall be paid to Lenders in accordance with their respective Applicable Percentages for application to the Obligations in the following order: (i) first, to due and unpaid Lender Expenses; (ii) second, to accrued, unpaid and uncapitalized interest at the Default Rate incurred pursuant to Section 2.3(b), if any; (iii) third, without duplication of amounts paid pursuant to clause (ii) above, to accrued and unpaid interest at the Term Loan Rate; (iv) fourth, to the Prepayment Premium; (v) fifth, to the Makewhole Amount (if any); (vi) sixth, to the outstanding principal amount of the Term Loans; and (vii) seventh, to any remaining amounts then due and payable under this Agreement and the other Loan Documents.

(e) Makewhole Amount. Any prepayment of the Term Loans by Borrower (A) pursuant to Section 2.2(c)(i) or Section 2.2(c)(ii) or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), in each case, occurring prior to the 2nd-year anniversary of the Closing Date, shall be accompanied by payment of an amount equal to the Makewhole Amount; provided, however, that, notwithstanding the foregoing, no payment of the Makewhole Amount shall be applicable to any prepayment of the Term Loans by Borrower pursuant to Section 2.2(c)(i) occurring prior to the 2nd-year anniversary of the Closing Date that is an Equity Proceeds Prepayment. For the avoidance of doubt, any prepayment of the Term Loans by Borrower pursuant to Section 2.2(c)(ii) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a) occurring prior to the 2nd-year anniversary of the Closing Date that is an Equity Proceeds Prepayment shall be accompanied by payment of an amount equal to the Makewhole Amount.

(f) Prepayment Premium. Any prepayment of the Term Loans by Borrower (A) pursuant to Section 2.2(c)(i) or Section 2.2(c)(ii) or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a) shall be accompanied by payment of an amount equal to the General Prepayment Premium; provided, however, that, notwithstanding the foregoing, any prepayment of the Term Loans by Borrower pursuant to Section 2.2(c)(i) occurring prior to the 2nd-year anniversary of the Closing Date that is an Equity Proceeds Prepayment shall be accompanied by payment of an amount equal to the Equity Proceeds Prepayment Premium. For the avoidance of doubt, any prepayment of the Term Loans by Borrower pursuant to Section 2.2(c)(ii) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a) occurring prior to the 2nd-year anniversary of the Closing Date that is an Equity Proceeds Prepayment shall be accompanied by payment of an amount equal to the General Prepayment Premium.

2.3. Payment of Interest on the Credit Extensions.

(a) Interest Rate.

(i) Subject to Section 2.3(b), the principal amount outstanding under each Term Loan shall accrue interest at a per annum rate equal to the LIBOR Rate plus seven and one half percent (7.50%) per annum (the “**Term Loan Rate**”), which interest shall be payable quarterly in arrears in accordance with this Section 2.3.

(ii) Interest shall accrue on each Term Loan commencing on, and including, the day on which such Term Loan is made, and shall accrue on such Term Loan, or any portion thereof, for the day on which such Term Loan or such portion is paid.

(iii) Except as otherwise expressly provided herein, interest is due and payable quarterly on each Interest Date; provided, that if any such date is not a Business Day, the applicable interest shall be due and payable on the first Business Day immediately after such date.

(iv) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a LIBOR Rate Transition Event or an Early Opt-in Election, as applicable, the Collateral Agent, Borrower and Required Lenders shall amend this Agreement and the Term Loan Notes to replace the LIBOR Rate with the Alternate Benchmark Rate, and such Alternative Benchmark Rate shall be effective from and after the Alternative Benchmark Start Date. Any such amendments with respect to a LIBOR Rate Transition Event will become effective at 5:00 p.m. on the third (3rd) Business Day after the Collateral Agent has delivered such proposed amendments to all Lenders and Borrower so long as the Collateral Agent has not received, by such time, written notice of objection to such amendments from the Required Lenders. Any such amendments with respect to an Early Opt-in Election will become effective on the date that the Required Lenders have delivered to the Collateral Agent written notice that such Required Lenders accept such amendments. No replacement of the LIBOR Rate with the Alternate Benchmark Rate pursuant to this Section 2.3(a)(iv) will occur prior to the applicable Alternate Benchmark Rate Start Date.

(b) Default Rate. In the event Borrower fails to pay any of the Obligations when due or upon the commencement and during the continuance of an Insolvency Proceeding of the Borrower or upon the occurrence and during the continuance of any other Event of Default, immediately (and without notice to any Credit Party or demand by the Collateral Agent or any Lender for payment therefor), the Obligations shall bear interest at a rate per annum which is three percentage points (3.00%) above the rate that is otherwise applicable thereto (the “**Default Rate**”), and shall be payable on the date specified herein; provided, that in the case of any past due Obligations (if any), such interest shall be payable entirely in cash on demand of the Collateral Agent or any Lender. Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment of any Obligations and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Collateral Agent or any Lender.

(c) 360-Day Year. Interest shall be computed on the basis of a year of 360 days and the actual number of days elapsed.

(d) Payments. Except as otherwise expressly provided herein, Borrower shall make (or shall cause to be made on its behalf) all loan payments and any other payments hereunder on the date specified herein to the bank account of each Lender or the Collateral Agent, as applicable, as such Lender or the Collateral Agent shall have designated in a written notice to Borrower delivered on or before the Closing Date (which such notice may be updated by such Lender or the Collateral Agent from time to time after the Closing Date). Any payment of principal or interest received after 2:00 p.m. on the date such payment is due and payable is considered received at the opening of business on the next Business Day. When any payment is due and payable on a day that is not a Business Day, such payment is due and payable on the immediately next Business Day and additional fees or interest, as applicable, shall continue to accrue until actually paid. Any and all payments to be made by (or on behalf of) Borrower hereunder or under any other Loan Document, including payments of principal, interest, fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

2.4. Expenses. Borrower shall pay to or reimburse (or pay directly on behalf of) the Collateral Agent and, as applicable, each Lender, all of such Person's Lender Expenses incurred through and after the Effective Date, promptly after receipt of a written demand therefor by such Lender or the Collateral Agent (with, in the case of any Lender, a copy of such demand to the Collateral Agent), setting forth in reasonable detail such Person's Lender Expenses; provided, however, that for purposes of this Section 2.4 and solely in the case of satisfying the condition precedent in Section 3.1(k), the parties hereto agree that the funds flow memo prepared and delivered by the Collateral Agent in advance of the Closing Date for attachment to the Payment/Advance Request for the Term Loans shall constitute such written demand so long as reasonable detail of the Lender Expenses set forth therein are delivered to Borrower no later than two (2) Business Days following the Closing Date.

2.5. Requirements of Law; Increased Costs. In the event that any applicable Change in Law:

(a) Does or shall subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or the Term Loans (except Indemnified Taxes, Taxes described in clause (b) through (d) of the definition of Excluded Taxes, and Connection Income Taxes);

(b) Does or shall impose, modify or hold applicable any reserve, capital requirement, special deposit, compulsory loan, insurance charge or similar requirements against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, any Lender; or

(c) Does or shall impose on any Lender any other condition (other than Taxes); and the result of any of the foregoing is to increase the cost to such Lender (as determined by such Lender in good faith using calculation methods customary in the industry) of making, renewing or maintaining the Term Loans or to reduce any amount receivable in respect thereof or to reduce the rate of return on the capital of such Lender or any Person controlling such Lender,

then, in any such case, Borrower shall promptly pay to the applicable Lender, within thirty (30) days of its receipt of the certificate described below, any additional amounts necessary to compensate such Lender for such additional cost or reduced amounts receivable or rate of return as reasonably determined by such Lender with respect to this Agreement or the Term Loans made hereunder. If any Lender becomes entitled to claim any additional amounts pursuant to this Section 2.5, it shall promptly notify Borrower in writing of the event by reason of which it has become so entitled (with a copy of such notice to the Collateral Agent), and a certificate as to any additional amounts payable pursuant to the foregoing sentence containing the calculation thereof in reasonable detail submitted by such Lender to Borrower (with a copy of such certificate to the Collateral Agent) shall be conclusive in the absence of manifest error. The provisions hereof shall survive the termination of this Agreement and the payment of the outstanding Term Loans and all other Obligations. Failure or delay on the part of any Lender to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital under this Section 2.5 shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrower shall not be under any obligation to compensate such Lender under this Section 2.5 with respect to increased costs or reductions with respect to any period prior to the date that is 180 days prior to the date of the delivery of the notice required pursuant to the foregoing provisions of this paragraph; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

2.6. Taxes; Withholding, Etc.

(a) All sums payable by any Credit Party hereunder and under the other Loan Documents shall (except to the extent required by Requirements of Law) be paid free and clear of, and without any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by any Governmental Authority. In addition, Borrower agrees to pay, and shall indemnify and hold each Lender harmless from, Other Taxes, and as soon as practicable after the date of paying such sum, Borrower shall furnish to each Lender (as applicable, with a copy to the Collateral Agent) the original or a certified copy of a receipt evidencing payment thereof or other evidence reasonably satisfactory to the Collateral Agent of such payment and of the remittance thereof to the relevant taxing or other Governmental Authority.

(b) If any Credit Party or any other Person (“**Withholding Agent**”) is required by Requirements of Law to make any deduction or withholding on account of any Tax (as determined in the good faith discretion of such Withholding Agent) from any sum paid or payable by any Credit Party to any Lender under any of the Loan Documents: (i) such Withholding Agent shall notify such Lender in writing (with a copy to the Collateral Agent) of any such requirement or any change in any such requirement promptly after such Withholding Agent becomes aware of it; (ii) such Withholding Agent shall make any such withholding or deduction; (iii) such Withholding Agent shall pay any such Tax before the date on which penalties attach thereto in accordance with Requirements of Law; (iv) if the Tax is an Indemnified Tax, the sum payable by such Withholding Agent in respect of which the relevant deduction, withholding or payment of Indemnified Tax is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (including any deductions for Indemnified Taxes applicable to additional sums payable under this Section 2.6(b)), such Lender receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment of Indemnified Tax been required or made; and (v) as soon as practicable after paying any sum from which it is required by Requirements of Law to make any deduction or withholding, Borrower shall (or shall cause such Withholding Agent, if not Borrower, to) deliver to such Lender (with a copy to the Collateral Agent) the original or a certified copy of a receipt evidencing payment thereof or other evidence reasonably satisfactory to such Lender of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other Governmental Authority.

(c) Borrower shall indemnify each Lender for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.6(c)) paid by such Lender and any liability (including any reasonable expenses) arising therefrom or with respect thereto whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Any indemnification payment pursuant to this Section 2.6(c) shall be made to the applicable Lender within thirty (30) days from written demand therefor.

(d) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and the Collateral Agent, at the time or times reasonably requested in writing by Borrower or the Collateral Agent, such properly completed and executed documentation as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, such Lender, if reasonably requested in writing by Borrower or the Collateral Agent, shall deliver such other documentation prescribed by Requirements of Law or otherwise required by Borrower or the Collateral Agent to enable Borrower or the Collateral Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.6(d)(i), (ii) or (iv) below) shall not be required if in such Lender’s reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender (it being acknowledged and agreed that providing any information currently required by any U.S. federal income tax withholding form is not considered at the Effective Date prejudicial to the position of such Lender). For the avoidance of doubt, for the purposes of this Section 2.6(d), the term “Lender” shall include each applicable assignee thereof. Without limiting the generality of the foregoing:

(i) If any Lender is a U.S. Person, such Lender shall deliver to Borrower and the Collateral Agent, on or prior to the Closing Date and the date on which a Lender Transfer involving such Lender occurs, as applicable, and at such other times as may be necessary in the determination of Borrower (in the reasonable exercise of its discretion) two (2) executed copies of Internal Revenue Service (“IRS”) Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

(ii) If any Lender is a Foreign Lender, such Lender shall deliver, and shall cause each applicable assignee thereof to deliver, to Borrower and the Collateral Agent, on or prior to; the Closing Date and, the date on which a Lender Transfer involving such Lender occurs, as applicable, and at such other times as may be necessary in the determination of Borrower (in the reasonable exercise of its discretion):

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, two (2) properly completed and duly executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, a properly completed and duly executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) two (2) completed and duly executed copies of IRS Form W-8ECI;

(3) to the extent that such Foreign Lender is not the beneficial owner, two (2) properly completed and duly executed copies of IRS W-8IMY and a withholding statement, along with IRS Form W-9, W-8BEN-E, W-8BEN, W-8ECI or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a certificate referenced in Section 2.6(d)(ii)(4) below on behalf of each such direct and indirect partner; or

(4) in the case of a Foreign Lender claiming the benefits of the exemption for “portfolio interest” under Section 881(c) of the IRC, it shall provide Borrower with two (2) properly completed and duly executed copies of IRS Form W-8BEN-E or IRS Form W-8BEN, as applicable, and a certificate reasonably satisfactory to Borrower to the effect that any interest received by such Foreign Lender is not received by a “bank” on “extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business” within the meaning of 881(c)(3)(A) of the IRC, a “10 percent shareholder” of Borrower within the meaning of Section 871(h)(3)(B) of the IRC, or a “controlled foreign corporation” related to Borrower as described in Section 881(c)(3)(C) of the IRC.

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

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

(v) If any Lender is required to deliver any forms, statements, certificates or other evidence with respect to United States federal Tax or backup withholding matters pursuant to this Section 2.6(d), such Lender hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time, change in circumstances or law, or additional guidance by a Governmental Authority renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, to promptly deliver to Borrower two (2) new original copies of updated or successor forms, certificates or evidence, as applicable.

(e) If any party hereto determines, in its discretion exercised in good faith, that it has received a refund of any Taxes or a credit or offset for any Taxes as to which it has been indemnified pursuant to this Section 2.6 (including by the payment of additional amounts pursuant to this Section 2.6), it shall pay to the indemnifying party an amount equal to such refund, credit or offset (but only to the extent of indemnity payments made, or additional amounts paid, under this Section 2.6 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (e) in the event that such indemnified party is required to repay, credit or offset such refund to such Governmental Authority and the requirement to repay such refund to such Governmental Authority is not due to the indemnified party's failure to timely provide complete and accurate IRS forms and other documentation required pursuant to Section 2.6(d) or Section 2.8. Notwithstanding anything to the contrary in this clause (e), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (e) if the payment of such amount would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such tax had never been paid. This clause (e) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(f) If any Lender requests compensation under Section 2.5, or requires Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to this Section 2.6, then such Lender shall (at the written request of Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Term Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.5 or 2.6, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

2.7. Additional Consideration. As additional consideration for the obligations of each Lender to fund its Applicable Percentage of the Term Loan Amount pursuant to Section 2.2 and Section 3.4, on the Closing Date, Borrower shall pay to each Lender an amount equal to the product of (a) the amount of the Term Loan advanced by such Lender on the Closing Date, multiplied by (b) two and one-half percent (2.50%) (such product, individually or collectively as the context dictates, the "Additional Consideration"). The Additional Consideration shall be fully earned when paid and shall not be refundable for any reason whatsoever and such Additional Consideration shall be treated as original issue discount for U.S. federal income tax purposes.

2.8. Evidence of Debt; Register; Collateral Agent's Books and Records; Term Loan Notes.

(a) Evidence of Debt; Register. Notwithstanding anything herein to the contrary, Borrower hereby designates the Collateral Agent to serve as Borrower's agent solely for purposes of maintaining at all times at the Collateral Agent's principal office a "book entry system" as described in Treasury Regulations Section 5f.103-1(c)(1)(ii) that identifies each beneficial owner that is entitled to a payment of principal and stated interest on each Term Loan (the "**Register**") so that each Term Loan is at all times in "registered form" as described in IRC Treasury Regulations Section 5f.103-1(c) or Proposed Section 1.163-5(b) (or any amended or successor version). The Collateral Agent is hereby authorized by Borrower to record in the manual or data processing records of the Collateral Agent, the date and amount of each advance and the amount of the outstanding Obligations and the date and amount of each repayment of principal and each payment of interest or otherwise on account of the Obligations. Absent manifest error, such records of the Collateral Agent shall be conclusive as to the outstanding principal amount of the total outstanding Obligations, and the payment of interest, principal and other sums due hereunder; provided, however, that the failure of the Collateral Agent to make any such record entry with respect to any payment shall not limit or otherwise affect the obligations of Borrower under the Loan Documents. Each Term Loan: (i) shall, pursuant to this clause (a), be also registered as to both principal and any stated interest with Borrower or its agent, and (ii) may be transferred by any Lender only by (1) surrender of the old instrument and either (x) the reissuance by Borrower of the old instrument to the new Lender or (y) the issuance by Borrower of a new instrument to the new Lender, or (2) confirmation with Borrower that the right to the principal and stated interest on such Term Loan is maintained through the book entry system kept by the Collateral Agent. Each Lender, severally and not jointly with any other Lender, represents that any interest that may become due and owing under this Agreement qualifies for the portfolio interest exception from withholding on interest payments pursuant to IRC Sections 871(h) and 881(c).

(b) Term Loan Notes. Borrower shall execute and deliver to each Lender to evidence such Lender's Term Loan, a Term Loan Note.

3. CONDITIONS TO EFFECTIVENESS AND TERM LOANS

3.1. Conditions Precedent to Effectiveness. The effectiveness of this Agreement is subject to the satisfaction (or waiver in accordance with Section 11.5 hereof) of the following conditions (it being understood that by their respective execution and delivery of this Agreement, the Collateral Agent and Lenders hereby confirm that the conditions to effectiveness of this Agreement described in this Section 3.1 have been satisfied or waived in accordance with Section 11.5 hereof) as of the Effective Date:

(a) the Collateral Agent's and each Lender's receipt of copies of the Loan Agreement, the Disclosure Letter to the Loan Agreement, the Perfection Certificate and the Payment/Advance Form, in each case dated as of the Effective Date, executed and delivered by each applicable Credit Party and in form and substance reasonably satisfactory to the Collateral Agent);

(b) the Collateral Agent's receipt of (i) true, correct and complete copies of the Operating Documents of each of the Credit Parties, and (ii) a Secretary's Certificate for each Credit Party, dated the Effective Date and signed by such Credit Party's Secretary (or similar officer), certifying that the foregoing copies are true, correct and complete (such Secretary's Certificate(s) to be in form and substance reasonably satisfactory to the Collateral Agent);

(c) the Collateral Agent's receipt of true, correct and complete copies of the Acquisition Agreement as it exists on the Effective Date, in form and substance reasonably satisfactory to the Collateral Agent and Lenders;

(d) the Collateral Agent's receipt of a good standing certificate for each Credit Party (where applicable), certified by the Secretary of State (or the equivalent thereof) of the jurisdiction of incorporation or formation of such Credit Party as of a date no earlier than thirty (30) days prior to the Effective Date;

(e) the Collateral Agent's receipt of a Secretary's Certificate with completed Borrowing Resolutions with respect to the Loan Documents and the Term Loans for each Credit Party, dated the Effective Date and signed by such Credit Party's Secretary (or similar officer) (such Secretary's Certificates to be in form and substance reasonably satisfactory to the Collateral Agent);

(f) each Credit Party shall have obtained any and all Governmental Approvals and consents of other Persons that are necessary in connection with the transactions contemplated by the Loan Documents, each of which (if any) shall be in full force and effect (and in form and substance reasonably satisfactory to the Collateral Agent);

(g) subject to Section 5.14, the Collateral Agent's receipt of (i) evidence that any products liability and general liability insurance policies maintained in the United States regarding any Collateral are in full force and effect and (ii) appropriate evidence showing the Collateral Agent, in such capacity for the benefit of Lenders and the other Secured Parties, having been named as additional insured or loss payee, as applicable (such evidence to be in form and substance reasonably satisfactory to the Collateral Agent);

(h) the Collateral Agent's receipt of all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the U.S.A. Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**"), in form and substance reasonably satisfactory to the Collateral Agent; and

(i) the Collateral Agent's receipt of an Officer's Certificate, dated the Effective Date and signed by a Responsible Officer of Borrower, confirming there is no Adverse Proceeding pending or, to the Knowledge of Borrower, threatened, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, except as set forth on Schedule 4.7 of the Disclosure Letter (such Officer's Certificate to be in form and substance reasonably satisfactory to the Collateral Agent).

3.2. Conditions Precedent to Term Loans. The obligation of each Lender to advance its Applicable Percentage of the Term Loan Amount on the Closing Date is subject to the following conditions precedent:

(a) the Collateral Agent's and each Lender's receipt of copies of all other Loan Documents not described in Section 3.1(a) hereof (including the Term Loan Notes, executed by Borrower, and the Collateral Documents, but excluding any Control Agreements and any other Loan Document described in Schedule 5.14 of the Disclosure Letter to be delivered after the Closing Date), executed and delivered by each applicable Credit Party (in form and substance reasonably satisfactory to the Collateral Agent); provided that, to the extent any lien on any Collateral (including the creation or perfection of any security interest therein) purported to be granted (or created) under any Collateral Document is not or cannot be granted (or created or perfected) on the Closing Date (other than (i) the Equity Interests in each Credit Party's direct U.S. Wholly Owned Subsidiaries that are purported to be granted or created pursuant to this Agreement or any other Loan Document, and (ii) each of the other assets or properties of Borrower and each Guarantor to the extent that a lien on and security interest in such Collateral may be perfected by means of (A) the filing of a Uniform Commercial Code financing statement or such other financing statement, (B) taking delivery and possession of certificated securities or (C) the filing of a IP Security Agreement with the United States Patent and Trademark Office or the United States Copyright Office (as applicable), it being understood that such financing statements and IP Security Agreement shall be delivered at closing, but pre-filing thereof shall not be a condition to funding of the Term Loan), after the Credit Parties' use of commercially reasonable efforts to do so, then the grant (or creation or perfection) of such lien thereon and security interest therein shall not constitute a condition precedent to the availability of the Term Loans on the Closing Date hereunder, but, instead, shall be required to be granted, created or perfected (as applicable) within thirty (30) days after the Closing Date (or such later date after the Closing Date as the Collateral Agent may agree in its sole discretion); provided, further, that the Loan Documents shall not contain any conditions to the availability and funding of the Term Loans hereunder other than as explicitly set forth in Section 3 hereof (the "**Funds Certain Provisions**");

(b) the Collateral Agent's receipt of an opinion of Pepper Hamilton LLP, counsel to all of the Credit Parties, duly executed, dated the Closing Date and addressed to the Collateral Agent and each Lender (such opinion to be in form and substance reasonably satisfactory to the Collateral Agent);

(c) subject to the Funds Certain Provisions, the Collateral Agent's receipt of all documents and instruments necessary to grant a first priority security interest in and Lien upon, and pledge to the Collateral Agent for the benefit of Lenders and the other Secured Parties, free and clear of all Liens other than Permitted Liens, the Collateral Agent shall have been executed (to the extent applicable) and delivered to the Collateral Agent and, if applicable, be in appropriate form for filing (in form and substance reasonably satisfactory to the Collateral Agent);

(d) [Reserved];

(e) each of the representations and warranties made by the Credit Parties (i) in Section 4.1(a) (as to each Credit Party only), Section 4.1(b)(ii), Section 4.3(a), Section 4.3(b)(i), Section 4.5, Section 4.9, Section 4.13(a), Section 4.14, and Section 4.18(d), and (ii) subject to the Funds Certain Provisions and solely to the extent that a breach thereof is (or would be) materially adverse to the interests of the Collateral Agent or Lenders with respect to any lien on any of the assets or properties described therein (including the creation or perfection of any security interest therein), Section 4.6(s), is true and correct in all material respects on the Closing Date (both with and without giving effect to the Term Loans and the consummation of the transactions contemplated by the Acquisition Agreement), unless such representation or warranty is expressly stated to relate to a specific earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (it being understood that any such representation or warranty that is qualified as to “materiality,” “Material Adverse Change,” or similar language shall be true and correct in all respects on the Closing Date (both with and without giving effect to the Term Loans and the consummation of the transactions contemplated by the Acquisition Agreement) or as of such earlier date, as applicable);

(f) each of the Specified Acquisition Agreement Representations is true and correct in all material respects on the Closing Date (both with and without giving effect to the consummation of the transactions contemplated by the Acquisition Agreement and the Term Loans), unless such representation or warranty is expressly stated to relate to a specific earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (it being understood that any such representation or warranty that is qualified as to “materiality,” “material adverse effect,” “Material Adverse Effect,” or similar language shall be true and correct in all respects on the Closing Date (both with and without giving effect to the consummation of the transactions contemplated by the Acquisition Agreement and the Term Loans) or as of such earlier date, as applicable);

(g) (i) substantially concurrently with the funding of the Term Loans hereunder, the transactions contemplated by the Acquisition Agreement shall be consummated in accordance with the terms and conditions of the Acquisition Agreement delivered to the Collateral Agent on the Effective Date without giving effect to any waiver or consent thereunder or any modification thereto that is materially adverse to the interests of the Collateral Agent or Lenders; provided, however, that for purposes of determining satisfaction of the condition precedent contained herein, (A) any increase in the Estimated Purchase Price shall be deemed to be materially adverse to the interests of the Collateral Agent and Lenders unless such increase is funded solely with the proceeds of any additional Equity Interests issued by Borrower or as otherwise approved in writing by the Collateral Agent and Lenders; (B) any decrease in the Estimated Purchase Price by ten percent (10%) or less shall be deemed to be materially adverse to the interests of the Collateral Agent and Lenders unless such decrease shall reduce on a dollar-for-dollar basis the aggregate principal amount of the Term Loans (to be effected through a reduction of the quarterly amortization payments of principal set forth in Section 2.2(b)(i)); (C) any decrease in the Estimated Purchase Price by more than ten percent (10%) shall be deemed to be materially adverse to the interests of the Collateral Agent and Lenders; (D) any change in third party beneficiary rights applicable to the Collateral Agent or any Lender under, or any change in the governing law of, the Acquisition Agreement, shall be deemed to be materially adverse to the interests of the Collateral Agent and Lenders unless such change is approved in writing by the Collateral Agent and Lenders; and (E) any amendment, waiver or consent to the definition of “Material Adverse Effect” (or similar term) as used in the Acquisition Agreement shall be deemed to be materially adverse to the interests of the Collateral Agent and Lenders;

(ii) a certificate of a Responsible Officer of Borrower, dated the Closing Date, confirming that all of the conditions to completion of the transactions contemplated by the Acquisition Agreement, other than payment of the Estimated Purchase Price, have been satisfied and that upon funding of the Term Loan and application of the proceeds thereof in accordance with the closing funds flow such transactions will be consummated by the parties thereto in accordance with their respective terms; and

(iii) the Collateral Agent’s receipt of true, correct and complete copies of the Acquisition Agreement as executed and delivered by all parties thereto, in the form delivered to the Collateral Agent on the Effective Date, except for any modifications thereto or any waivers or consents thereunder that, individually or taken together with any other modifications, waivers or consents, are not materially adverse to the interests of the Collateral Agent or Lenders;

(h) since the Effective Date (as defined in the Acquisition Agreement), there shall have been no events or occurrences that have resulted in any Material Adverse Effect (as defined in the Purchase Agreement);

(i) [reserved];

(j) payment of the Additional Consideration concurrent with the funding of the Term Loans;

(k) [reserved]; and

(l) payment of any and all accrued Lender Expenses as specified in Section 2.4 hereof (to the extent invoiced at least two (2) Business Days prior to the Closing Date) concurrent with the funding of the Term Loans; and

(m) the Collateral Agent's receipt of an Officer's Certificate, dated the Closing Date and signed by a Responsible Officer of Borrower, confirming satisfaction of the conditions precedent set forth in Section 3.1 and Section 3.2 (but not, for the avoidance of doubt, the satisfaction of the Collateral Agent or any Lender with respect to any document or action specified in any such condition precedent as being subject to the satisfaction of the Collateral Agent or any Lender), to be in form and substance reasonably satisfactory to the Collateral Agent.

3.3. Covenant to Deliver. The Credit Parties agree to deliver to the Collateral Agent and each Lender each item required to be delivered to the Collateral Agent or all Lenders under this Agreement as a condition precedent to any Credit Extension; provided, however, that any such items set forth on Schedule 5.14 of the Disclosure Letter shall be delivered to the Collateral Agent within the time period prescribed therefor on such schedule. The Credit Parties expressly agree that a Credit Extension made prior to the receipt by the Collateral Agent and Lenders of any such item shall not constitute a waiver by the Collateral Agent or any Lender of the Credit Parties' obligation to deliver such item, and the making of any Credit Extension in the absence of any such item required to have been delivered to the Collateral Agent and Lenders by the date of such Credit Extension shall be in each Lender's sole discretion.

3.4. Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of the Term Loans set forth in this Agreement, to obtain the Term Loans, Borrower shall deliver to the Collateral Agent and Lenders by electronic mail or facsimile a completed Payment/Advance Request for the Term Loans, executed by a Responsible Officer of Borrower (which notice shall be irrevocable on and after the date on which such notice is given and Borrower shall be bound to make a borrowing in accordance therewith), in which case each Lender agrees to advance its Applicable Percentage of the Term Loan Amount to Borrower on the Closing Date by wire transfer of same day funds in Dollars, to such account in the United States as may be designated in writing to the Collateral Agent by Borrower prior to the Closing Date.

4. REPRESENTATIONS AND WARRANTIES

In order to induce each Lender and the Collateral Agent to enter into this Agreement and for each Lender to make the Credit Extensions to be made on the Closing Date, each Credit Party, jointly and severally with each other Credit Party, represents and warrants to each Lender and the Collateral Agent that the following statements are true and correct as of the Effective Date (including giving pro forma effect to the Term Loans and the consummation of the transactions contemplated by the Acquisition Agreement) and, solely with respect to each of the representations or warranties set forth in Section 3.2(e), as of the Closing Date (both with and without giving effect to the Term Loans and the consummation of the transactions contemplated by the Acquisition Agreement):

4.1. Due Organization, Existence, Power and Authority. Each of Borrower and each of its Subsidiaries: (a) is duly incorporated, organized or formed, and validly existing and, where applicable, in good standing under the laws of its jurisdiction of incorporation, organization or formation identified on Schedule 4.15 of the Disclosure Letter; (b) has all requisite power and authority to (i) own, lease, license and operate its assets and properties and to carry on its business as currently conducted in the ordinary course of business and (ii) execute and deliver the Loan Documents to which it is a party and to perform its obligations thereunder and otherwise carry out the transactions contemplated thereby; (c) is duly qualified and, where applicable, in good standing under the laws of each jurisdiction where its ownership, lease, license or operation of assets or properties or the conduct of its business requires such qualification; and (d) has all requisite Governmental Approvals to operate its business as currently conducted; except in each described in clauses (a) (other than with respect to Borrower and any other Credit Party), (b)(i), (c) or (d) above, to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

4.2. Equity Interests. All of the outstanding Equity Interests in each Subsidiary of the Borrower, the Equity Interests in which are required to be pledged pursuant to the Collateral Documents, have been duly authorized and validly issued, are fully paid and, in the case of Equity Interests representing corporate interests, are non-assessable and, on the Closing Date, all such Equity Interests owned directly by Borrower or any other Credit Party are owned free and clear of all Liens except for Permitted Liens. Schedule 4.2 of the Disclosure Letter identifies each Person, the Equity Interests in which are required to be pledged on the Closing Date pursuant to the Collateral Documents.

4.3. Authorization; No Conflict. Except as set forth on Schedule 4.3 of the Disclosure Letter, the execution, delivery and performance by each Credit Party of the Loan Documents to which it is a party, and the consummation of the transactions contemplated thereby, (a) have been duly authorized by all necessary corporate or other organizational action and (b) do not and will not (i) contravene the terms of any of such Credit Party's Operating Documents, (ii) conflict with or result in any breach or contravention of, or require any payment to be made under (A) any provision of any security issued by such Credit Party or of any agreement, instrument or other undertaking to which such Credit Party is a party or affecting such Credit Party or the assets or properties of such Credit Party or any of its Subsidiaries or (B) any order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which such Credit Party or any of its properties or assets are subject, (iii) result in the creation of any Lien (other than under the Loan Documents) or (iv) violate any Requirements of Law, except, in the cases of clauses (b)(ii) and (b)(iv) above, to the extent that such conflict, breach, contravention, payment or violation could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change. With respect to the Operating Documents of Borrower, there has been no amendment, restatement, supplement or other modification to the Articles of Incorporation of Borrower since December 11, 2015, other than to change the address of Borrower's registered agent in the state of Virginia.

4.4. Government Consents; Third Party Consents. Except as set forth on Schedule 4.4 of the Disclosure Letter, no Governmental Approval or other approval, consent, exemption or authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person (including any counterparty to any Material Contract) is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Credit Party of this Agreement or any other Loan Document, or for the consummation of the transactions contemplated hereby or thereby, (b) the grant by any Credit Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof), or (d) the exercise by the Collateral Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except, in each case of clause (a) through (d) above, for (i) filings necessary to perfect the Liens on the Collateral granted by the Credit Parties to the Collateral Agent for the benefit of Lenders and the other Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect, (iii) filings under state or federal securities laws and (iv) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

4.5. Binding Obligation. Each Loan Document has been duly executed and delivered by each Credit Party that is a party thereto and constitutes a legal, valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by general principles of equity.

4.6. Collateral. In connection with this Agreement, the Credit Parties have delivered to the Collateral Agent a completed, omnibus certificate, duly signed by each Credit Party (the "Perfection Certificate"). Each Credit Party, jointly and severally, represents and warrants to the Collateral Agent and each Lender that:

(a) (i) its exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (ii) it is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (iii) the Perfection Certificate accurately sets forth its organizational identification number or accurately states that it has none; (iv) the Perfection Certificate accurately sets forth its place of business, or, if more than one, its chief executive office as well as its mailing address (if different than its chief executive office); (v) except as disclosed on the Perfection Certificate, it (and each of its predecessors) has not, in the five (5) years prior to the Closing Date, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (vi) all other information set forth on the Perfection Certificate pertaining to it and each of its Subsidiaries is accurate and complete in all material respects. If any Credit Party is not now a Registered Organization but later becomes one, it shall promptly notify the Collateral Agent of such occurrence and provide the Collateral Agent with such Credit Party's organizational identification number.

(b) (i) it has good title to, has rights in, and subject to Permitted Subsidiary Distribution Restrictions, the power to transfer (or, with respect to any Collateral to be acquired pursuant to the Acquisition Agreement, following the consummation of the transactions contemplated by the Acquisition Agreement, will have good title to, rights in and, subject to Permitted Subsidiary Distribution Restrictions, the power to transfer) each item of the Collateral upon which it purports to grant a Lien under any Collateral Document, free and clear of any and all Liens except Permitted Liens, except for such minor irregularities or defects in title as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, and (ii) it has no deposit accounts maintained at a bank or other depository or financial institution located in the United States other than the deposit accounts described in the Perfection Certificate delivered to the Collateral Agent in connection herewith.

(c) (i) A true, correct and complete list of each pending, registered, or issued Patent, Copyright and Trademark that, individually or taken together with any other such Patents, Copyrights or Trademarks, is material to the business of Borrower and its Subsidiaries, taken as a whole, relating to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory, that is owned or co-owned by or exclusively or non-exclusively licensed to any Credit Party or any of its Subsidiaries, excluding any Current Acquisition IP set forth on Schedule 4.6(c)(ii)(A) of the Disclosure Letter (collectively, the “**Current Company IP**”), including its name/title, current owner or co-owners, registration, patent or application number and registration or application date, issued or filed in the Territory, is set forth on Schedule 4.6(c)(i)(A) of the Disclosure Letter. Except as set forth on Schedule 4.6(c)(i)(B) of the Disclosure Letter, (A) to the Knowledge of Borrower, (1) each item of Current Company IP owned or co-owned by a Credit Party or any of its Subsidiaries is valid, subsisting and enforceable (or will be enforceable, upon issuance) and no such item of Current Company IP owned or co-owned by a Credit Party or any of its Subsidiaries has lapsed, expired, been cancelled or invalidated or become abandoned or unenforceable, and (2) no written notice has been received challenging the inventorship or ownership, or relating to any lapse, expiration, invalidation, abandonment or unenforceability of any such item of Current Company IP owned or co-owned by a Credit Party or any of its Subsidiaries, and (B) to the Knowledge of Borrower, (1) each item of Current Company IP which is licensed by a Credit Party or any of its Subsidiaries from another Person is valid, subsisting and enforceable and no such item of Current Company IP which is licensed by a Credit Party or any of its Subsidiaries has lapsed, expired, been cancelled or invalidated, or become abandoned or unenforceable, and (2) no written notice has been received challenging the inventorship or ownership, or relating to any lapse, expiration, invalidation, abandonment or unenforceability, of any such item of Current Company IP which is licensed by a Credit Party or any of its Subsidiaries. Except as set forth on Schedule 4.6(c)(i)(C) of the Disclosure Letter, (x) each Person who has or has had any rights in or to Current Company IP or any trade secrets owned, co-owned or licensed by any Credit Party or any of its Subsidiaries, including each inventor named on the Patents within such Current Company IP filed by any Credit Party or any of its Subsidiaries, has executed an agreement assigning his, her or its entire right, title and interest in and to such Current Company IP or trade secrets (as applicable), and the inventions, improvements, ideas, discoveries, writings, works of authorship, information and other intellectual property embodied, described or claimed therein, to the stated owner(s) thereof, and (y) to the Knowledge of Borrower, no such Person has any contractual or other obligation that would preclude or conflict with such assignment or the exploitation of any Product in the Territory or entitle such Person to ongoing payments;

(ii) A true, correct and complete list of each pending, registered, issued or in-licensed Patent, Copyright and Trademark existing as of the Effective Date, including any and all Transferred IP Rights (as defined in the Purchase Agreement) that, after giving effect to the transactions contemplated by the Acquisition Agreement, will be owned or co-owned by or exclusively or non-exclusively licensed to any Credit Party or any of its Subsidiaries and, individually or taken together with any other such Patents, Copyrights or Trademarks (including any Transferred IP Rights (as defined in the Purchase Agreement)), is material to the business of Borrower or any of its Subsidiaries (collectively, the “**Current Acquisition IP**”), including its name/title, current owner or co-owners (immediately after giving effect to the acquisition thereof pursuant to the Acquisition Agreement), registration, patent or application number and registration or application date, is set forth on Schedule 4.6(c)(ii)(A) of the Disclosure Letter. Immediately after giving effect to the acquisition of the Current Acquisition IP pursuant to the Acquisition Agreement, except as set forth on Schedule 4.6(c)(ii)(B) of the Disclosure Letter: (A) to the Knowledge of Borrower, (1) each item of Current Acquisition IP owned or co-owned by any Credit Party or any of its Subsidiaries is valid, subsisting and enforceable (or will be enforceable, upon issuance) and no such item of Current Acquisition IP has lapsed, expired, been cancelled or invalidated or become abandoned or unenforceable, and (2) no written notice has been received by any Credit Party or any of its Subsidiaries or by Asserzio Therapeutics, Inc. or any of its Affiliates challenging the inventorship or ownership, or relating to any lapse, expiration, invalidation, abandonment of, or scope, validity or enforceability of, any such item of Current Acquisition IP; and (B) to the Knowledge of Borrower, (1) each item of Current Acquisition IP that is licensed by a Credit Party or any of its Subsidiaries from another Person is valid, subsisting and enforceable and no such item of Current Acquisition IP has lapsed, expired, been cancelled or invalidated or become abandoned or unenforceable, and (2) no written notice has been received by any Credit Party or any of its Subsidiaries or by Asserzio Therapeutics, Inc. or any of its Affiliates challenging the inventorship or ownership, or relating to any lapse, expiration, invalidation, abandonment of, or scope, validity or enforceability of, any such item of Current Acquisition IP. Immediately after giving effect to the acquisition of the Current Acquisition IP pursuant to the Acquisition Agreement, except as set forth on Schedule 4.6(c)(ii)(C) of the Disclosure Letter, to the Knowledge of Borrower, (x) each Person who has or has had any rights in or to Current Acquisition IP or any trade secrets owned, co-owned or licensed by any Credit Party or any of its Subsidiaries, including each inventor named on the Patents within such Current Acquisition IP, has executed an agreement assigning his, her or its entire right, title and interest in and to such Current Acquisition IP or trade secrets (as applicable), and the inventions, improvements, ideas, discoveries, writings, works of authorship, information and other intellectual property embodied, described or claimed therein, to the stated owner(s) or licensor thereof, and (y) no such Person has any contractual or other obligation that would preclude or conflict with such assignment or the exploitation of any Product in the Territory or entitle such Person to ongoing payments. Immediately after giving effect to the acquisition of the Current Acquisition IP pursuant to the Acquisition Agreement, except for Permitted Licenses and as set forth on Schedule 4.6(c)(ii)(D) of the Disclosure Letter, no Person other than a Credit Party will have any right under the Current Acquisition IP Agreements to commercialize an Acquisition Product in the Territory; and

(iii) Except as set forth on Schedule 4.6(c)(iii), to the Knowledge of Borrower, there are no published Patents, Patent applications, articles or prior art references that could reasonably be expected to materially adversely affect the exploitation of any Product in the Territory.

(d) (i) (A) Each Credit Party or any of its Subsidiaries possesses valid title to the Current Company IP for which it is listed as the owner or co-owner on Schedule 4.6(c)(i)(A) of the Disclosure Letter, and (B) there are no Liens on any Current Company IP, other than Permitted Liens; and

(ii) Immediately after giving effect to the acquisition of the Current Acquisition IP pursuant to the Acquisition Agreement, to the Knowledge of Borrower, each Credit Party or any of its Subsidiaries possesses valid title to the Current Acquisition IP for which it is listed as the owner or co-owner on Schedule 4.6(c)(ii)(A) of the Disclosure Letter, and (B) there are no Liens on any Current Acquisition IP, other than Permitted Liens.

(e) (i) There are no maintenance, annuity or renewal fees that are currently overdue beyond their allotted grace period for any of the Current Company IP which is owned or co-owned by or exclusively licensed to any Credit Party or any of its Subsidiaries, except as could not reasonably be expected to have a materially adverse impact on such Credit Party's or Subsidiary's rights to such Current Company IP, nor have any applications or registrations therefor lapsed or become abandoned, been cancelled or expired. There are no maintenance, annuity or renewal fees that are currently overdue beyond their allotted grace period for any of the Current Company IP which is non-exclusively licensed to any Credit Party or any of its Subsidiaries, except as could not reasonably be expected to have a materially adverse impact on such Credit Party's or Subsidiary's rights to such Current Company IP; and

(ii) Immediately after giving effect to the acquisition of the Current Acquisition IP pursuant to the Acquisition Agreement, there are no maintenance, annuity or renewal fees that are overdue beyond their allotted grace period for any of the Current Acquisition IP which is owned or co-owned by or exclusively or non-exclusively licensed to any Credit Party or any of its Subsidiaries, except, as could not reasonably be expected to have a materially adverse impact on such Credit Party's or Subsidiary's rights to such Current Acquisition IP, nor have any applications or registrations therefor lapsed or become abandoned, been cancelled or expired.

(f) (i) There are no unpaid fees, royalties or indemnification payments owing by Borrower or any of its Subsidiaries under any Current Company IP Agreement that have become due, as of the Effective Date, or are or will have become due or overdue, as of the Closing Date. As of the Closing Date, no Current Company IP Agreement or any provision thereof (other than provisions solely with respect to confidentiality) is or will be in full force and effect or is or will be binding on or enforceable against Borrower or any of its Subsidiaries in accordance with its terms (except for confidentiality terms); and

(ii) There are no unpaid fees or royalties under any Current Acquisition IP Agreement that have become due, or are reasonably expected to become overdue. Each Current Acquisition IP Agreement is in full force and effect and is legal, valid, binding and enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability. Immediately after giving effect to the acquisition of the Current Acquisition IP Agreements pursuant to the Acquisition Agreement, except as set forth on Schedule 4.6(f)(ii) of the Disclosure Letter, neither Borrower nor any of its Subsidiaries, as applicable, is in breach of or default under any Current Acquisition IP Agreement to which it is a party or may otherwise be bound and no circumstances or grounds exist that would give rise to a claim of breach or right of rescission, termination, non-renewal, revision or amendment of any Current Acquisition IP Agreement, including the execution, delivery and performance of the Acquisition Agreement, this Agreement and the other Loan Documents.

(g) No payments by any Credit Party or any of its Subsidiaries are due to any other Person in respect of the Current Company IP, other than pursuant to any Current Company IP Agreement and those fees payable to patent offices in connection with the prosecution and maintenance of the Current Company IP (including any associated attorney fees). To the Knowledge of Borrower, no payments by any Credit Party or any of its Subsidiaries are due to any other Person in respect of the Current Acquisition IP, other than pursuant to any Current Acquisition IP Agreements and those fees payable to patent offices in connection with the prosecution and maintenance of the Current Acquisition IP (including any associated attorney fees).

(h) (i) No Credit Party or any of its Subsidiaries has undertaken or omitted to undertake any acts, and, to the Knowledge of Borrower, no circumstance or grounds exist, that would invalidate or reduce, in whole or in part, any enforceability or scope of (A) the Current Company IP in any manner that could reasonably be expected to materially adversely affect the exploitation of any Product in the Territory, or (B) in the case of Current Company IP owned or co-owned by, or exclusively or non-exclusively licensed to, any Credit Party or any of its Subsidiaries, other than with respect to Permitted Licenses and except as set forth on Schedule 4.6(h)(i) of the Disclosure Letter, a Credit Party's or Subsidiary's entitlement to own or license and exploit such Current Company IP in any manner that could reasonably be expected to materially adversely affect the exploitation of any Product in the Territory; and

(ii) Immediately after giving effect to the acquisition of the Current Acquisition IP pursuant to the Acquisition Agreement, no Credit Party or any of its Subsidiaries has undertaken or omitted to undertake any acts, and, to the Knowledge of Borrower, no circumstance or grounds exist, that would invalidate or reduce, in whole or in part, any enforceability or scope of (A) the Current Acquisition IP in any manner that could reasonably be expected to materially adversely affect the exploitation of any Product in the Territory, (B) in the case of Current Acquisition IP owned or co-owned by, or exclusively or non-exclusively licensed to, any Credit Party or any of its Subsidiaries, other than with respect to Permitted Licenses and except as set forth on Schedule 4.6(h)(ii) of the Disclosure Letter, a Credit Party's or Subsidiary's entitlement to own or license and exploit such Current Acquisition IP.

(i) Except as set forth on Schedule 4.6(i) of the Disclosure Letter, to the Knowledge of Borrower, there is no product or other technology of any third party that could reasonably be expected to infringe a Patent within the Current Company IP or the Current Acquisition IP in a manner that would result in a material adverse effect on any Product in the Territory.

(j) Except as described on Schedule 4.6(j) of the Disclosure Letter, no Credit Party is a party to or bound by (and, immediately after giving effect to the consummation of the transactions contemplated by the Acquisition Agreement, is or shall be a party to or is or shall be bound by) any Excluded License or any Restricted License.

(k) (i) In each case where an issued Patent within the Current Company IP is owned or co-owned by any Credit Party or any of its Subsidiaries by assignment, the assignment has been duly recorded with the U.S. Patent and Trademark Office; and

(ii) Immediately after giving effect to the acquisition of the Current Acquisition IP pursuant to the Acquisition Agreement, in each case where an issued Patent within the Current Acquisition IP is owned or co-owned by any Credit Party or any of its Subsidiaries by assignment, to the Knowledge of Borrower, the assignment has been duly recorded with the U.S. Patent and Trademark Office.

(l) [Reserved].

(m) Except as set forth on Schedule 4.6(m) of the Disclosure Letter, the manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory, does not and will not, to the Knowledge of Borrower, infringe or violate (or in the past infringed or violated), or form a reasonable basis for a claim of infringement or violation of, any of the rights of any third parties in or to any issued or registered Intellectual Property ("**Third Party IP**") or, to the Knowledge of Borrower, constitutes a misappropriation of (or in the past constituted a misappropriation of) any Third Party IP.

(n) Except as set forth on Schedule 4.6(n) of the Disclosure Letter, there are no settlements, covenants not to sue, consents, judgments, orders or similar obligations which (i) restrict the rights of any Credit Party or any of its Subsidiaries to use any Current Company IP or, to the Knowledge of Borrower, any Acquisition IP to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory (in order to accommodate any Third Party IP or otherwise), or (ii) permit any third parties to use any Current Company IP or, to the Knowledge of Borrower, any Acquisition IP.

(o) Except as set forth on Schedule 4.6(o) of the Disclosure Letter, (i) there is no, nor has there been any, infringement or violation by any Person of any of the Current Company IP or the rights therein or, to the Knowledge of Borrower, any of the Current Acquisition IP or the rights therein, and (ii) there is no, nor has there been any, misappropriation by any Person of any of the Current Company IP or the subject matter thereof or, to the Knowledge of Borrower, any of the Current Acquisition IP or the subject matter thereof.

(p) Immediately after giving effect to the acquisition of the Current Acquisition IP pursuant to the Acquisition Agreement, to the Knowledge of Borrower, each Credit Party and each of its Subsidiaries has taken all commercially reasonable measures customary in the pharmaceutical industry to protect the confidentiality and value of all trade secrets owned by such Credit Party or Subsidiary or used or held for use by such Credit Party or Subsidiary, in each case, in any way relating to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory.

(q) Except as set forth on Schedule 4.6(q), to the Knowledge of Borrower, any Product made, used or sold under the Patents within the Current Company IP or the Current Acquisition IP has been marked with the proper patent notice.

(r) Except as set forth on Schedule 4.6(r) of the Disclosure Letter, to the Knowledge of Borrower, at the time of any shipment of Product in the Territory occurring prior to the Effective Date, the units thereof so shipped complied with their relevant specifications and were developed and manufactured in all material respects in accordance with current FDA Good Manufacturing Practices, FDA Good Clinical Practices and FDA Good Laboratory Practices (as applicable).

(s) The Collateral Documents create in favor of the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a valid and, upon the making of the filings and the taking of the actions required under the terms of the Loan Documents (except to the extent not required to be perfected pursuant to the terms of the Loan Documents), perfected Lien on and security interest in the Collateral (in each case, solely to the extent perfection is available under applicable Law through the making of such filings and taking of such actions), securing the payment of the Obligations, and having priority over all other Liens on and security interests in the Collateral (except Permitted Liens).

4.7. Adverse Proceedings; Specified Disputes; Compliance with Laws.

(a) Except as has been disclosed in the Exchange Act Documents or as set forth on Schedule 4.7(a) of the Disclosure Letter, both before and immediately after giving effect to the consummation of the transactions contemplated by the Acquisition Agreement, there are no Adverse Proceedings pending or, to the Knowledge of Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Borrower or any of its Subsidiaries or against any of their respective assets or properties or revenues (including involving allegations of sexual harassment or misconduct by any officer of Borrower or any of its Subsidiaries) that, either individually or in the aggregate, could reasonably be expected to materially adversely affect the Collateral (including by imposing a Lien thereon) or result in a Material Adverse Change;

(b) Except as has been disclosed in the Exchange Act Documents or as set forth on Schedule 4.7(b) of the Disclosure Letter: (i) there is no pending, decided or settled opposition, interference proceeding, reissue proceeding, reexamination proceeding, *inter-partes* review proceeding, post grant review proceeding, cancellation proceeding, injunction, litigation, paragraph IV patent certification or lawsuit under the Hatch-Waxman Act, hearing, investigation, complaint, arbitration, mediation, demand, International Trade Commission investigation or decree, or any other dispute, disagreement or claim, alleged in writing to Borrower or any of its Subsidiaries (collectively referred to hereinafter as “**Specified Disputes**”), nor has any Specified Dispute been threatened in writing, challenging the legality, validity, enforceability or ownership of any Current Company IP; and (ii) to the Knowledge of Borrower, there is no pending, decided or settled Specified Dispute, nor has any Specified Dispute been threatened in writing, challenging the legality, validity, enforceability or ownership of any Current Acquisition IP; and

(c) Neither Borrower nor any of its Subsidiaries (i) is in violation of any Requirements of Law (including Environmental Laws), except for such violations that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change, or (ii) is subject to or in default with respect to any final judgments, orders, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to materially adversely affect the Collateral (including by imposing a Lien thereon) or result in a Material Adverse Change.

4.8. Exchange Act Documents; Financial Statements; Financial Condition; No Material Adverse Change; Books and Records.

(a) The documents filed by Borrower with the SEC pursuant to the Exchange Act since January 1, 2019 (the “**Exchange Act Documents**”), when they were filed with the SEC, conformed in all material respects to the requirements of the Exchange Act, and as of the time they were filed with the SEC, none of such documents contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein (excluding any projections and forward-looking statements, estimates, budgets and general economic or industry data of a general nature), in the light of the circumstances under which they were made, not misleading; provided, that, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projections are not a guarantee of financial performance and are subject to uncertainties and contingencies, many of which are beyond the control of Borrower or any Subsidiary, and neither Borrower nor any Subsidiary can give any assurance that such projections will be attained, that actual results may differ in a material manner from such projections and any failure to meet such projections shall not be deemed to be a breach of any representation or covenant herein);

(b) The financial statements (including the related notes thereto) of Borrower and its Subsidiaries included in the Exchange Act Documents present fairly in all material respects the consolidated financial condition of Borrower and such Subsidiaries and their consolidated results of operations as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified. Such financial statements have been prepared in conformity with Applicable Accounting Standards applied on a consistent basis throughout the periods covered thereby, except as otherwise disclosed therein and, in the case of unaudited, interim financial statements, subject to normal year-end audit adjustments and the exclusion of certain footnotes, and any supporting schedules included in the Exchange Act Documents present fairly in all material respects the information required to be stated therein (subject to the proviso in Section 4.8(a) above with respect to projections);

(c) Since December 31, 2018, there has not occurred or failed to occur any change or event that has had or could reasonably be expected to have, either alone or in conjunction with any other change(s), event(s) or failure(s), a Material Adverse Change, except as has been disclosed in the Exchange Act Documents; and

(d) The Books of Borrower and each of its Subsidiaries in existence immediately prior to the Closing Date contain full, true and correct entries of all dealings and transactions in relation to its business and activities in conformity with Applicable Accounting Standards and all Requirements of Law.

4.9. Solvency. Borrower and its Subsidiaries, on a consolidated basis, are Solvent. Without limiting the generality of the foregoing, there has been no proposal made or resolution adopted by any competent corporate body for the dissolution or liquidation of Borrower, nor do any circumstances exist which may result in the dissolution or liquidation of Borrower.

4.10. Payment of Taxes. All foreign, U.S. federal and state income and other material Tax returns and reports (or extensions thereof) of each Credit Party and each of its Subsidiaries required to be filed by any of them have been timely filed and are correct in all material respects, and all material Taxes which are due and payable by any Credit Party or any of its Subsidiaries and all material assessments, fees and other governmental charges upon any Credit Party or any of its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable except where the validity or amount thereof is being contested in good faith by appropriate proceedings; provided that (a) the applicable Credit Party has set aside on its books adequate reserves therefor in conformity with Applicable Accounting Standards and (b) the failure to pay such Taxes, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.

4.11. Environmental Matters. Neither Borrower nor any of its Subsidiaries nor any of their respective Facilities or operations is subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. There are and, to the Knowledge of Borrower, have been, no conditions, occurrences, or Hazardous Materials Activities that would reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. To the Knowledge of Borrower, no predecessor of Borrower or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, which would reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change (but, for the avoidance of doubt, Borrower has not undertaken any investigation of or made any inquiries to, or relating to, any of its or its Subsidiaries' predecessors), and neither Borrower's nor any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260 270 or any state equivalent, which would reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. No event or condition has occurred or is occurring with respect to any Credit Party relating to any Environmental Law, any Release of Hazardous Materials or any Hazardous Materials Activity that, individually or in the aggregate, has resulted in, or could reasonably be expected to result in, a Material Adverse Change.

4.12. Material Contracts. After giving effect to the consummation of the transactions contemplated by this Agreement, except as described on Schedule 4.12 of the Disclosure Letter, each Material Contract is a valid and binding obligation of the applicable Credit Party and, to the Knowledge of Borrower, each other party thereto, and is in full force and effect, and neither the applicable Credit Party nor, to the Knowledge of Borrower, any other party thereto is in material breach thereof or default thereunder, except where such breach or default (which default has not been cured or waived) could not reasonably be expected to give rise to any right of the applicable counterparty thereto to accelerate such Credit Party's or Subsidiary's obligations thereunder or cancel or terminate such Material Contract or any provision thereof or result in the cancellation, termination or invalidation of such Material Contract or any provision thereof. Except as described on Schedule 4.12 of the Disclosure Letter, no Credit Party or any of its Subsidiaries has received any written notice from any party thereto asserting or, to the Knowledge of Borrower threatening to assert, circumstances that could reasonably be expected to result in the cancellation, termination or invalidation of any Material Contract (or any material provision thereof) or the acceleration of such Credit Party's or Subsidiary's obligations thereunder.

4.13. Regulatory Compliance.

(a) No Credit Party is or is required to be registered as an "investment company" under the Investment Company Act of 1940. Each Credit Party has complied in all material respects with the Federal Fair Labor Standards Act.(b)Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, each Plan is in compliance with the applicable provisions of ERISA, the IRC and other U.S. federal or state Requirements of Law, respectively.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) neither any Credit Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 *et seq.* or 4243 of ERISA with respect to a Multiemployer Plan; and (iii) neither any Credit Party nor any ERISA Affiliate has engaged in a transaction that would be subject to Section 4069 or 4212(c) of ERISA, except, with respect to each of clauses (i), (ii) and (iii) above, as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

4.14. Margin Stock. Neither Borrower nor any of its Subsidiaries is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U of the Federal Reserve Board) or extending credit for the purpose of purchasing or carrying Margin Stock. No Credit Party owns any Margin Stock. Neither Borrower nor any of its Subsidiaries has taken or permitted to be taken any action that might cause any Loan Document to violate Regulation T, U or X of the Federal Reserve Board.

4.15. Subsidiaries. Schedule 4.15 of the Disclosure Letter (a) sets forth the name and jurisdiction of incorporation, organization or formation of Borrower and each of its Subsidiaries and (b) sets forth the ownership interest of Borrower and any other Credit Party in each of their respective Subsidiaries, including the percentage of such ownership.

4.16. Employee Matters. Neither Borrower nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to result in a Material Adverse Change. There is (a) no unfair labor practice complaint pending against Borrower or any of its Subsidiaries or, to the Knowledge of Borrower, threatened in writing against any of them before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is pending against Borrower or any of its Subsidiaries or, to the Knowledge of Borrower, threatened in writing against any of them, (b) no strike or work stoppage in existence or, to the Knowledge of Borrower, threatened in writing involving Borrower or any of its Subsidiaries, and (c) to the Knowledge of Borrower, no union representation question existing with respect to the employees of Borrower or any of its Subsidiaries and, to the Knowledge of Borrower, no union organization activity that is taking place that, in each case specified in clauses (a), (b) and (c) above, individually or taken together with any other case therein specified, could reasonably be expected to result in a Material Adverse Change.

4.17. Full Disclosure. None of the documents, certificates or written statements (excluding any projections and forward-looking statements, estimates, budgets and general economic or industry data of a general nature) furnished or otherwise made available to the Collateral Agent or any Lender by or on behalf of any Credit Party for use in connection with the transactions contemplated hereby (as may be modified or supplemented by other information so furnished promptly after the same becomes available) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein, as of the time when made or delivered, not misleading in light of the circumstances in which the same were made; provided, that, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projections are not a guarantee of financial performance and are subject to uncertainties and contingencies, many of which are beyond the control of Borrower or any Subsidiary, and neither Borrower nor any Subsidiary can give any assurance that such projections will be attained, that actual results may differ in a material manner from such projections and any failure to meet such projections shall not be deemed to be a breach of any representation or covenant herein). To the Knowledge of Borrower, there are no facts (other than matters of a general economic or industry nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change and that have not been disclosed herein or in such other documents, certificates and written statements furnished or made available to the Collateral Agent or any Lender for use in connection with the transactions contemplated hereby.

4.18. FCPA; Patriot Act; OFAC; Export and Import Laws.

(a) None of Borrower, its Subsidiaries or, to the Knowledge of Borrower, any director, officer, agent or employee of Borrower or any Subsidiary of Borrower has (i) used any corporate funds of Borrower or any of its Subsidiaries for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee or any other Person from corporate funds of Borrower or any of its Subsidiaries, (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977 (the “**FCPA**”) or the U.K. Bribery Act (“**UKBA**”) or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment;

(b) (i) The operations of Borrower and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, the Bank Secrecy Act of 1970 (as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001) and the anti-money laundering laws, rules and regulations of each jurisdiction (foreign or domestic) in which Borrower or any of its Subsidiaries is subject to such jurisdiction’s Requirements of Law (collectively, the “**Anti-Money Laundering Laws**”) and (ii) no action, suit or proceeding by or before any Governmental Authority or any arbitrator involving Borrower or any of its Subsidiaries with respect to the Anti-Money Laundering Laws is pending or to the Knowledge of Borrower, threatened in writing;

(c) None of Borrower, its Subsidiaries or, to the Knowledge of Borrower, any director, officer, agent or employee of Borrower or any Subsidiary of Borrower is, or is owned or controlled by any Persons which are, the target or the subject of any sanctions administered and enforced by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”), the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury or any other relevant sanctions authority (collectively “**Sanctions**”);

(d) Borrower will not, directly or, to the Knowledge of Borrower, indirectly through an agent, use any of the proceeds of the Credit Extension, or lend, contribute or otherwise make available such proceeds of the Credit Extensions to any Subsidiary, joint venture partner or other Person, (i) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business, or to obtain any improper advantage, in violation of the FCPA, UKBA or any other applicable anti-corruption laws, (ii) in violation of any Anti-Money Laundering Laws, or (iii) for the purpose of financing the activities of any Person that is the target or the subject of Sanctions or in any country or territory that at the time of such funding, is the subject of Sanctions; and

(e) Borrower and its Subsidiaries are in compliance, in all material respects, with applicable Export and Import Laws.

4.19. Health Care Matters

(a) Compliance with Health Care Laws. Except as set forth on Schedule 4.19(a) of the Disclosure Letter, each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries and each officer, Affiliate, and employee acting on behalf of such Credit Party or any of its Subsidiaries, is in compliance in all material respects with all Health Care Laws.

(b) Compliance with FDA Laws. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, are in compliance in all material respects with all applicable FDA Laws, including the Federal Food Drug and Cosmetic Act (21 U.S.C. § 301 et seq.) and the regulations promulgated thereunder (the “**FDCA**”), in any way relating to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, record keeping, reporting, transport, offer for sale, distribution or sale of any Product in the Territory. Each Product distributed or sold in the Territory at any and all times during the past five (5) years (or, with respect to the Acquisition Products, during the time such Products have actually been distributed or sold by the Borrower) has been manufactured, developed and tested in all material respects in accordance with current FDA Good Manufacturing Practices, FDA Good Clinical Practices and FDA Good Laboratory Practices (as applicable) and, if and to the extent such Product is required to be approved or cleared by the FDA pursuant to the FDCA in order to be legally marketed in the United States for such Product’s intended uses, such Product has been approved or cleared for such intended uses. To the Knowledge of Borrower, no Product that is or has been manufactured, tested, distributed, held or marketed by or on behalf of any Credit Party or any of its Subsidiaries has been adulterated or misbranded.

(c) Compliance with DEA Laws. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, is in compliance in all material respects with all applicable DEA Laws, including the Controlled Substances Act (21 U.S.C. § 801 et seq.) and the regulations promulgated thereunder (the “**CSA**”), in any way relating to any development, manufacture, production, use, commercialization, marketing, importing, storage, record keeping, reporting, transport, offer for sale, distribution or sale of any Product in the Territory. Each Product distributed or sold in the Territory at any and all times during the past five (5) years or, with respect to the Acquisition Products, during the time such Products have actually been distributed or sold by the Borrower) has been (i) stored, transported, imported, offered for sale, documented, secured, and distributed in all material respects in accordance with DEA Laws and any state laws and regulations applicable to controlled substances, and (ii) to the extent such Product is required to be authorized by the DEA pursuant to the CSA, such Product has been so authorized, and no inquiries regarding material issues have been initiated by the DEA.

(d) Material Statements. Within the past five (5) years, neither any Credit Party, nor, to the Knowledge of Borrower, any Subsidiary or any officer, Affiliate or employee of any Credit Party or Subsidiary in its capacity as a Subsidiary or as an officer, Affiliate or employee of a Credit Party or Subsidiary (as applicable), nor, to the Knowledge of Borrower, any agent of any Credit Party or Subsidiary, (i) has made an untrue statement of a material fact or a fraudulent statement to any Governmental Authority, (ii) has failed to disclose a material fact to any Governmental Authority, or (iii) has otherwise committed an act, made a statement or failed to make a statement that, in the case of clauses (i) through (iii) above, at the time such statement or disclosure was made (or, in the case of such failure, should have been made) or such act was committed, would reasonably be expected to constitute a material violation of any applicable Requirements of Law or could invoke the FDA Application Integrity Policy regarding “Fraud, Untrue Statements of Material Facts, Bribery and Illegal Gratuities,” set forth in FDA’s Compliance Policy Guide Sec. 120.100 or any similar policy, in each case as related to any Product.

(e) Proceedings; Audits. Except as has been disclosed in the Exchange Act Documents or as set forth on Schedule 4.19(e) of the Disclosure Letter: (i) there is no Adverse Proceeding pending or, to the Knowledge of Borrower, threatened in writing, against any Credit Party or any of its Subsidiaries relating to any allegations of non-compliance with any Health Care Laws, Data Protection Laws, FDA Laws, DEA Laws or other Requirements of Law; (ii) to the Knowledge of Borrower, there are no facts, circumstances or conditions that, individually or in the aggregate, could reasonably be expected to form the basis for any such Adverse Proceeding; and (iii) there are no Governmental Authority investigations or inquiries (other than routine audits), suits, claims, actions or proceedings pending or, to the Knowledge of Borrower, threatened, against any Credit Party or any of its Subsidiaries with respect to any of the Products or alleging any violation of any such Health Care Law, FDA Law, DEA Law or other applicable Requirements of Law.

(f) Safety Notices. Neither any Credit Party nor any of its Subsidiaries has initiated or otherwise engaged in, either voluntarily or at the request of the FDA or any other Regulatory Agency, any recalls, product suspensions or discontinuations, field notifications, field corrections, safety warnings, “dear doctor” letters, investigator notices, safety alerts or other similar notices of action, including as a result of any Risk Evaluation and Mitigation Strategy proposed or required by the FDA, relating to an alleged lack of safety, efficacy or regulatory compliance of any Product (a “**Safety Notice**”). Neither any Credit Party nor any of its Subsidiaries has received any notice from the FDA or any other Regulatory Agency that such Regulatory Agency has (i) commenced or may initiate any action to withdraw approval of, place sales or marketing restrictions on, request the recall of, or seek a Safety Notice regarding, any of the Products, or (ii) commenced or may initiate any action to enjoin or place restrictions on the manufacture or production of any of the Products. Each Credit Party and each of its Subsidiaries has filed all annual and periodic reports, amendments and safety reports for any Product required to be made by it to any Regulatory Agency.

(g) Preclinical Studies / Clinical Trials. All pre-clinical and clinical studies relating to any of the Products conducted by or on behalf of any Credit Party or any of its Subsidiaries have been, or are being, conducted in compliance with all applicable Requirements of Law, including the requirements of the FDA’s Good Laboratory Practice and Good Clinical Practice requirements, including regulations under 21 C.F.R. Parts 50, 54, 56, 58 and 312, the Animal Welfare Act and applicable experimental protocols, procedures and controls. No clinical trial conducted by or on behalf of any Credit Party or any of its Subsidiaries has been terminated or suspended by any Regulatory Authority and neither any Credit Party nor any of its Subsidiaries has received any notice that the FDA, any other Governmental Authority or any institutional review board, ethics committee or safety monitoring committee has recommended, initiated or threatened to initiate any action to suspend or terminate any clinical trial conducted by or on behalf of any Credit Party or any of its Subsidiaries or to otherwise restrict the preclinical research on or clinical study of any Product. Neither any Credit Party nor any of its Subsidiaries has a reasonable expectation that there are grounds for imposition of a clinical hold, as described in 21 C.F.R. § 312.42.

(h) Advertising / Promotion. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, officers, employees and agents has advertised, promoted, marketed and distributed each of the Products in compliance in all material respects with FDA Laws and other Requirements of Law. Except as set forth on Schedule 4.19(h) of the Disclosure Letter, neither any Credit Party nor, to the Knowledge of Borrower, any of its Subsidiaries, officers, employees or agents has received any notice of or is subject to any civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand letter, warning letter, untitled letter, proceeding or request for information from the FDA or any other Governmental Authority concerning noncompliance with any FDA Laws or other Requirements of Law with regard to advertising, promoting, marketing or distributing any of the Products.

(i) Recordkeeping / Reporting. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries has maintained records relating to the research, development, testing, manufacture, production, handling, labeling, packaging, storage, supply, promotion, distribution, marketing, commercialization, import, export and sale of each of the Products in compliance in all material respects with FDA Laws, DEA Laws and other applicable Requirements of Law, and each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries has submitted to the FDA and other Governmental Bodies in a timely manner all notices and annual or other reports required to be made by it, including adverse experience reports and annual reports, for each of the Products.

(j) Prohibited Transactions; No Whistleblowers. Except as set forth on Schedule 4.19(j) of the Disclosure Letter, within the past six (6) years, to the Knowledge of Borrower, neither any Credit Party, any Subsidiary, any officer, Affiliate or employee of a Credit Party or Subsidiary, nor any other Person acting on behalf of any Credit Party or any Subsidiary, directly or indirectly: (i) has offered or paid any remuneration, in cash or in kind, to, or made any financial arrangements with, any past, present or potential patient, supplier, physician or contractor, in order to illegally obtain business or payments from such Person in material violation of any Health Care Law; (ii) has given or made, or is party to any illegal agreement to give or make, any illegal gift or gratuitous payment of any kind, nature or description (whether in money, property or services) to any past, present or potential patient, supplier, physician or contractor, or any other Person in material violation of any Health Care Law; (iii) has given or made, or is party to any agreement to give or make on behalf of any Credit Party or any of its Subsidiaries, any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift, was a material violation of the laws of any Governmental Authority having jurisdiction over such payment, contribution or gift; (iv) has established or maintained any unrecorded fund or asset for any purpose or made any materially misleading, false or artificial entries on any of its books or records for any reason; or (v) has made, or is party to any agreement to make, any payment to any Person with the intention or understanding that any part of such payment would be in material violation of any Health Care Law. To the Knowledge of Borrower, there are no actions pending or threatened (in writing) against any Credit Party or any of its Subsidiaries or any of their respective Affiliates under any foreign, U.S. federal or state whistleblower statute, including under the False Claims Act of 1863 (31 U.S.C. § 3729 et seq.).

(k) Exclusion. Neither any Credit Party nor, to the Knowledge of Borrower, any Subsidiary or any officer, Affiliate or employee having authority to act on behalf of any Credit Party or any Subsidiary, is or, to the Knowledge of Borrower, has been threatened in writing to be: (i) excluded from any Governmental Payor Program pursuant to 42 U.S.C. § 1320a-7b and related regulations; (ii) “suspended” or “debarred” from selling any products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation relating to debarment and suspension applicable to federal government agencies generally (42 C.F.R. Subpart 9.4), or other U.S. Requirements of Law; (iii) debarred, disqualified, suspended or excluded from participation in Medicare, Medicaid or any other Governmental Payor Program or is listed on the General Services Administration list of excluded parties; (iv) a party to any other action or proceeding by any Governmental Authority that would prohibit the applicable Credit Party or Subsidiary from distributing or selling any Product in the Territory or providing any services to any governmental or other purchaser pursuant to any Health Care Laws; (v) convicted of any crime or, to the Knowledge of Borrower, engaged in any conduct, for which such Person could be debarred, suspended or excluded from participating in any governmental health care program under 42 U.S.C. § 1320a-7 and related regulations or any similar applicable Requirement of Law or program; or (vi) debarred pursuant to 21 U.S.C. § 335a and related regulations.

(l) HIPAA. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, to the extent applicable, is in material compliance with all applicable federal, state and local laws and regulations regarding the privacy, security, and notification of breaches of health information and regarding electronic transactions, including HIPAA, and each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, to the extent applicable, has implemented policies, procedures and training customary in the pharmaceutical industry or otherwise adequate to assure continued compliance and to detect non-compliance. No Credit Party is a “covered entity” as defined in 45 C.F.R. § 160.103 and no Credit Party or any Subsidiary is required to comply with the GDPR.

(m) Corporate Integrity Agreement. Neither any Credit Party or Subsidiary or any of their respective Affiliates, nor any officer, director, managing employee or, to the Knowledge of Borrower, agent (as those terms are defined in 42 C.F.R. § 1001.1001) of any Credit Party or Subsidiary, is a party to or has any ongoing reporting or disclosure obligations under, or is otherwise subject to, any corporate integrity agreement, monitoring agreement, deferred prosecution agreement, consent decree, settlement order or other similar agreements, or any order, in each case imposed by any U.S. Governmental Authority, concerning compliance with any laws, rules or regulations, issued under or in connection with a Governmental Payor Program.

4.20. Regulatory Approvals.

(a) Except as set forth on Schedule 4.20(a) of the Disclosure Letter, each Credit Party and each Subsidiary involved in any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory has all Regulatory Approvals material to the conduct of its business and operations. Each such Regulatory Approval is, as applicable, (i) in full force and effect, (ii) validly registered and on file with the applicable Regulatory Agency, in compliance in all material respects with all filing and maintenance requirements (including any fee requirements) thereof, and is in good standing, valid and enforceable, and (iii) no suspension, revocation, or cancellation of such Regulatory Approval is pending or, to the Knowledge of Borrower, threatened, and, to the Knowledge of Borrower, there is no basis for believing that such Regulatory Approval will not be renewable upon its expiration.

(b) Each Credit Party, each Subsidiary and, to the Knowledge of Borrower, each licensee of a Credit Party or a Subsidiary of any Intellectual Property relating to any Product, is in compliance with, and at all times during the past five (5) years, has complied, in all material respects, with all applicable foreign, U.S. federal, state and local laws, rules and regulations governing the research, development, manufacture, production, use, commercialization, marketing, importing, distribution or sale of any Product in the Territory, including all such regulations promulgated by each applicable Regulatory Agency. No Credit Party or any of its Subsidiaries has received any written notice from any Regulatory Agency alleging or citing action or inaction by any Credit Party or any of its Subsidiaries that would constitute a violation of any applicable foreign, U.S. federal, state or local laws, rules or regulations, including a Warning Letter or Untitled Letter from the FDA, that could reasonably be expected to result in a Material Adverse Change. To the Knowledge of Borrower, there is no act, omission, event or circumstance of which any Credit Party or any of its Subsidiaries is aware that would reasonably be expected to give rise to or form the basis for any civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand letter, warning letter, untitled letter, proceeding or request for information or any liability (whether actual or contingent) for failure to comply with any FDA Laws, DEA Laws, Health Care Laws or other applicable Requirements of Law. Neither any Credit Party or any of its Subsidiaries nor, to the Knowledge of Borrower, any director, officer, employee or contractor of any Credit Party or any of its Subsidiaries, has made any voluntary self-disclosure to any Governmental Authority regarding any potential material non-compliance with any applicable Requirements of Law.

4.21. Supply and Manufacturing.

(a) Except as set forth on Schedule 4.21(a) of the Disclosure Letter, to the Knowledge of Borrower, each Product has at all times (or, in the case of Acquisition Product, since January 9, 2018) been manufactured in sufficient quantities and of a sufficient quality to satisfy then-current demand of such Product in the Territory, without the occurrence of any event causing inventory of such Product to have become exhausted prior to satisfying such demand or any other event in which the manufacture and release to the market of such Product in the Territory does not satisfy such demand. To the Knowledge of Borrower, there is no event or circumstance which would reasonably be expected to adversely affect the ability to satisfy the sales demand for such Product in the Territory budgeted as of the Effective Date.

(b) Except as disclosed in the Exchange Act Documents or set forth on Schedule 4.21(b) of the Disclosure Letter, to the Knowledge of Borrower, (i) no manufacturer (including a contract manufacturer) or producer of any Product has (i) been subject to a Regulatory Agency shutdown, restriction or import or export prohibition, or (ii) received in the past five (5) years or is currently subject to a FDA Form 483 or other written Regulatory Agency notice of inspectional observations, warning letter, untitled letter or request to make changes to any Product that would reasonably be expected to impact any Product with respect to any facility manufacturing or producing such Product for import, distribution or sale in the Territory, and (iii) with respect to each such FDA Form 483 received or other written Regulatory Agency notice (if any), all scientific and technical violations or other issues relating to good manufacturing practice requirements documented therein, and any disputes regarding any such violations or issues, have been corrected or otherwise resolved.

(c) Except as disclosed in Schedule 4.21(c), no Credit Party or, to the Knowledge of Borrower, any of its Subsidiaries has received any notice, written or oral, from any party to any Manufacturing Agreement containing any indication by or written threat of such party to reduce or cease, in any material respect, the supply of Product or the active pharmaceutical ingredient incorporated therein in the Territory through calendar year 2025 (or such earlier date in accordance with the terms and conditions of such Manufacturing Agreement, as applicable).

4.22. Cybersecurity; Data Protection.

(a) Except as set forth on Schedule 4.22(a) of the Disclosure Letter, the information technology systems used in the business of Borrower and its Subsidiaries operate and perform in all material respects as required to permit Borrower and its Subsidiaries to conduct their business as presently conducted. Except as set forth on Schedule 4.22(a) of the Disclosure Letter, Borrower and its Subsidiaries have implemented and maintain a commercially reasonable enterprise-wide privacy and information security program with plans, policies and procedures for privacy, physical and cyber security, disaster recovery, business continuity and incident response, including reasonable and appropriate administrative, technical and physical safeguards to protect information subject to Data Protection Laws as well as information and other materials in which Borrower or any of its Subsidiaries have Intellectual Property rights (including Company IP and, immediately after giving effect to the acquisition of the Current Acquisition IP pursuant to the Acquisition Agreement, Acquisition IP) or nondisclosure obligations, and the information technology systems of Borrower and each of its Subsidiaries, from any unauthorized access, use, control, disclosure, destruction or modification. Except as set forth on Schedule 4.22(a) of the Disclosure Letter, neither Borrower nor any of its Subsidiaries, nor to the Knowledge of Borrower, any vendor of Borrower or any of its Subsidiaries, has suffered any data breaches or other incidents that (i) have resulted in any unauthorized access, acquisition, use, control, disclosure, destruction, or modification of any information subject to Data Protection Laws, any information or other materials subject to non-disclosure obligations or any material Company IP or Current Acquisition IP, or (ii) have resulted in unauthorized access to, control of, or disruption of the information technology systems of Borrower or any of its Subsidiaries. Borrower and each of its Subsidiaries is in material compliance with the requirements of (A) their respective enterprise-wide privacy and information security programs, (B) applicable Data Protection Laws, (C) all Material Contracts regarding the privacy and security of customer, consumer, patient, employee and other personal data, (D) all contractual non-disclosure obligations and (E) their respective published privacy policies. In the past six (6) years, there have not been any third party claims related to, any loss, theft, unauthorized access to, or unauthorized acquisition, modification, disclosure, corruption, destruction, or other misuse of any information subject to Data Protection Laws (including any ransomware incident) that Borrower or any of its Subsidiaries creates, receives, maintains, or transmits.

(b) In the past six (6) years, neither Borrower nor any of its Subsidiaries has received any written notice of any claims, investigations (including investigations by any Governmental Authority), or alleged violations relating to any information subject to Data Protection Laws created, received, maintained or transmitted by Borrower or any of its Subsidiaries.

4.23. Additional Representations and Warranties.

(a) After giving effect to the Term Loans, there is no Indebtedness other than the Permitted Indebtedness described in clauses (a), (b), (m), (o), (q) or (s) of the definition of "Permitted Indebtedness".

(b) There are no Hedging Agreements.

5. AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that, until payment in full of all Obligations (other than inchoate indemnity obligations), each Credit Party shall, and shall cause each of its Subsidiaries to:

5.1. **Maintenance of Existence.** (a) Preserve, renew and maintain in full force and effect its and all its Subsidiaries' legal existence under the Requirements of Law in their respective jurisdictions of organization, incorporation or formation; (b) take all commercially reasonable action to maintain all rights, privileges (including its good standing), permits, licenses and franchises necessary or desirable for it and all of its Subsidiaries in the ordinary course of its business, except in the case of clause (a) (other than with respect to Borrower) and clause (b) above, (i) to the extent that failure to do so could not reasonably be expected to result in a Material Adverse Change or (ii) pursuant to a transaction permitted by this Agreement; and (c) comply with all Requirements of Law of any Governmental Authority to which it is subject, except where the failure to do so could not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Change.

5.2. Financial Statements, Notices. Deliver to the Collateral Agent:

(a) Financial Statements.

(i) Annual Financial Statements. As soon as available, but in any event within ninety (90) days after the end of each fiscal year of Borrower (or such earlier date on which Borrower is required to file a Form 10-K under the Exchange Act, as applicable), beginning with the fiscal year ending December 31, 2019, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated statements of income, cash flows and stockholders' equity for such fiscal year, setting forth in comparative form the figures for the previous fiscal year, all prepared in accordance with Applicable Accounting Standards, with such consolidated financial statements to be audited and accompanied by (x) a report and opinion of Borrower's independent certified public accounting firm of recognized national standing (which report and opinion shall be prepared in accordance with Applicable Accounting Standards and shall not be subject to any qualification as to "going concern" or scope of audit), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries as of the dates and for the periods specified in accordance with Applicable Accounting Standards, and (y) if and only if Borrower is required to comply with the internal control provisions pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 requiring an attestation report of such independent certified public accounting firm, an attestation report of such independent certified public accounting firm as to Borrower's internal controls pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 attesting to management's assessment that such internal controls meet the requirements of the Sarbanes-Oxley Act of 2002; provided, however, that Borrower shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been made available within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC);

(ii) Quarterly Financial Statements. As soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of Borrower (or such earlier date on which Borrower is required to file a Form 10-Q under the Exchange Act, as applicable), beginning with the fiscal quarter ending March 31, 2020, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such fiscal quarter, and the related consolidated statements of income and cash flows and for such fiscal quarter and (in respect of the second and third fiscal quarters of such fiscal year) for the then-elapsed portion of Borrower's fiscal year, setting forth in comparative form the figures for the comparable period or periods in the previous fiscal year, all prepared in accordance with Applicable Accounting Standards, subject to normal year-end audit adjustments and the absence of disclosures normally made in footnotes; provided, however, that Borrower shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been made available within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC). Such consolidated financial statements shall be certified by a Responsible Officer of Borrower as, to his or her knowledge, fairly presenting, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries as of the dates and for the periods specified in accordance with Applicable Accounting Standards consistently applied, and on a basis consistent with the audited consolidated financial statements referred to under Section 5.2(a)(i), subject to normal year-end audit adjustments and the absence of footnotes; provided, however, that such certification by a Responsible Officer of Borrower shall be deemed to have made if a similar certification is required under the Sarbanes-Oxley Act of 2002 and such certification shall have been made available within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC);

(iii) Quarterly Compliance Certificate. Upon delivery (or within five (5) Business Days of any deemed delivery) of financial statements pursuant to Section 5.2(a)(i) and Section 5.2(a)(ii), a duly completed Compliance Certificate signed by a Responsible Officer, certifying, among other things, (i) the compliance of the Credit Parties with the covenants set forth in Section 5.2 and Section 6.15, and (ii) no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto; and

(iv) Information During Event of Default. As promptly as practicable (and in any event within five (5) Business Days of the request therefor), such additional information regarding the business or financial affairs of Borrower or any of its Subsidiaries, or compliance with the terms of this Agreement or any other Loan Documents, as the Collateral Agent may from time to time reasonably request during the existence of any Event of Default (subject to reasonable requirements of confidentiality, including requirements imposed by Requirements of Law or contract; provided that Borrower shall not be obligated to disclose any information that is reasonably subject to the assertion of attorney-client privilege or attorney work-product).

(b) Notice of Defaults or Events of Default, ERISA Events and Material Adverse Changes. Written notice as promptly as practicable (and in any event within five (5) Business Days) after a Responsible Officer of Borrower shall have become aware thereof, of the occurrence of any (i) Default or Event of Default, (ii) ERISA Event or (iii) Material Adverse Change.

(c) Legal Action Notice.

(i) Written notice as promptly as practicable (which shall be deemed given to the extent timely reported in a Form 8-K under the Exchange Act and available on the SEC's EDGAR system (or any successor system adopted by the SEC)) of any legal action, litigation, investigation or proceeding pending or threatened in writing against any Credit Party or any Subsidiary (i) that would reasonably be expected to result in uninsured damages or costs to such Credit Party or such Subsidiary in an amount in excess of the materiality thresholds applied by Borrower in accordance with the Exchange Act and related regulations and standards for purposes of its Exchange Act reporting, or (ii) which alleges potential violations of the Health Care Laws, FDA Laws, DEA Laws or other Requirements of Law or any applicable statutes, rules, regulations, standards, guidelines, policies and orders administered or issued by any foreign Governmental Authority, that, in each case described in clauses (i) and (ii) above, could, individually or taken together with any other such action, litigation, investigation or proceeding, reasonably be expected to result in a Material Adverse Change; and, in each such case, provide such additional information (including any material development therein) as the Collateral Agent may reasonably request in relation thereto; provided that Borrower shall not be obligated to disclose any information that is reasonably subject to the assertion of attorney-client privilege or attorney work-product;

(ii) Without limiting the generality of clause (i) above, prompt written updates (which shall be deemed given to the extent timely reported in the Borrower's periodic reporting under the Exchange Act and available on the SEC's EDGAR system (or any successor system adopted by the SEC)) of the status of any Opioids Case in which Borrower or any of its Subsidiaries has been named as a defendant, regarding, without limitation, the total number of such cases; the jurisdictions in which such cases have been filed, whether any scheduling order has been established and, if so, the applicable dates, and the status of discovery and any motions; and

(iii) Promptly, and in no event later than five (5) Business Days prior to the entry into a settlement agreement with respect to any Opioids Case or Cases (whether or not settled contemporaneously) for which the settlement value would cause the total payment by Borrower or any of its Subsidiaries for Opioids Cases (individually or in the aggregate) to exceed \$5,000,000 in the aggregate, written notice of the material terms of any proposed settlement, including the value and timing of any payment contemplated to be made by Borrower or any of its Subsidiaries.

5.3. Taxes. Timely file all foreign, U.S. federal and state income and other material required Tax returns and reports or extensions therefor and timely pay all material foreign, federal, state and local Taxes, assessments, deposits and contributions imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrue thereon; provided, however, that no such Tax or any claim for Taxes that have become due and payable and have or may become a Lien on any Collateral shall be required to be paid if (a) it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserves therefor have been set aside on its books and maintained in conformity with Applicable Accounting Standards, and (b) solely in the case of a Tax or claim that has or may become a Lien against any Collateral, such contest proceedings conclusively operate to stay the sale or forfeiture of any portion of any Collateral to satisfy such Tax or claim. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income Tax return with any Person (other than Borrower or any of its Subsidiaries) without the Collateral Agent's prior written consent.

5.4. Insurance. Maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons of comparable size engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons of comparable size engaged in the same or similar businesses as Borrower and its Subsidiaries) as are customarily carried under similar circumstances by such other Persons. Subject to Section 5.14, any products liability or general liability insurance maintained in the United States regarding Collateral shall name the Collateral Agent, on behalf of the Lenders and the other Secured Parties, as additional insured or loss payee, as applicable (the additional insured clauses or endorsements for which, in form and substance reasonably satisfactory to the Collateral Agent). So long as no Event of Default shall have occurred and be continuing, the Borrower and its Subsidiaries may retain all or any portion of the proceeds of any insurance of the Borrower and its Subsidiaries (and the Collateral Agent and each Lender shall promptly remit to the Borrower any proceeds with respect to any insurance actually received by it).

5.5. Operating Accounts. In the case of any Credit Party, contemporaneously with the establishment of any new Collateral Account at or with any bank or other depository or financial institution located in the United States, subject such account to a Control Agreement that is reasonably acceptable to the Collateral Agent. For each Collateral Account that each Credit Party at any time maintains, such Credit Party shall cause the applicable bank or other depository or financial institution located in the United States at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect the Collateral Agent's Lien, for the benefit of Lenders and the other Secured Parties, in such Collateral Account in accordance with the terms hereunder, which Control Agreement may not be terminated without the prior written consent of the Collateral Agent. The provisions of the previous two (2) sentences shall not apply to (1) accounts exclusively used for payroll, payroll Taxes and other employee wage and benefit payments to or for the benefit of any Credit Party's employees, (2) zero balance accounts, (3) accounts (including trust accounts) used exclusively for escrow, customs, insurance or fiduciary purposes, (4) merchant accounts, (5) accounts used exclusively for compliance with any Requirements of Law to the extent such Requirements of Law prohibit the granting of a Lien thereon, (6) accounts which constitute cash collateral in respect of a Permitted Lien and (7) any other accounts designated as an Excluded Account by a Responsible Officer of Borrower in writing delivered to the Collateral Agent, the cash balance of which such accounts does not exceed \$10,000,000 in the aggregate at any time (all such accounts in sub-clauses (1) through (7) above, collectively, the "Excluded Accounts"). Notwithstanding the foregoing, the Credit Parties shall have until the date that is ninety (90) days (or such longer period as the Collateral Agent may agree in its sole discretion) following (i) the Closing Date to comply with the provisions of this Section 5.5 with regards to Collateral Accounts (other than Excluded Accounts) of the Credit Parties in existence on the Closing Date (or opened during such 90-day period) and (ii) the closing date of any Acquisition or other Investment to comply with the provisions of this Section 5.5 with regards to Collateral Accounts (other than Excluded Accounts) of the Credit Parties acquired in connection with such Acquisition or other Investment.

5.6. Compliance with Laws. Comply in all respects with the Requirements of Law and all orders, writs, injunctions, decrees and judgments applicable to it or to its business or its assets or properties (including Environmental Laws, ERISA, Anti-Money Laundering Laws, OFAC, FCPA, Health Care Laws, FDA Laws, DEA Laws, Data Protection Laws and the Federal Fair Labor Standards Act, and any foreign equivalents thereof), except, in each case, if the failure to comply therewith could not, individually or taken together with any other such failures, reasonably be expected to result in a Material Adverse Change.

5.7. Protection of Intellectual Property Rights.

(a) Except as could not reasonably be expected to result in a Material Adverse Change, (i) protect, defend and maintain the validity and enforceability of the Company IP and the Acquisition IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory, including defending any future or current oppositions, interference proceedings, reissue proceedings, reexamination proceedings, *inter-partes* review proceedings, post grant review proceedings, cancellation proceedings, injunctions, lawsuits, paragraph IV patent certifications or lawsuits under the Hatch-Waxman Act, hearings, investigations, complaints, arbitrations, mediations, demands, International Trade Commission investigations, decrees, or any other disputes, disagreements, or claims, challenging the legality, validity, enforceability or ownership of any Company IP or Acquisition IP; (ii) maintain the confidential nature of any material trade secrets and trade secret rights used in any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory; and (iii) not allow any Company IP or Acquisition IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory to be abandoned, forfeited or dedicated to the public or any Current Company IP Agreement or Current Acquisition IP Agreement to be terminated by Borrower or any of its Subsidiaries, as applicable, without the Collateral Agent's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that with respect to any such Company IP or Acquisition IP that is not owned by Borrower or any of its Subsidiaries, the obligations in clauses (i) and (iii) above shall apply only to the extent Borrower or any of its Subsidiaries have the right to take such actions or to cause any licensee or other third party to take such actions pursuant to applicable agreements or contractual rights.

(b) Except as Borrower may otherwise determine in its reasonable business or legal judgment, (i) use commercially reasonable efforts, at its (or its Subsidiaries', as applicable) sole expense, either directly or indirectly, with respect to any licensee or licensor under the terms of any Credit Party's (or any of its Subsidiary's) agreement with the respective licensee or licensor, as applicable, to take any and all actions (including taking legal action to specifically enforce the applicable terms of any license agreement) and prepare, execute, deliver and file agreements, documents or instruments which are necessary or desirable to (A) prosecute and maintain the Company IP and Acquisition IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory and (B) diligently defend or assert the Company IP and Acquisition IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory against material infringement, misappropriation, violation or interference by any other Persons and, in the case of Copyrights, Trademarks and Patents within the Company IP, against any claims of invalidity or unenforceability (including by bringing any legal action for infringement, dilution, violation or defending any counterclaim of invalidity or action of a non-Affiliate third party for declaratory judgment of non-infringement or non-interference); and (ii) use commercially reasonable efforts to cause any licensee or licensor of any Company IP or Acquisition IP not to, and such Credit Party shall not, disclaim or abandon, or fail to take any action necessary or desirable to prevent the disclaimer or abandonment of any Company IP or Acquisition IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory.

(c) Except as Borrower may otherwise determine in its reasonable business or legal judgment, (i) protect, defend and maintain market exclusivity for the manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory through the Term Loan Maturity Date, and (ii) use commercially reasonable efforts to not allow for the manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of a generic version of any Product in the Territory before the Term Loan Maturity Date. Borrower agrees to: (x) notify the Collateral Agent in writing of and (y) keep the Collateral Agent informed regarding; and (z) at the reasonable request of the Collateral Agent in writing, consult with and consider in good faith any reasonable comments of the Collateral Agent (provided that Borrower shall not be obligated to disclose any information that is reasonably subject to the assertion of attorney-client privilege or attorney work-product) regarding, in each case of clauses (x), (y) and (z) above, with reasonable detail, any filings in any opposition, interference proceeding, reissue proceeding, reexamination proceeding, *inter-partes* review proceeding, post grant review proceeding, cancellation proceeding, injunction, lawsuit, paragraph IV patent certification or lawsuits under the Hatch-Waxman Act, hearing, investigation, complaint, arbitration, mediation, demand, International Trade Commission investigation, decree, or any other dispute, disagreement or claim, challenging the legality, validity, enforceability or ownership of any Company IP or Acquisition IP.

(d) Provide written notice to the Collateral Agent within thirty (30) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Each Credit Party shall take such commercially reasonable steps as the Collateral Agent requests to obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for (i) any Restricted License to, without giving effect to Section 9-408 of the Code, be deemed "Collateral" and for the Collateral Agent to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) the Collateral Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with the Collateral Agent's rights and remedies under this Agreement and the other Loan Documents.

5.8. Books and Records. Maintain proper Books, in which entries that are full, true and correct in all material respects and are in conformity with Applicable Accounting Standards consistently applied shall be made of all material financial transactions and matters involving the assets, properties and business of such Credit Party (or such Subsidiary), as the case may be.

5.9. Access to Collateral; Audits. Allow the Collateral Agent, or its agents or representatives, at any time after the occurrence and during the continuance of an Event of Default, during normal business hours and upon reasonable advance notice, to visit and inspect the Collateral and inspect, copy and audit any Credit Party's Books. The foregoing inspections and audits shall be at the relevant Credit Party's expense.

5.10. Use of Proceeds. (a) Use the proceeds of the Term Loans solely to fund and pay in accordance with the terms thereof the amounts required under Section 2.05 of the Purchase Agreement, to fund and pay any fees and expenses relating to this Agreement and the transactions contemplated by the Acquisition Agreement and for general corporate purposes, and (b) not use the proceeds of the Term Loans or any other Credit Extensions, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any Margin Stock, for the purpose of extending credit to any other Person to purchase or carry any Margin Stock or for any other purpose that might cause any Term Loan or other Credit Extension to be considered a “purpose credit” within the meaning of Regulation T, U or X of the Federal Reserve Board. If requested by the Collateral Agent, Borrower shall complete and sign Part I of a copy of Federal Reserve Form G-3 referred to in Regulation U and deliver such copy to the Collateral Agent.

5.11. Further Assurances. Promptly upon the reasonable written request of the Collateral Agent, execute, acknowledge and deliver such further documents and do such other acts and things in order to effectuate or carry out more effectively the purposes of this Agreement and the other Loan Documents at its expense, including after the Closing Date taking such steps as are reasonably deemed necessary or desirable by the Collateral Agent to attach, maintain, perfect, protect and enforce its Lien, for the benefit of Lenders and the other Secured Parties, on Collateral securing the Obligations created under the Security Agreement and the other Loan Documents in accordance with the terms of the Security Agreement and the other Loan Documents, subject to Permitted Liens; provided, however, that Credit Parties and their Subsidiaries shall not be required to take any action under laws outside the United States to attach, maintain, protect or perfect any Lien of the Collateral Agent, for the benefit of Lenders and the other Secured Parties, on Collateral.

5.12. Additional Collateral; Guarantors.

(a) From and after the Closing Date, except as otherwise approved in writing by the Collateral Agent, each Credit Party shall cause each of its Subsidiaries (other than Excluded Subsidiaries) to guarantee the Obligations and to cause each such Subsidiary to grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a first priority security interest in and Lien upon, and pledge to the Collateral Agent for the benefit of Lenders and the other Secured Parties, subject to Permitted Liens, all of such Subsidiary’s properties and assets constituting Collateral, whether now existing or hereafter acquired or existing, to secure such guaranty; provided, that such Credit Party’s obligations to cause any Subsidiaries formed or acquired after the Closing Date to take the foregoing actions shall be subject to the timing requirements of Section 5.13. Furthermore, except as otherwise approved in writing by the Collateral Agent, each Credit Party, from and after the Closing Date, shall, and shall cause each of its Subsidiaries to, grant the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a first priority security interest in and Lien upon, and pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, subject to Permitted Liens, the limitations set forth herein and the limitations set forth in the other Loan Documents, all of the Equity Interests (other than Excluded Equity Interests) in each of its Subsidiaries. Subject to Section 5.14, in connection with each pledge of certificated Equity Interests required under the Loan Documents, the Credit Parties shall deliver, or cause to be delivered, to the Collateral Agent, such certificate(s) together with stock powers or assignments, as applicable, properly endorsed for transfer to the Collateral Agent or duly executed in blank, in each case, in form and substance reasonably satisfactory to the Collateral Agent. Subject to Section 5.14, in connection with each pledge of uncertificated Equity Interests required under the Loan Documents, the Credit Parties shall deliver, or cause to be delivered, to the Collateral Agent an executed uncertificated stock control agreement among the issuer, the registered owner and the Collateral Agent, substantially in the form attached as an annex to the Security Agreement.

(b) In the event any Credit Party acquires any fee title to real estate in the U.S. with a fair market value (reasonably determined in good faith by a Responsible Officer of Borrower) in excess of \$5,000,000, unless otherwise agreed by the Collateral Agent, such Person shall execute or deliver, or cause to be executed or delivered, to the Collateral Agent, (i) within sixty (60) days after such acquisition, an appraisal complying with the Financial Institutions Reform, Recovery and Enforcement Act of 1989, (ii) within forty-five (45) days after receipt of notice from the Collateral Agent that such real estate is located in a Special Flood Hazard Area, Federal Flood Insurance, (iii) within sixty (60) days after such acquisition, a fully executed Mortgage, in form and substance reasonably satisfactory to the Collateral Agent, together with an A.L.T.A. lender’s title insurance policy issued by a title insurer reasonably satisfactory to the Collateral Agent, in form and substance (including any endorsements) and in an amount reasonably satisfactory to the Collateral Agent insuring that the Mortgage is a valid and enforceable first priority Lien on the respective property, free and clear of all defects, encumbrances and Liens (other than Permitted Liens), (iv) simultaneously with such acquisition, then-current A.L.T.A. surveys, certified to the Collateral Agent by a licensed surveyor sufficient to allow the issuer of the lender’s title insurance policy to issue such policy without a survey exception and (v) within sixty (60) days after such acquisition, an environmental site assessment prepared by a qualified firm reasonably acceptable to the Collateral Agent, in form and substance satisfactory to the Collateral Agent.

5.13. Formation or Acquisition of Subsidiaries. If Borrower or any of its Subsidiaries at any time after the Closing Date forms or acquires a Subsidiary (including by division), as promptly as practicable but in no event later than thirty (30) days (or such longer period as the Collateral Agent may agree in its sole discretion) after such formation or acquisition: (a) without limiting the generality of clause (d) below, Borrower will cause such Subsidiary (other than an Excluded Subsidiary) to execute and deliver to the Collateral Agent a joinder to the Security Agreement in the form attached thereto and any relevant IP Agreement or other Collateral Documents, as applicable; (b) Borrower will deliver to the Collateral Agent (i) true, correct and complete copies of the Operating Documents of such Subsidiary (other than an Excluded Subsidiary), (ii) a Secretary's Certificate, certifying that the copies of the Operating Documents of such Subsidiary (other than an Excluded Subsidiary) are true, correct and complete (such Secretary's Certificate to be in form and substance reasonably satisfactory to the Collateral Agent) and (iii) a good standing certificate for such Subsidiary (other than an Excluded Subsidiary) certified by the Secretary of State (or the equivalent thereof) of its jurisdiction of organization, incorporation or formation; (c) Borrower will deliver to the Collateral Agent an update to the Perfection Certificate reflecting the formation or acquisition of such Subsidiary (other than an Excluded Subsidiary); and (d) Borrower will cause such Subsidiary to satisfy all requirements contained in this Agreement (including Section 5.12) and each other Loan Document if and to the extent applicable to such Subsidiary. Borrower, Lenders and the Collateral Agent hereby agree that any such Subsidiary (other than an Excluded Subsidiary) shall constitute a Credit Party for all purposes hereunder as of the date of the execution and delivery of the joinder contemplated by clause (a) above. Any document, agreement or instrument executed or issued pursuant to this Section 5.13 shall be a Loan Document.

5.14. Post-Closing Requirements. Borrower will, and will cause each of its Subsidiaries to, take each of the actions set forth on Schedule 5.14 of the Disclosure Letter within the time period prescribed therefor on such schedule (or such longer period as the Collateral Agent may agree in its sole discretion), which shall include, among other things, that (a) notwithstanding anything to the contrary in Section 5.4, the Credit Parties shall have until the date that is thirty (30) days following the Closing Date (or such longer period as the Collateral Agent may agree in its sole discretion) to comply with the provisions of Section 5.4 with regards to naming the Collateral Agent, on behalf of the Lenders and the other Secured Parties, as additional insured or loss payee, on any products liability and general liability insurance maintained in the United States regarding Collateral on the Closing Date, (b) notwithstanding anything to the contrary in Section 5.5, the Credit Parties shall have until the date that is ninety (90) days following the Closing Date (or such longer period as the Collateral Agent may agree in its sole discretion) to comply with the provisions of Section 5.5 with regards to Collateral Accounts of the Credit Parties in existence on the Closing Date or opened during such 90-day period, and (c) notwithstanding anything to the contrary in Section 6.2(b), the Credit Parties shall have until the date that is thirty (30) days following the Closing Date (or such longer period as the Collateral Agent may agree in its sole discretion) to comply with the provisions of Section 6.2(b)(ii) with regards to the location of the primary Books of any Credit Party or any of its Subsidiaries or the location of any material portion of the Collateral as of the Closing Date or during such 30-day period. All representations and warranties and covenants contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to take the actions set forth on Schedule 5.14 of the Disclosure Letter within the time periods set forth therein, rather than elsewhere provided in the Loan Documents, such that to the extent any such action set forth in Schedule 5.14 of the Disclosure Letter is not overdue, the applicable Credit Party shall not be in breach of any representation or warranty or covenant contained in this Agreement or any other Loan Document applicable to such action for the period from the Closing Date until the date on which such action is required to be fulfilled as set forth on Schedule 5.14 of the Disclosure Letter.

5.15. Environmental.

(a) Deliver to the Collateral Agent:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Borrower or any of its Subsidiaries or by independent consultants, governmental authorities or any other Persons, with respect to significant environmental matters at any Facility or with respect to any material Environmental Claims;

(ii) promptly upon a Responsible Officer of Borrower obtaining knowledge of the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws, (B) any remedial action taken by any Credit Party or any other Person in response to (x) any Hazardous Materials Activities, the existence of which, individually or in the aggregate, could reasonably be expected to result in one or more Environmental Claims resulting in a Material Adverse Change, or (y) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, and (C) any Credit Party's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws, provided, that with respect to real property adjoining or in the vicinity of any Facility, Borrower shall have no duty to affirmatively investigate or make any efforts to become or stay informed regarding any such adjoining or nearby properties;

(iii) as soon as practicable following the sending or receipt thereof by any Credit Party, a copy of any and all written communications with respect to (A) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, (B) any Release required to be reported to any federal, state or local governmental or regulatory agency, or (C) any request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether any Credit Party or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change;

(iv) prompt written notice describing in reasonable detail (A) any proposed acquisition of stock, assets, or property by Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to (x) expose Borrower or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to result in a Material Adverse Change or (y) affect the ability of Borrower or any of its Subsidiaries to maintain in full force and effect all material Governmental Approvals required under any Environmental Laws for their respective operations, and (B) any proposed action to be taken by Borrower or any of its Subsidiaries to modify current operations in a manner that, individually or taken together with any other such proposed actions, could reasonably be expected to subject Borrower or any of its Subsidiaries to any additional material obligations or requirements under any Environmental Laws; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Collateral Agent in relation to any matters disclosed pursuant to this Section 5.15(a).

(b) Each Credit Party shall, and shall cause each of its Subsidiaries to, promptly take any and all actions reasonably necessary to

(i) cure any violation of applicable Environmental Laws by Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, and (ii) make an appropriate response to any Environmental Claim against Borrower or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

5.16. Inventory; Returns; Maintenance of Properties. Keep all Inventory in good and marketable condition, free from material defects and otherwise keep all Inventory in material compliance with all applicable FDA Good Manufacturing Practices. Returns and allowances between Borrower and its Account Debtors shall follow Borrower's customary practices as they exist at the Effective Date or any new returns and allowances practices established thereafter in good faith by Borrower. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear, casualty and condemnation excepted, any and all material tangible properties used or useful in its respective business, and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof, except where failure to do so could not reasonably be expected to result in a Material Adverse Change.

6. NEGATIVE COVENANTS

Each Credit Party covenants and agrees that, until payment in full of all Obligations (other than inchoate indemnity obligations), such Credit Party shall not, and shall cause each of its Subsidiaries not to:

6.1. Dispositions. Convey, sell, lease, transfer, assign, covenant not to sue, enter into a coexistence agreement, exclusively or non-exclusively license out, or otherwise dispose of (including any sale-leaseback or any transfer of assets pursuant to a plan of division), directly or indirectly and whether in one or a series of transactions (collectively, "Transfer"), all or any part of its properties or assets constituting Collateral under the Loan Documents (including, for the avoidance of doubt, any Equity Interests constituting Collateral issued by any Subsidiary which are owned or otherwise held by such Credit Party), other than Permitted Transfers (unless otherwise expressly prohibited under Section 6.6(b)).

6.2. Fundamental Changes; Location of Collateral.

(a) Without at least ten (10) days prior written notice to the Collateral Agent, solely in the case of a Credit Party: (i) change its jurisdiction of organization, incorporation or formation, (ii) change its organizational structure or type, (iii) change its legal name, or (iv) change any organizational number (if any) assigned by its jurisdiction of organization, incorporation or formation.

(b) Maintain its primary Books or deliver any material portion of the Collateral to one or more mortgaged or leased locations or one or more warehouses, processors or bailees, as applicable, unless (i) with respect to any new mortgaged or leased location or new warehouse, processor or bailee, such Credit Party has delivered at least fifteen (15) days' prior written notice to the Collateral Agent, which such notice shall in reasonable detail identify such Books or Collateral (as applicable) and indicate the location from which it is being delivered and the location to which it is being delivered (and may be in the form of an update to the Perfection Certificate; provided that any update to the Perfection Certificate by any Credit Party pursuant to this Section 6.2(b)(i) shall not relieve any Credit Party of any other Obligation under this Agreement, including under clause (ii) below), and (ii) subject to Section 5.14, a Collateral Access Agreement for such mortgaged or leased location or such warehouse, processor or bailee governing both such Books or Collateral (as applicable) and the location to which such Books or Collateral (as applicable) has been executed and delivered by all parties thereto (in form and substance reasonably satisfactory to the Collateral Agent).

(c) In the case of Collegium NF, LLC, engage in any business operations (other than (x) being party to the Commercialization Agreement, the ongoing provisions of which after the Closing Date shall be restricted to those identified in the Purchase Agreement, including the license of AccuForm patents on a non-exclusive royalty free basis, and (y) the sublicensing of the AccuForm patents to the Borrower on a non-exclusive royalty free basis) unless and until such Person is made a Guarantor hereunder and a grantor under the Security Agreement in accordance with the terms hereof and thereof.

6.3. Mergers, Liquidations or Dissolutions.

(a) Merge, divide itself into two (2) or more entities, consolidate, liquidate or dissolve, or permit any of its Subsidiaries to merge, divide itself into two (2) or more entities, consolidate, liquidate or dissolve with or into any other Person, except that:

(i) any Subsidiary of Borrower may merge, consolidate, liquidate or dissolve with or into Borrower, provided that Borrower is the surviving entity;

(ii) any Subsidiary of Borrower may merge, consolidate, liquidate or dissolve with or into any other Subsidiary of Borrower, provided that if any party to such merger, consolidation, liquidation or dissolution is a Credit Party then either (A) such Credit Party is the surviving entity or (B) the surviving or resulting entity executes and delivers to the Collateral Agent a joinder to the Security Agreement in the form attached thereto and any relevant IP Agreement or other Collateral Documents, as applicable, and otherwise satisfies the requirements of Section 5.13 substantially contemporaneously with completion thereof, as applicable;

(iii) any Subsidiary of Borrower may divide itself into two (2) or more entities or be dissolved or liquidated, provided that, if such Subsidiary is a Credit Party, the properties and assets of such Subsidiary are allocated or distributed to an existing or newly-formed Credit Party; and

(iv) any Permitted Acquisition or Permitted Investment may be structured as a merger or consolidation.

(b) Make, or permit any of its Subsidiaries to make, Acquisitions outside the ordinary course of business, including any purchase of the assets of any division or line of business of any other Person, other than Permitted Acquisitions or Permitted Investments.

6.4. Indebtedness. Directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness (including any Indebtedness consisting of obligations evidenced by a bond, debenture, note or other similar instrument) that is not Permitted Indebtedness; provided, however, that the accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.4.

6.5. Encumbrances. Except for Permitted Liens, (i) create, incur, allow, or suffer to exist any Lien on any Collateral (or any portion thereof) or all or any part of any Company IP or Acquisition IP that does not constitute Collateral, or (ii) permit (other than pursuant to the terms of the Loan Documents) any Collateral (or any portion thereof) not to be subject to the first priority security interest granted in the Loan Documents or otherwise pursuant to the Collateral Documents, other than, in the case of this clause (ii), as a direct result of any action by the Collateral Agent or any Lender or failure of the Collateral Agent or any Lender to perform an obligation thereof under the Loan Documents.

6.6. No Further Negative Pledges; Negative Pledge.

(a) No Credit Party nor any of its Subsidiaries shall enter into any agreement, document or instrument directly or indirectly prohibiting (or having the effect of prohibiting) or limiting the ability of such Credit Party or Subsidiary to create, incur, assume or suffer to exist any Lien upon any Collateral, whether now owned or hereafter acquired, in favor of the Collateral Agent, for the benefit of Lenders and the other Secured Parties, with respect to the Obligations or under the Loan Documents, other than Permitted Negative Pledges.

(b) Notwithstanding anything to the contrary in Section 6.1 or Section 6.5, no Credit Party will sell, assign, transfer, exchange or otherwise dispose of, or create, incur, allow or suffer to exist any Lien on, any Equity Interests constituting Collateral issued by any Subsidiary which are owned or otherwise held by such Credit Party, except for: (i) Permitted Liens; (ii) transfers between or among Credit Parties, provided that any and all steps as may be required to be taken in order to create and maintain a first priority security interest in and Lien upon such Equity Interests in favor of the Collateral Agent, for the benefit of Lenders and the other Secured Parties, are taken contemporaneously with the completion of any such transfer; and (iii) sales, assignments, transfers, exchanges or other dispositions to qualify directors if required by Requirements of Law or otherwise permitted under this Agreement, provided that such sale, assignment, transfer, exchange or other disposition shall be for the minimum number of Equity Interests as are necessary for such qualification under Requirements of Law.

6.7. Maintenance of Collateral Accounts. No Credit Party shall maintain any Collateral Account in the United States, except pursuant to the terms of Section 5.5 hereof.

6.8. Distributions; Investments.

(a) Pay any dividends or make any distribution or payment on or redeem, retire or purchase any Equity Interests, other than Permitted Distributions.

(b) Directly or indirectly make any Investment, other than Permitted Acquisitions or Permitted Investments.

6.9. No Restrictions on Subsidiary Distributions. No Credit Party nor any of its Subsidiaries shall enter into any agreement, document or instrument directly or indirectly prohibiting (or having the effect of prohibiting) or limiting the ability of any Subsidiary of Borrower to (a) pay dividends or make any other distributions on any of such Subsidiary's Equity Interests owned by Borrower or any other Subsidiary of Borrower, (b) repay or prepay any Indebtedness owed by such Subsidiary to Borrower or any other Subsidiary of Borrower, (c) make loans or advances to Borrower or any other Subsidiary of Borrower, or (d) transfer, lease or license any Collateral to Borrower or any other Subsidiary of Borrower, in each case other than Permitted Subsidiary Distribution Restrictions.

6.10. Subordinated Debt. Make or permit any voluntary or optional prepayment of any Subordinated Debt not otherwise expressly permitted pursuant to the applicable intercreditor, subordination or other similar agreement to which such Subordinated Debt is subject.

6.11. Amendments or Waivers of Organizational Documents. Amend, restate, supplement or otherwise modify, or waive, any provision of its Operating Documents in a manner that could reasonably be expected to result in a Material Adverse Change.

6.12. Compliance.

(a) Become an "investment company" under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose;

(b) No ERISA Affiliate shall cause or suffer to exist (i) any event that would result in the imposition of a Lien on any assets or properties of any Credit Party or a Subsidiary of a Credit Party with respect to any Plan or Multiemployer Plan or (ii) any other ERISA Event, that, in either case, could reasonably be expected to, individually or in the aggregate, result in a Material Adverse Change; or

(c) Permit the occurrence of any other event with respect to any present pension, profit sharing or deferred compensation plan that could reasonably be expected to result in a Material Adverse Change.

6.13. Compliance with Sanctions and Anti-Money Laundering Laws. The Collateral Agent and each Lender hereby notifies each Credit Party that pursuant to the requirements of Sanctions and Anti-Money Laundering Laws, and such Person's policies and practices, the Collateral Agent and each Lender is required to obtain, verify and record certain information and documentation that identifies each Credit Party and its principals, which information includes the name and address of each Credit Party and its principals and such other information that will allow the Collateral Agent and each Lender to identify such party in accordance with Sanctions and Anti-Money Laundering Laws. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries or controlled Affiliates to, directly or indirectly, knowingly enter into any documents or contracts with any Blocked Person. Each Credit Party shall promptly (but in any event within three (3) Business Days) notify the Collateral Agent and each Lender in writing upon any Responsible Officer of Borrower having knowledge that any Credit Party or any Subsidiary or Affiliate of any Credit Party is a Blocked Person or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries or controlled Affiliates to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Sanctions, or (iii) engage in or conspire to engage in any transaction that evades or avoids or violates, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in applicable Sanctions or Anti-Money Laundering Laws.

6.14. Amendments or Waivers of Current Company IP Agreements and Current Acquisition IP Agreements. (a) Waive, amend, cancel or terminate, exercise or fail to exercise, any material rights constituting or relating to any of the Current Company IP Agreements or the Current Acquisition IP Agreements, or (b) breach, default under, or take any action or fail to take any action that, with the passage of time or the giving of notice or both, would constitute a default or event of default under any of the Current Company IP Agreements or the Current Acquisition IP Agreements, in each instance described in clause (a) and (b) above, that could, individually or taken together with any other such waivers, amendments, cancellations, terminations, exercises or failures, reasonably be expected to result in a Material Adverse Change.

6.15. Minimum Revenue. Permit trailing twelve-month Net Sales, tested at the end of each fiscal quarter commencing with the fiscal quarter ending December 31, 2020, to be less than \$200,000,000.

7. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an “**Event of Default**”) under this Agreement:

7.1. Payment Default. Any Credit Party fails to (a) make any payment of any principal of the Term Loans when and as the same shall become due and payable, whether at the due date thereof (including pursuant to Section 2.2(c)) or at a date fixed for prepayment (whether voluntary or mandatory) thereof or by acceleration thereof or otherwise, or (b) within five (5) Business Days after the same becomes due, any payment of interest or premium pursuant to Section 2.2, including any applicable Additional Consideration, Makewhole Amount or Prepayment Premium, or any other Obligations (which five (5) Business Day cure period shall not apply to any such payments due on the Term Loan Maturity Date, such earlier date pursuant to Section 2.2(c)(ii) hereof or the date of acceleration pursuant to Section 8.1(a) hereof). A failure to pay any such interest, premium or Obligations pursuant to the foregoing clause (b) prior to the end of such five (5) Business Day-period shall not constitute an Event of Default (unless such payment is due on the Term Loan Maturity Date, such earlier date pursuant to Section 2.2(c)(ii) hereof or the date of acceleration pursuant to Section 8.1(a) hereof).

7.2. Covenant Default.

(a) The Credit Parties: (i) fail or neglect to perform any obligation in Sections 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.10, 5.12, 5.13 or 5.14 or (ii) violate any covenant in Section 6; or

(b) The Credit Parties fail or neglect to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents on its part to be performed, kept or observed and such failure continues for ten (10) days, after the earlier of the date on which (i) a Responsible Officer becomes aware of such failure and (ii) written notice thereof shall have been given to the Borrower by the Collateral Agent. Cure periods provided under this Section 7.2(b) shall not apply, among other things, to any of the covenants referenced in clause (a) above.

7.3. Material Adverse Change. A Material Adverse Change occurs.

7.4. Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of any Credit Party or of any entity under the control of any Credit Party (including a Subsidiary) in excess of \$10,000,000 on deposit or otherwise maintained with the Collateral Agent, or (ii) a notice of lien or levy is filed against any material portion of the Collateral by any Governmental Authority, and the same under clauses (i) and (ii) above are not, within thirty (30) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, that no Credit Extensions shall be made during any thirty (30) day cure period; or

(b) (i) Any material portion of Collateral is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower and its Subsidiaries from conducting any material part of their business, taken as a whole.

7.5. Insolvency.

(a) An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking: (i) relief in respect of any Credit Party, or of a substantial part of the property of any Credit Party, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Credit Party or for a substantial part of the property or assets of any Credit Party; or (iii) the winding-up or liquidation of any Credit Party, and such proceeding or petition shall continue undismissed or unstayed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(b) Any Credit Party shall: (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (a) above; (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Credit Party or for a substantial part of the property or assets of any Credit Party; (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) wind up or liquidate (except as otherwise expressly permitted hereunder).

7.6. Other Agreements. Any Credit Party fails to pay any Indebtedness (other than the Indebtedness represented by this Agreement and the other Loan Documents) within any applicable grace period after such payment is due and payable (including at final maturity) or after the acceleration of any such Indebtedness by the holder(s) thereof because of a breach or default, if the total amount of such unpaid or accelerated Indebtedness exceeds \$10,000,000, individually or together with any other such unpaid or accelerated Indebtedness.

7.7. Judgments. One or more final, non-appealable judgments, orders, or decrees for the payment of money in an amount in excess of \$10,000,000 (but excluding any final judgments, orders, or decrees for the payment of money that are covered by independent third-party insurance as to which liability has not been denied by such insurance carrier or by an indemnification claim against a solvent and unaffiliated Person that is not a Credit Party as to which such Person has not denied liability for such claim), shall be rendered against one or more Credit Parties and the same are not, within thirty (30) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay.

7.8. Misrepresentations. Any Credit Party or any Person acting for any Credit Party makes or is deemed to make any representation, warranty, or other statement now or later in this Agreement, any other Loan Document or in any writing delivered to the Collateral Agent or any Lender or to induce the Collateral Agent or any Lender to enter this Agreement or any other Loan Document, and such representation, warranty, or other statement is incorrect in any material respect (or, to the extent any such representation, warranty or other statement is qualified by materiality or Material Adverse Change, in any respect) when made or deemed to be made.

7.9. Loan Documents; Collateral. (a) Any material provision of any Loan Document shall for any reason cease to be valid and binding on or enforceable against any Credit Party, or any Credit Party shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or (b) any Collateral Document shall for any reason (other than pursuant to the terms thereof) cease to create a valid security interest in any material portion of the Collateral purported to be covered thereby or such security interest shall for any reason (other than pursuant to the terms of the Loan Documents) cease to be a perfected and first priority security interest in any material portion of the Collateral subject thereto, subject only to Permitted Liens, other than as a direct result of any action by the Collateral Agent or any Lender or failure of the Collateral Agent or any Lender to perform an obligation thereof under the Loan Documents.

7.10. ERISA Event. An ERISA Event occurs that, individually or taken together with any other ERISA Events, results or could reasonably be expected to result in a Material Adverse Change or the imposition of a Lien on any Collateral.

8. RIGHTS AND REMEDIES UPON AN EVENT OF DEFAULT

8.1. Rights and Remedies. While an Event of Default occurs and continues, the Collateral Agent may, or at the request of the Required Lenders, will, without notice or demand:

(a) declare all Obligations (including, for the avoidance of doubt, the Makewhole Amount or Prepayment Premium that is payable pursuant to Section 2.2(e) and Section 2.2(f), as applicable) immediately due and payable (but if an Event of Default described in Section 7.5 occurs all Obligations, including the Makewhole Amount and Prepayment Premium that is payable pursuant to Section 2.2(e) and Section 2.2(f), as applicable, are automatically and immediately due and payable without any action by the Collateral Agent or any Lender), whereupon all Obligations for principal, interest, premium or otherwise (including, for the avoidance of doubt, the Makewhole Amount and Prepayment Premium that is payable pursuant to Section 2.2(e) and Section 2.2(f), as applicable) shall become due and payable by Borrower without presentment, demand, protest or other notice of any kind, which are all expressly waived by the Credit Parties hereby;

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement;

(c) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that the Collateral Agent considers advisable, notify any Person owing Borrower money of the Collateral Agent's security interest, for the benefit of the Lenders and the other Secured Parties, in such funds, and verify the amount of the Collateral Accounts;

(d) make any payments and do any acts it considers necessary or reasonable to protect the Collateral or the Collateral Agent's security interest, for the benefit of Lenders and the other Secured Parties, in the Collateral. Borrower shall assemble the Collateral if the Collateral Agent or the Required Lenders requests and make it available as the Collateral Agent designates or the Required Lenders designate. The Collateral Agent or its agents or representatives may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien that appears to be prior or superior to its security interest, for the benefit of Lenders and the other Secured Parties, and pay all expenses incurred. Borrower grants the Collateral Agent a license to enter and occupy (and for its agents or representatives to enter and occupy) any of its premises, without charge, to exercise any of the Collateral Agent's or any Lender's rights or remedies;

(e) apply to the Obligations (i) any balances and deposits of Borrower it holds, or (ii) any amount held by the Collateral Agent owing to or for the credit or the account of Borrower;

(f) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. With respect to any and all Intellectual Property owned by any Credit Party and included in Collateral, each Credit Party hereby grants to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, as of the Closing Date, a non-exclusive, royalty-free license or other right to use, without charge, such Intellectual Property in advertising for sale and selling any Collateral and, in connection with the Collateral Agent's exercise of its rights under this Section 8.1, Borrower's rights under all licenses and all franchise Contracts inure to the benefit of all Secured Parties. Each Credit Party shall retain the right to control the Collateral Agent's use of its trade names and Trademarks and such trade names and Trademarks, together with the goodwill associated therewith, are and remain the exclusive property of the Credit Parties, and any and all use of the same by the Collateral Agent shall inure to the benefit of the Credit Parties;

(g) place a "hold" on any account maintained with the Collateral Agent or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(h) demand and receive possession of Borrower's Books regarding Collateral; and

(i) exercise all rights and remedies available to the Collateral Agent or any Lender under the Collateral Documents or any other Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

The Collateral Agent and each Lender agrees that in connection with any foreclosure or other exercise of rights under this Agreement or any other Loan Document with respect to any Intellectual Property included in the Collateral, the rights of the licensees under any license of such Intellectual Property will not be terminated, limited or otherwise adversely affected so long as no default exists thereunder in a way that would permit the licensor to terminate such license (commonly termed a non-disturbance). Without limitation to any other provision herein or in any other Loan Document, while an Event of Default occurs and continues, at the Collateral Agent's or the Required Lenders' request, Borrower shall, promptly following the receipt of such request, take such actions as are required or necessary to allow the Collateral Agent to collect, receive, appropriate and realize upon Borrower's rights and interests in, to and under any Current Company IP Agreement or Current Acquisition IP Agreement, including in connection with any foreclosure or other exercise of the Collateral Agent's or any Lender's rights with respect thereto (including, for the avoidance of doubt, using reasonable best efforts to obtain the written consent of any counterparty to the exercise by the Collateral Agent or any Lender of any and all rights and remedies under this Agreement or any other Loan Document with respect to any Current Company IP Agreement or Current Acquisition IP Agreement, in form and substance reasonably satisfactory to the Collateral Agent).

8.2. Power of Attorney. Borrower hereby irrevocably appoints the Collateral Agent and any Related Party thereof as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Collateral Accounts directly with depository banks where the Collateral Accounts are maintained, for amounts and on terms the Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's products liability or general liability insurance policies maintained in the United States regarding Collateral; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of the Collateral Agent or a third party as the Code permits. Borrower hereby appoints the Collateral Agent and any Related Party thereof as its lawful attorney-in-fact to file or record any documents necessary to perfect or continue the perfection of the Collateral Agent's security interest, for the benefit of Lenders and the other Secured Parties, in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and no Lender is under any further obligation to make Credit Extensions hereunder. The foregoing appointment of the Collateral Agent and any Related Party thereof as Borrower's attorney in fact, and all of the Collateral Agent's (or such Related Party's) rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and each Lender's obligation to provide Credit Extensions terminates.

8.3. Application of Payments and Proceeds Upon Default. If an Event of Default has occurred and is continuing, the Collateral Agent shall apply any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Collateral Accounts or disposition of any other Collateral, or otherwise, to the Obligations in such order as the Collateral Agent shall determine in its sole discretion. Any surplus shall be paid to Borrower or other Persons legally entitled thereto; Borrower shall remain liable to Lenders for any deficiency. If the Collateral Agent or any Lender directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, the Collateral Agent or such Lender, as applicable, shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by the applicable Lender(s) of cash therefor.

8.4. Collateral Agent's Liability for Collateral. So long as the Collateral Agent complies with Requirements of Law regarding the safekeeping of the Collateral in the possession or under the control of the Collateral Agent, the Collateral Agent shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; or (c) any act or default of any other Person. In no event shall the Collateral Agent or any Lender have any liability for any diminution in the value of the Collateral for any reason. Borrower bears all risk of loss, damage or destruction of the Collateral.

8.5. No Waiver; Remedies Cumulative. The Collateral Agent's or any Lender's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of the Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Each of the Collateral Agent's and Lender's rights and remedies under this Agreement and the other Loan Documents are cumulative. Each of the Collateral Agent and Lenders has all rights and remedies provided under the Code, by law, or in equity. The exercise by the Collateral Agent or any Lender of one right or remedy is not an election and shall not preclude the Collateral Agent or any Lender from exercising any other remedy under this Agreement or other remedy available at law or in equity, and the waiver by the Collateral Agent or any Lender of any Event of Default is not a continuing waiver. The Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

8.6. Demand Waiver; Makewhole Amount; Prepayment Premium. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by the Collateral Agent on which Borrower is liable. Borrower acknowledges and agrees that if the maturity of all Obligations shall be accelerated pursuant to Section 8.1(a) by reason of the occurrence of an Event of Default, the applicable Makewhole Amount and Prepayment Premium that is payable pursuant to Section 2.2(e) and Section 2.2(f) shall become due and payable by Borrower upon such acceleration, whether such acceleration is automatic or is effected by the Collateral Agent's or any Lender's declaration thereof, as provided in Section 8.1(a), and Borrower shall pay the applicable Makewhole Amount and Prepayment Premium that is payable pursuant to Section 2.2(e) and Section 2.2(f) as compensation to Lenders for the loss of its investment opportunity and not as a penalty, and Borrower waives any right to object thereto in any voluntary or involuntary bankruptcy, insolvency or similar proceeding or otherwise.

9. NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address (if any) indicated below. Any party to this Agreement may change its mailing or electronic mail address or facsimile number by giving all other parties hereto written notice thereof in accordance with the terms of this Section 9.

If to Borrower or any other Credit Party:

Collegium Pharmaceutical, Inc.
100 Technology Center Drive, Suite 300
Stoughton, MA 02072
Attention: Paul Brannelly
Telephone: (781) 713-3699
Email: pbrannelly@collegiumpharma.com

with a copy to:

Collegium Pharmaceutical, Inc.
100 Technology Center Drive, Suite 300
Stoughton, MA 02072
Attention: Shirley Kuhlmann
Telephone: (781) 232-0774
Email: skuhlmann@collegiumpharma.com

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

Pepper Hamilton LLP
3000 Two Logan Square
Philadelphia, PA 19103
Attn: Jen Porter
Telephone: (215) 981-4339
Facsimile: (215) 981-4750
Email: porterj@pepperlaw.com

If to the Collateral Agent:

BioPharma Credit PLC
c/o Beaufort House
51 New North Road
Exeter EX4 4EP
United Kingdom
Attn: Company Secretary
Tel: +44 01 392 477 500
Fax: +44 01 392 253 282
Email: pharmakon@Pharmakonadvisors.com

with copies (which shall not constitute notice) to:

Pharmakon Advisors LP
110 East 59th Street, #3300
New York, NY 10022
Attn: Pedro Gonzalez de Cosio
Phone: +1 (212) 883-2296
Fax: +1 (917) 210-4048
Email: pg@PharmakonAdvisors.com

and

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036-6745
Attn: Geoffrey E. Secol
Phone: (212) 872-8081
Fax: (212) 872-1002
Email: gsecol@akingump.com

If to any Lender:

To the address set forth on Exhibit E attached hereto.

10. CHOICE OF LAW, VENUE, AND JURY TRIAL WAIVER

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. Each party hereto submits to the exclusive jurisdiction of the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Requirements of Law, in such Federal court; provided, however, that nothing in this Agreement shall be deemed to operate to preclude the Collateral Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of the Collateral Agent or any Lender. Each party hereto expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each party hereto hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or *forum non conveniens* and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Each party hereto hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to such party at the address set forth in (or otherwise provided in accordance with the terms of) Section 9 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of such party's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR ALL PARTIES HERETO TO ENTER INTO THIS AGREEMENT. EACH PARTY HERETO HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

11. GENERAL PROVISIONS

11.1. Successors and Assigns.

(a) This Agreement binds and is for the benefit of the parties hereto and their respective successors and permitted assigns.

(b) No Credit Party may transfer, pledge or assign this Agreement or any other Loan Document or any rights or obligations hereunder or thereunder without the prior written consent of each Lender. Subject to clause (d) below, each Lender may at any time sell, transfer, assign or pledge this Agreement or any other Loan Document or any of its rights or obligations hereunder or thereunder, or grant a participation in all or any part of, or any interest in, such Lender's obligations, rights or benefits under this Agreement and the other Loan Documents, including with respect to any Term Loan (or any portion thereof), to any other Lender, any Affiliate of any Lender or any third party (any such sale, transfer, assignment, pledge or grant of a participation, a "**Lender Transfer**").

(c) In the case of a Lender Transfer in the form of a participation granted by any Lender to any third party, (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of its obligations hereunder, (iii) Borrower shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (iv) any agreement or instrument pursuant to which such Lender sells such participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, restatement or other modification hereto, subject, in each case described in clauses (i) through (iv) above, to the terms and conditions of this Agreement. Borrower agrees that each participant shall be entitled to the benefits of Sections 2.5 and 2.6 (subject to the requirements and limitations therein, including the requirements under Section 2.6(d) (it being understood that the documentation required under Section 2.6(d) shall be delivered to the applicable Lender)) to the same extent as if it were a Person that had acquired its interest by assignment pursuant to clause (b) above; provided that, with respect to any participation, such participant shall not be entitled to receive any greater payment under Sections 2.5 or 2.6 than the applicable Lender (i.e., the party that participated the interest) would have been entitled to receive, except to the extent of any entitlement to receive a greater payment resulting from a Change in Law that occurs after such participant acquired the applicable participation.

(d) No Lender shall make a Lender Transfer to a Competitor of Borrower, unless an Event of Default has occurred and is continuing.

(e) The Collateral Agent shall record any Lender Transfer in the Register. Each Lender shall provide Borrower and the Collateral Agent with written notice of a Lender Transfer delivered no later than five (5) Business Days prior to the date on which such Lender Transfer is consummated. For the avoidance of doubt, if any Lender sells a participation, such Lender shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each participant and principal amounts (and stated interest) of each participant's interest in the Term Loan(s) or other obligations under the Loan Documents (the "**Participant Register**"); provided, however, that such Lender shall have no obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(b) of the Treasury Regulations (or any amended or successor version thereof), or as otherwise required thereunder. The entries in the Participant Register shall be conclusive absent manifest error, and the Collateral Agent and each Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(f) Any attempted transfer, pledge or assignment of this Agreement or any other Loan Document or any rights or obligations hereunder or thereunder in violation of this Section 11.1 shall be null and void *ab initio* and of no effect.

11.2. Indemnification.

(a) Each of the Credit Parties agrees to indemnify and hold harmless each of the Collateral Agent, Lenders and its and their respective Affiliates (and its or their respective successors and assigns) and each manager, member, partner, controlling Person, director, officer, employee, agent or sub-agent, advisor and affiliate thereof (each such Person, an "**Indemnified Person**") from and against any and all Indemnified Liabilities; provided, however, that: (i) no Credit Party shall have any obligation to any Indemnified Person hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the bad faith, gross negligence or willful misconduct of that Indemnified Person (or its Affiliates or controlling Persons or their respective directors, officers, managers, partners, members, agents, sub-agents or advisors), as determined by a final, non-appealable judgment of a court of competent jurisdiction; (ii) no Credit Party shall have any obligation to any Indemnified Person hereunder with respect to any Indemnified Liabilities if and to the extent such Indemnified Liabilities arise from a material breach of any obligation of such Indemnified Person hereunder; (iii) no Credit Party shall have any obligation to any Indemnified Person hereunder with respect to any Indemnified Liabilities if and to the extent such Indemnified Liabilities arise from any claim by one Indemnified Person against another Indemnified Person that does not relate to any act or omission of any Credit Party; and (iv) no Credit Party shall be liable for any settlement of any claim or proceeding effected by any Indemnified Person without the prior written consent of such Credit Party (which consent shall not be unreasonably withheld, conditioned or delayed), but if settled with such consent or if there shall be a final judgment against an Indemnified Person, each of the Credit Parties shall, jointly and severally with each other Credit Parties, indemnify and hold harmless such Indemnified Person from and against any loss or liability by reason of such settlement or judgment in the manner set forth in this Agreement. This Section 11.2(a) shall not apply with respect to Taxes other than any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, costs, expenses and disbursements arising from any non-Tax claim.

(b) To the extent permitted by Requirements of Law, no party to this Agreement shall assert, and each party to this Agreement hereby waives, any claim against any other party hereto (and its or their successors and assigns), and each manager, member, partner, controlling Person, director, officer, employee, agent or sub-agent, advisor and affiliate thereof, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, arising out of, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, the Term Loans or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each party to this Agreement hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(c) Any action taken by any Credit Party under or with respect to any Loan Document, even if required under any Loan Document or at the request of the Collateral Agent or any Lender, shall be at the expense of such Credit Party, and neither the Collateral Agent nor any Secured Party shall be required under any Loan Document to reimburse any Credit Party or any Subsidiary of any Credit Party therefor except as expressly provided therein. In addition, and without limiting the generality of Section 2.4, Borrower agrees to pay or reimburse upon demand each of the Collateral Agent and Lenders (and their respective successors and assigns) and each of their respective Related Parties for any and all fees, expenses and disbursements of the kind or nature described in clause (i) of the definition of "Lender Expenses" incurred by it.

11.3. Severability of Provisions. In case any provision in or obligation hereunder or under any other Loan Document 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.

11.4. Correction of Loan Documents. The Collateral Agent or Required Lenders may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties hereto so long as the Collateral Agent or Required Lenders, as applicable, provides the Credit Parties and the other parties hereto with written notice of such correction and allows the Credit Parties at least ten (10) days to object to such correction in writing delivered to the Collateral Agent and each Lender. In the event of such objection, such correction shall not be made except by an amendment to this Agreement in accordance with Section 11.5.

11.5. Amendments in Writing; Integration.

(a) No amendment, restatement or modification of any provision of this Agreement or any other Loan Document, or waiver, discharge or termination of any obligation hereunder or thereunder, no approval or consent hereunder or thereunder (including any consent to any departure by Borrower or any other Credit Party herefrom or therefrom), shall in any event be effective unless the same shall be in writing and signed by Borrower (on its own behalf and on behalf of each other Credit Party) and the Required Lenders; provided, however, that no such amendment, restatement, modification, waiver, discharge, termination, approval or consent shall, unless in writing and signed by the Collateral Agent and the Required Lenders, affect the rights or duties of, or any amounts payable to, the Collateral Agent under this Agreement or any other Loan Document. Any such waiver, approval or consent granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver, approval or consent.

(b) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations among the parties hereto about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

11.6. Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

11.7. Survival. All covenants, representations and warranties made in this Agreement continue in full force and effect until all Obligations (other than inchoate indemnity obligations and any other obligations that, by their terms, are to survive the termination of this Agreement) have been paid in full and satisfied. The obligation of Borrower or any other the Credit Parties in Section 2.4 to pay or reimburse Lender Expenses, in Section 2.6 with respect to Taxes and withholding and in Section 11.2 to indemnify Indemnified Persons shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

11.8. Confidentiality. Any information regarding the Credit Parties and their Subsidiaries and their businesses provided to the Collateral Agent or any Lender by or on behalf of any Credit Party pursuant to the Loan Documents shall be deemed "Confidential Information"; provided, however, that Confidential Information does not include information that is either: (i) in the public domain or in the possession of the Collateral Agent, any Lender or any of their respective Affiliates prior to the disclosure hereunder thereto, or becomes part of the public domain after the disclosure hereunder thereto, other than as a result of a breach by the Collateral Agent, any Lender or any of their respective Affiliates of the obligations under this Section 11.8; or (ii) disclosed to the Collateral Agent, any Lender or any of their respective Affiliates by a third party if the Collateral Agent, such Lender or such Affiliate, as applicable, does not know that the third party is prohibited from disclosing the information. Neither the Collateral Agent nor any Lender shall disclose any Confidential Information to a third party or use Confidential Information for any purpose other than the exercise of its rights and the performance of its duties or obligations under the Loan Documents. The foregoing in this Section 11.8 notwithstanding, the Collateral Agent and each Lender may disclose Confidential Information: (a) to any of its Subsidiaries or Affiliates; (b) to prospective transferees, purchasers or participants of any interest in the Credit Extensions (including, for the avoidance of doubt, in connection with any proposed Lender Transfer); (c) as required by law, regulation, subpoena, or other order, provided, that (x) prior to any disclosure under this clause (c), the Collateral Agent or such Lender, as applicable, agrees to endeavor to provide Borrower with prior written notice thereof and with respect to any law, regulation, subpoena or other order, to the extent that the Collateral Agent or such Lender is permitted to provide such prior notice to Borrower pursuant to the terms hereof, and (y) any disclosure under this clause (c) shall be limited solely to that portion of the Confidential Information as may be specifically compelled by such law, regulation, subpoena or other order; (d) to the extent requested by regulators having jurisdiction over the Collateral Agent or such Lender or as otherwise required in connection with the Collateral Agent's or such Lender's examination or audit by such regulators; (e) as the Collateral Agent or such Lender considers reasonably necessary in exercising remedies under the Loan Documents; (f) to third-party service providers of the Collateral Agent or such Lender; and (g) to any of the Collateral Agent's or such Lender's Related Parties; provided, however, that the third parties to which Confidential Information is disclosed pursuant to clauses (a), (b), (f) and (g) are bound by obligations of confidentiality and non-use that are no less restrictive than those contained herein.

The provisions of this Section 11.8 shall survive the termination of this Agreement.

11.9. Attorneys' Fees, Costs and Expenses. In any action or proceeding between any Credit Party and the Collateral Agent or any Lender arising out of or relating to the Loan Documents, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

11.10. Right of Set-Off. In addition to any rights now or hereafter granted under Requirements of Law and not by way of limitation of any such rights, upon the occurrence of an Event of Default and at any time thereafter during the continuance of any Event of Default, each Lender is hereby authorized by each Credit Party at any time or from time to time, without prior notice to any Credit Party, any such notice being hereby expressly waived by Borrower (on its own behalf and on behalf of each other Credit Party), to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Lender hereunder and under the other Loan Documents, including all claims of any nature or description arising out of or connected hereto or with any other Loan Document, irrespective of whether or not (a) the Collateral Agent or such Lender shall have made any demand hereunder or (b) the principal of or the interest on the Term Loans or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured. Each Lender agrees promptly to notify Borrower and the Collateral Agent after any such set off and application made by such Lender; provided, that the failure to give such notice shall not affect the validity of such set off and application.

11.11. Marshalling; Payments Set Aside. Neither the Collateral Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to any Lender, or the Collateral Agent or any Lender enforces any Liens or exercises its rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

11.12. Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any Requirements of Law, including any state law based on the Uniform Electronic Transactions Act.

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

11.14. Construction of Agreement. The parties hereto mutually acknowledge that they and their respective attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty, this Agreement shall be construed without regard to which of the parties hereto caused the uncertainty to exist.

11.15. Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) except as expressly provided in Section 11.2(a), confer any benefits, rights or remedies under or by reason of this Agreement on any Persons other than the express parties to it and their respective successors and permitted assigns; (b) relieve or discharge the obligation or liability of any Person not an express party to this Agreement; or (c) give any Person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

11.16. No Advisory or Fiduciary Duty. The Collateral Agent and each Lender may have economic interests that conflict with those of the Credit Parties. Each Credit Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender or the Collateral Agent, on the one hand, and such Credit Party, its Subsidiaries, and any of their respective stockholders or affiliates, on the other hand. Each Credit Party acknowledges and agrees that (i) the transactions contemplated by the Loan Documents are arm's-length commercial transactions between each Lender and the Collateral Agent, on the one hand, and such Credit Party, its Subsidiaries and their respective affiliates, on the other hand, (ii) in connection therewith and with the process leading to such transaction, the Collateral Agent and each Lender is acting solely as a principal and not the advisor, agent or fiduciary of such Credit Party, its Subsidiaries or their respective affiliates, management, stockholders, creditors or any other Person, (iii) neither the Collateral Agent nor any Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party, its Subsidiaries or their respective affiliates with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether the Collateral Agent or any Lender or any of their respective affiliates has advised or is currently advising such Credit Party, its Subsidiaries or their respective affiliates on other matters) or any other obligation to such Credit Party, its Subsidiaries or their respective affiliates except the obligations expressly set forth in the Loan Documents and (iv) each Credit Party, its Subsidiaries and their respective affiliates have consulted their own legal and financial advisors to the extent each deemed appropriate. Each Credit Party further acknowledges and agrees that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit Party agrees that it will not claim that the Collateral Agent or any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party, its Subsidiaries or their respective affiliates in connection with such transaction or the process leading thereto.

12. COLLATERAL AGENT

12.1. Appointment and Authority. Each of the Lenders hereby irrevocably appoints BioPharma Credit PLC to act on its behalf as the Collateral Agent hereunder and under the other Loan Documents and authorizes the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except for the first two sentences of Section 12.6 and the penultimate paragraph of Section 12.8, the provisions of this Section 12 are solely for the benefit of the Collateral Agent and the Lenders, and neither Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions. Subject to Section 12.8 and Section 11.5, any action required or permitted to be taken by the Collateral Agent hereunder shall be so taken with the prior approval of the Required Lenders, except for such actions as are permitted in the Loan Documents to be taken by the Collateral Agent.

12.2. Rights as a Lender. The Person serving as the Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Collateral Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Collateral Agent hereunder in its individual capacity. Such Person and its Affiliates may lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Collateral Agent hereunder and without any duty to account therefor to the Lenders.

12.3. Exculpatory Provisions.

(a) The Collateral Agent shall not have any duties or obligations to the Lenders except those expressly set forth herein and in the other Loan Documents to which it is a party. Without limiting the generality of the foregoing, with respect to the Lenders, the Collateral Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents to which it is a party that the Collateral Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in such other Loan Documents), provided that the Collateral Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Collateral Agent to liability or that is contrary to any Loan Document or Requirements of Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents to which it is a party, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Collateral Agent or any of its Affiliates in any capacity.

(b) The Collateral Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Collateral Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 11.5) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Collateral Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Collateral Agent in writing by Borrower or a Lender.

(c) The Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 3 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Collateral Agent.

12.4. Reliance by Collateral Agent. The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

12.5. Delegation of Duties. The Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section 12 shall apply to any such sub-agent and to the Related Parties of the Collateral Agent and any such sub-agent. The Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

12.6. Resignation of Collateral Agent. The Collateral Agent may at any time give notice of its resignation to the Lenders and Borrower. Upon the receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with Borrower so long as no Default or Event of Default has occurred and is continuing, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Collateral Agent gives notice of its resignation, then the retiring Collateral Agent may, on behalf of the Lenders, appoint a successor Collateral Agent; provided that, whether or not a successor has been appointed or has accepted such appointment, such resignation shall become effective upon delivery of the notice thereof. Upon the acceptance of a successor's appointment as Collateral Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Collateral Agent, and the retiring Collateral Agent shall be discharged from all of its duties and obligations under the Loan Documents (if not already discharged therefrom as provided above in this Section 12.6), other than its obligations under Section 11.8. After the retiring Collateral Agent's resignation, the provisions of this Section 12 and Section 10 shall continue in effect for the benefit of such retiring Collateral Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Collateral Agent was acting as Collateral Agent. Upon any resignation by the Collateral Agent, all payments (if any), communications and determinations provided to be made by, to or through the Collateral Agent shall instead be made by, to or through each Lender (in the case of such payments and communications) or the Required Lenders (in the case of such determinations) directly, until such time as a Person accepts an appointment as Collateral Agent in accordance with this Section 12.6.

12.7. Non-Reliance on Collateral Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Collateral Agent or any other Lender or any of their respective Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and make Credit Extensions hereunder. Each Lender also acknowledges that it will, independently and without reliance upon the Collateral Agent or any other Lender or any of their respective Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

12.8. Collateral and Guaranty Matters. Each Lender agrees that any action taken by the Collateral Agent or the Required Lenders in accordance with the provisions of this Agreement or of the other Loan Documents, and the exercise by the Collateral Agent or Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Without limiting the generality of the foregoing, the Lenders irrevocably authorize the Collateral Agent, at its option and in its discretion, and the Collateral Agent agrees:

(a) to release any Lien on any property granted to or held by the Collateral Agent under any Collateral Document (i) upon payment in full of the Obligations (other than inchoate indemnity obligations), (ii) that is sold, transferred, disposed or to be sold, transferred, disposed as part of or in connection with any sale, transfer or other disposition (other than any sale to a Credit Party) permitted hereunder, (iii) subject to Section 11.5, if approved, authorized or ratified in writing by the Required Lenders, or (iv) to the extent such property is owned by a Guarantor upon the release of such Guarantor from its obligations under the Loan Documents pursuant to clause (c) below;

(b) to subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (d), (i), (n), (o), (q) and (t) of the definition of "Permitted Liens" (solely with respect to modifications, replacements, extensions or renewals of Liens permitted under clause (d), (i), (n), (o) and (q) of the definition of "Permitted Liens");

(c) to release any Guarantor from its obligations under the Loan Documents if such Person ceases to be a Subsidiary (or becomes an Excluded Subsidiary) as a result of a transaction permitted hereunder or upon payment in full of the Obligations (other than inchoate indemnity obligations);

(d) to enter into non-disturbance and similar agreements in connection with the licensing of Intellectual Property permitted pursuant to the terms of this Agreement; and

(e) to enter into a subordination, intercreditor, or other similar agreement with respect to any Indebtedness that constitutes Subordinated Debt to the extent such Subordinated Debt is permitted under the definition of "Permitted Indebtedness".

Upon request by the Collateral Agent at any time the Required Lenders will confirm in writing the Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Security Agreement pursuant to this Section 12.8.

In each case specified in this Section 12.8, the Collateral Agent will (and each Lender irrevocably authorizes the Collateral Agent to), at Borrower's expense: (A) deliver to Borrower any Collateral in the Collateral Agent's possession in connection with the release of the Collateral Agent's Lien thereon; and (B) execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request (i) to evidence the release or subordination of such item of Collateral from the Liens and security interests granted under the Collateral Documents, (ii) to enter into non-disturbance or similar agreements in connection with the licensing of Intellectual Property, (iii) to enter into a subordination, intercreditor, or other similar agreement with respect to any Indebtedness that constitutes Subordinated Debt to the extent such Subordinated Debt is permitted under the definition of "Permitted Indebtedness" or (iv) to evidence the release of any Guarantor from its obligations under the Loan Documents, in each case, in accordance with the terms and conditions of the Loan Documents (including this Section 12.8) and in form and substance reasonably acceptable to the Collateral Agent.

Without limiting the generality of Section 12.10 below, the Collateral Agent shall deliver to the Lenders notice of any action taken by it under this Section 12.8 promptly after the taking thereof; provided that delivery of or failure to deliver any such notice shall not affect the Collateral Agent's rights, powers, privileges and protections under this Section 12.

12.9. Reimbursement by Lenders. To the extent that Borrower for any reason fails to indefeasibly pay any amount required under Section 2.4 to be paid by it to the Collateral Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Collateral Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's *pro rata* share (based upon the percentages as used in determining the Required Lenders as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, damage, liability or related expense, as the case may be, was incurred by or asserted against the Collateral Agent (or any such sub-agent) in its capacity as such or against any Related Party of any of the foregoing acting for the Collateral Agent (or any sub-agent) in connection with such capacity.

12.10. Notices and Items to Lenders. The Collateral Agent shall deliver to the Lenders each notice, report, statement, approval, direction, consent, exemption, authorization, waiver, certificate, filing or other item received by it pursuant to this Agreement or any other Loan Document (including any item received by it pursuant to Section 3 or set forth on Schedule 5.14 of the Disclosure Letter); provided, that any delivery of or failure to deliver any such notice, report, statement, approval, direction, consent, exemption, authorization, waiver, certificate, filing or item shall not otherwise alter or effect the rights of the Lenders or the Collateral Agent under this Agreement or any other Loan Document or the validity of such item. In addition, to the extent the Collateral Agent or the Required Lenders deliver any notices, approvals, authorizations, directions, consents or waivers to Borrower pursuant to this Agreement or any other Loan Document, the Collateral Agent or the Required Lenders, as applicable, will also deliver such notice, approval, authorization, direction, consent or waiver to the other Lenders on or about the same time such notice, approval, authorization, direction, consent or waiver is provided to Borrower; provided, that the delivery of or failure to deliver such notice, approval, authorization, direction, consent or waiver to the other Lenders shall not in any way effect the obligations of Borrower, or the rights of the Collateral Agent or the Required Lenders, in respect of such notice, approval, authorization, direction, consent or waiver or the validity thereof.

13. **DEFINITIONS**

13.1. Definitions. For the purposes of and as used in the Loan Documents: (a) references to any Person include its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities; (b) except as the context otherwise requires (including to the extent otherwise expressly provided in any Loan Document), (i) references to any law, statute, treaty, order, policy, rule or regulation include any amendments, supplements and successors thereto and (ii) references to any contract, agreement, instrument or other document include any amendments, restatements, supplements or modifications thereto or thereof from time to time to the extent permitted by the provisions thereof; (c) the word “shall” is mandatory; (d) the word “may” is permissive; (e) the word “or” has the inclusive meaning represented by the phrase “or”; (f) the words “include”, “includes” and “including” are not limiting; (g) the singular includes the plural and the plural includes the singular; (h) numbers denoting amounts that are set off in parentheses are negative unless the context dictates otherwise; (i) each authorization herein shall be deemed irrevocable and coupled with an interest; (j) all accounting terms shall be interpreted, and all determinations relating thereto shall be made, in accordance with Applicable Accounting Standards; (k) references to any time of day shall be to New York time; (l) the words “herein”, “hereof”, “hereby”, “hereto” and “hereunder” refer to this Agreement as a whole; and (m) unless otherwise expressly provided, references to specific sections, articles, clauses, sub-clauses, annexes and exhibits are to this Agreement and references to specific schedules are to the Disclosure Letter. As used in this Agreement, the following capitalized terms have the following meanings:

“**Account**” means any “account” as defined in the Code with such additions to such term as may hereafter be made, and includes all accounts receivable, book debts, and other sums owing to Credit Parties.

“**Account Debtor**” means any “account debtor” as defined in the Code with such additions to such term as may hereafter be made.

“**Acquisition**” means (a) any Stock Acquisition, or (b) any Asset Acquisition.

“**Acquisition Agreement**” means, collectively, (a) the Asset Purchase Agreement between Borrower and Assertio Therapeutics, Inc., a Delaware corporation, executed and delivered by all parties thereto on or before the Closing Date, including, for the avoidance of doubt, the disclosure schedules prepared and delivered by the parties thereto in accordance therewith (the “**Purchase Agreement**”), (b) the Services Agreement (as defined in the Purchase Agreement) executed and delivered by all parties thereto in accordance with the Purchase Agreement, (c) the Escrow Agreement (as defined in the Purchase Agreement) executed and delivered by all parties thereto in accordance with the Purchase Agreement, and (d) any other material contract or agreement delivered in accordance with the Purchase Agreement or in furtherance of the transactions contemplated by the Purchase Agreement (including the Bill of Sale, Assignment and Assumption Agreement, IP Assignments and Purchaser FDA Transfer Letters (as each such term is defined in the Purchase Agreement)).

“**Acquisition IP**” means any and all of the following, as they exist throughout the world: (a) Current Acquisition IP; (b) improvements, continuations, continuations-in-part, divisions, provisionals or any substitute applications, any patent issued with respect to any of the Current Acquisition IP, any reissue, reexamination, renewal or patent term extension or adjustment (including any supplementary protection certificate) of any such patent, and any confirmation patent or registration patent or patent of addition based on any such patent, and all foreign counterparts of any of the foregoing; (c) trade secrets or trade secret rights, including any rights to unpatented inventions, know-how, show-how and operating manuals, in each case, specifically relating to any Acquisition Product in the Territory; (d) any and all IP Ancillary Rights specifically relating to any of the foregoing; and (e) regulatory filings, submissions and approvals related to any Acquisition Product.

“**Acquisition Products**” means, collectively, Nucynta® ER, Nucynta® Oral Solution and Nucynta® Tablets.

“**Additional Consideration**” is defined in [Section 2.7\(b\)](#).

“**Adverse Proceeding**” means any action, suit, proceeding, hearing (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Credit Party or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the Knowledge of Borrower, threatened against or adversely affecting any Credit Party or any of its Subsidiaries or any property of any Credit Party or any of its Subsidiaries.

“**Affiliate**” means, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company or limited liability partnership, that Person’s managers and members. As used in this definition, “control” means (a) direct or indirect beneficial ownership of at least fifty percent (50%) (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) of the voting share capital or other equity interest in a Person or (b) the power to direct or cause the direction of the management of such Person by contract or otherwise. In no event shall the Collateral Agent or any Lender be deemed to be an Affiliate of Borrower or any of its Subsidiaries.

“**Agreement**” is defined in the preamble hereof.

“**Alternate Benchmark Rate**” means: (a) in the case of a LIBOR Rate Transition Event, the alternate rate of interest to the three-month LIBOR Rate established by the Required Lenders and Borrower that gives due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the relevant Governmental Authority or (ii) any evolving or then-prevailing market convention for determining a rate of interest for Dollar-denominated credit facilities in the United States at such time; or (b) in the case of an Early Opt-In Determination, the alternate rate of interest to the three-month LIBOR Rate that has been determined by the Collateral Agent or the Required Lenders, as applicable.

“**Alternate Benchmark Rate Start Date**” means (a) in the case of a LIBOR Rate Transition Event, the earlier of (i) the applicable LIBOR Rate Replacement Date and (ii) if such LIBOR Rate Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than ninety (90) days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Determination, the date specified by the Collateral Agent by notice to Borrower and Lenders.

“**Anti-Money Laundering Laws**” is defined in [Section 4.18\(b\)](#).

“**Applicable Accounting Standards**” means with respect to Borrower and its Subsidiaries, generally accepted accounting principles in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination, consistently applied.

“**Applicable Percentage**” means, with respect to each Lender at any time of determination, the percentage equal to a fraction, the numerator of which is: (a) on or prior to the Closing Date, the amount of such Lender’s Term Loan Commitment at such time and the denominator of which is the Term Loan Amount at such time; and (b) after the Closing Date, the outstanding principal amount of such Lender’s portion of the Term Loans at such time, and the denominator of which is the aggregate outstanding principal amount of the Term Loans at such time.

“**ASC**” is defined in [Section 1](#).

“**Asset Acquisition**” means, with respect to Borrower or any of its Subsidiaries, any purchase, inbound license or other acquisition of any properties or assets (other than assets used in the ordinary course of business consistent with past practice) of any other Person (including any purchase or other acquisition of any business unit, line of business or division of such Person or all or substantially all of the assets of such Person). For the avoidance of doubt, “Asset Acquisition” includes any co-promotion or co-marketing arrangement pursuant to which Borrower or any Subsidiary acquires rights to promote or market the products of another Person.

“**Assumed Liabilities**” has the meaning assigned to such term in the Purchase Agreement.

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

“**Blocked Person**” means an individual or entity that is, or is owned or controlled by individuals or entities that are: (i) the subject or target of any sanctions administered or enforced by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority, or (ii) located, organized or resident in a country or territory that is the subject of Sanctions, including currently, Crimea, Cuba, Iran, North Korea, and Syria.

“**Board of Directors**” means, with respect to any Person, (i) in the case of any corporation, the board of directors of such Person, (ii) in the case of any limited liability company, the board of managers of such Person, or if there is none, the Board of Directors of the managing member of such Person, (iii) in the case of any partnership, the Board of Directors of the general partner of such Person and (iv) in any other case, the functional equivalent of the foregoing.

“**Board of Governors**” means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Books**” means all books and records including ledgers, records regarding a Credit Party’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Borrower**” is defined in the preamble hereof.

“**Borrowing Resolutions**” means, with respect to any Person, those resolutions adopted by such Person’s Board of Directors and delivered by such Person to the Collateral Agent pursuant to Section 3.1 approving the Loan Documents to which such Person is a party and the transactions contemplated thereby (including the Term Loans), together with a certificate executed by its Secretary (or similar officer) on behalf of such Person certifying that (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) attaches as an exhibit to such certificate a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) includes the name(s) and title(s) of the officers of such Person authorized to execute the Loan Documents to which such Person is a party on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) the Collateral Agent and each Lender may conclusively rely on such certificate with respect to the authority of such officers unless and until such Person shall have delivered to the Collateral Agent a further certificate canceling or amending such prior certificate.

“**Business Day**” means any day that is not a Saturday or a Sunday or a day on which banks are authorized or required to be closed in New York, New York, London or the Cayman Islands.

“**Capital Lease**” means, as applied to any Person, any lease of, or other arrangement conveying the right to use, any property by that Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such Person prepared in accordance with Applicable Accounting Standards (subject to Section 1 hereof).

“**Capital Lease Obligations**” means, at any time, with respect to any Capital Lease, any lease entered into as part of any sale leaseback transaction of any Person or any synthetic lease, the amount of all obligations of such Person that is (or that would be, if such synthetic lease or other lease were accounted for as a Capital Lease) capitalized on a balance sheet of such Person prepared in accordance with Applicable Accounting Standards.

“Cash Equivalents” means

(a) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government or by the government of any other member country of O.E.C.D. (provided that the full faith and credit of the United States or such other member country of O.E.C.D., as applicable, is pledged in support of those securities), in each case, having maturities of not more than two (2) years from the date of acquisition;

(b) certificates of deposit, time deposits with maturities of one year or less from the date of acquisition, bankers’ acceptances with maturities not exceeding one year and overnight bank deposits and demand deposits, in each case, with any commercial bank having (i) capital and surplus in excess of \$500,000,000 in the case of U.S. banks or (ii) capital and surplus in excess of \$100,000,000 (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(c) commercial paper or marketable short-term money market or readily marketable direct obligations and similar securities having one of the two highest ratings obtainable from Moody’s Investors Services, Inc. or S&P Global Ratings and, in each case, maturing within two (2) years after the date of acquisition;

(d) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clauses (a) and (c) above entered into with any financial institution meeting the qualifications specified in clause (b) above;

(e) investment funds investing ninety-five percent (95.0%) of their assets in securities of the types described in clauses (a) through (d) above and clause (f) below;

(f) investments in money market funds rated “AAA” (or the equivalent thereof) or better by S&P Global Ratings or “Aaa” (or the equivalent thereof) or better by Moody’s Investors Services, Inc. (or, if at any time neither Moody’s Investors Services, Inc. nor S&P Global Ratings shall be rating such obligations, an equivalent rating from another rating agency) and that have portfolio assets of at least \$1,000,000,000; and

(g) other investments in accordance with the Borrower’s investment policy as of the Effective Date or otherwise approved in writing by Collateral Agent.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code or any successor provision thereto; provided, that a “controlled foreign corporation” shall not constitute a CFC hereunder unless, at the relevant date of determination, there is (a) a reasonable expectation of substantial earnings and profits not subject to current inclusion in U.S. taxable income and (b) such earning and profits would not (i) be excluded, upon a “hypothetical distribution”, from the “tentative section 956 amount” (in each case, within the meaning of Treasury Regulations Section 1.956-1(a)(2)) by reason of the dividends received deduction under Section 245A of the Code, (ii) be excluded from gross income under Section 959(a) of the Code upon an actual distribution, or (iii) otherwise, if distributed, be treated as a return of basis under Section 301(c)(2) of the Code.

“CFC Domestic Subsidiary” means any Subsidiary that is organized under the laws of the United States, any state thereof or the District of Columbia that has no material assets other than the equity or debt of one or more CFCs or Disregarded Domestic Subsidiary.

“Change in Control” means: (a) a transaction or series of transactions (including any merger or consolidation with Borrower) in which any “person” or “group” (within the meaning of Section 13(d) and 14(d)(2) of the Exchange Act, but excluding any employee benefit plan of such Person or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of a majority of shares of the then outstanding capital stock of Borrower ordinarily entitled to vote in the election of directors; (b) a sale of all or substantially all of the consolidated assets of Borrower and its Subsidiaries in one transaction or a series of transactions (whether by way of merger, stock purchase, asset purchase or otherwise); or (c) a merger or consolidation involving Borrower in which Borrower is not the surviving Person.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking into effect of any law, treaty, order, policy, rule or regulation, (b) any change in any law, treaty, order, policy, rule or regulation or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case, pursuant to Basel III, shall be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“**Closing Date**” means the date on which the Term Loans are advanced by Lenders, which, subject to the satisfaction of the conditions precedent to the Term Loans set forth in Sections 3.1 and 3.2, shall be not less than four (4) and not more than six (6) Business Days following the Effective Date; provided, however, that the Closing Date shall not occur less than two (2) Business Days after Borrower notifies the Collateral Agent and Lenders in writing regarding the date on which the Closing Date shall occur.

“**Code**” means the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern; provided, further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, the Collateral Agent’s Lien, for the benefit of Lenders and the other Secured Parties, on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” means, collectively, “Collateral” (as such term is defined in the Security Agreement) and all other property of whatever kind and nature subject or purported to be subject from time to time to a Lien under any Collateral Document, but in any event excluding all Excluded Property.

“**Collateral Account**” means any Deposit Account of a Credit Party maintained with a bank or other depository or financial institution located in the United States, any Securities Account of a Credit Party maintained with a securities intermediary located in the United States, or any Commodity Account of a Credit Party maintained with a commodity intermediary located in the United States, other than an Excluded Account.

“**Collateral Access Agreement**” means an agreement, in form and substance reasonably satisfactory to the Collateral Agent and to which the Collateral Agent is a party, pursuant to which a mortgagee or lessor of real property on which Collateral is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory or other property owned by any Credit Party, acknowledges the Liens and security interests of the Collateral Agent, for the benefit of Lenders and the other Secured Parties, and waives (or, if approved by the Collateral Agent in its sole discretion, subordinates) any Liens or security interests held by such Person on any such Collateral, and, in the case of any such agreement with a mortgagee or lessor, permits the Collateral Agent and any Lender (and its representatives and designees) reasonable access to any Collateral stored or otherwise located thereon.

“**Collateral Agent**” means BioPharma Credit PLC, in its capacity as Collateral Agent appointed under Section 12.1, and its successors in such capacity.

“**Collateral Documents**” means, collectively, the Security Agreement, the Control Agreements, the IP Agreements, any Mortgages and any and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Loan Documents in order to grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, or perfect, a Lien on any Collateral as security for the Obligations, and all amendments, restatements, modifications or supplements thereof or thereto.

“**Commodity Account**” means any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“**Company IP**” means any and all of the following, as they exist in and throughout the Territory: (a) Current Company IP; (b) improvements, continuations, continuations-in-part, divisions, provisionals or any substitute applications, any patent issued with respect to any of the Current Company IP, any patent right claiming the composition of matter of, or the method of making or using, any Product in the Territory, any reissue, reexamination, renewal or patent term extension or adjustment (including any supplementary protection certificate) of any such patent, and any confirmation patent or registration patent or patent of addition based on any such patent; (c) trade secrets or trade secret rights, including any rights to unpatented inventions, know-how, show-how and operating manuals, in each case, specifically relating to any Product in the Territory; (d) any and all IP Ancillary Rights specifically relating to any of the foregoing; and (e) regulatory filings, submissions and approvals related to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory and all data provided in any of the foregoing.

“**Compliance Certificate**” means that certain certificate in the form attached hereto as Exhibit D.

“**Competitor**” means, at any time of determination, any Person that is an operating company directly and primarily engaged in the same or substantially the same line of business as the Borrower and its Subsidiaries, including those Persons identified on Schedule 12.1 of the Disclosure Letter, which Borrower may update from time to time.

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

“**Contingent Obligation**” means, for any Person, (a) any direct or indirect liability, contingent or not, of that Person for any indebtedness, lease, dividend, letter of credit or other obligation of another Person directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable (other than by endorsements of instruments in the course of collection) and (b) any obligation of that Person to pay an earn-out payment, milestone payment or similar contingent payment or contingent compensation (including purchase price adjustments) to a counterparty incurred or created in connection with an Acquisition, Transfer or Investment or otherwise in connection with any collaboration, development or similar agreement, in each instance where such contingent payment or compensation becomes due and payable upon the occurrence of an event or the performance of an act (and not solely with the passage of time). The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it reasonably determined by such Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

“**Control Agreement**” means, with respect to any Credit Party, any control agreement entered into among such Credit Party, the Collateral Agent and, in the case of a Deposit Account, the bank or other depository or financial institution located in the United States at which such Credit Party maintains such Deposit Account, or, in the case of a Securities Account or a Commodity Account, the securities intermediary or commodity intermediary located in the United States at which such Credit Party maintains such Securities Account or Commodities Account, in either case, pursuant to which the Collateral Agent obtains control (within the meaning of the Code) over such Collateral Account.

“**Copyrights**” means any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“**Credit Extension**” means any Term Loan or any other extension of credit by any Lender for Borrower’s benefit pursuant to this Agreement.

“**Credit Party**” means Borrower and each Guarantor.

“**CSA**” is defined in Section 4.19(c).

“**Current Acquisition IP**” is defined in Section 4.6(c)(ii).

“**Current Acquisition IP Agreement**” means any Transferred Contract (as defined in the Acquisition Agreement) that will be acquired or assumed by Borrower (or any of its Affiliates) pursuant to the Acquisition Agreement, pursuant to which Borrower (or any such Affiliate) has the legal right to exploit Current Acquisition IP that is owned by another Person to research, develop, manufacture, produce, use, supply, commercialize, market, import, store, transport, offer for sale, distribute or sell any Acquisition Product.

“**Current Company IP**” is defined in Section 4.6(c)(i).

“**Current Company IP Agreement**” means any contract or agreement, pursuant to which Borrower or any of its Subsidiaries has the legal right to exploit Current Company IP that is owned by another Person, to research, develop, manufacture, produce, use, supply, commercialize, market, import, store, transport, offer for sale, distribute or sell any Product that is not an Acquisition Product.

“**Data Protection Laws**” means, collectively, any and all foreign or domestic, statutes, ordinances, orders, rules, regulations, judgments, Governmental Approvals, or any other requirements of Governmental Authorities relating to the privacy, security, or confidentiality of personal data (including individually identifiable information) and other sensitive information, including HIPAA, Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45), and GDPR.

“**DEA**” means the United States Drug Enforcement Administration.

“**DEA Laws**” means all applicable statutes (including the CSA), rules, regulations and orders implemented, administered, enforced or issued by DEA (and any foreign or U.S. state equivalent).

“**Default**” means any breach of or default under any term, provision, condition, covenant or agreement contained in this Agreement or any other Loan Document or any other event, that, in each case, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“**Disregarded Domestic Subsidiary**” means any direct or indirect Subsidiary that is organized under the laws of the United States, any state thereof or the District of Columbia that is treated as disregarded for U.S. tax purposes and substantially all the assets of which consist of equity of one or more CFCs.

“**Deposit Account**” means any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“**Disclosure Letter**” means the disclosure letter to this Agreement, dated the Effective Date, delivered by the Credit Parties to the Collateral Agent (including all schedules attached thereto).

“**Disqualified Equity Interest(s)**” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable) or upon the happening of any event or condition, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (except as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control, asset sale or similar event shall be subject to the prior repayment in full in cash of the Term Loans and all other Obligations (other than inchoate indemnity obligations)), (b) is redeemable at the option of the holder thereof, in whole or in part (except as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control, asset sale or similar event shall be subject to the prior repayment in full in cash of the Term Loans and all other Obligations (other than inchoate indemnity obligations)), (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is convertible into or exchangeable for (i) Indebtedness or (ii) any other Equity Interest that would constitute a Disqualified Equity Interest, in each case described in clauses (a) through (d) above, prior to the date that is 180 days after the Term Loan Maturity Date; provided that, if such Equity Interest is issued pursuant to any plan for the benefit of any employee, director, manager or consultant of the Borrower or its Subsidiaries or by any such plan to such employee, director, manager or consultant, such Equity Interest shall not constitute a Disqualified Equity Interest solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of the termination, death or disability of such employee, director, manager or consultant.

“Dollars,” “dollars” or use of the sign “\$” means only lawful money of the United States and not any other currency, regardless of whether that currency uses the “\$” sign to denote its currency or may be readily converted into lawful money of the United States.

“**Early Opt-In Determination**” means the occurrence of: (a) the determination by the Collateral Agent (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for determining the rate described in clause (a) or clause (b) of the definition of “LIBOR Rate” and such circumstances are reasonably likely to be permanent or indefinite; or (b) the determination by the Collateral Agent, or a notification by the Required Lenders to the Collateral Agent (with a copy to Borrower) that the Required Lenders have determined, that the three-month Dollar-denominated credit facilities being executed at such time are being executed or amended to incorporate or adopt a new benchmark interest rate to replace the three-month LIBOR Rate for Dollar-denominated credit facilities.

“**Effective Date**” is defined in the preamble hereof.

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

“**Environmental Laws**” means, with respect to any Credit Party, Subsidiary or any Facility, collectively, any and all applicable current or future, foreign or domestic, statutes, ordinances, orders, rules, regulations, judgments and Governmental Approvals, and any other requirements of Governmental Authorities, relating to (i) environmental matters, including those relating to any Hazardous Materials Activity, (ii) the generation, use, storage, transportation or disposal of Hazardous Materials or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare.

“**Equity Interests**” means, with respect to any Person, collectively, any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in such Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire (by purchase, conversion, dividend, distribution or otherwise) any of the foregoing (and all other rights, powers, privileges, interests, claims and other property in any manner arising therefrom or relating thereto); provided, however, that Indebtedness convertible into Equity Interests (or into any combination of cash and Equity Interests based on the value of such Equity Interests) shall not constitute Equity Interests unless and until (and solely to the extent) so converted into Equity Interests.

“**Equity Proceeds Prepayment**” means any single prepayment of Term Loans by Borrower of no more than \$50,000,000 pursuant to Section 2.2(c)(i) made (i) solely with the proceeds from an issuance of Equity Interests in Borrower and (ii) within sixty (60) days of the issuance of such Equity Interests.

“**Equity Proceeds Prepayment Premium**” means, with respect to the Equity Proceeds Prepayment, if Borrower makes such prepayment on or prior to the 2nd-year anniversary of the Closing Date, an amount equal to the product of the aggregate principal amount of the Term Loans prepaid multiplied by 0.05. For the avoidance of doubt, no Equity Prepayment Premium shall be due and owing with respect to the Equity Proceeds Prepayment if Borrower makes such prepayment after the 2nd-year anniversary of the Closing Date.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, and its regulations.

“**ERISA Affiliate**” means, with respect to any Person, any trade or business (whether or not incorporated) that, together with such Person, is treated as a single employer under Section 414(b) or (c) of the IRC or, solely for purposes of Section 302 of ERISA or Section 412 of the IRC, Section 412(m) or (o) of the IRC.

“**ERISA Event**” means (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived by regulation); (b) with respect to a Plan, the failure by Borrower or its Subsidiaries or their ERISA Affiliates to satisfy the minimum funding standard of Section 412 of the IRC and Section 302 of ERISA, whether or not waived; (c) the failure by Borrower or its Subsidiaries or their ERISA Affiliates to make by its due date a required installment under Section 430(j) of the IRC with respect to any Plan or to make any required contribution to a Multiemployer Plan; (d) the filing pursuant to Section 412(c) of the IRC or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the incurrence by Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by Borrower or its Subsidiaries or any of their respective ERISA Affiliates from the Pension Benefit Guaranty Corporation (referred to and defined in ERISA) or a plan administrator of any notice relating to the intention to terminate any Plan or Plans under Section 4041 or 4041A of ERISA or to appoint a trustee to administer any Plan under Section 4042 of ERISA, or the occurrence of any event or condition which would reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan under Section 4041 Section 4042 of ERISA; (g) the incurrence by Borrower or its Subsidiaries or any of their respective ERISA Affiliates of any liability with respect to the withdrawal from any Plan or Multiemployer Plan; (h) the receipt by Borrower or its Subsidiaries or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Section 4245 or Section 4241, respectively, of ERISA; (i) the “substantial cessation of operations” by Borrower or its Subsidiaries or their ERISA Affiliates within the meaning of Section 4062(e) of ERISA with respect to a Plan; or (j) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the IRC or Section 406 of ERISA) which would reasonably be expected to result in material liability to Borrower or its Subsidiaries.

“**Estimated Purchase Price**” has the meaning assigned to such term in the Purchase Agreement.

“**Event of Default**” is defined in [Section 7](#).

“**Exchange Act**” means the Securities Exchange Act of 1934.

“**Exchange Act Documents**” is defined in [Section 4.8\(a\)](#).

“**Excluded Accounts**” is defined in [Section 5.5](#).

“**Excluded Equity Interests**” means, collectively: (i) any Equity Interests in any Subsidiary with respect to which the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest therein and Lien thereon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, thereof, to secure the Obligations (and any guaranty thereof) are validly prohibited by Requirements of Law; (ii) any Equity Interests in any Subsidiary with respect to which the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest therein and Lien thereon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, thereof, to secure the Obligations (and any guaranty thereof) require the consent, approval or waiver of any Governmental Authority or other third party and such consent, approval or waiver has not been obtained by Borrower following Borrower’s commercially reasonable efforts to obtain the same; (iii) any Equity Interests in any Subsidiary that is a non-Wholly-Owned Subsidiary that the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest therein and Lien thereon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, thereof, to secure the Obligations (and any guaranty thereof) are validly prohibited by, or would give any third party (other than Borrower or an Affiliate of Borrower) the right to terminate its obligations under, the Operating Documents or the joint venture agreement or shareholder agreement with respect to, or any other contract or agreement with such third party relating to, such non-Wholly-Owned Subsidiary, including any contract or agreement evidencing any Indebtedness of such non-Wholly-Owned Subsidiary (other than customary non-assignment provisions which are ineffective under Article 9 of the Code or other Requirements of Law), but, in the case of any such Equity Interests, only to the extent and for so long as such Operating Document, joint venture agreement, shareholder agreement or other contract or agreement is in effect; (iv) any voting Equity Interests in excess of 65% of the issued and outstanding Equity Interests of each Subsidiary that is (A) a CFC, (B) a CFC Domestic Subsidiary or (C) a Disregarded Domestic Subsidiary; (v) so long as it shall be in compliance with the covenant set forth in [Section 6.2\(c\)](#), Collegium NF, LLC, and (vi) any Equity Interests in any other Subsidiary, with respect to which Borrower and the Collateral Agent reasonably determine by mutual agreement that the cost of granting the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a security interest therein and Lien thereon, and pledging to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, thereof, to secure the Obligations (and any guaranty thereof) are excessive, relative to the value to be afforded to the Secured Parties thereby.

“Excluded License” means an exclusive license or sublicense, to a Person other than a Subsidiary of Borrower, of any Intellectual Property within the Territory covering any Product that is tantamount to a sale of substantially all rights to the Intellectual Property covering such Product because it conveys to the licensee or sublicensee exclusive rights to practice such Intellectual Property in the Territory for consideration that is not based upon future development or commercialization of any Products in the Territory (other than pursuant to so-called earn-out payments) or services by the licensee or sublicensee (other than transition services), such as, for example, consideration of only upfront advances or initial license fees or similar payments in consideration of such rights, with no anticipated subsequent payments or only *de minimis* payments to Borrower or any of its Subsidiaries (other than pursuant to so-called earn-out payments or transition services).

“Excluded Property” has the meaning set forth in the Security Agreement.

“Excluded Subsidiaries” means, collectively: (i) any Subsidiary, with respect to which the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, the properties and assets thereof subject or purported to be subject from time to time to a Lien under any Collateral Document and the Equity Interests therein to secure the Obligations (and any guaranty thereof) are validly prohibited by Requirements of Law; (ii) any Subsidiary, with respect to which the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, the properties and assets thereof subject or purported to be subject from time to time to a Lien under any Collateral Document and the Equity Interests therein to secure the Obligations (and any guaranty thereof) require the consent, approval or waiver of any Governmental Authority or other third party (other than Borrower or an Affiliate of Borrower) and such consent, approval or waiver has not been obtained by Borrower or such Subsidiary following Borrower’s and such Subsidiary’s commercially reasonable efforts to obtain the same; (iii) any Subsidiary that is a non-Wholly Owned Subsidiary with respect to which the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, the properties and assets thereof to secure the Obligations (and any guaranty thereof) are validly prohibited by, or would give any third party (other than Borrower or an Affiliate of Borrower) the right to terminate its obligations under, such non-Wholly Owned Subsidiary’s Operating Documents or the joint venture agreement or shareholder agreement with respect thereto or any other contract or agreement with such third party relating thereto, including any contract or agreement evidencing any Indebtedness of such non-Wholly Owned Subsidiary (other than customary non-assignment provisions which are ineffective under Article 9 of the Code or other Requirements of Law), but, in each case, only to the extent and for so long as such Operating Document, joint venture agreement, shareholder agreement or other contract or agreement is in effect; (iv) any Subsidiary that owns properties and assets with an aggregate fair market value (reasonably determined in good faith by a Responsible Officer of Borrower) of less than \$5,000,000; (v) any (A) CFC, (B) Subsidiary of a CFC, (C) CFC Domestic Subsidiary or (D) Disregarded Domestic Subsidiary; (vi) any not-for-profit Subsidiaries, captive insurance Subsidiaries and special purpose entities used for permitted financings; (viii) so long as it shall be in compliance with Section 6.2(c), Collegium NF, LLC, and (ix) any other Subsidiary, with respect to which Borrower and the Collateral Agent reasonably determined by mutual agreement that the cost of granting the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a security interest in and Lien upon, and pledging to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, the properties and assets thereof subject or purported to be subject from time to time to a Lien under any Collateral Document and the Equity Interests therein to secure the Obligations (and any guaranty thereof) or are excessive relative to the value to be afforded to the Secured Parties thereby.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to Lender or required to be withheld or deducted from a payment to Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each instance, (i) imposed by the United States or as a result of Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of Lender with respect to any Obligation pursuant to a law in effect on the date on which (i) Lender acquires such interest in any Obligation or (ii) Lender changes its lending office, except to the extent that, pursuant to Section 2.6, amounts with respect to such Taxes were payable either to Lender’s assignor immediately before Lender became a party hereto or to Lender immediately before it changed its lending office, (c) Taxes attributable to Lender’s failure to comply with Section 2.6(d), and (d) any withholding Taxes imposed under FATCA.

“Export and Import Laws” means, collectively, all applicable laws, regulations, orders or directives that apply to the import, export, re-export, transfer, disclosure or provision of goods, software, technology or technical assistance, including any restrictions or controls administered pursuant to the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774, administered by the U.S. Department of Commerce, Bureau of Industry and Security, any U.S. Customs regulations, and any other similar import and export laws, regulations, orders and directives of other jurisdictions to the extent applicable.

“Facility” means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by any Credit Party or any of its Subsidiaries or any of their respective predecessors or Affiliates, with respect to the manufacture, production, storage or distribution any Product in the Territory.

“FATCA” means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (including, for the avoidance of doubt, any agreements between the governments of the United States and the jurisdiction in which the applicable Lender is resident implementing such provisions), or any amended or successor version that is substantively comparable and not materially more onerous to comply with, and any current or future regulations promulgated thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the IRC, any intergovernmental agreement entered into in connection with the implementation of the foregoing sections of the IRC and any fiscal or regulatory legislation, regulations, rules or practices adopted pursuant to, or official interpretations implementing such Sections of the IRC or intergovernmental agreements.

“FCPA” is defined in Section 4.18(a).

“FDA” means the United States Food and Drug Administration (and any foreign equivalents, including the European Medicines Agency).

“FDA Good Clinical Practices” means the standards set forth in 21 C.F.R. Parts 50, 54, 56 and 312 and FDA’s implementing guidance documents.

“FDA Good Laboratory Practices” means the standards set forth in 21 C.F.R. Part 58 and FDA’s implementing guidance documents.

“FDA Good Manufacturing Practices” means the standards set forth in 21 C.F.R. Parts 210, 211, 600 and 610 and FDA’s implementing guidance documents.

“FDA Laws” means all applicable statutes (including the FDCA), rules and regulations implemented administered or enforced by the FDA (and any foreign equivalent).

“FDCA” is defined in Section 4.19(b).

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System.

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

“**GDPR**” means the General Data Protection Regulation (EU) 2016/679.

“**General Prepayment Premium**” means, with respect to any prepayment of the Term Loans by Borrower pursuant to Section 2.2(c) that is not an Equity Proceeds Prepayment or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), an amount equal to the product of the aggregate principal amount of the Term Loans prepaid, multiplied by:

(a) if such prepayment occurs on or prior to the 2nd-year anniversary of the Closing Date, 0.03;

(b) if such prepayment occurs after the 2nd-year anniversary of the Closing Date but on or prior to the 3rd-year anniversary of the Closing Date, 0.02; and

(c) if such prepayment occurs after the 3rd-year anniversary of the Closing Date but prior to the 4th-year anniversary of the Closing Date, 0.01.

For the avoidance of doubt, no General Prepayment Premium shall be due and owing for any payment of principal of the Term Loans made on the Term Loan Maturity Date.

“**Governmental Approval**” means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any agency (including Regulatory Agencies), government department, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“**Governmental Payor Programs**” means all governmental third party payor programs in which any Credit Party or its Subsidiaries participates, including Medicare, Medicaid, TRICARE or any other federal or state health care programs.

“**Guarantor**” means any Subsidiary that is a present or future guarantor of the Obligations.

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

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

“Health Care Laws” means, collectively: (a) all applicable federal, state or local laws, rules, regulations, orders, ordinances, statutes and requirements issued under or in connection with Medicare, Medicaid or any other Government Payor Program; (b) all applicable federal and state laws and regulations governing the confidentiality of health information, including HIPAA; (c) all applicable federal, state and local fraud and abuse laws of any Governmental Authority, including the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7(b)), the civil False Claims Act (31 U.S.C. § 3729 et seq.), Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes; (d) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173) and the regulations promulgated thereunder; (e) the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h); (f) all applicable reporting and disclosure requirements under the Medicaid Drug Rebate Program (e.g., Monthly and Quarterly Average Manufacturer Price, Baseline Average Manufacturer Price, and Rebate Per Unit, as applicable), Medicare Part B (Quarterly Average Sales Price), Section 602 of the Veteran’s Health Care Act (Public Health Service 340B Quarterly Ceiling Price), Section 603 of the Veteran’s Health Care Act (Quarterly and Annual Non-Federal Average Manufacturer Price and Federal Ceiling Price), Best Price, Federal Supply Schedule Contract Prices and Tricare Retail Pharmacy Refunds, and Medicare Part D; (g) all applicable health care laws, rules, codes, statutes, regulations, orders, ordinances and requirements pertaining to Medicare or Medicaid; and (h) all applicable federal, state or local laws, rules, regulations, ordinances, statutes and requirements relating to (i) the regulation of managed care, third party payors and Persons bearing the financial risk for the provision or arrangement of health care services, (ii) billings to insurance companies, health maintenance organizations and other Managed Care Plans or otherwise relating to insurance fraud, or (iii) any insurance, health maintenance organization or managed care Requirements of Law; and (i) any other applicable health care laws, rules, codes, regulations, manuals, orders, ordinances, and statutes relating to the manufacture, sale and distribution of pharmaceutical products.

“Hedging Agreement” means any interest rate, currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity or equity prices or values (including any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), and any confirmation execution in connection with any such agreement or arrangement.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 (as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) of 2009), any and all rules or regulations promulgated from time to time thereunder, and any state or federal laws with regards to the security, privacy, or notification of breaches of the confidentiality of health information which are not preempted pursuant to 45 C.F.R. Part 160, Subpart B.

“Indebtedness” means, with respect to any Person, without duplication: (a) all indebtedness for advanced or borrowed money of, or credit extended to, such Person; (b) all obligations issued, undertaken or assumed by such Person as the deferred purchase price of assets, properties, services or rights (other than (i) accrued expenses and trade payables entered into in the ordinary course of business consistent with past practice which are not more than one hundred and eighty (180) days past due or subject to a bona fide dispute, (ii) obligations to pay for services provided by employees and individual independent contractors in the ordinary course of business consistent with past practice which are not more than one hundred and twenty (120) days past due or subject to a bona fide dispute, (iii) liabilities associated with customer prepayments and deposits, and (iv)(A) prepaid or deferred revenue arising in the ordinary course of business consistent with past practice), including any obligation or liability to pay deferred purchase price or other similar deferred consideration for such assets, properties, services or rights where such deferred purchase price or consideration becomes due and payable solely upon the passage of time, and (B) any obligation described in clause (b) of the definition of “Contingent Obligation” that is due and payable (or that becomes due and payable) solely with the passage of time (and not upon the occurrence of an event or the performance of an act); (c) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder and all reimbursement or payment obligations with respect to letters of credit, surety bonds, performance bonds and other similar instruments issued by such Person; (d) all obligations of such Person evidenced by notes, bonds, debentures or other debt securities or similar instruments (including debt securities convertible into Equity Interests), including obligations so evidenced incurred in connection with the acquisition of properties, assets or businesses; (e) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement or incurred as financing, in either case with respect to property acquired by such Person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property); (f) all Capital Lease Obligations of such Person; (g) the principal balance outstanding under any synthetic lease, off-balance sheet loan or similar off balance sheet financing product by such Person; (h) Disqualified Equity Interests; (i) all indebtedness referred to in clauses (a) through (g) above of other Persons secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in assets or properties (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness of such other Persons; and (j) all Contingent Obligations of such Person described in clause (a) of the definition thereof (not including, for the avoidance of doubt, any purchase price adjustment incurred pursuant to the Acquisition Agreement).

“**Indemnified Liabilities**” means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims, actions, judgments, suits, costs, reasonable and documented out-of-pocket fees, expenses and disbursements of any kind or nature whatsoever (including the reasonable and documented fees and disbursements of one counsel for Indemnified Persons plus, if required, one local legal counsel in each relevant material jurisdiction, and in the case of an actual or perceived conflict of interest, one additional counsel for such affected Indemnified Persons, in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened in writing by any Person, whether or not any such Indemnified Person shall have commenced such proceeding or hearing or be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnified Persons in enforcing the indemnity hereunder), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations, on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnified Person, in any manner relating to or arising out of this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby (including any Lender’s agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Loan Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of any guaranty of the Obligations)).

“**Indemnified Person**” is defined in Section 11.2(a).

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Loan Document and (b) to the extent not otherwise described in clause (a) above, Other Taxes.

“**Insolvency Proceeding**” means, with respect to any Person, any proceeding by or against such Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

“**Intellectual Property**” means all:

- (a) Copyrights, Trademarks, and Patents;
- (b) trade secrets and trade secret rights, including any rights to unpatented inventions, know-how, show-how and operating manuals;
- (c) (i) all computer programs, including source code and object code versions, (ii) all data, databases and compilations of data, whether machine readable or otherwise, and (iii) all documentation, training materials and configurations related to any of the foregoing (collectively, “**Software**”);
- (d) all right, title and interest arising under any contract or Requirements of Law in or relating to Internet Domain Names;
- (e) design rights;
- (f) IP Ancillary Rights (including all IP Ancillary Rights related to any of the foregoing); and
- (g) any similar or equivalent rights to any of the foregoing anywhere in the world.

“**Interest Date**” means the last day of each calendar quarter.

“**Interest Period**” means, with respect to the Term Loans, (a) the period commencing on (and including) the Closing Date and ending on (and including) the first Interest Date following the Closing Date (provided, that if such Interest Date is not a Business Day, the applicable Interest Period shall end on the first Business Day immediately following such Interest Date), and (b) thereafter, each period beginning on (and including) the first day immediately following the end of the preceding Interest Period and ending on the earlier of (and including) (x) the next Interest Date (provided, that if such Interest Date is not a Business Day, the applicable Interest Period shall end on the first Business Day immediately following such Interest Date) and (y) the Term Loan Maturity Date.

“Interest Rate Determination Date” means (a) initially, the Closing Date and (b) thereafter, the first day of each Interest Period (or, if any such day is not a Business Day, the first Business Day immediately following such day).

“Internet Domain Name” means all right, title and interest (and all related IP Ancillary Rights) arising under any contract or Requirements of Law in or relating to Internet domain names.

“Inventory” means all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including such inventory as is temporarily out of a Credit Party’s or Subsidiary’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“Investment” means (a) any beneficial ownership interest in any Person (including Equity Interests), (b) any Acquisition or (c) the making of any advance, loan, extension of credit or capital contribution in or to, any Person.

“IP Agreements” means, collectively, (a) those certain Intellectual Property Security Agreements entered into by and between any Credit Party and the Collateral Agent, each dated as of the Closing Date, and (b) any Intellectual Property Security Agreement entered into by and between any Credit Party and the Collateral Agent after the Closing Date in accordance with the Loan Documents.

“IP Ancillary Rights” means, with respect to any Copyright, Trademark, Patent, Software, trade secrets or trade secret rights, including any rights to unpatented inventions, know-how, show-how and operating manuals, collectively, all income, royalties, proceeds and liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect thereto, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof.

“IRC” means the Internal Revenue Code of 1986.

“IRS” is defined in Section 2.6(d)(i).

“Knowledge” of Borrower means the actual knowledge, after reasonable investigation, of the Responsible Officers of Borrower.

“Lender” means each Person signatory hereto as a “Lender” and its successors and assigns.

“**Lender Expenses**” means, collectively: (i) all reasonable and documented out-of-pocket fees and expenses of the Collateral Agent and, as applicable, each Lender (and their respective successors and assigns) and their respective Related Parties (including the reasonable and documented out-of-pocket fees, expenses and disbursements of any legal counsel for all such Persons taken as a whole), (A) incurred in connection with developing, preparing, negotiating, executing and delivering, and interpreting, investigating and administering, the Loan Documents (or any term or provision thereof), any commitment, proposal letter, letter of intent or term sheet therefor or any other document prepared in connection therewith, (B) incurred in connection with the consummation and administration of any transaction contemplated therein, (C) incurred in connection with the performance of any obligation or agreement contemplated therein, (D) incurred in connection with any modification or amendment of any term or provision of or any supplement to or the termination (in whole or in part) of, any Loan Document, (E) in connection with internal audit reviews and Collateral audits and (F) otherwise incurred with respect to the Credit Parties in connection with the Loan Documents, including any filing or recording fees and expenses; and (ii) all reasonable and documented out-of-pocket costs and expenses incurred by the Collateral Agent and each Lender (and their respective successors and assigns) and their respective Related Parties (including the reasonable and documented out-of-pocket fees, expenses and disbursements of any legal counsel for all such Persons taken as a whole) in connection with (A) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work-out”, (B) the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, with respect to the Collateral or any other related right or remedy or (C) the commencement, defense, conduct of, intervention in, or the taking of any other action with respect to, any proceeding (including any Insolvency Proceeding) related to any Credit Party or any Subsidiary of any Credit Party in respect of any Loan Document or any Obligation, or otherwise in connection with any Loan Document or any Obligation (or the response to and preparation for any subpoena or request for document production relating thereto). Notwithstanding any of the foregoing, none of the out-of-pocket fees and expenses of the Collateral Agent or any Lender (or any of their respective successors and assigns) or any of their respective Related Parties incurred solely in connection with the exercise by the Collateral Agent of its rights under Section 5.7(c)(ii)(z) shall constitute Lender Expenses.

“**Lender Transfer**” is defined in Section 11.1(b).

“**LIBOR Rate**” means, as of any Interest Rate Determination Date (and for the Interest Period that follows such Interest Rate Determination Date), the rate per annum equal to the London Interbank Offered Rate (“**LIBOR**”) appearing on Reuters Page LIBOR01 (or any successor or substitute page) for three-month Dollar deposits, or (b) if no such rate is available, the rate of interest determined by the Collateral Agent to be the rate or the arithmetic mean of rates at which Dollar deposits in immediately available funds are offered to first-tier banks in the London interbank Eurodollar market, in either case under clause (a) or (b) above, at approximately 11:00 a.m., London time, on such Interest Rate Determination Date for a period of three (3) months; provided, however, that for purposes of calculating the Interest Rate, the LIBOR Rate shall at all times have a floor of two percent (2.00%).

“**LIBOR Rate Replacement Date**” means the earlier to occur of the following events with respect to LIBOR:

(a) in the case of clause (a) or (b) of the definition of “LIBOR Rate Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR; or

(b) in the case of clause (c) of the definition of “LIBOR Rate Transition Event,” the date of the public statement or publication of information referenced therein.

“**LIBOR Rate Transition Event**” means the occurrence of one or more of the following events with respect to LIBOR:

(a) a public statement or publication of information has been made by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR;

(b) a public statement or publication of information has been made by or on behalf of the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or

(c) a public statement or publication of information has been made by or on behalf of the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

“**Lien**” means a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind or assignment for security purposes, whether voluntarily incurred or arising by operation of law or otherwise against any property or assets.

“Loan Documents” means, collectively, this Agreement, the Disclosure Letter, the Term Loan Notes, the Security Agreement, the IP Agreements, the Perfection Certificate, any Control Agreement, any other Collateral Document, any guaranties executed by a Guarantor in favor of the Collateral Agent for the benefit of Lenders and the other Secured Parties in connection with this Agreement, and any other present or future agreement between or among a Credit Party, the Collateral Agent and any Lender in connection with this Agreement, including, for the avoidance of doubt, any annexes, exhibits or schedules thereto.

“Makewhole Amount” means, with respect to any prepayment of the Term Loans by Borrower pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a) occurring prior to the 2nd-year anniversary of the Closing Date, an amount equal to the sum of all interest that would have accrued and been payable from the date of such prepayment through the 2nd-year anniversary of the Closing Date on the aggregate principal amount of the Term Loans prepaid.

“Managed Care Plans” means all health maintenance organizations, preferred provider organizations, individual practice associations, competitive medical plans and similar arrangements.

“Manufacturing Agreement” means any agreement entered into by any Credit Party or any of its Subsidiaries with third parties (or that any Credit Party or any of its Subsidiaries otherwise becomes a party to) for the commercial manufacture or supply in the Territory of any Product (other than the Acquisition Products prior to the Closing Date) for any indication in the United States or for the commercial manufacture or supply of the active pharmaceutical ingredient incorporated therein.

“Margin Stock” means “margin stock” within the meaning of Regulations U and X of the Federal Reserve Board as now and from time to time hereafter in effect.

“Material Adverse Change” means any material adverse change in or effect on: (i) the business, financial condition, prospects (solely with respect to the ability of the Credit Parties to satisfy the financial covenant set forth in Section 6.15 hereof), properties or assets (including all or any portion of Collateral), liabilities (actual or contingent), operations, or performance of the Credit Parties, taken as a whole; (ii) without limiting the generality of clause (i) above, the rights of the Borrower and its Subsidiaries, taken as a whole, in or related to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory; (iii) the ability of the Credit Parties, taken as a whole, to fulfill the payment or performance obligations under this Agreement or any other Loan Document; or (iv) the binding nature or validity of, or the ability of the Collateral Agent or any Lender to enforce, any of the Loan Documents or any of its rights or remedies thereunder; in each case described in clauses (i) through (iv) above, individually or taken together with any other such change or effect.

“Material Contract” means any contract or other arrangement to which any Credit Party or any of its Subsidiaries is a party (other than the Loan Documents) or by which any of its assets or properties are bound, that in any way relates to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory, for which the breach thereof, default or nonperformance thereunder, cancellation or termination thereof or the failure to renew could reasonably be expected to result in a Material Adverse Change. For the avoidance of doubt, each of the Acquisition Agreement, Current Company IP Agreement, Transferred Contract (as defined in the Purchase Agreement), Current Acquisition IP Agreement and Manufacturing Agreement shall be deemed a Material Contract for all purposes hereunder, in each case unless and to the extent as otherwise may be agreed by the Collateral Agent or Required Lenders.

“Medicaid” means the health care assistance program established by Title XIX of the SSA (42 U.S.C. 1396 et seq.).

“Medicare” means the health insurance program for the aged and disabled established by Title XVIII of the SSA (42 U.S.C. 1395 et seq.).

“Mortgage” means any deed of trust, leasehold deed of trust, mortgage, leasehold mortgage, deed to secure debt, leasehold deed to secure debt or other document creating a Lien on real estate or any interest in real estate.

“Multiemployer Plan” means a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which Borrower or its Subsidiaries or their respective ERISA Affiliates is then making or accruing an obligation to make contributions; (b) to which Borrower or its Subsidiaries or their respective ERISA Affiliates has within the preceding five (5) plan years made contributions; or (c) with respect to which Borrower or its Subsidiaries would reasonably be expected to incur material liability.

“Net Sales” means, as of any date of determination and solely with respect to sales of the Products, the net consolidated product revenue (consistent with the calculation of same in Borrower’s financial statements) of Borrower and its Subsidiaries of Products for the twelve (12) months prior to such date (excluding, for the avoidance of doubt, any (i) upfront or milestone payments received by Borrower or any of its Subsidiaries, (ii) advancements, payments or reimbursements of expenses of Borrower or any of its Subsidiaries, and (iii) any other non-sales-based revenue or proceeds received by Borrower or any of its Subsidiaries), determined on a consolidated basis in accordance with Applicable Accounting Standards as set forth in Borrower’s financial statements or as otherwise evidenced in a manner reasonably satisfactory to the Required Lenders.

“Obligations” means, collectively, the Credit Parties’ obligations to pay when due any and all debts, principal, interest, Lender Expenses, the Additional Consideration, the Makewhole Amount (if applicable), the Prepayment Premium (if applicable) and any other fees, expenses, indemnities and amounts any Credit Party owes any Lender or the Collateral Agent now or later, under this Agreement or any other Loan Document, including interest accruing after Insolvency Proceedings begin (whether or not allowed), and to perform Borrower’s duties under the Loan Documents.

“OFAC” is defined in [Section 4.18\(c\)](#).

“Operating Documents” means, with respect to any Person, collectively, such Person’s formation documents as certified with the Secretary of State or other applicable Governmental Authority of such Person’s jurisdiction of formation on a date that is no earlier than thirty (30) days prior to the date on which such documents are due to be delivered under this Agreement, and (a) if such Person is a corporation, its bylaws (or similar organizational regulations) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), including, for the avoidance of doubt, all current amendments, restatements, supplements or modifications thereto.

“Opioids Case” means any proceeding in any court of competent jurisdiction alleging any cause of action or any violation of a Requirement of Law arising from or related to the manufacture, production, distribution, marketing, promotion or sale of opioid prescription drug products.

“ordinary course of business” means, in respect of any transaction involving any Person, the ordinary course of such Person’s business, undertaken by such Person in good faith and not for purposes of evading any covenant, prepayment obligation or restriction in any Loan Document.

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing, mortgage or property Taxes, charges or similar levies or similar Taxes that arise from any payment made hereunder, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to a Lender Transfer.

“Participant Register” is defined in [Section 11.1\(e\)](#).

“**Patents**” means all patents and patent applications (including any continuations, continuations-in-part, divisions, provisionals or any substitute applications), any patent issued with respect to any of the foregoing patent applications, any reissue, reexamination, renewal or patent term extension or adjustment (including any supplementary protection certificate) protection of any such patent, and any confirmation patent or registration patent or patent of addition based on any such patent, and all foreign and international counterparts of any of the foregoing. For the avoidance of doubt, patents and patent applications under this definition include all those filed with the U.S. Patent and Trademark Office or which could be nationalized in the United States.

“**Patriot Act**” is defined in [Section 3.1\(i\)](#).

“**Payment/Advance Request**” means a Payment/Advance Request in substantially the form attached hereto as [Exhibit A](#).

“**Payment Date**” means, with respect to the Term Loans, (a) the 3rd-month anniversary of the Closing Date, (b) the 6th-month anniversary of the Closing Date, (c) the 9th-month anniversary of the Closing Date, (d) the 12th-month anniversary of the Closing Date; (e) the 15th-month anniversary of the Closing Date, (f) the 18th-month anniversary of the Closing Date, (g) the 21st-month anniversary of the Closing Date, (h) the 24th-month anniversary of the Closing Date, (i) the 27th-month anniversary of the Closing Date, (j) the 30th-month anniversary of the Closing Date, (k) the 33rd-month anniversary of the Closing Date, (l) the 36th-month anniversary of the Closing Date, (m) the 39th-month anniversary of the Closing Date, (n) the 42nd-month anniversary of the Closing Date, (o) the 45th-month anniversary of the Closing Date, and (p) the Term Loan Maturity Date, as the context dictates.

“**Perfection Certificate**” is defined in [Section 4.6](#).

“**Permitted Acquisition**” means any Acquisition (including, for the avoidance of doubt, any inbound license), so long as:

(a) no Default or Event of Default shall have occurred and be continuing as of, or could reasonably be expected to result from, the consummation of such Acquisition;

(b) the properties or assets being acquired or licensed are useful in, or the Person whose Equity Interests are being acquired is engaged in, as applicable, (i) the same or a related line of business as that then-conducted by Borrower or its Subsidiaries or (ii) a line of business that is ancillary to and in furtherance of a line of business as that then-conducted by Borrower or its Subsidiaries;

(c) in the case of an Asset Acquisition, the subject properties or assets are being acquired or licensed by a Credit Party, and, within the timeframes expressly set forth in [Section 5.12](#), such Credit Party shall have executed and delivered or authorized, as applicable, any and all security agreements, financing statements and any other documentation reasonably requested by the Collateral Agent, in order to include the newly acquired or licensed properties or assets within the Collateral to the extent required by [Section 5.12](#);

(d) in the case of a Stock Acquisition, the subject Equity Interests are being acquired directly by a Credit Party, and such Credit Party shall have complied with its obligations under [Section 5.13](#) within the timeframes expressly set forth therein; and

(e) any Indebtedness or Liens assumed in connection with such Acquisition are otherwise permitted under [Section 6.4](#) or [6.5](#), respectively.

“Permitted Convertible Indebtedness” means Indebtedness incurred by Borrower having a feature which entitles the holder thereof to convert or exchange all or a portion of such Indebtedness into Equity Interests in Borrower (or into any combination of cash and such Equity Interests based on the value of such Equity Interests); provided, that (i) such Indebtedness shall be unsecured, (ii) such Indebtedness shall not be guaranteed by any Subsidiary of Borrower, (iii) such Indebtedness shall be on substantially the terms set forth in the Preliminary Prospectus Supplement or otherwise shall not include covenants and defaults that are, taken as a whole, more restrictive on Borrower than the covenants and defaults that are, taken as a whole, contained herein (as reasonably determined by Borrower in its good faith judgment), (iv) other than in respect of the issuance of convertible notes pursuant to the Preliminary Prospectus Supplement on or about the Closing Date (or, with respect to any such Indebtedness issued pursuant to the exercise of any related over-allotment option, no later than 40 calendar days after the date of the Preliminary Prospectus Supplement), immediately prior to and after giving effect to the incurrence of such Indebtedness, no Default or Event of Default shall have occurred and be continuing or could reasonably be expected to occur as a result thereof, (v) such Indebtedness has a scheduled maturity date that is that is no earlier than the Term Loan Maturity Date, and (vi) Borrower shall have delivered to the Collateral Agent a certificate of a Responsible Officer of Borrower certifying as to the foregoing with respect to such Indebtedness.

“Permitted Distributions” means:

(a) dividends, distributions or other payments by any Wholly-Owned Subsidiary on its Equity Interests to, or the redemption, retirement or purchase by any Wholly-Owned Subsidiary of its Equity Interests from, Borrower or any other Wholly-Owned Subsidiary;

(b) dividends, distributions or other payments by any non-Wholly-Owned Subsidiary on its Equity Interests to, or the redemption, retirement or purchase by any non-Wholly-Owned Subsidiary of its Equity Interests from, Borrower or any other Subsidiary or each other owner of such non-Wholly-Owned Subsidiary’s Equity Interests based on their relative ownership interests of the relevant class of such Equity Interests;

(c) redemptions by Borrower in whole or in part any of its Equity Interests for another class of its Equity Interests or rights to acquire its Equity Interests or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests;

(d) any such payments arising from a Permitted Acquisition or a Permitted Investment by Borrower or any of its Subsidiaries;

(e) payments by any Credit Party or any Subsidiary of a Credit Party to any Credit Party or any Subsidiary of a Credit Party pursuant to Tax sharing agreements among the Credit Parties and their Subsidiaries on customary terms to the extent attributable to the ownership or operation of the Credit Party and their Subsidiaries;

(f) the payment of dividends by Borrower solely in non-cash pay and non-redeemable capital stock (including, for the avoidance of doubt, dividends and distributions payable solely in Equity Interests);

(g) cash payments in lieu of the issuance of fractional shares arising out of stock dividends, splits or combinations or in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests;

(h) in connection with any Acquisition or other Investment by Borrower or any of its Subsidiaries, (i) the receipt or acceptance of the return to Borrower or any of its Subsidiaries of Equity Interests of Borrower constituting a portion of the purchase price consideration in settlement of indemnification claims, or as a result of a purchase price adjustment (including earn-outs or similar obligations) and (ii) payments or distributions to equity holders pursuant to appraisal rights required under Requirements of Law;

(i) the distribution of rights pursuant to any shareholder rights plan or the redemption of such rights for nominal consideration in accordance with the terms of any shareholder rights plan;

(j) dividends, distributions or payments on its Equity Interests by any Subsidiary to any Credit Party;

(k) the conversion of convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof;

(l) dividends, distributions or payments on its Equity Interests by any Subsidiary that is not a Credit Party to any other Subsidiary that is not a Credit Party;

(m) purchases of Equity Interests of Borrower or its Subsidiaries in connection with the exercise of stock options by way of cashless exercise, or in connection with the satisfaction of withholding tax obligations;

(n) issuance to directors, officers, employees or contractors of Borrower of common stock of Borrower upon the vesting of restricted stock, restricted stock units, or other rights to acquire common stock of Borrower pursuant to plans or agreements approved by Borrower's Board of Directors or stockholders;

(o) the repurchase, retirement or other acquisition or retirement for value of Equity Interests of Borrower or any of its Subsidiaries held by any future, present or former employee, consultant, officer or director (or spouse, ex-spouse or estate of any of the foregoing or trust for the benefit of any of the foregoing or any lineal descendants thereof) of Borrower or any of its Subsidiaries pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any stock subscription or shareholder agreement or employment agreement; provided, however, that the aggregate payments made under this clause (n) do not exceed in any calendar year the sum of (i) \$3,000,000 plus (ii) the amount of any payments received in such calendar year under key-man life insurance policies; and

(p) dividends or distributions on its Equity Interests by Borrower payable solely in additional shares of its common stock within sixty (60) days after the date of declaration thereof.

"Permitted Indebtedness" means:

(a) Indebtedness of the Credit Parties to Secured Parties under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Closing Date, immediately after giving effect to the consummation of the transactions contemplated by the Acquisition Agreement, and shown on Schedule 12.2 of the Disclosure Letter;

(c) [reserved];

(d) Indebtedness not to exceed \$10,000,000 in the aggregate at any time outstanding, consisting of (i) Indebtedness incurred to finance the purchase, construction, repair, or improvement of fixed assets and (ii) Capital Lease Obligations;

(e) Indebtedness in connection with corporate credit cards, purchasing cards or bank card products;

(f) [reserved];

(g) Indebtedness assumed in connection with any Permitted Acquisition or Permitted Investment, so long as (i) such Indebtedness was not incurred in connection with, or in anticipation of, such Acquisition or Investment and (ii) is at all times unsecured or Subordinated Debt;

(h) Indebtedness of Borrower or any of its Subsidiaries with respect to outstanding letters of credit entered into in the ordinary course of business (including any obligation thereunder for undrawn amounts and for any drawings thereunder) and secured solely by cash or cash equivalents;

(i) Indebtedness owed (i) by a Credit Party to another Credit Party, (ii) by a Subsidiary of Borrower that is not a Credit Party to another Subsidiary of Borrower that is not a Credit Party, (iii) by a Credit Party to a Subsidiary of Borrower that is not a Credit Party, or (iv) by a Subsidiary of Borrower that is not a Credit Party to a Credit Party not to exceed \$5,000,000 in the aggregate at any time outstanding;

(j) Indebtedness consisting of Contingent Obligations described in clause (a) of the definition thereof (i) of a Credit Party of Permitted Indebtedness of another Credit Party (or obligations that do not constitute Indebtedness hereunder), (ii) of a Subsidiary of Borrower which is not a Credit Party of Permitted Indebtedness (or obligations that do not constitute Indebtedness hereunder) of another Subsidiary of Borrower which is not a Credit Party, (iii) of a Subsidiary of Borrower which is not a Credit Party of Permitted Indebtedness (or obligations that do not constitute Indebtedness hereunder) of a Credit Party, or (iv) of a Credit Party of Permitted Indebtedness (or obligations that do not constitute Indebtedness hereunder) of a Subsidiary of Borrower which is not a Credit Party, provided that any and all such Indebtedness consisting of such Contingent Obligations under this clause (iv) does not exceed \$5,000,000 in the aggregate at any time outstanding;

(k) Indebtedness consisting of Contingent Obligations described in clause (b) of the definition thereof in connection with any Permitted Acquisition (including any purchase price adjustment or indemnity payment incurred or created pursuant to the Acquisition Agreement), Permitted Transfer or Permitted Investment or otherwise in connection with any collaboration, development or similar arrangement not otherwise prohibited hereunder, in each instance only if such Indebtedness is due and payable upon the occurrence of an event or the performance of an act (and not solely with the passage of time);

(l) Indebtedness of any Person that becomes a Subsidiary (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Subsidiary in a transaction permitted hereunder) of Borrower after the Effective Date, or Indebtedness of any Person that is assumed after the Effective Date by any Subsidiary in connection with an acquisition of assets by such Subsidiary; provided, that, in each instance, such Indebtedness is not incurred in contemplation of such transaction and is at all times unsecured or Subordinated Debt;

(m) (i) Indebtedness with respect to workers' compensation claims, payment obligations in connection with health, disability or other types of social security benefits, unemployment or other insurance obligations, reclamation and statutory obligations or (ii) Indebtedness related to employee benefit plans, including annual employee bonuses, accrued wage increases and 401(k) plan matching obligations, in each case described in clauses (i) and (ii) above, incurred in the ordinary course of business consistent with past practice;

(n) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations arising in the ordinary course of business consistent with past practice;

(o) Indebtedness in respect of netting services, overdraft protection and other cash management services in the ordinary course of business consistent with past practice;

(p) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business consistent with past practice;

(q) Indebtedness consisting of guarantees resulting from endorsement of negotiable instruments for collection by any Credit Party in the ordinary course of business consistent with past practice;

(r) unsecured Indebtedness incurred in connection with any items of Permitted Distributions in clause (o) of the definition of "Permitted Distributions";

(s) (i) Permitted Convertible Indebtedness that does not have a scheduled maturity date that is earlier than the Term Loan Maturity Date, not to exceed \$125,000,000 (as may be increased by the original principal amount of any such Indebtedness issued pursuant to an over-allotment option, not to exceed \$20,000,000 in the aggregate) in the aggregate at any time outstanding; and (ii) other Permitted Convertible Indebtedness that does not have a scheduled maturity date that is earlier than 180 days after the Term Loan Maturity Date, not to exceed \$125,000,000 (as may be increased by the original principal amount of any such Indebtedness issued pursuant to an over-allotment option, not to exceed \$20,000,000 in the aggregate) in the aggregate at any time outstanding; and

(t) subject to the proviso immediately below, extensions, refinancings, modifications, amendments, restatements and, solely in the case of any items of Permitted Indebtedness in clause (b) above or any Permitted Indebtedness constituting notes governed by an indenture, exchanges, of any items of Permitted Indebtedness described in clauses (a) through (s) above, so long as, in each instance, the principal amount thereof is not increased (other than by any reasonable amount of premium (if any), interest (including post-petition interest), fees, expenses, charges or additional or contingent interest reasonably incurred in connection with the same and the terms thereof) and, solely in the instance of any items of Permitted Indebtedness in clause (s) above and any Subordinated Debt permitted under the definition of "Permitted Indebtedness", the maturity thereof is not shortened.

Notwithstanding the foregoing, “Permitted Indebtedness” shall not include any Hedging Agreements.

“**Permitted Investments**” means:

- (a) Investments (including Investments in Subsidiaries) existing on the Effective Date (including giving pro forma effect to the consummation of the transactions contemplated by the Acquisition Agreement) and shown on Schedule 12.3 of the Disclosure Letter, and any extensions, renewals or reinvestments thereof;
- (b) Investments consisting of cash and Cash Equivalents;
- (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business consistent with past practice;
- (d) subject to Section 5.5, Investments consisting of deposit accounts or securities accounts;
- (e) Investments in connection with Permitted Transfers;
- (f) Investments consisting of (i) travel advances and employee relocation loans and other employee advances in the ordinary course of business consistent with past practice, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower pursuant to employee stock purchase plans or agreements approved by Borrower’s Board of Directors;
- (g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business consistent with past practice;
- (h) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business consistent with past practice; provided that this clause (h) shall not apply to Investments of any Credit Party in any of its Subsidiaries;
- (i) joint ventures or strategic alliances consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support;
- (j) Investments (i) required in connection with a Permitted Acquisition (including the formation of any Subsidiary for the purpose of effectuating such Permitted Acquisition, the capitalization of such Subsidiary whether by capital contribution or intercompany loans, in each instance, to the extent otherwise permitted by the terms of this Agreement, related Investments in Subsidiaries necessary to consummate such Permitted Acquisition, and the receipt of any non-cash consideration in a Permitted Acquisition), and (ii) consisting of earnest money deposits required in connection with a Permitted Acquisition or other acquisition of properties or assets not otherwise prohibited hereunder;
- (k) Investments constituting the formation of any Subsidiary for the purpose of consummating a merger or acquisition transaction permitted by Section 6.3(a)(i) through (iv) hereof, which such transaction is otherwise a Permitted Investment;
- (l) Investments of any Person that (i) becomes a Subsidiary of Borrower (or of any Person not previously a Subsidiary of Borrower that is merged or consolidated with or into a Subsidiary of Borrower in a transaction permitted hereunder) after the Effective Date, or (ii) are assumed after the Effective Date by any Subsidiary of Borrower in connection with an acquisition of assets from such Person by such Subsidiary (including in connection with the acquisition of the Purchased Assets pursuant to the Purchase Agreement), in either case, in a Permitted Acquisition; provided, that in each instance, any such Investment (x) exists at the time such Person becomes a Subsidiary of Borrower (or is merged or consolidated with or into a Subsidiary of Borrower) or such assets are acquired, (y) was not made in contemplation of or in connection with such Person becoming a Subsidiary of Borrower (or merging or consolidating with or into a Subsidiary of Borrower) or such acquisition of assets, and (z) could not reasonably be expected to result in a Default or an Event of Default;

(m) Investments arising as a result of the licensing of Intellectual Property in the ordinary course of business consistent with past practice and not prohibited hereunder;

(n) Investments by (i) any Credit Party in any other Credit Party, (ii) any Subsidiary of Borrower which is not a Credit Party in another Subsidiary of Borrower which is not a Credit Party, (iii) any Subsidiary of Borrower which is not a Credit Party in any Credit Party, and (iv) any Credit Party in a Subsidiary of Borrower which is not a Credit Party not to exceed \$10,000,000 in the aggregate per fiscal year;

(o) Repurchases of capital stock of Borrower or any of its Subsidiaries deemed to occur upon the exercise of options, warrants or other rights to acquire capital stock of Borrower or such Subsidiary solely to the extent that shares of such capital stock represent a portion of the exercise price of such options, warrants or such rights;

(p) Repurchases of capital stock constituting Permitted Distributions; and

(q) Repurchases or redemptions of Indebtedness not prohibited under Section 6.4;

provided, however, that, none of the foregoing Investments shall be a “Permitted Investment” if any Indebtedness or Liens assumed in connection with such Investment are not otherwise permitted under Section 6.4 or 6.5, respectively.

Notwithstanding the foregoing, “Permitted Investments” shall not include any Hedging Agreements.

“**Permitted Licenses**” means, collectively: (a) any non-exclusive license or covenant not to sue in any geography world-wide, or any exclusive license or covenant not to sue as to a geography other than the U.S., of or with respect to any Intellectual Property, or a non-exclusive grant, or an exclusive grant as to a geography other than the U.S., of development, manufacturing, production, commercialization, marketing, co-promotion, distribution, sale or similar commercial rights with respect to any Product; and (b) any intercompany licenses or other similar arrangements among Credit Parties. Notwithstanding the foregoing or any other provision of this Agreement, no Excluded License entered into after the Closing Date shall be a “Permitted License” hereunder without the prior written consent thereto of the Collateral Agent or the Required Lenders.

“**Permitted Liens**” means:

(a) Liens securing the Obligations pursuant to any Loan Document;

(b) Liens existing on the Closing Date and set forth on Schedule 12.4 of the Disclosure Letter;

(c) Liens for Taxes, assessments or governmental charges (i) which are not yet delinquent or (ii) which are being contested in good faith and by appropriate proceedings promptly instituted and diligently conducted; provided that adequate reserves therefor have been set aside on the books of the applicable Person and maintained in conformity with Applicable Accounting Standards, if required; provided, further, that in the case of a Tax, assessment or charge that has or may become a Lien against any Collateral, such contest proceedings conclusively operate to stay the sale or forfeiture of any portion of any Collateral to satisfy such Tax, assessment or charge;

(d) Pledges, deposits or Liens arising as a matter of law in the ordinary course of business (other than Liens imposed by ERISA) in connection with workers' compensation, payroll taxes, unemployment insurance, old-age pensions, or other similar social security legislation, (ii) pledges or deposits made in the ordinary course of business consistent with past practice securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Borrower or any of its Subsidiaries, (iii) subject to Section 6.2(b), statutory or common law Liens of landlords and pledges and deposits in the ordinary course of business securing liability to landlords (including obligations in respect of letters of credit or bank guarantees for the benefit of landlords), and (iv) pledges or deposits to secure performance of tenders, bids, leases, statutory or regulatory obligations, surety and appeal bonds, government contracts, performance and return-of-money bonds and other obligations of like nature, in each case, other than for borrowed money and entered into in the ordinary course of business consistent with past practice;

(e) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under either Section 7.4 or 7.7;

(f) Liens (including the right of set-off) in favor of banks or other financial institutions incurred on deposits made in accounts held at such institutions in the ordinary course of business; provided that such Liens (i) are not given in connection with the incurrence of any Indebtedness, (ii) relate solely to obligations for administrative and other banking fees and expenses incurred in the ordinary course of business in connection with the establishment or maintenance of such accounts and (iii) are within the general parameters customary in the banking industry;

(g) Liens that are contractual rights of set-off (i) relating to pooled deposit or sweep accounts of Borrower or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business consistent with past practice or (ii) relating to purchase orders and other agreements entered into with customers of Borrower or any of its Subsidiaries in the ordinary course of business consistent with past practice;

(h) Liens solely on any cash earnest money deposits made by Borrower or any of its Subsidiaries in connection with any Permitted Acquisition or Permitted Investment;

(i) Liens existing after the Closing Date (other than those described in clause (b) above) on any asset or property at the time of its acquisition or on the assets or properties of any Person at the time such Person becomes a Subsidiary of Borrower; provided, that, in each case (i) neither such Lien was created nor the Indebtedness secured thereby was incurred in contemplation of such acquisition or such Person becoming a Subsidiary of Borrower, (ii) such Lien does not extend to or cover any other assets or properties (other than the proceeds or products thereof and other than after-acquired assets or properties subject to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that requires, pursuant to its terms and conditions in effect at such time, a pledge of after-acquired assets or properties, it being understood that such requirement shall not be permitted to apply to any assets or properties to which such requirement would not have applied but for such acquisition), (iii) the Indebtedness and any other obligations secured thereby is permitted under Section 6.4 hereof, and (iv) such Lien is of the type otherwise permitted under Section 6.5 hereof;

(j) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(k) Liens securing Indebtedness permitted under clause (d) of the definition of "Permitted Indebtedness" (including any extensions, refinancings, modifications, amendments or restatements of such Indebtedness permitted under clause (t) of the definition of "Permitted Indebtedness"); provided, that, in each instance, such Lien does not extend to or cover any assets or properties other than those that are subject to such Capital Lease Obligations or acquired with such Indebtedness;

(l) rights of first refusal, voting, redemption, transfer or other restrictions (including call provisions and buy-sell provisions) with respect to the Equity Interests of any joint venture or other Persons that are not Subsidiaries;

(m) servitudes, easements, rights-of-way, restrictions and other similar encumbrances on real property imposed by Requirements of Law and encumbrances consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor defects or other irregularities in title which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any Credit Party or any Subsidiary of any Credit Party;

(n) to the extent constituting a Lien, escrow arrangements securing indemnification obligations associated with any Permitted Acquisition or Permitted Investment;

(o) licenses, sublicenses, leases or subleases of personal property (other than relating to Intellectual Property) granted to third parties in the ordinary course of business consistent with past practice which, in each instance, do not interfere in any material respect with the operations of the business of any Credit Party or any of its Subsidiaries and do not prohibit granting the Collateral Agent a security interest therein for the benefit of Lenders and the other Secured Parties;

(p) Permitted Licenses;

(q) Liens on cash or other current assets pledged to secure (i) Indebtedness in respect of corporate credit cards, purchasing cards or bank card products or (ii) Indebtedness in the form of letters of credit or bank guarantees;

(r) Liens on any properties or assets of Borrower or any of its Subsidiaries which do not constitute Collateral under the Loan Documents, including any of the Excluded Property, other than Company IP or Acquisition IP relating in any way to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory that does not constitute Collateral, if any;

(s) Liens on properties or assets of Borrower or any of its Subsidiaries imposed by law or regulation which were incurred in the ordinary course of business, including landlords', carriers', warehousemen's, mechanics', materialmen's, contractors', suppliers of materials', architects' and repairmen's Liens, and other similar Liens arising in the ordinary course of business consistent with past practice; provided that such Liens (i) do not materially detract from the value of such properties or assets subject thereto or materially impair the use of such properties or assets subject thereto in the operations of the business of Borrower or such Subsidiary or (ii) are being contested in good faith by appropriate proceedings, which conclusively operate to stay the sale or forfeiture of any portion of such properties or assets subject thereto and for which adequate reserves have been set aside on the books of the applicable Person and maintained in conformity with Applicable Accounting Standards, if required;

(t) Liens on funds escrowed in connection with the consummation of the transactions contemplated by the Acquisition Agreement or other Permitted Acquisitions; and

(u) subject to the provisos immediately below, the modification, replacement, extension or renewal of the Liens described in clauses (a) through (s) above; provided, however, that any such modification, replacement, extension or renewal must (i) be limited to the assets or properties encumbered by the existing Lien (and any additions, accessions, parts, improvements and attachments thereto and the proceeds thereof) and (ii) not increase the principal amount of any Indebtedness secured by the existing Lien (other than by any reasonable premium or other reasonable amount paid and fees and expenses reasonably incurred in connection therewith); provided, further, that to the extent any of the Liens described in clauses (a) through (s) above secure Indebtedness of a Credit Party, such Liens, and any such modification, replacement, extension or renewal thereof, shall constitute Permitted Liens if and only to the extent that such Indebtedness is permitted under Section 6.4 hereof.

“Permitted Negative Pledges” means:

(a) prohibitions or limitations with regards to specific properties or assets encumbered by Permitted Liens, if and only to the extent each such prohibition or limitation applies only to such properties or assets;

(b) prohibitions or limitations set forth in any lease, license or other similar agreement entered into in the ordinary course of business and not prohibited hereunder;

(c) prohibitions or limitations relating to Permitted Indebtedness, in the case of each such agreement if and only to the extent such prohibitions or limitations, taken as a whole, are not materially more restrictive than the prohibitions and limitations set forth in this Agreement and the other Loan Documents, taken as a whole (as reasonably determined by a Responsible Officer of Borrower in good faith);

(d) customary provisions restricting assignments, subletting, sublicensing or other transfer of properties or assets subject thereto set forth in leases, subleases, licenses (including Permitted Licenses) and other similar agreements that are not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such restriction applies only to the properties or assets subject to such leases, subleases, licenses or agreements, and customary provisions restricting assignment, pledges or transfer of any agreement entered into in the ordinary course of business consistent with past practice;

(e) prohibitions or limitations imposed by Requirements of Law;

(f) prohibitions or limitations that exist as of the Effective Date under any items of Permitted Indebtedness in clause (b) of the definition of "Permitted Indebtedness";

(g) customary prohibitions or limitations arising in connection with any Permitted Transfer or contained in any contract or agreement relating to any Permitted Transfer pending the consummation of such Transfer;

(h) customary provisions in shareholders' agreements, joint venture agreements, organizational documents or similar binding agreements relating to, or any agreement evidencing Indebtedness of, any joint venture entity or non-Wholly-Owned Subsidiary and applicable solely to such joint venture entity or non-Wholly-Owned Subsidiary and the Equity Interests issued thereby;

(i) customary net worth provisions set forth in real property leases entered into by Subsidiaries of Borrower, so long as such net worth provisions would not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(j) customary net worth provisions set forth in customer agreements entered into in the ordinary course of business consistent with past practice that are not otherwise prohibited under this Agreement or any other Loan Document, so long as such net worth provisions would not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(k) restrictions on cash or other deposits (including escrowed funds) imposed by agreements entered into in the ordinary course of business consistent with past practice that are not otherwise prohibited under this Agreement or any other Loan Document;

(l) prohibitions or limitations set forth in any agreement in effect at the time any Person becomes a Subsidiary (but not any amendment, modification, restatement, renewal, extension, supplement or replacement expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Subsidiary and each such prohibition or limitation does not apply to Borrower or any other Subsidiary (other than such Person and any other Person that is a Subsidiary of such first Person at the time such first Person becomes a Subsidiary);

(m) prohibitions or limitations imposed by any Loan Document;

(n) customary provisions set forth in joint venture agreements or agreements governing minority investments that are not otherwise prohibited by this Agreement or any other Loan Document, if and only to the extent each such prohibition or limitation applies only to the joint venture entity or minority investment that is the subject of such agreement;

(o) limitations imposed with respect to any license acquired in a Permitted Acquisition;

(p) customary provisions restricting assignments or other transfer of properties or assets subject thereto set forth in any agreement entered into in the ordinary course of business consistent with past practice, if and only to the extent each such restriction applies only to the properties or assets subject to such agreement;

(q) prohibitions or limitations imposed by any contract or agreement evidencing any Permitted Indebtedness of the type described in clause (d) of the definition of “Permitted Indebtedness”; and

(r) prohibitions or limitations imposed by any amendments, modifications, restatements, renewals, extensions, supplements or replacements of any of the agreements referred to in clauses (a) through (q) above, except to the extent that any such amendment, modification, restatement, renewal, extension, supplement or replacement expands the scope of any such prohibition or limitation.

“**Permitted Subsidiary Distribution Restrictions**” means, in each case notwithstanding Section 6.8:

(a) prohibitions or limitations with regards to specific properties or assets encumbered by Permitted Liens, if and only to the extent each such prohibition or limitation applies only to such properties or assets;

(b) prohibitions or limitations set forth in any lease, license or other similar agreement not prohibited hereunder;

(c) prohibitions or limitations relating to Permitted Indebtedness, in the case of each such agreement if and only to the extent such prohibitions or limitations, taken as a whole, are not materially more restrictive than the prohibitions and limitations set forth in this Agreement and the other Loan Documents, taken as a whole (as reasonably determined by a Responsible Officer of Borrower in good faith);

(d) customary provisions restricting assignments, subletting, sublicensing or other transfer of properties or assets subject thereto set forth in leases, subleases, licenses (including Permitted Licenses) and other similar agreements that are not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such restriction applies only to the properties or assets subject to such leases, subleases, licenses or agreements, and customary provisions restricting assignment, pledges or transfer of any agreement entered into in the ordinary course of business consistent with past practice;

(e) prohibitions or limitations on the transfer or assignment of any properties, assets or Equity Interests set forth in any agreement entered into in the ordinary course of business consistent with past practice that is not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such prohibition or limitation applies only to such properties, assets or Equity Interests;

(f) prohibitions or limitations imposed by Requirements of Law;

(g) prohibitions or limitations that exist as of the Effective Date under any Permitted Indebtedness of the type described in clause (b) of the definition of “Permitted Indebtedness”;

(h) customary prohibitions or limitations arising in connection with any Permitted Transfer or contained in any contract or agreement relating to any Permitted Transfer pending the consummation of such Transfer;

(i) customary provisions in shareholders’ agreements, joint venture agreements, organizational documents or similar binding agreements relating to, or any agreement evidencing Indebtedness of, any joint venture entity or non-Wholly-Owned Subsidiary and applicable solely to such joint venture entity or non-Wholly-Owned Subsidiary and the Equity Interests issued thereby;

(j) customary net worth provisions set forth in real property leases entered into by Subsidiaries of Borrower, so long as such net worth provisions would not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(k) customary net worth provisions set forth in customer agreements entered into in the ordinary course of business consistent with past practice that are not otherwise prohibited under this Agreement or any other Loan Document, so long as such net worth provisions would not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(l) restrictions on cash or other deposits (including escrowed funds) imposed by agreements entered into in the ordinary course of business consistent with past practice that are not otherwise prohibited under this Agreement or any other Loan Document;

(m) prohibitions or limitations set forth in any agreement in effect at the time any Person becomes a Subsidiary (but not any amendment, modification, restatement, renewal, extension, supplement or replacement expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Subsidiary and each such prohibition or limitation does not apply to Borrower or any other Subsidiary (other than such Person and any other Person that is a Subsidiary of such first Person at the time such first Person becomes a Subsidiary);

(n) prohibitions or limitations imposed by any Loan Document;

(o) customary provisions set forth in joint venture agreements or agreements governing minority investments that are not otherwise prohibited by this Agreement or any other Loan Document, if and only to the extent each such prohibition or limitation applies only to the joint venture entity or minority investment that is the subject of such agreement;

(p) customary provisions restricting assignments or other transfer of properties or assets subject thereto set forth in any agreement entered into in the ordinary course of business consistent with past practice, if and only to the extent each such restriction applies only to the properties or assets subject to such agreement;

(q) prohibitions or limitations imposed by any agreement evidencing any Permitted Indebtedness of the type described in any of clause (d) of the definition of "Permitted Indebtedness"; and

(r) prohibitions or limitations imposed by any amendments, modifications, restatements, renewals, extensions, supplements or replacements of any of the agreements referred to in clauses (a) through (q) above, except to the extent that any such amendment, modification, restatement, renewal, extension, supplement or replacement expands the scope of any such prohibition or limitation.

"Permitted Transfers" means:

(a) Transfers of any properties or assets which do not constitute Collateral under the Loan Documents, other than any Company IP or Acquisition IP that does not constitute Collateral under the Loan Documents but is related in any way to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of any Product in the Territory;

(b) Transfers of Inventory in the ordinary course of business consistent with past practice;

(c) Transfers of surplus, damaged, worn out or obsolete equipment that is, in the reasonable judgment of Borrower exercised in good faith, no longer economically practicable to maintain or useful in the ordinary course of business consistent with past practice, and Transfers of other properties or assets in lieu of any pending or threatened institution of any proceedings for the condemnation or seizure of such properties or assets or for the exercise of any right of eminent domain;

(d) Transfers made in connection with Permitted Liens;

(e) Transfers of cash and Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;

(f) Transfers (i) between or among Credit Parties, provided that, with respect to any properties or assets constituting Collateral under the Loan Documents, any and all steps as may be required to be taken in order to create and maintain a first priority security interest in and Lien upon such properties and assets in favor of the Collateral Agent for the benefit of Lenders and the other Secured Parties are taken contemporaneously with the completion of any such transfer, and (ii) between or among Subsidiaries which are not Credit Parties;

(g) the sale or issuance of Equity Interests in any Subsidiary of Borrower to any Credit Party or Subsidiary, provided, that any such sale or issuance by a Credit Party shall be to another Credit Party;

(h) the sale or discount without recourse of accounts receivable arising in the ordinary course of business consistent with past practice in connection with the compromise or collection thereof;

(i) any abandonment, cancellation, non-renewal or discontinuance of use or maintenance of Company IP or Acquisition IP that Borrower reasonably determines in good faith (i) is no longer economically practicable to maintain or useful in the ordinary course of business consistent with past practice and that (ii) would not reasonably be expected to be adverse to the rights, remedies and benefits available to, or conferred upon, Lender under any Loan Document in any material respect; and

(j) Transfers by Borrower or any of its Subsidiaries pursuant to any Permitted License.

“**Person**” means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

“**Plan**” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the IRC or Section 302 of ERISA which is maintained or contributed to by Borrower or its Subsidiaries or their respective ERISA Affiliates or with respect to which Borrower or its Subsidiaries have any liability (including under Section 4069 of ERISA).

“**Preliminary Prospectus Supplement**” means the Preliminary Prospectus Supplement for the offering by Borrower of convertible notes, substantially in the form provided to the Collateral Agent on the Effective Date.

“**Prepayment Premium**” means, as applicable, (i) the Equity Proceeds Prepayment Premium or (ii) the General Prepayment Premium.

“**Product**” means, collectively, (i) Xtampza® ER, (ii) any successor to Xtampza® ER, (iii) the Acquisition Products, (iv) any successor to any Acquisition Product, and (v) any other pharmaceutical, biologic or medical device products sold or out-licensed by any Credit Party or its Subsidiaries at any time after the Effective Date.

“**Purchased Assets**” has the meaning assigned to such term in the Purchase Agreement.

“**Register**” is defined in Section 2.8(a).

“**Registered Organization**” means any “registered organization” as defined in the Code with such additions to such term as may hereafter be made.

“**Regulatory Agency**” means a U.S. Governmental Authority with responsibility for the approval of the marketing and sale of pharmaceuticals or other regulation of pharmaceuticals, including the FDA and the DEA.

“**Regulatory Approval**” means all approvals, product or establishment licenses, registrations or authorizations of any Regulatory Agency necessary for the manufacture, use, storage, import, export, transport, offer for sale, or sale of any Product.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“**Release**” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater, in each case, in the United States.

“**Required Lenders**” means, at any time of determination (a) prior to the Closing Date, Lenders obligated with respect to greater than fifty percent (50%) of the Term Loan Commitments, and (b) thereafter, Lenders representing greater than fifty percent (50%) of the sum of the outstanding principal amount of the Term Loans at such time.

“**Requirements of Law**” means, as to any Person, (a) the organizational or governing documents of such Person, and (b) any law (statutory or common), treaty, order, policy, rule or regulation or determination of an arbitrator or a court or other Governmental Authority (including Health Care Laws, Data Protection Laws, FDA Laws, DEA Laws, and all applicable statutes, rules, regulations, standards, guidelines, policies and orders administered or issued by any foreign Governmental Authority) that is applicable to and binding upon such Person or any of its assets or properties, or to which such Person or any of its assets or properties are subject.

“**Responsible Officers**” means, with respect to Borrower, collectively, the Chief Executive Officer, President, Chief Commercial Officer, Chief Compliance Officer, Chief Marketing Officer, Chief Technology Officer, General Counsel, and Chief Financial Officer.

“**Restricted License**” means any material license or other agreement of the kind or nature subject or purported to be subject from time to time to a Lien under any Collateral Document, with respect to which a Credit Party is the licensee, (a) that prohibits or otherwise restricts such Credit Party from granting a security interest in such Credit Party’s interest in such license or agreement in a manner enforceable under Requirements of Law, or (b) for which a breach of or default under would reasonably be expected to interfere with the Collateral Agent’s or any Lender’s right to sell any Collateral.

“**Safety Notice**” is defined in Section 4.19(f).

“**Sanctions**” is defined in Section 4.18(c).

“**SEC**” shall mean the Securities and Exchange Commission and any analogous Governmental Authority.

“**Secured Parties**” means each Lender, each other Indemnified Person and each other holder of any Obligation of a Credit Party.

“**Securities Account**” means any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“**Securities Act**” means the Securities Act of 1933.

“**Security Agreement**” means the Guaranty and Security Agreement, dated as of the Closing Date, by and among the Credit Parties and the Collateral Agent, in form and substance substantially similar to Exhibit C attached hereto or in such form or substance as the Credit Parties and the Collateral Agent may otherwise agree.

“**Security Disclosure Letter**” means the “Security Disclosure Letter”, as such term is defined in the Security Agreement.

“**Solvent**” means, with respect to any Person as of any date of determination, that, as of such date, (a) the value of the assets (including goodwill minus disposition costs) of such Person (both at fair value and present fair saleable value), on a going concern basis, is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person, (b) such Person is able to generally pay all liabilities (including trade debt) of such Person as such liabilities become absolute and mature in the ordinary course of business consistent with past practice and (c) such Person does not have unreasonably small capital after giving due consideration to the prevailing practice in the industry in which it is engaged or will be engaged. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“**Specified Acquisition Agreement Representations**” means the representations and warranties with respect to the Purchased Assets and the Assumed Liabilities made by or on behalf of Assertio Therapeutics, Inc. in the Acquisition Agreement as are material to the interests of the Collateral Agent or Lenders, but only to the extent that Borrower has the right (determined without regard to any notice requirement) to terminate its obligations under the Acquisition Agreement or to decline to consummate the acquisition of the Purchased Assets or the assumption of the Assumed Liabilities pursuant to the Purchase Agreement, without the incurrence of any liabilities or obligations, as a result of a breach of any such representations or warranties, as determined without giving effect to any waiver, amendment, consent or other modification thereto.

“**Specified Disputes**” is defined in [Section 4.7\(b\)](#).

“**SSA**” means the Social Security Act of 1935, codified at Title 42, Chapter 7, of the United States Code.

“**Stock Acquisition**” means the purchase or other acquisition by Borrower or any of its Subsidiaries of all of the Equity Interests (by merger, stock purchase or otherwise) in any other Person.

“**Subordinated Debt**” means any Indebtedness in the form of or otherwise constituting term debt incurred by any Credit Party or any Subsidiary thereof (including any Indebtedness incurred in connection with any Acquisition or other Investment) that: (a) is subordinated in right of payment to the Obligations at all times until all of the Obligations have been paid, performed or discharged in full and Borrower has no further right to obtain any Credit Extension hereunder pursuant to a subordination, intercreditor or other similar agreement that is in form and substance reasonably satisfactory to the Collateral Agent (which agreement shall include turnover provisions that are reasonably satisfactory to the Collateral Agent); (b) except as permitted by [clause \(d\)](#) below or otherwise permitted, is not subject to scheduled amortization, redemption (mandatory), sinking fund or similar payment and does not have a final maturity before a date that is at least one hundred and twenty (120) days following the Term Loan Maturity Date; (c) does not include covenants (including financial covenants) and agreements (excluding agreements with respect to maturity, amortization, pricing and other economic terms) that, taken as a whole, are more restrictive or onerous on the Credit Parties in any material respect than the comparable covenants and agreements, taken as a whole, in the Loan Documents (as reasonably determined by a Responsible Officer of Borrower in good faith); (d) is not subject to repayment or prepayment, including pursuant to a put option exercisable by the holder of any such Indebtedness, prior to a date that is at least one hundred and twenty (120) days following the Term Loan Maturity Date except in the case of an event of default or change of control (or the equivalent thereof, however described); and (e) does not provide or otherwise include provisions having the effect of providing that a default or event of default (or the equivalent thereof, however described) under or in respect of such Indebtedness shall exist, or such Indebtedness shall otherwise become due prior to its scheduled maturity or the holder or holders thereof or any trustee or agent on its or their behalf shall be permitted (with or without the giving of notice, the lapse of time or both) to cause any such Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, in any such case upon the occurrence of a Default or Event of Default hereunder unless and until the Obligations have been declared, or have otherwise automatically become, immediately due and payable pursuant to [Section 8.1\(a\)](#).

“**Subsidiary**” means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which more than fifty percent (50.0%) of whose shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors (or similar body) of such corporation, partnership or other entity are at the time owned, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of a Credit Party.

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

“**Term Loan Amount**” means an original principal amount equal to Two Hundred Million Dollars (\$200,000,000.00).

“**Term Loan Commitment**” means, with respect to any Lender, the commitment of such Lender to make the Credit Extensions relating to the Term Loans on the Closing Date, in the aggregate principal amount set forth opposite such Lender’s name on Exhibit E attached hereto.

“**Term Loan Maturity Date**” means the 48th-month anniversary of the Closing Date.

“**Term Loan Note**” means a promissory note in substantially the form attached hereto as Exhibit B, as it may be amended, restated, supplemented or otherwise modified from time to time.

“**Term Loan Rate**” is defined in Section 2.3(a)(i).

“**Term Loans**” is defined in Section 2.2(a).

“**Territory**” means, collectively, the United States and all other countries in which any Product has been commercialized by the Credit Parties or their Subsidiaries, or in which any attempt to commercialize any Product by the Credit Parties or their Subsidiaries has occurred (such as submission of applications to Governmental Authorities).

“**Third Party IP**” is defined in Section 4.6(m).

“**Trademarks**” means (a)(i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, service marks, elements of package or trade dress of goods or services, logos and other source or business identifiers, (ii) all registrations and recordings thereof in the United States Patent and Trademark Office or in any similar office or agency of the United States or any state thereof or in any similar office or agency anywhere in the world in which foreign counterparts are registered or issued, (iii) all applications in connection therewith and (iv) all goodwill associated therewith, and (b) all renewals thereof.

“**Transfer**” is defined in Section 6.1.

“**Treasury Regulations**” mean those regulations promulgated pursuant to the IRC.

“**TRICARE**” means a program of medical benefits covering former and active members of the uniformed services and certain of their dependents, financed and administered by the United States Departments of Defense, Health and Human Services and Transportation.

“**UKBA**” is defined in Section 4.18(a).

“**United States**” or “**U.S.**” means the United States of America, its fifty (50) states, the District of Columbia, Puerto Rico or any other jurisdiction within the United States of America.

“**U.S. Person**” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“Wholly-Owned Subsidiary” means, with respect to any Person, a Subsidiary of such Person, all of the Equity Interests in which (other than directors’ qualifying shares or nominee or other similar shares required pursuant to Requirements of Law) are owned by such Person or another Wholly-Owned Subsidiary of such Person. Unless the context otherwise requires, each reference to a Wholly-Owned Subsidiary herein shall be a reference to a Wholly-Owned Subsidiary of a Credit Party.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

[Signature page follows.]

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

COLLEGIUM PHARMACEUTICAL INC.,
as Borrower

By: /s/ Joseph Ciaffoni

Name: Joseph Ciaffoni

Title: President and Chief Executive Officer

Signature Page to Loan Agreement

**COLLEGIUM SECURITIES CORPORATION,
as an additional Credit Party**

By: /s/ Joseph Ciaffoni

Name: Joseph Ciaffoni

Title: President

Signature Page to Loan Agreement

**BIOPHARMA CREDIT PLC,
as Collateral Agent and Lender**

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By /s/ Pedro Gonzalez de Cosio

Name: Pedro Gonzalez de Cosio

Title: CEO and Managing Member

**BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP,
as Lender**

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By /s/ Pedro Gonzalez de Cosio

Name: Pedro Gonzalez de Cosio

Title: CEO and Managing Member

Signature Page to Loan Agreement

EXHIBIT A – PAYMENT/ADVANCE REQUEST FORM

LOAN PAYMENT/ADVANCE REQUEST

Reference is made to that certain Loan Agreement dated as of February 6, 2020 by and among COLLEGIUM PHARMACEUTICAL INC., a Virginia corporation (“**Borrower**”), BIOPHARMA CREDIT PLC (in its capacity as “**Collateral Agent**” and a “**Lender**”) and BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP (a “**Lender**”) and the other parties thereto (the “**Loan Agreement**”; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement). This Loan Payment/Advance Request is being delivered pursuant to Section 3.4 of the Loan Agreement.

The undersigned, being the duly elected and acting Executive Vice President and Chief Financial Officer of Borrower does hereby certify, solely in his/her capacity as an authorized officer of Borrower and not in his/her personal capacity, that, on the Closing Date:

1. Borrower hereby requests a borrowing of the Term Loans;
2. each of the representations and warranties made by the Credit Parties (i) in Section 4.1(a) (as to each Credit Party only), Section 4.1(b)(ii), Section 4.3(a), Section 4.3(b)(i) Section 4.5, Section 4.9, Section 4.13(a), Section 4.14, and Section 4.18(d), and (ii) subject to the Funds Certain Provisions and solely to the extent that a breach thereof is (or would be) materially adverse to the interests of the Collateral Agent or Lenders with respect to any lien on any of the assets or properties described therein (including the creation or perfection of any security interest therein), Section 4.6(s), is true and correct in all material respects on the Closing Date (both with and without giving effect to the Term Loans and the consummation of the transactions contemplated by the Acquisition Agreement), unless such representation or warranty is expressly stated to relate to a specific earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (it being understood that any such representation or warranty that is qualified as to “materiality,” “Material Adverse Change,” or similar language shall be true and correct in all respects on the Closing Date (both with and without giving effect to the Term Loans and the consummation of the transactions contemplated by the Acquisition Agreement) or as of such earlier date, as applicable);
3. all conditions set forth in Section 3.1 and Section 3.2 of the Loan Agreement have been satisfied (or waived by the Required Lenders) as of the Closing Date (excluding, for the avoidance of doubt, the satisfaction of the Collateral Agent or any Lender with respect to any document or action specified in any such condition precedent as being subject to the satisfaction of the Collateral Agent or any Lender);
4. the undersigned is a Responsible Officer of Borrower; and
5. the proceeds of the Term Loans shall be disbursed as set forth on Attachment A hereto.¹

Dated: _____, 20__

[Signature page follows]

¹ To be prepared by the Collateral Agent’s counsel for attachment hereto.

**COLLEGIUM PHARMACEUTICAL INC.,
as Borrower**

By: _____
Name: _____
Title: _____

Signature Page to Loan/Advance Request

EXHIBIT B

THIS NOTE CONTAINS ORIGINAL ISSUE DISCOUNT, AS DEFINED IN SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. PLEASE CONTACT PAUL BRANNELLY, 100 TECHNOLOGY CENTER DRIVE, SUITE 300, STOUGHTON, MA 02072, TELEPHONE: (781) 713-3699 TO OBTAIN INFORMATION REGARDING THE ISSUE PRICE OF THE NOTE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT IN THE NOTE AND THE YIELD TO MATURITY.

TERM LOAN NOTE

\$ _____ .00

Dated: [_____], 2020

FOR VALUE RECEIVED, the undersigned, COLLEGIUM PHARMACEUTICAL, INC., a Virginia corporation ("**Borrower**"), HEREBY PROMISES TO PAY to [BIOPHARMA CREDIT PLC] [BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP] ("**Lender**"), or its registered assignees, the principal amount of _____ MILLION DOLLARS (\$ _____ .00), plus interest on the aggregate unpaid principal amount hereof at a per annum rate equal to the LIBOR Rate plus seven and one half percent (7.50%) per annum, and in accordance with the terms of the Loan Agreement dated as of February 6, 2020 by and among Borrower, Lender and the other parties thereto (as may be amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents, shall be due and payable on the Term Loan Maturity Date. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Borrower shall make equal quarterly payments of principal of the Term Loans commencing on the first Payment Date on the 3rd-month anniversary of the Closing Date and continuing on each subsequent Payment Date; provided, that if any such Payment Date is not a Business Day, the applicable payment shall be due and payable on the first Business Day immediately after such date. All unpaid principal with respect to the Term Loans (and, for the avoidance of doubt, all accrued and unpaid interest, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents) is due and payable in full on the Term Loan Maturity Date. Interest shall accrue on this Term Loan Note commencing on, and including, the date of this Term Loan Note, and shall accrue on this Term Loan Note, or any portion thereof, for the day on which this Term Loan Note or such portion is paid. Interest on this Term Loan Note shall be payable in accordance with Section 2.3 of the Loan Agreement.

Principal, interest and all other amounts due with respect to this Term Loan Note are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Term Loan Note.

The Loan Agreement, among other things, (a) provides for the making of secured Term Loans by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Term Loan Note may not be prepaid except as set forth in Section 2.2(c) of the Loan Agreement or as expressly provided in Section 8.1 of the Loan Agreement.

This Term Loan Note and the obligation of Borrower to repay the unpaid principal amount of this Term Loan Note, interest thereon, and all other amounts due Lender under the Loan Agreement are secured pursuant to the Collateral Documents.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Term Loan Note are hereby waived.

THIS TERM LOAN NOTE AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS TERM LOAN NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Note Register; Ownership of Note. The ownership of an interest in this Term Loan Note shall be registered on a record of ownership maintained by Collateral Agent. Notwithstanding anything else in this Term Loan Note to the contrary, the right to the principal of, and stated interest on, this Term Loan Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Term Loan Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Term Loan Note on the part of any other Person.

[Signature page follows]

IN WITNESS WHEREOF, Borrower has caused this Term Loan Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

COLLEGIUM PHARMACEUTICAL, INC.,
as **Borrower**

By: _____

Name: Joseph Ciaffoni

Title: President and Chief Executive Officer

Signature Page to Term Loan Note

EXHIBIT C

FORM OF SECURITY AGREEMENT

(to be attached)

EXHIBIT D

COMPLIANCE CERTIFICATE

TO: BIOPHARMA CREDIT PLC

FROM: COLLEGIUM PHARMACEUTICAL, INC.

The undersigned authorized officer of COLLEGIUM PHARMACEUTICAL, INC., a Virginia corporation ("**Borrower**") hereby certifies, solely in his/her capacity as a Responsible Officer of Borrower and not in his/her personal capacity, that in accordance with the terms and conditions of the Loan Agreement (the "**Loan Agreement**"; capitalized terms used, but not defined herein having the meanings given them in the Loan Agreement) dated as of February 6, 2020 by and among Borrower, the Guarantors from time to time party thereto, BIOPHARMA CREDIT PLC, a public limited company incorporated under the laws of England and Wales (as "**Collateral Agent**") and the Lenders party thereto:

(i) The Credit Parties are in compliance for the period ending _____ with the covenants set forth in Section 5.2 and Section 6.15 of the Loan Agreement, except as noted below;

(ii) No Default or Event of Default has occurred and is continuing, except as noted below;

(iii) Each Credit Party and each of its Subsidiaries has timely filed all foreign, U.S. federal and state income Tax returns and other material Tax returns and reports (or extensions thereof) of each Credit Party and each of its Subsidiaries required to be filed by any of them and such returns and reports are correct in all material respects, and has timely paid all material Taxes, assessments, deposits and contributions owed which are due and payable by any Credit Party or Subsidiary or upon its properties, assets, income, businesses and franchises, except as otherwise permitted pursuant to the terms of Section 4.10 or Section 5.3 of the Loan Agreement; and

(iv) No Liens have been levied or claims made against any Credit Party or any of its Subsidiaries relating to unpaid employee payroll or benefits of which (a) such Credit Party has not previously provided written notification to the Collateral Agent or (b) which do not constitute Permitted Liens.

Attached are the required documents, if any, supporting our certification(s). The undersigned Responsible Officer of Borrower further certifies, in such capacity and not in his/her personal capacity, that the attached financial statements (if any) fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries as of applicable the dates and for the applicable periods in accordance with Applicable Accounting Standards consistently applied (taking into account the provisions of Section 1 of the Loan Agreement if and to the extent applicable).

Date: _____

[Signature page follows]

**COLLEGIUM PHARMACEUTICAL, INC.,
as Borrower**

By: _____

Name: _____

Title: _____

Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under "Complies" column.

	Reporting Covenant	Requirement		Complies	
1)	Annual Financial Statements	90 days after year end	Yes	No	N/A
2)	Quarterly Financial Statements	45 days after quarter end	Yes	No	N/A
3)	Other Information after an Event of Default	5 Business Days after request	Yes	No	N/A
4)	Legal Action Notice	Promptly	Yes	No	N/A
5)	Notice of Default, etc.	Promptly (within 5 Business Days) after knowledge	Yes	No	N/A
6)	Minimum Revenue	Quarterly	Yes	No	N/A

Deposit and Securities Accounts

(Please list all accounts and indicate each Excluded Account with an asterisk (); attach separate sheet if additional space needed)*

	Bank	Account Number	New Account?		Acct Control Agmt in place?	
1)			Yes	No	Yes	No
2)			Yes	No	Yes	No
3)			Yes	No	Yes	No
4)			Yes	No	Yes	No
5)			Yes	No	Yes	No
6)			Yes	No	Yes	No

Other Matters

Have there been any changes in management since the last Compliance Certificate? Yes No

Have there been any prohibited Transfers? Yes No

Exceptions

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

LENDER USE ONLY

Compliance Status

Yes

No

EXHIBIT E

COMMITMENTS; NOTICE ADDRESSES

Lender	Commitments	Notice Address
BioPharma Credit PLC	Term Loan Commitment: \$165,000,000.00	<p>BIOPHARMA CREDIT PLC c/o Beaufort House 51 New North Road Exeter EX4 4EP United Kingdom Attn: Company Secretary Tel: +44 01 392 477 500 Fax: +44 01 392 253 282</p> <p>with copies (which shall not constitute notice) to:</p> <p>PHARMAKON ADVISORS LP 110 East 59th Street, #3300 New York, NY 10022 Attn: Pedro Gonzalez de Cosio Phone: +1 (212) 883-2296 Fax: +1 (917) 210-4048 Email: pg@PharmakonAdvisors.com</p> <p>and</p> <p>AKIN GUMP STRAUSS HAUER & FELD LLP One Bryant Park New York, NY 10036-6745 Attn: Geoffrey E. Secol Phone: (212) 872-8081 Fax: (212) 872-1002 Email: gsecol@akingump.com</p>
BioPharma Credit Investments V (Master) LP	Term Loan Commitment: \$35,000,000.00	<p>BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP c/o BioPharma Credit Investments V GP LLC c/o Walkers Corporate Limited Cayman Corporate Centre, 27 Hospital Road, George Town, Grand Cayman KY1-9008 Attn: Pedro Gonzalez de Cosio</p> <p>with copies (which shall not constitute notice) to:</p> <p>PHARMAKON ADVISORS LP 110 East 59th Street, #3300 New York, NY 10022 Attn: Pedro Gonzalez de Cosio Phone: +1 (212) 883-2296 Fax: +1 (917) 210-4048 Email: pg@PharmakonAdvisors.com</p> <p>and</p> <p>AKIN GUMP STRAUSS HAUER & FELD LLP One Bryant Park New York, NY 10036-6745 Attn: Geoffrey E. Secol Phone: (212) 872-8081 Fax: (212) 872-1002 Email: gsecol@akingump.com</p>