
**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): **March 23, 2022 (March 22, 2022)**

Collegium Pharmaceutical, Inc.

(Exact name of registrant as specified in its charter)

Virginia

(State or other jurisdiction of
incorporation or organization)

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**

Not Applicable

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

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

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

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.001 par value per share	COLL	The Nasdaq Global Select Market

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

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.

Explanatory Note

As previously disclosed in the Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) by Collegium Pharmaceutical, Inc., a Virginia corporation (the “Company”), on February 14, 2022, the Company entered into an Agreement and Plan of Merger, dated as of February 14, 2022 (the “Merger Agreement”), with Bristol Acquisition Company Inc., a Delaware corporation and wholly owned subsidiary of the Company (“Purchaser”), and BioDelivery Sciences International, Inc., a Delaware corporation (“BDSI”).

Item 1.01 Entry into a Material Definitive Agreement.

The information contained in Item 2.03 of this Current Report on Form 8-K is incorporated by reference herein.

Item 2.01 Completion of Acquisition or Disposition of Assets.

Pursuant to the Merger Agreement, on February 18, 2022, Purchaser commenced a tender offer to purchase all of the outstanding shares of common stock of BDSI, par value \$0.001 per share (the “Shares”), at a price of \$5.60 per Share, in cash, subject to applicable withholding taxes and without interest (the “Offer Price”), upon the terms and subject to the conditions set forth in the offer to purchase, dated February 18, 2022 (together with any amendments, supplements or modifications thereto, the “Offer to Purchase”), and in the related letter of transmittal (the “Letter of Transmittal” and, together with the Offer to Purchase, the “Offer”).

The Offer expired at 12:00 midnight, Eastern Time, at the end of March 18, 2022 (i.e., one minute following 11:59 p.m., Eastern Time, on March 18, 2022). According to the depository for the Offer, 74,780,700 Shares were validly tendered and not validly withdrawn in the Offer, representing approximately 72.44% of the outstanding Shares (not including 5,548,893 Shares delivered through notices of guaranteed delivery, representing approximately 5.37% of the Shares outstanding). The number of Shares tendered satisfied the condition to the Offer that there be validly tendered and not validly withdrawn prior to the expiration of the Offer a number of Shares (but excluding Shares tendered pursuant to guaranteed delivery procedures that have not yet been “received”, as defined by Section 251(h)(6)(f) of the General Corporation Law of the State of Delaware (the “DGCL”) by the “depository” (as such term is defined in Section 251(h)(6)(c) of the DGCL), together with the Shares then owned by Purchaser and its affiliates (as such term is defined in Section 251(h)(6)(a) of the DGCL)), representing at least one Share more than 50% of all issued and outstanding Shares as of immediately after the consummation of the Offer (the “Minimum Condition”). As a result of the satisfaction of the Minimum Condition and each of the other conditions to the Offer, on March 21, 2022, Purchaser irrevocably accepted for payment all Shares that were validly tendered (and not validly withdrawn) pursuant to the Offer, and will as promptly as practicable pay for all such validly tendered Shares.

Following the consummation of the Offer, the remaining conditions to the Merger (as defined below) set forth in the Merger Agreement were satisfied, and Purchaser merged with and into BDSI (the “Merger”) in accordance with Section 251(h) of the DGCL, with BDSI surviving the Merger as a wholly owned subsidiary of the Company. The Merger was effective at 5:00 p.m. on March 22, 2022 (the “Effective Time”).

At the Effective Time, each then issued and outstanding Share not previously purchased in the Offer (other than Excluded Shares and Dissenting Shares (each as defined in the Merger Agreement)) was converted into the right to receive the Offer Price in cash, less any applicable withholding taxes and without interest.

Pursuant to the Merger Agreement, at the Effective Time, each stock option to purchase Shares that was outstanding immediately prior to the Effective Time (each, a “BDSI Option”) automatically accelerated and became fully vested and exercisable effective immediately prior to the Effective Time. As of the Effective Time, each BDSI Option that had a per share exercise price that is less than the Offer Price (each, an “In-the-Money Option”) and was outstanding and unexercised immediately prior to the Effective Time was cancelled and converted into the right to receive an amount in cash equal to the product of (A) the total number of Shares subject to such fully vested In-the-Money Option immediately prior to the Effective Time, *multiplied by* (B) the excess, if any, of (x) the Offer Price *minus* (y) the exercise price payable per Share under such In-the-Money Option, such amount to be paid, minus any applicable withholding taxes, in accordance with the Merger Agreement. Each BDSI Option that had a per Share exercise price that was equal to or more than the Offer Price at the Effective Time that was then outstanding and unexercised was cancelled without any consideration payable therefor whether before or after the Effective Time.

In addition, in accordance with the Merger Agreement, each restricted stock unit award issued by BDSI (a “BDSI RSU”) that was outstanding immediately prior to the Effective Time automatically accelerated and became fully vested immediately prior to the Effective Time. As of the Effective Time, each BDSI RSU that was then outstanding immediately prior to the Effective Time, was cancelled and converted into the right to receive an amount in cash equal to the product of (A) the total number of Shares issuable in settlement of such BDSI RSU, immediately prior to the Effective Time, *multiplied by* (B) the Offer Price, subject to any withholding taxes required to be deducted and withheld by applicable law.

Further, as of the Effective Time, each warrant to purchase shares of BDSI Common Stock (a “BDSI Warrant”) that was outstanding and unexercised immediately prior to the Effective Time was cancelled and converted into the right to receive cash in an amount equal to the product of (A) the total number of Shares subject to such BDSI Warrant immediately prior to the Effective Time, multiplied by (B) the excess, if any, of (x) the Offer Price *minus* (y) the exercise price payable per Share under such BDSI Warrant, subject to any withholding taxes required to be deducted and withheld by applicable law.

The aggregate consideration to be paid by Purchaser to complete the Offer and the Merger is approximately \$607 million without giving effect to related transaction fees and expenses.

The foregoing description of the Merger Agreement, the Offer and the Merger does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, which was filed as Exhibit 2.1 to the Current Report on Form 8-K filed by the Company on February 14, 2022, and is incorporated herein by reference.

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

On March 22, 2022, in connection with closing (the “Closing”) of the transactions contemplated by the Merger Agreement (the “Transactions”), the Company entered into an Amended and Restated Loan Agreement by and among the Company; its subsidiary, Collegium Securities Corporation; Purchaser; 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 \$650 million secured term loan (the “Term Loan”), the proceeds of which were used to repay the Company’s existing term loan, repay outstanding indebtedness of BDSI and fund a portion of the consideration to be paid to complete the Transactions.

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 1.20%), plus a margin of 7.5% per annum. The Company is required to repay the Term Loan by paying \$100 million in amortization payments during the first year and the remaining \$550 million balance will amortize in equal quarterly installments over the remaining three (3) years.

The Loan Agreement contains certain covenants and obligations of the parties, including, without limitation, 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 10.1, and which is incorporated by reference herein.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On March 23, 2022, the Company appointed Dr. Thomas Smith as the Company's Executive Vice President and Chief Medical Officer. Dr. Richard Malamut ceased to serve as Executive Vice President and Chief Medical Officer of the Company as of the same date. The Company appreciates Dr. Malamut's service and wishes him the best in his future endeavors.

Item 8.01 Other Events.

On March 22, 2022, the Company issued a press release announcing the successful completion of the Company's acquisition of BDSI, including the completion of both the Offer and the Merger. A copy of the press release is filed as Exhibit 99.1 hereto and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(a) Financial Statements of Businesses Acquired.

The audited financial statements of BDSI required by this item will be filed by amendment to this Current Report on Form 8-K no later than 71 calendar days after the date on which this Current Report on Form 8-K was required to be filed.

(b) Pro Forma Financial Information.

The pro forma financial information reflecting the Merger, to the extent required by this item, will be furnished by amendment to this Current Report on Form 8-K no later than 71 calendar days after the date on which this Current Report on Form 8-K was required to be filed.

(d) Exhibits

Exhibit	Description
2.1	Agreement and Plan of Merger, dated as of February 14, 2022, by and among Collegium Pharmaceutical, Inc., Bristol Acquisition Company, Inc. and BioDelivery Sciences International, Inc. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by Collegium on February 14, 2022).
10.1†	Loan Agreement, dated as of March 22, 2022, by and among Collegium Pharmaceutical, Inc., its subsidiary, Collegium Securities Corporation, Purchaser, BioPharma Credit PLC, and BioPharma Credit Investments V (Master) LP, as lender.
99.1	Press Release, dated March 22, 2022.
104	Cover Page Interactive Data File (the cover page XBRL tags are embedded within the Inline XBRL document).

† Certain confidential portions have been omitted from this exhibit.

SIGNATURE

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

Dated: March 23, 2022

COLLEGIUM PHARMACEUTICAL, INC.

By: /s/ Colleen Tupper

Name: Colleen Tupper

Title: Executive Vice President and Chief Financial Officer

Certain identified information has been excluded from this exhibit in accordance with Regulation S-K Item 601(a)(6) because it would constitute a clearly unwarranted invasion of personal privacy. [***] indicates that information has been redacted.

Execution Version

AMENDED AND RESTATED LOAN AGREEMENT

Dated as of March 22, 2022

among

COLLEGIUM PHARMACEUTICAL, INC.

(as *Borrower*),

THE GUARANTORS PARTY HERETO

(as additional *Credit Parties*),

BIOPHARMA CREDIT PLC

(as *Collateral Agent*),

BPCR LIMITED PARTNERSHIP

(as a *Lender*)

and

BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP

(as a *Lender*)

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EXHIBITS:

- EXHIBIT A: Form of Loan 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
- EXHIBIT F: Form of Solvency Certificate

AMENDED AND RESTATED LOAN AGREEMENT

THIS AMENDED AND RESTATED LOAN AGREEMENT (this “**Agreement**”), dated as of March 22, 2022 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 with company number 10443190 (as the “**Collateral Agent**”), BPCR LIMITED PARTNERSHIP, a limited partnership established under the laws of England and Wales with registration number LP020944 (as a “**Lender**”) and BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP, a Cayman Islands exempted limited partnership acting by its general partner, BioPharma Credit Investments V GP LLC (as a “**Lender**”), provides the terms on which each Lender shall make, and Borrower shall repay, the Credit Extensions (as hereinafter defined). This Agreement amends and restates in its entirety, and replaces, the terms of (and obligations outstanding under) that certain Loan Agreement, dated as of February 6, 2020 (the “**Effective Date**”), among Borrower, Collegium Securities Corporation (as an additional Credit Party), the Collateral Agent and Lenders, and amended as of February 24, 2020 and May 27, 2020 (the “**Prior Loan Agreement**”). The parties hereto agree that the Prior Loan Agreement is hereby superseded and replaced in its entirety by this Agreement and the Prior Loan Agreement has no further force or effect, and 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), 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) With respect to each Term Loan, Borrower shall make quarterly payments of principal of such Term Loan commencing on the first Payment Date immediately following the Closing Date and continuing on each subsequent Payment Date, in an amount equal to (A) \$25,000,000.01 in each of the first four (4) quarters following the Closing Date and (B) \$45,833,333.33 in each of the remaining twelve (12) quarters thereafter; 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) 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 the Term Loans advanced by Lenders under this Agreement, in whole but not in part; 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.

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

(g) Any Makewhole Amount or Prepayment Premium payable as a result of any prepayment of the Term Loans 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), shall be presumed to be the liquidated damages sustained by each applicable Lender as the result of the early redemption and repayment of such Term Loan Notes and Borrower agrees that it is reasonable under the circumstances currently existing. BORROWER EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE REQUIREMENTS OF LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF ANY MAKEWHOLE AMOUNT OR PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH PREPAYMENT OR ACCELERATION OR OTHERWISE. Borrower expressly agrees that (to the fullest extent it may lawfully do so) that: (i) each Makewhole Amount and Prepayment Premium is reasonable and is the product of an arm's-length transaction among sophisticated business people, ably represented by counsel; (ii) each Makewhole Amount and Prepayment Premium shall be payable notwithstanding the then-prevailing market rates at the time payment thereof is made; (iii) there has been a course of conduct among Lenders and Borrower giving specific consideration in this transaction for such agreement to pay each Makewhole Amount and Prepayment Premium; and (iv) Borrower shall be estopped hereafter from claiming differently than as agreed to in this Section 2.2(g). Borrower expressly acknowledges that its agreement to pay the Makewhole Amount and Prepayment Premium, as the case may be, to applicable Lenders as herein described is a material inducement to such Lenders to make any Credit Extension.

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 11:00 a.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.

(e) Benchmark Replacement Setting. Notwithstanding anything to the contrary herein or in any other Loan Document:

(i) Replacing USD LIBOR. On March 5, 2021 the Financial Conduct Authority (“**FCA**”), the regulatory supervisor of USD LIBOR’s administrator (“**IBA**”), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 3-month, 6-month and 12-month USD LIBOR tenor settings. On the earlier of (A) the date that all Available Tenors of USD LIBOR have either permanently or indefinitely ceased to be provided by IBA or have been announced by or on behalf of the FCA pursuant to public statement or publication of information to be no longer representative and (B) the Early Opt-in Effective Date, if the then-current Benchmark is USD LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

(ii) Replacing Future Benchmarks. Upon the occurrence of a Benchmark Transition Event, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to Borrower and the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Collateral Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by or on behalf of the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, Borrower, with respect to any request (pursuant to Section 3.7) for a borrowing of Term Loans to be made that would bear interest by reference to such Benchmark, will be deemed to have converted such request into a request for a borrowing of Term Loans to be made that will bear interest by reference to the Benchmark Replacement that has replaced such Benchmark.

(iii) Benchmark Replacement Conforming Changes. In connection with the implementation and administration of a Benchmark Replacement, the Collateral Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iv) Notices; Standards for Decisions and Determinations. The Collateral Agent will promptly notify Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Collateral Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.3(e), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement.

(v) Unavailability of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR), then the Collateral Agent may remove any tenor of such Benchmark that is unavailable or non-representative tenor for Benchmark (including Benchmark Replacement) settings and (ii) the Collateral Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

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 Closing 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(g), 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 Loan 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 on the Closing 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) 0.01 (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 TERM LOANS

3.1. 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 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 described in this Section 3.1 have been satisfied or waived in accordance with Section 11.5 hereof):

(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 Loan Advance Request, in each case dated as of the Closing 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 and each Lender's receipt of copies of (i) the Term Loan Notes dated the Closing Date and executed by Borrower, (ii) a solvency certificate of Borrower in the form attached hereto as Exhibit F dated the Closing Date and executed by the Chief Financial Officer of Borrower, and (iii) the Collateral Documents, in each case dated the Closing Date and executed and delivered by each applicable Credit Party (excluding, for the avoidance of doubt, any Control Agreements and any other Loan Document described in Schedule 5.14 of the Disclosure Letter to be delivered after the Closing Date), all 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 uncertificated stock control agreements, or (C) the filing of IP Security Agreements 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 Agreements shall be delivered on or before the Closing Date, 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**");

(c) the Collateral Agent's receipt of (A) true, correct and complete copies of (i) the Operating Documents of each Credit Party, Acquisition Target and any Subsidiary of Acquisition Target and (ii) completed Borrowing Resolutions with respect to the Loan Documents and Term Loans for each Credit Party, Acquisition Target and any Subsidiary of Acquisition Target and (B) a Secretary's Certificate for each Credit Party, Acquisition Target and any Subsidiary of Acquisition Target, dated the Closing Date and signed by such Credit Party's, Acquisition Target's, or such Subsidiary'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);

(d) the Collateral Agent's receipt of true, correct and complete copies of (i) the Purchase Agreement, executed and delivered by all parties thereto, (ii) the Purchaser Stockholder Consent, executed and delivered by Borrower in accordance with the Purchase Agreement and (iii) a certificate of merger in respect of the merger described in such Purchase Agreement as filed (or in the form to be submitted for filing as early as practicable on the Closing Date) with the Secretary of State of the State of Delaware, in each case in form and substance reasonably satisfactory to the Collateral Agent and Lenders;

(e) the Collateral Agent's receipt of a good standing certificate for (i) 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 and (ii) the Acquisition Target and any Subsidiaries of the Acquisition Target, certified by the Secretary of State (or the equivalent thereof) of the jurisdiction of incorporation or formation of the Acquisition Target, in each case as of a date no earlier than thirty (30) days prior to the Closing Date;

(f) the Collateral Agent's receipt of an Officer's Certificate, dated the Closing Date and signed by a Responsible Officer of Borrower, certifying that 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, no later than three (3) Business Days prior to the Closing Date, 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**") and including, for the avoidance of doubt, a certification regarding beneficial ownership as required by 31 C.F.R. §1010.230, in form and substance reasonably satisfactory to the Collateral Agent; and

(i) the Collateral Agent's receipt of an Officer's Certificate, dated the Closing 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).

(j) the Collateral Agent's receipt of an opinion of Troutman Pepper Hamilton Sanders 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);

(k) 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 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);

(l) the Collateral Agent's receipt of an Officer's Certificate, dated the Closing Date and signed by a Responsible Officer of Borrower, confirming that each of the representations and warranties made by the Credit Parties (the "**Specified Representations**") (i) in Section 4.1(a), 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 Sections 4.18(a)-(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, in each case, 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) (such Officer's Certificate to be in form and substance reasonably satisfactory to the Collateral Agent);

(m) the Collateral Agent's receipt of an Officer's Certificate, dated the Closing Date and signed by a Responsible Officer of Borrower (to be in form and substance reasonably satisfactory to the Collateral Agent), confirming that:

(i) concurrently with the funding of the Term Loans hereunder, the transactions contemplated by the Acquisition Agreement shall be consummated in accordance in all material respects with the terms and conditions of the Acquisition Agreement delivered to the Collateral Agent on the Closing Date, without giving effect to any waiver or consent thereunder or any amendment or modification thereto that, taken as a whole, is materially adverse to the interests of the Lenders; provided, however, that for purposes of determining satisfaction of the condition precedent contained in this sub-clause (i), (A) any increase in the Offer Price shall be deemed to be materially adverse to the interests of the Lenders unless such increase is funded solely with the proceeds of any additional Equity Interests issued by Borrower; (B) any decrease in the Offer Price shall be deemed to be materially adverse to the interests of the 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)); and (C) any amendment, modification, 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 Lenders (and shall require the consent of Lenders, not to be unreasonably withheld, delayed or conditioned);

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

(iii) all of the conditions to completion of the transactions contemplated by the Acquisition Agreement, other than payment of the Offer Price, have been satisfied, and that upon funding of the Term Loans and application of the proceeds thereof in accordance with the closing funds flow for such transactions, the transactions contemplated by the Acquisition Agreement have been consummated by the parties thereto on the Closing Date in accordance with their respective terms (for the avoidance of doubt, after giving effect to the making of the Term Loans and the use of the proceeds thereof); and

(iv) 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);

(n) the Collateral Agent's receipt of evidence, in form and substance reasonably satisfactory to the Collateral Agent, of the repayment in full of all Indebtedness outstanding under the Prior Loan Documents and all other amounts outstanding pursuant thereto concurrent with the funding of the Term Loans in accordance with the Prior Loan Payoff Letter (which repayment shall be effected by deduction of all such amounts from the proceeds of the Term Loans on the Closing Date);

(o) payment of the Additional Consideration in accordance with Section 2.7, which such payment shall be deducted from the proceeds of the Term Loans concurrent with the funding of the Term Loans;

(p) the Collateral Agent's receipt of (i) a payoff letter in respect of the Indebtedness outstanding under the BDSI Existing Loan Agreement from BPCR Limited Partnership, as lender thereunder, and (ii) evidence, in form and substance reasonably satisfactory to the Collateral Agent, of the repayment in full of all Indebtedness outstanding under the BDSI Existing Loan Agreement and all other amounts outstanding pursuant thereto prior to or concurrent with the funding of the Term Loans in accordance with such payoff letter (which repayment shall be effected by deduction of all such amounts from the proceeds of the Term Loans on the Closing Date);

(q) payment of any and all accrued Lender Expenses as specified in Section 2.4 hereof (to the extent invoiced at least three (3) Business Days prior to the Closing Date) concurrent with the funding of the Term Loans (which such payment shall be made by deduction of such Lender Expenses from the proceeds of the Term Loans on the Closing Date);

(r) the Collateral Agent's receipt of evidence, in form and substance reasonably satisfactory to the Collateral Agent, of the payment of (i) any and all expenses incurred in connection with the prepayment and repayment by Borrower of all amounts outstanding under the Prior Loan Documents, and (ii) any and all expenses incurred in connection with the prepayment and repayment by Acquisition Target of all amounts outstanding under the BDSI Existing Loan Agreement;

(s) the Collateral Agent's receipt of an Officer's Certificate, dated the Closing Date and signed by a Responsible Officer of Borrower, confirming that immediately following the consummation of the transactions occurring on the Closing Date, neither Borrower nor any of its Subsidiaries shall have any outstanding Indebtedness other than Permitted Indebtedness set forth on Schedule 12.2 of the Disclosure Letter; and

(t) 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 (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.

3.2. 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.

3.3. 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 Loan 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 Closing 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 Specified Representations, 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); provided, that solely as to the Acquisition Target and the Acquired Business and solely in respect of all periods occurring prior to the Closing Date, each of the representations and warranties in this Article 4 are made to the Knowledge of Borrower:

4.1. Due Organization, Existence, Power and Authority. Each of Borrower, Acquisition Target 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 Company Product in the Territory or entitle such Person to ongoing payments;

(ii) A true, correct and complete list of each pending, registered or issued Patent, Copyright and Trademark that, directly or indirectly, through the acquisition of the Acquisition Target and the Acquired Business by any Credit Party or any of its Subsidiaries pursuant to 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, is material to the business of Borrower and its Subsidiaries, taken as a whole, including after giving effect to the acquisition, directly or indirectly, of the Acquisition Target and the Acquired Business pursuant to the Acquisition Agreement, relating to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of the Acquisition Product in the Territory (collectively, the “**Current Acquisition IP**”), including its name/title, current owner or co-owners (immediately after giving effect to the acquisition thereof, directly or indirectly through the acquisition of the Acquisition Target and the Acquired Business), 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, directly or indirectly through the acquisition of the Acquisition Target and the Acquired Business, 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 the Acquisition Target 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 the Acquisition Target, 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, directly or indirectly through the acquisition of the Acquisition Target and the Acquired Business, 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 Acquisition Product in the Territory or entitle such Person to ongoing payments. Immediately after giving effect to the acquisition of the Current Acquisition IP, directly or indirectly through the acquisition of the Acquisition Target and the Acquired Business, 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, directly or indirectly through the acquisition of the Acquisition Target and the Acquired Business, 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 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 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, directly or indirectly through the acquisition of the Acquisition Target and the Acquired Business: (A) 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; and (B) there are no maintenance, annuity or renewal fees that are currently overdue beyond their allotted grace period for any of the Current Acquisition 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 Acquisition IP.

(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 Closing Date, or are or will have become due or overdue, as of the Closing Date. As of the Closing Date, each 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 legal, valid and binding on or enforceable against Borrower or any of its Subsidiaries in accordance with its terms (except for confidentiality terms). Neither Borrower nor any of its Subsidiaries, as applicable, is in breach of or default under any Current Company 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 Company IP Agreement, including the execution, delivery and performance of the Acquisition Agreement, this Agreement and the other Loan Documents; and

(ii) There are no unpaid fees, royalties or indemnification payments 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, directly or indirectly through the acquisition of the Acquisition Target and the Acquired Business, 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 Company 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 Company Product in the Territory; and

(ii) Immediately after giving effect to the acquisition of the Current Acquisition IP, directly or indirectly through the acquisition of the Acquisition Target and the Acquired Business, 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 Acquisition 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 in any manner that could reasonably be expected to materially adversely affect the exploitation of any Acquisition Product in the Territory.

(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, directly or indirectly through the acquisition of the Acquisition Target and the Acquired Business, 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: (i) 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; and (ii) immediately after giving effect to the acquisition of the Current Acquisition IP, directly or indirectly through the acquisition of the Acquisition Target and the Acquired Business, to the Knowledge of Borrower, 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 infringe or violate (or in the past infringed or violated), or form a reasonable basis for a claim of infringement or violation of, any Third Party IP or 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(q) 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, directly or indirectly through the acquisition of the Acquisition Target and the Acquired Business, 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 Closing 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, 2022 (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, 2021, 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. Solely with respect to the Acquisition Target and the Acquired Business and solely with respect to periods occurring prior to the Closing Date, each of the representations and warranties in this Section 4.11 are made to the Knowledge of Borrower.

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, Acquisition Target and each of their respective Subsidiaries, and (b) sets forth the ownership interest of Borrower, Acquisition Target 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 Acquisition Product, during the time such Product has actually been distributed or sold by the Borrower) has been manufactured, developed and tested in all material respects in compliance with all applicable FDA Laws including any applicable current FDA Good Manufacturing Practices, FDA Good Clinical Practices and FDA Good Laboratory Practices 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 and meets in all material respects any additional conditions of approval or clearance by the FDA (as applicable). 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 Acquisition Product, during the time such Product has 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 Common Rule, including regulations under 45 C.F.R. part 46, and guidance documents issued by the Office for Human Research Protection, 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 that is reasonable and 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.

(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 1, 2019) 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 Closing 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 in Schedule 4.22(a) of the Disclosure Letter, the information technology systems used in the business of each of Borrower and its Subsidiaries (“**Systems**”) operate and perform in all material respects as required to permit each of Borrower and its Subsidiaries to conduct their business as presently conducted.

(b) Except as set forth on Schedule 4.22(b) of the Disclosure Letter, Borrower and each of its Subsidiaries has implemented and maintains a commercially reasonable privacy and information security program (“**Security Program**”) that addresses privacy, physical and cyber security, disaster recovery, business continuity and incident response, and that includes reasonable and appropriate administrative, technical and physical safeguards that are designed to protect the integrity and availability of the Systems and to protect against (i) any unauthorized, accidental, or unlawful access to or acquisition, use, disclosure, processing, loss, destruction, or modification of Personal Data that would require notification to affected individuals or any Governmental Authority under any applicable Data Protection Law (each, a “**Personal Data Breach**”), (ii) any unauthorized or unlawful access to or acquisition, use, disclosure, or loss of Sensitive Information that is not Personal Data, and (iii) material security incidents that would result in unauthorized or unlawful access to or acquisition, use, control, disruption, destruction, or modification of any of the Systems (each, a “**Security Incident**”).

(c) Borrower and each of its Subsidiaries has conducted commercially reasonable privacy and security audits and penetration tests at reasonable intervals on all Systems that maintain, store, or process Sensitive Information. Borrower and, to Knowledge of Borrower, each of its Subsidiaries has addressed all material privacy or data security issues identified as “critical,” “high risk,” or similar level of risk rating that are raised in any such audits or penetration tests (including any third party audits of the Systems).

(d) Except as set forth on Schedule 4.22(d) of the Disclosure Letter, and except as would not reasonably be expected to result in a Material Adverse Change, to the Knowledge of Borrower, neither Borrower nor any of its Subsidiaries, has, in the past three (3) years, suffered any Security Incidents.

(e) Borrower and each of its Subsidiaries is in material compliance with the requirements of (i) their respective Security Programs, (ii) applicable Data Protection Laws, (iii) their respective Material Contracts regarding the privacy, security, and notification of breaches of customer, consumer, patient, clinical trial participant, employee, and other Personal Data, (iv) all contractual non-disclosure obligations, and (v) their respective published privacy policies.

(f) Except as set forth on Schedule 4.22(f) of the Disclosure Letter, in the past six (6) years: (i) neither Borrower nor any of its Subsidiaries has received any written third party claims or, to the Knowledge of Borrower, any threat (in writing) of a third party claim, related to any Personal Data Breaches; and (ii) 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 Personal Data Breaches..

(g) Solely as to the Acquisition Target and the Acquired Business and solely in respect of all periods occurring prior to the Closing Date, each of the representations and warranties in this Section 4.22 are made to the Knowledge of Borrower.

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, 2022, 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, 2022, 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), including accounts (other than Excluded Accounts) acquired in connection with the acquisition of the Acquired Business; and (ii) the closing date of any Acquisition (other than the acquisition of the Acquired Business) 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 Offer Price required under Section 2.1 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 (and, for the avoidance of doubt, Acquisition Target), 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 on the Closing Date or any new returns and allowances practices established thereafter in good faith by Borrower that could not reasonably be expected to result in a Material Adverse Change. 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, dated as of December 4, 2017, among Assertio, Inc., Borrower and Collegium NF, LLC (as amended), the ongoing provisions of which after May 28, 2019 shall be restricted to those identified in that certain Purchase Agreement, dated as of February 6, 2020, between Borrower and Assertio Therapeutics, Inc. including the license of AccuForm patents on a non-exclusive royalty free basis, and (y) the sublicensing of the AccuForm patents to 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. Notwithstanding anything herein to the contrary, nothing herein shall prohibit any Credit Party or its Subsidiaries from entering into in-licensing agreements; provided, however, that in each case, no Indebtedness that is not Permitted Indebtedness is, directly or indirectly, created, incurred or assumed in connection therewith.

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.

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: Shirley Kuhlmann, General Counsel
Email: ***

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

Troutman Pepper Hamilton Sanders LLP
3000 Two Logan Square
Philadelphia, PA 19103
Attn: Jen Porter
Telephone: ***
Facsimile: ***
Email: ***

If to Collateral Agent: BioPharma Credit PLC
c/o Beaufort House
51 New North Road
Exeter EX4 4EP
United Kingdom
Attn: Company Secretary
Tel: ***
Fax: ***
Email: ***

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: ***
Fax: ***
Email: ***

and

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036-6745
Attn: Geoffrey E. Secol
Phone: ***
Fax: ***
Email: ***

If to any Lender: To the address of such Lender set forth on Exhibit D attached hereto

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: ***
Fax: ***
Email: ***

and

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036-6745
Attn: Geoffrey E. Secol
Phone: ***
Fax: ***
Email: ***

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 REQUIREMENTS OF LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY CLAIM, SUIT, ACTION OR PROCEEDING WITH RESPECT TO, OR DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN OR RELATED HERETO OR THERETO (WHETHER FOUNDED IN CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO OTHER PARTY AND NO RELATED PARTY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10 AND (C) 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**") without the consent of Borrower.

(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 (in which case, without the consent of Borrower).

(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 (ii) 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.

12.11. Amendment and Restatement.

(a) This Agreement amends and restates in its entirety, and replaces, the terms of (and obligations outstanding under) the Prior Loan Agreement, and the Prior Loan Agreement shall have no further force or effect.

(b) All “Term Loans” outstanding under the Prior Loan Agreement shall be deemed to be Term Loans under this Agreement; provided, however, that all “Term Loans” outstanding under the Prior Loan Agreement shall be prepaid and repaid on the Closing Date in accordance with Article 3 hereof and, if and only to the extent so prepaid and repaid, shall be terminated upon such prepayment and repayment on the Closing Date and shall not be deemed to be Term Loans under this Agreement upon such prepayment and repayment on the Closing Date. All “Obligations” existing under the Prior Loan Agreement shall be deemed to be outstanding under this Agreement and, in each case (i) are in all respects enforceable with only the terms thereof being modified as provided by this Agreement and (ii) shall in all respects be continuing after the Closing Date and shall be deemed to be Obligations governed by this Agreement; provided, however, that all “Obligations” existing under the Prior Loan Agreement shall be paid and satisfied in full in accordance with Article 3 hereof and, if and to the extent so paid and satisfied, shall be terminated and no longer enforceable under this Agreement upon such payment and satisfaction on the Closing Date, shall not in any respects be continuing after the Closing Date and shall no longer be deemed to be Obligations governed by this Agreement upon such payment and satisfaction on the Closing Date.

(c) On and after the Closing Date, all references to the Prior Loan Agreement or the “Loan Agreement” in any and all of the existing Loan Documents executed in connection with the Prior Loan Agreement (the “**Prior Loan Documents**”), whether on the Effective Date or at any time thereafter but prior to the Closing Date, shall be deemed to include references to this Agreement, as amended, restated, supplemented or otherwise modified from time to time.

(d) Each party to this Agreement acknowledges and agrees that this Agreement and the documents executed and delivered in connection herewith do not constitute a novation, payment and reborrowing or termination of any of the Obligations under the Prior Loan Agreement as in effect prior to the Closing Date or a novation or payment and reborrowing of any amount owing under the Prior Loan Agreement as in effect prior to the Closing Date.

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:

“**2026 Convertible Notes**” means the 2.625% Convertible Senior Notes issued by Borrower on February 13, 2020, in the aggregate principal amount of \$143.8 million, and maturing on February 15, 2026, unless earlier repurchased, redeemed or converted.

“**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.

“**Acquired Business**” means the business of the Acquisition Target and its Subsidiaries.

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

“**Acquisition Agreement**” means, collectively, (a) the Agreement and Plan of Merger, dated as of February 14, 2022, among Borrower, Bristol Acquisition Company Inc. and Acquisition Target, executed and delivered by all parties thereto, including, for the avoidance of doubt, the disclosure schedules prepared and delivered by the parties thereto in accordance therewith (the “**Purchase Agreement**”), (b) a written consent of Borrower, in its capacity as the sole shareholder of Bristol Acquisition Company Inc., adopting the Purchase Agreement, executed and delivered by Borrower pursuant to the Purchase Agreement (the “**Purchaser Stockholder Consent**”), and (c) any other material contract, agreement, instrument or certificate delivered in accordance with the Purchase Agreement or in furtherance of the transactions contemplated by 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 Acquisition Product in the Territory or the Acquired Business; (d) any and all IP Ancillary Rights specifically relating to any of the foregoing; and (e) regulatory filings, submissions and approvals related to Acquisition Product or the Acquired Business.

“**Acquisition Product**” means, collectively, (a)(i) BELBUCA® (buprenorphine buccal film), (ii) any successor to BELBUCA® (buprenorphine buccal film) and (iii) any other product for use in the treatment of chronic pain that includes buprenorphine, and (b)(i) Symproic® (naldemedine tosylate), (ii) any successor to Symproic® (naldemedine tosylate) and (iii) any other product for use in the treatment of chronic pain that includes naldemedine tosylate and is subject to the Symproic License Agreement.

“**Acquisition Target**” means BioDelivery Sciences International, Inc., a Delaware corporation.

“**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.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if the then-current Benchmark is a term rate, any tenor for such Benchmark or that is or may be used for determining the length of an Interest Period or (b) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

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

“**BDSI Existing Loan Agreement**” means, collectively, that certain Loan Agreement, dated as of May 23, 2019, among BioDelivery Sciences International, Inc., as borrower, the guarantors party thereto as of the Closing Date and BPCR Limited Partnership, as lender, together with each other Loan Document (as such term is defined in the BDSI Existing Loan Agreement).

“**Benchmark**” means, initially, USD LIBOR; provided, that if a replacement of the Benchmark has occurred pursuant to Section 2.3(e), then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

“**Benchmark Replacement**” means, for any Available Tenor:

(a) For purposes of Section 2.3(e)(i), the first alternative below that can be determined by the Collateral Agent:

(i) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months’ duration, and 0.42826% (42.826 basis points) for an Available Tenor of six-months’ duration, or

(ii) the sum of: (i) Daily Simple SOFR and (ii) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of USD LIBOR with a SOFR-based rate having approximately the same length as the interest payment period specified in Section 2.3(e)(i); and

(b) For purposes of Section 2.3(e)(ii), the sum of: (i) the alternate benchmark rate and (ii) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Collateral Agent as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for U.S. dollar-denominated syndicated or bilateral credit facilities at such time;

provided that, if the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“**Benchmark Replacement Conforming Changes**” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment notices and other technical, administrative or operational matters) that the Collateral Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Collateral Agent in a manner substantially consistent with market practice (or, if the Collateral Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Collateral Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Collateral Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Transition Event” means, with respect to any then-current Benchmark other than USD LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

“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 finance 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 Closing Date or otherwise approved in writing by Collateral Agent.

“**CCPA**” means the California Consumer Privacy Act, as amended and codified at Cal. Civ. Code § 1798.100 et seq, including any implementing regulations with which compliance is mandated.

“**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, 3.2 and 3.3, shall be no later than the outside date set forth in Section 9.1(b) of the Purchase Agreement; 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.

“Common Rule” means the U.S. Federal Policy for the Protection of Human Subjects, codified at 45 C.F.R. part 46, or foreign equivalents.

“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.

“Company Product” means (i) Xtampza® ER, (ii) any successor to Xtampza® ER, (iii) Nucynta® ER, (iv) any successor to Nucynta® ER, (v) Nucynta® IR, (vi) any successor to Nucynta® IR.

“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 each of: (a) the Exclusive License Agreement, dated as of April 4, 2019, between Acquisition Target and Shionogi Inc. (the **“Symproic License Agreement”**); (b) the Transition Services and Distribution Agreement between Acquisition Target and Shionogi Inc. and effective as of April 4, 2019; (c) the Supply Agreement between Acquisition Target and Shionogi Inc. effective as of April 4, 2019 (the **“Supply Agreement”**); (d) the Quality Agreement between Acquisition Target and Shionogi Inc. described in the Supply Agreement; (e) the PVG Agreement between Acquisition Target and Shionogi Inc. contemplated in Section 5.3 of the Symproic License Agreement; and (f) any other contract or agreement, pursuant to which Acquisition Target or its Subsidiaries 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 Acquisition Product in the Territory.

“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 Company Product.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Collateral Agent in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for bilateral business loans; provided, that if the Collateral Agent decides that any such convention is not administratively feasible for the Collateral Agent, then the Collateral Agent may establish another convention in its reasonable discretion.

“**Data Protection Laws**” means, collectively, any and all foreign or domestic (including U.S. federal, state and local) 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 HIPAA, Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45), CCPA, the Standards for the Protection of Personal Information of Massachusetts Residents (201 Mass. Code Regs. 17.01) 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 Closing 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 Effective Date**” means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Collateral Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

“Early Opt-in Election” means the occurrence of:

(a) a notification by the Collateral Agent to (or the request by Borrower to the Collateral Agent to notify) each of the other parties hereto that at least five (5) currently outstanding U.S. dollar-denominated syndicated or bilateral credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated or bilateral credit facilities are identified in such notice and are publicly available for review), and

(b) the election by the Collateral Agent to trigger a fallback from USD LIBOR and the provision by the Collateral Agent of written notice of such election to Borrower and the Lenders.

“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.

“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.

“**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 , collectively, (i) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (the “**EU GDPR**”) and (ii) the EU GDPR as it forms part of the laws of the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (the “**UK GDPR**”).

“**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 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.

“**IP Security Agreements**” means, collectively, (a) those certain Intellectual Property Security Agreements entered into by and between any Credit Party and the Collateral Agent in accordance with the Loan Documents, 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.

“**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; provided, however, that, solely with respect to the Acquisition Target, the Acquired Business or any of the properties, assets, liabilities or obligations thereof, and solely with respect of all periods occurring prior to the Closing Date, such term means the actual knowledge, assuming the accuracy of the representations and warranties contained in the Acquisition Agreement and after Borrower’s diligence investigation in the acquisition of the Acquisition Target and the Acquired Business and the other transactions contemplated by the Acquisition Agreement, 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 greater of (a) USD LIBOR as published on the applicable Bloomberg LIBOR page administered by the ICE Benchmark Administration for Dollars for a period equal in length to three (3) months to such Interest Period (or, in the event such rate does not appear on such page or screen, on any successor or substitute page on such screen that displays such rate, the rate per annum equal to the rate determined by the Collateral Agent to be the average of the rates per annum at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Term Loans with a term equivalent to such Interest Period would be offered by three (3) major banks in the London interbank Eurodollar market at their request, determined as of approximately 11:00 a.m., London time, on such Interest Rate Determination Date), and (b) 1.20% per annum. Unless otherwise specified in any amendment to this Agreement entered into in accordance with Section 2.3(e), in the event that a Benchmark Replacement with respect to the LIBOR Rate is implemented, then all references herein to LIBOR Rate shall be deemed references to such Benchmark Replacement.

“**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 Advance Request**” means a Loan Advance Request for the Term Loans in substantially the form attached hereto as Exhibit A.

“**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 Acquisition Product 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, 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\(c\)](#).

“**Offer Price**” has the meaning ascribed to such term in the Purchase Agreement.

“**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(h).

“**Payment Date**” means, with respect to the Term Loans and as the context dictates: (a) the first Interest Date on or immediately following the Closing Date; (b) thereafter, each succeeding Interest Date; and (c) the Term Loan Maturity Date.

“**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, rights 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, rights 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.

Notwithstanding anything in the foregoing to the contrary, the acquisition of the Acquisition Target and the Acquired Business pursuant to the Acquisition Agreement shall be deemed to be a Permitted Acquisition if and only if consummated pursuant to material terms and conditions substantially the same as those included in the Purchase Agreement delivered to the Collateral Agent pursuant to Section 3.1(d)(i), without giving effect to any waiver, modification or consent thereunder that is materially adverse to the interests of the Collateral Agent or Lenders.

“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 acquisition of the Acquisition Target and the Acquired Business pursuant to the Acquisition Agreement, and shown on Schedule 12.2 of the Disclosure Letter (which, for the avoidance of doubt, shall include any Indebtedness of Borrower outstanding under the 2026 Convertible Notes on the Closing Date but shall not include any Indebtedness under the BDSI Existing Loan Agreement);

(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, (ii) is at all times unsecured or Subordinated Debt, and (iii) solely in the case of Indebtedness assumed in connection with the acquisition of the Acquisition Target and the Acquired Business pursuant to the Acquisition Agreement, such Indebtedness is set forth on Schedule 12.2 of the Disclosure Letter;

(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 (j) 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 Closing Date, or Indebtedness of any Person that is assumed after the Closing Date by any Subsidiary in connection with an acquisition of assets by such Subsidiary (including in connection with the acquisition of assets, directly or indirectly through the acquisition of the Acquisition Target and the Acquired Business, pursuant to the Acquisition Agreement); provided, that, in each instance, such Indebtedness (i) is not incurred in contemplation of such transaction, (ii) is at all times unsecured or Subordinated Debt, and (iii) solely in the case of Indebtedness assumed in connection with the acquisition of the Acquisition Target and the Acquired Business pursuant to the Acquisition Agreement, such Indebtedness is set forth on Schedule 12.2 of the Disclosure Letter;

(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) [Reserved]; 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 Closing Date (including giving *pro forma* effect to the acquisition of the Acquisition Target and the Acquired Business pursuant to 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 Closing Date (including in connection with the acquisition of the Acquisition Target and the Acquired Business pursuant to the Acquisition Agreement), or (ii) are assumed after the Closing 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 Acquisition Target and the Acquired Business pursuant to the Acquisition 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 Closing 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 Closing 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.

“Personal Data” means information protected as “personal data,” “personal information,” “personally identifiable information,” “protected health information,” “identifiable private information,” or any similar terms under applicable Data Protection Laws.

“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).

“**Prepayment Premium**” 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), 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, 0.02; and
- (b) if such prepayment occurs after the 2nd-year anniversary of the Closing Date but on or prior to the 4th-year anniversary of the Closing Date, 0.01.

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

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

“**Prior Loan Documents**” is defined in Section 12.11.

“**Prior Loan Payoff Letter**” means that certain payoff letter in respect of the Indebtedness outstanding under the Prior Loan Documents from BioPharma Credit PLC, as collateral agent thereunder, reflecting the amounts required in order to pay in full all Indebtedness outstanding under the Prior Loan Agreement as of the Closing Date and all other amounts outstanding pursuant thereto or to any other Prior Loan Documents and providing that all such amounts shall be deducted from the proceeds of the Term Loans concurrent with the funding of the Term Loans.

“**Product**” means, collectively, (i) any Company Product, and (ii) any Acquisition Product.

“**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 Amended and Restated 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.

“Security Disclosure Letter” means the “Security Disclosure Letter”, as such term is defined in the Security Agreement.

“Sensitive Information” means, collectively, (a) any Personal Data that is subject to any Data Protection Law, (b) any information in which Borrower or any of its Subsidiaries have IP Ancillary Rights or any other Intellectual Property rights (including Company IP), (c) any information with respect to which Borrower or any of its Subsidiaries have contractual non-disclosure obligations, and (d) nonpublic regulatory submission materials.

“SOFR” means a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org> (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).

“**Solvent**” means, as of any date of determination, that, as of such date: (a) the fair value of the assets of Borrower and its Subsidiaries on a consolidated basis will exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of Borrower and its Subsidiaries on a consolidated basis, respectively; (b) the present fair saleable value of the property of Borrower and its Subsidiaries on a consolidated basis will be greater than the amount that will be required to pay the probable liability of Borrower and its Subsidiaries on a consolidated basis, respectively, on their debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) Borrower and its Subsidiaries on a consolidated basis will be able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) Borrower and its Subsidiaries on a consolidated basis will not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted after such date. 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 made by or with respect to the Acquisition Target in the Acquisition Agreement as are material to the interests of Lenders, but only to the extent that Borrower has the right (determined without regard to any notice requirement and including, for the avoidance of doubt, as a result of the failure of any such representations or warranties to be accurate resulting in a failure of a condition precedent to Borrower’s obligations under the Acquisition Agreement) to terminate its obligations under the Acquisition Agreement or to decline to consummate the acquisition of the Acquisition Target and the Acquired Business 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\(b\)](#).

“**Specified Representations**” is defined in [Section 3.2\(e\)](#).

“**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 Six Hundred and Fifty Million Dollars (\$650,000,000.00).

“**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).

“**Term SOFR**” means, for the applicable corresponding tenor, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“**Territory**” means the United States.

“**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 Amended and Restated Loan Agreement to be executed as of the Closing Date.

**COLLEGIUM PHARMACEUTICAL INC.,
as Borrower**

By: /s/ Joseph Ciaffoni
Name: Joseph Ciaffoni
Title: President and Chief Executive Officer

Signature Page to Amended and Restated Loan Agreement

**COLLEGIUM SECURITIES CORPORATION,
as an additional Credit Party**

By: /s/ Joseph Ciaffoni
Name: Joseph Ciaffoni
Title: President and Chief Executive Officer

Signature Page to Amended and Restated Loan Agreement

**BRISTOL ACQUISITION COMPANY INC.,
as an additional Credit Party**

By: /s/ Joseph Ciaffoni
Name: Joseph Ciaffoni
Title: President and Chief Executive Officer

Signature Page to Amended and Restated Loan Agreement

**BIOPHARMA CREDIT PLC,
as Collateral Agent**

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: Managing Member

**BPCR LIMITED PARTNERSHIP,
as a 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: Managing Member

**BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP,
as Lender**

By: BioPharma Credit Investments V GP LLC,
its general partner

By: Pharmakon Advisors, LP,
its Investment Manager

By /s/ Pedro Gonzalez de Cosio

Name: Pedro Gonzalez de Cosio

Title: CEO and Managing Member

Signature Page to Amended and Restated Loan Agreement

EXHIBIT A – LOAN ADVANCE REQUEST FORM

LOAN ADVANCE REQUEST

Reference is made to that certain Amended and Restated Loan Agreement dated as of March 22, 2022 by and among COLLEGIUM PHARMACEUTICAL INC., a Virginia corporation (“**Borrower**”), the Guarantors from time to time party thereto, BIOPHARMA CREDIT PLC (in its capacity as “**Collateral Agent**”), BPCR LIMITED PARTNERSHIP (a “**Lender**”) and BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP (a “**Lender**”), acting by its general partner, BioPharma Credit Investments V GP LLC (the “**Loan Agreement**”; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement). This Loan Advance Request is being delivered pursuant to Sections 3.1(a), 3.2 and 3.3 of the Loan Agreement.

The undersigned, being the duly elected and acting [●] of Borrower does hereby certify, solely in his/her capacity as an authorized officer of Borrower and not in his/her personal capacity, to each Lender and the Collateral Agent 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), 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 Sections 4.18(a)-(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 stated earlier date, as applicable);

3. all of the conditions set forth in Article 3 of the Loan Agreement have been satisfied (or waived in writing 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 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.

Dated: March __, 2022

[Signature page follows]

**COLLEGIUM PHARMACEUTICAL INC.,
as Borrower**

By: _____
Name: _____
Title: _____

Signature Page to Loan Advance Request

EXHIBIT B

THIS TERM LOAN NOTE HAS BEEN ISSUED WITH “ORIGINAL ISSUE DISCOUNT” (WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). HOLDERS OF THIS TERM LOAN NOTE SHOULD CONTACT COLLEEN TUPPER, 100 TECHNOLOGY CENTER DRIVE, SUITE 300, STOUGHTON, MA 02072, TELEPHONE: (781) 713-3699 IN WRITING TO OBTAIN (1) THE ISSUE PRICE AND ISSUE DATE OF THIS TERM LOAN NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THIS TERM LOAN NOTE AND (3) THE YIELD TO MATURITY OF THIS TERM LOAN NOTE.

FORM OF TERM LOAN NOTE

\$325,000,000.00

Dated: March 22, 2022

FOR VALUE RECEIVED, the undersigned, COLLEGIUM PHARMACEUTICAL, INC., a Virginia corporation (“**Borrower**”), HEREBY PROMISES TO PAY to [] (“**Lender**”), or its registered assignees, the principal amount of THREE HUNDRED AND TWENTY-FIVE MILLION DOLLARS (\$325,000,000.00), 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 Amended and Restated Loan Agreement dated as of March 22, 2022 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 quarterly payments of principal of such Term Loan commencing on the first Payment Date immediately following the Closing Date and continuing on each subsequent Payment Date, in an amount equal to (A) \$25,000,000.01 in each of the first four (4) quarters following the Closing Date and (B) \$45,833,333.33 in each of the remaining twelve (12) quarters thereafter; 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:

Title:

Signature Page to Term Loan Note

EXHIBIT C

FORM OF SECURITY AGREEMENT

(to be attached)

AMENDED AND RESTATED GUARANTY AND SECURITY AGREEMENT

Dated as of March 22, 2022

by

COLLEGIUM PHARMACEUTICAL, INC.

(as *Borrower*),

COLLEGIUM SECURITIES CORPORATION

(as *Guarantor*),

BRISTOL ACQUISITION COMPANY INC.

(as *Guarantor*),

and

EACH OTHER GRANTOR
FROM TIME TO TIME PARTY HERETO

in favor of

BIOPHARMA CREDIT PLC

(as *Collateral Agent* on behalf of Lenders and the other Secured Parties)

AMENDED AND RESTATED GUARANTY AND SECURITY AGREEMENT (this "Agreement"), dated as of March 22, 2022 (the "Amendment Effective Date"), by COLLEGIUM PHARMACEUTICAL, INC., a Virginia corporation ("Borrower"), COLLEGIUM SECURITIES CORPORATION, a Massachusetts corporation (as a Guarantor), BRISTOL ACQUISITION COMPANY INC., a Delaware corporation (as a Guarantor) and each other Person that becomes a party hereto pursuant to Section 8.6 (together with Borrower and such Guarantors, "Grantors"), in favor of BIOPHARMA CREDIT PLC, a public limited company incorporated under the laws of England and Wales (as the "Collateral Agent") on behalf of Lenders and each other Secured Party.

WITNESSETH:

WHEREAS, pursuant to that certain Loan Agreement, dated as of February 6, 2020 (the "Effective Date") and amended as of February 24, 2020 and May 27, 2020, by and among Borrower, Collegium Securities Corporation (as an additional Credit Party), the Collateral Agent and Lenders (the "Prior Loan Agreement"), Lenders agreed to make extensions of credit to Borrower upon the terms and subject to the conditions set forth therein, including the execution and delivery of that certain Guaranty and Security Agreement, dated as of February 13, 2020, by and among Borrower, Collegium Securities Corporation (as a Guarantor) and the Collateral Agent (the "Prior Guaranty and Security Agreement");

WHEREAS, pursuant to that certain Amended and Restated Loan Agreement, dated as of March 22, 2022 by and among Borrower, Collegium Securities Corporation (as an additional Credit Party), Bristol Acquisition Company Inc. (as an additional Credit Party), the Collateral Agent and Lenders (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), the Prior Loan Agreement has been superseded and replaced in its entirety by the Loan Agreement and the Prior Loan Agreement has no further force and effect;

WHEREAS, this Agreement amends and restates in its entirety, and replaces, the terms of (and obligations outstanding under) the Prior Guaranty and Security Agreement. The parties hereto agree that the Prior Guaranty and Security Agreement is hereby superseded and replaced in its entirety by this Agreement and the Prior Guaranty and Security Agreement has no further force or effect;

WHEREAS, each Grantor other than Borrower agrees to guaranty, jointly and severally, the Obligations (as defined in the Loan Agreement) of Borrower;

WHEREAS, each Grantor will derive substantial direct and indirect benefits from the making of the extensions of credit under the Loan Agreement; and

WHEREAS, it is a condition precedent to the obligation of Lenders to extend credit to Borrower under the Loan Agreement that the Grantors shall have executed and delivered this Agreement to the Collateral Agent and each Lender for the benefit of Lenders and the other Secured Parties.

NOW, THEREFORE, in consideration of the mutual premises herein contained and for valuable consideration the receipt and sufficiency of which is hereby acknowledged and to induce the Collateral Agent, Lenders and the Credit Parties to enter into the Loan Agreement and to induce each Lender to make extensions of credit to Borrower thereunder, each Grantor hereby agrees with the Collateral Agent, each intending to be legally bound, as follows:

ARTICLE I

DEFINED TERMS

Section 1.1. Definitions. Capitalized terms used herein without definition are used as defined in the Loan Agreement.

(a) The following terms have the meanings given to them in the Code and terms used herein without definition that are defined in the Code have the meanings given to them in the Code (such meanings to be equally applicable to both the singular and plural forms of the terms defined): “account”, “account debtor”, “as-extracted collateral”, “certificated security”, “chattel paper”, “check”, “commercial tort claim”, “commodity account”, “commodity contract”, “documents”, “deposit account”, “electronic chattel paper”, “encumbrance”, “entitlement holder”, “equipment”, “farm products”, “financial asset”, “fixture”, “general intangible”, “goods”, “health-care-insurance receivable”, “instruments”, “inventory”, “investment property”, “letter of credit”, “letter-of-credit right”, “money”, “proceeds”, “promissory note”, “record”, “securities account”, “security”, “security entitlement”, “supporting obligation”, “tangible chattel paper” and “uncertificated security”.

(b) The following terms shall have the following meanings:

“Agreement” means this Guaranty and Security Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Applicable IP Office” means the United States Patent and Trademark Office or the United States Copyright Office, as the context dictates.

“Collateral” has the meaning specified in Section 3.1.

“Excluded Property” means, collectively:

(i) all foreign Intellectual Property and any “intent to use” United States Trademark applications for which a statement of use or an amendment to allege use has not been filed (but only until such statement is filed) solely to the extent, if any, that, and only during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent to use Trademark applications under applicable federal law;

(ii) any permit, lease, license, contract, instrument or other agreement held by any Grantor with respect to which, the grant to the Collateral Agent, in favor of and for the benefit of Lenders and the other Secured Parties, of a security interest therein and Lien thereupon, and the pledge to the Collateral Agent, in favor of and 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 create a right of termination in favor of any other party thereto (other than Borrower or an Affiliate of Borrower) under, the terms thereof, but only, in each case, to the extent, and for so long as, such prohibition or term is not terminated or rendered unenforceable or otherwise deemed ineffective by the Code (including Sections 9-406(d), 9-407(a), 9-408(a) and 9-409 of the Code) or by any applicable Requirements of Law;

(iii) any permit, lease, license, contract, instrument or other agreement held by any Grantor with respect to which, the grant to the Collateral Agent, in favor of and for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien thereupon, and the pledge to the Collateral Agent, in favor of and 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 (other than Borrower or an Affiliate of Borrower), provided such Grantor or Borrower has not obtained such consent, approval or waiver following their respective commercially reasonable efforts to obtain the same;

(iv) any other asset or property subject or purported to be subject to a Lien under any Collateral Document held by any Grantor with respect to which, the grant to the Collateral Agent, in favor of and for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien thereupon, and the pledge to the Collateral Agent, in favor of and 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 (other than Borrower or an Affiliate of Borrower), provided such Grantor or Borrower has not obtained such consent, approval or waiver following their respective commercially reasonable efforts to obtain the same;

(v) any property or asset subject or purported to be subject to a Lien under any Collateral Document held by any Grantor that is a non-Wholly-Owned Subsidiary with respect to which, the grant to the Collateral Agent, in favor of and for the benefit of Lenders and the other Secured Parties, of a security interest therein and Lien thereupon, and the pledge to the Collateral Agent, in favor of and 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 of, the joint venture agreement or shareholder agreement with respect to, or any other contract with such third party relating to 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 only, in each case, to the extent, and for so long as such Operating Documents, joint venture agreement, shareholder agreement or other contract is in effect;

(vi) any asset or property subject or purported to be subject to a Lien under any Collateral Document held by any Grantor with respect to which, the cost, difficulty, burden or consequences (including adverse Tax consequences) of granting the Collateral Agent, in favor of and for the benefit of Lenders and the other Secured Parties, a security interest therein and Lien thereupon, and pledging to the Collateral Agent, in favor of and 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 Secured Parties thereby;

(vii) any rights under any Federal or state governmental license, permit, franchise or authorization to the extent that the granting of a security interest therein is specifically prohibited or restricted by any Requirements of Law;

(viii) any asset or property subject to a Permitted Lien, to the extent the terms of the documents governing such Permitted Lien or the Permitted Indebtedness secured thereby validly prohibit other Liens on such asset or property or would create a right of termination in favor of any other party thereto (other than Borrower or an Affiliate of Borrower), but only, in each case, to the extent, and for so long as, such prohibition or term is not terminated or rendered unenforceable or otherwise deemed ineffective by the Code (including Sections 9-406(d), 9-407(a), 9-408(a) and 9-409 of the Code) or by any applicable Requirements of Law;

(ix) leasehold interests in real property;

(x) fee interests in real property with a fair market value (reasonably determined in good faith by a Responsible Officer of Borrower) less than \$5,000,000;

(xi) Vehicles;

(xii) any letter of credit and all letter-of-credit rights with respect thereto to the extent not perfected by the filing of a UCC-1 financing statement;

- (xiii) any Intellectual Property unrelated 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;
- (xiv) Excluded Equity Interests;
- (xv) Excluded Accounts; and
- (xvi) margin stock (within the meaning of Regulation U of the Board of Governors, as in effect from time to time);

provided, however, that “Excluded Property” shall not include any proceeds, products, substitutions or replacements of Excluded Property (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property).

“Fraudulent Transfer Laws” has the meaning set forth in Section 2.2.

“Guaranteed Obligations” has the meaning set forth in Section 2.1.

“Guarantor” means each Grantor other than Borrower.

“Guaranty” means the guaranty of the Guaranteed Obligations made by Guarantors as set forth in this Agreement.

“IP License” means all express and implied grants or rights to make, have made, use, sell, reproduce, distribute, modify, or otherwise exploit any Intellectual Property, as well as all covenants not to sue and co-existence agreements (and all related IP Ancillary Rights), whether written or oral, relating to any Intellectual Property.

“Maximum Guaranteed Amount” has the meaning set forth in Section 2.2.

“NDA” means a new drug application filed with the FDA pursuant to Section 505(b) of the U.S. Federal Food, Drug, and Cosmetic Act, along with all supplements and amendments thereto.

“Pledged Certificated Stock” means all of the Equity Interests (other than Excluded Equity Interests) in any Subsidiary evidenced by a certificate, instrument or other similar document (as defined in the Code), in each case owned by any Grantor, including a Grantor’s right, title and interest resulting from its ownership of any such Equity Interests as a limited or general partner in any partnership that has issued Pledged Certificated Stock or as a member of any limited liability company that has issued Pledged Certificated Stock, and a Grantor’s right, title and interest resulting from its ownership of any such Equity Interests in, to and under any Operating Document or shareholder agreement of any corporation, partnership or limited liability company to which it is a party, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including all certificated Equity Interests listed on Schedule 1 of the Security Disclosure Letter. “Pledged Certificated Stock” includes, for the avoidance of doubt, any Pledged Uncertificated Stock that subsequently becomes certificated.

“Pledged Collateral” means, collectively, the Pledged Stock and the Pledged Debt Instruments.

“Pledged Debt Instruments” means all right, title and interest of any Grantor in instruments evidencing any Indebtedness or other obligations owed to such Grantor, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including all Indebtedness described on Schedule 3 of the Security Disclosure Letter, issued by the obligors named therein. “Pledged Debt Instruments” excludes any Excluded Property.

“Pledged Investment Property” means any investment property of any Grantor, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, other than any Pledged Stock or Pledged Debt Instruments. “Pledged Investment Property” excludes any Excluded Property.

“Pledged Stock” means all Pledged Certificated Stock and all Pledged Uncertificated Stock.

“Pledged Uncertificated Stock” means all of the Equity Interests (other than Excluded Equity Interests) in any Subsidiary that is not Pledged Certificated Stock, in each case owned by any Grantor, including Grantor’s right, title and interest resulting from its ownership of any such Equity Interests as a limited or general partner in any partnership not constituting Pledged Certificated Stock or as a member of any limited liability company not constituting Pledged Certificated Stock, a Grantor’s right, title and interest resulting from its ownership of any such Equity Interests in, to and under any Operating Document or shareholder agreement of any partnership or limited liability company to which it is a party, and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, including in each case those interests set forth on Schedule 1 of the Security Disclosure Letter, to the extent such interests are not certificated.

“Secured Obligations” has the meaning set forth in Section 3.2.

“Security Disclosure Letter” means the security agreement disclosure letter, dated as of the date hereof, delivered by the Grantors to the Collateral Agent and each Lender.

“Vehicles” means rolling stock, motor vehicles, vessels, aircraft and other assets subject to certificates of title.

Section 1.2. Certain Other Terms.

(a) For the purposes of and as used in this Agreement: (i) 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; (ii) each authorization herein shall be deemed irrevocable and coupled with an interest; and (iii) where the context requires, provisions relating to any Collateral when used in relation to a Grantor shall refer to such Grantor’s Collateral or any relevant part thereof.

(b) Other Interpretive Provisions.

(i) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto.

(ii) This Agreement. The words “hereof”, “herein”, “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.

(iii) Certain Common Terms. The words “include”, “included” and “including” are not limiting and mean “including without limitation.” The word “or” has the inclusive meaning represented by the phrase “and/or”. The word “shall” is mandatory. The word “may” is permissive. The singular includes the plural and the plural includes the singular.

(iv) Performance; Time. Whenever any performance obligation hereunder (other than a payment obligation) shall be stated to be due or required to be satisfied on a day other than a Business Day, such performance shall be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including.” If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision shall be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(v) Contracts. Except as the context otherwise requires (including to the extent otherwise expressly provided herein), references to any contract, agreement, instrument or other document, including this Agreement and the other Loan Documents, shall be deemed to include any and all amendments, supplements or modifications thereto or restatements or substitutions thereof, in each case which are in effect from time to time, but only to the extent such amendments, supplements, modifications, restatements or substitutions are not prohibited by the terms of any Loan Document.

(vi) Laws. Except as the context otherwise requires (including to the extent otherwise expressly provided herein), references to any law, statute, treaty, order, policy, rule or regulation include any amendments, supplements and successors thereto, and references to any law, statute, treaty, order, policy, rule or regulation are to be construed as including all statutory and regulatory provisions related thereto or consolidating, amending, replacing, supplementing or interpreting such law, statute, treaty, order, policy, rule or regulation.

(vii) Excluded Property. Notwithstanding anything to the contrary herein, the representations, warranties and covenants set forth herein in relation to the assets of the Grantors shall not apply to any Excluded Property.

ARTICLE II

GUARANTY

Section 2.1. Guaranty. To induce Lenders to make the Term Loans to Borrower in accordance with the terms and conditions of the Loan Agreement, each Guarantor, jointly and severally with each other Guarantor, absolutely, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, the full and punctual payment when due, whether at stated maturity or earlier, by reason of acceleration, mandatory prepayment or otherwise in accordance with any Loan Document, of all the Obligations of Borrower existing on the date hereof or hereinafter incurred or created (the “Guaranteed Obligations”). This Guaranty by each Guarantor hereunder constitutes a guaranty of payment and not of collection. Each Guarantor hereby acknowledges and agrees that the Guaranteed Obligations, at any time and from time to time, may exceed the Maximum Guaranteed Amount of such Guarantor and may exceed the aggregate of the Maximum Guaranteed Amounts of all Guarantors, in each case without discharging, limiting or otherwise affecting the obligations of any Guarantor hereunder or the rights, powers and remedies of any Secured Party hereunder or under any other Loan Document.

Section 2.2. Limitation of Guaranty. Any term or provision of this Guaranty or any other Loan Document to the contrary notwithstanding, the maximum aggregate amount for which any Guarantor shall be liable hereunder (the “Maximum Guaranteed Amount”) shall not exceed the maximum amount for which such Guarantor can be liable without rendering this Guaranty or any other Loan Document, as it relates to such Guarantor, subject to avoidance under applicable Requirements of Law relating to fraudulent conveyance or fraudulent transfer (including the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act and Section 548 of title 11 of the United States Code or any applicable provisions of comparable Requirements of Law) (collectively, “Fraudulent Transfer Laws”). Any analysis of the provisions of this Guaranty for purposes of Fraudulent Transfer Laws shall take into account the right of contribution established in Section 2.7 below and, for purposes of such analysis, give effect to any discharge of intercompany debt as a result of any payment made under the Guaranty.

Section 2.3. Authorization; Other Agreements. The Collateral Agent, on behalf of Lenders and the other Secured Parties is hereby authorized, without notice, to or demand upon any Guarantor and without discharging or otherwise affecting the obligations of any Guarantor hereunder and without incurring any liability hereunder, from time to time, to do each of the following but subject in all cases to the terms and conditions of the other Loan Documents:

- (a) (i) modify, amend, supplement or otherwise change, (ii) accelerate or otherwise change the time of payment or (iii) waive or otherwise consent to noncompliance with, any Guaranteed Obligation or any Loan Document;
- (b) apply to the Guaranteed Obligations any sums by whomever paid or however realized to any Guaranteed Obligation in such order as provided in the Loan Documents;
- (c) refund at any time any payment received by any Secured Party in respect of any Guaranteed Obligation;
- (d) (i) sell, exchange, enforce, waive, substitute, liquidate, terminate, release, abandon, fail to perfect, subordinate, accept, substitute, surrender, exchange, affect, impair or otherwise alter or release any Collateral for any Guaranteed Obligation or any other guaranty therefor in any manner, (ii) receive, take and hold additional Collateral to secure any Guaranteed Obligation, (iii) add, release or substitute any one or more other Guarantors, makers or endorsers of any Guaranteed Obligation or any part thereof and (iv) otherwise deal in any manner with Borrower or any other Guarantor, maker or endorser of any Guaranteed Obligation or any part thereof; and
- (e) settle, release, compromise, collect or otherwise liquidate the Guaranteed Obligations.

Section 2.4. Guaranty Absolute and Unconditional. Each Guarantor hereby waives and agrees not to assert any defense (other than the defense of indefeasible payment in full of the Guaranteed Obligations (other than inchoate indemnity obligations)), whether arising in connection with or in respect of any of the following clauses (a) through (f) or otherwise, and hereby agrees that its obligations under this Guaranty are irrevocable, absolute and unconditional and shall not be discharged as a result of or otherwise affected by any of the following clauses (a) through (f) (which may not be pleaded and evidence of which may not be introduced in any proceeding with respect to this Guaranty, in each case except as otherwise agreed in writing by the Collateral Agent):

- (a) the invalidity or unenforceability of any obligation of Borrower or any other Guarantor under any Loan Document or any other agreement or instrument relating thereto (including any amendment, consent or waiver thereto), or any security for, or other guaranty of, any Guaranteed Obligation or any part thereof, or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations or any part thereof;
- (b) the absence of (i) any attempt to collect any Guaranteed Obligation or any part thereof from Borrower or any other Guarantor or other action to enforce the same or (ii) any action to enforce any Loan Document or any Lien thereunder;

(c) the failure by any Person to take any steps to perfect and maintain any Lien on, or to preserve any rights with respect to, any Collateral;

(d) any workout, insolvency, bankruptcy proceeding, reorganization, arrangement, liquidation or dissolution by or against Borrower, any other Guarantor or any of Borrower's other Subsidiaries or any procedure, agreement, order, stipulation, election, action or omission thereunder, including any discharge or disallowance of, or bar or stay against collecting, any Guaranteed Obligation (or any interest thereon) in or as a result of any such proceeding;

(e) any foreclosure, whether or not through judicial sale, and any other sale or other disposition of any Collateral or any election following the occurrence of an Event of Default and during the continuance thereof by the Collateral Agent, on behalf of Lenders and any other Secured Party, to proceed separately against any Collateral in accordance with the Collateral Agent's rights and the rights of any Lender or other Secured Party under any applicable Requirements of Law; or

(f) any other defense, setoff, counterclaim or any other circumstance that might otherwise constitute a legal or equitable discharge of Borrower, any other Guarantor or any other Subsidiary of Borrower, in each case other than the defense of indefeasible payment in full of the Guaranteed Obligations (other than inchoate indemnity obligations).

Section 2.5. Waivers. To the fullest extent permitted by Requirements of Law, each Guarantor hereby unconditionally and irrevocably waives and agrees not to assert any claim, defense (other than the defense of payment in full of the Guaranteed Obligations (other than inchoate indemnity obligations)), setoff or counterclaim based on diligence, promptness, presentment, requirements for any demand or notice hereunder, including any of the following: (a) any demand for payment or performance and protest and notice of protest; (b) any notice of acceptance; (c) any presentment, demand, protest or further notice or other requirements of any kind with respect to any Guaranteed Obligation (including any accrued but unpaid interest thereon) becoming immediately due and payable; and (d) any other notice in respect of any Guaranteed Obligation or any part thereof, and any defense arising by reason of any disability or other defense of Borrower or any other Guarantor. Until the indefeasible payment in full of the Guaranteed Obligations (other than inchoate indemnity obligations), each Guarantor further unconditionally and irrevocably agrees not to (x) enforce or otherwise exercise any right of subrogation or any right of reimbursement or contribution or similar right against Borrower or any other Guarantor by reason of any Loan Document or any payment made thereunder or (y) assert any claim, defense, setoff or counterclaim it may have against any other Credit Party or set off any of its obligations to such other Credit Party against obligations of such Credit Party to such Guarantor. No obligation of any Guarantor hereunder shall be discharged other than by complete performance.

Section 2.6. Reliance. Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of Borrower, each other Guarantor and any other guarantor, maker or endorser of any Guaranteed Obligation or any part thereof, and of all other circumstances bearing upon the risk of nonpayment of any Guaranteed Obligation or any part thereof that reasonable and diligent inquiry would reveal, and each Guarantor hereby agrees that neither the Collateral Agent nor any Lender or other Secured Party shall have any duty to advise any Guarantor of information known to it regarding such condition or any such circumstances. In the event the Collateral Agent, in its sole discretion, undertakes at any time or from time to time to provide any such information to any Guarantor, such Person shall be under no obligation to (a) undertake any investigation not a part of its regular business routine, (b) disclose any information that any Lender or other Secured Party, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (c) make any future disclosures of such information or any other information to any Guarantor.

Section 2.7. Contribution. To the extent that any Guarantor shall be required hereunder to pay any portion of any Guaranteed Obligation exceeding the greater of (a) the amount of the value actually received by such Guarantor and its Subsidiaries from the Term Loans and other Obligations and (b) the amount such Guarantor would otherwise have paid if such Guarantor had paid the aggregate amount of the Guaranteed Obligations (excluding the amount thereof repaid by Borrower) in the same proportion as such Guarantor's net worth on the date enforcement is sought hereunder bears to the aggregate net worth of all Guarantors on such date, then such Guarantor shall be reimbursed by such other Guarantors for the amount of such excess, *pro rata*, based on the respective net worth of such other Guarantors on such date.

ARTICLE III

GRANT OF SECURITY INTEREST

Section 3.1. Collateral. For the purposes of this Agreement, the following tangible and intangible assets and property now owned or at any time hereafter acquired, developed or created by a Grantor or in which a Grantor now has or at any time in the future may acquire any right, title or interest, in each case, wherever located, is collectively referred to as the "Collateral":

- (a) all accounts;
- (b) all as-extracted collateral;
- (c) all chattel paper, including electronic chattel paper or tangible chattel paper;
- (d) all checks;
- (e) all deposit accounts;
- (f) all documents;
- (g) all encumbrances;
- (h) all equipment;
- (i) all fixtures;
- (j) all general intangibles (including all Current Company IP Agreements, Current Acquisition IP Agreements, Manufacturing Agreements and any other agreements or contracts of any kind);
- (k) all goods;
- (l) any and all Intellectual Property and IP Licenses (including all IP Licenses under the Current Company IP Agreements and Current Acquisition IP Agreements to which a Grantor is a party and the rights of such Grantor thereunder, and all of a Grantor's right, title and interest in, to and under any Internet Domain Names and Software) relating 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, including any similar or equivalent rights to those set forth in any of clauses (a) through (f) of the definition of "Intellectual Property");

- (m) all instruments (including all promissory notes);
- (n) all right, title and interest in, to and under any NDA relating to the commercialization, marketing, offer for sale, distribution or sale of any Product in the Territory;
- (o) all inventory;
- (p) all investment property (including Pledged Collateral, Pledged Investment Property, Equity Interests, securities, securities accounts and security entitlements with respect thereto and financial assets carried therein, and all commodity accounts and commodity contracts);
- (q) all money;
- (r) all letters of credit, letter-of-credit rights and supporting obligations;
- (s) all commercial tort claims, in each case, (i) of which Grantor has Knowledge and (ii) with a predicted value of \$1,000,000 or more (as reasonably determined by a Responsible Officer of Borrower in good faith and based upon reasonable assumptions);
- (t) all books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time pertain to or evidence or contain information relating to any of the other property described in this Section 3.1;
- (u) all property of such Grantor held by the Collateral Agent for the benefit of Lenders and any other Secured Party, including all property of every description, in the custody of or in transit to the Collateral Agent for the benefit of Lenders and any other Secured Party for any purpose, including safekeeping, collection or pledge, for the account of such Grantor or as to which such Grantor may have any right or power, including cash;
- (v) all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing;
- (w) to the extent not otherwise included, all personal property of such Grantor, whether tangible or intangible and wherever located, and all proceeds, products, accessions, rents, issues and profits of any and all of the foregoing and all collateral security, supporting obligations and guarantees given by any Person with respect to any of the foregoing; and
- (x) to the extent not otherwise included, all other properties or assets of whatever kind and nature subject or purported to be subject from time to time to a Lien under any Collateral Document;

excluding, however, all Excluded Property.

Section 3.2. Grant of Security Interest in Collateral.

(a) Without limiting any other security interest granted to the Collateral Agent, in favor of and for the benefit of Lenders and the other Secured Parties, each Grantor, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations of such Grantor (the "Secured Obligations"), hereby pledges, hypothecates and grants to the Collateral Agent, in favor and for the benefit of Lenders and the other Secured Parties, to secure the payment and performance in full of all of the Obligations for the benefit of Lenders and the other Secured Parties, a first priority Lien (subject only to Permitted Liens) on and continuing security interest in, all of its right, title and interest in, to and under the Collateral of such Grantor, wherever located, whether now owned or hereafter acquired or arising. For the avoidance of doubt, no Lien or security interest is hereby granted on, and "Collateral" shall not include, any Excluded Property; provided, however, that if and when any property or asset shall cease to be Excluded Property, a first priority Lien (subject only to Permitted Liens) on and security interest in such property or asset shall be deemed granted therein and, therefore, "Collateral" shall then include any such property or asset.

(b) Notwithstanding anything herein to the contrary, no Grantor or Subsidiary of any Grantor shall be required to take any action under laws outside the United States to perfect any Lien of the Collateral Agent, for the benefit of Lenders and the other Secured Parties, on Collateral.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

To induce the Collateral Agent and Lenders to enter into the Loan Documents, each Grantor, jointly and severally with each other Grantor, represents and warrants each of the following to the Collateral Agent, each Lender and the other Secured Parties:

Section 4.1. Title; No Other Liens. Except for the Lien granted to the Collateral Agent for the benefit of Lenders and the other Secured Parties pursuant to this Agreement and any other Permitted Liens under any Loan Document (including Section 4.2 hereof), such Grantor owns or otherwise has the rights it purports to have in each item of the Collateral, free and clear of any and all Liens or claims of others. Such Grantor (a) is the record and beneficial owner of the Collateral pledged by it hereunder constituting instruments or certificates and (b) except for Permitted Subsidiary Distribution Restrictions, has rights in or the power to transfer each other item of Collateral in which a Lien is granted by it hereunder, free and clear of any other Lien other than any Permitted Liens.

Section 4.2. Perfection and Priority. Other than in respect of money and other Collateral subject to Section 9-311(a)(1) of the Code, the security interest granted to the Collateral Agent pursuant to this Agreement constitutes a valid and continuing first priority perfected security interest (subject, in the case of priority only, to Permitted Liens that are expressly permitted (if at all) by the terms of the Loan Agreement or this Agreement to, or that by operation of law, have superior priority to the Lien and security interest granted to the Collateral Agent for the benefit of Lenders and the other Secured Parties) in favor of and for the benefit of Lenders and the other Secured Parties in all Collateral, subject, for the following Collateral, to the occurrence of the following: (a) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the Code, the completion of the filings and other actions specified on Schedule 2 of the Security Disclosure Letter (which, in the case of all filings and other documents referred to on such schedule, have been duly authorized by the applicable Guarantor); (b) with respect to any account over which a Control Agreement is required pursuant to Section 5.5 of the Loan Agreement, the execution of Control Agreements; (c) in the case of all United States Trademarks, Patents and Copyrights for which Code filings are insufficient to effectuate perfection, all appropriate filings having been made with the Applicable IP Office, as applicable; (d) in the case of all Pledged Certificated Stock, Pledged Debt Instruments and Pledged Investment Property, the delivery to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of such Pledged Certificated Stock, Pledged Debt Instruments and Pledged Investment Property consisting of instruments and certificates, in each case, properly endorsed for transfer to the Collateral Agent or in blank; (e) in the case of all Pledged Uncertificated Stock, the delivery to the Collateral Agent, for the benefit of the Lenders and the other Secured Parties, of an executed uncertificated stock control agreement among the issuer, the registered owner and the Collateral Agent in the form attached as Annex 4 hereto; and (f) in the case of all other instruments that are not Pledged Stock, if any, the delivery thereof to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of such instruments. Such Lien on and security interest in Pledged Stock shall be prior to all other Liens on such Collateral, subject to Permitted Liens having priority over the Collateral Agent's Lien by operation of law or as and to the extent expressly permitted (if at all) by any Loan Document. Subject to Section 3.2(b) above, except to the extent expressly not required pursuant to the terms of the Loan Agreement or this Agreement, all actions by each Grantor necessary or desirable to protect and perfect the first priority Lien on and security interest in the Collateral granted hereunder have been duly taken.

Section 4.3. Pledged Stock.

(a) The Pledged Stock issued by any Subsidiary of any Grantor pledged by such Grantor hereunder (i) consist of the number and types of Equity Interests listed on Schedule 1 of the Security Disclosure Letter and constitutes that percentage of the issued and outstanding equity of all classes of each issuer thereof as set forth on Schedule 1 of the Security Disclosure Letter, (ii) has been duly authorized, validly issued and is fully paid and nonassessable (other than Pledged Stock in limited liability companies and partnerships), and (ii) constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to equitable principles (regardless of whether enforcement is sought in equity or at law). As of the date any Joinder Agreement or Pledge Amendment is delivered pursuant to Section 8.6, the Pledged Stock pledged by each applicable Grantor thereunder (x) is listed on the applicable schedule attached to such Joinder Agreement or Pledge Amendment, as applicable, and constitutes that percentage of the issued and outstanding equity of all classes of each issuer thereof as set forth on such schedule, (y) has been duly authorized, validly issued and is fully paid and non-assessable (other than Pledged Stock in limited liability companies and partnerships) and (z) constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to equitable principles (regardless of whether enforcement is sought in equity or at law).

(b) (i) All Pledged Certificated Stock has been delivered to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, in accordance with Section 5.2(a), and (ii) with respect to all Pledged Uncertificated Stock, uncertificated stock control agreements in the form attached as Annex 4 hereto have been delivered to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, in accordance with Section 5.2(a).

(c) Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent for the benefit of Lenders and the other Secured Parties shall be entitled to exercise all of the rights of the Grantor granting the security interest in any Pledged Stock, and a transferee or assignee of such Pledged Stock shall become a holder of such Pledged Stock to the same extent as such Grantor and, upon the transfer of the entire interest of such Grantor, such Grantor shall, by operation of law, cease to be a holder of such Pledged Stock.

ARTICLE V

COVENANTS

Each Grantor agrees with the Collateral Agent to the following, until the indefeasible payment in full of the Obligations (other than inchoate indemnity obligations) and unless the Collateral Agent, on behalf of Lenders and the other Secured Parties, otherwise consents in writing:

Section 5.1. Maintenance of Perfected Security Interest; Further Documentation and Consents.

(a) Subject to the occurrence of the actions described in Section 4.2, which each Grantor shall promptly undertake, and except to the extent perfection is either (i) mutually agreed between Borrower and the Collateral Agent not to be required under this Agreement or the other Loan Documents or (ii) mutually agreed between Borrower and the Collateral Agent to be effected by filings of financing statements or amendments thereto to be made by the Collateral Agent or any Lender or its Related Party pursuant to Section 7.2, such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.2 and shall warrant and defend the Collateral covered by such security interest and such priority against the claims and demands of all Persons (other than Secured Parties).

(b) Such Grantor shall furnish to the Collateral Agent at any time and from time to time statements and schedules further identifying and describing the Collateral and such other documents in connection with the Collateral as the Collateral Agent may reasonably request in writing, in all cases in reasonable detail and in form and substance reasonably satisfactory to the Collateral Agent (including in the case of any commercial tort claim constituting Collateral, for the avoidance of doubt, reasonable detail identifying the specific claims subject to the security interest granted in such commercial tort claims to the Collateral Agent pursuant to this Agreement).

(c) At any time and from time to time, upon the written request of the Collateral Agent, such Grantor shall, for the purpose of obtaining or preserving the full benefits of this Agreement and the other Collateral Documents and of the rights and powers herein and therein granted, (i) promptly and duly execute and deliver, and have recorded, such further documents, including an authorization to file (or, as applicable, the filing) of any financing statement or amendment under the Code (or other filings under similar Requirements of Law) in effect in any jurisdiction with respect to the security interest created hereby and (ii) take such further action as the Collateral Agent may reasonably request in writing that is consistent with the requirements hereof and of the other Loan Documents, including executing and delivering any Control Agreements required by Section 5.5 of the Loan Agreement with respect to the Collateral Accounts.

Section 5.2. Pledged Collateral.

(a) Delivery of Pledged Collateral. Such Grantor shall, promptly after acquiring any Pledged Collateral not owned on the Closing Date: (i) deliver to the Collateral Agent, in suitable form for transfer and in form and substance reasonably satisfactory to the Collateral Agent, (A) all such Pledged Stock that is Pledged Certificated Stock, (B) all Pledged Debt Instruments having a face value in excess of \$1,000,000; and (C) all certificates and instruments evidencing Pledged Investment Property having a face value in excess of \$1,000,000; (ii) subject all Collateral Accounts required to be subject to a Control Agreement pursuant to the Loan Agreement to a Control Agreement; and (iii) cause the issuer of any such Pledged Stock that is Pledged Uncertificated Stock to execute an uncertificated stock control agreement in the form attached hereto as Annex 4, pursuant to which, *inter alia*, such issuer agrees to comply with the Collateral Agent's instructions with respect to such Pledged Uncertificated Stock without further consent by such Grantor, and, for the avoidance of doubt, if any such Pledged Uncertificated Stock becomes certificated, promptly (but in any event within thirty (30) days thereof) deliver to the Collateral Agent, in suitable form for transfer and in form and substance reasonably satisfactory to the Collateral Agent, all such certificates, instruments or other similar documents (as defined in the Code).

(b) Event of Default. During the continuance of any Event of Default and in connection with the exercise of rights or remedies hereunder or under any other Loan Document, the Collateral Agent shall have the right, at any time in its discretion and without prior notice to any Grantor, to (i) transfer to or to register in its name or in the name of its nominees any Pledged Stock and (ii) exchange any certificate or instrument representing or evidencing any Pledged Stock for certificates or instruments of smaller or larger denominations.

(c) Cash Distributions with respect to Pledged Collateral and Pledged Investment Property. Except as provided in Article VI and subject to any limitations set forth in the Loan Agreement, such Grantor shall be entitled to receive all cash distributions paid in respect of the Pledged Collateral and the Pledged Investment Property.

(d) Voting Rights. Except as provided in Article VI, such Grantor shall be entitled to exercise all voting, consent and corporate, partnership, limited liability company and similar rights with respect to the Pledged Collateral and Pledged Investment Property; provided, however, that no vote shall be cast, consent, waiver or ratification given or right exercised (or failed to be exercised) or other action taken (or failed to be taken) by such Grantor in any manner that would reasonably be expected to (i) violate or be inconsistent with any of the terms of this Agreement or any other Loan Document or (ii) have the effect of materially impairing such Collateral or the position or interests of the Secured Parties.

Section 5.3. Intellectual Property. Such Grantor shall, promptly (and in no event later than fifteen (15) days) after delivery of financial statements pursuant to Section 5.2(a) of the Loan Agreement), execute and deliver to the Collateral Agent, in form and substance reasonably acceptable to the Collateral Agent and suitable for filing in the Applicable IP Office, the short-form intellectual property security agreements in the form attached hereto as Annex 3 for all Collateral consisting of any newly-acquired Copyrights, Trademarks or Patents (as applicable) of such Grantor registered in the Applicable IP Office during the applicable reporting period.

ARTICLE VI

REMEDIAL PROVISIONS

Section 6.1. Code and Other Remedies.

(a) Code Remedies. During the continuance of an Event of Default, the Collateral Agent, on behalf of Lenders and the other Secured Parties, may exercise, in addition to all other rights and remedies granted to it in this Agreement, any IP Agreement, any other Loan Document or in any other instrument or agreement securing, evidencing or relating to any Secured Obligation, all rights, powers and remedies of a secured party under the Code or any other Requirements of Law or in equity.

(b) Disposition of Collateral. During the continuance of an Event of Default, without limiting the generality of the foregoing, the Collateral Agent may (personally or through its agents or attorneys), without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by Requirements of Law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived): (i) enter upon the premises where any Collateral is located, without any obligation to pay rent, through self-help, without judicial process, without first obtaining a final judgment or giving Grantor or any other Person notice or opportunity for a hearing on the Collateral Agent's or any Lender's claim or action; (ii) collect, receive, appropriate and realize upon any Collateral; (iii) store, process, repair or recondition the Collateral or otherwise prepare any Collateral for disposition in any manner to the extent the Collateral Agent deems appropriate; and (iv) sell, assign, license out, convey, transfer, grant option or options to purchase or license and deliver any Collateral (or enter into contractual obligations to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Collateral Agent or any Lender or other Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Collateral Agent, on behalf of Lenders and the other Secured Parties, shall have the right, upon any such public sale or sales and, to the extent permitted by the Code and other Requirements of Law, upon any such private sale or sales, to purchase or license the whole or any part of the Collateral so sold or licensed, free of any right or equity of redemption of any Grantor, which right or equity is hereby waived and released. The Collateral Agent, as representative of all Lenders and other Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the Code, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent on behalf of Lenders and the other Secured Parties, at such sale. If the Collateral Agent on behalf of any Lender sells any of the Collateral upon credit, Grantor will be credited only with payments actually made by purchaser and received by such Lender and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Collateral Agent may resell the Collateral and Grantor shall be credited with proceeds of the sale. Neither the Collateral Agent nor any Lender shall have an obligation to marshal any of the Collateral.

(c) Management of the Collateral. Each Grantor further agrees, that, during the continuance of any Event of Default, (i) at the Collateral Agent's request, it shall assemble the Collateral and make it available to the Collateral Agent at places that the Collateral Agent shall reasonably select, whether at such Grantor's premises or elsewhere, (ii) without limiting the foregoing, the Collateral Agent also has the right to require that such Grantor store and keep any Collateral pending further action by the Collateral Agent and, while any such Collateral is so stored or kept, provide such guards and maintenance services as shall be necessary to protect the same and to preserve and maintain such Collateral in good condition, normal wear and tear excepted, (iii) until the Collateral Agent is able to sell, assign, license out, convey or transfer any Collateral, the Collateral Agent shall have the right to hold or use such Collateral to the extent that it deems appropriate for the purpose of preserving the Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent and (iv) the Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of any Collateral and to enforce any of the Collateral Agent's or any Lender's remedies, with respect to such appointment without any prior notice or hearing as to such appointment. The Collateral Agent shall not have any obligation to any Grantor to maintain or preserve the rights of any Grantor as against other Persons with respect to any Collateral while such Collateral is in the possession of the Collateral Agent.

(d) Application of Proceeds. The Collateral Agent shall apply the cash proceeds received by it in respect of any sale of, any collection from, or other realization upon all or any part of the Collateral, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any Collateral or in any way relating to the Collateral or the rights of Lenders and the other Secured Parties, including reasonable and documented out-of-pocket attorneys' fees and disbursements, to the payment in whole or in part of the Secured Obligations, as set forth in the Loan Agreement, and only after such application and after the payment by the Collateral Agent or Lenders of any other amount required by any Requirements of Law, need the Collateral Agent or any Lender account for the surplus, if any, to any Grantor.

(e) Direct Obligation. Neither the Collateral Agent nor any Lender or other Secured Party shall be required to make any demand upon, or pursue or exhaust any right or remedy against, any Grantor or any other Person with respect to the payment of the Obligations or to pursue or exhaust any right or remedy with respect to any Collateral therefor or any direct or indirect guaranty thereof. All of the rights and remedies of the Collateral Agent and Lenders and any other Secured Party shall be cumulative, may be exercised individually or concurrently and not exclusive of any other rights or remedies provided by any Requirements of Law. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Collateral Agent, Lenders or any other Secured Party, any valuation, stay, appraisal, extension, redemption or similar laws and any and all rights or defenses it may have as a surety, now or hereafter existing, arising out of the exercise by any of them of any rights or remedies hereunder. If any notice of a proposed sale or other disposition of any Collateral shall be required by Requirements of Law, such notice shall be deemed reasonable and proper if given at least ten (10) days before such sale or other disposition.

(f) Commercially Reasonable. To the extent that applicable Requirements of Law impose duties on the Collateral Agent or any Lender or other Secured Party to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent or any Lender to do any of the following:

(i) fail to incur significant costs, expenses or other liabilities reasonably deemed as such by the Collateral Agent or such Lender to prepare any Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition;

(ii) fail to obtain permits, licenses or other consents for access to any Collateral to sell or license or for the collection or sale or licensing of any Collateral, or, if not required by other Requirements of Law, fail to obtain permits, licenses or other consents for the collection or disposition of any Collateral;

(iii) fail to exercise remedies against account debtors or other Persons obligated on any Collateral or to remove Liens on any Collateral or to remove any adverse claims against any Collateral;

(iv) advertise dispositions of any Collateral through publications or media of general circulation, whether or not such Collateral is of a specialized nature, or to contact other Persons, whether or not in the same business as any Grantor, for expressions of interest in acquiring any such Collateral;

(v) exercise collection remedies against account debtors and other Persons obligated on any Collateral, directly or through the use of collection agencies or other collection specialists, hire one or more professional auctioneers to assist in the disposition of any Collateral, whether or not such Collateral is of a specialized nature, or, to the extent deemed appropriate by the Collateral Agent or such Lender, obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent or such Lender in the collection or disposition of any Collateral, or utilize Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets to dispose of any Collateral;

(vi) dispose of assets in wholesale rather than retail markets;

(vii) disclaim warranties, such as title, merchantability, possession, non-infringement or quiet enjoyment; or

(viii) purchase insurance or credit enhancements to insure the Collateral Agent or any Lender or other Secured Party against risks of loss, collection or disposition of any Collateral or to provide to the Collateral Agent and Lenders a guaranteed return from the collection or disposition of any Collateral.

Each Grantor acknowledges that the purpose of this Section 6.1 is to provide a non-exhaustive list of actions or omissions that are commercially reasonable when exercising remedies against any Collateral and that other actions or omissions by the Collateral Agent, Lenders or any other Secured Party shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 6.1. Without limitation upon the foregoing, nothing contained in this Section 6.1 shall be construed to grant any rights to any Grantor or to impose any duties on the Collateral Agent or any Lender or other Secured Party that would not have been granted or imposed by this Agreement or by applicable Requirements of Law in the absence of this Section 6.1.

(g) IP Licenses. To the extent permitted, and only for the purpose of enabling the Collateral Agent to exercise rights and remedies under this Section 6.1 during the continuance of an Event of Default (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, license out, convey, transfer or grant options to purchase any Collateral) at such time as the Collateral Agent on behalf of Lenders and the other Secured Parties shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent (i) an irrevocable, nonexclusive, assignable, license in the Territory (exercisable without payment of royalty or other compensation to such Grantor), including the right to sublicense, use and practice any and all Intellectual Property now owned or held or hereafter acquired or held by such Grantor and access to all media in which any of the licensed items may be recorded or stored and to all Software and programs used for the compilation or printout thereof and (ii) an irrevocable license (without payment of rent or other compensation to such Grantor) to use, operate and occupy all real property owned, operated, leased, subleased or otherwise occupied by such Grantor.

Section 6.2. Accounts and Payments in Respect of General Intangibles.

(a) In addition to, and not in substitution for, any similar requirement in the Loan Agreement, if required by the Collateral Agent at any time during the continuance of an Event of Default, any payment of accounts or payment in respect of general intangibles relating to the Collateral, when collected by any Grantor, shall be promptly (and, in any event, within two (2) Business Days of such collection) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent for the benefit of Lenders and the other Secured Parties, in a Collateral Account, subject to withdrawal by the Collateral Agent as provided in Section 6.4. Until so turned over, such payment shall be held by such Grantor in trust for the Collateral Agent for the benefit of Lenders and the other Secured Parties, segregated from other funds of such Grantor. Each such deposit of proceeds of accounts and payments in respect of general intangibles relating to the Collateral shall, upon the Collateral Agent's request, be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(b) At any time during the continuance of an Event of Default:

(i) each Grantor shall, upon the Collateral Agent's request, assemble and hold for the benefit of Lenders and the other Secured Parties all original and other documents evidencing, and relating to, the contractual obligations and transactions that gave rise to any account or any payment in respect of general intangibles included in or otherwise relating in any way to any of the Collateral, including all IP Licenses, original orders, invoices and shipping receipts and notify account debtors that the accounts or general intangibles have been collaterally assigned to the Collateral Agent for the benefit of Lenders and the other Secured Parties and that payments in respect thereof shall be made directly to the Collateral Agent for the benefit of Lenders and the other Secured Parties or to any Lender on behalf of itself and the other Secured Parties, as the Collateral Agent shall direct; and

(ii) each Grantor shall take all actions, deliver all documents and provide all information necessary or reasonably requested by the Collateral Agent to ensure any Internet Domain Name included in or otherwise relating in any way to any of the Collateral is registered.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each account and each payment in respect of general intangibles included in the Collateral to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither the Collateral Agent nor any Lender or other Secured Party shall have any obligation or liability under any agreement giving rise to an account or a payment in respect of a general intangible included in the Collateral by reason of or arising out of any Loan Document or the receipt by the Collateral Agent or any Lender or other Secured Party of any payment relating thereto, nor shall the Collateral Agent nor any Lender or other Secured Party be obligated in any manner to perform any obligation of any Grantor under or pursuant to any agreement giving rise to an account or a payment in respect of a general intangible included in the Collateral, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

Section 6.3. Pledged Collateral.

(a) Voting Rights. During the continuance of an Event of Default, all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Collateral Agent or a nominee on behalf of Lenders or the other Secured Parties, who shall thereupon have the sole right to exercise such voting and other consensual rights, including (i) the right to exercise any voting, consent, corporate and other right pertaining to the Pledged Collateral at any meeting of shareholders, partners or members, as the case may be, of the relevant issuer or issuers of Pledged Collateral or otherwise, and (ii) any right of conversion, exchange and subscription and any other right, privilege or option pertaining to the Pledged Collateral as if it were the absolute owner thereof (including the right to exchange at its discretion any Pledged Collateral upon the merger, amalgamation, consolidation, reorganization, recapitalization or other fundamental change in the corporate or equivalent structure of any issuer of Pledged Collateral, the right to deposit and deliver any Pledged Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Collateral Agent (or such nominee) on behalf of Lenders or the other Secured Parties may determine), all without liability except to account for property actually received by it; provided, however, that the Collateral Agent (or such nominee) shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(b) Proxies. During the continuance of an Event of Default, in order to permit the Collateral Agent on behalf of Lenders and the other Secured Parties to exercise the voting and other consensual rights that it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions that it may be entitled to receive hereunder, (i) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all such proxies, dividend payment orders and other instruments as the Collateral Agent may from time to time reasonably request and (ii) without limiting the effect of clause (i) above, such Grantor hereby grants to the Collateral Agent for the benefit of Lenders and the other Secured Parties an irrevocable proxy to vote all or any part of the Pledged Collateral and to exercise all other rights, powers, privileges and remedies to which a holder of the Pledged Collateral would be entitled (including giving or withholding written consents of shareholders, partners or members, as the case may be, calling special meetings of shareholders, partners or members, as the case may be, and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Collateral on the record books of the issuer thereof) by any other Person (including the issuer of such Pledged Collateral or any officer or agent thereof) during the continuance of an Event of Default and which proxy shall only terminate upon (A) the cure of any and all Events of Default or (B) the indefeasible payment in full of the Secured Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted).

(c) Authorization of Issuers. Each Grantor hereby expressly and irrevocably authorizes and instructs, without any further instructions from such Grantor, each issuer of any Pledged Collateral pledged hereunder by such Grantor to, and each Grantor that is an issuer of Pledged Collateral so pledged hereunder hereby agrees to (i) comply with any instruction received by it from the Collateral Agent in writing that states that an Event of Default is continuing and is otherwise in accordance with the terms of this Agreement and each Grantor agrees that such issuer shall be fully protected from liabilities to such Grantor in so complying, and (ii) during the continuance of such Event of Default, unless otherwise permitted hereby or by the Loan Agreement, pay any dividend or make any other payment with respect to the Pledged Collateral directly to the Collateral Agent for the benefit of Lenders and the other Secured Parties or to any Lender on behalf of itself and the other Secured Parties, as the Collateral Agent shall direct.

Section 6.4. Proceeds to be Turned over to and Held by Collateral Agent. Unless otherwise expressly provided in the Loan Agreement or this Agreement, during the continuance of an Event of Default and, upon written notice by the Collateral Agent to the relevant Grantor or Grantors, all proceeds of any Collateral received by any Grantor hereunder in cash or Cash Equivalents shall be held by such Grantor in trust for Lenders and the other Secured Parties, segregated from other funds of such Grantor, and shall, promptly upon receipt by any Grantor, be turned over to the Collateral Agent for the benefit of Lenders and the other Secured Parties in the exact form received (with any necessary endorsement). All such proceeds of Collateral and any other proceeds of any Collateral received by the Collateral Agent in cash or Cash Equivalents shall be held by the Collateral Agent for the benefit of itself and the other Secured Parties in a Collateral Account. All proceeds being held by the Collateral Agent in a Collateral Account (or by such Grantor in trust for Lenders and the other Secured Parties) shall continue to be held as collateral security for the Secured Obligations and shall not constitute payment thereof until applied as provided in the Loan Agreement.

Section 6.5. Sale of Pledged Collateral.

(a) Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any Pledged Collateral by reason of certain prohibitions contained in the Securities Act and applicable state or foreign securities laws or otherwise or may determine that a public sale is impracticable, not desirable or not commercially reasonable and, accordingly, may resort to one or more private sales thereof to a restricted group of purchasers that shall be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Collateral Agent shall be under no obligation to delay a sale of any Pledged Collateral for the period of time necessary to permit the issuer thereof to register such securities for public sale under the Securities Act or under applicable state securities laws even if such issuer would agree to do so.

(b) Each Grantor agrees to use commercially reasonable efforts to do or cause to be done all such other acts as may be reasonably necessary to make such sale or sales of any portion of the Pledged Collateral pursuant to Section 6.1 and this Section 6.5 valid and binding and in compliance with all applicable Requirements of Law. Each Grantor further agrees that a breach of any covenant contained herein will cause irreparable injury to the Collateral Agent, Lenders and the other Secured Parties, that the Collateral Agent, Lenders and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained herein shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defense against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing under the Loan Agreement or a defense of indefeasible payment in full of the Guaranteed Obligations (other than inchoate indemnity obligations). Each Grantor waives any and all rights of contribution or subrogation upon the sale or disposition of all or any portion of the Pledged Collateral by the Collateral Agent on behalf of Lenders and the other Secured Parties.

Section 6.6. Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of any Collateral are insufficient to pay the Secured Obligations and the reasonable and documented fees and disbursements of any attorney employed by the Collateral Agent or any Lender to collect such deficiency.

Section 6.7. Collateral Accounts. If any Event of Default shall have occurred and be continuing, the Collateral Agent may apply the balance from any Collateral Account of a Grantor or instruct the bank at which any Collateral Account is maintained to pay the balance of any Collateral Account to the Collateral Agent for the benefit of Lenders and the other Secured Parties or to any Lender on behalf of itself and the other Secured Parties, as the Collateral Agent shall direct, to be applied to the Secured Obligations in accordance with the terms hereof.

Section 6.8. Directions, Notices or Instructions. Neither the Collateral Agent nor any Lender or any Related Party thereof or any other Secured Party shall take any action under or issue any directions, notice or instructions pursuant to any Control Agreement or similar agreement unless an Event of Default has occurred and is continuing.

ARTICLE VII

ADDITIONAL RIGHTS OF COLLATERAL AGENT

Section 7.1. Collateral Agent's Appointment as Attorney-in-Fact.

(a) Each Grantor hereby irrevocably constitutes and appoints the Collateral Agent and any Related Party thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of the Loan Documents, to take any appropriate action and to execute any document or instrument that may be necessary or desirable to accomplish the purposes of the Loan Documents, in each case during the continuance of an Event of Default, and, without limiting the generality of the foregoing, each Grantor hereby gives the Collateral Agent and its Related Party the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any of the following when an Event of Default shall be continuing:

(i) in the name of such Grantor, in its own name or otherwise, take possession of and indorse and collect any check, draft, note, acceptance or other instrument for the payment of moneys due under any account or general intangible or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Collateral Agent for the purpose of collecting any such moneys due under any account or general intangible or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property (including any IP Ancillary Rights) or any IP Licenses included in the Collateral, execute, deliver and have recorded any document that the Collateral Agent may request to evidence, effect, publicize or record the Collateral Agent's security interest, in favor of and for the benefit of Lenders and the other Secured Parties, in such Intellectual Property or IP Licenses and the goodwill and general intangibles of such Grantor relating thereto or represented thereby and the Collateral Agent's (on behalf of Lenders and the other Secured Parties) rights and remedies with respect thereto;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against any Collateral, effect any repair or obtain or pay any insurance called for by the terms of the Loan Agreement (including all or any part of the premiums therefor and the costs thereof);

(iv) execute, in connection with any sale provided for in Section 6.1 or 6.5, any document to effect or otherwise necessary or appropriate in relation to evidence the sale of any Collateral; or

(v) (A) direct any party liable for any payment under any Collateral to make payment of any moneys due or to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct, (B) ask or demand for, and collect and receive payment of and receipt for, any moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral, (C) commence and prosecute any suit, action or proceeding at law or in equity in any court of competent jurisdiction to collect any Collateral and to enforce any other right in respect of any Collateral, (D) defend any actions, suits, proceedings, audits, claims, demands, orders or disputes brought against such Grantor with respect to any Collateral, (E) settle, compromise or adjust any such actions, suits, proceedings, audits, claims, demands, orders or disputes and, in connection therewith, give such discharges or releases as the Collateral Agent may deem appropriate, (F) assign or license any Intellectual Property included in the Collateral on such terms and conditions and in such manner as the Collateral Agent shall in its sole discretion determine, including the execution and filing of any document necessary to effectuate or record such assignment or license and (G) generally, sell, assign, license, convey, transfer or grant a Lien on, make any contractual obligation with respect to and otherwise deal with, any Collateral as fully and completely as though the Collateral Agent on behalf of Lenders and the other Secured Parties were the absolute owner thereof for all purposes and do, at the Collateral Agent's option, at any time or from time to time, all acts and things that the Collateral Agent deems necessary to protect, preserve or realize upon any Collateral and the Collateral Agent's, in favor of and for the benefit of Lenders and the other Secured Parties, security interests therein and to effect the intent of the Loan Documents, all as fully and effectively as such Grantor might do.

(vi) If any Grantor fails to perform or comply with any contractual obligation contained herein, the Collateral Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such contractual obligation.

(b) Without limiting the generality of Section 2.4 of the Loan Agreement, the Lender Expenses and any other reasonable and documented out-of-pocket expenses of the Collateral Agent and any Lender and other Secured Party incurred in connection with the taking of any actions pursuant to or as otherwise contemplated by this Section 7.1, together with, solely in the event any Grantor 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, at the election of the Required Lenders, upon the occurrence and during the continuance of any other Event of Default, interest thereon at the Default Rate, from the date of payment by such Person to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to such Person in accordance with Section 2.4 of the Loan Agreement.

(c) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue of this Section 7.1. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until the indefeasible payment in full of the Secured Obligations (other than inchoate indemnity obligations), this Agreement is terminated and the security interests created hereby are released.

Section 7.2. Authorization to File Financing Statements. Each Grantor authorizes the Collateral Agent and its Related Party, at any time and from time to time, without notice to any Grantor, to file or record financing statements, amendments thereto, and other filing or recording documents or instruments with respect to any Collateral in such form, in such jurisdictions and in such offices as the Collateral Agent reasonably determines appropriate to perfect or protect the security interests of the Collateral Agent, in favor of and for the benefit of Lenders and the other Secured Parties, under this Agreement or any other Loan Document (and the Collateral Agent's and each Lender's and each other Secured Party's rights in respect thereof), and such financing statements and amendments may describe the Collateral covered thereby as "all assets of the debtor" or words of similar effect and may include a notice that any disposition of the Collateral, by any Grantor or other Person, shall be deemed to violate the rights of the Collateral Agent and Lenders and other Secured Parties under the Code to the extent not permitted under this Agreement or any other Loan Document. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction. Such Grantor also hereby ratifies its authorization for the Collateral Agent to have filed any initial financing statement or amendment thereto under the Code (or other similar laws) in effect in any jurisdiction if filed prior to the date hereof.

Section 7.3. Authority of Collateral Agent. Each Grantor acknowledges that, as between the Collateral Agent and the Grantors, the Collateral Agent shall be conclusively presumed to be acting as agent for each Lender and all of the other Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation or entitlement to make any inquiry respecting such authority.

Section 7.4. Duty; Obligations and Liabilities.

(a) Duty of Collateral Agent. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as it deals with similar property for its own account. The powers conferred on the Collateral Agent hereunder are solely to protect each Lender's and the other Secured Parties' interest in the Collateral and shall not impose any duty upon the Collateral Agent to exercise any such powers. The Collateral Agent shall be accountable only for amounts that it receives as a result of the exercise of such powers, and neither it nor any of its Related Parties shall be responsible to any Grantor for any act or failure to act hereunder, except for its or their own gross negligence, bad faith or willful misconduct as finally determined by a court of competent jurisdiction. In addition, the Collateral Agent shall not be liable or responsible for any loss or damage to any Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehousemen, carrier, forwarding agency, consignee or other bailee if such Person has been selected by the Collateral Agent in good faith.

(b) Obligations and Liabilities with respect to Collateral. Neither the Collateral Agent nor Lenders or any other Secured Parties nor any of their respective Related Parties shall be liable for failure to demand, collect or realize upon any Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to any Collateral.

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Reinstatement. Each Grantor agrees that, if any payment made by any Credit Party or other Person and applied to the Secured Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or the proceeds of any Collateral are required to be returned by any Secured Party to such Credit Party, its estate, trustee, receiver or any other party, including any Grantor, under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or repayment, any Lien or other Collateral securing such liability shall be and remain in full force and effect, as fully as if such payment had never been made. If, prior to any of the foregoing, (a) any Lien or other Collateral securing such Grantor's liability hereunder shall have been released or terminated by virtue of the foregoing or (b) any provision of the Guaranty hereunder shall have been terminated, cancelled or surrendered, such Lien, other Collateral or provision shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of such Grantor in respect of any Lien or other Collateral securing such obligation or the amount of such payment.

Section 8.2. Release of Collateral and Guarantee Obligations.

(a) When all Obligations (other than unasserted inchoate indemnity obligations) have been indefeasibly paid in full, the Collateral shall be released from the Lien created hereby and this Agreement and all obligations (other than those expressly stated to survive such termination) of each Lender and any other Secured Party and each Guarantor and Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party (except as required hereunder), and all rights of the Collateral Agent, Lenders and any other Secured Parties to the Collateral shall revert to the Grantors.

(b) In connection with any termination or release pursuant to this Section 8.2, the Collateral Agent shall, and to the extent required, each Secured Party hereby authorizes the Collateral Agent to, promptly execute and deliver to any Grantor all instruments, documents and agreements which such Grantor shall reasonably request in writing to evidence and confirm such termination or release (including termination statements under the Code and customary payoff letters), and will duly assign, transfer and deliver to such Grantor (or its designee), such of the Collateral that may be in the possession of the Collateral Agent, all without further consent or joinder of the Collateral Agent or any Lender or other Secured Party.

(c) Any termination or release pursuant to this Section 8.2 is subject to reinstatement as provided in Section 8.1.

(d) Upon the release of the Liens on any Collateral or of a Grantor from all of its obligations as a Credit Party under the Loan Agreement and as a Grantor hereunder, any representation, warranty or covenant contained in any Loan Document relating to any such Collateral or such Grantor, as applicable, shall no longer be deemed to be made.

(e) Without limiting the generality of Section 2.4 of the Loan Agreement, the Lender Expenses and any other reasonable and documented out-of-pocket expenses of the Collateral Agent and any Lender and other Secured Party incurred in connection with the taking of any actions pursuant to or as otherwise contemplated by this Section 8.2 in accordance with Section 2.4 of the Loan Agreement.

Section 8.3. Independent Obligations. The obligations of each Grantor hereunder are independent of and separate from the Secured Obligations and the Guaranteed Obligations. Upon any Event of Default and during the continuance thereof, the Collateral Agent for the benefit of Lenders and the other Secured Parties may, at its sole election, proceed directly and at once, without notice, against any Grantor and any Collateral to collect and recover the full amount of any Secured Obligation or Guaranteed Obligation then due, without first proceeding against any other Grantor, any other Credit Party or any other Collateral and without first joining any other Grantor or any other Credit Party in any proceeding.

Section 8.4. No Waiver by Course of Conduct. Neither the Collateral Agent nor any Secured Party shall by any act (except by a written instrument pursuant to Section 8.5), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of the Collateral Agent or any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Collateral Agent or any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy that the Collateral Agent or any Secured Party would otherwise have on any future occasion.

Section 8.5. Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 11.5 of the Loan Agreement; provided, however, that annexes to this Agreement may be supplemented (but no existing provisions may be modified and no Collateral may be released) through Pledge Amendments and Joinder Agreements, in substantially the form of Annex 1 and Annex 2 attached hereto, respectively, in each case, duly executed by the Collateral Agent and each Grantor directly affected thereby.

Section 8.6. Additional Grantors and Guarantors; Additional Pledged Collateral.

(a) Joinder Agreements. If, at the option of Borrower or as required pursuant to Section 5.12 or Section 5.13 of the Loan Agreement, Borrower shall cause any Subsidiary (other than an Excluded Subsidiary) that is not a Grantor or Guarantor to become a Grantor and Guarantor hereunder, such Subsidiary shall execute and deliver to the Collateral Agent a Joinder Agreement substantially in the form of Annex 2 attached hereto and shall thereafter for all purposes be a party hereto and have the same rights, benefits and obligations as a Grantor party hereto on the Closing Date.

(b) Pledge Amendments. To the extent any Pledged Collateral has not been delivered as of the Closing Date, such Grantor shall, promptly after such Pledged Collateral is acquired, deliver a pledge amendment duly executed by the Grantor in substantially the form of Annex 1 attached hereto (each, a "Pledge Amendment"). Such Grantor authorizes the Collateral Agent to attach each Pledge Amendment to this Agreement.

Section 8.7. Notices. All notices, requests and demands to or upon the Collateral Agent or any Grantor hereunder shall be effected in the manner provided for in Section 9 of the Loan Agreement; provided, however, that any such notice, request or demand to or upon any Grantor shall be addressed to Borrower's notice address set forth in Section 9 of the Loan Agreement.

Section 8.8. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Collateral Agent and each Secured Party and their respective successors and assigns; provided, however, that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent.

Section 8.9. Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or by electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

Section 8.10. Severability. Any provision of this Agreement being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of this Agreement or any part of such provision in any other jurisdiction.

Section 8.11. Choice of Law. 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.

Section 8.12. Jury Trial Waiver. TO THE FULLEST EXTENT PERMITTED BY REQUIREMENTS OF LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY CLAIM, SUIT, ACTION OR PROCEEDING WITH RESPECT TO, OR DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN OR RELATED HERETO OR THERETO (WHETHER FOUNDED IN CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO OTHER PARTY AND NO RELATED PARTY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.12 AND (C) HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

SECTION 10 OF THE LOAN AGREEMENT IS HEREBY INCORPORATED HEREIN BY REFERENCE, *MUTATIS MUTANDIS*.

Section 8.13. Amendment and Restatement.

(a) This Agreement amends and restates in its entirety, and replaces, the terms of (and obligations outstanding under) the Prior Guaranty and Security Agreement, and the Prior Guaranty and Security Agreement shall have no further force or effect.

(b) All "Secured Obligations" existing under the Prior Guaranty and Security Agreement shall be deemed to be outstanding under this Agreement and, in each case (i) are in all respects enforceable with only the terms thereof being modified as provided by this Agreement and (ii) shall in all respects be continuing after the Amendment Effective Date and shall be deemed to be Secured Obligations governed by this Agreement; provided, however, that all "Secured Obligations" existing under the Prior Guaranty and Security Agreement shall be paid and satisfied in full in accordance with Article 3 of the Loan Agreement and, if and to the extent so paid and satisfied, shall be terminated and no longer enforceable under this Agreement upon such payment and satisfaction on the Closing Date, shall not in any respects be continuing after the Closing Date and shall no longer be deemed to be Secured Obligations governed by this Agreement upon such payment and satisfaction on the Closing Date.

(c) On and after the Amendment Effective Date, all references to the Prior Guaranty and Security Agreement or the "Security Agreement" in any and all of the existing Loan Documents executed in connection with the Prior Loan Agreement, whether on the Effective Date or at any time thereafter but prior to the Amendment Effective Date, shall be deemed to include references to this Agreement, as amended, restated, supplemented or otherwise modified from time to time.

(d) Each party to this Agreement acknowledges and agrees that this Agreement and the documents executed and delivered in connection herewith do not constitute a novation, payment and reborrowing or termination of any of the Secured Obligations under the Prior Guaranty and Security Agreement as in effect prior to the Amendment Effective Date or a novation or payment and reborrowing of any amount owing under the Prior Loan Agreement as in effect prior to the Amendment Effective Date.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the undersigned has caused this Amended and Restated Guaranty and Security Agreement to be duly executed and delivered as of the date first above written.

COLLEGIUM PHARMACEUTICAL, INC.,
as Borrower and Grantor

By: _____
Name:
Title:

COLLEGIUM SECURITIES CORPORATION,
as a Grantor

By: _____
Name:
Title:

BRISTOL ACQUISITION COMPANY INC.,
as a Grantor

By: _____
Name:
Title:

Signature Page to Amended and Restated Guaranty and Security Agreement

ACCEPTED AND AGREED
as of the date first above written:

BIOPHARMA CREDIT PLC,
as Collateral Agent

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By: _____
Name: Pedro Gonzalez de Cosio
Title: Managing Member

Signature Page to Amended and Restated Guaranty and Security Agreement

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 Amended and Restated Loan Agreement (the “**Loan Agreement**”; capitalized terms used, but not defined herein having the meanings given them in the Loan Agreement) dated as of March 22, 2022 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 all required covenants set forth in 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 imposed upon such Credit Party or Subsidiary or any of its properties or assets or in respect of any of its income, businesses or franchises, which are due and payable by such Credit Party or Subsidiary, 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 (which shall not be attached if such financial statements are deemed to be delivered by filing with the SEC on Form 10-Q or 10-K, as applicable) fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries as of the applicable 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.

<u>Reporting Covenant</u>		<u>Requirement</u>	<u>Complies</u>		
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

Deposit and Securities Accounts

(Please list all accounts and indicate each Excluded Account with an asterisk (); attach separate sheet if additional space needed)*

	<u>Bank</u>	<u>Account Number</u>	<u>New Account?</u>		<u>Acct Control Agmt in place?</u>	
			Yes	No	Yes	No
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
BPCR Limited Partnership	Term Loan Commitment: \$325,000,000.00	<p>BPCR LIMITED PARTNERSHIP c/o Beaufort House 51 New North Road Exeter EX4 4EP United Kingdom Attn: Company Secretary Tel: *** Fax: *** Email: ***</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: *** Fax: *** Email: ***</p> <p>and</p> <p>AKIN GUMP STRAUSS HAUER & FELD LLP One Bryant Park New York, NY 10036-6745 Attn: Geoffrey E. Secol Phone: *** Fax: *** Email: ***</p>
BioPharma Credit Investments V (Master) LP	Term Loan Commitment: \$325,000,000.00	<p>BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP c/o BioPharma Credit Investments V GP LLC c/o Walkers Corporate Limited 190 Elgin Avenue, 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: *** Fax: *** Email: ***</p> <p>and</p> <p>AKIN GUMP STRAUSS HAUER & FELD LLP One Bryant Park New York, NY 10036-6745 Attn: Geoffrey E. Secol Phone: *** Fax: *** Email: ***</p>

EXHIBIT F

FORM OF SOLVENCY CERTIFICATE

SOLVENCY CERTIFICATE

March 22, 2022

This Solvency Certificate is being executed and delivered pursuant to Section 3.1(b)(ii) of the Amended and Restated Loan Agreement, dated as of the date hereof (the "**Loan Agreement**"), by and among Collegium Pharmaceutical, Inc., a Virginia corporation (the "**Borrower**"), the Guarantors from time to time party thereto, the Lenders party thereto and BIOPHARMA CREDIT PLC, as Collateral Agent. Capitalized terms used but not otherwise defined herein have the meanings assigned to such terms in the Loan Agreement.

I am the duly qualified and acting Chief Financial Officer of the Borrower, and in such capacity and not in an individual capacity, I certify as follows:

As of the date hereof, immediately after the consummation of the transactions contemplated by the Acquisition Agreement and after giving effect to the Acquisition of the Acquisition Target, (i) the fair value of the assets of the Borrower and its Subsidiaries on a consolidated basis will exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of the Borrower and its Subsidiaries on a consolidated basis, respectively; (ii) the present fair saleable value of the property of the Borrower and its Subsidiaries on a consolidated basis will be greater than the amount that will be required to pay the probable liability of the Borrower and its Subsidiaries on a consolidated basis, respectively, on their debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) the Borrower and its Subsidiaries on a consolidated basis will be able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) the Borrower and its Subsidiaries on a consolidated basis will not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted after the date hereof. In computing the amount of contingent or unliquidated liabilities as of such date, 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.

**COLLEGIUM PHARMACEUTICAL, INC.,
as Borrower**

By: _____
Name: Colleen Tupper
Title: Chief Financial Officer



Collegium Completes the Acquisition of BDSI

STOUGHTON, Mass., March 22, 2022 -- Collegium Pharmaceutical, Inc. (Nasdaq: COLL) ("Collegium") today announced that it has completed the acquisition of BioDelivery Sciences International Inc. (Nasdaq: BDSI) ("BDSI").

"This acquisition is a major step forward in our mission to build a leading, diversified specialty pharmaceutical company committed to improving the lives of people living with serious medical conditions," said Joe Ciaffoni, President and Chief Executive Officer of Collegium. "We have significantly diversified the business and expanded our overall revenue scale. This transaction is immediately and highly accretive, and we are now focused on seamless integration and delivering identified synergies of at least \$75 million within twelve months."

Strategic Rationale

- Strategically aligned with Collegium's mission to build a leading, diversified specialty pharmaceutical company committed to improving the lives of people living with serious medical conditions
- Diversifies and expands Collegium's revenues by adding BELBUCA[®] as a second and highly complementary growth driver to Collegium's highly differentiated pain portfolio, in addition to a contributor with SYMPROIC[®], and a new product launch opportunity with ELYXYB[™]
- Further strengthens Collegium's financial position through increased revenue scale, immediate and significant earnings accretion, and accelerated cash flow generation, driven by identified annual run rate synergies of at least \$75 million expected to be achieved within twelve months post-closing
- ELYXYB[™] provides entry into the neurology market, a strategic market adjacency previously identified by Collegium

Additional Transaction Details

The acquisition was structured as a cash tender offer to acquire all the outstanding shares of BDSI at the price of \$5.60 per share. As of the expiration of the tender offer at one minute following 11:59 p.m., New York time, on March 18, 2022, the depositary for the tender offer advised Collegium and BDSI that stockholders holding approximately 72.44% of the outstanding shares of common stock of BDSI had tendered their shares, satisfying the minimum condition to consummate the tender offer. All of the conditions to the offer have been satisfied and on March 21, 2022, Collegium and its wholly-owned subsidiary, Bristol Acquisition Company, Inc. ("Purchaser"), accepted for payment and will promptly pay for all shares validly tendered and not validly withdrawn prior to the expiration of the tender offer. On March 22, 2022, Collegium completed its acquisition of BDSI through the merger of Purchaser with and into BDSI without a vote of BDSI's stockholders pursuant to Section 251(h) of the Delaware General Corporation Law ("DGCL"). As a result of the merger, BDSI is now wholly owned by Collegium. In connection with the merger, all BDSI shares not validly tendered into the tender offer (other than shares owned by BDSI, Collegium or Purchaser or any direct or indirect wholly owned subsidiary of BDSI, Collegium or Purchaser, which were cancelled and retired and ceased to exist, and no consideration delivered in exchange therefor) have been cancelled and (other than any shares held by holders who are entitled to appraisal rights under Section 262 of the DGCL and who had properly exercised and perfected their respective demands for appraisal of such shares in the time and manner provided in Section 262 of the DGCL and, as of the effective time of the merger, had neither effectively withdrawn nor lost their rights to such appraisal and payment under the DGCL) converted into the right to receive the same \$5.60 per share, net to the holder thereof, in cash, without interest, subject to any applicable withholding taxes, as will be paid for all shares that were validly tendered (and not validly withdrawn) in the tender offer.

BDSI common stock will cease to be traded on the Nasdaq Global Select Market.

About Collegium Pharmaceutical, Inc.

Collegium is a diversified, specialty pharmaceutical company committed to improving the lives of people living with serious medical conditions. Collegium's headquarters are located in Stoughton, Massachusetts. For more information, please visit the Company's website at www.collegiumpharma.com.

Forward-Looking Statements

This press release contains forward-looking statements within the meaning of The Private Securities Litigation Reform Act of 1995. We may, in some cases, use terms such as "predicts," "forecasts," "believes," "potential," "proposed," "continue," "estimates," "anticipates," "expects," "plans," "intends," "may," "could," "might," "should" or other words that convey uncertainty of future events or outcomes to identify these forward-looking statements. Examples of forward-looking statements contained in this press release include, among others, statements related to the acquisition of BioDelivery Sciences International, Inc. ("BDSI") and the anticipated benefits thereof, our strategy, plans, objectives, expectations (financial or otherwise) and intentions, future financial results and growth potential, potential synergies, anticipated product portfolio, development programs, patent terms and other statements that are not historical facts. Such statements are subject to numerous important factors, risks and uncertainties that may cause actual events or results, performance, or achievements to differ materially from the company's current expectations. Actual results may differ materially from management's expectations and such forward-looking statements in this press release could be affected as a result of various important factors, including risks relating to, among others: risks related to the ability to realize the anticipated benefits of the proposed acquisition, including the possibility that the expected benefits from the acquisition will not be realized or will not be realized within the expected time period; the risk that the businesses will not be integrated successfully; disruption from the transaction making it more difficult to maintain business and operational relationships; negative effects of the consummation of the acquisition on the market price of our common stock and/or operating results; significant transaction costs; unknown liabilities; risks related to future opportunities and plans for BDSI and its products, including uncertainty of the expected financial performance of BDSI and its products; the impact of the COVID-19 pandemic on our ability to conduct our business, reach our customers, and supply the market with our products; our ability to commercialize and grow sales of our products; our ability to manage our relationships with licensors; the success of competing products that are or become available; our ability to obtain and maintain regulatory approval of our products and any product candidates, and any related restrictions, limitations, and/or warnings in the label of an approved product; the size of the markets for our products and product candidates, and our ability to service those markets; our ability to obtain reimbursement and third-party payor contracts for our products; the rate and degree of market acceptance of our products and product candidates; the costs of commercialization activities, including marketing, sales and distribution; changing market conditions for our products; the outcome of any patent infringement, opioid-related or other litigation that may be brought by or against us, including litigation with Purdue Pharma, L.P.; the outcome of any governmental investigation related to our business; our ability to secure adequate supplies of active pharmaceutical ingredient for each of our products and manufacture adequate supplies of commercially saleable inventory; our ability to obtain funding for our operations and business development; regulatory developments in the U.S.; our expectations regarding our ability to obtain and maintain sufficient intellectual property protection for our products; our ability to comply with stringent U.S. and foreign government regulation in the manufacture of pharmaceutical products, including U.S. Drug Enforcement Agency, or DEA, compliance; our customer concentration; and the accuracy of our estimates regarding expenses, revenue, capital requirements and need for additional financing. These and other risks are described under the heading "Risk Factors" in our and BDSI's Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q and other filings with the SEC. Any forward-looking statements that we make in this press release speak only as of the date of this press release. We assume no obligation to update our forward-looking statements whether as a result of new information, future events or otherwise, after the date of this press release.

Contact:
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