

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

**FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**Aquestive Therapeutics, Inc.**  
(Exact name of registrant as specified in its charter)

Delaware 82-3827296  
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification Number)

30 Technology Drive S.  
Warren, New Jersey 07059  
(908) 941-1900  
(Address, including zip code, and telephone number, including area code of registrant's principal executive offices)

A. Ernest Toth, Jr.  
Chief Financial Officer  
Aquestive Therapeutics, Inc.  
30 Technology Drive S.  
Warren, New Jersey 07059  
(908) 941-1900  
(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

Thomas A. Zalewski  
Chief Legal Officer and Chief Compliance Officer  
Aquestive Therapeutics, Inc.  
30 Technology Drive S.  
Warren, New Jersey 07059

David S. Rosenthal, Esq.  
Anna Tomczyk, Esq.  
Dechert LLP  
1095 Avenue of the Americas  
New York, New York 10036

**From time to time after the effective date of this Registration Statement**  
(Approximate date of commencement of proposed sale to the public)

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

**The information in this preliminary prospectus is not complete and may be changed. The Selling Stockholders may not resell these securities or accept an offer to buy these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities, and the Selling Stockholders are not soliciting offers to buy these securities in any state where such offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED JUNE 26, 2026**

**PROSPECTUS**



**Aquestive Therapeutics, Inc.**

**230,271 Shares of Common Stock**

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This prospectus relates to the resale of up to 230,271 shares of Aquestive Therapeutics, Inc. (the “Company,” “we,” “our” or “us”) common stock, par value \$0.001 per share (“Common Stock”), by the selling stockholders listed in this prospectus, their transferees, donees, pledgees, assignees, successors and others who later come to hold any of the selling stockholders’ interests in shares of our Common Stock other than through a public sale (the “Selling Stockholders”). The shares of Common Stock offered for resale pursuant to this prospectus include an aggregate of 230,271 shares of Common Stock (the “Warrant Shares”) issuable upon exercise of common warrants (the “Warrants”) issued to the Selling Stockholders pursuant to a warrant issuance agreement by and between the Company and the Selling Stockholders (the “Warrant Issuance Agreement”), related to the Tranche A Term Loan (as defined below).

The Warrants have an exercise price of \$4.18 per share, subject to adjustment, were exercisable beginning on May 12, 2026 and expire on May 12, 2031. At the option of the holder, the Warrants may also be exercised, in whole or in part, at such time by means of a “cashless exercise”.

We are registering the Warrant Shares on behalf of the Selling Stockholders, to be offered and sold by the Selling Stockholders from time to time. We are not selling any securities under this prospectus. Upon any cash exercise of the Warrants by the Selling Stockholders, we will receive cash proceeds per share equal to the exercise price of the Warrants. If the Warrants are exercised in a cashless exercise, we will not receive any proceeds from the exercise of the Warrants.

The Selling Stockholders may sell the Warrant Shares described in this prospectus in a number of different ways and at varying prices. See Plan of Distribution on page [12](#) of this prospectus for more information about how the Selling Stockholders may sell the Warrant Shares offered pursuant to this prospectus. The Selling Stockholders may be “underwriters” within the meaning of Section 2(a)(11) of the Securities Act of 1933, as amended (the “Securities Act”).

We will pay the expenses incurred in registering the Warrant Shares, including our legal and accounting fees. See Plan of Distribution on page [12](#) of this prospectus.

Our Common Stock is traded on the Nasdaq Global Market under the symbol “AQST”. On June 24, 2026, the last reported sale price of our Common Stock was \$4.99 per share.

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***Investing in our securities involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading “Risk Factors” contained in this prospectus and any related free writing prospectus, and under similar headings in the other documents that are incorporated by reference into this prospectus as described on page [4](#) of this prospectus.***

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**NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

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**The date of this prospectus is \_\_\_\_\_, 2026.**

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## ABOUT THIS PROSPECTUS

This prospectus is a part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or SEC, utilizing a “shelf” registration process. Under this shelf registration process, the Selling Stockholders may, from time to time, offer and sell the Warrant Shares described in this prospectus in one or more offerings. Information about the Selling Stockholders may change over time.

Each time the Selling Stockholders sell the Warrant Shares using this prospectus, to the extent necessary and required by law, we will provide a prospectus supplement that will contain specific information about the terms of that offering, including the number of Warrant Shares being offered, the manner of distribution, the identity of any underwriters or other counterparties and other specific terms related to the offering. The prospectus supplement may also add, update or change information contained in this prospectus. To the extent that any statement made in a prospectus supplement is inconsistent with statements made in this prospectus, the statements made in this prospectus will be deemed modified or superseded by those made in the prospectus supplement. You should read this prospectus, any applicable prospectus supplement and the information incorporated by reference in the prospectus before making an investment in shares of our Common Stock. See “*Where You Can Find More Information*” for more information.

Neither we nor the Selling Stockholders have authorized any person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus, any applicable prospectus supplement or any related free writing prospectus prepared by or on behalf of us or to which we have referred you. This prospectus, any applicable supplement to this prospectus or any related free writing prospectus does not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor does this prospectus, any applicable supplement to this prospectus or any related free writing prospectus constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. For investors outside of the United States, neither we nor the Selling Stockholders have done anything that would permit the offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. You are required to inform yourselves about and to observe any restrictions relating to the offering and distribution of this prospectus outside of the United States.

You should not assume that the information contained in this prospectus, any applicable prospectus supplement or any related free writing prospectus is accurate on any date subsequent to the date set forth on the front of the document or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even if this prospectus, any applicable prospectus supplement or any related free writing prospectus is delivered, or securities are sold, on a later date. Our business, financial condition, results of operations and prospects may have changed since the date on the front cover of this prospectus.

This prospectus and the information incorporated herein by reference contain summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed or will be incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described below under the heading “*Where You Can Find More Information*.”

## SUMMARY

*This summary highlights information contained in other parts of this prospectus or incorporated by reference into this prospectus from our filings with the Securities and Exchange Commission (the "SEC"). As it is only a summary, it does not contain all of the information that you should consider before purchasing our securities and it is qualified in its entirety by, and should be read in conjunction with, the more detailed information appearing elsewhere or incorporated by reference into this prospectus. You should read the entire prospectus, the registration statement of which this prospectus is a part, and the information incorporated by reference herein in their entirety, including the "Risk Factors" and our financial statements and the related notes contained in and incorporated by reference into this prospectus, before purchasing our securities.*

*Unless the context indicates otherwise, references in this prospectus to "Aquestive," "Company," "we," "us" and "our" refer to Aquestive Therapeutics, Inc. and its consolidated subsidiaries.*

### Company Overview

We are a pharmaceutical company advancing medicines to bring meaningful improvement to patients' lives through innovative science and delivery technologies. The worldwide leader in delivering trusted, quality medications on oral film, we operate as both a developer of our own proprietary products and a Contract Development and Manufacturing Organization (CDMO) for licensees, with our headquarters in New Jersey and U.S.-based manufacturing facilities in Indiana. We are the exclusive manufacturer of four commercialized products marketed by licensees across six continents using proprietary, best-in-class technologies like PharmFilm®. Aquestive's AdrenaVerse™ platform contains a library of more than 20 epinephrine prodrugs enabling the pursuit of various potential allergy and dermatological indications. We are advancing Anaphylm™ (dibutepinephrine) sublingual film for the treatment of severe allergic reactions, including anaphylaxis, and AQST-108 (epinephrine) topical gel for various potential dermatological conditions, including alopecia areata, atopic dermatitis, rosacea, and psoriasis.

We manufacture licensed products at our facilities and anticipate that our current manufacturing capacity is sufficient for commercial quantities of our licensed products and product candidates currently in development. Our facilities have been inspected by the Food and Drug Administration (FDA), Australian Government Department of Health's Therapeutics Goods Administration (TGA), and Drug Enforcement Agency (DEA), and are subject to inspection by all applicable health agencies, including the Brazilian Health Regulatory Agency (ANVISA) and European Medicines Agency (EMA). Not all collaborative or licensed products of the Company that may be commercially launched in the future will necessarily be manufactured by us.

### Corporate Information

Aquestive Therapeutics, Inc. was formed effective on January 1, 2018 via the conversion of MonoSol Rx, LLC to a Delaware corporation and a simultaneous name change. Our production facilities are located in Portage, Indiana, and our corporate headquarters and primary research laboratory facilities are located at 30 Technology Drive S., Warren, New Jersey 07059. Our telephone number there is (908) 941-1900. The address of our website is [www.aquestive.com](http://www.aquestive.com). The information set forth on, or connected to, our website is expressly not incorporated by reference into, and does not constitute a part of, this prospectus.

### Implications of Being a Smaller Reporting Company

We are a "smaller reporting company" as defined in the Securities Exchange Act of 1934, as amended (the "Exchange Act"). As a result, we may take advantage of certain of the scaled disclosures available to smaller reporting companies until the fiscal year following the determination that our voting and non-voting Common Stock held by non-affiliates is more than \$250 million measured on the last business day of our second fiscal quarter, or our annual revenues are more than \$100 million during the most recently completed fiscal year and our voting and non-voting Common Stock held by non-affiliates is more than \$700 million measured on the last business day of our second fiscal quarter.

<b>The Offering</b>	
<b>Shares of Common Stock offered by the Selling Stockholders</b>	230,271 Warrant Shares.
<b>Use of proceeds</b>	We are not selling any securities under this prospectus and will not receive any of the proceeds from the sale of the Warrant Shares covered hereby by the Selling Stockholders, except for the exercise price paid by the Selling Stockholders for the Warrant Shares offered hereby upon any cash exercise of the Warrants.
<b>Terms of this offering</b>	The Selling Stockholders, including their transferees, donees, pledgees, assignees, successors and others who later come to hold any of the Selling Stockholders' interests in the Warrant Shares other than through a public sale, may sell, transfer or otherwise dispose of any or all of the shares of Common Stock offered by this prospectus from time to time as described in the " <i>Plan of Distribution</i> ," including on The Nasdaq Global Market or any other stock exchange, market or trading facility on which the shares are traded or in private transactions. The shares of Common Stock may be sold at fixed prices, at market prices prevailing at the time of sale, at prices related to prevailing market price or at negotiated prices.
<b>Nasdaq symbol</b>	Our Common Stock is listed on The Nasdaq Global Market under the symbol "AQST".
<b>Risk Factors</b>	Investing in our securities involves significant risks. Before making a decision whether to invest in our securities, please read the information contained in or incorporated by reference under the heading " <i>Risk Factors</i> " in this prospectus, the documents we have incorporated by reference herein, and under similar headings in other documents filed after the date hereof and incorporated by reference into this prospectus. See " <i>Incorporation of Certain Information by Reference</i> " and " <i>Where You Can Find More Information</i> ".

## RISK FACTORS

*An investment in our securities involves a high degree of risk. Before deciding whether to purchase our securities, including the shares of Common Stock offered by this prospectus, you should carefully consider the risks and uncertainties described under “Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2025, our Quarterly Report on Form 10-Q for the period ended March 31, 2026 and any subsequent Quarterly Reports on Form 10-Q and our other filings with the SEC, all of which are incorporated by reference herein. If any of these risks actually occur, our business, financial condition and results of operations could be materially and adversely affected and we may not be able to achieve our goals, the value of our securities could decline and you could lose some or all of your investment. Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business operations. If any of these risks occur, our business, results of operations or financial condition and prospects could be harmed. In that event, the market price of our Common Stock and the value of the Warrants could decline, and you could lose all or part of your investment.*

### **Risks Related to This Offering**

***We have no control over the timing or volume of sales of the Warrant Shares by the Selling Stockholders, and any such sales could cause our stock price to decline.***

The Selling Stockholders may offer and sell some, all, or none of the Warrant Shares registered for resale pursuant to this prospectus at any time and from time to time in their sole discretion. We have no ability to control or predict the timing or volume of any such sales. Sales of substantial amounts of our Common Stock in the public market by the Selling Stockholders, or the perception that such sales might occur, could adversely affect the prevailing market price of our Common Stock. Such sales could also impair our ability to raise additional capital through the sale of equity or equity-related securities in the future at a time and price that we deem appropriate.

***We will not receive any proceeds from the sale of the Warrant Shares by the Selling Stockholders.***

We are not selling any shares of our Common Stock under this prospectus and will not receive any proceeds from the sale of the Warrant Shares by the Selling Stockholders. Upon any cash exercise of the Warrants by the Selling Stockholders, we will receive cash proceeds per share equal to the exercise price of \$4.18 per share. However, if the Warrants are exercised on a cashless basis, we will not receive any proceeds from such exercise. There can be no assurance that the Selling Stockholders will exercise any or all of the Warrants, or that they will not elect to exercise the Warrants on a cashless basis, in which case we would receive no proceeds.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, the documents that we incorporate by reference herein and certain other communications made by us include forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Words such as “believe,” “anticipate,” “plan,” “expect,” “estimate,” “intend,” “may,” “will,” or the negative of those terms, and similar expressions are intended to identify forward-looking statements.

These forward-looking statements include, but are not limited to, statements regarding the advancement and related timing of our product candidate Anaphylm™ (dibutepinephrine) sublingual film through clinical development and approval by the FDA, including our ability to address the concerns raised by the FDA in the Complete Response Letter (CRL) dated January 30, 2026 and Type A meeting with the FDA on March 26, 2026, and for the FDA to approve Anaphylm or whether the FDA may request further information from us, disagree with our protocols, study designs, or findings or otherwise undertake a lengthy review of our resubmission, and challenges regarding the following commercial launch of Anaphylm, if approved by the FDA; the advancement and related timing of potential international regulatory filings and marketing authorization of Anaphylm outside of the U.S.; Anaphylm’s potential to be the first and only oral administration of epinephrine and to be accepted as an alternative to existing standards of care, if approved by the FDA; the expected growth of the U.S. epinephrine market including in value and the opportunity such growth presents to the Company should Anaphylm be approved by the FDA; the advancement, growth and related timing of our AdrenaVerse™ pipeline epinephrine prodrug product candidates, including AQST-108 (epinephrine) topical gel, through clinical development and FDA regulatory approval process, including design and timing of clinical studies including those necessary to support the targeted indication of alopecia areata for AQST-108 or other possible indications; the potential sale or outlicensing of Anaphylm, Libervant or other product candidates; anticipated timelines, milestones, and guidance relating to regulatory submissions, clinical studies, regulatory interactions, and potential approvals, which are subject to change based on regulatory feedback, protocol alignment, data sufficiency, and other factors outside the Company’s control; the commercial opportunity of Libervant, Anaphylm, AQST-108 and our other product candidates, should these product candidates be approved by the FDA; the focus on continuing to manufacture Suboxone®, Emylif®, Sympazan®, Ondif® and other licensed products; the potential benefits our products and product candidates could bring to patients; the achievement of clinical and commercial milestones, product orders and fulfillment; our cash requirements, cash funding and cash burn; short-term and longer term liquidity and the ability to fund our business operations; our growth and future financial and operating results and financial position, including with respect to our 2026 financial outlook; and business strategies, market opportunities, and other statements that are not historical facts.

These forward-looking statements are based on our current expectations and beliefs and are subject to a number of risks and uncertainties that could cause actual results to differ materially from those described in the forward-looking statements. Such risks and uncertainties include, but are not limited to:

- risks associated with our development work, including any delays or changes to the timing, cost and success of our product development activities and clinical trials and plans, including those relating to Anaphylm, AQST-108, and our other product candidates;
- risk of insufficient capital and cash resources, including insufficient access to available debt and equity financing, including under our “at-the-market” facility and the funding agreement with RTW Investments LP, and revenues from operations, to satisfy all of our short-term and longer-term liquidity and cash requirements to support our growth strategy, and other cash needs, at the times and in the amounts needed, and to fund future clinical development and commercial activities for our product candidates, including Anaphylm, AQST-108 and Libervant should these product candidates be approved by the FDA;
- risks related to our existing indebtedness and potential future obligations under our Credit Agreement, including the risk that, should Anaphylm receive FDA approval, our indebtedness will increase substantially, and there is no assurance that revenues from the commercialization of Anaphylm will be sufficient to service or repay such obligations; and that, if Anaphylm does not receive FDA approval, we will be required to maintain larger cash reserves to fund ongoing operations and will not be able to deploy those funds for other purposes;
- risks that restrictive covenants contained in our Credit Agreement could limit our operational flexibility, including restrict our ability to incur additional indebtedness or make investments, and impair our ability to raise additional capital when needed;

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- risk of the impact of our obligations under the Company's purchase and sale agreement with funds managed by RTW Investments LP and the royalty rights agreements with third parties, each of which agreements requires the Company to make payments to each counterparty thereof, respectively, of a portion of our revenues, on our ability to contribute to the funding of our operations and the payment of interest on our debt;
- risk of delays in advancement of the regulatory approval process through the FDA of our product candidates, including the filing of the respective NDAs, for Anaphylm, AQST-108, Libervant and other product candidates, or failure to receive FDA approval at all for any of these product candidates;
- risk of FDA inspections of manufacturing and clinical study sites for any of our product candidates, including Anaphylm;
- risk of government shutdowns or actions to reduce government workforces on the ability of the FDA to act on the approval of our product candidates, including Anaphylm and Libervant;
- risk of the Company's ability to generate sufficient clinical and other human factor data, including with respect to our submission of pharmacokinetics and pharmacodynamics (PK/PD) comparability data for FDA approval of Anaphylm;
- risks associated with our ability to address the FDA's comments on and identified deficiencies in our NDA for Anaphylm, including the concerns raised by the FDA in the CRL and Type A Meeting;
- risks associated with the success of any competing products, including generics;
- risks and uncertainties inherent in commercializing a new product (including technology risks, financial risks, market risks and implementation risks and regulatory limitations);
- risk of development of a sales and marketing capability for commercialization of our product candidates, including Anaphylm, if approved by the FDA;
- risks associated with the potential impact on the value of the Company of the sale or outlicensing of our product and product candidates, including Libervant and Anaphylm and other product candidates;
- risk that our manufacturing capabilities will be insufficient to support demand of our product candidates in the U.S. and abroad, including Anaphylm, if such product candidates should be approved by the FDA and other regulatory authorities, and our licensed products in the U.S. and abroad;
- risk of eroding market share for Suboxone® as a sunsetting product, which accounts for a substantial part of our current operating revenue;
- risk of default of our debt instruments;
- risks related to the outsourcing of certain sales, marketing and other operational and staff functions to third parties;
- risk of the rate and degree of market acceptance in the U.S. and abroad of Anaphylm, AQST-108, Libervant and our other product candidates, should these product candidates be approved by the FDA and other regulatory authorities, and for our licensed products in the U.S. and abroad;
- risk associated with the size and growth of our product markets; risk associated with our compliance with all FDA and other governmental and customer requirements for our manufacturing facilities;
- risks associated with intellectual property rights and infringement claims relating to our products;
- risk that our patent applications for our product candidates, including for Anaphylm, will not be timely issued, or issued at all, by the United States Patent and Trademark Office (PTO) or, if issued, will be sufficient to provide long-term commercial success of these product candidates; risk of unexpected patent developments;
- risk of legislation and regulatory actions and changes in laws or regulations affecting our business, including relating to our products and product candidates and product pricing, reimbursement or access therefor; risk of loss of significant customers;

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- risks related to claims and legal proceedings against us including patent infringement, securities, business torts, investigative, product safety or efficacy and antitrust litigation matters;
- risk of product recalls and withdrawals;
- risks related to any disruptions in our information technology networks and systems, including the impact of cybersecurity attacks;
- risk of increased cybersecurity attacks and data accessibility disruptions due to remote working arrangements; risk of adverse developments affecting the financial services industry;
- risks related to inflation and changing interest rates; risks related to the impact of pandemic diseases on our business;
- risks and uncertainties related to general economic, political (including the Ukraine, Israel and Iran wars and other acts of war and terrorism), business, industry, regulatory, financial and market conditions and other unusual items; risks related to uncertainty about presidential administration initiatives and their impact on our business, including imposition of government tariffs and other trade restrictions; and
- other uncertainties affecting us described in the “Risk Factors” section and in other sections included in our Annual Report on Form 10-K, in our Quarterly Reports on Form 10-Q, and in our Current Reports on Form 8-K and our other filings with the SEC.

These forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to differ materially from those expressed or implied by these statements. These factors include the matters discussed and referenced in the “Risk Factors” section and in other sections included in our Annual Report on Form 10-K, and in our Quarterly Reports on Form 10-Q. Given those uncertainties, you should not place undue reliance on these forward-looking statements, which speak only as of the date made. All subsequent forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by this cautionary statement. We assume no obligation to update forward-looking statements or outlook or guidance after the date of this prospectus whether as a result of new information, future events or otherwise, except as may be required by applicable law. Readers should not rely on the forward-looking statements included in this prospectus or the documents that we incorporate by reference herein as representing our views as of any date after the date of the filing of this prospectus.

## DESCRIPTION OF THE PRIVATE PLACEMENT

As previously disclosed in our Current Report on Form 8-K filed with the SEC on May 13, 2026, on May 12, 2026 (the “Effective Date”), we entered into a five-year term loan facility of up to \$150.0 million pursuant to a credit agreement and guaranty (the “Credit Agreement”) with Oaktree Fund Administration, LLC, a Delaware limited liability company, as administrative agent, and certain funds managed by Oaktree Capital Management, L.P. party thereto, which included a term loan in an aggregate principal amount of \$55.0 million that was funded on the Effective Date (the “Tranche A Term Loan”), a term loan in an aggregate principal amount of \$20.0 million available subject to certain terms and conditions (the “Tranche B Term Loan”), a term loan in an aggregate principal amount of \$25.0 million available subject to certain terms and conditions (the “Tranche C Term Loan”), and a term loan advance available upon the mutual consent of the Lenders and subject to certain terms and conditions in an aggregate principal amount of up to \$50.0 million (the “Tranche D Term Loan”). In connection with entering into the Credit Agreement, we entered into the Warrant Issuance Agreement with the Selling Stockholders, pursuant to which we agreed to issue Warrants to purchase Warrant Shares in amounts equal to (i) (x) 1.75% of the aggregate principal amount of the Tranche A Term Loan (y) divided by the volume weighted average price for the 30 trading days prior to the Effective Date (the “Tranche A VWAP”) and (ii) for the Tranche B and Tranche C draw-downs, (x) 1.75% of the aggregate principal amount of the drawn-down tranche (y) divided by the lower of (1) the Tranche A VWAP and (2) the VWAP for the 30 days prior to the funding of such tranche (the “Subsequent Tranche VWAP”). The exercise price of the Warrants is the Tranche A VWAP of \$4.18 per share for the Tranche A Warrants and the lower of (1) the Tranche A VWAP and (2) the Subsequent Tranche VWAP for the subsequent tranche draw-downs, in each case subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions.

The Warrants have a term of five years from their initial issuance. The Warrants are subject to a beneficial ownership limitation of 4.99%, or 9.99% at the election of the holder and effective 61 days after notice is provided to the Company (the “Beneficial Ownership Limitation”), which such limitation restricts a Selling Stockholder from exercising that portion of the Warrants that would result in such Selling Stockholder and its affiliates and any person acting as a group together with such Selling Stockholder and its affiliates owning, after exercise, a number of shares of Common Stock in excess of the Beneficial Ownership Limitation. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of a Warrant. As to any fraction of a share which would otherwise be issued upon exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the exercise price or round up to the next whole share.

Pursuant to the Warrant Issuance Agreement, we are required to file a resale registration statement (the “Resale Registration Statement”) under the Securities Act to register the resale of the Warrant Shares within 45 days of each Warrant issuance (each, a “Filing Deadline”) and to use commercially reasonable efforts to cause such Resale Registration Statement to become effective as promptly as practical following the applicable Filing Deadline and to maintain the effectiveness of such Resale Registration Statement at all times until all Warrant Shares have been sold or the applicable Warrant has expired. This prospectus covers the resale of the Warrant Shares related to the Tranche A Term Loan.

**SELLING STOCKHOLDERS**

This prospectus relates to the sale from time to time by the Selling Stockholders of up to 230,271 Warrant Shares received pursuant to the Warrant Issuance Agreement entered into in connection with the Credit Agreement, as described under “Description of the Private Placement,” above. When we refer to the “Selling Stockholders” in this prospectus, we mean the entities listed in the table below, and their respective transferees, donees, pledgees, assignees, successors and others who later come to hold any of the Selling Stockholders’ interests in shares of our Common Stock other than through a public sale.

The Selling Stockholders may sell some, all or none of their Warrant Shares. We do not know how long the Selling Stockholders will hold the Warrants, whether the Selling Stockholders will exercise the Warrants, and upon exercise, how long the Selling Stockholders will hold the Warrant Shares before selling them, and we currently have no agreements, arrangements or understandings with the Selling Stockholders regarding the sale of any of the Warrant Shares.

The following table presents information regarding the Selling Stockholders and the Warrant Shares that they may offer and sell from time to time under this prospectus. The table is prepared based on information supplied to us by the Selling Stockholders, and reflects their holdings as of June 18, 2026, unless otherwise noted in the footnotes to the table. Beneficial ownership is determined in accordance with the rules of the SEC, and thus represents voting or investment power with respect to our securities. Under such rules, beneficial ownership includes any shares over which the individual has sole or shared voting power or investment power as well as any shares that the individual has the right to acquire within 60 days after the date of this table, including pursuant to exercise of the Warrants, to our knowledge and subject to applicable community property rules, the persons and entities named in the table have sole voting and sole investment power with respect to all equity interests beneficially owned. The percentage of shares beneficially owned before and after the offering is based on 125,466,988 shares of our Common Stock actually outstanding as of June 18, 2026.

Each of the Selling Stockholders is an affiliate of a broker-dealer, however, the Selling Stockholders have each represented to us that it acquired all of the securities registered by the registration statement of which this prospectus is a part in the ordinary course of business, and, at the time of acquisition, had no agreements or understandings, directly or indirectly, with any person to distribute such shares of Common Stock. Other than as described in “Description of the Private Placement,” above, the Selling Stockholders and their affiliates have not held a position or office, or had any material relationship, with us within the last three years.

Name of Selling Stockholder <sup>(2)</sup>	Shares of Common Stock beneficially owned prior to the offering		Shares of Common Stock to be offered	Shares of Common Stock beneficially owned after the offering <sup>(1)</sup>	
	Number	Percentage		Number	Percentage
Oaktree-TCDRS Strategic Credit, LLC	7,872	*	7,873	0	—
Oaktree-Forrest Multi-Strategy, LLC	3,905	*	3,906	0	—
Oaktree-TBMR Strategic Credit Fund C, LLC	2,024	*	2,025	0	—
Oaktree-TBMR Strategic Credit Fund F, LLC	3,269	*	3,270	0	—
Oaktree-TBMR Strategic Credit Fund G, LLC	5,270	*	5,271	0	—
Oaktree-TSE 16 Strategic Credit, LLC	7,301	*	7,302	0	—
INPRS Strategic Credit Holdings, LLC	5,388	*	5,389	0	—
Oaktree Specialty Lending Corporation	26,526	*	26,527	0	—
Oaktree Direct Lending Fund Delaware Holdings Non-EURRC, L.P.	4,584	*	4,585	0	—
Oaktree Direct Lending Fund VCOC Delaware Holdings Non-EURRC, L.P.	1,842	*	1,843	0	—
Oaktree Direct Lending Fund Unlevered Delaware Holdings Non-EURRC, L.P.	3,543	*	3,544	0	—
Oaktree Blue Credit 1 Investment Fund, L.P.	10,972	*	10,973	0	—
Oaktree Multi-Strategy Credit Archway Evergreen Fund, L.P.	2,136	*	2,137	0	—
Oaktree LSL Fund Delaware Holdings Non-EURRC, L.P.	32,676	*	32,677	0	—
Oaktree Jalapeno Investment Fund, L.P.	112,948	*	112,949	0	—

\* Less than 1%

(1) Assumes all Warrant Shares offered by the Selling Stockholders hereby are sold and that the Selling Stockholders buy no additional shares of Common Stock prior to the completion of this offering.

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- (2) The sole manager of each of Oaktree-TCDRS Strategic Credit, LLC, Oaktree-Forrest Multi-Strategy, LLC, Oaktree-TBMR Strategic Credit Fund C, LLC, Oaktree-TBMR Strategic Credit Fund F, LLC, Oaktree-TBMR Strategic Credit Fund G, LLC, Oaktree-TSE 16 Strategic Credit, LLC, and INPRS Strategic Credit Holdings, LLC is Oaktree Capital Management, L.P.
- The sole general partner of Oaktree Direct Lending Fund VCOC Delaware Holdings Non-EURRC, L.P. is Oaktree Direct Lending Fund VCOC (Parallel), L.P. The sole general partner of each of Oaktree Direct Lending Fund VCOC (Parallel), L.P., Oaktree Direct Lending Fund Delaware Holdings Non-EURRC, L.P., and Oaktree Direct Lending Fund Unlevered Delaware Holdings Non-EURRC, L.P. is Oaktree Direct Lending Fund GP, L.P. The sole general partner of Oaktree Direct Lending Fund GP, L.P. is Oaktree Direct Lending Fund GP Ltd. The sole director of Oaktree Direct Lending Fund GP Ltd. is Oaktree Capital Management, L.P.
- The sole general partner of Oaktree LSL Fund Delaware Holdings Non-EURRC, L.P. is Oaktree Life Sciences Lending Fund GP, L.P. The sole general partner of Oaktree Life Sciences Lending Fund GP, L.P. is Oaktree Life Sciences Lending Fund GP Ltd. The sole director of Oaktree Life Sciences Lending Fund GP Ltd. is Oaktree Capital Management, L.P.
- The sole general partner of Oaktree Capital Management, L.P. is Oaktree Capital Management GP, LLC.
- The sole investment advisor of Oaktree Specialty Lending Corporation is Oaktree Fund Advisors, LLC. The sole managing member of Oaktree Fund Advisors, LLC is Oaktree Capital II, L.P.
- The sole general partner of Oaktree Blue Credit 1 Investment Fund, L.P. is Oaktree Blue Credit 1 Investment Fund GP, L.P. The sole general partner of Oaktree Multi-Strategy Credit Archway Evergreen Fund, L.P. is Oaktree Multi-Strategy Credit Archway Evergreen Fund GP, L.P. The sole general partner of Oaktree Jalapeno Investment Fund, L.P. is Oaktree Jalapeno Investment Fund GP, L.P. The sole general partner of each of Oaktree Blue Credit 1 Investment Fund GP, L.P., Oaktree Multi-Strategy Credit Archway Evergreen Fund GP, L.P., and Oaktree Jalapeno Investment Fund GP, L.P. is Oaktree Fund GP IIA, LLC. The sole managing member of Oaktree Fund GP IIA, LLC is Oaktree Fund GP II, L.P. The sole general partner of Oaktree Fund GP II, L.P. is Oaktree Capital II, L.P.
- The sole general partner of Oaktree Capital II, L.P. is Oaktree Capital II GP, LLC.
- The sole managing member of each of Oaktree Capital Management GP, LLC and Oaktree Capital II GP, LLC is Oaktree Capital Holdings, LLC. Oaktree Capital Holdings, LLC is governed and controlled by its fourteen-member board of directors.
- Each of the foregoing general partners, managing members, directors, and investment advisors disclaims beneficial ownership of the securities. The address of each of the foregoing is 555 S. Flower St., 35th Floor, Los Angeles, CA 90071.

**USE OF PROCEEDS**

The Warrant Shares to be offered and sold using this prospectus will be offered and sold by the Selling Stockholders named in this prospectus. Accordingly, we will not receive any proceeds from the sale of any Warrant Shares in this offering, except for the exercise price paid by the Selling Stockholders for the Warrant Shares offered hereby upon the exercise of the Warrants. We will pay all of the fees and expenses incurred by us in connection with this registration.

## PLAN OF DISTRIBUTION

The Selling Stockholders and any of their transferees, donees, pledgees, assignees, successors and others who later come to hold any of the Selling Stockholders' interests in shares of our Common Stock other than through a public sale may, from time to time, sell any or all of the Warrant Shares covered hereby on The Nasdaq Global Market or any other stock exchange, market or trading facility on which the Warrant Shares are traded or in private transactions. These sales may be at fixed or negotiated prices, at market prices prevailing at the time of sale, or at prices related to prevailing market price. The Selling Stockholders may use any one or more of the following methods when selling the Warrant Shares:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the Warrant Shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- distributions of the Warrant Shares by a Selling Stockholder to its partners, members, stockholders, equityholders or other affiliates, including distributions made in-kind;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the Selling Stockholders to sell a specified number of the Warrant Shares at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholders may also sell the Warrant Shares under Rule 144 or any other exemption from registration under the Securities Act, if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholders may arrange for other broker-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholders (or, if any broker-dealer acts as agent for the purchaser of the Warrant Shares, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2121; and in the case of a principal transaction a markup or markdown in compliance with FINRA Rule 2121. If the Warrant Shares are sold through broker-dealers, the Selling Stockholders will be responsible for any applicable fees, discounts or commissions or agent's commissions.

In connection with the sale of the Warrant Shares or interests therein, the Selling Stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the Warrant Shares in the course of hedging the positions they assume. The Selling Stockholders may also sell securities short and deliver these Warrant Shares to close out their short positions, or loan or pledge the Warrant Shares to broker-dealers that in turn may sell these Warrant Shares. The Selling Stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of Warrant Shares offered by this prospectus, which Warrant Shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Selling Stockholders and any broker-dealers or agents that are involved in selling the Warrant Shares may be deemed to be "underwriters" within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the Warrant Shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. The Selling Stockholders have informed the Company that they do not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the Warrant Shares.

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The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the Warrant Shares. The Company has agreed to provide customary indemnification to the Selling Stockholders under the Securities Act.

We have agreed to keep this prospectus effective until all Warrant Shares have been sold pursuant to this prospectus or Rule 144 under the Securities Act, but not more than five years from the date of issuance of the Warrants. The Warrant Shares will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the Warrant Shares covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the Warrant Shares may not simultaneously engage in market making activities with respect to the Common Stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of the Common Stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need for Selling Stockholders who are “underwriters” within the meaning of Section 2(a)(11) of the Securities Act to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

Our Common Stock is quoted on The Nasdaq Global Market under the symbol “AQST”.

## LEGAL MATTERS

Dechert LLP will pass upon the validity of the securities being offered by this prospectus.

## EXPERTS

The financial statements of Aquestive Therapeutics, Inc. as of December 31, 2025 and 2024, and for each of the years in the two-year period ended December 31, 2025, have been incorporated by reference herein and in the registration statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, and upon the authority of said firm as experts in accounting and auditing.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-3 under the Securities Act, with respect to the securities being offered by this prospectus. This prospectus does not contain all of the information in the registration statement and its exhibits. For further information with respect to us and the securities offered by this prospectus, we refer you to the registration statement and its exhibits. Statements contained in this prospectus as to the contents of any contract or any other document referred to herein are not necessarily complete, and in each instance, we refer you to the copy of the contract or other document filed as an exhibit to the registration statement. Each of these statements is qualified in all respects by this reference.

We file electronically with the SEC annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy statements and other information and amendments to those reports filed or furnished pursuant to Section 13 or 15(d) of the Exchange Act. The SEC maintains an Internet site ([www.sec.gov](http://www.sec.gov)) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. Copies of these reports, proxy and information statements and other information may be obtained by electronic request at the following e-mail address: [publicinfo@sec.gov](mailto:publicinfo@sec.gov).

We make available, free of charge and through our Internet web site at [www.aquestive.com](http://www.aquestive.com), our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to any such reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. Copies of our Code of Business Conduct and Ethics and our Corporate Governance Guidelines may be accessed free of charge by visiting our website at [www.aquestive.com](http://www.aquestive.com) under “Investors” at “Corporate Governance: Governance Documents” or by requesting a copy via an e-mail addressed to [investorrelations@aquestive.com](mailto:investorrelations@aquestive.com) or by written request addressed to our Corporate Secretary at our principal executive offices. To the extent required by applicable law and regulation, we intend to post on our website any amendment to, or waiver under, a provision of the Code of Business Conduct and Ethics that applies to our executive officers and directors within the time period required. The information set forth on, or connected to, our website is expressly not incorporated by reference into, and does not constitute a part of, this prospectus.

## INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to “incorporate by reference” information into this prospectus, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The SEC file number for the documents incorporated by reference in this prospectus is 001-38599. The documents incorporated by reference into this prospectus contain important information that you should read about us.

The following documents are incorporated by reference into this document:

- our Annual Report on Form 10-K for the year ended December 31, 2025, filed with the SEC on [March 4, 2026](#);
- our Quarterly Report on Form 10-Q for the quarter ended March 31, 2026, filed with the SEC on [May 13, 2026](#);
- our Definitive Proxy Statement on Schedule 14A, filed with the SEC on [April 24, 2026](#), to the extent incorporated by reference in Part III of the Form 10-K;
- our Current Reports on Form 8-K filed with the SEC on [January 9, 2026](#), [March 4, 2026](#), [March 20, 2026](#), [May 13, 2026](#) and [June 10, 2026](#), to the extent the information in such reports is filed and not furnished; and
- the description of our Common Stock contained in our Registration Statement on Form 8-A, filed with the SEC on [July 20, 2018](#), including any amendments or reports filed for the purposes of updating this description.

We also incorporate by reference into this prospectus all documents (other than current reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits filed on such form that are related to such items) that are filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (i) after the date of the initial filing of the registration statement of which this prospectus forms a part and prior to effectiveness of the registration statement, or (ii) after the date of this prospectus but prior to the termination of the offering. These documents include periodic reports, such as Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, as well as proxy statements.

We will provide to each person, including any beneficial owner, to whom a prospectus is delivered, without charge upon written or oral request, a copy of any or all of the documents that are incorporated by reference into this prospectus but not delivered with the prospectus, including exhibits that are specifically incorporated by reference into such documents. You should direct any requests for documents to Aquestive Therapeutics, Inc., Attn: Corporate Secretary, 30 Technology Drive S., Warren, NJ 07059; telephone: (908) 941-1900.

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference into this document will be deemed to be modified or superseded for purposes of the document to the extent that a statement contained in this document or any other subsequently filed document that is deemed to be incorporated by reference into this document modifies or supersedes the statement.



**230,271 Shares of Common Stock**

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**PROSPECTUS**

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**, 2026**

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**PART II**

**INFORMATION NOT REQUIRED IN THE PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution**

The following table sets forth the estimated costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the offering of the securities being registered. All the amounts shown are estimates, except for the SEC registration fee.

SEC registration fee	\$ 156.14
Accounting fees and expenses	\$ 35,000
Legal fees and expenses	\$ 35,000
Printing and miscellaneous expenses	\$ 2,000
<b>Total</b>	<b><u>\$72,156.14</u></b>

**Item 15. Indemnification of Officers and Directors**

The Registrant is incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law provides that a Delaware corporation may indemnify any persons who are, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such person as an officer, director, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any persons who are, or are threatened to be made, a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses which such officer or director has actually and reasonably incurred. The Registrant's certificate of incorporation and bylaws provide for the indemnification of our directors and officers to the fullest extent permitted under the Delaware General Corporation Law.

Section 102(b)(7) of the Delaware General Corporation Law permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except for liability for any:

- transaction from which the director derives an improper personal benefit;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or redemption of shares; or
- breach of a director's duty of loyalty to the corporation or its stockholders.

The Registrant's certificate of incorporation includes such a provision. Expenses incurred by any officer or director in defending any such action, suit or proceeding in advance of its final disposition shall be paid by the Registrant upon delivery to the Registrant of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified by the Registrant.

As permitted by the Delaware General Corporation Law, the Registrant has entered into indemnification agreements with its directors and executive officers. These agreements, among other things, require the Registrant to

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indemnify each director and officer to the fullest extent permitted by law and advance expenses to each indemnitee in connection with any proceeding in which indemnification is available.

The Registrant has an insurance policy covering our officers and directors with respect to certain liabilities, including liabilities arising under the Securities Act of 1933, as amended, or the Securities Act, or otherwise.

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### Item 16. Exhibits and Financial Statement Schedules

Exhibit Number	Description of Document
<a href="#">3.1</a>	Amended and Restated Certificate of Incorporation of Aquestive Therapeutics, Inc., dated as of July 27, 2018 (filed as Exhibit 3.1 to the Current Report on Form 8-K of the Company, as filed on July 27, 2018, and incorporated by reference herein).
<a href="#">3.2</a>	Amended and Restated Bylaws of Aquestive Therapeutics, Inc. (filed as Exhibit 3.1 to the Current Report on Form 8-K of the Company, as filed on October 16, 2024, and incorporated by reference herein).
<a href="#">4.1</a>	Form of Common Stock Certificate of Aquestive Therapeutics, Inc. (filed as Exhibit 4.1 to the Registration Statement on Form S-1 of the Company (File No. 333-225924), as filed on June 27, 2018, and incorporated by reference herein).
<a href="#">4.2*</a>	Form of Warrant.
<a href="#">5.1*</a>	Opinion of Dechert LLP.
<a href="#">10.1*</a>	Warrant Issuance Agreement, dated as of May 12, 2026, between Oaktree Capital Management, L.P. and Aquestive Therapeutics, Inc.
<a href="#">10.2*†</a>	Credit Agreement and Guaranty, dated as of May 12, 2026, by and among Aquestive Therapeutics, Inc., the guarantors from time to time party thereto, the lenders from time to time party thereto, and Oaktree Fund Administration, LLC.
<a href="#">10.3*</a>	Security Agreement, dated as of May 12, 2026, by and among Aquestive Therapeutics, Inc., the borrower's subsidiaries having acceded thereto pursuant to Section 24, and Oaktree Fund Administration, LLC.
<a href="#">23.1*</a>	Consent of KPMG LLP.
<a href="#">23.2*</a>	Consent of Dechert LLP (included in its Opinion filed as Exhibit 5.1 hereto).
<a href="#">24.1*</a>	Powers of Attorney (included on signature page).
<a href="#">107*</a>	Filing Fee Table.

\* Filed herewith.

† Certain portions of this exhibit have been omitted in accordance with Item 601(b)(10)(iv) of Regulation S-K because the omitted information is (i) not material and (ii) the registrant customarily and actually treats that information as private or confidential. The registrant agrees to furnish supplementally an unredacted copy and its materiality and privacy or confidentiality analyses to the SEC upon its request.

### Item 17. Undertakings

The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; *provided, however*, that the undertakings set forth in paragraphs (1)(i), (1)(ii) and (1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, that are incorporated by reference in this registration statement or are contained in a form of prospectus filed pursuant to Rule 424(b) that is part of this registration statement.
- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for the purpose of determining liability under the Securities Act to any purchaser:
  - (i) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
  - (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.
- (5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser: (i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424; (ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant; (iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and (iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (6) That, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (7) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the County of Somerset, State of New Jersey, on the 26th day of June, 2026.

AQUESTIVE THERAPEUTICS, INC.

By: /s/ Daniel Barber

Daniel Barber

President and Chief Executive Officer

(Principal Executive Officer)

II-5

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**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Daniel Barber and A. Ernest Toth, Jr., and each of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement and sign any registration statement for the same offering covered by the registration statement that is to be effective upon filing pursuant to Rule 462 promulgated under the Securities Act of 1933, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Name and Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Daniel Barber</u> Daniel Barber	President, Chief Executive Officer and Member of the Board of Directors (Principal Executive Officer)	June 26, 2026
<u>/s/ A. Ernest Toth, Jr.</u> A. Ernest Toth, Jr.	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	June 26, 2026
<u>/s/ Gregory B. Brown</u> Gregory B. Brown, M.D.	Chairman of the Board of Directors	June 26, 2026
<u>/s/ Abigail L. Jenkins</u> Abigail L. Jenkins	Member of the Board of Directors	June 26, 2026
<u>/s/ John S. Cochran</u> John S. Cochran	Member of the Board of Directors	June 26, 2026
<u>/s/ Julie Krop</u> Julie Krop, M.D.	Member of the Board of Directors	June 26, 2026
<u>/s/ Marco Taglietti</u> Marco Taglietti, M.D.	Member of the Board of Directors	June 26, 2026
<u>/s/ Timothy Morris</u> Timothy Morris	Member of the Board of Directors	June 26, 2026

## COMMON STOCK PURCHASE WARRANT

## AQUESTIVE THERAPEUTICS, INC.

Warrant Shares:

Initial Exercise Date: [•], 2026  
Original Issuance Date: [•], 2026

THIS COMMON STOCK PURCHASE WARRANT (the “Warrant”) certifies that, for value received, Oaktree Capital Management, L.P., acting on behalf of certain funds and accounts managed by it or an affiliate, in each case, within its Global Private Debt strategy, or one or more entities owned by such funds or accounts or its assigns (“Purchaser” and, together with any assignee(s) or transferee(s), “Holder” or “Holders”) is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after [•] (the “Initial Exercise Date”) and on or prior to 5:00 p.m. (New York City time) on [•] (the “Termination Date”) but not thereafter, to subscribe for and purchase from **Aquestive Therapeutics, Inc.**, a corporation incorporated under the laws of the state of Delaware (the “Company”), up to [ ] shares (as subject to adjustment hereunder, the “Warrant Shares”) of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Credit Agreement and Guaranty, dated May 12, 2026 (the “Credit Agreement”), among the Company, the guarantors party thereto from time to time, the lenders party thereto from time to time and Oaktree Fund Administration, LLC, as administrative agent.

Section 2. Exercise.

(a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the “Notice of Exercise”). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

For the avoidance of doubt, there is no circumstance that would require the Company to net cash settle the Warrants.

(b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be \$[•], subject to adjustment hereunder (the “Exercise Price”).

(c) Cashless Exercise. Notwithstanding anything to the contrary set forth herein, at the option of the Holder, this Warrant may also be exercised, in whole or in part, at such time by means of a “cashless exercise” in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. (“Bloomberg”) as of the time of the Holder’s execution of the applicable Notice of Exercise if such Notice of Exercise is executed during “regular trading hours” on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of “regular trading hours” on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of “regular trading hours” on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 2(c).

“Bid Price” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

(d) Mechanics of Exercise.

(i) Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder’s or its designee’s balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system (“DWAC”) if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144, and otherwise by physical delivery of a certificate, registered in the Company’s share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in a Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of such Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company for the relevant Warrant Shares and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of such Notice of Exercise (such date, the “Warrant Share Delivery Date”). Upon delivery of a Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the applicable Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of such Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the applicable Notice of Exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, “Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Company’s primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise. Notwithstanding the foregoing, with respect to any Notice(s) of Exercise delivered on or prior to 12:00 p.m. (New York City time) on the Initial Exercise Date, which may be delivered at any time after the time of execution of the Credit Agreement, the Company agrees to deliver the Warrant Shares subject to such notice(s) by 4:00 p.m. (New York City time) on the Initial Exercise Date and the Initial Exercise Date shall be the Warrant Share Delivery Date for purposes hereunder, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received by such Warrant Share Delivery Date.

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(iii) Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

(iv) Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

(v) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

(vi) Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

(vii) Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

(e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant. If the Warrant is unexercisable as a result of the Holder's Beneficial Ownership Limitation, no alternate consideration is owing to the Holder.

### Section 3. Certain Adjustments.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) [RESERVED]

(c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(d) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(e) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company (or any Subsidiary), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of the Company's assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding shares of Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 3(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein.

(f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(g) Notice to Holder.

(i) Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with a Fundamental Transaction, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

(h) Voluntary Adjustment By Company. Subject to the rules and regulations of the Trading Market, the Company may at any time during the term of this Warrant reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company.

#### Section 4. Transfer of Warrant.

(a) Transferability. This Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants, substantially identical in all other respects to this Warrant, in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the “Warrant Register”), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

#### Section 5. Representations and Warranties.

(a) Duly Incorporated. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) Power and Authority. The Company has the requisite power and authority to enter into and consummate the transactions contemplated by this Warrant and otherwise to carry out its respective obligations hereunder. The execution and delivery by the Company of the Warrant and the consummation of the transactions contemplated hereunder have been duly authorized by all necessary action on the part of the Company and no further consent or action is required by the Company, its Board of Directors, or its stockholders. The execution, delivery and performance by the Company of the Warrant and the consummation by the Company of the transactions contemplated hereby (including, without limitation, the reservation of Common Stock for the subsequent issuance of the Common Stock) does not and will not (i) conflict with or violate any provisions of the Company or any of its subsidiaries’ certificate or articles of incorporation, bylaws, or other organizational or charter documents, (ii) conflict with, result in a breach of, or constitute (with the giving of any notice, the passage of time, or both) a default under any material agreement of the Company, (iii) result in or require the creation or imposition of any lien upon any assets of the Company, or (iv) violate any material provision of applicable law, rule, regulation, order, judgment injunction, decree or other restriction of any governmental authority (including, without limitation, foreign, federal, or state securities laws and rules and regulations of the Trading Market).

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

(d) Consents. Neither the Company nor any of its subsidiaries is required to obtain any consent, waiver, authorization, permit or order of, give any notice to, or make any filing or registration with, any governmental authority or other person in connection with the execution, delivery, and performance by the Company of this Warrant. The Company is not in violation of any material requirements of Nasdaq and has no knowledge of any facts or circumstances which would reasonably be expected to result in the delisting or suspension of the Company Common Stock after the date hereof.

#### Section 6. Miscellaneous.

(a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a “cashless exercise” pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Trading Day, then such action may be taken or such right may be exercised on the next succeeding Trading Day.

(d) Authorized Shares. The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the complete exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the complete exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens, charges and preemptive or similar rights created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue). The Company will take all such action as may be reasonably necessary or appropriate to assure that the Warrant Shares may be issued as provided herein without violating any applicable law or regulation, or any requirements of the Trading Market upon which the Company Common Stock may be listed.

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(e) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Credit Agreement.

(f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

(g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Credit Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(h) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Credit Agreement.

(i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

(k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

(m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(o) Tax Treatment. No later than ninety (90) days after the Initial Issuance Date, the Company shall provide the Oaktree Fund Administration, LLC ("Oaktree"), on behalf of the Purchaser, with a valuation of the Warrant for tax purposes (the "Proposed Valuation"). If Oaktree disagrees with the Proposed Valuation, it (on behalf of the Purchaser) shall propose reasonable comments to the Proposed Valuation within fifteen (15) days of receiving the Proposed Valuation, and the Company shall consider such comments in good faith. If the parties cannot agree as to the Proposed Valuation within one hundred and twenty (120) days after the Initial Issuance Date after good faith discussion, an independent valuation firm shall be engaged (at the joint expense of the Company and Oaktree (on behalf of the Purchaser)) to provide the Company and the Holder with a final valuation of the Warrant for tax purposes (the "Final Valuation") within thirty (30) days of its engagement, and such Final Valuation shall be binding on the Purchaser and the Company for all U.S. tax purposes.

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*(Signature Page Follows)*

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

**AQUESTIVE THERAPEUTICS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**OAKTREE CAPITAL MANAGEMENT, L.P.,**

By: \_\_\_\_\_  
Name:  
Title:

NOTICE OF EXERCISE

TO: AQUESTIVE THERAPEUTICS, INC.

(1) The undersigned hereby elects to purchase \_\_\_\_\_ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

in lawful money of the United States; or

if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

The Warrant Shares shall be delivered to the following DWAC Account Number:

[SIGNATURE OF HOLDER]

Name of Investing Entity:

*Signature of Authorized Signatory of Investing Entity:*

Name of Authorized Signatory:

Title of Authorized Signatory:

Date: \_\_\_\_\_

ASSIGNMENT FORM

*(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone  
Number: \_\_\_\_\_

Email  
Address: \_\_\_\_\_

Dated: \_\_\_\_\_

Holder's  
Signature: \_\_\_\_\_

Holder's  
Address: \_\_\_\_\_



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www.dechert.com

June 26, 2026

Aquestive Therapeutics, Inc.  
30 Technology Drive  
Warren, New Jersey 07059

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to Aquestive Therapeutics, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing by the Company of a registration statement on Form S-3 (the "Registration Statement"), filed today with the U.S. Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), in connection with the resale from time to time by the selling stockholders identified in the Registration Statement (the "Selling Stockholders") of up to 230,265 shares (the "Shares") of the Company's common stock, par value \$0.001 per share (the "Common Stock"), issuable to the Selling Stockholders upon the exercise of common stock purchase warrants (the "Warrants") pursuant to the Warrant Issuance Agreement dated as of May 12, 2026 (the "Warrant Issuance Agreement").

This opinion letter is being furnished to the Company in accordance with the requirements of Item 601(b)(5) under Regulation S-K of the Securities Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement, other than as to the validity of the Shares as set forth below.

In rendering the opinion expressed below, we have examined and relied on originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments and such agreements, certificates and receipts of public officials, certificates of officers or other representatives of the Company and others, and such other documents as we have deemed necessary or appropriate as a basis for rendering the opinion set forth below, including the following documents:

- (i) the Registration Statement;
- (ii) the Company's Amended and Restated Certificate of Incorporation, as originally filed with the Secretary of State of the State of Delaware on July 27, 2018;
- (iii) the Company's Amended and Restated Bylaws, effective as of October 16, 2024;
- (iv) the Form of Warrant;
- (v) the Warrant Issuance Agreement;
- (vi) a Certificate of Good Standing with respect to the Company issued by the Secretary of State of the State of Delaware, as of a recent date; and
- (vii) the resolutions of the board of directors of the Company, relating to, among other things, the authorization and approval of the preparation and filing of the Registration Statement.

As to the facts upon which this opinion letter is based, we have relied, to the extent we deem proper, upon certificates of public officials and certificates and written statements of agents, officers, directors, employees and representatives of, and accountants for, the Company and we have assumed in this regard the truthfulness of such certifications and statements. We have not independently established the facts so relied on.

In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as original documents, the conformity to original documents of all documents submitted to us as copies, the legal capacity of natural persons who are signatories to the documents examined by us and the legal power and authority of all persons signing on behalf of the parties to all documents (other than the Company). We have further assumed that there has been no oral modification of, or amendment or supplement (including any express or implied waiver, however arising) to, any of the agreements, documents or instruments used by us to form the basis of the opinion expressed below.

On the basis of the foregoing and subject to the assumptions, qualifications and limitations set forth in this letter, we are of the opinion, as of the date hereof, that the Shares have been duly authorized for issuance by the Company and, when the Shares have been duly issued and delivered to the Selling Stockholders in accordance with the terms of the Warrants, the Shares will be validly issued, fully paid and non-assessable.

The opinion expressed herein is limited to the General Corporation Law of the State of Delaware. We are members of the bar of the State of New York. We express no opinion concerning the laws of any other jurisdiction, and we express no opinion concerning any state securities or "blue sky" laws, rules or regulations, or any federal, state, local or foreign laws, rules or regulations relating to the offer and/or sale of the Shares. The opinions expressed herein are based upon the law as in effect and the documentation and facts known to us on the date hereof.

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement. We further consent to the use of our name in the prospectus contained therein, under the caption "Legal Matters." In giving such consent, we do not admit hereby that we come within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

This opinion letter has been prepared for your use solely in connection with the Registration Statement. We assume no obligation to advise you of any changes in the foregoing subsequent to the effectiveness of the Registration Statement.

Very truly yours,

/s/ Dechert LLP

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WARRANT ISSUANCE AGREEMENT

This WARRANT ISSUANCE AGREEMENT (this "Agreement") is entered into as of May 12, 2026 (the "Effective Date"), between Oaktree Capital Management, L.P., acting on behalf of certain funds and accounts managed by it or an affiliate, in each case, within its Global Private Debt strategy, or one or more entities owned by such funds or accounts (the "Purchaser"), and Aquestive Therapeutics, Inc., a corporation incorporated in the State of Delaware (the "Company").

WHEREAS, the Company, the guarantors party thereto from time to time, the lenders party thereto from time to time (including the Purchaser) and Oaktree Fund Administration, LLC, as administrative agent (the "Administrative Agent"), are party to that certain Credit Agreement and Guaranty, dated as of May 12, 2026 (the "Credit Agreement");

WHEREAS, pursuant to the Credit Agreement, the lenders party thereto have agreed to make available to the Company (a) Tranche A Term Loans (as defined in the Credit Agreement), (b) Tranche B Term Loans (as defined in the Credit Agreement), (c) Tranche C Term Loans (as defined in the Credit Agreement) and (d) Tranche D Term Loans (as defined in the Credit Agreement, and together with the Tranche A Term Loans, the Tranche B Term Loans and the Tranche C Term Loans, the "Term Loans");

WHEREAS, the Company and the Purchaser have agreed that, in connection with the Credit Agreement, on the terms and conditions described in this Agreement, the Company will issue and deliver to the Purchaser or its assigns, from time to time upon the funding of each tranche of Term Loans, warrants for the purchase of shares (the "Warrant Shares") of the Company's common stock, par value \$0.001 per share (the "Common Stock"), in the form attached hereto as Exhibit A (each, a "Warrant" and together with the Warrant Shares, the "Securities"), with the number of Warrant Shares and the exercise price per Warrant Share for each Warrant determined in accordance with Section 1 of this Agreement; and

WHEREAS, the parties hereto desire to provide for the issuance of the Warrants and the subscription and purchase of the Warrant Shares issuable upon exercise thereof.

NOW THEREFORE, in consideration of the covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Purchaser hereby agree as follows:

1. Issuance of Warrants. Subject to the terms and conditions of this Agreement, the Company shall issue and deliver to the Purchaser Warrants for the purchase of Warrant Shares, with each Warrant to be issued substantially in the form attached hereto as Exhibit A and completed in accordance with the provisions of this Section 1. The Company shall issue and deliver to the Purchaser:
  - a. Tranche A Warrant. On the date of funding of the Tranche A Term Loans under the Credit Agreement, the Company shall issue and deliver to the Purchaser and its assigns a Warrant (the "Tranche A Warrant") pursuant to which the Purchaser and its assigns shall have the right to purchase that certain number of shares of Common Stock equal to the quotient obtained by dividing (i) the product of (A) the aggregate principal amount of the Tranche A Term Loans funded under the Credit Agreement and (B) 1.75%, by (ii) the Tranche A Initial Exercise Price (as defined herein) (the "Tranche A Warrant Shares"). The exercise price per Tranche A Warrant Share shall be equal to the Thirty Day VWAP (as defined below) as of the date of funding of the Tranche A Term Loans (the "Tranche A Initial Exercise Price").

- b. Tranche B Warrant. On the date of funding of the Tranche B Term Loans under the Credit Agreement, the Company shall issue and deliver to the Purchaser and its assigns a Warrant (the "Tranche B Warrant") pursuant to which the Purchaser and its assigns shall have the right to purchase that certain number of shares of Common Stock equal to the quotient obtained by dividing (i) the product of (A) the aggregate principal amount of the Tranche B Term Loans funded under the Credit Agreement and (B) 1.75%, by (ii) the exercise price per Tranche B Warrant Share determined in accordance with this Section 1.b (the "Tranche B Warrant Shares"). The exercise price per Tranche B Warrant Share shall be equal to the lesser of (A) the Tranche A Initial Exercise Price and (B) the Thirty Day VWAP (as defined below) as of the date of funding of the Tranche B Term Loans.
- c. Tranche C Warrant. On the date of funding of the Tranche C Term Loans under the Credit Agreement, the Company shall issue and deliver to the Purchaser and its assigns a Warrant (the "Tranche C Warrant") and, together with the Tranche A Warrant and the Tranche B Warrant, the "Warrants") pursuant to which the Purchaser and its assigns shall have the right to purchase that certain number of shares of Common Stock equal to the quotient obtained by dividing (i) the product of (A) the aggregate principal amount of the Tranche C Term Loans funded under the Credit Agreement and (B) 1.75%, by (ii) the exercise price per Tranche C Warrant Share determined in accordance with this Section 1.c (the "Tranche C Warrant Shares") and, together with the Tranche A Warrant Shares and the Tranche B Warrant Shares, the "Warrant Shares"). The exercise price per Tranche C Warrant Share shall be equal to the lesser of (A) the Tranche A Initial Exercise Price and (B) the Thirty Day VWAP as of the date of funding of the Tranche C Term Loans (the exercise price applicable to each Warrant, the "Exercise Price").
- d. Exercise Period. Each Warrant shall be exercisable commencing on the date of issuance thereof and shall expire at 5:00 p.m. (New York City time) on the date that is five (5) years after the date of issuance of such Warrant (each such date, an "Expiration Date"). Any unexercised portion of a Warrant shall automatically expire and become null and void upon the applicable Expiration Date without any further action by either party. For the avoidance of doubt, the Tranche A Warrant, the Tranche B Warrant and the Tranche C Warrant shall each have their own independent Expiration Date calculated from the date of issuance of each such Warrant.

"Thirty Day VWAP" means, for any date, the average of the daily VWAP (as defined in the applicable Warrant) of the Common Stock for the thirty (30) Trading Days (as defined in the Credit Agreement) immediately preceding such date.

- 2. Consideration. Each Warrant is being issued to the Purchaser in consideration of the Purchaser's commitments and obligations under the Credit Agreement.

3. Delivery. On each date on which a funding of Tranche A Term Loans, Tranche B Term Loans or Tranche C Term Loans occurs under the Credit Agreement (each such date, a “Warrant Delivery Date”), the Company shall deliver to the Purchaser the applicable Warrant, duly executed on behalf of the Company and registered in the name of the Purchaser or its designee. Delivery of each Warrant shall take place remotely by electronic transfer of documentation on the applicable Warrant Delivery Date.
4. Registration Rights
- a. Filing. Within forty-five (45) days following the issuance of each Warrant (each such date, a “Filing Deadline”), the Company shall prepare and file with the Securities and Exchange Commission (the “SEC”): a registration statement on Form S-3 or an amendment to an effective Company registration statement on Form S-3 (or, if Form S-3 is not then available to the Company to register for resale the Warrant Shares issuable upon the exercise of such Warrant, on such other appropriate form as the Company shall determine in good faith) or the then appropriate form for an offering to be made on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the “Securities Act”) or any successor rule thereto, covering the resale of the Warrant Shares issuable upon exercise of such Warrant by the holder thereof on a delayed or continuous basis pursuant to Rule 415 (each, a “Registration Statement”). If permitted under the Securities Act, such Registration Statement shall be an “automatic shelf registration statement” as defined in Rule 405 under the Securities Act. The Company will provide customary indemnification to Purchaser, its assigns and transferees, and each of the persons who control them (within the meaning of Section 15 of the Securities Act or Section 20 of the Securities Exchange Act of 1934, as amended).
- b. Effectiveness. The Company shall use commercially reasonable efforts to cause each Registration Statement to be declared effective by the SEC as promptly as practicable after the applicable Filing Deadline.
- c. Maintenance. The Company shall use commercially reasonable efforts to maintain the effectiveness of each Registration Statement, and to keep each Registration Statement continuously effective and available for use, including by notifying the holders of Securities promptly after the Company becomes aware that the Registration Statement or prospectus therein, as then amended or supplemented, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and by filing any necessary post-effective amendments and prospectus supplements necessary to comply with the provisions of the Securities Act and by filing one or more replacement or renewal Registration Statements upon the expiration of any such Registration Statement, if required by Rule 415 under the Securities Act, until the earlier of (i) the date on which all Warrant Shares covered by such Registration Statement have been sold pursuant to such Registration Statement or Rule 144 under the Securities Act and (ii) the applicable Expiration Date of the relevant Warrant. The Company shall bear all expenses related to the filing and maintenance of the continuous effectiveness of each Registration Statement.

5. Representations and Warranties of the Company.

- a. Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its respective obligations hereunder and thereunder. The execution and delivery by the Company of this Agreement and the consummation by it of the transactions contemplated hereunder have been duly authorized by all necessary action on the part of the Company and no further consent or action is required by the Company, or its Board of Directors or stockholders. The Agreement has been (or upon delivery will have been) duly executed by the Company, and, when delivered in accordance with the terms hereof, will constitute a valid and binding obligation of the Company, enforceable against the Company, in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law.
- b. No Conflicts. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby (including, without limitation, the reservation of Common Stock for the issuance of the Securities and the subsequent issuance of the Securities) do not and will not (i) conflict with or violate any provision of the Company or any of its subsidiaries' certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any lien upon any of the properties or assets of the Company or any of its subsidiaries, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing the Company or a subsidiary's debt or otherwise) or other understanding to which the Company or any of its subsidiaries is a party or by which any property or asset of the Company or any of its subsidiaries is bound or affected, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any governmental authority to which the Company or any subsidiary is subject (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of the Nasdaq Stock Market LLC ("Nasdaq") to which the Company is subject), or by which any property or asset of the Company or any subsidiary is bound or affected; except in the case of clause (ii) or (iii) above, as would not reasonably be expected to (x) have or result in a material adverse effect on the legality, validity, binding effect or enforceability of this Agreement, (y) have or result in a material adverse effect on the business operations, properties, assets, condition (financial or otherwise) or liabilities of the Company and its subsidiaries, taken as a whole, or (z) have or result in a material adverse effect on the Company's authority or ability to perform fully on a timely basis its obligations under this Agreement.

- c. Consents. Neither the Company nor any of its subsidiaries is required to obtain any consent, waiver, authorization, permit or order of, give any notice to, or make any filing or registration with, any governmental authority or other person in connection with the execution, delivery and performance by the Company of this Agreement, other than (i) the filing of any requisite notices and/or application(s) to Nasdaq for the issuance of the Warrants and the issuance of the Warrant Shares upon exercise of the Warrants and the listing of the Warrant Shares for trading thereon, and (ii) the filing of a Current Report on Form 8-K, or the disclosure required thereby in another filing, with the Securities and Exchange Commission. The Company is not in violation of any material requirements of Nasdaq and has no knowledge of any facts or circumstances which would reasonably be expected to result in the delisting or suspension of the Common Stock after the date hereof.
  - d. Issuance of the Securities. The issuance of the Warrants is duly authorized and, upon issuance in accordance with the terms of this Agreement, each Warrant will be validly issued free from all preemptive or similar rights, taxes, liens (other than transfer limitations imposed by applicable securities laws) and charges with respect to the issue thereof. As of each applicable Warrant Delivery Date, the Company shall have reserved from its duly authorized capital stock not less than 100% of the maximum number of Warrant Shares issuable upon exercise of the applicable Warrant (without taking into account any limitations on the exercise of such Warrant set forth therein). Upon exercise in accordance with each Warrant, the Warrant Shares, when issued, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights, taxes, liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock (as set forth in the applicable charter documents).
6. Representations and Warranties of the Purchaser.
- a. Binding Agreement. This Agreement constitutes the legal, valid and binding obligation of the Purchaser, enforceable in accordance with its terms, and the execution, delivery and performance of this Agreement by the Purchaser does not and will not conflict with, violate or cause a breach of any provision of the organizational documents of the Purchaser.
  - b. Accredited Investor Status. The Purchaser is an “accredited investor” as that term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (the “Securities Act”).
  - c. Purchase for Own Account. The Purchaser and each of its permitted assigns is acquiring, and will acquire, any securities of the Company for its own account, for investment purposes only, and not with a view to, or for offer or sale in connection with, any distribution thereof within the meaning of the Securities Act.

7. Other Agreements of the Parties.

- a. Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the Warrants in which the Company shall record the name and address of the person in whose name each Warrant has been issued (including the name and address of each permitted transferee) and the number of Warrant Shares issuable upon exercise of each Warrant held by such person. The Company shall keep the register open and available at all times during business hours upon reasonable notice for inspection of the Purchaser or its legal representatives.
  - b. Transfer. All of Purchaser's rights hereunder are transferable and assignable, in whole or in part, to any affiliate or any managed, advised, or sub-advised fund or account of Oaktree Capital Management, L.P. or an affiliate, or one or more entities owned by such funds or accounts.
8. Miscellaneous. Sections 14.01, 14.02, 14.04, 14.05, 14.08, 14.09, 14.10, 14.11, 14.13, 14.14 of the Credit Agreement relating to governing law, jurisdiction, waiver of jury trial, counterparts, severability, amendments and waivers, notices, successors and assigns, and entire agreement shall *apply mutatis mutandis* to this Agreement.

[Signature Page Follows]

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

COMPANY:

AQUESTIVE THERAPEUTICS, INC.

By: /s/ Daniel Barber

Name: Daniel Barber

Title: Chief Executive Officer and President

PURCHASER:

OAKTREE CAPITAL MANAGEMENT, L.P., solely in its capacity as manager of certain funds and accounts in its global private debt strategy

By: /s/ Mary Gallegly

Name: Mary Gallegly

Title: Managing Director

By: /s/ Jessica Dombroff

Name: Jessica Dombroff

Title: Senior Vice President

EXHIBIT A  
FORM OF WARRANT

COMMON STOCK PURCHASE WARRANT

AQUESTIVE THERAPEUTICS, INC.

Warrant Shares:

Initial Exercise Date: [•], 2026  
Original Issuance Date: [•], 2026

THIS COMMON STOCK PURCHASE WARRANT (the “Warrant”) certifies that, for value received, Oaktree Capital Management, L.P., acting on behalf of certain funds and accounts managed by it or an affiliate, in each case, within its Global Private Debt strategy, or one or more entities owned by such funds or accounts or its assigns (“Purchaser” and, together with any assignee(s) or transferee(s), “Holder” or “Holders”) is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after [•] (the “Initial Exercise Date”) and on or prior to 5:00 p.m. (New York City time) on [•] (the “Termination Date”) but not thereafter, to subscribe for and purchase from **Aquestive Therapeutics, Inc.**, a corporation incorporated under the laws of the state of Delaware (the “Company”), up to [ ] shares (as subject to adjustment hereunder, the “Warrant Shares”) of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Credit Agreement and Guaranty, dated May 12, 2026 (the “Credit Agreement”), among the Company, the guarantors party thereto from time to time, the lenders party thereto from time to time and Oaktree Fund Administration, LLC, as administrative agent.

Section 2. Exercise.

(a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the “Notice of Exercise”). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

For the avoidance of doubt, there is no circumstance that would require the Company to net cash settle the Warrants.

(b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be \$[•], subject to adjustment hereunder (the “Exercise Price”).

(c) Cashless Exercise. Notwithstanding anything to the contrary set forth herein, at the option of the Holder, this Warrant may also be exercised, in whole or in part, at such time by means of a “cashless exercise” in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of “regular trading hours” (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. (“Bloomberg”) as of the time of the Holder’s execution of the applicable Notice of Exercise if such Notice of Exercise is executed during “regular trading hours” on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of “regular trading hours” on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of “regular trading hours” on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 2(c).

“Bid Price” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

(d) Mechanics of Exercise.

(i) Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder’s or its designee’s balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system (“DWAC”) if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144, and otherwise by physical delivery of a certificate, registered in the Company’s share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in a Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of such Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company for the relevant Warrant Shares and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of such Notice of Exercise (such date, the “Warrant Share Delivery Date”). Upon delivery of a Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the applicable Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of such Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the applicable Notice of Exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, “Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Company’s primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise. Notwithstanding the foregoing, with respect to any Notice(s) of Exercise delivered on or prior to 12:00 p.m. (New York City time) on the Initial Exercise Date, which may be delivered at any time after the time of execution of the Credit Agreement, the Company agrees to deliver the Warrant Shares subject to such notice(s) by 4:00 p.m. (New York City time) on the Initial Exercise Date and the Initial Exercise Date shall be the Warrant Share Delivery Date for purposes hereunder, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received by such Warrant Share Delivery Date.

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(iii) Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

(iv) Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

(v) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

(vi) Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

(vii) Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

(e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant. If the Warrant is unexercisable as a result of the Holder's Beneficial Ownership Limitation, no alternate consideration is owing to the Holder.

### Section 3. Certain Adjustments.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) [RESERVED]

(c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(d) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(e) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company (or any Subsidiary), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of the Company's assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding shares of Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 3(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein.

(f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(g) Notice to Holder.

(i) Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with a Fundamental Transaction, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

(h) Voluntary Adjustment By Company. Subject to the rules and regulations of the Trading Market, the Company may at any time during the term of this Warrant reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company.

#### Section 4. Transfer of Warrant.

(a) Transferability. This Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants, substantially identical in all other respects to this Warrant, in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the “Warrant Register”), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

#### Section 5. Representations and Warranties.

(a) Duly Incorporated. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) Power and Authority. The Company has the requisite power and authority to enter into and consummate the transactions contemplated by this Warrant and otherwise to carry out its respective obligations hereunder. The execution and delivery by the Company of the Warrant and the consummation of the transactions contemplated hereunder have been duly authorized by all necessary action on the part of the Company and no further consent or action is required by the Company, its Board of Directors, or its stockholders. The execution, delivery and performance by the Company of the Warrant and the consummation by the Company of the transactions contemplated hereby (including, without limitation, the reservation of Common Stock for the subsequent issuance of the Common Stock) does not and will not (i) conflict with or violate any provisions of the Company or any of its subsidiaries’ certificate or articles of incorporation, bylaws, or other organizational or charter documents, (ii) conflict with, result in a breach of, or constitute (with the giving of any notice, the passage of time, or both) a default under any material agreement of the Company, (iii) result in or require the creation or imposition of any lien upon any assets of the Company, or (iv) violate any material provision of applicable law, rule, regulation, order, judgment injunction, decree or other restriction of any governmental authority (including, without limitation, foreign, federal, or state securities laws and rules and regulations of the Trading Market).

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

(d) Consents. Neither the Company nor any of its subsidiaries is required to obtain any consent, waiver, authorization, permit or order of, give any notice to, or make any filing or registration with, any governmental authority or other person in connection with the execution, delivery, and performance by the Company of this Warrant. The Company is not in violation of any material requirements of Nasdaq and has no knowledge of any facts or circumstances which would reasonably be expected to result in the delisting or suspension of the Company Common Stock after the date hereof.

#### Section 6. Miscellaneous.

(a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a “cashless exercise” pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Trading Day, then such action may be taken or such right may be exercised on the next succeeding Trading Day.

(d) Authorized Shares. The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the complete exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the complete exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens, charges and preemptive or similar rights created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue). The Company will take all such action as may be reasonably necessary or appropriate to assure that the Warrant Shares may be issued as provided herein without violating any applicable law or regulation, or any requirements of the Trading Market upon which the Company Common Stock may be listed.

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(e) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Credit Agreement.

(f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

(g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Credit Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(h) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Credit Agreement.

(i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

(k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

(m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(o) Tax Treatment. No later than ninety (90) days after the Initial Issuance Date, the Company shall provide the Oaktree Fund Administration, LLC ("Oaktree"), on behalf of the Purchaser, with a valuation of the Warrant for tax purposes (the "Proposed Valuation"). If Oaktree disagrees with the Proposed Valuation, it (on behalf of the Purchaser) shall propose reasonable comments to the Proposed Valuation within fifteen (15) days of receiving the Proposed Valuation, and the Company shall consider such comments in good faith. If the parties cannot agree as to the Proposed Valuation within one hundred and twenty (120) days after the Initial Issuance Date after good faith discussion, an independent valuation firm shall be engaged (at the joint expense of the Company and Oaktree (on behalf of the Purchaser)) to provide the Company and the Holder with a final valuation of the Warrant for tax purposes (the "Final Valuation") within thirty (30) days of its engagement, and such Final Valuation shall be binding on the Purchaser and the Company for all U.S. tax purposes.

\*\*\*\*\*

*(Signature Page Follows)*

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

**AQUESTIVE THERAPEUTICS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**OAKTREE CAPITAL MANAGEMENT, L.P.,**

By: \_\_\_\_\_  
Name:  
Title:

NOTICE OF EXERCISE

TO: AQUESTIVE THERAPEUTICS, INC.

(1) The undersigned hereby elects to purchase \_\_\_\_\_ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

in lawful money of the United States; or

if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

The Warrant Shares shall be delivered to the following DWAC Account Number:

[SIGNATURE OF HOLDER]

Name of Investing Entity:

*Signature of Authorized Signatory of Investing Entity:*

Name of Authorized Signatory:

Title of Authorized Signatory:

Date: \_\_\_\_\_

ASSIGNMENT FORM

*(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone  
Number: \_\_\_\_\_

Email  
Address: \_\_\_\_\_

Dated: \_\_\_\_\_

Holder's  
Signature: \_\_\_\_\_

Holder's  
Address: \_\_\_\_\_

THE SYMBOL “[\*\*\*]” DENOTES PLACES WHERE CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE OF INFORMATION THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

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**CREDIT AGREEMENT AND GUARANTY**

**dated as of May 12, 2026**

**by and among**

**AQUESTIVE THERAPEUTICS, INC.,  
as the Borrower,**

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

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

**as the**

**Lenders,**

**and**

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

**U.S. \$150,000,000**

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## CREDIT AGREEMENT AND GUARANTY

CREDIT AGREEMENT AND GUARANTY, dated as of May 12, 2026 (this “*Agreement*”), among **AQUESTIVE THERAPEUTICS, INC.**, a Delaware corporation (the “*Borrower*”), certain Subsidiaries of the Borrower that may be required to provide Guarantees from time to time hereunder (each a “*Guarantor*” and collectively, the “*Guarantors*”), the lenders from time to time party hereto (each a “*Lender*” and collectively, the “*Lenders*”), and **OAKTREE FUND ADMINISTRATION, LLC**, as administrative agent for the Lenders (in such capacity, the “*Administrative Agent*”).

WITNESSETH:

WHEREAS, the Borrower has requested that the Lenders provide a first-lien term loan facility to the Borrower in an aggregate principal amount of \$150,000,000, consisting of (a) a \$55,000,000 Tranche A Term Loan to be extended on the Closing Date, (b) a \$20,000,000 Tranche B Term Loan to be extended on the Applicable Funding Date for the Tranche B Term Loan, (c) a \$25,000,000 Tranche C Term Loan to be extended on the Applicable Funding Date for the Tranche C Term Loan and (d) a \$50,000,000 Tranche D Term Loan to be extended on the Applicable Funding Date for the Tranche D Term Loan; and

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

NOW, THEREFORE, the parties hereto agree as follows:

### SECTION 1. DEFINITIONS

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

“*Account Control Agreement Completion Date*” has the meaning set forth in **Section 8.18(a)**.

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

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

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“*Affected Financial Institution*” means (i) any EEA Financial Institution or (ii) any U.K. Financial Institution.

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

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

“*Allocable Amount*” has the meaning set forth in **Section 13.10(b)**.

“*Anaphylm*” means the sublingual film containing the prodrug dibutepinephrine referred to by the Borrower as of the date hereof as Anaphylm or Anaphylm (dibutepinephrine) Sublingual Film, and as further described on **Schedule 1(b)**. For clarity, Anaphylm may be ultimately marketed with another or additional trade names.

“*Anaphylm Net Sales Trigger Date*” means the date that is [\*\*\*] immediately following the date (which must be on or prior to [\*\*\*]) on which both (i) Net Sales for the most recently ended [\*\*\*] period exceeds \$[\*\*\*] and (ii) a Responsible Officer of the Borrower has delivered a certificate to the Administrative Agent certifying the occurrence of the events in the immediately preceding **clause (i)** and providing evidence of the foregoing reasonably satisfactory to the Administrative Agent.

“*Anti-Terrorism Laws*” means any applicable laws relating to terrorism or money laundering, including (i) the Money Laundering Control Act of 1986 (e.g., 18 U.S.C. §§ 1956 and 1957), (ii) the Bank Secrecy Act of 1970 (e.g., 31 U.S.C. §§ 5311 – 5330), as amended by the Patriot Act, (iii) the laws, regulations and Executive Orders administered by the United States Department of the Treasury’s Office of Foreign Assets Control (“**OFAC**”), (iv) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and implementing regulations by the United States Department of the Treasury, (v) any law prohibiting or directed against terrorist activities or the financing of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B), or (vi) any similar laws enacted in the United States, the United Kingdom, European Union or any other jurisdictions in which the Borrower or any of its Subsidiaries operates.

“*Applicable Availability Period*” means, (i) with respect to the Tranche A Term Loans, the Closing Date, and (ii) with respect to each other tranche of Loans, the meaning set forth on **Schedule 1** for such tranche of Loans.

“*Applicable Funding Condition*” means, (i) with respect to the Tranche A Term Loans, the conditions precedent set forth in **Section 6**, and (ii) with respect to each other tranche of Loans, the meaning set forth in the Loans Schedule for such tranche of Loans.

“*Applicable Funding Date*” means, (i) with respect to the Tranche A Term Loans, the Closing Date, and (ii) with respect to each other tranche of Loans, the date during the Applicable Availability Period for such tranche of Loans on which all conditions precedent set forth in **Section 6.02** are satisfied or waived in accordance with the terms of this Agreement.

“**Applicable Margin**” means a *per annum* percentage equal to 6.25%; provided that from and after the Applicable Funding Date with respect to the Tranche B Term Loans, the Applicable Margin then in effect shall be permanently reduced by a *per annum* percentage equal to 0.25%.

“**Approved Indication**” means the treatment of type I allergic reactions (including anaphylaxis) in adults and adolescent patients seven (7) years and older who weigh 30 kg or greater, which shall exclude any and all Blackbox Warnings.

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

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

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

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

“**Bail-In Legislation**” means, (i) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (ii) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Bailee Letter**” means a bailee letter substantially in the form of **Exhibit G**, or such other form as is reasonably acceptable to the Administrative Agent.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy.”

“**Blackbox Warning**” means any “black box warnings” as defined under 21 CFR 201.57(e) of the Code of Federal Regulations.

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

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

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

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

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

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

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

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

“**Bringdown Date**” means each date on which a Loan is advanced pursuant to **Section 2.01** and any other date the representations and warranties under the Loan Documents are required to be made (other than the Closing Date).

“**Capital Lease Obligations**” means, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) any property by such Person as lessee, which obligations are required to be classified and accounted for as a capital lease or finance lease on a balance sheet of such Person under GAAP, and for the purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

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

“**Change of Control**” means (i) an event or series of events (a) as a result of which any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Act, but excluding any of such person or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any Plan) becomes the “beneficial owner”, directly or indirectly, of thirty-five percent (35%) or more of the Equity Interests of the Borrower entitled to vote for members of the Board of the Borrower on a fully-diluted basis (and taking into account all such Equity Interests that such person or group has the right to acquire pursuant to any Option Right); (b) as a result of which, during any period of twelve (12) consecutive months, a majority of the members of the Board of the Borrower cease to be composed of individuals (w) who were members of such Board on the first day of such period, (x) whose election, appointment or nomination to such Board was approved by individuals referred to in **clause (x)** above constituting at the time of such election, appointment or nomination, at least a majority of such Board or equivalent governing body, (y) who were elected to such Board by the stockholders of the Borrower at a duly convened annual or special meeting of stockholders of the Borrower that does not occur in connection with, or as a result of, a proxy contest or a transaction that constitutes, or is intended to constitute a Change of Control under **clauses (i)(a), (ii), (iii) or (iv)** of this definition or (z) whose election, appointment or nomination to such Board was approved by individuals referred to in **clauses (w), (x) and (y)** above constituting at the time of such election, appointment or nomination, at least a majority of such Board; provided, that no change in the composition of the Board of the Borrower shall be deemed to constitute or contribute to a Change of Control under this clause (b) to the extent that such change in composition results from (A) the resignation, retirement, death, disability, or removal for cause of any director for reasons unrelated to any such transaction, or (B) any requirement of applicable Law or the listing rules of any national securities exchange on which the Equity Interests of the Borrower are then listed or traded (including any mandatory board composition or director independence requirements); (ii) an event or series of related events that results in the sale of all or substantially all of the assets or businesses of the Borrower and its Subsidiaries, taken as a whole; (iii) except to the extent permitted by this Agreement, an event or series of related events that results in the Borrower’s failure to own, directly or indirectly, beneficially and of record, one-hundred percent (100%) of all issued and outstanding Equity Interests of each Subsidiary Guarantor (other than, in the case of this **clause (ii)** solely with respect to any Subsidiary Guarantor, as a result of (a) any Asset Sale permitted by **Section 9.09**, liquidation or dissolution permitted by **Section 9.03(b)** or (b) any Equity Interests in the nature of directors’ qualifying shares required pursuant to applicable Law); or (iv) any Change of Control (as defined in the Permitted RTW Royalty Purchase Agreement) occurs under the Permitted RTW Royalty Purchase Agreement. For purposes of this definition, “beneficial owner” is as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have “beneficial ownership” of all Equity Interests that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “**Option Right**”).

“**Charges**” has the meaning set forth in **Section 14.17**.

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

“**Closing Date**” means the date on which the conditions precedent specified in **Section 6.01** are satisfied (or waived in accordance with **Section 14.04**).

“**CME**” means CME Group Benchmark Administration Limited.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” means any real, personal and mixed property (including Equity Interests), whether tangible or intangible, in which Liens are granted or purported to be granted to the Administrative Agent as security for the Obligations under any Loan Document on or after the Closing Date, including future acquired or created assets or property (or collectively, all such real, personal and mixed property, as the context may require); provided, that “**Collateral**” shall not include any “Excluded Asset” (as defined in the Security Agreement).

“**Combination Product**” means (a) a single pharmaceutical formulation (whether co-formulated or administered together via the same administration route) containing as its active ingredients both the Product and one or more other therapeutically or prophylactically active pharmaceutical or biologic ingredients (each an “Other Component”) or (b) a combination therapy comprised of the Product and one or more Other Component(s), whether priced and sold in a single package containing such multiple products, packaged separately but sold together for a single price, or sold under separate price points but labeled for use together, in each case, including all dosage forms, formulations, presentations, and package configurations. Drug delivery vehicles, adjuvants and excipients will not be deemed to be “active ingredients”, except in the case where such delivery vehicle, adjuvant or excipient is recognized by the FDA as an active ingredient in accordance with 21 C.F.R. 210.3(b)(7). All references to Products in this Agreement shall be deemed to include Combination Products.

“**Commitment**” means, with respect to each Lender, the obligation of such Lender to make Loans to the Borrower on each Applicable Funding Date in accordance with the terms and conditions of this Agreement, which commitment is in the amount set forth opposite such Lender’s name on **Schedule 1** under the caption “Applicable Commitment”, as such Schedule may be amended from time to time pursuant to an Assignment and Assumption or otherwise (such amount as to any Lender, its “**Applicable Commitment**”). The aggregate amount of Commitments on the Closing Date equals \$150,000,000.

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

“**Conforming Changes**” means, with respect to the use, administration of or any conventions associated with Term SOFR or any proposed Successor Rate, as applicable, any conforming changes to the definitions of “Term SOFR” and “Interest Period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of “Business Day” and “U.S. Government Securities Business Day”, timing of borrowing requests or prepayment and length of lookback periods) as may be appropriate, in the reasonable discretion of the Administrative Agent (in consultation with the Borrower), to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent determines (in consultation with the Borrower) is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“**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.

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

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

“**Controlled Account**” has the meaning set forth in **Section 8.17(a)**.

“**Copyright**” means published and unpublished works of authorship whether or not copyrightable, including software, website and mobile content, data, databases, and other compilations of information, in each case, whether or not registered, any and all copyrights in and to together with all neighboring and related rights, common law rights and moral rights relating thereto, and all copyrights, copyright registrations and applications for copyright registrations, including all renewals, extensions, restorations, derivative works and reversions thereof and all common law rights, moral rights and other rights whatsoever accruing thereunder or pertaining thereto throughout the world.

“**Cure Expiration Date**” has the meaning set forth in **Section 11.04(a)**.

“**Daily Simple SOFR**” means, with respect to any applicable determination date, a rate *per annum* equal to SOFR, as published by the Federal Reserve Bank on the Federal Reserve Bank of New York’s website (or any successor source) on the U.S. Government Securities Business Day immediately preceding such date. If such rate has not been published by 11:00 a.m. New York City time on such next succeeding U.S. Government Securities Business Day, then Daily Simple SOFR for such determination date shall be the SOFR published for the last preceding U.S. Government Securities Business Day.

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

“**Defaulting Lender**” means, subject to **Section 2.06(b)**, any Lender, as determined by the Administrative Agent, that (a) has failed to perform any of its funding obligations hereunder, including with respect to any Commitments of such Lender, within three (3) Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations hereunder, or (c) has (i) become the subject of an Insolvency Proceeding, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (iv) become the subject of a Bail-In Action; provided, that, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interests in that Lender or any direct or indirect parent company thereof by a Governmental Authority. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of **clauses (a) through (c)** above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 2.06(b)**) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each Lender promptly following such determination.

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

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

“**Designated Jurisdiction**” means, at any time, any country, region or territory to the extent that such country, region or territory is the subject or target of any comprehensive Sanctions (which, at the time of this Agreement, includes the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, the Crimea Region of Ukraine, Cuba, Iran and North Korea).

“**Disqualified Equity Interests**” means, with respect to any Person, any Equity Interest of such Person that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (in each case, other than solely for (a) Qualified Equity Interests and (b) customary cash in lieu of fractional shares), including pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for (a) Qualified Equity Interests and (b) cash in lieu of fractional shares), in whole or in part, (iii) provides for the scheduled payments of dividends or other distributions in cash (other than the payment of cash in lieu of fractional shares) or other securities that would constitute Disqualified Equity Interests, or (iv) is or becomes convertible into or exchangeable (unless at the sole option of the issuer thereof) for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date; provided, that, any Disqualified Equity Interests that would not constitute Disqualified Equity Interests but for provisions thereof giving holders of such Equity Interests (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem or repurchase such Equity Interests upon the occurrence of a change in control (including for this purpose an asset sale that would require prepayment in full of the Obligations) occurring prior to the 91st day after the Maturity Date shall not constitute Disqualified Equity Interests if such right to redemption or repurchase is subject, to the satisfaction of the Administrative Agent in its reasonable discretion, to the prior payment in full in cash of all Obligations under the Loan Documents (other than contingent indemnification obligations and expense reimbursement obligations for which no claim has been asserted); provided, further, that, if such Equity Interests are issued pursuant to a customary employee benefits or equity incentive plan for the benefit of employees of the Borrower or any Subsidiary or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because (x) such employee may deliver such Equity Interests to the Borrower and its Subsidiaries (or the Borrower or such Subsidiary withholds such Equity Interests) in satisfaction of any exercise price or tax withholding obligations with respect to such Equity Interests, or (y) they may be required to be repurchased by the Borrower or its Subsidiaries as a result of any such employee’s termination, death or disability.

**“Disqualified Lender”** means (a) those Persons listed on Schedule 1(a) to this Agreement, (b) any competitor of Borrower or any of its Subsidiaries primarily operating in the same line of business as Borrower or any of its Subsidiaries or (c) with respect to any Persons covered in clauses (a) or (b) above, such Person’s Affiliates (other than, with respect to clause (b) above, any Person that is a bona fide debt fund primarily engaged in the making, purchasing, holding or other investing in commercial loans, notes, bonds or similar extensions of credit or securities in the Ordinary Course) that are either clearly identifiable as an Affiliate of any such competitor on the basis of such Person’s name or identified by name in writing by the Borrower to the Administrative Agent from time to time. Notwithstanding anything to the contrary contained in this Agreement, (x) the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders, (y) the Borrower, the Guarantors and the Lenders acknowledge and agree that the Administrative Agent shall have no responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Lender and that the Administrative Agent shall have no liability with respect to any assignment or participation made to a Disqualified Lender and (z) neither clause (b) or (c) above shall apply retroactively to any Person that previously acquired an assignment or participation interest hereunder to the extent such Person was not a Disqualified Lender at the time of the applicable assignment or participation, as the case may be.

**“Distributor”** means a Third Party that (a) purchases or has the option to purchase the Product in finished form from or at the direction of the Borrower or any of its Affiliates, (b) has the right, option or obligation to distribute, market and sell the Product (with or without packaging rights) in one or more regions, (c) does not obtain a license or other rights to any Patent Rights, and (d) does not otherwise make any royalty, milestone, profit share or other similar payment to the Borrower or its Affiliate based on such Third Party’s sale of the Product. The term “packaging rights” in this definition will mean the right for the Distributor to package or have packaged Products supplied in unpackaged bulk form into individual ready-for-sale packs.

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

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

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

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

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

**“Eligible Transferee”** means and includes (i) any commercial bank, (ii) any insurance company, (iii) any finance company, (iv) any financial institution, (v) any Person that is a bona fide debt fund primarily engaged in the making, purchasing, holding or other investing in commercial loans, notes, bonds or similar extensions of credit or securities in the Ordinary Course, (vi) with respect to any Lender, any of its Affiliates or such Lender’s or Affiliate’s managed funds or accounts, or any other Lender, and (vii) any other “accredited investor” (as defined in Regulation D of the Securities Act) that is principally in the business of managing investments or holding assets for investment purposes; provided, that no Defaulting Lender or Disqualified Lender shall be an Eligible Transferee (unless, with respect to a Disqualified Lender, an Event of Default under **Section 11.01(a), (b)** or **(h)** has occurred and is continuing); provided, that the foregoing shall not apply retroactively to any Person that previously acquired an assignment or participation interest hereunder to the extent such Person was not a Defaulting Lender or Disqualified Lender at the time of the applicable assignment or participation, as the case may be.

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

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

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

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

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

**“ERISA Affiliate”** means any Person that for purposes of Title I or Title IV of ERISA or Section 412 of the Code would be deemed at any relevant time to be under common control, or treated as a single employer, with any Obligor or Subsidiary thereof, under Section 414(b), (c), (m) or (o) of the Code.

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

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

“**Erroneous Payment**” has the meaning set forth in **Section 12.13(a)**.

“**Erroneous Payment Deficiency Assignment**” has the meaning set forth in **Section 12.13(d)**.

“**Erroneous Payment Impacted Loans**” has the meaning set forth in **Section 12.13(d)**.

“**Erroneous Payment Return Deficiency**” has the meaning set forth in **Section 12.13(d)**.

“**Erroneous Payment Subrogation Rights**” has the meaning set forth in **Section 12.13(d)**.

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

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

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

“**Excluded Accounts**” means (i) deposit accounts exclusively used for payroll, payroll Taxes and other employee wage and benefit payments to or for the benefit of any Obligor’s employees; provided, that with respect to payroll accounts, the amounts in such accounts shall not exceed the amount necessary for the applicable Obligor to fully-fund its next two complete payroll cycles in the Ordinary Course and such minimum account as may be required by any applicable Law or as customary by the applicable financial institution with respect to such account, (ii) zero balance accounts that are swept no less frequently than weekly to a Controlled Account (including any such account where payments pursuant to Medicaid, Medicare, TRICARE or other state or federal healthcare payor programs are deposited), (iii) accounts (including trust accounts) used exclusively for bona fide escrow purposes, insurance or fiduciary purposes and (iv) any other deposit accounts or securities accounts only for so long as the amounts therein do not exceed \$[\*\*\*] in the aggregate.

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

“**Existing Credit Facility**” means the Indebtedness incurred under that certain Indenture, dated as of November 1, 2023, by and between the Borrower and U.S. Bank Trust Company, National Association, as Trustee and as Collateral Agent.

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

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

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

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

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

“**FDA Approval**” means approval by the FDA with respect to NDA #219870 for Anaphylm, in the Territory for the Approved Indication with a final product label (i) reasonably acceptable to the Lenders and (ii) that does not contain any contraindications or limitations that are in excess in any material respect of any similar contraindications or limitations applicable to similar FDA approved prescribed injectable, intranasal, or sublingual epinephrine for emergency treatment of type I allergic reactions (including anaphylaxis), including Neffy®.

“**Federal Funds Effective Rate**” means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided, that (a) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to three (3) major banks on such day on such transactions as determined by the Administrative Agent; provided, further, that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“**Fee Letters**” means (i) the Upfront Fee Letter, dated the date of this Agreement, among the Borrower, the Lenders and the Administrative Agent and (ii) the Agency Fee Letter, dated the date of this Agreement, among the Borrower and the Administrative Agent.

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

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

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination. All references to “GAAP” shall be to GAAP applied consistently with the principles used in the preparation of the financial statements delivered pursuant to **Section 6.01(e)**.

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

“**Governmental Authority**” means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any state, territory, county, city or other political subdivision of any country, in each case whether U.S. or non-U.S.

“**Guarantee**” of or by any Person (the “**guarantor**”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation (the “**primary obligations**”) of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such primary obligations or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such primary obligations of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such primary obligations or (iv) as an account party in respect of any letter of credit or letter of guaranty (including any bank guarantee) issued to support such primary obligations; provided, that the term Guarantee shall not include endorsements for collection or deposit or guarantees of any straight-line or operating lease (including any lease that would not have been a capital lease under GAAP prior to giving effect to Accounting Standards Codification 842, Leases).

“**Guarantee Assumption Agreement**” means a Guarantee Assumption Agreement substantially in the form of **Exhibit C** by an entity that, pursuant to **Section 8.11(a)**, is required to become a “Guarantor.”

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

“**Guarantor**” has the meaning set forth in the Preamble hereto.

“**Guarantor Payment**” has the meaning set forth in **Section 13.10(a)**.

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

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

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

“**Healthcare Laws**” means, collectively, all Laws regulating the distribution, dispensing, importation, exportation, quality, manufacturing, labeling, commercialization, promotion and provision of and payment for drugs, medical devices, medical or healthcare products, items and services, including the Health Insurance Portability and Accountability Act of 1996, as amended (“**HIPAA**”); 42 U.S.C. § 1320a-7b (Criminal Penalties Involving Medicare or State Health Care Programs); 42 U.S.C. § 1320a-7h (the Physician Payment Sunshine Act); 31 U.S.C. §§ 3729 et seq. (the civil False Claims Act); 21 U.S.C. §§ 801 et. seq (the federal Controlled Substances Act); the FD&C Act; all rules and regulations promulgated under or pursuant to any of the foregoing; and any non-U.S., state or local equivalents.

“**Hedging Agreement**” means any interest rate exchange agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

“**HIPAA**” has the meaning set forth in “Healthcare Laws”.

“**Improvements**” means any improvement, invention or discovery relating to the Product (other than with respect to a new composition of matter), including the formulation, or the method of manufacture of the Product.

“**IND**” means an investigational new drug application submitted to the FDA pursuant to 21 C.F.R. Part 312 for allowance to initiate human clinical trials in the United States, or any equivalent application submitted to a Regulatory Authority outside of the United States including all amendments that may be submitted with respect to the foregoing.

“**Indebtedness**” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid (excluding interest penalties for late payments under commercial contracts entered into in the Ordinary Course and, for the avoidance of doubt, which commercial contracts do not relate to obligations for borrowed money or purchase money indebtedness), (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (it being agreed that seller notes and earn out obligations are addressed in **clause (l)** of this definition), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) obligations under any Hedging Agreement, currency swaps, forwards, futures or derivatives transactions, (k) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (l) all obligations under any earn out and guaranteed minimum milestone and other payments of such Person under any license or other agreements appearing on such Person’s balance sheet in accordance with GAAP (but excluding any agreements under which such payments are based on sales or revenues (or a percentage thereof) under any such license or other agreement), (m) any Disqualified Equity Interests of such Person, and (n) all other obligations required to be classified as indebtedness of such Person under GAAP; provided that, notwithstanding the foregoing, Indebtedness shall not include (A) accrued expenses, deferred rent, deferred Taxes, deferred compensation or customary obligations under employment agreements (including obligations in respect of early retirement or termination obligations, deferred compensatory or employee or director equity plans, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage taxes), or (B) accounts payable incurred in the Ordinary Course not overdue by more than sixty (60) days or that are otherwise being contested in good faith. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

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

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

**“In-License”** means any license, settlement agreement or other agreement or arrangement between the Borrower or any of its Affiliates and any Third Party pursuant to which the Borrower or any of its Affiliates obtains a license or a covenant not to sue or similar grant of rights to any Patents or other intellectual property rights of such Third Party that is necessary for or used in the research, development, manufacture, use or commercialization of the Product.

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

**“Intellectual Property”** means all intellectual property or proprietary rights of any kind anywhere in the world, including any such rights in or to Patents, Trademarks, Copyrights, Trade Secrets, database rights and any Technical Information, in each case, whether U.S. or non-U.S, together with all rights to claim priority from such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

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

**“Interest Period”** means, for each Loan, (a) the period commencing on and including the Applicable Funding Date and ending on but excluding the immediately subsequent Payment Date and (b) subsequently, each period commencing on and excluding the last day of the previous Interest Period for such Loan and ending on but excluding the immediately subsequent Payment Date; provided however if such period shall end on a day that is not a Business Day, it shall be deemed to end on the next succeeding Business Day.

**“Interest Rate”** means, for any Interest Period, a rate per annum equal to the sum of (a) the Applicable Margin, plus (b) Three-Month Term SOFR for such Interest Period, as may be increased pursuant to **Section 3.02(b)**; provided that, the Interest Rate with respect to such portion of interest shall increase by 0.50% to the extent the Borrower elects to pay a portion of interest due and payable with respect to such Interest Period in-kind as permitted under **Section 3.02(d)**.

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

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

**“IRS”** means the U.S. Internal Revenue Service or any successor agency.

**“Landlord Consent”** means, with respect to locations in the United States, a Landlord Consent in a form reasonably acceptable to the Administrative Agent.

**“Law”** means, collectively, all applicable U.S. or non-U.S. federal, state, provincial, territorial, municipal or local statute, treaty, rule, guideline, guidance, regulation, ordinance, code or administrative or judicial precedent or authority, including any applicable interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case having the force of law.

**“Legal and IP Expenses”** has the meaning set forth in **Section 14.03(a)**.

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

**“Licensee”** means, with respect to the Product, a Third Party to whom the Borrower or any Affiliate of the Borrower has granted a license or sublicense to engage in Product Commercialization and Development Activities for the Product. For clarity, a Distributor shall not be deemed to be a “Licensee.”

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

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

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

“**Loans Schedule**” means **Schedule 1** attached hereto.

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

“**Majority Lenders**” means, at any time, Lenders having at such time in excess of fifty percent (50%) of the sum of (i) aggregate unused Commitments then in effect and (ii) the outstanding principal amount of the Loans at such time. The Commitments of any Defaulting Lender shall be disregarded in determining Majority Lenders at any time.

“**Management Rights Agreement**” means that certain Management Rights Agreement, dated as of the date hereof, by and among the Borrower, Oaktree Direct Lending Fund Unlevered Delaware Holdings Non-EURRC, L.P. and Oaktree Direct Lending Fund VCOC Delaware Holdings Non-EURRC, L.P. (collectively, the “**VCOC Investors**”), and each indirect parent entity of the VCOC Investors party thereto.

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

“**Market Capitalization**” means, for any given date of determination, an amount equal to (a) the average of the daily volume weighted average price of Borrower’s common stock as reported for each of the thirty (30) Trading Days preceding such date of determination multiplied by (b) the total number of issued and outstanding shares of Borrower’s common stock that are issued and outstanding on the date of the determination and listed on the main exchange of the NASDAQ (or, if the primary listing of such common stock is on the main exchange of the New York Stock Exchange, on such other exchange), subject to appropriate adjustment for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period.

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

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

“**Material Environmental Liability**” means any Environmental Liability that has had or would reasonably be expected to have a Material Adverse Effect.

“**Material Indebtedness**” means, at any time, any Indebtedness of any Obligor or Subsidiary thereof, the outstanding principal amount of which, individually or in the aggregate, exceeds \$[\*\*\*].

“**Material Intellectual Property**” means all Intellectual Property that is currently owned by (or purported to be owned by) or, licensed to (or purported to be licensed to) the Borrower or any of its Subsidiaries, or acquired, developed or obtained by, or otherwise licensed to the Borrower or any of its Subsidiaries after the date hereof that is, in each case, material to the Borrower or any of its Subsidiaries. “Material Intellectual Property” shall include all Intellectual Property that is material to, or specifically embodied in, covering or related to or directed toward, (i) the Product or (ii) Product Commercialization and Development Activities with respect to the Product.

“**Material License**” has the meaning set forth in **Section 8.02(g)**.

“**Material Real Property**” shall mean any real property owned in fee by the Borrower or any other Obligor (or owned by any person required to become an Obligor hereunder) (a) with a fair market value in excess of \$[\*\*\*] and (b) not located in an area determined by the U.S. Federal Emergency Management Agency (or any successor agency) to be located in a special flood hazard area.

“**Material Software**” has the meaning set forth in **Section 7.05(b)(G)**.

“**Maturity Date**” means May 12, 2031 or, if such date is not a Business Day, the immediately preceding Business Day.

“**Maximum Rate**” has the meaning set forth in **Section 14.17**.

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

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

“**Minimum Liquidity Amount**” means (a) prior to the funding of the Tranche B Term Loans, \$27,500,000 and (b) after the funding of the Tranche B Term Loans, \$15,000,000; provided that, upon the occurrence of the Specified Repayment, the Minimum Liquidity Amount shall be reduced by an amount equal to the amount of such Specified Repayment on a dollar-for-dollar basis.

“**Minimum Liquidity Covenant**” has the meaning set forth in **Section 10.01**.

“**Minimum Net Sales**” means, with respect to each fiscal quarter end where the covenant in **Section 10.02** is tested, the amount set forth opposite such date on **Schedule 10** under the caption “Minimum Net Sales”; provided, the Minimum Net Sales shall in no event exceed \$[\*\*\*].

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

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

“**Mortgage**” means each mortgage, deed of trust and similar agreement or instrument creating a Lien on Material Real Property made by any Obligor in favor of, or for the benefit of, the Administrative Agent for the benefit of the Secured Parties, in form and substance reasonably satisfactory to the Administrative Agent and the Borrower and containing such provisions as shall be advisable under the law of the jurisdiction in which such mortgage or deed of trust is to be recorded, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time.

“**Mortgage Deliverables**” has the meaning set forth in **Section 8.11(b)(iv)**.

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

“**NASDAQ**” means The Nasdaq Global Market.

“**NDA**” means a new drug application, submitted to the FDA pursuant to 21 U.S.C. § 355 seeking approval to market a new drug in the United States, or any equivalent application submitted to a Regulatory Authority outside of the United States, and all supplements or amendments thereto.

“**Net Cash Proceeds**” means, (i) with respect to any Casualty Event experienced or suffered by any Obligor or any of its Subsidiaries, the amount of cash proceeds (including any cash received upon the sale or other disposition of any non-cash consideration received by any Obligor as a result of such Casualty Event so long as such cash is received within three hundred sixty-five (365) days of the occurrence of such Casualty Event) received (directly or indirectly) from time to time by or on behalf of such Person in respect of such Casualty Event after deducting therefrom only (a) reasonable costs and expenses related thereto incurred by such Obligor or such Subsidiary in connection therewith, (b) Taxes (including transfer Taxes or net income Taxes) paid or reasonably expected to be payable within twelve months of such Casualty Event in connection therewith, (c) reasonable reserves established for liabilities estimated to be payable in respect of such Casualty Event and deposited into escrow with a third party escrow agent on customary terms or set aside in a Controlled Account and (d) any amounts required to be used to prepay Permitted Indebtedness pursuant to **Sections 9.01(j) and 9.01(l)** secured by the assets subject to such Casualty Event (other than (x) Indebtedness owing to the Administrative Agent or any Lender under this Agreement or the other Loan Documents and (y) Indebtedness assumed by the purchaser of such asset); (ii) with respect to any Asset Sale pursuant to **Section 9.09(g), (k) or (m)** or that is not permitted by **Section 9.09** (other than a Specified Permitted License or a Specified Permitted Transaction) by any Obligor or any of its Subsidiaries, the amount of cash proceeds (including any cash received upon the sale or other disposition of any non-cash consideration received by any Obligor as a result of such Asset Sale so long as such cash is received within three hundred sixty-five (365) days of the occurrence of such Asset Sale) received (directly or indirectly) from time to time by or on behalf of such Person in respect of such Asset Sale after deducting therefrom only (a) reasonable costs and expenses related thereto incurred by such Obligor or such Subsidiary in connection therewith, (b) Taxes (including transfer Taxes or net income Taxes) paid or reasonably expected to be payable within twelve months of such Asset Sale in connection therewith, (c) reasonable reserves established for liabilities estimated to be payable in respect of such Asset Sale and deposited into escrow with a third party escrow agent on customary terms or set aside in a Controlled Account and (d) any amounts required to be used to prepay Permitted Indebtedness pursuant to **Sections 9.01(j) and 9.01(l)** secured by the assets subject to such Asset Sale (other than (x) Indebtedness owing to the Administrative Agent or any Lender under this Agreement or the other Loan Documents and (y) Indebtedness assumed by the purchaser of such asset) and (iii) with respect to any Specified Permitted License or Specified Permitted Transaction by any Obligor or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) from time to time by or on behalf of such Person in respect of such Specified Permitted License or Specified Permitted Transaction, as applicable, after deducting therefrom only (a) reasonable costs and expenses related thereto incurred by such Obligor or such Subsidiary in connection therewith, (b) Taxes (including transfer Taxes or net income Taxes) paid or reasonably expected to be payable within twelve months of such Specified Permitted License or Specified Permitted Transaction, as applicable, in connection therewith, (c) reasonable reserves established for liabilities estimated to be payable in respect of such Specified Permitted License or Specified Permitted Transaction, as applicable, and deposited into escrow with a third party escrow agent on customary terms or set aside in a Controlled Account and (d) any amounts required to be used to prepay Permitted Indebtedness pursuant to **Sections 9.01(j) and 9.01(l)** secured by the assets subject to such Specified Permitted License or Specified Permitted Transaction, as applicable (other than (x) Indebtedness owing to the Administrative Agent or any Lender under this Agreement or the other Loan Documents and (y) Indebtedness assumed by the purchaser of such asset); provided that, in each case of **clauses (i), (ii) and (iii)**, costs and expenses shall only be deducted to the extent, that the amounts so deducted are (x) actually paid or payable to a Person that is not an Affiliate of any Obligor or any of its Subsidiaries and (y) properly attributable to such Casualty Event, Asset Sale, Specified Permitted License or Specified Permitted Transaction, as the case may be.

“**Net Sales**” means, with respect to the Product, the gross amount invoiced, billed or otherwise recorded for sales of the Product in the Territory by or on behalf of the Borrower, its Affiliates, or any Licensee of the Borrower or any of the Borrower’s Affiliates (each of the foregoing Persons, for purposes of this definition, shall be considered a “Affiliated Party”) to a Third Party in an arm’s length transaction (“Gross Sales”) less the following amounts, to the extent actually paid, incurred, allowed or accrued in accordance with GAAP consistently applied, and not reimbursed by such Third Party, provided that any given amount may be taken as a permitted deduction only once:

- (a) normal and customary rebates, chargebacks, quantity, trade and similar discounts, credits and allowances and other price reductions reasonably granted, allowed, incurred or paid in so far as they are applied to sales of the Product;
- (b) discounts (including cash, quantity, trade, governmental, and similar discounts), coupons, retroactive price reductions, charge back payments and rebates granted to wholesalers, Distributors, pharmacies and other retailers, managed care organizations, group purchasing organizations or other buying groups, pharmacy benefit management companies, health maintenance organizations, or to federal, state, provincial, local and other governments, or to their agencies, and any other providers of health insurance coverage, health care organizations or other health care institutions (including hospitals), health care administrators or patient assistance or other similar programs (including payments made under the new “Medicare Part D Coverage Gap Discount Program” and the “Annual Fee for Branded Pharmaceutical Manufacturers” specific to the Product), in each case, as applied to sales of the Product;
- (c) credits, adjustments, and allowances, including those granted on account of price adjustments, billing errors, and damage, Product otherwise not in saleable condition, and rejection, return or recall of the Product;
- (d) reasonable and customary freight and insurance costs incurred with respect to the shipment of the Product to customers, in each case if charged separately and invoiced to the customer;
- (e) sales, use, value-added, excise, turnover, inventory and other similar Taxes (excluding income or franchise Taxes of any kind), and that portion of annual fees due under Section 9008 of the United States Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-48) and any other fee imposed by any equivalent applicable law, in each of the foregoing cases, that Borrower allocates to sales of the Product in accordance with Borrower’s standard policies and procedures consistently applied across its products, as adjusted for rebates and refunds, imposed in connection with the sales of the Product to any Third Party, to the extent such Taxes are not paid by the Third Party;
- (f) actual copayment waiver amounts uncollected or uncollectible debt amounts with respect to sales of the Product, provided that if the debt is thereafter paid, the corresponding amount shall be added to the Net Sales of the period during which it is paid;
- (g) reasonable, customary and documented out of pocket amounts directly relating to co-pay programs, bridging programs or other similar patient assistance programs which may be implemented from time to time by the Borrower; and
- (h) amounts previously included in Net Sales of the applicable Product that are adjusted or written-off by an Affiliated Party as uncollectible in accordance with the standard practices of such Affiliated Party for writing off uncollectible amounts consistently applied; provided, that if any such written-off amounts are subsequently collected, then such collected amounts will be included in Net Sales in the period in which they are subsequently collected.

For clarity, "Net Sales" will not include (i) sales or dispositions for charitable, promotional, pre-clinical, clinical, regulatory, compassionate use, named patient use or indigent or other similar programs, reasonable quantities of Product used as samples, and Product used in the development of the Product, (ii) sales or dispositions between any of the Affiliated Parties (unless an Affiliated Party is the final end-user of the Product), but will include subsequent sales or dispositions of Product to a non-Affiliated Party, or (iii) payment obligations under any In-Licenses.

Net Sales for any Combination Product shall be calculated by multiplying actual Net Sales of such Combination Product by the fraction  $A/(A+B)$  where "A" is the weighted average invoice price of the Product contained in such Combination Product when sold separately during the applicable accounting period in which the sales of the Combination Product were made, and "B" is the combined weighted average invoice prices of all of the Other Components contained in such Combination Product sold separately during such same accounting period. If A or B cannot be determined because invoice prices for the Product or the Other Component(s) are not available separately, the Borrower and the Administrative Agent shall determine Net Sales for the Product by mutual agreement based on the relative contribution of the Product and each such Other Component in such Combination Product in accordance with the above formula.

"**Net Sales Cure Payment**" means, with respect to any fiscal quarter of the Borrower to which the Minimum Net Sales Covenant applies, the amount, if positive, by which Net Sales for the four consecutive fiscal quarter period of the Borrower ending on the last day of such fiscal quarter is less than the Minimum Net Sales for such period; provided that the Net Sales Cure Payment shall in no event be less than \$[\*\*\*].

"**Non-U.S. Plan**" shall mean any plan, fund (including, without limitation, any superannuation fund) or other similar program established, contributed to (regardless of whether through direct contributions or through employee withholding) or maintained outside the United States by any Obligor or one or more Subsidiaries of any Obligor primarily for the benefit of employees of any such Obligor or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

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

"**Notice of Intent to Cure Net Sales Covenant**" has the meaning set forth in **Section 11.04(b)**.

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

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

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

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

“**Option Right**” has the meaning set forth in the definition of “Change of Control.”

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

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

“**Other Component**” has the meaning set forth in the definition of “Combination Products”.

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

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.04(b)).

“**Out-License**” means each license or other agreement between the Borrower or any of its Affiliates and any Third Party (other than Distributors) pursuant to which the Borrower or any of its Affiliates grants a license, sublicense, or other rights to practice any Patents or other intellectual property rights to research, develop, manufacture, use, or engage in Product Commercialization and Development Activities with respect to the Product.

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

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

“**Patents**” means (i) all domestic, national, regional and foreign patents, Patent Rights, patent applications, provisional applications, patent disclosures and Invention disclosures issued or filed, (ii) any domestic, national, regional or foreign patent applications filed from such patents, patent rights, patent applications, provisional applications, patent disclosures and Invention disclosures claiming priority to any of these, including renewals, divisionals, continuations, continuations-in-part, substitutions, provisionals, converted provisionals, and continued prosecution applications, (iii) any domestic, national, regional or foreign patents that have issued or in the future issue from the foregoing described in **clauses (i) and (ii)**, including utility models, petty patents, design patents and all other rights in designs and certificates of invention; and (iv) all extensions or restorations by existing or future extension or restoration mechanisms, including revalidations, reissues, re-examinations, revisions, and term extensions (including any supplementary protection certificates and the like) of the foregoing patents or patent applications described in **clauses (i), (ii) and (iii)**, including the Inventions claimed in any of the foregoing and any priority rights arising therefrom.

“**Patent Rights**” means any and all Patents, as well as any Patents covering any Improvements, owned or In-Licensed by the Borrower or any of its Affiliates or under which the Borrower or any of its Affiliates is or may become empowered to grant licenses necessary for or used in the research, development, manufacture, use, or commercialization of the Product, including the Patents listed on Schedule 2 to the Security Agreement.

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

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

“**Payment Recipient**” has the meaning set forth in **Section 12.13(a)**.

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

“**Perfection Certificate**” means the Collateral, Perfection and Information Certificate delivered pursuant to **Section 6.01(d)**.

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

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

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

(c) subject to **clause (j)** below, in the case of any Acquisition of Equity Interests of another Person, after giving effect to such Acquisition, all Equity Interests of such other Person acquired by the Borrower or any of its Subsidiaries shall be owned, directly or indirectly, beneficially and of record, by the Borrower or any of its Subsidiaries, and, the Borrower shall cause such acquired Person to satisfy each of the actions set forth in **Section 8.11** as and when required by such Section and **clause (j)** below;

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

(e) if such Acquisition is structured as the acquisition or In-Licensing of the right to use, make, have made, import, export, develop, sell or offer for sale, any product, product line or Intellectual Property of or from any other Person, such product, product line or Intellectual Property shall be acquired or In-Licensed by an Obligor, shall be free and clear of Liens other than Permitted Liens and all other actions shall have been taken that are necessary or reasonably requested by the Administrative Agent to provide and perfect a first priority Lien to the Administrative Agent for the benefit of the Secured Parties in such Intellectual Property or Intellectual Property directed to such product or product line (in each case, subject to Permitted Liens);

(f) to the extent that all or any portion of the purchase price (including reasonable estimates of any Deferred Acquisition Consideration other than any Deferred Acquisition Consideration consisting of customary royalty payments (and not payments based on passage of time or regulatory approval, in each case, without a corresponding performance-based metric) that are calculated on the basis of future revenues pursuant to an agreement entered into as an Arm’s Length Transaction) for any such Acquisition is paid in cash, the amount thereof does not exceed (i) \$[\*\*\*] in the aggregate with all other Permitted Acquisitions during the term of this Agreement plus (ii) the proceeds of any sale of equity interests of the Borrower or any contribution to the equity of the Borrower to the extent such proceeds are not otherwise applied to fund or finance any other acquisition, Investment, Restricted Payment, or other expenditure or transaction;

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

(h) in the case of any such Acquisition that has a purchase price (including reasonable estimates of any Deferred Acquisition Consideration other than any Deferred Acquisition Consideration consisting of customary royalty payments (and not payments based on passage of time or regulatory approval) that are calculated on the basis of future revenues pursuant to an agreement entered into as an Arm's Length Transaction) in excess of \$[\*\*\*], (i) the Borrower shall provide to the Administrative Agent (A) at least ten (10) Business Day's prior written notice of any such Acquisition, together with summaries, prepared in reasonable detail, of all due diligence conducted by or on behalf of the Borrower or the applicable Subsidiary, as applicable, prior to such Acquisition, in each case subject to customary confidentiality restrictions, (B) subject to customary confidentiality restrictions, a copy of the draft purchase agreement, license agreement or other proposed transaction agreement related to the proposed Acquisition (and any related documents reasonably requested by the Administrative Agent), (C) pro forma financial statements of the Borrower and its Subsidiaries (as of the last day of the most recently ended fiscal quarter prior to the date of consummation of such Acquisition for which financial statements are required to be delivered pursuant to **Sections 8.01(a) or (b)**) after giving effect to such Acquisition and, subject to customary confidentiality restrictions, all copies of any quality of earnings or other third-party reports, and (D) subject to customary confidentiality restrictions, any other information reasonably requested (to the extent available), by the Administrative Agent and available to the Obligors and (ii) the Majority Lenders shall have consented in writing to such Acquisition (such consent not to be unreasonably withheld, conditioned or delayed);

(i) no Obligor or any of its Subsidiaries (including any acquired Person) shall, in connection with any such Acquisition, assume or remain liable with respect to (x) any Indebtedness of the related seller or the business, Person or assets acquired, except to the extent permitted pursuant to **Section 9.01(l)**, (y) any Lien on any business, Person or assets acquired, except to the extent permitted pursuant to **Section 9.02**, and (z) any other liabilities that are not Indebtedness (including Tax, ERISA and environmental liabilities), except to the extent the assumption of such liabilities would not reasonably be expected to result in a Material Adverse Effect; provided that if such assumed liabilities exceed \$[\*\*\*] in the aggregate, the Majority Lenders shall have consented in writing to such acquisition in its sole discretion. Any other such Indebtedness, liabilities or Liens not permitted to be assumed, continued or otherwise supported by any Obligor or Subsidiary thereof hereunder shall be paid in full or released within thirty (30) days after the acquisition date (or such longer period of time as agreed by the Administrative Agent in its sole discretion) as to the business, Persons or properties being so acquired on or before the consummation of such Acquisition; and

(j) such Acquisition shall be of assets or entities located in the United States (or in Canada, the United Kingdom, Germany, the Netherlands or any other jurisdiction consented to by the Administrative Agent (as determined in its sole discretion) so long as all material assets and/or the entities that are the subject of such Acquisition are contributed or otherwise transferred to an Obligor and become Collateral subject to a perfected security interest in favor of the Administrative Agent within sixty (60) days of the consummation of such Acquisition on terms and pursuant to documentation reasonably satisfactory to the Administrative Agent.

“**Permitted Bracebridge Royalty Purchase Agreement**” means that certain Royalty Right Agreement, dated as of November 1, 2023, between the Borrower, as seller, and the purchasers named therein.

“**Permitted Cash Equivalent Investments**” means (i) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any state thereof having maturities of not more than one (1) year from the date of acquisition, (ii) commercial paper maturing no more than two hundred seventy (270) days after the date of acquisition thereof and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., (iii) certificates of deposit maturing no more than one (1) year after issue that are issued by any bank organized under the Laws of the United States, or any state thereof, the District of Columbia or any non-U.S. jurisdiction, or any U.S. branch of a foreign bank having, at the date of acquisition thereof, combined capital and surplus of not less than \$500,000,000, (iv) any money market or similar funds that exclusively hold any of the foregoing and (v) any other Investments permitted by the Obligors’ investment policy as in effect on the Closing Date, and as amended from time to time with the prior written consent of the Agent.

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

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

“**Permitted Licenses**” means (i) each license agreement existing on the Closing Date and set forth on **Schedule 2**, (ii) Specified Permitted Licenses, (iii) licenses of off-the-shelf software that is commercially available to the public, and (iv) intercompany licenses or grants of rights for development, manufacture, production, commercialization (including commercial sales to end users), marketing, promotion, co-promotion, sales or distribution, which may be exclusive if each party to such license or grant is an Obligor at the time such license or grant is entered into; provided, that, with respect to each such license or grant described in this **clause (iv)**, (a) no Default or Event of Default has occurred and is continuing at the time such license or grant, or the agreement governing such license or grant is entered into and (b) such license or grant constitutes an Arm’s Length Transaction, the terms of which do not provide for a sale or assignment of Intellectual Property.

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

“**Permitted Priority Liens**” means (i) Liens permitted under **Sections 9.02(c), (d), (e), (f), (g), (h), (i), (j), (k), (p), (q), (r), (s)(ii), (t) and (u)** and (ii) Liens permitted under **Section 9.02(b)**; provided that such Liens are also of the type described in **clause (i)** of this definition.

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

**“Permitted RTW Buyer”** means 4010 Royalty Investments ICAV, an Umbrella Irish Collective Asset-Management Vehicle with Segregated Liability Between Sub-Funds, for and on Behalf of its Sub-Fund, 4010 Royalty Investments Fund 1 (or any successor thereto under the Permitted RTW Royalty Purchase Agreement solely to the extent that such successor becomes a party to the Permitted RTW Intercreditor Agreement).

**“Permitted RTW Indebtedness”** means (a) any Indebtedness incurred in connection with the Permitted RTW Royalty Purchase Agreement, including any Permitted Refinancing thereof and (b) any amounts that are due and payable (by demand or otherwise) pursuant to the Permitted RTW Royalty Purchase Agreement, including without limitation, Section 10.1 thereof; provided that (i) no Subsidiary that is not an Obligor shall guarantee, or otherwise be an obligor, in respect of such Indebtedness or amounts (unless such Subsidiary becomes an Obligor under this Agreement), and (ii) any Liens securing such Indebtedness or amounts shall be subject to the Permitted RTW Intercreditor Agreement.

**“Permitted RTW Intercreditor Agreement”** means the intercreditor agreement entered into on the Closing Date by and between the Administrative Agent and the Permitted RTW Buyer, in form and substance reasonably acceptable to the Administrative Agent and the Majority Lenders.

**“Permitted RTW Royalty Purchase Agreement”** means that certain Purchase and Sale Agreement, dated as of August 13, 2025, by and between the Borrower, as seller, and the Permitted RTW Buyer, as buyer, as may be amended from time to time to the extent permitted under the Permitted RTW Intercreditor Agreement.

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

**“Post-Closing Asset”** means any asset developed or acquired by any Obligor after the Closing Date (it being understood that Post-Closing Assets shall not include the Product) or any derivatives, analogs, by-products or offshoots thereof.

“**Plan**” means any employee pension benefit plan as defined in Section 3 of ERISA (other than a Multiemployer Plan), and in respect of which any Obligor or any Subsidiary of an Obligor has or may have an obligation to contribute (or is deemed under Section 4069 of ERISA to have maintained or contributed to or to have had an obligation to contribute to, or otherwise to have liability with respect to) such plan.

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

“**Pro Forma Basis**” or “**pro forma basis**” means, with respect to the calculation of any financial ratio, as of any date, that *pro forma* effect will be given to the Transactions, any Permitted Acquisition, any issuance, incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction and for which any such financial ratio is being calculated) and all sales, transfers and other dispositions or discontinuance of any subsidiary, line of business or division, in each case that have occurred during the four consecutive fiscal quarter period of the Borrower being used to calculate such financial ratio (the “**Reference Period**”), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at an entity that became a Subsidiary after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period.

“**Product**” means all current and future pharmaceutical products developed or to be developed by the Borrower or any of its Affiliates, for the treatment of type I allergic reactions, including anaphylaxis, containing or comprising individually and collectively (a) Anaphylm, (b) [\*\*\*], and (c) [\*\*\*].

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

“**Product Commercialization and Development Activities**” means, with respect to any Product, any combination of research, development, manufacture, import, use, sale, licensing, importation, exportation, shipping, storage, handling, design, labeling, marketing, promotion, supply, distribution, testing, packaging, purchasing or other commercialization activities, receipt of payment in respect of any of the foregoing (including in respect of licensing, royalty or similar payments), or any similar or other activities the purpose of which is to commercially exploit such Product.

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

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

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

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

“**Real Property Security Documents**” means any Mortgage Deliverables, Landlord Consents or Bailee Letters.

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

“**Reference Period**” has the meaning set forth in the definition of “Pro Forma Basis”.

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

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

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

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

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

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

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

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

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

“**Resolution Authority**” means an EEA Resolution Authority or, with respect to any U.K. Financial Institution, a U.K. Resolution Authority.

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

“**Restricted Payment**” means (i) any dividend or other distribution (whether in cash, Equity Interests or other property) with respect to, or on account of, any Equity Interests of any Obligor or any of its Subsidiaries, (ii) any payment (whether in cash, Equity Interests or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests of any Obligor or any of its Subsidiaries, or (iii) any option, warrant or other right to acquire any such Equity Interests of any Obligor or any of its Subsidiaries.

“**Restrictive Agreement**” means any Contract or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of any Obligor or any of its Subsidiaries to create, incur or permit to exist any Lien in favor of the Administrative Agent or the Lenders upon any of its properties or assets (other than (x) customary provisions in Contracts (including leases and In-Licenses of Intellectual Property) restricting the assignment thereof and (y) restrictions or conditions imposed by any Contract governing secured Permitted Indebtedness permitted under **Section 9.01(j)**), to the extent that such restrictions or conditions apply only to the property or assets securing such Indebtedness), or (ii) the ability of any Obligor or any of its Subsidiaries to make Restricted Payments with respect to any of their respective Equity Interests or to make or repay loans or advances to any other Obligor or any of its Subsidiaries or such other Obligor or to Guarantee Indebtedness of any other Obligor or any of its Subsidiaries thereof or such other Obligor.

“**Sanction**” means any international economic or financial sanction or trade embargo imposed, administered or enforced from time to time by the United States Government (including OFAC), the United Nations Security Council, the European Union or its Member States, the United Kingdom (including His Majesty’s Treasury) or other relevant sanctions authority where the Borrower is located or conducts business.

“**Sanctioned Person**” means, at any time, (i) any Person listed in any Sanctions-related list of designated Persons maintained by the United States Government (including OFAC), the United Nations Security Council, the European Union or its Member States, the government of the United Kingdom (including His Majesty’s Treasury) or other relevant sanctions authority with jurisdiction over the Obligors and their Subsidiaries, (ii) any Person organized, incorporated or resident in a Designated Jurisdiction or (iii) any Person fifty percent (50%) or more owned or controlled (as such terms are defined by the relevant Sanctions authority) by any such Person or Persons described in the foregoing **clause (i) or (ii)**.

“**Scheduled Unavailability Date**” has the meaning set forth in **Section 5.01(a)(ii)**.

“**SEC**” means the U.S. Securities and Exchange Commission and any successor agency thereto.

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

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

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

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

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

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

“**Specified Litigation**” has the meaning given to such term on **Schedule 9.01(g)**.

“**Specified Litigation Settlement Agreement**” means that certain [\*\*\*].

“**Specified Permitted Licenses**” means any Out-License granted for the use of Intellectual Property of any Obligor for development, manufacture, production, commercialization (including commercial sales to end users), marketing, promotion, co-promotion, sales or distribution of (A) on an exclusive or non-exclusive basis anywhere in the world, any asset owned or controlled by any Obligor on the Closing Date (including [\*\*\*] (including any derivatives, analogs, byproducts or offshoots thereof) and any asset in development on the Closing Date), in all cases other than Anaphylm, (B) on an exclusive or non-exclusive basis, to the extent the geographical scope of such license is outside of the Territory, (1) the Product and (2) any Post-Closing Asset, (C) on an exclusive or non-exclusive basis, to the extent the geographical scope of such license is inside of the Territory, any Post-Closing Asset for upfront cash consideration of less than or equal to (together with any Specified Permitted Transaction with respect to such Post-Closing Asset permitted pursuant to clause (C) of the definition of Specified Permitted Transaction) \$[\*\*\*], and (D) with the consent of the Majority Lenders (such consent not to be unreasonably withheld, conditioned or delayed), on an exclusive or non-exclusive basis, any other transaction not specified in the foregoing clause (A), (B) and (C), in respect of any Post-Closing Assets; provided, that, in each case (a) no Event of Default has occurred and is continuing at the time such license or grant, or the agreement governing such license or grant is entered into and (b) such license or grant constitutes an Arm’s Length Transaction, the terms of which do not provide for a sale or assignment of Intellectual Property.

“**Specified Permitted Transactions**” means any royalty monetization transactions, commercial arrangements, distribution arrangements, co-promotes and similar arrangements with respect to (A) on an exclusive or non-exclusive basis anywhere in the world, any asset owned or controlled by any Obligor on the Closing Date (including [\*\*\*] (including any derivatives, analogs, byproducts or offshoots thereof) and any asset in development on the Closing Date), in all cases other than Anaphylm, (B) on an exclusive or non-exclusive basis, to the extent the geographical scope of such transaction is outside of the Territory, (1) the Product and (2) any Post-Closing Asset, (C) on an exclusive or non-exclusive basis, to the extent the geographical scope of such transaction is inside of the Territory, any Post-Closing Asset for upfront cash consideration of less than or equal to (together with any Specified Permitted License with respect to such Post-Closing Asset permitted pursuant to clause (C) of the definition of Specified Permitted License) \$[\*\*\*], and (D) with the consent of the Majority Lenders (such consent not to be unreasonably withheld, conditioned or delayed), on an exclusive or non-exclusive basis, any other transaction not specified in the foregoing clause (A), (B) and (C) in respect of any Post-Closing Assets.

“**Specified Repayment**” has the meaning given to such term in **Section 3.03(b)(v)**.

“**Subsidiary**” means, with respect to any Person (the “**parent**”) at any date, any corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, directly or indirectly. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Subsidiary Guarantors**” means each Subsidiary of the Borrower identified on the signature pages hereto and each Subsidiary of the Borrower that becomes, or is required to become, a “Subsidiary Guarantor” after the date hereof pursuant to **Section 8.11(a)** or **8.11(b)**.

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

“**Technical Information**” means all Product Related Information and, with respect to any Products or Product Commercialization and Development Activities, all related know-how, trade secrets and other proprietary or confidential information, any information of a scientific, technical, or business nature in any form or medium, Invention disclosures, all documented research, developmental, demonstration or engineering work, algorithms, concepts, data, databases, designs, discoveries, methods, processes, protocols, chemistries, compositions, show-how, specifications for Products, techniques, technology, and all improvements thereof and thereto, and all other technical data and information related thereto.

“**Term SOFR**” means for any Interest Period the rate per annum equal to the Term SOFR Screen Rate for a tenor equivalent to such Interest Period on the day that is two U.S. Government Securities Business Days prior to the commencement of such Interest Period; provided that if the rate is not published prior to 11:00 a.m. (New York City time) on such determination date then Term SOFR means the Term SOFR Screen Rate on the first preceding U.S. Government Securities Business Day for which such Term SOFR Screen Rate for such tenor was published by CME (or any successor administrator reasonably satisfactory to the Administrative Agent) so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such determination date.

“**Term SOFR Replacement Date**” has the meaning assigned to such term in **Section 5.05(a)(ii)(A)**.

“**Term SOFR Screen Rate**” means the forward-looking SOFR term rate administered by CME (or any successor administrator reasonably satisfactory to the Administrative Agent) and published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent in its reasonable discretion from time to time).

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

“**Territory**” means the United States of America, its fifty (50) states, the District of Columbia, Puerto Rico and any other jurisdiction within the United States of America.

“**Third Party**” means any Person that is not the Borrower or one of the Borrower’s Affiliates.

“**Three-Month Term SOFR**” means, with respect to any Interest Period, a rate per annum equal to the greater of (x) 2.75% per annum and (y) the Term SOFR for a three-month interest period.

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

“**Trade Secrets**” means all know-how, trade secrets and other proprietary or confidential information, any information of a scientific, technical, or business nature in any form or medium, Inventions and Invention disclosures, all documented research, developmental, demonstration or engineering work (including all novel manufacturing methods), and all other technical data, clinical data and information related thereto, including laboratory notebooks, chemical and biological materials (including any compounds, DNA, RNA, clones, vectors, cells and any expression product, progeny, derivatives or improvements thereto) and the results of experimentation and testing, including samples.

“**Trademarks**” means all trade names, trademarks and service marks, rights in get up, trade dress, corporate names, logos, Internet domain names, IP addresses, social media handles, uniform resource locators and other indicia of origin, trademark and service mark registrations, and applications for trademark and service mark registrations, whether or not registered, and any and all common law rights thereto, including (i) all renewals of trademark and service mark registrations and (ii) all rights whatsoever accruing thereunder or pertaining thereto throughout the world, together, in each case, with the goodwill of the business connected with the use thereof and symbolized thereby and rights to sue for passing off or unfair competition relating thereto.

“**Trading Day**” means a day on which the common stock of Borrower is traded on a Trading Market.

“**Trading Market**” means any market or exchange of (x) The Nasdaq Stock Market LLC, (y) the New York Stock Exchange or (z) any other market or exchange that is reasonably acceptable to the Administrative Agent.

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

“**Tranche A Warrant**” has the meaning given to such term in the definition of “Warrant Documents”.

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

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

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

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

“**U.K. Financial Institutions**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**U.K. Resolution Authority**” means the Bank of England or any other public administrative authority having responsibility for the resolution of any U.K. Financial Institution.

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

“**Unfunded Pension Liability**” of any Title IV Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Title IV Plan, determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

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

“**U.S. Government Securities Business Day**” means any day, except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

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

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

“**Waiver Condition**” has the meaning set forth in **Section 10.02(b)**.

“**Warrant Documents**” means (i) that certain Warrant Issuance Agreement, dated as of the date hereof, by and between the Borrower and the purchaser(s) party thereto (the “**Warrant Issuance Agreement**”), (ii) that certain Common Stock Purchase Warrant, dated as of the date hereof, by and between the Borrower and purchaser(s) party thereto (the “**Tranche A Warrant**”), (iii) each other Common Stock Purchase Warrant to be issued pursuant to the Warrant Issuance Agreement, and (iv) each other document contemplated by the Warrant Issuance Agreement.

“*Warrant Issuance Agreement*” has the meaning given to such term in the definition of “Warrant Documents”.

“*Warrants*” means the Common Stock Purchase Warrants to be issued pursuant to the Warrant Issuance Agreement on the terms and conditions set forth therein.

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

“*Write-Down and Conversion Powers*” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any U.K. Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

“*Yield Protection Premium*” means

(a) other than with respect to any repayment or prepayment of all or any portion of the Loans in connection with a Change of Control, with respect to any repayment or prepayment of all or any portion of the Loans or any requirement to repay or prepay any Loans, whether by optional or mandatory prepayment, acceleration or otherwise (in each case other than any scheduled payments pursuant to **Section 3.01(a)**), occurring:

(i) on or prior to the first anniversary of the Closing Date, an amount equal to (A) the amount of interest (calculated on a net present value basis using a discount rate equal to the Three-Month Treasury Rate as of the applicable date of such repayment or prepayment plus 0.50%) that would have been paid (in accordance with **Section 3.02(c)**) on the aggregate principal amount of the Loans being so repaid or prepaid if such principal amount had been outstanding from the date of such repayment or prepayment to but excluding the first anniversary of the Closing Date (in each case, calculated on the basis of the interest rate with respect to the Loans that is in effect on the date of such repayment or prepayment and on the basis of actual days elapsed over a year of three hundred sixty (360) days (assuming for purposes of such calculation that, on each Payment Date occurring after the date of such repayment or prepayment, no portion of the interest with respect to such Loans is capitalized)), plus (B) 5% of the aggregate outstanding principal amount of the Loans being so repaid or prepaid; provided, that, in the event of a Specified Repayment on or prior to the first anniversary of the Closing Date, the “Yield Protection Premium” with respect thereto shall be 50% of the amount calculated pursuant to this **clause (i)** for such period,

(ii) at any time after the first anniversary of the Closing Date but on or prior to the second anniversary of the Closing Date, an amount equal to 5% (or, solely with respect to any Specified Repayment, 2.50%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid,

(iii) at any time after the second anniversary of the Closing Date but on or prior to the third anniversary of the Closing Date, an amount equal to 2% (or, solely with respect to any Specified Repayment, 1.00%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid,

(iv) at any time after the third anniversary of the Closing Date but on or prior to the fourth anniversary of the Closing Date, an amount equal to 1% (or, solely with respect to any Specified Repayment, 0.50%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid; and

(v) at any time after the fourth anniversary of the Closing Date, 0%;

(b) with respect to any repayment or prepayment of all or any portion of the Loans in connection with a Change of Control, occurring:

(i) on or prior to the first anniversary of the Closing Date, an amount equal to 4% of the aggregate outstanding principal amount of the Loans being so repaid or prepaid; and

(ii) at any time after the first anniversary of the Closing Date but on or prior to the second anniversary of the Closing Date, an amount equal to 3% of the aggregate outstanding principal amount of the Loans being so repaid or prepaid;

(iii) at any time after the second anniversary of the Closing Date but on or prior to the third anniversary of the Closing Date, an amount equal to 2% of the aggregate outstanding principal amount of the Loans being so repaid or prepaid,

(iv) at any time after the third anniversary of the Closing Date but on or prior to the fourth anniversary of the Closing Date, an amount equal to 1% of the aggregate outstanding principal amount of the Loans being so repaid or prepaid; and

(v) at any time after the fourth anniversary of the Closing Date, 0%.

**1.02 Accounting Terms and Principles.** Unless otherwise specified, all accounting terms used in each Loan Document shall be interpreted, and all accounting determinations and computations thereunder (including under **Section 10** and any definitions used in such calculations) shall be made, in accordance with GAAP. Unless otherwise expressly provided, all financial covenants and defined financial terms shall be computed on a consolidated basis for the Borrower and its Subsidiaries, in each case without duplication. If the Borrower requests an amendment to any provision hereof to eliminate the effect of (a) any change in GAAP or the application thereof or (b) the issuance of any new accounting rule or guidance or in the application thereof, in each case, occurring after the date of this Agreement, then the Lenders and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such change or issuance with the intent of having the respective positions of the Lenders and Borrower after such change or issuance conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, (i) the provisions in this Agreement shall be calculated as if no such change or issuance has occurred and (ii) the Borrower shall provide to the Lenders a written reconciliation in form and substance reasonably satisfactory to the Lenders, between calculations of any baskets and other requirements hereunder before and after giving effect to such change or issuance. Notwithstanding anything to the contrary in this Agreement, all obligations of any Person that would have been treated as operating leases pursuant to GAAP prior to the effectiveness of Accounting Standards Codification 842 shall continue to be treated as operating leases for the purposes of the Loan Documents.

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

- (a) the terms defined in this Agreement include the plural as well as the singular and vice versa;
- (b) words importing gender include all genders;
- (c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement;

(d) any reference to “this Agreement” refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision;

(e) references to days, months and years refer to calendar days, months and years, respectively;

(f) all references herein to “include” or “including” shall be deemed to be followed by the words “without limitation”;

(g) the word “from” when used in connection with a period of time means “from and including” and the word “until” means “to but not including”;

(h) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer broadly to any and all assets and properties, whether tangible or intangible, real or personal, including cash, securities, rights under contractual obligations and permits and any right or interest in any such assets or property;

(i) accounting terms not specifically defined herein (other than “property” and “asset”) shall be construed in accordance with GAAP, subject to **Section 1.02**;

(j) the word “will” shall have the same meaning as the word “shall”;

(k) where any provision in this Agreement or any other Loan Document refers to an action to be taken by any Person, or an action which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or, to the knowledge of such Person, indirectly; and

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

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

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

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

## **SECTION 2. THE COMMITMENT AND THE LOANS**

### **2.01 Loans.**

(a) On the terms and subject to the conditions of this Agreement, each Lender agrees:

(i) to make Loans to the Borrower in a principal amount not to exceed the amount of such Lender's Commitment with respect to Tranche A Term Loans on the Closing Date ("**Tranche A Term Loans**");

(ii) to make Loans to the Borrower in a principal amount not to exceed the amount of such Lender's Commitment with respect to Tranche B Term Loans on the Applicable Funding Date for the Tranche B Term Loans ("**Tranche B Term Loans**");

(iii) to make Loans to the Borrower in a principal amount not to exceed the amount of such Lender's Commitment with respect to Tranche C Term Loans on the Applicable Funding Date for the Tranche C Term Loans ("*Tranche C Term Loans*"); and

(iv) to make Loans to the Borrower in a principal amount not to exceed the amount of such Lender's Commitment with respect to Tranche D Term Loans on the Applicable Funding Date for the Tranche D Term Loans ("*Tranche D Term Loans*").

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

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

## **2.02 Borrowing Procedures.**

(a) With respect to Tranche A Term Loans, at least five (5) Business Days prior to the Closing Date (or such shorter period agreed to by the Lenders as determined in their sole discretion), the Borrower shall deliver to the Administrative Agent an irrevocable Borrowing Notice in the form of **Exhibit A** signed by a duly authorized representative of the Borrower (which notice, if received by the Administrative Agent on a day that is not a Business Day or after 10:00 A.M. (Eastern time) on a Business Day, shall be deemed to have been delivered on the next Business Day). Notwithstanding the foregoing a Borrowing Notice may state that such notice is conditional upon the occurrence of some identifiable event or condition, in which case such Borrowing Notice may be revoked or delayed by the Borrower (by notice to the Administrative Agent on or prior to the specified date of borrowing) if such condition is not satisfied or is postponed to a date later than the expected borrowing date, as applicable.

(b) With respect to the Tranche B Term Loans, Tranche C Term Loans and Tranche D Term Loans, within five (5) Business Days after the satisfaction of the Applicable Funding Conditions (or such shorter period agreed to by the Lenders as determined in their sole discretion) for such Tranche B Term Loans, Tranche C Term Loans or Tranche D Term Loans, as applicable, the Borrower shall deliver to the Administrative Agent an irrevocable Borrowing Notice for the full amount of the applicable Commitments, and the Lenders shall fund such Tranche B Term Loans, Tranche C Term Loans or Tranche D Term Loans, as applicable, to the Borrower within five (5) Business Days after receipt thereof (or shorter period agreed by all of the Lenders).

(c) Each Borrowing Notice shall be for the full amount of the applicable Commitment. If the full amount of the applicable Commitment is not drawn on the Applicable Funding Date, the remaining amount of such undrawn Commitment shall terminate.

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

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

**2.05 Use of Proceeds.** The Borrower shall use the proceeds of the Loans (i) for repaying the Existing Credit Facility and (ii) for general corporate purposes, including, but not limited to, the payment of fees and expenses associated with this Agreement and the other Loan Documents.

**2.06 Defaulting Lenders.**

(a) **Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law,

(i) **Waivers and Amendment.** The Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in **Section 14.04**.

(ii) **Reallocation of Payments.** Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Section 11** or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to **Section 4.03**), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and sixth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that, if (x) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made at a time when the conditions set forth in **Section 6.02** were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of that Defaulting Lender. Any payments, prepayments, repayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this **Section 2.06(a)(ii)** shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(b) **Defaulting Lender Cure.** If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will cease to be a Defaulting Lender; provided, that, no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; provided, further, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(c) **Certain Fees.** No Defaulting Lender shall be entitled to receive any fee payable hereunder or pursuant to the Fee Letters for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fees that otherwise would have been required to have been paid to that Defaulting Lender).

### SECTION 3. PAYMENTS OF PRINCIPAL AND INTEREST, ETC.

#### 3.01 Scheduled Repayments and Prepayments Generally; Application.

(a) **Scheduled Repayments and Prepayments.** The Borrower hereby promises to pay in cash to the Administrative Agent for the account of each Lender (as such amounts may in each case be reduced from time to time in accordance with **Section 3.03**): on the Maturity Date, all outstanding Obligations in full, together with the Exit Fee, the accrued and unpaid interest and any other accrued and unpaid charges thereon and all other obligations due and payable by the Borrower under this Agreement (other than inchoate indemnification and expense reimbursement obligations for which no claim has been made).

(b) **Application of Payments.** Except as otherwise specifically provided in this Agreement, each payment pursuant to this **Section 3.01** (including each repayment and prepayment) by the Borrower (other than fees payable pursuant to the Fee Letters) will be deemed to be made ratably in accordance with the Lenders' Proportionate Shares and applied ratably among each tranche of the Loans. On any date occurring prior to the Maturity Date that payment or prepayment in full of the Loans hereunder occurs, the Borrower shall pay in full all outstanding Obligations, which shall include the Yield Protection Premium and Exit Fee, if applicable (but other than inchoate indemnification and expense reimbursement obligations for which no claim has been made).

#### 3.02 Interest.

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

(b) **Default Interest.** Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the Interest Rate shall increase (i) automatically, in the case of any Event of Default under Section 11.01(a), (b) or (h) and (ii) upon the request of the Majority Lenders, in the case of any other Event of Default, by two percent (2.0%) *per annum* (the Interest Rate, as increased pursuant to this **Section 3.02(b)**, being the “**Default Rate**”); provided, that, with respect to the preceding **clause (ii)**, the Majority Lenders may impose the Default Rate retroactively to the occurrence of such Event of Default. Any Default Rate interest shall be due and payable in cash on demand by the Administrative Agent or the Majority Lenders.

(c) **Interest Payment Dates.** Subject to **Section 3.02(d)**, Accrued interest on the Loans shall be payable in arrears on each Payment Date in cash, and upon the payment or prepayment of the Loans (on the principal amount being so paid or prepaid); provided that interest payable at the Default Rate shall also be payable in cash from time to time on demand by the Administrative Agent.

(d) **PIK Interest.** Notwithstanding **Section 3.02(c)**, so long as no Event of Default has occurred and is continuing, at any time prior to the second anniversary of the Closing Date, the Borrower may pay an amount of interest on the outstanding principal amount of Loans corresponding to up to 200 basis points of the Interest Rate then applicable pursuant to **Section 3.02(a)** in kind (in lieu of payment in cash for such portion, with the remainder to be paid in cash) on each applicable Payment Date, by irrevocable written election of the Borrower to the Administrative Agent, to be delivered at least five (5) Business Days (or such shorter period as the Administrative Agent may agree) prior to such Payment Date, which notice shall specify the amount of interest on the outstanding principal amount of Loans that the Borrower elected to pay in kind; provided that the Interest Rate for any such election shall be adjusted in accordance with the definition thereof. The aggregate outstanding principal amount of the Loan shall be automatically increased without the need for any action by any Person and capitalized on such Payment Date by the amount of such interest paid in kind in accordance with this **Section 3.02(d)**. For the avoidance of doubt, the portion of the interest payable pursuant to **Section 3.02(a)** not paid in kind shall be paid in cash. If any Event of Default has occurred and is continuing as of any such Payment Date, all interest accruing on the Loans shall be due and payable in cash in arrears on such Payment Date.

### **3.03 Prepayments.**

#### **(a) Optional Prepayments.**

(i) Subject to prior written notice pursuant to **Section 3.03(a)(ii)** below, the Borrower shall have the right to optionally prepay in whole or in part the outstanding principal amount of the Loans on any Business Day for an amount equal to the sum of (A) the aggregate principal amount of the Loans being prepaid, (B) any accrued but unpaid interest on the principal amount of the Loans being prepaid, (C) any applicable Yield Protection Premium or Exit Fee in each case with respect to the principal amount of the Loans being prepaid and (D) if applicable, other unpaid amounts then due and owing pursuant to this Agreement and the other Loan Documents (such aggregate amount, the “**Prepayment Price**”); provided that each partial prepayment of principal of Loans shall be in an aggregate amount at least equal to \$5,000,000 and integral multiples of \$1,000,000 in excess thereof (or, if less, the full remaining outstanding principal amount of the Loans).

(ii) A notice of optional prepayment shall be in writing (including by e-mail) and shall be effective only if received by the Administrative Agent not later than 2:00 p.m. (Eastern time) on a date not less than two (2) Business Days prior to the proposed prepayment date; provided that a notice of optional prepayment may state that such notice is conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness or the occurrence of some other identifiable event or condition, in which case such notice of prepayment may be revoked or delayed by the Borrower (by notice to the Administrative Agent on or prior to the specified date of prepayment) if such condition is not satisfied or is postponed later than the expected prepayment date, as applicable. Each notice of optional prepayment shall specify the proposed prepayment date, the Prepayment Price (or specifying that such prepayment will be in full) and any conditions to prepayment (if applicable).

(b) **Mandatory Prepayments.**

(i) **Mandatory Prepayments for Casualty Events or Asset Sales.** Unless otherwise waived by the Majority Lenders in their sole discretion, within five (5) Business Days after the receipt of Net Cash Proceeds from (x) the occurrence of any Casualty Event or Asset Sale pursuant to **Section 9.09(g), (k) or (m)** or that is not permitted by **Section 9.09** or (y) any Specified Permitted License or Specified Permitted Transaction, the Borrower shall make a mandatory prepayment of the Loans in an amount equal to the sum of (i) one hundred percent (100%) of (A) the Net Cash Proceeds received by the Borrower or any of its Subsidiaries with respect to such Asset Sale, (B) the Net Cash Proceeds received by the Borrower or any of its Subsidiaries with respect to the insurance proceeds or condemnation awards in respect of such Casualty Event or (C) the Net Cash Proceeds received by the Borrower or any of its Subsidiaries with respect to such Specified Permitted License or Specified Permitted Transaction, as the case may be, (ii) any accrued but unpaid interest on any principal amount of the Loans being paid and (iii) any applicable Yield Protection Premium or Exit Fee; provided that, so long as no Event of Default has occurred and is continuing or shall immediately result therefrom, if, within ten (10) Business Days following the occurrence of any such Casualty Event, Asset Sale, Specified Permitted License or Specified Permitted Transaction as a result of which the Borrower or any of its Subsidiaries receives Net Cash Proceeds, a Responsible Officer of the Borrower delivers to the Administrative Agent a notice (which may, for the avoidance of doubt, be by e-mail) to the effect that the Borrower or the applicable Subsidiary intends to apply (A) the Net Cash Proceeds from such Asset Sale, (B) the Net Cash Proceeds from such insurance proceeds or condemnation awards in respect of such Casualty Event or (C) the Net Cash Proceeds from such Specified Permitted License or Specified Permitted Transaction, as applicable, to reinvest in inventory, assets or activities that are used or useful in the business of the Borrower or any of its Subsidiaries (a "**Reinvestment**") (which, (x) in the case of any such Asset Sale, shall be in an aggregate amount of less than \$[\*\*\*] during the term of this Agreement, and (y) in the case of any such Casualty Event, shall be in an aggregate amount of less than \$[\*\*\*] in the aggregate during the term of this Agreement; provided, that, for the avoidance of doubt, the foregoing limitations on Reinvestment shall not apply to Net Cash Proceeds from Specified Permitted Licenses and Specified Permitted Transactions), then such (A) Net Cash Proceeds of such Asset Sale, (B) Net Cash Proceeds from insurance proceeds or condemnation awards in respect of such Casualty Event or (C) Net Cash Proceeds of such Specified Permitted License or Specified Permitted Transaction, as applicable, may be applied for such purpose in lieu of such mandatory prepayment to the extent such (A) Net Cash Proceeds of such Asset Sale, (B) Net Cash Proceeds from insurance proceeds or condemnation awards in respect of such Casualty Event or (C) Net Cash Proceeds of such Specified Permitted License or Specified Permitted Transaction, as applicable, are actually applied for such purpose; provided, further, that, if such Casualty Event, Asset Sale, Specified Permitted License or Specified Permitted Transaction occurs with respect to any Obligor, such Reinvestment shall be made in the business of an Obligor; provided, further, that, in the event that such Net Cash Proceeds have not been so applied within two hundred seventy (270) days (the "**Reinvestment Period**") following the occurrence of such Casualty Event, Asset Sale, Specified Permitted License or Specified Permitted Transaction, the Borrower shall no later than the end of such period make a mandatory prepayment of the Loans in an aggregate amount equal to the sum of (i) one hundred percent (100%) of the unused balance of (A) such Net Cash Proceeds received by any Obligor or any of its Subsidiaries with respect to such Asset Sale, (B) such Net Cash Proceeds received by any Obligor or any of its Subsidiaries from such insurance proceeds or condemnation awards in respect of such Casualty Event or (C) such Net Cash Proceeds received by any Obligor or any of its Subsidiaries with respect to such Specified Permitted License or Specified Permitted Transaction, (ii) any accrued but unpaid interest on any principal amount of the Loans being prepaid and (iii) any applicable Yield Protection Premium or Exit Fee. Notwithstanding the foregoing, for the avoidance of doubt, no mandatory prepayment shall be required pursuant to this **Section 3.03(b)(i)** as a result of any Permitted Licenses or Specified Permitted Transactions except with respect to any Specified Permitted License or Specified Permitted Transaction to the extent otherwise required above in this **Section 3.03(b)(i)** and (y) no Yield Protection Premium shall accrue or be payable in respect of any mandatory prepayment arising out of a Casualty Event.

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

(iii) **Mandatory Prepayment for Change of Control.** Upon the occurrence of any Change of Control, the Borrower shall prepay all of the Loans and Obligations, including any accrued but unpaid interest on the principal amount of the Loans being prepaid and any applicable Yield Protection Premium and Exit Fee.

(iv) **Mandatory Prepayment for Net Sales Cure Payment.** The amount of any Net Sales Cure Payment shall be applied to the prepayment of the Loans, including any accrued but unpaid interest on any principal amount of the Loans being prepaid and any applicable Yield Protection Premium and Exit Fee.

(v) **Mandatory Prepayment for Failure to Obtain FDA Approval.** If the FDA Approval has not been granted by the FDA to the Borrower by December 31, 2027, then the Borrower shall, upon demand by the Administrative Agent (as determined in its sole discretion), prepay the Loans in an aggregate amount of up to the Minimum Liquidity Amount, including any accrued but unpaid interest on any principal amount of the Loans being prepaid and any applicable Yield Protection Premium and Exit Fee, in the amounts so demanded by the Administrative Agent (such payment, the “*Specified Repayment*”).

(vi) **Notice.** The Borrower shall notify the Administrative Agent not later than 2:00 p.m. (Eastern time) on a date not less than two (2) Business Days prior to any mandatory prepayment. Each notice of mandatory prepayment shall specify the proposed prepayment date, the Prepayment Price (or specifying that such prepayment will be in full), and the subsection under which the prepayment is required; provided that, with respect to any mandatory prepayment pursuant to preceding **clause (iv)**, the applicable Notice of Intent to Cure Net Sales Covenant shall satisfy such notice requirement. Notwithstanding anything in this **Section 3.03** to the contrary, any Lender may elect, by written notice to the Administrative Agent no later than 2:00 p.m. (Eastern time), one (1) Business Day prior to the prepayment date (or such later time as the Administrative Agent may agree), to decline all or any portion of any mandatory prepayment of its Loans pursuant to this **Section 3.03**. Any Lender that fails to deliver such notice to the Administrative Agent in the time frame set forth above shall be deemed to have accepted its share of any mandatory prepayment. The aggregate amount of the prepayment that would have been applied to prepay Loans but was so declined may be retained by the Borrower and used for any general corporate purpose not prohibited by this Agreement.

(c) **[Reserved]**.

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

(e) **Payments.** All payments shall be accompanied by accrued but unpaid interest on the principal amount of the Loans being prepaid (subject to any interest paid in kind pursuant to **Section 3.02(d)**), and any applicable Yield Protection Premium and Exit Fee.

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

**3.05 Exit Fee.** Upon any repayment or prepayment of all or any portion of the Loans or any requirement to repay or prepay any Loans, whether by optional or mandatory prepayment, acceleration or otherwise, including any termination, cancellation, distribution under a plan pursuant to any Insolvency Proceeding on account of the outstanding principal of the Loans hereunder, whether voluntary or involuntary, prior to, on or after the Maturity Date or following the acceleration of the Obligations hereunder, the Borrower shall pay to each of the Lenders, for their own account, the following fees (the "**Exit Fee**"):

- (a) on or prior to the second anniversary of the Closing Date, a fee equal to 1.00% (or, solely with respect to (x) any Specified Repayment, 0.50% and (y) any Change of Control, 0%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid or accelerated or otherwise becoming due (including, for the avoidance of doubt, the principal amount of such Loans attributable to paid in kind interest);
- (b) at any time after the second anniversary of the Closing Date but on or prior to the third anniversary of the Closing Date, for its own account a fee equal to 1.50% (or, solely with respect to any Specified Repayment, 0.75%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid or accelerated or otherwise becoming due (including, for the avoidance of doubt, the principal amount of such Loans attributable to paid in kind interest);
- (c) to the extent that the Anaphylm Net Sales Trigger Date has not occurred, at any time after the third anniversary of the Closing Date, for its own account a fee equal to 2.00% (or, solely with respect to any Specified Repayment, 1.00%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid or accelerated or otherwise becoming due (including, for the avoidance of doubt, the principal amount of such Loans attributable to paid in kind interest); and
- (d) to the extent that the Anaphylm Net Sales Trigger Date has occurred:
- (i) at any time from and after the thirty-seventh (37<sup>th</sup>) month of the Closing Date to and including the forty-second (42<sup>nd</sup>) month after the Closing Date, for its own account a fee equal to 1.75% (or, solely with respect to any Specified Repayment, 0.875%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid or accelerated or otherwise becoming due (including, for the avoidance of doubt, the principal amount of such Loans attributable to paid in kind interest);
- (ii) at any time from and after the forty-third (43<sup>rd</sup>) month after the Closing Date to and including the forty-eighth (48<sup>th</sup>) month after the Closing Date, for its own account a fee equal to 1.50% (or, solely with respect to any Specified Repayment, 0.75%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid or accelerated or otherwise becoming due (including, for the avoidance of doubt, the principal amount of such Loans attributable to paid in kind interest);
- (iii) at any from and after the forty-eighth (49<sup>th</sup>) month after the Closing Date to and including the fifty-fourth (54<sup>th</sup>) month after the Closing Date, for its own account a fee equal to 1.25% (or, solely with respect to any Specified Repayment, 0.625%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid or accelerated or otherwise becoming due (including, for the avoidance of doubt, the principal amount of such Loans attributable to paid in kind interest); and
- (iv) at any time from and after the fifty-fifth (55<sup>th</sup>) month after the Closing Date, for its own account a fee equal to 1.00% (or, solely with respect to any Specified Repayment, 0.50%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid or accelerated or otherwise becoming due (including, for the avoidance of doubt, the principal amount of such Loans attributable to paid in kind interest).

The Exit Fee shall be earned, due and payable immediately upon any such payment or prepayment, and shall be in addition to any accrued and unpaid interest, reimbursement obligations, Yield Protection Premium or other amounts payable in connection therewith.

#### SECTION 4. PAYMENTS, ETC.

##### 4.01 Payments.

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

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

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

(B) second, to the payment of that portion of the Obligations constituting unpaid fees, indemnities, costs, expenses and other amounts (other than principal and interest, but including fees and disbursements and other charges of counsel payable under **Section 14.03**, any applicable Yield Protection Premium or Exit Fee) payable to the Lenders arising under the Loan Documents, ratably among them in proportion to the respective amounts described in this **Section 4.01(b)(B)** payable to them;

(C) third, to the payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this **Section 4.01(b)(C)** payable to them;

(D) fourth, to the payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this **Section 4.01(b)(D)** payable to them;

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

(F) sixth, the balance, if any, after all Obligations (other than inchoate indemnification and expense reimbursement obligations for which no claim has been made) have been paid in full, to the Borrower or such other Person as may be lawfully entitled to or directed by the Borrower to receive the remainder.

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

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

**4.03 Set-Off.**

(a) **Set-Off Generally.** Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent, each of the Lenders and each of their Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Administrative Agent, any Lender and any of their Affiliates to or for the credit or the account of any Obligor against any and all of the Obligations, whether or not such Person shall have made any demand and although such obligations may be unmatured; provided, that, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of **Section 2.06** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Any Person exercising rights of set off hereunder agrees promptly to notify the Borrower after any such set-off and application; provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Administrative Agent, the Lenders and each of their Affiliates under this **Section 4.03** are in addition to other rights and remedies (including other rights of set-off) that such Persons may have.

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

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

**SECTION 5.**  
**YIELD PROTECTION, TAXES, ETC.**

**5.01 Additional Costs.**

(a) **Change in Law Generally.** If, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), the adoption of any Law, or any change in any Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or administration thereof, or compliance by the Administrative Agent or any of the Lenders (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, shall impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement, in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office) or shall impose on a Lender (or its lending office) any other condition affecting the Loans or the Commitment, and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or any other Loan Document, or subject any Lender to any Taxes on its Loans, Commitment or other obligations, or its deposits, reserves, other liabilities or capital (if any) attributable thereto (other than (i) Indemnified Taxes, (ii) Taxes described in **clauses (ii)** through **(iv)** of the definition of Excluded Taxes and (iii) Connection Income Taxes), on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, then the Borrower shall pay to such Lender on demand, within three (3) Business Days after receipt of the certificate contemplated by **Section 5.01(c)**, such additional amount or amounts as will compensate such Lender for such increased cost or reduction.

(b) **Change in Capital Requirements.** If a Lender shall have determined that, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), the adoption of any Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then the Borrower shall pay to such Lender, within three (3) Business Days after receipt of the certificate contemplated by **Section 5.01(c)**, such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

(c) **Notification by Lender.** Each Lender promptly will notify the Borrower of any event of which it has knowledge, occurring after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), which will entitle such Lender to compensation pursuant to this **Section 5.01**. Before giving any such notice pursuant to this **Section 5.01(c)** such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of such Lender claiming compensation under this **Section 5.01**, setting forth the additional amount or amounts to be paid to it hereunder, shall be conclusive and binding on the Borrower in the absence of manifest error. The Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this **Section 5.01** for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender notifies the Borrower of the change in law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the change in law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

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

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

### 5.03 Taxes.

(a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of any Obligor under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by any Law. If any Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Laws and, if such Tax is an Indemnified Tax, then the sum payable by such Obligor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 5.03**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

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

(c) **Evidence of Payments.** As soon as practicable after any payment of Taxes by an Obligor to a Governmental Authority pursuant to this **Section 5.03**, such Obligor shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) **Indemnification by the Obligors.** The Obligors shall reimburse and indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5.03**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Obligors by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) **Indemnification by the Lenders.** Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Obligors have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Obligors to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 14.05(e)** relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this **Section 5.03(e)**.

(f) **Status of Lenders.**

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

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

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

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

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

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

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

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

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this **Section 5.03(f)(ii)(D)**, “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(iii) In addition, the Administrative Agent (or any successor Administrative Agent) shall, on or before the date on which it becomes a party hereto, provide to the Borrower duly completed and executed copies of (i) IRS Form W-9 or (ii) if the Administrative Agent is not a U.S. Person, IRS Form W-8IMY and appropriate backing forms (with respect to amounts received on account of any Lender) and an appropriate IRS Form W-8 (with respect to amounts received on its own account), with the effect that, in either case, the Obligors will be entitled to make payments hereunder to the Administrative Agent (or any successor Administrative Agent) without withholding or deduction on account of United States federal taxes.

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

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

(h) **Tax Treatment.** Each party hereto hereby acknowledges and agrees that, for U.S. federal and applicable state and local income tax accounting purposes, the Company shall determine the appropriate accruals of interest and “original issue discount” under the Loans in accordance with applicable Law; provided, that no portion of any interest payable on any Loan under this Agreement will be treated as contingent interest for purposes of Section 871(h)(4) of the Code. The parties hereto agree not to take any position that is inconsistent with the provisions of this Section 5.03(h) on any Tax return or in any audit or any other administrative or judicial proceeding unless otherwise required by applicable Law.

#### **5.04 Mitigation Obligations; Replacement of Lenders.**

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

(b) If any Lender requests compensation pursuant to **Section 5.01**, or if any Lender has declined or is unable to designate a different lending officer pursuant to the preceding **clause (a)**, or if any Lender is a Defaulting Lender, then the Borrower may, at such Lender's sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **Section 14.05(b)** (other than such Lender's consent)), all of its interests, rights (other than its existing rights to payments pursuant to **Section 5.01** or **Section 5.03**) and obligations under this Agreement and the related Loan Documents to an Eligible Transferee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that: (i) the Borrower shall have provided all of the documentation and information in accordance with **Section 14.05(b)**; (ii) such Lender shall have received payment of an amount equal to (A) the outstanding principal of its Loans, (B) accrued interest thereon, (C) accrued fees and (D) all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) (notwithstanding anything herein to the contrary, without any Yield Protection Premium or Exit Fee); (iii) in the case of any such assignment resulting from a claim for compensation under **Section 5.01** or payments required to be made pursuant to **Section 5.03**, such assignment will result in a reduction in such compensation or payments thereafter; and (iv) such assignment does not conflict with applicable Law. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### **5.05 Inability to Determine Rates.**

(a) **Replacement of Term SOFR or Successor Rate.** Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Majority Lenders notify the Administrative Agent (with, in the case of the Majority Lenders, a copy to the Borrower) that the Borrower or Majority Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining Term SOFR pursuant to the definition thereof, including because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity has made a public statement identifying a specific date after which three month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be representative or made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is reasonably satisfactory to the Administrative Agent that will continue to provide such interest periods of Term SOFR after such specific date, (the latest date on which such interest periods of Term SOFR or the Term SOFR Screen Rate are no longer representative or available permanently or indefinitely, the “*Scheduled Unavailability Date*”);

then

(A) in the case of events or circumstances of the type described in **Section 5.05(a)(i)** or **(ii)** affecting Term SOFR, on a date and time reasonably determined by the Administrative Agent (any such date, the “*Term SOFR Replacement Date*”), which date shall be on the relevant Payment Date and, solely with respect to **clause (ii)** above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any other Loan Document with Daily Simple SOFR, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document, and all interest payments on Loans with a Successor Rate of Daily Simple SOFR will be payable on the next Payment Date; or

(B) (x) if the Administrative Agent reasonably determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date, or (y) if the events or circumstances of the type described in **Section 5.05(a)(i)** or **(ii)** affecting any Successor Rate are then in effect, then, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing the Interest Rate or any then current Successor Rate in accordance with this **Section 5.05** with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the U.S. and denominated in Dollars for such alternative benchmarks, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the U.S. and denominated in Dollars for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent (in consultation with the Borrower) from time to time in its reasonable discretion and may be periodically updated (and any such proposed rate, including for the avoidance of doubt, any adjustment thereto, a “*Successor Rate*”), and any such amendment shall become effective at 5:00 p.m. on the fifth (5<sup>th</sup>) Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Majority Lenders have delivered to the Administrative Agent written notice that such Majority Lenders object to such amendment.

(b) The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of the implementation of any Successor Rate.

(c) Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent (in consultation with the Borrower).

(d) Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

(e) In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes in its reasonable discretion from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

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

## **SECTION 6. CONDITIONS**

**6.01 Conditions to Closing.** The effectiveness of this Agreement shall be subject to the satisfaction (or waiver by the Lenders in accordance with **Section 14.04**) of each of the conditions precedent set forth below in this **Section 6.01**.

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

(b) **Certificate of Good Standing.** The Administrative Agent shall have received from each Obligor a copy of a good standing certificate, dated a date reasonably close to the Closing Date, for each such Person.

(c) **Secretary's Certificate.** The Administrative Agent shall have received from each Obligor a certificate, dated as of the Closing Date, duly executed and delivered by such Person's Responsible Officer, certifying that attached thereto is a copy of the resolutions of each such Person's Board then in full force and effect authorizing the execution, delivery and performance of each Loan Document to be executed by such Person and the Transactions;

(i) that attached thereto are the incumbency and signatures of Responsible Officers authorized to execute and deliver each Loan Document to be executed by such Person;

(ii) that attached thereto is a copy of the Certificate of Good Standing and the Organic Documents of such Person then in full force and effect; and

(iii) confirming that borrowing, guaranteeing and/or securing, as appropriate, the entry into the Loan Documents and the performance of its obligations thereunder would not cause any borrowing, guarantee, security or similar limit binding on such Person to be exceeded.

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

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

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

(i) audited consolidated financial statements of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2025; and

(ii) unaudited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal quarter ended March 31, 2026, in each case, together with the related consolidated statement of operations, shareholder's equity and cash flows for such fiscal quarter.

(f) **Solvency.** The Administrative Agent shall have received a solvency certificate, substantially in the form of **Exhibit I**, duly executed and delivered by the chief financial officer, or other equivalent officer, of the Borrower, dated as of the Closing Date.

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

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

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

(iii) UCC-3 termination statements, Intellectual Property security agreement terminations and any other releases, if any, necessary to release all Liens and other rights of any Person in any collateral described in the Security Agreement previously granted by any Person (other than with respect to Permitted Liens); and

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

(h) **Lien Searches.** The Administrative Agent shall be reasonably satisfied with Lien searches regarding the Obligors made as of a date reasonably close to the Closing Date.

(i) **Closing Certificate.** The Administrative Agent shall have received a duly executed certificate of a Responsible Officer certifying as to the matters set forth in **Section 6.01** (o) and (p).

(j) **Opinion of Counsel.** The Administrative Agent shall have received a duly executed legal opinion of counsel to the Obligors, addressed the Administrative Agent and each Lender, dated as of the Closing Date, in form and substance reasonably acceptable to the Administrative Agent.

(k) **Fee Letters.** The Administrative Agent shall have received executed counterparts of the Fee Letters, duly executed and delivered by the Borrower.

(l) **Closing Fees, Expenses, Etc.** Each of the Administrative Agent and each Lender shall have received for its own account all fees, costs and expenses due and payable to it pursuant to the Fee Letters and **Section 14.03** (and subject to the limitations and caps set forth in such Section), including all reasonable and documented closing costs and fees and all unpaid reasonable and documented expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent's and the Lenders' reasonable and documented legal fees and expenses), to the extent invoiced (or as to which a good faith estimate has been provided to the Borrower) at least two (2) Business Days prior to the Closing Date, net of any amounts previously paid by the Borrower to the Administrative Agent or the Lenders as a deposit against such fees, costs and expenses.

(m) **Material Adverse Effect.** Since December 31, 2024, no Material Adverse Effect shall have occurred, both immediately before and immediately after giving effect to the Loans to be made on the Closing Date.

(n) **Evidence of Insurance.** Subject to **Section 8.18(c)**, receipt by the Administrative Agent of copies of insurance policies or certificates of insurance of the Obligors evidencing liability and casualty insurance meeting the requirements set forth in the Loan Documents.

(o) **No Default.** No event shall have occurred and be continuing that would constitute a Default or Event of Default.

(p) **Representations and Warranties.** The representations and warranties contained in this Agreement and in the other Loan Documents delivered pursuant to **Section 6.01(a)** shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Closing Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date.

(q) **Know Your Customer; Beneficial Ownership Certification.** To the extent requested in writing by any Lender or the Administrative Agent at least ten (10) Business Days prior to the Closing Date, the Borrower shall have provided to such Lender and the Administrative Agent all documentation and other information so requested, including a duly executed IRS Form W-9 of the Borrower (or such other applicable tax form), in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, and if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification, in each case prior to the Closing Date.

(r) **Payoff of Existing Credit Facility.** The Existing Credit Facility (other than contingent obligations (including indemnification obligations) that by their terms are to survive the termination of the relevant loan documentation and debt instruments evidencing the Existing Credit Facility) shall have been (or substantially concurrently with the making of the Tranche A Term Loans on the Closing Date shall be) repaid or satisfied and discharged, and in connection therewith all guarantees and Liens in respect thereof shall have been released (including any reassignment, as applicable) on or prior to the Closing Date and the Administrative Agent shall have received evidence reasonably acceptable to it of such repayment, satisfaction or discharge and release of Liens

(s) **Permitted RTW Intercreditor Agreement; Permitted RTW Royalty Purchase Agreement.** The Administrative Agent shall have received (i) the Permitted RTW Intercreditor Agreement, (ii) a certified copy of the Permitted RTW Royalty Purchase Agreement and (iii) a consent under the Permitted RTW Royalty Purchase Agreement between the Borrower and the Permitted RTW Buyer (which, for the avoidance of doubt, shall be included in the Permitted RTW Intercreditor Agreement), in each case duly executed by each of the parties thereto and in form and substance reasonably satisfactory to the Administrative Agent and the Lenders.

(t) **Minimum Liquidity.** The Administrative Agent shall have received written evidence reasonably satisfactory to it that, as of the Closing Date, the Borrower is in compliance with **Section 10.01**.

(u) **Warrants.** The Lenders shall have received fully executed copies of the Warrant Issuance Agreement and the Tranche A Warrant.

**6.02 Conditions to the Borrowing of All Loans.** The obligation of each Lender to make each tranche of Loans shall be subject to the delivery of a Borrowing Notice as required pursuant to **Section 2.02**, and the prior or concurrent satisfaction (or waiver by the Lenders in accordance with **Section 14.04**) of each of the conditions precedent set forth below in this **Section 6.02**:

(a) **Closing Date.** The Closing Date shall have occurred.

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

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

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

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

(f) **Representations and Warranties.** The representations and warranties contained in this Agreement and in the other Loan Documents delivered pursuant to **Section 6.01(a)** shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Applicable Funding Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date.

(g) **Material Adverse Effect.**

(i) No Material Adverse Effect shall have occurred, both immediately before and immediately after giving effect to the Loans to be made on such borrowing date.

(ii) No event shall have occurred and be continuing that would constitute a material disruption of, or Material Adverse Effect in, the financial, banking or capital markets generally.

(h) **Applicable Funding Condition.** The Applicable Funding Condition shall have been satisfied in form and substance reasonably satisfactory to each Lender.

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

## **SECTION 7. REPRESENTATIONS AND WARRANTIES**

The Borrower and each other Obligor hereby jointly and severally represents and warrants to the Administrative Agent and each Lender on the Closing Date and each Bringdown Date, as set forth below:

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

## **7.02 Authorization; Enforceability.**

(a) **Authorization.** Each Transaction to which an Obligor is a party (or to which it or any of its assets or properties is subject) is within such Obligor's corporate or other organizational powers and has been duly authorized by all necessary corporate or other organizational action including, if required, approval by all necessary holders of Equity Interests, and such authorizations are (or were) in full force and effect at the time of consummation of the applicable Transaction.

(b) **Enforceability.** This Agreement has been duly executed and delivered by each Obligor and constitutes, and each of the other Loan Documents to which it is a party when executed and delivered by such Obligor will constitute, a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium receivership, liquidation, examinership or similar laws of general applicability affecting the enforcement of creditors' rights and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**7.03 Governmental and Other Approvals; No Conflicts.** None of the execution, delivery and performance by each Obligor of the Loan Documents to which it is a party or the consummation by each Obligor of the Transactions (i) requires any Governmental Approval of, registration or filing with, or any other action by, any Governmental Authority or any other Person, except for (x) such as have been obtained or made and are in full force and effect (y) filings and recordings in respect of perfecting or recording the Liens created pursuant to the Security Documents and (z) registrations or filings required under applicable securities laws, (ii) will violate (1) any Law, (2) any Organic Document of any Obligor or any of its Subsidiaries or (3) any order of any Governmental Authority, that in the case of **Section 7.03(ii)(1)** or **7.03(ii)(3)**, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect, (iii) will violate or result in a default under any Material Agreement binding upon any Obligor or any of its Subsidiaries that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect or (iv) will result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of any Obligor or any of its Subsidiaries.

## **7.04 Financial Statements; Material Adverse Effect.**

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

(b) **No Material Adverse Effect.** Since December 31, 2024, there has been no Material Adverse Effect.

## 7.05 Properties.

(a) **Property Generally.** Each Obligor and each of its Subsidiaries has good and (in the case of real property only) marketable fee simple title to, or valid leasehold interests in, or license to, all its real and personal property material to its business, including all properties and assets, whether tangible or intangible, relating to its Products or Product Commercialization and Development Activities and all Material Intellectual Property, subject only to Permitted Liens and except for defects in title that (i) do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes and (ii) would not reasonably be expected to prevent or interfere with the ability of any Obligor or any of its Subsidiaries to conduct any Product Commercialization and Development Activities with respect to any of its Products in any material respect. Neither Borrower nor any Obligor makes any representation or warranty with respect to the fee title to any real property in which Borrower or such Obligor holds only a leasehold interest and no present fee ownership interest.

(b) **Intellectual Property; Privacy.**

(i) Except as set forth in **Schedule 7.05(b)(i)**,

(A) the Obligors are the sole and exclusive legal and beneficial owners of all right, title and interest in and to all Material Intellectual Property owned or purported to be owned by the Borrower or any of its Subsidiaries, free and clear of:

(1) any Claims that would reasonably be expected to result in a Material Adverse Effect, including a Material Adverse Effect on any Product Commercialization and Development Activities with respect to the Product, or

(2) any Liens other than Permitted Liens; and

(B) the Obligors own or have sufficient and valid rights to use all Intellectual Property material to conduct the businesses of the Borrower and its Subsidiaries as currently conducted, including the Product Commercialization and Development Activities with respect to the Product.

(ii) Without limiting the foregoing, and except as set forth in **Schedule 7.05(b)(ii)**:

(A) other than (1) customary restrictions in In-Licenses of Intellectual Property, out-licenses of Intellectual Property (other than the Out-Licenses) and non-disclosure Contracts, or (2) as would have been or is permitted by **Section 9.09**, there are no judgments, covenants not to sue, grants, Liens (other than Permitted Liens), or other Claims, agreements or arrangements relating to any Material Intellectual Property owned or purported to be owned by the Borrower or any of its Subsidiaries, and to the knowledge of the Obligors any other Material Intellectual Property, which materially restrict any Obligor or any of its Subsidiaries with respect to its use, enforcement, or other exploitation of any Material Intellectual Property;

(B) the operation and conduct of the business of any Obligor or any of its Subsidiaries, including the exploitation of any Intellectual Property, does not infringe, misappropriate or otherwise violate, or has not in the past three (3) years infringed, misappropriated or otherwise violated, any rights arising under any Intellectual Property of any other Person that would reasonably be expected to result in a Material Adverse Effect, including on any Product Commercialization and Development Activities with respect to the Product;

(C) (1) there are no pending Claims threatened in writing, against any Obligor or any of their Subsidiaries asserted by any other Person relating to Intellectual Property owned or purported to be owned by the Borrower or any of its Subsidiaries or, to the knowledge of the Obligors, any other Material Intellectual Property, including any material Claims alleging ownership, invalidity or unenforceability of any Material Intellectual Property, or infringement, misappropriation, or violation of such Person's Intellectual Property rights in any material respect; and (2) neither any Obligor nor any of their Subsidiaries has received in the past three (3) years, any written notice (which may be by email) from, or written Claim by, any Person that the operation and conduct of the businesses of any Obligor or any of its Subsidiaries (including their use or other exploitation of Intellectual Property), as currently conducted, infringes, misappropriates or otherwise violates any Intellectual Property of any other Person, in each case of **Sections 7.05(b)(iii)(C)(1) and (2)**, that would reasonably be expected to result in a Material Adverse Effect;

(D) to the knowledge of any Obligor and its Subsidiaries, no Material Intellectual Property is being infringed, misappropriated or otherwise violated by any other Person in any material respect; and in the past three (3) years, neither such Obligor nor any of its Subsidiaries has put any other Person on written notice of such actual or potential infringement, misappropriation or violation of any such Material Intellectual Property, and neither any Obligor nor any of their Subsidiaries has initiated any Claim with respect to any such Material Intellectual Property; and

(E) each Obligor and each of its Subsidiaries has taken reasonable precautions to protect the secrecy, confidentiality and value of its Material Intellectual Property consisting of Trade Secrets, and to the knowledge of each Obligor and their Subsidiaries no such Trade Secret constituting Material Intellectual Property has been used or discovered by, or disclosed to, any Person except pursuant to written, valid and enforceable non-disclosure agreements protecting the confidentiality thereof, which agreements, to the knowledge of each Obligor and their Subsidiaries, have not been breached in any material respect or who is otherwise subject to fiduciary or statutory duties or other similar obligations, regarding the protection of such Trade Secrets.

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

(A) to the knowledge of the Obligors, the issued claims in such Patents are valid and enforceable and none of the issued claims in such Patents has been judged invalid or unenforceable;

(B) subsequent to the issuance of such Patents, neither the Borrower nor any of its Subsidiaries or, to the knowledge of the Obligors, any of its or their predecessors-in-interest, has filed any disclaimer or made or permitted any other voluntary reduction in the scope of the Inventions claimed in such Patents that would reasonably be expected to result in a Material Adverse Effect, including with respect to on any Product Commercialization and Development Activities with respect to the Product;

(C) to the knowledge of the Obligors and its Subsidiaries, no third party has claimed that it conceived or contributed to the conception of or is an inventor of allowable or allowed subject matter of such Patents and no such Patent has been the subject of any interference, re-examination, opposition, or any other post-grant proceedings; and

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

(E) all U.S. patents and U.S. patent applications of such Patents have been filed and prosecuted in compliance with 37 C.F.R. § 1.56, which includes a duty to disclose all information known to that individual to be “material to patentability,” as such is defined in 37 C.F.R. § 1.56, and no material misrepresentations have been made and no material information has been concealed from the USPTO in any such U.S. patents and U.S. patent applications.

(iv) All maintenance fees, annuities, and the like due or payable on or with respect to any such Patents constituting Material Intellectual Property have been timely paid or the failure to so pay would not reasonably be expected to result in a Material Adverse Effect.

(v) Except as would not reasonably be expected to have a Material Adverse Effect, the Obligors and their respective Subsidiaries: (A) have had and have appropriate privacy policies and data security policies in place that are in compliance in all material respects with all applicable privacy cybersecurity Laws relating to the protection, collection, use, access, storage, maintenance, processing, transmission, distribution, transfer (including cross-border transfer) or disclosure of personally identifiable information, (B) are and have been in compliance in all material respects with such policies, Laws and contractual obligations to which any Obligor and any of its Subsidiaries are bound that relate to the protection, collection, use, access, storage, maintenance, processing, transmission, distribution, transfer (including cross-border transfer) or disclosure of personally identifiable information, and (C) have not received any notice, and are not and have not been subject to any Claim, and, to the knowledge of any Obligor and its Subsidiaries, no such notice or Claim is or has been threatened, regarding the protection, collection, use, access, storage, maintenance, processing, transmission, distribution, transfer (including cross-border transfer) or disclosure of personally identifiable information. To the knowledge of any Obligor and its Subsidiaries, during the past three (3) years, neither any Obligor nor any of their respective Subsidiaries has experienced any breach of security or unauthorized access by third parties of any personally identifiable information or confidential or proprietary data that is in its possession, custody, or control, in each case, except as would not reasonably be expected to have a Material Adverse Effect.

## **7.06 No Actions or Proceedings.**

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

(b) **Environmental Matters.** No Obligor nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, except for any such failure to comply with such Environmental Law or failure to obtain, maintain or comply with a permit that would not reasonably be expected to have a Material Adverse Effect, (ii) has become subject to any Environmental Liability that would reasonably be expected to have a Material Adverse Effect, (iii) except as disclosed on **Schedule 7.06(b)** (as updated from time to time, including in any Compliance Certificate), and except as would not reasonably be expected to have a Material Adverse Effect, has received any Environmental Claim, or has knowledge that any is threatened, (iv) has entered into any agreement in which such Obligor or any Subsidiary has assumed or undertaken responsibility or obligations of any other person with respect to any Material Environmental Liability or (v) has knowledge of any basis for any other Material Environmental Liability.

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

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

**7.08 Taxes.** Except as set forth on **Schedule 7.08**, each Obligor and each of its Subsidiaries has timely filed or caused to be filed (taking into account valid extensions) all income Tax returns and other material Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such Obligor or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

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

**7.10 Investment Company Act and Margin Stock Regulation.**

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

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

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

**7.12 Subsidiaries.** Set forth on **Schedule 7.12** (as updated from time to time, including in any Compliance Certificate) is a complete and correct list of all direct and indirect Subsidiaries of the Borrower. Each such Subsidiary is duly organized or incorporated, as applicable, and validly existing under the jurisdiction of its organization shown in said **Schedule 7.12**, and the percentage ownership by each Obligor of each such Subsidiary thereof is as shown in said **Schedule 7.12**.

**7.13 Indebtedness and Liens.** Set forth on **Schedule 7.13(a)** is a complete and correct list of all Indebtedness (other than Permitted Indebtedness under any clause of **Section 9.01** other than clause (b) thereof) of each Obligor and each of its Subsidiaries outstanding as of the Closing Date. Set forth on **Schedule 7.13(b)** is a complete and correct list of all Liens (other than Permitted Liens under any clause of **Section 9.02** other than clause (b) thereof) granted by the Obligors and each of their respective Subsidiaries with respect to their respective property and outstanding as of the Closing Date.

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

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

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

**7.17 Pension Matters.**

(a) Except as would not, in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Laws has received a favorable determination letter from the IRS to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code covering all applicable tax law changes or is comprised of a master or prototype plan that has received a favorable opinion letter from the IRS, and, nothing has occurred since the date of such determination that would adversely affect such determination (or, in the case of a Plan with no determination, nothing has occurred that would materially adversely affect the issuance of a favorable determination letter or otherwise materially adversely affect such qualification).

(b) Except as would not, in the aggregate, reasonably be expected to result in a Material Adverse Effect, (x) each Plan is in compliance with applicable provisions of ERISA, the Code and other Laws, (y) there are no existing or pending (or to the knowledge of any Obligor or any of its Subsidiaries, threatened in writing) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Plan to which any Obligor or Subsidiary thereof incurs or otherwise has or would have an obligation or any liability or Claim and (z) no ERISA Event has occurred or is reasonably expected to occur.

(c) Except as would not, in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Obligor and any of its ERISA Affiliates have met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained.

(d) There exists no Unfunded Pension Liability with respect to Title IV Plans in the aggregate (taking into account only Title IV Plans with positive Unfunded Pension Liability), except as would not have or be reasonably expected to have a Material Adverse Effect.

(e) If each Obligor and each ERISA Affiliate were to withdraw in a complete withdrawal from all Multiemployer Plans as of the date this assurance is given or deemed given, the aggregate Withdrawal Liability that would be incurred would not be reasonably be expected to have a Material Adverse Effect.

(f) Except as would not, in the aggregate, reasonably be expected to result in a Material Adverse Effect: (i) each Non-U.S. Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities; (ii) all contributions required to be made with respect to a Non-U.S. Plan have been timely made.; (iii) none of the Obligors nor any of their respective Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Non-U.S. Plan, (iv) the present value of the accrued benefit liabilities (whether or not vested) under each Non-U.S. Plan, determined as of the end of the applicable Obligor's most recently ended fiscal year on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the assets of such Non-U.S. Plan allocable to such benefit liabilities.

#### **7.18 Regulatory Approvals.**

(a) Each Obligor and each of its Subsidiaries holds, and will continue to hold, either directly or through licensees and agents, all Product Authorizations necessary or required for the Borrower and each of its Subsidiaries to conduct their respective operations and businesses in the manner currently conducted and to conduct its Product Commercialization and Development Activities in each case except where the failure to hold any such Product Authorizations would not reasonably be expected to result in a Material Adverse Effect.

(b) During the past two (2) years, no Obligor nor its Subsidiaries has received any written notice from the FDA or any Regulatory Authority that the FDA or such Regulatory Authority is considering suspending, revoking or materially limiting any material Product Authorization, where such suspension, revocation, limitation or non-approval, would reasonably be expected to result in a Material Adverse Effect. The Obligors and their Subsidiaries have made all material required notices, registrations and reports and other filings with respect to the Products and Product Commercialization and Development Activities, in each case except where the failure to make the same would not reasonably be expected to result in a Material Adverse Effect.

(c) Except as set forth on **Schedule 7.18(c)**, and except as related to Environmental Law or Hazardous Materials, and without limiting the generality of any other representation or warranty made by any Obligor hereunder or under any other Loan Document: (i) no Obligor, nor any of its Subsidiaries nor, to the knowledge of any Obligor, any of their respective agents, manufacturers, suppliers, clinical investigators, licensors or licensees have received any inspection reports, warning letters or notices or similar documents with respect to any Product or any Product Commercialization and Development Activities from any Regulatory Authority within the last two (2) years that asserts material lack of compliance with any applicable Healthcare Laws or Product Authorizations; (ii) no Obligor, nor any of its Subsidiaries nor, to the knowledge of any Obligor, any of their respective agents, manufacturers, suppliers, clinical investigators, licensors or licensees have received any material notification from any Regulatory Authority within the last two (2) years asserting that any Product or any Product Commercialization and Development Activities lacks a required Product Authorization; (iii) there is no pending regulatory action, investigation or inquiry (other than non-material routine or periodic inspections or reviews) against any Obligor, any of its Subsidiaries or, to the knowledge of any Obligor, with respect to any Product or any Product Commercialization and Development Activities, and, to the knowledge of any Obligor, there is no reasonable basis in fact for any material adverse regulatory action against such Obligor or any of its Subsidiaries or, to the knowledge of such Obligor, any of their respective agents, suppliers, licensors or licensees with respect to any Product or any Product Commercialization and Development Activities; (iv) during the past two (2) years, no Obligor, nor any of its Subsidiaries nor, to the knowledge of any Obligor, any of their respective manufacturers has experienced any significant failures in the manufacturing or supply of the Product that, individually or in the aggregate, have had or would reasonably be expected to result in, if such failure occurred again, a Material Adverse Effect; and (v) no criminal, injunctive, seizure, detention or civil penalty action has been commenced or threatened in writing by any Regulatory Authority within the last two (2) years with respect to or in connection with any Product or any Product Commercialization and Development Activities, and there are no consent decrees (including plea agreements) that relate to any Product or any Product Commercialization and Development Activities. No Obligor nor any of its Subsidiaries, nor, to the knowledge of any Obligor, any of their respective agents, suppliers, licensees or licensors, is employing or utilizing the services of any individual, in connection with Product Commercialization and Development Activities, who has been debarred from any federal healthcare program, where such debarment would reasonably be expected to have a Material Adverse Effect.

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

**7.20 OFAC; Anti-Terrorism Laws.**

(a) Neither the Borrower nor any of its Subsidiaries is in violation of any Anti-Terrorism Law.

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

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

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

**7.23 Royalty and Other Payments.** Except as set forth on **Schedule 7.23**, no Obligor, nor any of its Subsidiaries, is obligated to pay any royalty, milestone payment, deferred payment or any other contingent payment in respect of any Product.

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

**7.25 Security Interest.** The Security Documents provide the Secured Parties with effective, valid, legally binding and enforceable first priority Liens on all of the Collateral, subject to Permitted Liens (subject to the Permitted RTW Intercreditor Agreement). As of the Closing Date, (a) there are no security interests in, or Liens on, any of the Collateral other than Permitted Liens and (b) all necessary action (including as described in **Section 7.03**) has been taken under applicable Law to (i) establish and perfect the first priority rights of the Secured Parties in and to the Collateral, if applicable (subject in all cases to the Permitted RTW Intercreditor Agreement), and (ii) terminate and/or release all existing security interests in, and Liens on, the Collateral, in each case, under their respective applicable Law, in each case of **Sections 7.25(a)** and **(b)**, subject to Permitted Liens.

**7.26 New Chemical Entity.** As of the Closing Date, the NDA for Anaphylm in the United States is being reviewed by the FDA as a New Chemical Entity (NCE).

## **SECTION 8. AFFIRMATIVE COVENANTS**

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

**8.01 Financial Statements and Other Information.** The Borrower will furnish to the Administrative Agent (which shall, in turn, provide such information to the Lenders):

(a) as soon as available and in any event within forty-five (45) days after the end of the first three (3) fiscal quarters of each fiscal year (commencing with the fiscal quarter ending March 31, 2026) (i) the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal quarter and (ii) the related consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such fiscal quarter, in each case prepared in all material respects in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year, together with (iii) a certificate of a Responsible Officer of the Borrower stating that (x) such financial statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as at such date and (y) the results of operations of the Borrower and its Subsidiaries for the period ended on such date have been prepared in all material respects in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes; provided that documents required to be furnished pursuant to this **Section 8.01(a)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR" (with the related certificate separately delivered);

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

(c) [reserved];

(d) together with the financial statements required pursuant to **Sections 8.01(a) and (b)**, a compliance certificate signed by a Responsible Officer of the Borrower as of the end of the applicable accounting period (which delivery may be by electronic communication including fax or email and shall be deemed to be an original, authentic counterpart thereof for all purposes) substantially in the form of **Exhibit E** (a “**Compliance Certificate**”) including (i) details of any issues that are material that are raised by auditors and any occurrence or existence of any event, circumstance, act or omission that would cause any representation or warranty contained in **Section 7.07** or **Section 7.18** to be incorrect in any material respect (or in any respect if such representation or warranty is qualified by materiality or by reference to Material Adverse Effect) if such representation or warranty were to be made at the time of delivery of a Compliance Certificate (it being understood that no representation or warranty contained in **Section 7.07** or **Section 7.18** is required to be, shall be or shall be deemed to be made in connection with a delivery of any Compliance Certificate), (ii) for any fiscal period when the Minimum Net Sales Covenant is in effect and tested, a certification as to whether or not the Borrower is in compliance with the Minimum Net Sales Covenant as of the last day of such period or certification that a Waiver Condition applies and (iii) a statement that no Default or Event of Default has occurred and is continuing (or, if a Default or an Event of Default has occurred, describing in detail the nature, condition or event for the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event);

(e) as soon as available and in any event no later than forty-five (45) days after the first day of each fiscal year, a board-approved consolidated financial forecast for the Borrower and its Subsidiaries for such fiscal year;

(f) promptly after the same are released, copies of any press release required by U.S. securities laws to be filed with the SEC (excluding, for the avoidance of doubt, any immaterial, routine or administrative press releases); provided that documents required to be furnished pursuant to this **Section 8.01(f)** shall be deemed furnished on the date that such documents are publicly available on “EDGAR” or the Borrower’s website;

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

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

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

(j) promptly and in any event within five (5) Business Days after the Borrower obtains knowledge of any Claim related to any Product or inventory involving more than \$[\*\*\*], written notice thereof from a Responsible Officer of the Borrower which notice shall include a statement setting forth details of such Claim;

(k) [reserved];

(l) together with the delivery of the Compliance Certificate, a report stating the (i) the Net Sales for such fiscal quarter, including the calculations and adjustments from gross sales from which such Net Sales are derived, (ii) Net Sales as a percentage of gross sales for such fiscal quarter and (iii) Net Sales divided by the number of units of the Product sold in such fiscal quarter;

(m) [reserved];

(n) as soon as possible and in any event within five (5) Business Days after the end of each calendar month, a certificate signed by a Responsible Officer of the Borrower certifying that as of the last day of such calendar month, the Borrower is in compliance with the Minimum Liquidity Amount requirement set forth in **Section 10.01**; provided that the Administrative Agent shall have the right to reasonably request information supporting such compliance;

(o) (I) concurrently with the delivery to the Permitted RTW Buyer under the Permitted RTW Royalty Purchase Agreement, (i) copies of the Reports (as defined in the Permitted RTW Royalty Purchase Agreement (as in effect on the date hereof)) delivered pursuant to Section 6.1(a) of the Permitted RTW Royalty Purchase Agreement (as in effect on the date hereof) (including any information delivered to the Permitted RTW Buyer pursuant to Section 6.1(b) of the Permitted RTW Royalty Purchase Agreement (as in effect on the date hereof)) and (ii) copies of any notices or information delivered by the Borrower and its Subsidiaries pursuant to Section 6.1(c), (d) or (e) of the Permitted RTW Royalty Purchase Agreement (as in effect on the date hereof) or Section 6.2(b) of the Permitted RTW Royalty Purchase Agreement (as in effect on the date hereof) and (II) as soon as possible and in any event within five (5) Business Days, provide the Administrative Agent written notice of (A) any termination, cancellation, or expiration of the Permitted RTW Royalty Purchase Agreement and (B) any written notice, allegation or assertion by the Permitted RTW Buyer that it intends to, or has taken action to, repudiate, disclaim or otherwise cease to perform or materially delay its material obligations under the Permitted RTW Royalty Purchase Agreement, including, without limitation, its obligation to pay the purchase price thereunder; and

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

**8.02 Notices of Material Events.** The Borrower will furnish to the Administrative Agent (which shall, in turn, provide such information to the Lenders) written notice of the following (x) with respect to **clause (a)** below within three (3) Business Days, (y) with respect to **clause (b)** through **clause (n)** below, within five (5) Business Days and (z) with respect to **clause (o)** below within two (2) Business Days, in each case, after a Responsible Officer of the Borrower first learns of or acquires knowledge with respect to:

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

(b) the occurrence of any event or series of related events with respect to the property or assets of the Borrower or any of its Subsidiaries resulting in a Loss aggregating \$[\*\*\*] or more;

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

(d) the assertion of any Claim under any Environmental Law by any Person against, or with respect to the activities of, the Borrower or any of its Subsidiaries and any alleged liability or non-compliance with any Environmental Laws or any permits, licenses or authorizations issued pursuant to Environmental Laws, in each case, which would reasonably be expected to result in a Material Environmental Liability;

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

(f) the occurrence of an ERISA Event that results or would reasonably be expected to result in a Material Adverse Effect, in writing and in reasonable detail (including a description of any action that any Obligor or any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto);

(g) (i) the termination of any Material Agreement or other Contract pursuant to which any Obligor or any of its Subsidiaries receives or grants a license, covenant not to sue or other rights, including a Specified Permitted License, that is material to the Product Commercialization and Development Activities (each such Contract, a "**Material License**"), other than in accordance with its terms and not as a result of a breach or default, (ii) the receipt by the Borrower or any of its Subsidiaries of any notice of a material breach or default under such Material Agreement or Material License (and a copy thereof) asserting a default by such Obligor or any of its Subsidiaries where such alleged default would permit such counterparty to terminate such Material Agreement or Material License, (iii) the entering into of (A) any new Material Agreement by any Obligor (and a copy thereof) or (B) any Material License or (iv) any material amendment to a Material Agreement or Material License that would be adverse in any material respect to the Lenders (and a copy thereof); provided, that the Borrower shall not be required to provide such notice if such documents become publicly available on "EDGAR" within the time period notice would otherwise be required pursuant to this **Section 8.02**;

(h) there has been (i) a material increase in Unfunded Pension Liabilities (taking into account only Title IV Plans with positive Unfunded Pension Liabilities) since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable; or (ii) the existence a material increase since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable, in potential Withdrawal Liability under Section 4201 of ERISA, if all Obligors and the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans, in each case of the foregoing clauses (i) and (ii), that results or would reasonably be expected to result in a Material Adverse Effect;

(i) any material change in accounting policies or financial reporting practices by the Borrower or any of its Subsidiaries (other than as required or permitted under GAAP);

(j) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving an Obligor that would reasonably be expected to result in a Material Adverse Effect;

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

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

(m) (i) any Claim of actual or alleged infringement, misappropriation or other violation of any Intellectual Property by or against the Borrower or any of its Subsidiaries that results in or would reasonably be expected to result in a Material Adverse Effect, (ii) any revocation, withdrawal, suspension, cancellation, material limitation, termination or materially adverse modification of any material Product Authorization in the U.S., and (iii) any written notice or other written communication from the FDA that the FDA (A) intends to take any action described in **subsection (ii)**, or (B) will not approve, or will materially delay its review of, any NDA submitted to the FDA;

(n) (A) that the Borrower has abandoned the development of Anaphylm or is no longer seeking to obtain FDA Approval and (B) the FDA Approval has not been granted to the Borrower by the FDA by December 31, 2027; and

(o) the FDA Approval has been granted to the Borrower by the FDA.

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

**8.03 Existence.** Such Obligor shall, and shall cause each of its Subsidiaries to, preserve, renew and maintain in full force and effect its legal existence; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03** or any Asset Sale permitted under **Section 9.09**.

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

**8.05 Insurance.** Such Obligor will, and will cause each of its Subsidiaries to maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations, including commercial property, liability and business interruption coverage. Upon the request of the Administrative Agent, the Borrower shall (i) furnish the Administrative Agent from time to time with material information as to the insurance carried by it and, if so requested, copies of all such insurance policies and (ii) furnish the Administrative Agent from time to time with a certificate from the Borrower's insurance broker or other insurance specialist stating that all premiums then due on the policies relating to insurance on the Collateral have been paid and that such policies are in full force and effect. Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder to levels which do not meet the levels required pursuant to the first sentence of this **Section 8.05** shall entitle the Secured Parties to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to the first sentence of this **Section 8.05** or otherwise to obtain similar insurance in place of such policies, and in each case, the Borrower will be responsible for the reasonable and documented cost of such insurance (to be payable on demand). The amount of any such reasonable and documented expenses shall accrue interest at the Default Rate if not paid on demand and shall constitute "Obligations." Such Obligor shall cause each such policy of insurance (with respect to each such policy outstanding as of the Closing Date, within the time period set forth in **Section 8.18(c)**) to (i) name the Administrative Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear, and (ii) in the case of each casualty insurance policy (including business interruption, if any) contain a lender loss payable clause or endorsement naming the Administrative Agent, on behalf of the Secured Parties, as loss payee thereunder and providing for at least thirty (30) days' prior written notice to the Administrative Agent (ten (10) days' prior written notice in the event of cancellation for nonpayment) of any cancellation of such policy, and otherwise reasonably satisfactory in form and substance to the Administrative Agent.

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

**8.07 Compliance with Laws and Other Obligations.** Such Obligor will, and will cause each of its Subsidiaries to, (i) comply with all Laws (including Anti-Terrorism Laws, Sanctions and Environmental Laws) applicable to it and its business activities, (ii) comply with all Healthcare Laws and Governmental Approvals (including Product Authorizations) applicable to it and its business activities and (iii) maintain in full force and effect (other than termination of such agreement in accordance with its terms), remain in compliance with, and perform all obligations under all Material Agreement to which it is a party, except, in the case of **clauses (i), (ii) and (iii)** above, where the failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Each Obligor shall maintain in effect and enforce policies and procedures reasonably designed to promote compliance by such Obligor, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Terrorism Laws and Sanctions.

**8.08 Maintenance of Properties, Etc.**

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

(b) Such Obligor shall, and shall cause each of its Subsidiaries to, use commercially reasonable efforts to renew, file for, prosecute, enforce and maintain all Material Intellectual Property, owned or controlled by such party.

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

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

**8.11 Certain Obligations Respecting Subsidiaries; Further Assurances.**

(a) **Subsidiary Guarantors, etc.** In the event that the Borrower or any of its Subsidiaries shall form or acquire any new Subsidiary, the Borrower shall promptly (and in any event within forty-five (45) days calendar from the date of such formation or acquisition or such longer period agreed to by the Administrative Agent in its sole discretion):

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

(ii) take such action or cause such Subsidiary to take such action (which may include but shall not be limited to joining the Security Agreement and delivering shares of stock or share certificates (or equivalent), together with undated transfer powers or stock transfer forms (or equivalent) executed in blank, applicable control agreements, notices and other instruments, making any required registrations and, in the case of any Subsidiary organized or incorporated outside of the United States, executing and delivering such applicable local law security documents)) as shall be reasonably necessary or reasonably requested by the Administrative Agent in order to create and perfect, in favor of the Administrative Agent, for the benefit of the Secured Parties, valid and enforceable first priority (subject to Permitted Priority Liens and the Permitted RTW Intercreditor Agreement) Liens on substantially all of the personal property of such new Subsidiary as collateral security for the Obligations hereunder as and when required by the terms of the Security Documents; provided that any such security interest or Lien shall be subject to the relevant requirements of the Security Documents and the Intercompany Subordination Agreement;

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

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

(v) cause each new Subsidiary to become a party to the Intercompany Subordination Agreement.

(b) **Further Assurances.**

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

(ii) in the event that such Obligor creates, develops or otherwise acquires Intellectual Property during the term of this Agreement, then the provisions of this Agreement and the Security Agreement shall and hereby does automatically apply thereto and any such Intellectual Property shall automatically constitute and hereby does constitute part of the Collateral under the Security Documents (other than Excluded Assets (as defined in the Security Agreement or in such other Security Document, as applicable)), without further action by any party, in each case from and after the date of such creation, development or acquisition;

(iii) without limiting the generality of the foregoing, each Obligor will, and will cause each Person that is required to be a Subsidiary Guarantor to, take such action from time to time (which may include but shall not be limited to joining the Security Agreement and delivering shares of stock or share certificates (or equivalent), together with undated transfer powers or stock transfer forms (or equivalent) executed in blank, applicable control agreements, notices and other instruments and making any required registrations (including such applicable local law security documents)) as shall be required by the terms of the Security Documents or reasonably requested by the Administrative Agent to create, in favor of the Administrative Agent for the benefit of the Secured Parties, perfected security interests and Liens in substantially all of the personal property (other than, in relation to the Security Documents, the Excluded Assets (as defined in the Security Agreement or such Security Document)) of such Obligor as collateral security for the Obligations; provided that any such security interest or Lien shall be subject to the relevant requirements of the Security Documents;

(iv) promptly (and in any event within five (5) Business Days) following the acquisition by any Obligor following the Closing Date of any Material Real Property, such Obligor shall notify Administrative Agent of such fact and shall, if so requested by Administrative Agent, within thirty (30) days following such request by Administrative Agent (or such longer period as agreed by Administrative Agent in its reasonable discretion), with respect to any such owned or leased real estate, deliver or cause to be delivered to Administrative Agent the following (collectively, "**Mortgage Deliverables**"): (A) a mortgage or deed of trust, as applicable, in form and substance reasonably satisfactory to Administrative Agent, executed by the title holder thereof and recorded in the applicable jurisdiction, granting Administrative Agent, on behalf of the Lenders, a first priority Lien on the fee interest in such real estate, (B) a lender's title insurance policy issued by a title insurer reasonably satisfactory to Administrative Agent in form and substance and in amounts reasonably satisfactory to Administrative Agent insuring Administrative Agent's, for itself and on behalf of the Lenders', first priority Lien in the fee interest in such real estate, free and clear of all defects and encumbrances except Permitted Liens, (C) a current ALTA survey, certified to Administrative Agent, for itself and on behalf of the Lenders, by a licensed surveyor, in form and substance reasonably satisfactory to Administrative Agent, or survey affidavits sufficient to allow the issuer of the lender's title insurance policy to issue such policy without a survey exception, (D) a certificate, in form and substance reasonably acceptable to Administrative Agent, to Administrative Agent from a national certification agency acceptable to Administrative Agent, indicating whether such real estate is located in a special flood hazard area and (E) legal opinions in form and substance reasonably acceptable to Administrative Agent from one or more law firms reasonably acceptable to Administrative Agent opining as to due execution, authority, noncircumvention, recordability, perfection and enforceability of such mortgage or deed of trust (it being acknowledged, for the avoidance of doubt, that no Obligor shall be required to provide a mortgage, deed of trust, or similar instrument with respect to any leased real property); and

(v) subject to **Section 8.18(b)** with respect to any such agreements in effect as of the Closing Date, in the event that such Obligor is party to (i) any lease agreement with respect to real property or (ii) any warehousing or bailment arrangement pursuant to which inventory, equipment or other assets of the Obligors are stored at a third-party warehouse or other facility, in each case of **clauses (i) and (ii)**, where the location of such real property, warehouse or facility is in the United States and the Collateral at such location is valued in excess of \$[\*\*\*], such Obligor shall use its commercially reasonable efforts to obtain a Landlord Consent or Bailee Letter, as applicable, within 45 days after entry into such agreement or arrangement (or such longer period as agreed to by the Administrative Agent in its reasonable discretion). For the avoidance of doubt, the failure to obtain any such Landlord Consent or Bailee Waiver (as applicable) after the use of commercially reasonable efforts shall not be a Default or an Event of Default. For purposes of clarity, no Obligor shall be required to enter into or obtain any leasehold mortgage, Landlord Consent, Bailee Waiver or any similar agreement in respect of any leasehold interest in real property in any jurisdiction outside of the United States.

**8.12 Termination of Non-Permitted Liens.** In the event that any Obligor shall become aware of, or be notified by the Administrative Agent or any Lender of the existence of, any outstanding Lien against any assets or property of such Obligor or any of its Subsidiaries, which Lien is not a Permitted Lien, such Obligor shall use its commercially reasonable efforts to promptly terminate or cause the termination of such Lien. This provision shall not limit any rights or remedies the Administrative Agent and Lenders have upon the occurrence and during the continuance of an Event of Default.

**8.13 Quarterly Call with Borrower and Management.** Quarterly, at a time selected by the Borrower and reasonably acceptable to the Administrative Agent that is promptly after the delivery of the information required pursuant to **Section 8.01(a) or (b)**, as applicable, commencing with the delivery of information with respect to the fiscal period ending June 30, 2026, the Borrower and its senior management team shall participate in a conference call for Lenders to discuss the financial position and results of operations of the Borrower and its Subsidiaries for the most recently ended period for which financial statements have been delivered.

**8.14 Board Materials.**

(a) The Borrower shall notify the Administrative Agent of any meetings of the Board (or any committee thereof) of the Borrower within five (5) Business Days after the occurrence thereof.

(b) Upon the Administrative Agent's reasonable request, the Borrower shall deliver to the Administrative Agent and the Lenders within fifteen (15) Business Days after the request therefor: (i) copies of all minutes of meetings of the Board (or any committee thereof) of the Borrower and any presentations delivered in connection with such meetings that are provided to the Board of the Borrower and (ii) copies of all material written consents duly passed by the Board (or any committee thereof) of the Borrower, in each case, other than any materials and presentations that are prepared for, presented during, or relating to, any executive sessions of the Board (or any committee thereof) of the Borrower; provided that any such material may be excluded or redacted by the Borrower in its reasonable discretion to (A) exclude information relating to (u) the performance of the Administrative Agent or any Lender, (v) the Borrower's strategy regarding the Loans or performance or non-performance under the Loan Documents, (w) the Borrower's evaluation of its rights or obligations under, or actual or potential compliance with, the Loan Documents, (x) any actual or contemplated financing or strategic transactions (including any refinancing transactions), (y) any actions the Borrower is considering with respect to any of the forgoing or (z) matters that could reasonably be expected to create a conflict of interest, (B) preserve attorney-client, work-product or other applicable privilege, (C) prevent any disclosure that could reasonably be expected to create a conflict of interest, or (D) protect proprietary information, trade secrets, or individually identifiable health information (as defined under HIPAA) or other confidential information relating to healthcare patients.

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

**8.16 ERISA Compliance.** Such Obligor shall comply, and shall cause each of its Subsidiaries to comply, with the provisions of ERISA with respect to any Plans to which such Obligor or such Subsidiary is a party as an employer, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

**8.17 Cash Management.** Such Obligor shall:

(a) subject to **Section 8.18(a)**, cause each deposit account, disbursement account, investment account (or other similar account) and lockbox of any Obligor (in each case, other than any Excluded Accounts) existing after the Account Control Agreement Completion Date to be subject to an account control agreement between the applicable Obligor, the Administrative Agent and the applicable depository institution in favor of the Administrative Agent in form and substance reasonably acceptable to the Administrative Agent (each such deposit account, disbursement account, investment account (or similar account) and lockbox, a “**Controlled Account**”) that (A) ensures, to the extent necessary under applicable Law, the perfection of a first priority (subject to Liens permitted under **Section 9.02(i)**) security interest in favor of the Administrative Agent on such Controlled Account, (B) provides that, upon written notice from the Administrative Agent, such depository institution shall comply with instructions originated by the Administrative Agent directing disposition of the funds in such Controlled Account without further consent of the applicable Obligor and (C) may not be terminated without prior written consent of the Administrative Agent; provided that, (x) each such deposit account, disbursement account or investment account (or other similar account) or lockbox existing on the Closing Date shall not be required to be subject to such an account control agreement until the Account Control Agreement Completion Date (or such longer period as agreed to by the Administrative Agent in its sole discretion), and (y) each such deposit account, disbursement account or investment account (or other similar account) or lockbox opened or acquired after the Closing Date shall not be required to be subject to such an account control agreement until the date that is forty-five (45) days after the opening or acquisition thereof (or such longer period as agreed to by the Administrative Agent in its sole discretion);

(b) deposit promptly, and in any event no later than two (2) Business Days after the date of receipt thereof (or such longer period of time as agreed by the Administrative Agent in its sole discretion), all cash, checks, drafts or other similar items of payment and relating to or constituting payments made in respect of any and all accounts and other rights and interests into (i) on and after the Account Control Agreement Completion Date, Controlled Accounts and (ii) prior to the Account Control Agreement Completion Date, deposit accounts held by the Obligors in the United States; and

(c) at any time after the occurrence and during the continuance of any Event of Default pursuant to **Section 11.01(a), (b), (d)** (but only as a result of a breach of any covenant under **Section 10**; provided further that any Event of Default as a result of a breach of **Section 10.02** (i) is subject to cure as provided in **Section 11.04** and (ii) shall not occur until the Cure Expiration Date) or **(h)**, at the request of the Administrative Agent, each Obligor shall cause all payments constituting proceeds of accounts to be directed into lockbox accounts under agreements in form and substance satisfactory to the Administrative Agent.

**8.18 Post-Closing Obligations.**

(a) Within thirty (30) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion) (the “**Account Control Agreement Completion Date**”), the Administrative Agent shall have received evidence that all deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts (other than Excluded Accounts) of each Obligor, are Controlled Accounts to the extent required to comply with the requirement of **Section 8.17**.

(b) Within forty-five (45) days after the Closing Date (or such later date as may be agreed by the Administrative Agent in its reasonable discretion) the Obligors shall use commercially reasonable efforts to obtain (A) a Landlord Consent with respect to any lease agreement in existence on the Closing Date with respect to real property or (B) a Bailee Letter with respect to any warehousing or bailment arrangement in existence on the Closing Date pursuant to which inventory, equipment or other assets of such Obligor are stored at a third-party warehouse or other facility, in each case of **clauses (A) and (B)**, where the location of such real property, warehouse or facility is in the United States and the Collateral at such location is valued in excess of \$2,000,000. For avoidance of doubt, the failure to obtain any such Landlord Consent or Bailee Waiver (as applicable) after the use of commercially reasonable efforts shall not be a Default or an Event of Default. For purposes of clarity, no Obligor shall be required to enter into or obtain any Landlord Consent or Bailee Waiver in respect of any leasehold interest in real property in any jurisdiction outside of the United States.

(c) Within thirty (30) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), Borrower shall cause all insurance policies so required pursuant to the Loan Documents to (i) name the Administrative Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear, and (ii) in the case of each casualty insurance policy contain a lender loss payable clause or endorsement naming the Administrative Agent, on behalf of the Secured Parties, as loss payee thereunder and providing for at least thirty (30) days' prior written notice to the Administrative Agent (ten (10) days' prior written notice in the event of cancellation for nonpayment) of any cancellation of such policy.

(d) Within sixty (60) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), Borrower shall deliver to the Administrative Agent duly executed and delivered Transfer Letters signed in blank covering all pending or issued Material Drug Applications of the Borrower existing on the Closing Date.

## **SECTION 9. NEGATIVE COVENANTS**

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

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

(a) the Obligations;

(b) Indebtedness existing on the date hereof and set forth on **Schedule 7.13(a)** and Permitted Refinancings thereof; provided that, if such Indebtedness is intercompany Indebtedness, (i) any Permitted Refinancing of such Indebtedness shall also be intercompany Indebtedness among the same parties and (ii) such Indebtedness shall be subject to the Intercompany Subordination Agreement;

(c) Indebtedness resulting from the settlement of any litigation (other than the Specified Litigation) in an aggregate amount not to exceed \$[\*\*\*]; provided that, to the extent insurance proceeds or indemnification from a solvent, unaffiliated third-party are actually received (or are reasonably expected to be received within 180 days of such settlement) by the applicable Obligor or Subsidiary, such amounts shall not be subject to the foregoing cap; provided, further, that, customary deductibles, retentions and co-insurance shall not reduce availability under this **clause (c)**;

(d) Indebtedness consisting of guarantees resulting from the endorsement of negotiable instruments for collection in the Ordinary Course;

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

(f) Indebtedness with respect to letters of credit that are at any time outstanding and issued on behalf of the Borrower or any Subsidiary in an amount not to exceed \$[\*\*\*] in the aggregate at any time;

(g) Indebtedness relating to or incurred in connection with the Specified Litigation Settlement Agreement;

(h) Indebtedness with respect to the Existing Credit Facility in an amount not to exceed the amount outstanding on the date hereof plus interest; provided that, no Indebtedness shall be permitted to be incurred under this clause (h) from and after the Closing Date;

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

(j) Ordinary Course equipment and software financing and leasing (including Capital Lease Obligations and purchase money Indebtedness); provided that (i) if secured, the collateral therefor consists solely of the assets being financed, the products and proceeds thereof and books and records related thereto and (ii) the aggregate outstanding principal amount of such Indebtedness does not exceed \$[\*\*\*] in the aggregate at any time;

(k) Permitted RTW Indebtedness;

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

(m) [Reserved];

(n) other unsecured Indebtedness in an aggregate outstanding principal amount not to exceed \$[\*\*\*];

(o) [Reserved];

(p) Indebtedness in respect of (i) letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created, or related to obligations or liabilities incurred, in the Ordinary Course, (ii) workers compensation claims, health, disability or other employee benefits, or performance of commercial contracts, or (iii) leases, subleases or liability insurance or self-insurance, workshare arrangements, or (iv) other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims;

(q) Indebtedness arising in connection with the financing of insurance premiums in the Ordinary Course;

(r) Indebtedness in respect of (i) customary performance bonds, bid bonds, appeal bonds, surety bonds, customs bonds, government bonds, performance and completion guarantees and similar obligations in each case arising in the Ordinary Course and (ii) customary indemnification obligations to purchasers in connection with Asset Sales permitted by **Section 9.09**;

(s) Indebtedness in respect of (i) netting services, (ii) overdraft protections, (iii) business credit cards, (iv) purchasing cards, (v) payment processing, (vi) automatic clearinghouse arrangements, (vii) arrangements in respect of pooled deposit or sweep accounts, (viii) check endorsement guarantees, and (ix) otherwise in connection with deposit accounts or cash management services, in each case, in the Ordinary Course; provided that the aggregate amount outstanding under **clause (iii)** shall not to exceed \$[\*\*\*] at any time outstanding; and

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

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

(a) Liens securing the Obligations;

(b) any Lien on any property or asset of such Obligor or any of its Subsidiaries existing on the date hereof and set forth on **Schedule 7.13(b)** and renewals and extensions thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien; provided that (i) no such Lien (including any renewal or extension thereof) shall extend to any other property or asset of such Obligor or any of its Subsidiaries (other than improvements and accessions to such property or asset) and (ii) any such Lien shall secure only those obligations which it secures on the date hereof and renewals, extensions and replacements thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien that do not increase the outstanding principal amount thereof (other than by an amount equal to unpaid interest and premiums thereon, required prepayment premiums, and any customary underwriting discounts, fees, commissions and expenses associated with such extension, renewal or replacement);

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

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

(e) pledges or deposits made in the Ordinary Course (i) in connection with bids, leases, appeal bonds, workers' compensation, unemployment insurance or other similar social security legislation or (ii) securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees) insurance carriers providing property, casualty or liability insurance to the Borrower or any Subsidiary;

(f) Liens for Taxes, assessments and other governmental charges not delinquent or that are being contested in good faith by appropriate proceedings diligently conducted, for which adequate reserves with respect thereto are being maintained in accordance with GAAP;

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

(h) with respect to any real property, (i) such defects or encroachments as might be revealed by an up-to-date survey of such real property, and such other defects in title that (A) do not interfere in any material respect with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes and (B) could not reasonably be expected to prevent or interfere with the ability of any Obligor or any of its Subsidiaries to conduct any Product Commercialization and Development Activities with respect to the Product in any material respect; (ii) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real property pursuant to all applicable Laws; and (iii) rights of expropriation, access or user or any similar right conferred or reserved by or in any Law, which, in the aggregate for foregoing **clauses (i), (ii) and (iii)**, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors or its Subsidiaries;

(i) (i) Liens that are contractual or common law rights of set-off relating to (A) the establishment of depository relations in the Ordinary Course with banks not given in connection with the issuance of Indebtedness or (B) pooled deposit or sweep accounts of the Borrower and any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the Ordinary Course, (ii) other Liens securing cash management obligations with depository institutions (that do not constitute Indebtedness) in the Ordinary Course and (iii) Liens encumbering customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the Ordinary Course of business;

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

(k) Liens securing Indebtedness permitted under **Sections 9.01(f), (q), (r), and (s)**;

(l) any judgment Lien or Liens arising from decrees or attachments not constituting an Event of Default;

(m) Liens arising from precautionary UCC financing statement filings regarding operating leases of personal property and consignment arrangements entered into in the Ordinary Course;

(n) other Liens not securing borrowed money which secure obligations in an aggregate amount not to exceed \$[\*\*\*] at any time outstanding;

(o) Liens securing Indebtedness permitted under **Section 9.01(h)**; provided that, no Liens shall be permitted to be incurred under this clause (o) from and after the Closing Date;

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods and incurred in the Ordinary Course;

(q) (i) Permitted Licenses and Specified Permitted Transactions, (ii) solely with respect to assets owned by third parties and licensed or leased to such Obligor or any of its Subsidiaries, retained interests or title of licensors or lessors that do not conflict with such Obligor's or any such Subsidiaries' use thereof and (iii) leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the Ordinary Course of any Obligor or any Subsidiary thereof;

(r) Liens on cash and Permitted Cash Equivalent Investments securing obligations under Permitted Hedging Agreements;

(s) (i) Liens to secure payment of workers' compensation, employment insurance, old age pensions, social security and other like social and welfare obligations incurred in the Ordinary Course (other than Liens imposed by ERISA) and (ii) deposits in respect of letters of credit, bank guarantees or similar instruments issued for the account of any Obligor or any Subsidiary in the Ordinary Course supporting obligations of the type set forth in **clause (i)** above;

(t) Liens solely on any cash earnest money deposits or customary cash escrow arrangements made by the Borrower or any of the Subsidiaries in connection with any letter of intent or purchase agreement in respect of any Investment permitted hereunder;

(u) Liens arising out of any sale-leaseback transaction not prohibited by **Section 9.14**, so long as such Liens attach only to the property sold and being leased in such transaction and any accessions and additions thereto or proceeds and products thereof and related property;

(v) Liens of sellers of goods to the Borrower and any Subsidiaries arising under Article 2 of the UCC or otherwise in the Ordinary Course, covering only the goods sold and securing only the unpaid purchase price for such goods and related expenses;

(w) any Lien arising under conditional sale, title retention, consignment or similar arrangements for the sale of goods in the Ordinary Course; provided that such Lien attaches only to the goods subject to such sale, title retention, consignment or similar arrangement; and

(x) back-up Liens securing the Permitted RTW Indebtedness solely to the extent that (and only for so long as) the Permitted RTW Indebtedness is subject to the Permitted RTW Intercreditor Agreement.

provided that no Lien otherwise permitted under any of the foregoing shall apply to any Material Intellectual Property, other than **Sections 9.02(a), (f), (l) and (q)** of this **Section 9.02**.

**9.03 Fundamental Changes and Acquisitions.** Such Obligor will not, and will not permit any of its Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation (or otherwise merge, amalgamate or consolidate), (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), (iii) other than in the case of the Borrower, sell or issue any of its Equity Interests or (iv) other than Permitted Acquisitions and any Acquisition permitted by **Section 9.05(a)**, make any Acquisition or otherwise acquire any business or substantially all the property from, or Equity Interests of, or be a party to any Acquisition of, any Person, except:

(a) the merger, amalgamation, consolidation or liquidation of any (i) Subsidiary with or into any Obligor; provided that with respect to any such transaction involving (x) the Borrower, the Borrower must be the surviving or successor entity of such transaction or (y) any other Obligor, such Obligor must be the surviving or successor entity of such transaction or the surviving Person shall concurrently become an Obligor (unless such transaction involves more than one Obligor, then an Obligor must be the surviving or successor entity of such transaction) or (ii) any Subsidiary that is not an Obligor with or into any other Subsidiary that is not an Obligor;

(b) the sale, lease, transfer or other disposition by (i) any Subsidiary of any or all of its property (upon voluntary liquidation or otherwise) to any Obligor or to any entity that concurrently shall become an Obligor or (ii) any Subsidiary that is not an Obligor of any or all of its property (upon voluntary liquidation or otherwise) to any other Subsidiary that is not an Obligor;

(c) the sale, transfer or other disposition of the Equity Interests of (i) any Subsidiary to any Obligor or (ii) any Subsidiary that is not an Obligor to any other Subsidiary that is not an Obligor;

(d) mergers, amalgamations, consolidations, dissolutions, winding ups or liquidations of any Subsidiary (other than the Borrower) to effectuate any Asset Sales permitted under **Section 9.09**; provided that an Obligor shall be the surviving or receiving party, as applicable, with respect to any such event that involves an Obligor (unless such transaction involves more than one Obligor, then an Obligor must be the surviving or successor entity of such transaction);

(e) in connection with any Permitted Acquisition or other Investment permitted under **Section 9.05**, any Obligor or any of its Subsidiaries may merge or amalgamate into or consolidate with any other Person or permit any other Person to merge or amalgamate into or consolidate with it, so long as (i) the Person surviving such merger or amalgamation with any Subsidiary shall be a direct or indirect wholly-owned Subsidiary of the Borrower, (ii) in the case of any such event to which the Borrower is a party, the Borrower is the surviving Person, and (iii) in the case of any such event to which a Guarantor is a party, the surviving Person is such Guarantor or concurrently therewith becomes a Guarantor (unless such transaction involves more than one Guarantor, then a Guarantor must be the surviving or successor entity of such transaction); and

(f) any Subsidiary may dissolve, liquidate or wind up its affairs at any time, provided, that, such dissolution, liquidation or winding up could not reasonably be expected to have a Material Adverse Effect and all of such Subsidiary's assets and business are transferred to an Obligor or solely in the case of a Subsidiary that is not an Obligor, another Subsidiary that is not an Obligor prior to or concurrently with such dissolution, liquidation or winding up.

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

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

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

(b) operating deposit accounts with banks (or similar deposit-taking institutions) and securities accounts (and the cash and Permitted Cash Equivalent Investments therein) that, in the case maintained by Obligors, are compliant with **Section 8.17(a)**;

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

- (d) investments in cash and Permitted Cash Equivalent Investments;
- (e) Investments by an Obligor in another Obligor;
- (f) Investments in connection with, and the performance of obligations under (including, for the avoidance of doubt, the entry into, payment of any premium with respect to and the settlement of), any Permitted Hedging Agreement in accordance with its terms and as otherwise permitted by this Agreement;
- (g) Investments consisting of prepaid expenses, deposits under contracts for the purchase of assets, negotiable instruments held for collection or deposit, security deposits with utilities, landlords and other like Persons and deposits in connection with workers' compensation and similar deposits, in each case, made in the Ordinary Course, and other deposits and cash collateral constituting Permitted Liens;
- (h) employee, officer and director loans, travel advances and guarantees in accordance with the Borrower's usual and customary practices with respect thereto (if permitted by applicable Laws) which in the aggregate shall not exceed \$[\*\*\*] outstanding at any time;
- (i) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;
- (j) Permitted Acquisitions;
- (k) the increase in value of any Investment otherwise permitted pursuant to this **Section 9.05**;
- (l) other Investments in an aggregate amount outstanding at any time not to exceed \$[\*\*\*];
- (m) Investments of any Person in existence at the time such Person becomes a Subsidiary (including via a Permitted Acquisition); provided such Investment was not made in connection with or anticipation of such Person becoming a Subsidiary and any modification, replacement, renewal or extension thereof;
- (n) Investments permitted under **Section 9.03** (other than **clause (e)** thereof);
- (o) Investments consisting of the non-cash portion of the sales consideration received by the Borrower or any of its Subsidiaries in connection with any Asset Sale permitted under **Section 9.09**;
- (p) to the extent constituting Investments, Guarantees of Indebtedness, which Guarantees are permitted under **Section 9.01**; and
- (q) Investments in the Ordinary Course consisting of endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices.

Notwithstanding anything in this Agreement to the contrary, (i) the Obligors shall not, and shall not permit any of their Subsidiaries to (x) directly or indirectly transfer, by means of contribution, sale, assignment, lease or sublease, license or sublicense, or other disposition of any kind (including as an Investment, Restricted Payment or Asset Sale), any Material Intellectual Property owned or controlled by any Obligor or any of its Subsidiaries to any Person other than to the Borrower or a Guarantor, other than pursuant to Permitted Licenses, Specified Permitted Transactions or as permitted pursuant to **Section 9.09(j)** or **Section 9.03** (other than by reference to **Section 9.09**) or (y) permit any Person other than an Obligor to license or own any interest in any Material Intellectual Property owned by such Obligor (other than (A) pursuant to Permitted Licenses and Specified Permitted Transactions and (B) as permitted by **Section 9.09(j)** or **(l)** or **Section 9.03** (other than by reference to **Section 9.09**)), and (ii) no Material Intellectual Property or Material Agreement shall be contributed as an Investment or distributed as a Restricted Payment to any Subsidiary other than an Obligor (other than pursuant to Permitted Licenses and Specified Permitted Transactions).

**9.06 Restricted Payments.** Such Obligor will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment; provided that the following Restricted Payments shall be permitted:

(a) dividends with respect to the Borrower's Equity Interests payable solely in shares of its Qualified Equity Interests (or the equivalent thereof);

(b) so long as no Event of Default has occurred and is continuing or would reasonably be expected to occur or result from such Restricted Payment, the Borrower's purchase, redemption, retirement, or other acquisition of shares of its Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its Qualified Equity Interests;

(c) dividends or distributions paid in cash by any Subsidiary of an Obligor to any Obligor;

(d) so long as no Event of Default has occurred and is continuing or would reasonably be expected to occur or result from such Restricted Payment, any purchase, redemption, retirement or other acquisition of Equity Interests of the Borrower held by consultants, officers, directors and employees or former consultants, officers, directors or employees (or their transferees, estates, or beneficiaries under their estates) of the Borrower and its Subsidiaries not to exceed \$[\*\*\*] in any fiscal year;

(e) cashless repurchases of Equity Interests deemed to occur upon exercises of options and warrants or the settlement or vesting of other equity awards if such Equity Interests represent a portion of the exercise price of such options or warrants or similar equity incentive awards;

(f) cash payments made by the Borrower in lieu of fractional shares upon exercise of warrants or options or conversions of convertible securities;

(g) the Borrower may acquire (or withhold) its Equity Interests pursuant to any employee equity incentive or similar plan to pay withholding taxes for which the Borrower is liable in respect of a current or former officer, director, employee, member of management or consultant upon such grant or award (or upon vesting or exercise thereof);

(h) [reserved]; and

(i) so long as no Event of Default has occurred and is continuing or would reasonably be expected to occur or result from such Restricted Payment, other Restricted Payments in an aggregate amount not to exceed \$[\*\*\*] in any fiscal year.

Notwithstanding anything to the contrary in the foregoing, the issuance of, entry into (including any payments of premiums in connection therewith), performance of obligations under (including any payments of interest), and conversion, exercise, repurchase, redemption, settlement or early termination or cancellation of (whether in whole or in part and including by netting or set-off) (in each case, whether in cash, common shares, or, following a merger event or other change of the common shares, other securities or property), or the satisfaction of any condition that would permit or require any of the foregoing shall not constitute a Restricted Payment by the Borrower.

**9.07 Payments of Indebtedness.** Such Obligor will not, and will not permit any of its Subsidiaries to, make any payments in respect of any Indebtedness other than (i) payments of the Obligations, (ii) scheduled payments of Indebtedness to the extent permitted pursuant to the terms, if any, of any applicable subordination or intercreditor agreement in respect of the Obligations, (iii) intercompany indebtedness permitted under **Section 9.01** subject to the Intercompany Subordination Agreement, (iv) Indebtedness permitted to be incurred under **Sections 9.01(b), (c), (d), (g), (i)** (to the extent the underlying Indebtedness is otherwise permitted to be paid under this **Section 9.07**), **(j), (k)** (solely to the extent not prohibited by the Permitted RTW Intercreditor Agreement), **(l), (n), (p), (q), (r), (s)** and **(t)** and (v) Permitted Refinancings not prohibited hereunder.

**9.08 Change in Fiscal Year.** Such Obligor will not, and will not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the date hereof (without the prior written consent of the Administrative Agent), except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to that of the Borrower.

**9.09 Sales of Assets, Etc.** Such Obligor will not, and will not permit any of its Subsidiaries to, directly or indirectly, sell, lease or sublease (as lessor or sub-lessor), sale and leaseback, assign, convey, exclusively license (in terms of geography or field of use), transfer, or otherwise dispose of any of its businesses, assets or property of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired (including accounts receivable and Equity Interests of Subsidiaries, but excluding de minimis shares of Equity Interests required for qualification of directors under applicable law), in each case, involving property of the Borrower or any of its Subsidiaries in excess of \$[\*\*\*] in one transaction or series of transactions (any thereof, an “*Asset Sale*”), except:

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

(b) (i) sales of inventory in the Ordinary Course in an Arm's Length Transaction and (ii) the use of cash and Permitted Cash Equivalent Investments in the Ordinary Course or as otherwise permitted pursuant to this Agreement;

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

(d) Permitted Licenses and Specified Permitted Transactions;

(e) licenses, transfers of assets, rights or property by the Borrower or any Subsidiary to any Obligor;

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

(g) dispositions resulting from Casualty Events (without giving effect to the Dollar exception set forth in the definition thereof);

(h) the unwinding of any Hedging Agreements permitted by **Section 9.05** pursuant to its terms;

(i) in connection with any transaction permitted by **Section 9.02**, **Section 9.03**, **Section 9.05**, **Section 9.06** or **Section 9.14**, in each case, other than by reference to this **Section 9.09**;

(j) in connection with the transactions contemplated under the Permitted RTW Purchase Agreement;

(k) so long as no Event of Default has occurred and is continuing, other Asset Sales (other than with respect to Material Intellectual Property) with a fair market value not in excess of \$[\*\*\*] in the aggregate in any fiscal year;

(l) in connection with the transactions contemplated under the Permitted Bracebridge Royalty Purchase Agreement;

(m) other Asset Sales (other than with respect to Material Intellectual Property) not in excess of (i) \$[\*\*\*] in the aggregate in any fiscal year and (ii) \$[\*\*\*] in the aggregate during the term of this Agreement in which any Obligor or any Subsidiary will receive cash proceeds in an amount equal to no less than [\*\*\*] percent ([\*\*\*]%) of the total consideration (fixed or contingent) paid or payable to such Obligor or Subsidiary;

(n) dispositions in the Ordinary Course consisting of the abandonment, lapse, forfeiture, cancellation or dedication to the public of Intellectual Property (other than Material Intellectual Property) which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Obligors and their Subsidiaries; and

(o) any sublease of space in a real property (or portion thereof) leased by an Obligor or by any Subsidiary from time to time, provided such sublease does not materially interfere with the business and operations of the Borrower and its Subsidiaries.

Notwithstanding anything in this Agreement to the contrary, (i) the Borrower shall not, and shall not permit any of its Subsidiaries to (x) directly or indirectly transfer, by means of contribution, sale, sale and leaseback, assignment, lease or sublease, conveyance, license or sublicense, disposition of any kind or otherwise, Material Intellectual Property owned or controlled by any other Obligor or any of its Subsidiaries to any Person other than the Borrower or a Guarantor, other than pursuant to Permitted Licenses, Specified Permitted Transactions or as permitted pursuant to **Section 9.09(j)** or **Section 9.03** (other than by reference to this **Section 9.09**), or (y) permit any Person other than the Borrower or a Guarantor to hold any interest in such Material Intellectual Property (other than (A) pursuant to Permitted Licenses and Specified Permitted Transactions and (B) as permitted by **9.09(j)** or **(l)** or **Section 9.03** (other than by reference to this **Section 9.09**)), and (ii) no Material Intellectual Property owned or controlled by the Borrower or a Guarantor shall be contributed as an Investment to any Subsidiary other than to the Borrower or a Guarantor (other than pursuant to Permitted Licenses and Specified Permitted Transactions).

**9.10 Transactions with Affiliates.** Such Obligor will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction to sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, unless such arrangement or transaction (i) is an Arm's Length Transaction, (ii) is of the kind which would be entered into by a prudent Person in the position of the Obligor or its Subsidiaries with another Person that is not an Affiliate, (iii) is between or among (x) one or more Obligors, on the one hand, and, on the other hand, one or more Obligors, (y) one or more Subsidiaries of the Obligors that are not Obligors, on the one hand, and, on the other hand, one or more Subsidiaries of the Obligors that are not Obligors and (z) one or more Obligors or their Subsidiaries that are not Obligors, on the one hand, and, on the other hand, one or more Obligors or their Subsidiaries that are Obligors (provided that, with respect to **clause (z)** only, the terms thereof are no less favorable to the Obligors than those that would be obtained in a comparable arm's-length transaction with a non-affiliated Person), (iv) constitutes customary compensation (including performance, discretionary, retention, relocation, transaction and other special bonuses and payment, severance payments and payments pursuant to employment agreements), other benefits (including retirement, health, stock option and other benefit plans, life insurance, disability insurance and other equity (or equity-linked) awards) and indemnification of, and other employment arrangements with, directors, officers, and employees of any Obligor or its Subsidiaries in the Ordinary Course, (v) constitutes payment of customary fees, reimbursement of expenses, and payment of indemnification to officers and directors and customary payment of insurance premiums on behalf of officers and directors by the Obligors or their Subsidiaries, in each case, in the Ordinary Course, (vi) is permitted pursuant to **Section 9.05(h)** or **Section 9.06(d)** or are the transactions set forth on **Schedule 7.19**, or (vii) is a transaction or a series of related transactions with an aggregate consideration of less than \$[\*\*\*].

**9.11 Restrictive Agreements.** Such Obligor will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any Restrictive Agreement other than (i) restrictions and conditions imposed by applicable Laws or by the Loan Documents, (ii) Restrictive Agreements listed on **Schedule 7.15**, and, to the extent such Restrictive Agreement is set forth in an agreement evidencing Indebtedness, any Permitted Refinancing in respect thereof, so long as such restrictions are not (taken as a whole) materially less favorable to the Lenders (taken as a whole) than those in the original Indebtedness, (iii) limitations associated with Permitted Liens or any document or instrument governing any Permitted Lien, (iv) any documentation governing Indebtedness referenced in **Section 9.01(l), (m) or (o)** (or any Permitted Refinancing thereof), (v) customary provisions in leases, subleases, Permitted Licenses, Specified Permitted Transactions and other Contracts restricting the assignment thereof or restricting the assignment, pledge, transfer or sublease or sublicense of the property leased, licensed or otherwise the subject thereof; (vi) any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Subsidiary (but not any modification or amendment expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Subsidiary; (vii) restrictions or conditions in any Indebtedness permitted pursuant to **Section 9.01** that is incurred or assumed by Subsidiaries that are not Obligors to the extent such restrictions or conditions are no more restrictive in any material respect than the restrictions and conditions in the Loan Documents; (viii) restrictions or conditions imposed by any agreement relating to purchase money Indebtedness and other secured Indebtedness or to leases, subleases and licenses permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness or the property leased, subleased or licensed; (ix) customary provisions in contracts for the disposition of any assets; provided that the restrictions in any such contract shall apply only to the assets or Subsidiary that is to be disposed of and such disposition is permitted hereunder (or, in the case of the sale of the Borrower, such agreement contemplates the repayment in full of the Obligations hereunder (other than inchoate indemnification and expense reimbursement obligations for which no claim has been made)); (x) customary provisions regarding confidentiality or restricting assignment, pledges or transfer of any Permitted License, Specified Permitted Transaction or any other agreement entered into in the Ordinary Course; (xi) customary net worth provisions or similar financial maintenance provisions contained in any agreement entered into by a Subsidiary; (xii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures and applicable solely to such joint ventures; and (xiii) restrictions or encumbrances in any agreement in effect at the time a Person becomes a Subsidiary, so long as such agreement was not entered into in contemplation of such Person becoming a Subsidiary and such restrictions or encumbrances do not extend beyond such Subsidiary or its assets.

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

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

(b) waive, amend, replace or otherwise modify any term or provision of any Material License or Material Agreement, in each case, in a manner materially adverse to the rights and remedies the Administrative Agent and the Lenders hereunder; or

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

(d) enter into, waive, terminate, replace or otherwise modify any Contract that involves or results in the disposition, assignment or licensing of any Material Intellectual Property, unless such agreement is (i) a Permitted License or a Specified Permitted Transaction, (ii) permitted pursuant to **Section 9.09** or (iii) approved in writing by the Majority Lenders.

**9.13 Out-Licenses.** No Obligor shall, nor shall it permit any of its Subsidiaries to, enter into or become or remain bound by any Out-License, covenant not to sue or other grant of rights or immunities under Material Intellectual Property, except for Permitted Licenses and Specified Permitted Transactions.

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

**9.15 Hazardous Material.**

(a) Such Obligor will not, and will not permit any of its Subsidiaries to use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

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

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

**9.18 Sanctions; Anti-Corruption Use of Proceeds.**

(a) No Obligor nor any of its Subsidiaries or their respective agents shall (i) conduct any business or engage in any transaction or dealing with any Sanctioned Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person; (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to any Sanctions; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any applicable Sanctions, the Patriot Act or any other Anti-Terrorism Law.

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

## SECTION 10. FINANCIAL COVENANTS

**10.01 Minimum Liquidity.** The Obligors shall maintain the Minimum Liquidity Amount in unrestricted cash (subject to Liens granted under the Loan Documents in favor of the Administrative Agent and Liens permitted under **Section 9.02(i)**) and/or Permitted Cash Equivalent Investments, and at all times after the Account Control Agreement Completion Date, in one or more Controlled Accounts that is free and clear of all Liens, other than Liens granted under the Loan Documents in favor of the Administrative Agent and Liens permitted under **Section 9.02(i)** (such covenant, the “*Minimum Liquidity Covenant*”). For the avoidance of doubt, the Minimum Liquidity Covenant shall apply at all times but the requirement to maintain unrestricted cash (subject to Liens granted under the Loan Documents in favor of the Administrative Agent and Liens permitted under **Section 9.02(i)**) and/or Permitted Cash Equivalent Instruments in one or more Controlled Accounts shall not apply until the Account Control Agreement Completion Date.

### **10.02 Minimum Net Sales.**

(a) Beginning with the later of (x) the first full fiscal quarter ending after the Applicable Funding Date with respect to the Tranche B Term Loans and (y) the four fiscal quarter period ending December 31, 2027, and with respect to each subsequent fiscal quarter thereafter, the Net Sales of the Borrower and its Subsidiaries for the twelve (12) consecutive month period ending on the last day of such fiscal quarter shall not be less than the Minimum Net Sales for such period (such covenant, the “*Minimum Net Sales Covenant*”).

(b) Notwithstanding anything herein to the contrary, compliance with the Minimum Net Sales Covenant shall not be tested at the end of any fiscal quarter if one of the following conditions have been met: (i) the Obligors’ cash and/or Permitted Cash Equivalent Investments in one or more Controlled Accounts that is free and clear of all Liens, other than Liens granted under the Loan Documents in favor of the Administrative Agent and Liens permitted under **Section 9.02(i)** on the last Business Day of such quarter is equal to or greater than the product of (A) 1.50 multiplied by (B) the aggregate principal amount of outstanding Loans on such date; or (ii) the Market Capitalization as of the last Trading Day of such quarter is at least Five Hundred Million Dollars (\$500,000,000.00) (any of the immediately foregoing **clauses (i)** or **(ii)**, a “*Waiver Condition*”). To the extent Borrower elects not to test compliance with the Minimum Net Sales Covenant for a given fiscal quarter, the fulfillment of a Waiver Condition shall be met by (x) with respect to **clause (i)** above, delivery of bank statements as of the last Business Day of such fiscal quarter showing compliance with the applicable cash and Permitted Cash Equivalent Investments requirements, or (y) with respect to **clause (ii)** above calculations of Market Capitalization as of the last Trading Day of such fiscal quarter (to be delivered concurrently with delivery of a Compliance Certificate for such fiscal quarter).

**SECTION 11.**  
**EVENTS OF DEFAULT**

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

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

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

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

(d) **Certain Covenants.** Any Obligor shall fail to observe or perform any covenant, condition or agreement contained in **Sections 8.02, 8.03** (with respect to the Borrower’s existence), **8.11, 8.15, 8.17, 8.18, Section 9, Section 10** or Section 4 of the Warrant Issuance Agreement; provided that any Event of Default under **Section 10.02** is subject to cure as provided in **Sections 11.04** and an Event of Default with respect to such Section shall not occur until the Cure Expiration Date.

(e) **Other Covenants.** Any Obligor shall fail to observe or perform (i) any covenant, condition or agreement contained in **Sections 8.01(a), 8.01(b), 8.01(d), 8.01(l), 8.01(n) or 8.01(o)(II)(A)** and such failure shall continue unremedied for a period of five (5) or more days, (ii) any covenant, condition or agreement contained in **Section 8.01(o)(II)(B)** and such failure shall continue unremedied for a period of ten (10) or more days or (iii) any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a), (b), (d), (e)(i) or (e)(ii)**) or any other Loan Document, and, only in the case of any failure that is capable of cure, such failure shall continue unremedied for a period of thirty (30) or more days.

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

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

(h) **Insolvency, Bankruptcy, Etc.**

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

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

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

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

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

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

(A) seeking to adjudicate it as insolvent;

(B) seeking a receiving order against it;

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

(D) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property, and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of sixty (60) days after the institution thereof; provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against such Obligor or such Subsidiary thereunder in the interim, such grace period will cease to apply; provided, further, that if such Obligor or Subsidiary files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply.

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

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

(j) **ERISA.** If any of the following occurs: (i) one or more ERISA Events shall have occurred; (ii) there is or arises an Unfunded Pension Liability (taking into account only Title IV Plans with positive Unfunded Pension Liability); or (iii) there is or arises any potential Withdrawal Liability, if all Obligors and the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans, in each case, would reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount in excess of \$[\*\*\*].

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

(l) **[Reserved].**

(m) **Regulatory Matters, Etc.** If any of the following occurs: (i) the FDA initiates an enforcement action, or issues a warning letter with respect to Anaphylm that causes any Obligor to discontinue or withdraw, or would reasonably be expected to cause any Obligor to discontinue or withdraw, marketing or sales of Anaphylm, or causes a material delay in the manufacture or sale of Anaphylm, (ii) any revocation, withdrawal, suspension, cancellation, material limitation, termination or adverse modification of any Product Authorization in the U.S. for Anaphylm, or (iii) a recall of Anaphylm, in each case of **clauses (i) – (iii)** above, that, in each case prevents the Obligors from selling or manufacturing Anaphylm in the United States for more than [\*\*\*].

(n) **[Reserved].**

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

## 11.02 Remedies.

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

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

**11.03 Additional Remedies.** If an Event of Default has occurred and is continuing, if any Obligor shall at such time be in default under a Material Agreement that is continuing, the Administrative Agent shall have the right (but not the obligation) to cause such default or defaults under such Material Agreement to be remedied (including by paying any unpaid amount thereunder) and otherwise exercise any and all rights of such Obligor, as the case may be, thereunder, as may be necessary to prevent or cure any such default, and each Obligor shall promptly execute, acknowledge and deliver to the Administrative Agent such instruments as the Administrative Agent may reasonably request in writing to permit the Administrative Agent to cure any such default under the applicable Material Agreement or permit the Administrative Agent to take such other action required to enable the Administrative Agent to cure or remedy such default and preserve the interests of the Administrative Agent. Any amounts paid by the Administrative Agent pursuant to this **Section 11.03** shall be payable in accordance with **Section 14.03(a)**, shall accrue interest at the Default Rate if not paid when due, and shall constitute "Obligations."

#### 11.04 Minimum Net Sales Covenant Cure.

(a) Notwithstanding anything to the contrary contained in **Section 11.02**, in the event the Borrower fails to comply with the requirements of the Minimum Net Sales Covenant, during the period from the end of the relevant fiscal quarter until the expiration of the fifteenth (15<sup>th</sup>) Business Day subsequent to the date the financial statements are required to be delivered pursuant to **Sections 8.01(a)** or **8.01(b)** (the “**Cure Expiration Date**”), the Borrower shall have the right to make a Net Sales Cure Payment with the proceeds from the sale or issuance of Equity Interests (other than Disqualified Equity Interests) (the “**Minimum Net Sales Cure Right**”). Upon the Administrative Agent’s receipt of the applicable Net Sales Cure Payment and the making of the prepayment pursuant to **Section 3.03(b)(iv)**, the Borrower shall then be in compliance with the requirements of the Minimum Net Sales Covenant and the Borrower shall be deemed to have satisfied the requirements of the Minimum Net Sales Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Minimum Net Sales Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement. Any Net Sales Cure Payment shall be applied to the prepayment of the Loans, including accrued and unpaid interest and any applicable Yield Protection Premium or Exit Fee.

(b) Upon the Administrative Agent’s receipt of a notice from the Borrower that it intends to exercise the Minimum Net Sales Cure Right (a “**Notice of Intent to Cure Net Sales Covenant**”), until the fifteenth (15<sup>th</sup>) Business Day subsequent to the date the financial statements are required to be delivered pursuant to **Sections 8.01(a)** or **8.01(b)** to which such Notice of Intent to Cure Net Sales Covenant relates, no Lender shall be required to extend any credit pursuant to its Commitment during such period, and neither the Administrative Agent nor any Lender shall exercise the right to accelerate payment of the Loans or terminate the Commitments and neither the Administrative Agent nor any other Lender shall exercise any right to foreclose on or take possession of the Collateral, or any other remedy pursuant hereto, any other Loan Document or applicable Law solely on the basis of an allegation of an Event of Default having occurred and being continuing under **Section 11.01** due to failure by the Borrower to comply with the requirements of the Minimum Net Sales Covenant for the applicable period. If prior to the Cure Expiration Date, the Majority Lenders decline the exercise by the Borrower of the Minimum Net Sales Cure Right by written notice to the Administrative Agent and the Borrower to that effect, then the Borrower shall be deemed to have satisfied the requirements of the Minimum Net Sales Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Minimum Net Sales Covenant and any related Default that had occurred shall be deemed cured for the purposes of this Agreement and the other Loan Documents.

(c) Notwithstanding anything else in this Agreement, there shall be no more than four (4) fiscal quarters in which the cure rights set forth in this **Section 11.04** are exercised during the term of this Agreement; provided further that, in each four fiscal quarter period, there will be at least two (2) fiscal quarters in which the cure rights set forth in this **Section 11.04** are not exercised.

**11.05 Payment of Yield Protection Premium and Exit Fee.** Notwithstanding anything in this Agreement to the contrary, each of the Yield Protection Premium and Exit Fee shall automatically be due and payable at any time the Obligations become due and payable prior to the Maturity Date in accordance with the terms hereof (other than as a result of a Casualty Event) as though such Indebtedness was voluntarily prepaid and shall constitute part of the Obligations, whether due to acceleration pursuant to the terms of this Agreement (in which case it shall be due immediately, upon the giving of notice to Borrower in accordance with **Section 11.02(a)**, or automatically, in accordance with **Section 11.02(b)**), by operation of law or otherwise (including on account of any bankruptcy filing), in view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such acceleration, and by mutual agreement of the parties as to a reasonable estimation and calculation of the lost profits or damages of the Lenders as a result thereof. Any Yield Protection Premium or Exit Fee payable pursuant to this Agreement shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination, acceleration, redemption, repayment or prepayment and each Obligor agrees that such Yield Protection Premium or Exit Fee is reasonable under the circumstances currently existing. Each of the Yield Protection Premium and Exit Fee shall also become due and payable under this Agreement in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means or the Obligations are reinstated pursuant to Section 1124 of the Bankruptcy Code. If either the Yield Protection Premium or Exit Fee (or both) becomes due and payable pursuant to this Agreement, such Yield Protection Premium or Exit Fee shall be deemed to be principal of the Loans and Obligations under this Agreement and interest shall accrue on the full principal amount of the Loans (including such Yield Protection Premium or Exit Fee) from and after the applicable triggering event. In the event the Yield Protection Premium is determined not to be due and payable by order of any court of competent jurisdiction, including by operation of the Bankruptcy Code, despite such a triggering event having occurred, each of the Yield Protection Premium and Exit Fee shall nonetheless constitute Obligations under this Agreement for all purposes hereunder. EACH OBLIGOR HEREBY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE YIELD PROTECTION PREMIUM AND ANY DEFENSE TO PAYMENT, WHETHER SUCH DEFENSE MAY BE BASED IN PUBLIC POLICY, AMBIGUITY, OR OTHERWISE. The Obligors, the Administrative Agent and the Lenders acknowledge and agree that any Yield Protection Premium or Exit Fee due and payable in accordance with this Agreement shall not constitute unmatured interest, whether under Section 5.02(b)(3) of the Bankruptcy Code or otherwise. Each Obligor further acknowledges and agrees, and waives any argument to the contrary, that payment of such amount does not constitute a penalty or an otherwise unenforceable or invalid obligation. Each Obligor expressly agrees that (i) each of the Yield Protection Premium and Exit Fee is reasonable and is the product of an arm's-length transaction between sophisticated business people, ably represented by counsel, (ii) each of the Yield Protection Premium and Exit Fee shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between the Lenders and the Obligors giving specific consideration in this transaction for such agreement to pay each of the Yield Protection Premium or Exit Fee, (iv) the Obligors shall not challenge or question, or support any other Person in challenging or questioning, the validity or enforceability of the Yield Protection Premium or Exit Fee or any similar or comparable prepayment fee under the circumstances described herein, and shall be estopped hereafter from claiming differently than as agreed to in this **Section 11.05**, (v) their agreement to pay each of the Yield Protection Premium or Exit Fee is a material inducement to the Lenders to make the Loans, and (vi) each of the Yield Protection Premium and Exit Fee represents a good faith, reasonable estimate and calculation of the lost profits, losses or other damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such event. Each Obligor expressly acknowledges that its agreement to pay or guarantee the payment of the Yield Protection Premium or Exit Fee to the Lenders as herein described are individually and collectively a material inducement to holders to enter into this Agreement.

**SECTION 12.**  
**THE ADMINISTRATIVE AGENT**

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

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

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

(c) **Limited Duties.** The Lenders and the Obligors hereby each acknowledge and agree that the Administrative Agent (i) has undertaken its role hereunder purely as an accommodation to the parties hereto and the Transactions, (ii) is receiving no compensation for undertaking such role and (iii) subject only to the notice provisions set forth in **Section 12.09**, may resign from such role at any time for any reason or no reason whatsoever. Without limiting the foregoing, the parties hereto further acknowledge and agree that under the Loan Documents, the Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in **Section 12.11**), with duties that are entirely administrative in nature, notwithstanding the use of the defined term “the Administrative Agent”, the terms “agent”, “administrative agent” and “collateral agent” and similar terms in any Loan Document to refer to the Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any duty or obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document (fiduciary or otherwise), in each case, regardless of whether a Default has occurred and is continuing, and each Lender hereby waives and agrees not to assert any claim against the Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in this **Section 12.01(c)**. Without in any way limiting the foregoing, the Administrative Agent shall not, except as expressly set forth in this Agreement and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Obligor or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

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

### **12.03 Use of Discretion.**

(a) **No Action without Instructions.** The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except (subject to **Section 12.03(b)** below) any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to written instructions from the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) **Right Not to Follow Certain Instructions.** Notwithstanding **Section 12.03(a)** or any other term or provision of this **Section 12**, the Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Administrative Agent, any other Secured Party) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any Related Party thereof or (ii) that is, in the opinion of the Administrative Agent, in its sole and absolute discretion, contrary to any Loan Document or applicable Law, including, for the avoidance of doubt, any action that may be in violation of the automatic stay in connection with any Insolvency Proceeding.

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

**12.05 Reliance and Liability.**

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

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

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of, or with the consent of, the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in **Section 14.03**) or for the actions or omissions of any of its Related Parties selected with reasonable care (other than employees, officers and directors of the Administrative Agent, when acting on behalf of the Administrative Agent);

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

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

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

**12.06 Administrative Agent Individually.** The Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, accept deposits from, act as the financial advisor for or in any other advisory capacity for, or engage in any kind of business with, any Obligor or Affiliate thereof as though it were not acting as the Administrative Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender", "Majority Lender", and any similar terms shall, except where otherwise expressly provided in any Loan Document, include the Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Majority Lenders, respectively.

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

## 12.08 Expenses; Indemnities.

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

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

## 12.09 Resignation of the Administrative Agent.

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

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

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

(a) any Subsidiary of the Borrower from its guaranty of any Obligation of any Obligor (i) if such Subsidiary ceases to be a Subsidiary of such Obligor as a result of a transaction permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such transaction, such Subsidiary would not be required to guaranty any Obligations pursuant to **Section 8.11(a)**, so long as the primary purpose of any sale, disposition or transfer of the Equity Interest of such Subsidiary that causes such Subsidiary to cease to be a Subsidiary of an Obligor is not to cause the release of such Subsidiary from its guaranty or any Obligation, and (ii) upon (x) termination of the Commitments and (y) payment and satisfaction in full of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable (other than inchoate indemnification and expense reimbursement obligations for which no claim has been made); and

(b) any Lien held by the Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is disposed of by an Obligor in a transaction permitted by the Loan Documents (including pursuant to a valid waiver or consent), (ii) any property subject to a Lien described in **Section 9.02(c) or (j)** and (iii) all of the Collateral and all Obligors, upon (x) termination of the Commitments and (y) payment and satisfaction in full of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable (other than inchoate indemnification and expense reimbursement obligations for which no claim has been made). Each Lender hereby directs the Administrative Agent, and the Administrative Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guarantees and Liens when and as directed in this **Section 12.10** and deliver to the Borrower, at the expense of the Borrower, any portion of such Collateral so released pursuant to this **Section 12.10** that is in possession of the Administrative Agent. In addition, in connection with any Permitted Licenses or Specified Permitted Transactions, each Lender hereby authorizes Administrative Agent to, and at the request of the Borrower, the Administrative Agent shall, negotiate and enter into a non-disturbance agreement and other similar agreements in form and substance reasonably satisfactory to Administrative Agent.

Notwithstanding the foregoing or anything to the contrary herein, (i) the release of any Obligor from its guaranty of any Obligations under this **Section 12.10** or otherwise hereunder shall only be permitted if any such permitted transaction or series of related transactions is not consummated for the primary purpose of effecting a release of such Obligor from its Obligations under the Loan Documents in accordance with the terms hereof, and (ii) the Administrative Agent may not effect a release of any Obligor that ceases to be an Obligor due solely to a disposition of Equity Interests in (or issuance of Equity Interests by) such Obligor, unless the transaction related to such release is a disposition of Equity Interests for fair market value to an unaffiliated third party and for a bona fide primary business purpose.

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

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

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

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

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

### **12.13 Acknowledgements of Lenders.**

(a) If the Administrative Agent notifies a Lender, or any Person who has received funds on behalf of a Lender (any such Lender or other recipient, a "**Payment Recipient**"), that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding **clause (b)**) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "**Erroneous Payment**") and demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this **Section 12.13**, and held in trust for the benefit of the Administrative Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two (2) Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this **Section 12.13(a)** shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding **clause (a)**, each Payment Recipient, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment (a "**Payment Notice**"), (y) that was not preceded or accompanied by a Payment Notice, or (z) that such Payment Recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then, in each such case: (i) it acknowledges and agrees that (A) in the case of immediately preceding **clauses (x) or (y)**, an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding **clause (z)**), in each case, with respect to such payment, prepayment or repayment; and (ii) such Payment Recipient shall promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding **clauses (x), (y) or (z)**) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this **Section 12.13(b)**.

(c) Each Lender hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under the preceding **Section 12.13(a)** above.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with the preceding **Section 12.13(a)** above, from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “**Erroneous Payment Return Deficiency**”), upon the Administrative Agent’s notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (i) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the “**Erroneous Payment Impacted Loans**”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Loans, the “**Erroneous Payment Deficiency Assignment**”) (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (ii) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (iv) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (v) the Administrative Agent shall reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. Subject to **Section 14.05**, the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment shall reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Lender under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the “**Erroneous Payment Subrogation Rights**”) (provided, that the Obligors’ Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment).

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Obligor; provided, that this **Section 12.13** shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, the last sentence of **Section 12.13(d)** above and this **Section 12.13(e)** shall not apply to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Obligor for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including waiver of any defense based on “discharge for value” or any similar doctrine.

(g) Each party’s obligations, agreements and waivers under this **Section 12.13** shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

**12.14 Permitted RTW Intercreditor Agreement.** The Lenders acknowledge that the Permitted RTW Indebtedness may be secured by Liens on the Collateral and that the exercise of certain of the rights and remedies of the Administrative Agent under the Loan Documents may be subject to the provisions of the Permitted RTW Intercreditor Agreement. Each Lender irrevocably (a) consents to the terms and conditions in each Permitted RTW Intercreditor Agreement, (b) authorizes and directs the Administrative Agent to execute and deliver the Permitted RTW Intercreditor Agreement and any documents relating thereto, in each case, on behalf of such Lenders and to take all actions (and execute all documents) required (or deemed advisable) by it in accordance with the terms of the Permitted RTW Intercreditor Agreement, and without any further consent, authorization or other action by such Lender, (c) agrees that, upon the execution and delivery thereof, such Lender will be bound by the provisions of the Permitted RTW Intercreditor Agreement as if it were a signatory thereto and will take no actions contrary to the provisions of such Permitted RTW Intercreditor Agreement and (d) agrees that no Lender shall have any right of action whatsoever against Agent as a result of any action taken by Agent pursuant to this **Section 12.14** or in accordance with the terms of any Permitted RTW Intercreditor Agreement. Each Lender hereby further irrevocably authorizes and directs the Administrative Agent to enter into such amendments, supplements or other modifications to the Permitted RTW Intercreditor Agreement as are approved by the Administrative Agent and the Majority Lenders; provided, that the Administrative Agent may execute and deliver such amendments, supplements and modifications thereto as are contemplated by the Permitted RTW Intercreditor Agreement in connection with any extension, renewal, refinancing or replacement of this Agreement or any refinancing of the Obligations, in each case, on behalf of such Lender and without any further consent, authorization or other action by any Lender. The Administrative Agent shall have the benefit of the provisions of Section 12 with respect to all actions taken by it pursuant to this **Section 12.14** or in accordance with the terms of the Permitted RTW Intercreditor Agreement to the full extent thereof.

### **SECTION 13. GUARANTY**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**13.03 Discharge Only Upon Payment in Full.** Subject to any prior release herefrom of any Guarantor by the Administrative Agent in accordance with (and pursuant to authority granted to the Administrative Agent under) the terms of this Agreement, each Guarantor's obligations hereunder shall remain in full force and effect until all of the Guaranteed Obligations shall have been paid in full in cash (other than inchoate indemnification and expense reimbursement obligations for which no claim has been made) and all Commitments shall have terminated or expired (herein, the "**Termination Conditions**"), and until the prior and complete satisfaction of the Termination Conditions all of the rights and remedies under this Guaranty and the other Loan Documents shall survive. Notwithstanding the foregoing, the Administrative Agent hereby agrees to release any Subsidiary of the Borrower from its guaranty of any Obligation of any Obligor if all of the Equity Interests in such Subsidiary owned by any Obligor or any of its Subsidiaries are disposed of in an Asset Sale permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such Asset Sale, such Subsidiary would not be required to guarantee any Obligations pursuant to **Section 8.11(a)**. At the request and expense of the Borrower or such Obligor, the Administrative Agent hereby agrees to execute and deliver all instruments and documents to evidence such release.

**13.04 Additional Waivers; General Waivers.**

(a) **Additional Waivers.** Notwithstanding anything herein to the contrary, each of the Guarantors hereby absolutely, unconditionally, knowingly, and expressly waives, in each case other than a defense that the Guaranteed Obligations have been paid and performed in full:

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

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

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

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

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

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

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

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

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

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

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

**13.10 Contribution with Respect to Guaranteed Obligations.**

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

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

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

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

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

**13.11 General Limitation on Guarantee Obligations.** In any action or proceeding involving any provincial, territorial or state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under **Section 13.01** would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under **Section 13.01**, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Guarantor, the Administrative Agent, any Lender or any other Person, be automatically limited and reduced to the highest amount valid and enforceable, not constituting a fraudulent transfer or conveyance and not subordinated to the claims of other creditors, as applicable, as determined in such action or proceeding.

#### **SECTION 14. MISCELLANEOUS**

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

**14.02 Notices.** All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) or in the other Loan Documents shall be given or made in writing (including by telecopy or email) delivered, if to the Borrower, another Obligor, the Administrative Agent or any Lender, to its address specified on the signature pages hereto or its Guarantee Assumption Agreement, as the case may be, or at such other address as shall be designated by such party in a written notice to the other parties. Except as otherwise provided in this Agreement or therein, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication).

#### 14.03 Expenses, Indemnification, Etc.

(a) **Expenses.** Each Obligor, jointly and severally, agrees to pay or reimburse (i) the Administrative Agent and the Lenders and their respective Affiliates for all of their reasonable and documented out of pocket costs and expenses (including the reasonable and documented out of pocket fees, expenses, charges and disbursements of (a) Morgan, Lewis & Bockius LLP and (b) Hogan Lovells US LLP, each of which are counsel to the Administrative Agent and the Lenders, and (if necessary) of a single local counsel to the Administrative Agent and the Lenders, taken as a whole, in each relevant material jurisdiction and one regulatory counsel for the Administrative Agent and the Lenders taken as a whole, and any sales, goods and services or other similar Taxes applicable thereto, and reasonable and documented printing, reproduction, document delivery, communication and travel costs) in connection with (x) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the making of the Loans (exclusive of post-closing costs and subject to the limitations set forth in the Agency Fee Letter), except all such costs and expenses resulting from the gross negligence, willful misconduct or bad faith of any of the Administrative Agent or the Lenders as determined by a court of competent jurisdiction in a final and non-appealable judgment; (y) post-closing costs (including costs of the administration of this Agreement and the other Loan Documents) and (z) the negotiation or preparation of any modification, supplement or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated); and (ii) each of the Administrative Agent and the Lenders for all of their documented out of pocket costs and expenses (including the reasonable and documented fees and expenses of any legal counsel, provided, that such documentation shall not include legal time entries, but may include aggregate hours) in connection with the enforcement, exercise or protection of their rights in connection with this Agreement and the other Loan Documents, including their rights under this **Section 14.03**, or in connection with the Loans made hereunder, including such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) **Indemnification.** Each Obligor, jointly and severally, hereby indemnifies the Administrative Agent (and any sub-agent thereof), the Lenders and their respective Affiliates, directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an “*Indemnified Party*”) from and against, and agrees to hold them harmless against, any and all Claims and Losses of any kind including reasonable and documented out of pocket fees and disbursements of any counsel for the Indemnified Parties (limited to, at most, one legal counsel for the Indemnified Parties, taken as a whole, in each relevant jurisdiction, and, if reasonably necessary in the case of an actual or perceived conflict of interest, one additional conflict counsel to each similarly-situated Indemnified Party), that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to (i) Agreement or any of the other Loan Documents or the Transactions, (ii) any use made or proposed to be made with the proceeds of the Loans, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Obligor or any of its Subsidiaries, or (iv) any actual or prospective claim, investigation, litigation or proceeding relating to any of the foregoing, whether based on contract, tort, or any other theory, whether or not such investigation, litigation or proceeding is brought by any Obligor, any of its Subsidiaries, shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence or willful misconduct. No Obligor shall assert any claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. The Borrower, its Subsidiaries and Affiliates and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties are each sometimes referred to in this Agreement as a “*Borrower Party*”. None of the Administrative Agent, any Lender or any Indemnified Party shall assert any claim against any Borrower Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. Notwithstanding the foregoing in this **Section 14.03(b)**, the Obligors shall not be liable for any settlement of any proceeding effected without the Obligors’ consent (which consent shall not be unreasonably withheld, delayed or conditioned), but if settled with the Obligors’ written consent, or if there is a judgment against an Indemnified Party in any such proceeding, the Obligors shall indemnify and hold harmless each Indemnified Party to the extent and in the manner set forth above. The Obligors shall not, without the prior written consent of an Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending or threatened proceeding against such Indemnified Party in respect of which indemnity could have been sought hereunder by such Indemnified Party unless (x) such settlement includes an unconditional release of such Indemnified Party from all liability or claims that are the subject matter of, or arise out of, such proceeding and (y) such settlement does not include any statement as to, or any admission of fault, culpability, wrongdoing or a failure to act by or on behalf of such Indemnified Party. This Section shall not apply to (x) Taxes other than Taxes relating to a non-Tax Claim or Loss governed by this **Section 14.03(b)** or (y) yield protection matters covered by **Section 5.01**, which shall be governed exclusively by such Section.

**14.04 Amendments, Etc.** Except as otherwise expressly provided in this Agreement, any provision of this Agreement and any other Loan Document may be modified or supplemented only by an instrument in writing signed by the Borrower, the Administrative Agent and the Majority Lenders; provided that:

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

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

(i) amend, modify, discharge, terminate or waive any of the terms of this Agreement or any other Loan Agreement (including by modifying any defined term used therein or any provision referenced therein) if such amendment, modification, discharge, termination or waiver would (A) increase the amount of the Loans or Commitment, reduce the fees payable hereunder or under any other Loan Document, (B) reduce interest rates (provided that the Majority Lenders may waive or revoke the imposition of the Default Rate) or other amounts payable with respect to the Loans (it being understood that the waiver or declining of any mandatory prepayment of Loans pursuant to **Section 3.03(b)** shall not constitute a reduction of any amount payable with respect to the Loans), (C) extend any date fixed for payment of principal, interest or other amounts payable relating to the Loans (it being understood that the waiver or declining of any mandatory prepayment of Loans pursuant to **Section 3.03(b)** shall not constitute an extension of any date fixed for payment of principal, interest or other amounts payable relating to the Loans), (D) extend the repayment dates of the Loans, (E) modify the Commitments (it being understood and agreed that a waiver of any condition precedent set forth in **Section 6.02** or of any Default or Event of Default or a mandatory reduction in Commitments is not considered a modification of any Commitment), or (F) modify the definition of "Proportionate Share," provided, for the avoidance of doubt, that any waiver relating to an Event of Default or Default shall only require the consent of the Majority Lenders (other than an Event of Default under **Section 11.01(a)** or **(b)**, to the extent such payments have not been made by the Obligors);

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

(iii) amend this the definition of "Majority Lenders", **Section 3.01(b)**, **Section 4.01**, the final paragraph of **Section 9.09**, this **Section 14.04** or any other provision requiring the consent of each Lender or all Lenders;

(iv) amend, modify, discharge, terminate or waive any of the terms of this Agreement with respect to (A) any conditions precedent to funding including the definitions of "Applicable Availability Period", "Applicable Funding Conditions" or "Applicable Funding Date" and (B) any change to the requirements to repay the Obligations hereunder in Dollars; or

(v) except in connection with any debtor-in-possession financing, (A) subordinate, or enter into any amendment, waiver or consent having the effect of subordinating, the Obligations to any other Indebtedness or other obligation, or (B) subordinate, or enter into any amendment, waiver or consent having the effect of subordinating, the Liens securing the Obligations to Liens securing any other Indebtedness or other obligation; provided, that, any transaction described in this clause (v) shall only require the consent of the Majority Lenders to the extent that each Lender has been offered an opportunity to participate on a pro rata basis in such transactions that will be senior to the Obligations and/or secured by Liens on the Collateral that will be senior to the Liens securing the Obligations.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

#### 14.05 Successors and Assigns.

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

(b) **Assignments by Lender.** Any Lender may at any time assign to one or more Eligible Transferees (or, if an Event of Default under **Section 11.01(a), (b)** or **(h)** has occurred and is continuing, to any Person) all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) and the other Loan Documents; provided that (i) no such assignment shall be made to any Defaulting Lender, any Obligor, any Affiliate of any Obligor, any employees or directors of any Obligor at any time and (ii) no such assignment shall be made without the prior written consent of the Administrative Agent (except with respect to assignments to a Lender or an Eligible Transferee described in **clause (vi)** of the definition thereof). The consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, (y) such assignment is to another Lender or (z) such assignment is to an Eligible Transferee (described in **clause (vi)** of the definition thereof); provided, further, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received written notice thereof. Subject to the recording thereof by the Administrative Agent pursuant to **Section 14.05(d)**, and to receipt by the Administrative Agent of a processing and recordation fee in the amount of \$3,500 payable by the applicable Lender (provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment) from and after the date such Assignment and Assumption is recorded in the Register, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the Lender under this Agreement and the other Loan Documents, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) and the other Loan Documents but shall continue to be entitled to the benefits of **Section 5** and **Section 14.03**. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this **Section 14.05(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 14.05(e)**. If an assignee is not a Lender, the assignee shall provide the Administrative Agent with all "know your customer" documents requested by the Administrative Agent pursuant to anti-money laundering rules and regulations.

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

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

(e) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Eligible Transferee (other than a natural person, a Defaulting Lender or any Obligor or any of its Affiliates or Subsidiaries) (each, a “**Participant**”) in all or a portion of the Lender’s rights and/or obligations under this Agreement (including all or a portion of the Commitment and/or the Loans owing to it) and the other Loan Documents; provided that (i) such Lender’s obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with such Lender in connection therewith. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that would (i) increase or extend the term of such Lender’s Commitment (it being understood and agreed that a waiver of any condition precedent set forth in **Section 6.02** or of any Default or Event of Default or a mandatory reduction in Commitments is not considered an increase or extension of any Commitment), (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant (it being understood that the waiver or declining of any prepayment of Loans shall not constitute an extension of any date fixed for payment of principal, interest or other amounts payable to the Participant), (iii) reduce the amount of any such payment of principal (it being understood that the waiver or declining of any prepayment of Loans shall not constitute a reduction of any amount payable with respect to the Loans), or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest (provided that the Majority Lenders may waive or revoke the imposition of the Default Rate). The Borrower agrees that each Participant shall be entitled to the benefits of **Section 5.01** or **5.03** (subject to the requirements and limitations therein, including the requirements under **Section 5.03(f)** (it being understood that the documentation required under **Section 5.03(f)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 14.05(b)**; provided that such Participant (i) agrees to be subject to the provisions of **Section 5.04** as if it were an assignee under **Section 14.05(b)** and (ii) shall not be entitled to receive any greater payment under **Section 5.01** or **5.03**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Law that occurs after the Participant acquired the applicable participation or the sale of the participation to such Participant is made with the Borrower’s prior written consent. To the extent permitted by Law, each Participant also shall be entitled to the benefits of **Section 4.03(a)** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under the Loan Documents (the “**Participant Register**”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) **[Reserved]**.

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

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

(a) **Certain Additional Payments.** In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Proportionate Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Proportionate Share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

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

**14.08 Counterparts, Effectiveness.** This Agreement may be executed in any number of counterparts (including electronic imaging means), all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission (e.g., in PDF format) shall be effective as delivery of a manually executed counterpart hereof. This Agreement shall become effective when counterparts hereof executed on behalf of the Obligor, the Administrative Agent and the Lender shall have been received by the Administrative Agent. The words "execution," "execute," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**14.09 Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; provided that Section 5-1401 of the New York General Obligations Law shall apply.

**14.10 Jurisdiction, Service of Process and Venue.**

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

(b) **Process.** Each party hereto hereby consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Each party hereto irrevocably consents to service of process in the manner provided for notices in **Section 14.02**. Nothing in this Agreement shall in any way be deemed to limit the ability of the parties hereto to serve any process or summons in any manner permitted by any Law.

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

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

**14.12 Waiver of Immunity.** To the extent that any Obligor may be or become entitled to claim for itself or its property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), such Obligor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement and the other Loan Documents.

**14.13 Entire Agreement.** This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including any confidentiality (or similar) agreements. EACH OBLIGOR ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND WILL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH ADMINISTRATIVE AGENT OR THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

**14.14 Severability.** If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof. Without limiting the foregoing provisions of this Section 14.14, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by the Bankruptcy Code, or any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, examinership, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

**14.15 No Fiduciary Relationship.** The Borrower acknowledges that the Administrative Agent and the Lenders have no fiduciary relationship with, or fiduciary duty to, the Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and the Borrower is solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties.

**14.16 Confidentiality.** The Administrative Agent and each Lender agree to keep confidential, and not disclose to any Person all non-public information provided to them by or on behalf of any Obligor pursuant to this Agreement that is designated by such Obligor as confidential in accordance with its customary procedures for handling its own confidential information; provided that nothing herein shall prevent the Administrative Agent or any Lender from disclosing any such information (i) to the Administrative Agent, any other Lender or any Affiliate of a Lender, (ii) subject to an agreement to comply with the provisions of this Section, to any Eligible Transferee or assignee permitted under **Section 14.05(b)**, and any actual or prospective direct or indirect counterparty to any Hedging Agreement (or any professional advisor to such counterparty), (iii) to its employees, officers, directors, agents, attorneys, accountants, trustees and other professional advisors or those of any of its affiliates (provided that, in each case, such Persons were informed of the confidential nature of such confidential information and instructed to keep such information confidential or are otherwise subject to professional obligations to maintain the confidentiality of such confidential information) (collectively, its “**Related Parties**”), in each case on a need-to-know basis, (iv) upon the requirement or demand of any Governmental Authority or any Regulatory Authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (v) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Law, (vi) if required to do so in connection with any litigation or similar proceeding, (vii) that has been publicly disclosed (other than as a result of a disclosure in violation of this **Section 14.16**), (viii) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender’s investment portfolio in connection with ratings issued with respect to such Lender, (ix) to the extent necessary in connection with the exercise of any remedy hereunder or under any other Loan Document, (x) on a confidential basis to (A) any rating agency in connection with rating the Borrower or its Subsidiaries or the Loans or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the Loans or (xi) to any other party hereto; provided that, in the case of disclosure pursuant to **clauses (iv), (v) and (vi)** above, the Administrative Agent or applicable Lender, as applicable, shall promptly provide notice to the Borrower to the extent reasonable and not prohibited by Law or any applicable Governmental Authority.

**14.17 Interest Rate Limitation.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable Law (collectively, “**Charges**”), shall exceed the maximum lawful rate (the “**Maximum Rate**”) that may be contracted for, charged, taken, received or reserved by the Administrative Agent and the Lender holding such Loan in accordance with applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate. To the extent lawful, the interest and Charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan so that at no time shall the interest and Charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

**14.18 Judgment Currency.**

(a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent permitted by Law, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase Dollars with such other currency at the buying spot rate of exchange in the New York foreign exchange market on the Business Day immediately preceding that on which any such judgment, or any relevant part thereof, is given.

(b) The obligations of the Obligors in respect of any sum due to the Administrative Agent hereunder and under the other Loan Documents shall, notwithstanding any judgment in a currency other than Dollars, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in such other currency the Administrative Agent may, in accordance with normal banking procedures, purchase Dollars with such other currency. If the amount of Dollars so purchased is less than the sum originally due to the Administrative Agent in Dollars, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent against such loss. If the amount of Dollars so purchased exceeds the sum originally due to the Administrative Agent in Dollars, the Administrative Agent shall remit such excess to the Borrower.

**14.19 USA PATRIOT Act.** The Administrative Agent and the Lenders hereby notify the Obligors that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "*Patriot Act*"), they are required to obtain, verify and record information that identifies the Obligors, which information includes the name and address of each Obligor and other information that will allow such Person to identify such Obligor in accordance with the Patriot Act.

**14.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

[Signature Pages Follow]

**BORROWER:**

**AQUESTIVE THERAPEUTICS, INC.**

By: [\*\*\*]

Name: [\*\*\*]

Title: [\*\*\*]

Address for Notices:  
30 Technology Drive,  
Warren, NJ 07059  
Attn: Legal  
Email: [\*\*\*]  
Facsimile: [\*\*\*]

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

Dechert LLP  
1095 Avenue of the Americas  
New York, New York 10036  
Attention: Scott M. Zimmerman; David S. Rosenthal  
Email: [\*\*\*]; [\*\*\*]  
Facsimile: [\*\*\*]; [\*\*\*]

**ADMINISTRATIVE AGENT:**

**OAKTREE FUND ADMINISTRATION, LLC**

By: [\*\*\*]

Its: [\*\*\*]

By: [\*\*\*]

Name: [\*\*\*]

Title: [\*\*\*]

By: [\*\*\*]

Name: [\*\*\*]

Title: [\*\*\*]

**Address for Notices:**

Oaktree Fund Administration, LLC

333 S. Grand Avenue, 28<sup>th</sup> Fl.

Los Angeles, CA 90071

Attn: Oaktree Agency

Email: [\*\*\*]

**With a copy to:**

Oaktree Capital Management, L.P.

333 S. Grand Avenue, 28<sup>th</sup> Fl.

Los Angeles, CA 90071

Attn: Rahul Anand; Chris Tie

Email: [\*\*\*]

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

Morgan, Lewis & Bockius LLP

101 Park Avenue

New York, NY 10178-0060

Attn: Katherine G. Weinstein

Email: [\*\*\*]

**LENDERS:**

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[Signature Page to Credit Agreement]

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**The following defined terms apply to the Tranche B Term Loans:**

“**Applicable Availability Period**” means the period starting on the first Business Day following receipt by the Administrative Agent of the Tranche B Condition Certificate and ending on June 30, 2027.

“**Applicable Funding Condition**” means that (i) the Closing Date shall have occurred, (ii) the Borrower shall have received FDA Approval (which for the avoidance of doubt excludes accelerated or restricted FDA Approval) and such FDA Approval shall not have been withdrawn by the FDA prior to the Applicable Funding Date with respect to the Tranche B Term Loan, (iii) the Administrative Agent shall have received the Tranche B Condition Certificate, (iv) the Tranche A Term Loans shall have been funded by the Lenders in accordance with **Section 2.01**, (v) the representations and warranties set forth in the Warrant Issuance Agreement and the Warrants issued in connection with the Tranche B Term Loan shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Applicable Funding Date for the Tranche B Term Loans, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date and (vi) and Warrants with respect to the Tranche B Term Loans shall have been issued to the Lenders.

“**Tranche B Condition Certificate**” means a certificate substantially in the form of **Exhibit K-1** signed by a Responsible Officer of the Borrower as of the end of the applicable quarter indicating that the Applicable Funding Conditions applicable to the Tranche B Term Loans have been satisfied.

**Tranche C Term Loans**

**Lenders and their respective Applicable Commitments:**

Lender	Applicable Commitment
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
<b>Tranche C Commitment</b>	<b>\$25,000,000.00</b>

**The following defined terms apply to the Tranche C Term Loans:**

“**Applicable Availability Period**” means the period starting on the first Business Day following receipt by the Administrative Agent of the Tranche C Condition Certificate and ending on December 31, 2027.

“**Applicable Funding Condition**” means that (i) the Closing Date shall have occurred, (ii) the Administrative Agent shall have received the Tranche C Condition Certificate, (iii) Net Sales for the trailing six (6) consecutive month period is at least \$[\*\*\*], (iv) the Tranche A Term Loans and the Tranche B Term Loans shall have been funded by the Lenders in accordance with **Section 2.01**, (v) the representations and warranties set forth in the Warrant Issuance Agreement and the Warrants issued in connection with the Tranche C Term Loan shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Applicable Funding Date for the Tranche C Term Loans, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date and (vi) Warrants with respect to the Tranche C Term Loans shall have been issued to the Lenders.

“**Tranche C Condition Certificate**” means a certificate substantially in the form of **Exhibit K-2** signed by a Responsible Officer of the Borrower indicating that the Applicable Funding Conditions applicable to the Tranche C Term Loans have been satisfied.

**Tranche D Term Loans<sup>1</sup>**

**Lenders and their respective Applicable Commitments:**

Lender	Applicable Commitment
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
<b>Tranche D Commitment</b>	<b>\$50,000,000.00</b>

<sup>1</sup> It being acknowledged and agreed that at the Closing Date and until satisfaction of the conditions precedent to the Tranche D Term Loan (i) the Commitment set out for Tranche D in the amount set forth opposite such Lender’s name on Schedule 1 is not committed as at the Closing Date, but is indicative only of the amount that would constitute such Lender’s pro-rata portion of the Tranche D Term Loans to be offered and agreed in accordance with the terms hereof and (ii) any Lender’s decision to advance such Tranche D Term Loan funding shall be in any such Lender’s sole and absolute discretion.

**The following defined terms apply to the Tranche D Term Loans:**

*“Applicable Availability Period”* means the period starting on the first Business Day following receipt by the Administrative Agent of the written consent of the Borrower and each of the Lenders for funding the Tranche D Term Loans in accordance with this Agreement, and ending on the Maturity Date.

*“Applicable Funding Condition”* means that the Administrative Agent shall have received the prior written consent of the Borrower and each of the applicable Lenders for funding such Lender’s pro-rata portion of the Tranche D Term Loans in accordance with terms to be agreed among such Lenders and the Borrower.

**SECURITY AGREEMENT**

by and among

**AQUESTIVE THERAPEUTICS, INC.,**

a Delaware corporation,

**Borrower's Subsidiaries having acceded hereto pursuant to Section 24,**

and

**OAKTREE FUND ADMINISTRATION, LLC,**

as Administrative Agent for the Lenders referred to below

**Dated as of May 12, 2026**

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## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "*Agreement*"), dated as of May 12, 2026, is made by and among AQUESTIVE THERAPEUTICS, INC., a Delaware corporation (the "*Borrower*"), the Borrower's Subsidiaries having acceded hereto pursuant to **Section 24** (each a "*Guarantor*" and, together with the Borrower, each a "*Grantor*" and, collectively, the "*Grantors*"), and Oaktree Fund Administration, LLC, as administrative agent for the Lenders referred to below (in such capacity, together with its successors and assigns, the "*Administrative Agent*").

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

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

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

NOW, THEREFORE, the parties hereto agree as follows:

### **SECTION 1 Definitions; Interpretation.**

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

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

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

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

"*Applicable Date*" shall mean (i) (A) with respect to any Grantor that is a party hereto on the Closing Date, the Closing Date or (B) with respect to any Grantor that is not a party hereto on the Closing Date, the date on which an Assumption Agreement is executed and delivered by such Grantor and (ii) thereafter, with respect to each Grantor a party hereto, the last day of each calendar quarter.

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

“**Collateral**” has the meaning set forth in **Section 2**.

“**Development and Licensing Agreements**” means agreements for the development and licensing of single or multiple Products, executed by the Borrower and third parties prior to submission of an applicable Drug Application to the FDA.

“**Drug Application**” means a pending or approved new drug application, an abbreviated new drug application, investigational new drug exemption, or a biologic license application for any product, as appropriate, as those terms are defined in the FDCA.

“**Excluded Asset**” means:

(i) any leases, licenses, permits, letters of credit, bonds, guarantees, chattel paper, contracts, rights, instruments, documents or other agreements or purchase money agreements contained within the Collateral to which any Grantor is a party or any of its rights or interests are subject thereto (including pursuant to a purchase money security interest or similar arrangement) to the extent and solely to the extent that the grant of such security interest shall (1) constitute or result in the abandonment, invalidation or unenforceability of any right, title, interest or purchase money arrangement of such Grantor therein, (2) create a situation under which such Grantor or any other party to any such lease, license, contract, right, instrument, document, or other agreement that is affiliated with such Grantor (including, without limitation, any guarantor or indemnitor thereunder or with respect thereto) shall be deemed to have breached or terminated pursuant to the terms of, or defaulted under, or a termination right shall arise under any such Collateral (in each case, so long as such term was not incurred or entered into in contemplation of this Agreement or the other Loan Documents), (3) require consent of any third Person (other than a Grantor) that has not been obtained; and in each case under **clauses (1), (2) and (3)** above such abandonment, invalidation, unenforceability, breach, termination, default or consent requirement (x) would not be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the NY UCC (or any successor provision or provisions) or equivalent statutes of any relevant jurisdiction or any applicable Law or principles of equity or (y) has not been waived and is not waivable by any Grantor or Subsidiary thereof or (4) violate any material provisions of Law applicable to such Grantor or such lease, license, permit, letter of credit, bonds, guarantee, chattel paper, contract, right, instrument, document or other agreement or purchase money arrangement (so long as such term was not incurred or entered into in contemplation of this Agreement); provided, however, that the Excluded Assets shall not include, and such security interest shall attach immediately without action by any Person at such time as the condition causing such abandonment, invalidation, unenforceability, breach, termination, default, termination right or violation shall be remedied and to the extent severable, shall attach immediately to, any portion of such lease, license, contract, right, agreement or purchase money arrangement that does not result in any of the consequences specified in **(1), (2), (3) or (4)** above;

(ii) any property subject to a Permitted Lien pursuant to Section 9.02(c), 9.02(e), 9.02(r) or 9.02(s)(ii) of the Credit Agreement, to the extent that (and only to the extent) and only for so long as, the grant of other Liens on such asset (A) would result in a breach, violation or invalidation of, or constitute a default under, the agreement or instrument governing such arrangement or (B) would require the consent of any other party to such arrangement;

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

(iv) any United States "intent-to-use" trademark or service mark application filed pursuant to Section 1(b) of the Lanham Act prior to the filing and acceptance by the United States Patent and Trademark Office of an "Amendment to Allege Use" or a "Statement of Use" pursuant to Sections 1(c) or 1(d) of the Lanham Act, solely to the extent that and solely during the period in which the grant of such security interest would impair the validity or enforceability, or result in the cancellation or voiding of such "intent-to-use" trademark or service mark application under federal law;

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

(vi) Excluded Accounts;

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

(viii) equity interests of joint ventures permitted by the Credit Agreement to the extent and for so long as the pledge of such equity interests is prohibited by such Person's organizational or joint venture documents or any contractual obligation of such Person, to the extent such contractual obligation is permitted under the Loan Documents (so long as in respect of such prohibition or restriction, such prohibition or restriction is not incurred in contemplation of such equity interests);

*provided* that the Proceeds of any Excluded Assets shall not constitute Excluded Assets and shall be subject to the Security Interest unless such Proceeds would otherwise constitute Excluded Assets; *provided further* that to the extent that any Excluded Asset shall cease to constitute an Excluded Asset, such asset shall automatically and immediately be subject to the Security Interest without any further action of any Person.

“**FDCA**” means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. Section 301 et seq., and all regulations promulgated thereunder.

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

“**Intellectual Property Collateral**” means the following properties and assets anywhere in the world owned by any Grantor or which any Grantor otherwise owns hereafter:

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

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

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

(iv) all Trade Secrets, software, data (including business data and technical data), databases, quality control procedures, product, service and technical specifications, operating, production and quality control manuals, sales literature, including all Licenses relating to any of the foregoing and all income, fees, royalties or other payments with respect to any Licenses;

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

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

“**Intellectual Property Security Agreement**” means each Copyright Security Agreement in substantially the form of **Exhibit C**, each Trademark Security Agreement in substantially the form of **Exhibit D**, each Patent Security Agreement in substantially the form of **Exhibit E** or any amendment thereto and prepared for purposes of recordation with the United States Copyright Office or the United States Patent and Trademark Office or any equivalent thereof in any relevant jurisdiction, as applicable.

“**License**” means any written Contract pursuant to which any Grantor grants or receives any license, sublicense, covenant not to assert or other right or immunity with respect to any Intellectual Property owned or controlled by any Grantor, including those listed on **Schedule 2**.

“**Material Drug Application**” means any Drug Application as it relates to the Product and any other material Drug Application.

“**NY UCC**” means the Uniform Commercial Code as from time to time in effect in the State of New York; *provided* that if by reason of mandatory provisions of law, the perfection, the effect of perfection or non-perfection or the priority of the Security Interest in any portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction in the United States other than New York, “NY UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdictions for purposes of the provisions hereto relating to such perfection, effect of perfection or non-perfection or priority with respect to such Collateral.

“**Partnership and LLC Collateral**” means any and all limited, limited liability and general partnership interests and limited liability company interests of any type or nature (including any such interests in the Borrower’s direct or indirect Subsidiaries now or hereafter owned by any Grantor), including all economic and/or control rights with respect thereto, whether now existing or hereafter acquired or arising, including any such interests specified in **Schedule 3**.

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

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

“**Pledged Collateral**” means any and all (i) Pledged Shares; (ii) additional capital stock or other Equity Interests of the direct Subsidiaries of any Grantor, whether certificated or uncertificated; (iii) other Investment Property of any Grantor; (iv) warrants, options or other rights entitling any Grantor to acquire any interest in Equity Interests or other securities of such Subsidiaries or any other Person; (v) Partnership and LLC Collateral; (vi) Instruments and Pledged Debt Securities; (vii) securities, property, interest, dividends and other payments and distributions from time to time received, receivable or otherwise distributed in respect of, or issued as an addition to, in redemption of, in renewal or exchange for, in substitution or upon conversion of, or otherwise on account of, any of the foregoing; (viii) certificates and instruments now or hereafter representing or evidencing any of the foregoing; (ix) rights, interests and Claims with respect to the foregoing, including under any and all related agreements, instruments and other documents; and (x) cash and non-cash proceeds of any of the foregoing, in each case whether presently existing or owned or hereafter arising or acquired and wherever located, and as from time to time received or receivable by, or otherwise paid or distributed to or acquired by, any Grantor, in each case, to the extent not constituting an Excluded Asset.

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

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

“*Pledged Issuers*” means any and all Persons now or hereafter existing whom the Grantor at any time or from time to time owns or acquires shares of Equity Interests in.

“*Pledged Shares*” means all of the issued and outstanding shares of Equity Interests, whether certificated or uncertificated, of Borrower’s direct or indirect Subsidiaries, now or hereafter owned by any Grantor, including each Subsidiary identified on **Schedule 3** (as amended or supplemented from time to time) and all privileges, powers, right, title and interest of such Grantor as a stockholder or shareholder in any corporation, a limited or general partner in any partnership or a member of any limited liability company, or in, to and under any organizational document of any partnership or limited liability company to which it is a party, including all economic rights, all control rights, authority, and powers, all status rights of such Grantor as a member, shareholder, or other owner (as applicable) in such Equity Interests, and all rights and interests, if any, to participate in the management of each Pledged Issuer and any distribution of property made on, in respect of or in exchange for the foregoing from time to time, in each case, to the extent not constituting an Excluded Asset.

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

“*Quarterly Reporting Date*” means the date that the Borrower is required to deliver the financial information specified in Sections 8.01(a), (b) and (d) of the Credit Agreement.

“*Registered*” means, with respect to Intellectual Property, registered with, issued by, renewed by or the subject of a pending application before or pending registration at the United States Patent and Trademark Office, the United States Copyright Office, as applicable, or any other Governmental Authority.

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

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

“*Transfer Letters*” shall mean customary transfer forms, in form and substance reasonably satisfactory to the Administrative Agent by which any Grantor conveys to Administrative Agent, its designee, or (at the option of the Administrative Agent) in blank, its right, title and interest to any Material Drug Application or permit to be submitted to FDA as described in 21 C.F.R. §314.72.

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

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

## **SECTION 2 Security Interest.**

(a) **Grant of Security Interest.** As security for the payment or performance in full of the Secured Obligations, each Grantor hereby grants to the Administrative Agent, for itself and on behalf of and for the ratable benefit of the other Secured Parties, a security interest (the “**Security Interest**”) in and lien on all of such Grantor’s right, title and interest in, to and under the following property, wherever located and whether now existing or owned or hereafter acquired by such Grantor, or in which such Grantor now has or at any time in the future may acquire (collectively, the “**Collateral**”): (i) all Accounts; (ii) all Chattel Paper; (iii) all Commercial Tort Claims specified in **Schedule 1** or notified to the Administrative Agent pursuant to **Section 5(o)**; (iv) all Deposit Accounts, Securities Accounts and Commodity Accounts; (v) all Documents; (vi) all Equipment; (vii) all General Intangibles; (viii) all Instruments; (ix) all Inventory; (x) all Drug Applications, including all data and other Trade Secrets included therein; (xi) all Letter-of-Credit Rights; (xii) all other Goods; (xiii) all Intellectual Property Collateral; (xiv) all money; (xv) all Pledged Collateral; (xvi) all Books pertaining to the foregoing; (xvii) any Grantor’s rights under any agreement, including without limitation, such Grantor’s rights to claim a reversionary interest in any Intellectual Property or Drug Application pursuant to an underlying agreement, and (xviii) (A) to the extent not covered in **clauses (i) through (xvii)** above all other personal property of such Grantor and (B) all products, Proceeds and Supporting Obligations of any and all of the foregoing.

Notwithstanding the foregoing or anything herein to the contrary, in no event shall the “**Collateral**” (or any component defined terms comprising thereof) include or the Security Interest attach to any Excluded Asset.

Notwithstanding the foregoing or anything herein to the contrary, to the extent the transfer of the Revenue Participation Right (defined in the Permitted RTW Royalty Purchase Agreement) contemplated thereby is held not to be a sale and for so long as any obligations under the Permitted RTW Royalty Purchase Agreement remain outstanding (other than contingent indemnification obligations for which no claim has been asserted), the Secured Parties hereby agree “**Collateral**” shall not include, and the Security Interest shall not attach to, the Revenue Participation Right (as defined in the Permitted RTW Royalty Purchase Agreement) and the Revenue Share Payments (as defined in the Permitted RTW Royalty Purchase Agreement).

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

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

### **SECTION 3      Perfection and Priority.**

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

(b) **Delivery of Pledged Collateral.** Each Grantor hereby agrees to deliver promptly (and in any case no later than the next Quarterly Reporting Date following the acquisition thereof (or such longer period as the Administrative Agent may agree)) to the Administrative Agent, the certificates and instruments representing any Pledged Collateral with a value in excess of \$1,000,000 (other than Instruments subject to **subsection (c)** below), which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, in form reasonably satisfactory to the Administrative Agent. If any Grantor shall become entitled to receive or shall receive any certificate or instrument representing Pledged Collateral with a value in excess of \$1,000,000 (other than Instruments subject to **subsection (c)** below) after the date hereof, such Grantor shall accept the foregoing as the agent for the Administrative Agent, shall hold it in trust for the Administrative Agent, shall segregate it from other property or funds of such Grantor, and shall promptly (and in any case no later than the next Quarterly Reporting Date after the acquisition thereof (or such longer period as the Administrative Agent may agree)) deliver the same forthwith to or for the account of the Administrative Agent, at the address designated by the Administrative Agent and to the Person to be designated by the Administrative Agent, which shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank in form satisfactory to the Administrative Agent.

(c) **Instrument Collateral.** Anything herein to the contrary notwithstanding, so long as no Event of Default shall have occurred and be continuing, each Grantor may retain for collection in the Ordinary Course any Instruments constituting Collateral representing amounts not exceeding \$1,000,000 in the aggregate and any notes evidencing intercompany balances, in each case received by such Grantor in the Ordinary Course, and the Administrative Agent shall, promptly upon request of such Grantor, make appropriate arrangements for making any other Instruments pledged by such Grantor available to the payor of any such Instrument for purposes of presentation, collection or renewal (any such arrangement to be effected, to the extent required under applicable Law to continue to have perfected the Administrative Agent's security interest in such Instruments, against trust receipt or like document).

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

(e) **Intellectual Property Collateral.**

(i) Each Grantor shall execute and deliver to the Administrative Agent, concurrently with the execution of this Agreement, such Intellectual Property Security Agreements as the Administrative Agent may reasonably request, and record such Intellectual Property Security Agreements with the United States Copyright Office or the United States Patent and Trademark Office, as applicable, and take such other action as may be necessary, or as the Administrative Agent may reasonably request, to perfect the Administrative Agent's security interest in the United States Intellectual Property Collateral.

(ii) Following the creation, development or acquisition of any Intellectual Property Collateral by any Grantor after the date hereof which is Registered with the United States Copyright Office or the United States Patent and Trademark Office, as applicable, such Grantor shall (A) include details of such newly created, developed, or acquired Intellectual Property Collateral on the next Compliance Certificate provided under Section 8.01 of the Credit Agreement, (B) modify this Agreement by attaching to such Compliance Certificate an amended **Schedule 2** to include any such Registered Intellectual Property Collateral which becomes part of the Collateral and which was not already included on **Schedule 2**, (C) promptly following the delivery of such next Compliance Certificate, record such Intellectual Property Security Agreement(s) with respect to such Intellectual Property Collateral with the United States Copyright Office or the United States Patent and Trademark Office, as applicable, and (D) take such other action as may be necessary, or as the Administrative Agent or the Majority Lenders may reasonably request and consistent with the terms of this Agreement, to perfect the Administrative Agent's security interest in such U.S. Intellectual Property Collateral.

(iii) As of the most recent Applicable Date (subject to Section 8.18 of the Credit Agreement with respect to the Grantors as of the Closing Date), each applicable Grantor shall execute and deliver to the Administrative Agent a Transfer Letter signed in blank covering such pending or issued Material Drug Application.

(iv) Without limiting the generality of the foregoing, each Grantor hereby authorizes the Administrative Agent, with prompt written notice thereof to the Grantors, to supplement this Agreement by supplementing **Schedule 2** to identify specifically any Intellectual Property, License or Drug Application of a Grantor that, in the Administrative Agent's reasonable judgment, constitutes Intellectual Property Collateral; provided that any Grantor shall have the right, exercisable within ten (10) days after it has been notified by the Administrative Agent of such Intellectual Property Collateral, to advise the Administrative Agent in writing, stating in reasonable detail, that such Intellectual Property or License does not constitute Intellectual Property Collateral.

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

(g) [Reserved].

(h) **Control.** Subject to Section 8.18(a) of the Credit Agreement, each Grantor will cooperate with the Administrative Agent in obtaining control (as defined in the NY UCC) of Collateral consisting of any Deposit Accounts, Securities Accounts, Electronic Chattel Paper, Commodity Accounts, Uncertificated Securities or Letter-of-Credit Rights, including delivery of control agreements with respect to Controlled Accounts (as defined in the Credit Agreement), but excluding (x) any Excluded Accounts or (y) any Electronic Chattel Paper Commodity Accounts, Uncertificated Securities or Letter-of-Credit Rights, in each case, with a value of less than \$1,000,000, as the Administrative Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the Administrative Agent's security interest in such Collateral. Administrative Agent agrees that, unless an Event of Default has occurred and is continuing, Administrative Agent will not exercise any control over any such Deposit Account, Securities Account, Commodity Account, Commodity Accounts or Uncertificated Securities or give a notice of control to applicable institution or intermediary under any control agreement.

(i) **Additional Subsidiaries.** In the event that any Grantor acquires rights in any Subsidiary after the date hereof and such Subsidiary is required to become a Subsidiary Guarantor under Section 8.11(a) of the Credit Agreement, such applicable Grantor shall deliver to the Administrative Agent a completed pledge supplement, substantially in the form of **Exhibit B** (the "**Pledge Supplement**"), together with all schedules thereto, reflecting such new Subsidiary. Notwithstanding the foregoing, it is understood and agreed that the security interest of the Administrative Agent shall attach to the Pledged Collateral (other than Excluded Assets) related to such Subsidiary immediately upon any Grantor's acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a Pledge Supplement.

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

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

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

(a) **Location of Chief Executive Office and Collateral.** Such Grantor's chief executive office and principal place of business (as of the date of this Agreement) is located at the address set forth in **Schedule 1**, and all other locations (as of the date of this Agreement) where such Grantor conducts business (indicating whether such locations are leased or owned by such Grantor) or where Collateral is kept are set forth in **Schedule 1** (other than (A) Equipment or Inventory in transit with common carriers or in the possession of employees, customers, development partners or vendors or other third parties, in each case in the Ordinary Course, (B) Collateral which is out for repair or processing, (C) Equipment that is mobile in nature, including vehicles and portable computing equipment and (D) locations having Collateral, in each case, with a fair market value of less than \$2,000,000 per location).

(b) **Locations of Books.** All physical Books pertaining to the Rights to Payment of such Grantor are kept at such Grantor's chief executive office, principal place of business or place where such Grantor conducts business, such other locations set forth in **Schedule 1** or such other locations as such Grantor may notify the Administrative Agent pursuant to **Section 5(d)**.

(c) **Jurisdiction of Organization and Names.** Except as permitted pursuant to **Section 5(f)**, such Grantor's jurisdiction of organization or incorporation is set forth in **Schedule 1**; and such Grantor's exact legal name is as set forth in the signature pages of this Agreement. Except as permitted pursuant to **Section 5(f)**, all trade names and trade styles under which such Grantor presently conducts its business operations are set forth in **Schedule 1**, and, except as set forth in **Schedule 1**, such Grantor has not, at any time in the past five (5) years: (i) been known as or used any other corporate, trade or fictitious name or (ii) changed its name; (iii) been the surviving or resulting corporation in a merger or consolidation; or (iv) acquired through asset purchase or otherwise any business of any Person.

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

(e) **Intellectual Property Collateral.**

(i) As of the date of this Agreement, **Schedule 2** includes (i) all Copyrights Registered with the United States Copyright Office and all Copyright Licenses and (ii) all Patents and Trademarks Registered with the United States Patent and Trademark Office and all Patent Licenses, Trademark Licenses, and any other material Licenses, in each case, that are not Excluded Assets and are owned by any Grantor. Except as otherwise indicated on **Schedule 2**, all filings, fees, and other payments necessary for the maintenance thereof have been, as applicable, timely filed or paid with respect to all such Registered Intellectual Property, except where the failure to pay such payments would not reasonably be expected to result in a Material Adverse Effect, and all such Registered Intellectual Property that is issued or registered and is material to the conduct of its business is subsisting and, to the knowledge of each Grantor, valid and enforceable.

(ii) As of the Closing Date, all Material Drug Applications owned by any Grantor are identified in **Schedule 2** attached hereto. Each Grantor, to its knowledge, has taken all actions necessary under applicable Law to keep all Drug Applications material to the business of Grantors taken as a whole in full force and effect.

(iii) A Transfer Letter signed in blank covering each pending or issued Material Drug Application has been delivered to the Administrative Agent within the time period required pursuant to **Section 3(e)(iii)**.

(f) **Enforceability; Priority of Security Interest.** (i) Other than the portions of the Collateral that constitute leased real property (but excluding all general intangibles related thereto), this Agreement creates a valid security interest in the Collateral which is enforceable against the Collateral in which such Grantor now has rights and will create a valid security interest which is enforceable against the Collateral in which such Grantor hereafter acquires rights at the time such Grantor acquires any such rights; and (ii) other than with respect to Collateral that constitute leased real property (but excluding all general intangibles related thereto), upon the completion of the filings described in Section 4(g) and delivery of certificates, instruments and other writing representing Pledged Collateral (if any) and performance of other actions described in Section 3 (collectively, the "**Perfection Actions**"), the Administrative Agent will have a perfected security interest in the Collateral in which such Grantor now has rights, and will have a perfected security interest in the Collateral in which such Grantor hereafter acquires rights at the time such Grantor acquires any such rights, in each case, to the extent such Collateral can be perfected by the completion of such Perfection Actions, in each case, for the Administrative Agent's own benefit and for the ratable benefit of the other Secured Parties, subject to Permitted Liens and securing the payment and performance of the Secured Obligations.

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

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

(i) **Rights to Payment.** In each case, with respect to Rights of Payment in excess of \$1,000,000 constituting Collateral of each Grantor:

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

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

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

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

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

(j) **Inventory.** No Inventory of such Grantor constituting Collateral is stored with any bailee, warehouseman or similar Person or on any premises leased to such Grantor, no such Inventory has been consigned to such Grantor or consigned by such Grantor to any Person, nor is any such Inventory held by such Grantor for any Person under any "bill and hold" or other arrangement, except, in each case, (i) as set forth in **Schedule 1**, subject to **Section 5(m)**, (ii) Inventory in transit with common carriers or in the possession of employees, customers, development partners or vendors, in each case in the Ordinary Course and (iii) locations having Inventory with a fair market value of less than \$2,000,000 per location.

(k) [Reserved].

(l) **Instrument Collateral.** (i) Such Grantor has not previously assigned any interest in any Instruments constituting Collateral with a principal amount in excess of \$250,000 individually held by such Grantor (other than such interests as will be released on or before the date hereof) since the Closing Date, (ii) no Person other than such Grantor owns an interest in such Instruments (whether as joint holders, participants or otherwise) (except as otherwise permitted under **Section 5(h)**), and (iii) to the knowledge of such Grantor, no material default exists under or in respect of such Instruments.

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

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

(o) **Letter-of-Credit Rights.** Other than those for which notice is delivered pursuant to **Section 5(o)**, such Grantor does not have any Letter-of-Credit Rights with an undrawn face amount in excess of \$1,000,000 constituting Collateral except as set forth in **Schedule 1**.

(p) **Commercial Tort Claims.** Other than those for which notice is delivered pursuant to **Section 5(o)**, such Grantor does not have any Commercial Tort Claims constituting Collateral the recovery from which would reasonably be expected to exceed \$1,000,000 except as set forth in **Schedule 1**.

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

(r) **Pledged Debt Securities.** As of the Closing Date, **Schedule 1** correctly sets forth a list of all Collateral constituting Pledged Debt Securities in excess of \$500,000, the aggregate principal amount and maturity date of all Indebtedness represented by such Pledged Debt Securities and includes all debt securities, promissory notes and other Collateral constituting such Pledged Debt Securities required to be pledged hereunder. To the knowledge of such Grantor, the Collateral constituting Pledged Debt Securities are valid and binding obligations of the issuers thereof, subject as to the enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting rights generally and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

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

**SECTION 5 Covenants.** Until the Secured Obligations (other than inchoate indemnification and expense reimbursement obligations for which no claim has been made) have been paid in full in cash and no Lender shall have any Commitment, each Grantor agrees that:

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

(b) **Preservation of Collateral.** Such Grantor will do and perform all commercially reasonable acts necessary and appropriate to maintain, preserve and protect the Collateral, except to the extent permitted by **Section 5(n)**.

(c) **Compliance with Laws, Etc.** Such Grantor will (x) comply, in all respects, with all applicable Laws, except where the failure to so comply would not reasonably be expected to result in a Material Adverse Effect and (y) comply in all material respects with all policies of insurance, relating to the possession, operation, maintenance and control of the Collateral, except where the failure to do so would not reasonably be expected to result in a loss of any such policy.

(d) **Location of Books and Chief Executive Office.** Such Grantor will: (i) keep all Books pertaining to the Collateral constituting Rights to Payment of such Grantor at such Grantor's chief executive office, principal place of business, place where such Grantor conducts business or such other location provided in **Schedule 1**, and (ii) promptly notify the Administrative Agent of any changes in the location of such Grantor's chief executive office or principal place of business.

(e) **Location of Collateral.** Such Grantor will: (i) keep the Collateral (to the extent such Collateral is tangible or a tangible embodiment of Collateral) held by such Grantor at the locations set forth in **Schedule 1** or at such other locations as may be disclosed in writing to the Administrative Agent pursuant to **clause (ii)** and will not remove any such Collateral from such locations (other than (A) in connection with sales of Inventory in the Ordinary Course, other dispositions permitted by **Section 5** and movements of Collateral from one disclosed location to another disclosed location, (B) Equipment or Inventory in transit with common carriers or in the possession of employees, customers, development partners or vendors or other third parties, in each case in the Ordinary Course, (C) Collateral which is out for repair or processing, (D) Equipment that is mobile in nature, including vehicles and portable computing equipment and (E) locations having Collateral, in each case, with a fair market value of less than \$2,000,000 per location); and (ii) give the Administrative Agent prompt notice of (but in any event, no later than after the next Quarterly Reporting Date) any change in the locations set forth in **Schedule 1**.

(f) **Change in Name, Identity or Structure.** Such Grantor will not effect or permit (i) any change in name, (ii) any change in its jurisdiction of organization, (iii) any change in its registration as an organization (or any new registration); and (iv) any changes in its identity or structure in any manner which might make any financing statement filed hereunder incorrect or misleading unless within five (5) Business Days (or such longer period as the Administrative Agent may agree as determined in its sole discretion) of such change, such Grantor has notified the Administrative Agent of such change and all filings have been made under the Uniform Commercial Code or otherwise that are required hereunder in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected (subject to Liens permitted under the Loan Documents) security interest in all the Collateral (other than any Excluded Assets) that can be perfected by making such filings under the Uniform Commercial Code; provided that no Grantor shall change its jurisdiction to a jurisdiction outside of the United States without the prior written consent of the Administrative Agent.

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

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

(i) **[Reserved].**

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

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

(ii) if any Accounts constituting Collateral of such Grantor in an aggregate amount in excess of \$1,000,000 per fiscal year arise from Contracts with the United States or any department, agency or instrumentality thereof, promptly (but in any event, no later ten (10) Business Days thereafter) notify the Administrative Agent thereof and, to the extent permitted by applicable Law and requested by the Administrative Agent, execute any documents and instruments and take any other steps reasonably requested by the Administrative Agent in order that all monies due and to become due thereunder shall be assigned to the Administrative Agent upon the occurrence and continuance of an Event of Default; and

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

(k) **Instruments, Investment Property, Etc.** On each Quarterly Reporting Date, such Grantor will (i) promptly deliver to the Administrative Agent, or an agent designated by it in New York, appropriately endorsed or accompanied by appropriate instruments of transfer or assignment, (x) all Collateral constituting Instruments, Documents, Tangible Chattel Paper, in each case, with respect to such Instruments, Documents or Tangible Chattel Paper, in an amount in excess of \$1,000,000 and (y) Collateral constituting certificated securities with respect to any Investment Property held by such Grantor, and all other Collateral constituting Rights to Payment, in each case, in an amount in excess of \$1,500,000, held by such Grantor at any time evidenced by promissory notes, trade acceptances or other instruments, other than Instruments subject to **Section 3(c)**, (ii) cause any securities intermediaries to show on their books that the Administrative Agent is the entitlement holder with respect to any Investment Property in excess of \$1,000,000 held by such securities intermediary on behalf of such Grantor, and/or obtain Control Agreements in favor of the Administrative Agent from such securities intermediaries, in form and substance reasonably satisfactory to the Administrative Agent, with respect to any such Investment Property, as reasonably requested by the Administrative Agent, and (iii) use commercially reasonable efforts to provide such notice, obtain such acknowledgments and take all such other action, with respect to any Letter-of-Credit Rights with a value in excess of \$1,000,000 held by such Grantor, as the Administrative Agent shall reasonably specify.

(l) **Deposit Accounts and Securities Accounts.** Such Grantor will give the Administrative Agent notice of the establishment of any new Deposit Account, new Securities Account and new Commodity Account, in each case other than any Excluded Account.

(m) **Inventory.** Such Grantor will not dispose of any Inventory on a bill-and-hold, guaranteed sale, sale and return, sale on approval, consignment or similar basis, nor acquire any Inventory from any Person on any such basis, without in each case giving the Administrative Agent written notice thereof no later than the next Quarterly Reporting Date.

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

(i) not allow or suffer any Material Intellectual Property constituting Intellectual Property Collateral owned by such Grantor that is material to the business of the Borrower and its Subsidiaries to become abandoned, nor any registration thereof to be abandoned, terminated, lapsed, forfeited, expired or dedicated to the public, except to the extent permitted by the Credit Agreement;

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

(iii) diligently prosecute all applications for Patents, Copyrights and Trademarks constituting Material Intellectual Property owned or controlled by any Obligor, and file and prosecute any and all continuations, divisionals, continuations-in-part, applications for reissue, applications for certificate of correction and like matters as shall be reasonable and appropriate in accordance with prudent business practice, and promptly and timely pay any and all maintenance, license, application, registration and other fees, Taxes and expenses due or incurred in connection with any such Material Intellectual Property;

(iv) in the event that any Grantor knows or has a reason to believe in its reasonable, good faith judgement, that any Intellectual Property owned by any Obligor constituting Intellectual Property Collateral has been, is currently being or will imminently be infringed, misappropriated or otherwise violated by a third person in any manner that would reasonably be expected to result in a Material Adverse Effect, such Grantor shall promptly (and in any case within ten (10) Business Days after obtaining knowledge thereof) notify the Administrative Agent in writing and shall, if consistent with prudent business judgment, promptly take such commercially reasonable measures to cause a cessation of such infringement, misappropriation or other violation and, if appropriate, to recover damages therefor;

(v) take any and all actions necessary to keep all Drug Applications in full force and effect, including without limitation the manufacture of all Products subject to such Drug Applications consistent with applicable current good manufacturing practices as set forth in 21 C.F.R. Parts 210 and 211 and timely payment of any and all user fees necessary thereto, in each case of this clause (v), to the extent the failure to maintain any such Drug Application could reasonably be expected to result in a Material Adverse Effect. For the avoidance of doubt, and notwithstanding the foregoing, Grantor shall not be required to maintain any such Drug Application with respect to a product it has in its good faith business judgment permanently withdrawn from the market;

(vi) [reserved]; and

(vii) upon the occurrence and during the continuance of an Event of Default, make available immediately upon the request of Administrative Agent a complete copy of each Drug Application, including all amendments thereto, to Administrative Agent or any purchaser identified by Administrative Agent (for the avoidance of doubt, Administrative Agent understands that the information contained in such Drug Applications and investigational new drug applications constitutes confidential information).

(o) **Notices, Reports and Information.** Such Grantor will (i) no later than the next Quarterly Reporting Date following the occurrence thereof, notify the Administrative Agent of any other modifications of or additions to the information contained in **Schedule 1** (including any acquisition or holding of an interest in any Chattel Paper, Commercial Tort Claims and Letter-of- Credit Rights) and (ii) upon the delivery of a Compliance Certificate pursuant to Section 8.01(d) of the Credit Agreement, notify the Administrative Agent of any event which would reasonably be expected to materially adversely affect the value of the Collateral (taken as a whole) or the Administrative Agent's Lien thereon.

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

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

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

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

## **SECTION 6 Rights to Payment and Pledged Collateral.**

(a) **Collection of Rights to Payment.** Unless and until an Event of Default has occurred and is continuing and the Administrative Agent has given prior written notice to the relevant Grantor of the Administrative Agent's intent to exercise its rights under this **Section 6** to collect any Rights to Payment of any Grantor, each such Grantor shall endeavor in the first instance diligently to collect all amounts due or to become due on or with respect to the Rights to Payment held by such Grantor consistent with its past business practices. At the request of the Administrative Agent, upon the occurrence and during the continuation of an Event of Default, all remittances received by such Grantor shall be held in trust for the Administrative Agent and, in accordance with the Administrative Agent's instructions, remitted to the Administrative Agent or deposited to an account with the Administrative Agent in the form received (with any necessary endorsements or instruments of assignment or transfer).

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

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

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

(e) **IRREVOCABLE PROXY.**

(i) EACH GRANTOR HEREBY **IRREVOCABLY** CONSTITUTES AND APPOINTS ADMINISTRATIVE AGENT AS ITS PROXY AND ATTORNEY-IN-FACT (SUBJECT TO THE TERMS OF THIS AGREEMENT) FOR SUCH GRANTOR WITH RESPECT TO THE PLEDGED SHARES WITH THE RIGHT TO, UPON THE OCCURRENCE AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT AND AFTER THE ADMINISTRATIVE AGENT SHALL HAVE GIVEN WRITTEN NOTICE TO THE RELEVANT GRANTOR OF THE ADMINISTRATIVE AGENT'S INTENT TO EXERCISE ITS RIGHTS, TAKE ANY OF THE FOLLOWING ACTIONS: (I) TRANSFER AND REGISTER IN ITS NAME OR IN THE NAME OF ITS NOMINEE THE WHOLE OR ANY PART OF THE PLEDGED SHARES, (II) VOTE THE PLEDGED SHARES, WITH FULL POWER OF SUBSTITUTION TO DO SO, (III) RECEIVE AND COLLECT ANY DIVIDEND OR OTHER PAYMENT OR DISTRIBUTION IN RESPECT OF OR IN EXCHANGE FOR THE PLEDGED SHARES OR ANY PORTION THEREOF, TO GIVE FULL DISCHARGE FOR THE SAME AND TO INDORSE ANY INSTRUMENT MADE PAYABLE TO GRANTOR FOR SAME, (IV) EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF THE PLEDGED SHARES WOULD BE ENTITLED (INCLUDING, WITH RESPECT TO THE PLEDGED SHARES, GIVING OR WITHHOLDING WRITTEN CONSENTS OF MEMBERS OR OTHER EQUITYHOLDERS, CALLING SPECIAL MEETINGS OF MEMBERS OR OTHER EQUITYHOLDERS AND VOTING AT SUCH MEETINGS), AND (V) TAKE ANY ACTION AND TO EXECUTE ANY INSTRUMENT WHICH ADMINISTRATIVE AGENT MAY DEEM NECESSARY OR ADVISABLE TO ACCOMPLISH THE PURPOSES OF THIS AGREEMENT. THE APPOINTMENT OF ADMINISTRATIVE AGENT AS PROXY AND ATTORNEY-IN-FACT IS COUPLED WITH AN INTEREST AND SHALL BE VALID AND IRREVOCABLE FROM THE DATE THAT SUCH GRANTOR BECOMES A PARTY HERETO UNTIL THE DATE THAT THIS AGREEMENT IS TERMINATED IN ACCORDANCE WITH SECTION 25, IT BEING UNDERSTOOD THAT SUCH SECURED OBLIGATIONS AND COMMITMENTS WILL CONTINUE TO BE EFFECTIVE OR AUTOMATICALLY REINSTATED, AS THE CASE MAY BE, IF AT ANY TIME PAYMENT, IN WHOLE OR IN PART, OF ANY OF THE SECURED OBLIGATIONS IS RESCINDED OR MUST OTHERWISE BE RESTORED OR RETURNED BY THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY OTHER SECURED PARTY FOR ANY REASON, INCLUDING AS A PREFERENCE, FRAUDULENT CONVEYANCE, OR OTHERWISE UNDER ANY BANKRUPTCY, INSOLVENCY, OR SIMILAR LAW, ALL AS THOUGH SUCH PAYMENT HAD NOT BEEN MADE; IT BEING FURTHER UNDERSTOOD THAT IN THE EVENT PAYMENT OF ALL OR ANY PART OF THE SECURED OBLIGATIONS IS RESCINDED OR MUST BE RESTORED OR RETURNED, ALL REASONABLE AND DOCUMENTED OUT-OF-POCKET COSTS AND EXPENSES (INCLUDING REASONABLE EXTERNAL COUNSEL ATTORNEYS' FEES AND DISBURSEMENTS) INCURRED BY THE ADMINISTRATIVE AGENT IN DEFENDING AND ENFORCING SUCH REINSTATEMENT SHALL BE DEEMED TO BE INCLUDED AS A PART OF THE SECURED OBLIGATIONS, IN EACH CASE, TO THE EXTENT SUCH COSTS AND EXPENSES ARE REQUIRED TO BE REIMBURSED BY THE GRANTORS PURSUANT TO SECTION 14.03(a) OF THE CREDIT AGREEMENT. SUCH APPOINTMENT OF ADMINISTRATIVE AGENT AS PROXY AND ATTORNEY-IN-FACT SHALL BE VALID AND IRREVOCABLE AS PROVIDED HEREIN SUBJECT TO ANY LIMITATIONS TO THE CONTRARY SET FORTH IN THE ORGANIZATIONAL DOCUMENTS OF ANY GRANTOR OR ANY ISSUER, SO LONG AS IN EACH CASE SUCH LIMITATION HAS NOT BEEN ENTERED INTO IN CONTEMPLATION OF SUCH APPOINTMENT. TO THE EXTENT ANY APPLICABLE LAW IMPOSES A MAXIMUM TERM, THIS PROXY SHALL BE VALID FOR SUCH MAXIMUM TERM AND, WITHOUT FURTHER ACTION, SHALL AUTOMATICALLY CONTINUE AND BE DEEMED EXTENDED FOR SUCCESSIVE LIKE PERIODS UNTIL THE OBLIGATIONS HAVE BEEN INDEFEASIBLY PAID IN FULL IN CASH (OTHER THAN INCHOATE INDEMNIFICATION AND EXPENSE REIMBURSEMENT OBLIGATIONS FOR WHICH NO CLAIM HAS BEEN MADE) AND NO LENDER HAS ANY COMMITMENT.

(ii) Upon the exercise by the Administrative Agent of the proxy set forth in **Section 6(c)(i)**, all prior proxies given by any Grantor with respect to any of the Pledged Shares (other than to the Administrative Agent) are hereby revoked by such Grantor, and no subsequent proxies (other than to the Administrative Agent) will be given by any Grantor with respect to any of the Pledged Shares until such Event of Default has been cured or waived or the Obligations have been indefeasibly paid in full in cash (other than inchoate indemnification and expense reimbursement obligations for which no claim has been made), unless the Administrative Agent otherwise subsequently agrees in writing. To the fullest extent permitted by applicable law, the Administrative Agent shall have no agency, fiduciary, or other implied duties to any Grantor, any Loan Party, or any other Person when acting in its capacity as such proxy or attorney-in-fact. Each Grantor hereby waives and releases any claims that it may otherwise have against the Administrative Agent with respect to any breach or alleged breach of any such agency, fiduciary, or other duty with respect to any aspect of any transaction contemplated by the Loan Documents.

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

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

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

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

- (d) notify the U.S. Postal Service and other postal authorities to change the address for delivery of mail addressed to such Grantor to such address as the Administrative Agent may designate; and, without limiting the generality of the foregoing, establish with any Person lockbox or similar arrangements for the payment of the Rights to Payment of such Grantor;
- (e) receive, open and dispose of all mail addressed to such Grantor;
- (f) send requests for verification of Rights to Payment to the customers or other obligors of such Grantor;
- (g) contact, or direct such Grantor to contact, all account debtors and other obligors on the Rights to Payment of such Grantor and instruct such account debtors and other obligors to make all payments directly to the Administrative Agent;
- (h) assert, adjust, sue for, compromise or release any claims under any policies of insurance;
- (i) exercise dominion and control over, and refuse to permit further withdrawals from, any Deposit Accounts of such Grantor maintained with the Administrative Agent, any Lender or any other bank, financial institution or other Person, in each case other than any Excluded Accounts;
- (j) notify each Person maintaining lockbox or similar arrangements for the payment of the Rights to Payment of such Grantor to remit all amounts representing collections on such Rights to Payment directly to the Administrative Agent;
- (k) ask, demand, collect, receive and give acquittances and receipts for any and all Rights to Payment of such Grantor, enforce payment or any other rights in respect of the Rights to Payment and other Collateral, grant consents, agree to any amendments, modifications or waivers of the agreements and documents governing such Rights to Payment and other Collateral, and otherwise file any Claims, take any action or institute, defend, settle or adjust any actions, suits or proceedings with respect to the Collateral, as the Administrative Agent may deem necessary or desirable to maintain, preserve and protect the Collateral, to collect the Collateral or to enforce the rights of the Administrative Agent with respect to the Collateral;
- (l) execute any and all applications, documents, papers and instruments necessary for the Administrative Agent to use, otherwise transfer the Intellectual Property Collateral and grant or issue any exclusive or non-exclusive license, sublicense, release, covenant not to assert or other similar right or immunity with respect to any Intellectual Property Collateral;
- (m) execute any and all endorsements, assignments or other documents and instruments necessary to sell, lease, assign, convey or otherwise transfer title in or dispose of the Collateral;
- (n) execute and deliver to any securities intermediary or other Person any entitlement order or other notice, document or instrument which the Administrative Agent may deem necessary or advisable to maintain, protect, realize upon and preserve the Deposit Accounts and Investment Property of such Grantor constituting Collateral and the Administrative Agent's security interest therein;

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

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

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

provided that, with respect to **clauses (b) through (q)** above, such rights shall be exercisable solely upon the occurrence and during the continuance of an Event of Default.

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

**SECTION 8 Agent Performance of Grantor Obligations.** Upon the occurrence and continuation of an Event of Default and the Administrative Agent's notice to the relevant Grantor of the Administrative Agent's exercise of its rights (which notice may be substantially concurrent with such exercise), the Administrative Agent shall have the right (but not any obligation) to perform or pay any obligation which any Grantor has agreed to perform or pay under or in connection with this Agreement, and such Grantor shall reimburse the Administrative Agent on demand for all documented out of pocket costs and expenses incurred by the Administrative Agent pursuant to this **Section 8**. For the avoidance of doubt, such rights shall include (but shall not be limited to) (i) the right to enforce all of such Grantor's rights under and pursuant to all agreements with respect to the Collateral, all for the sole benefit of the Administrative Agent (for the benefit of the Secured Parties) as contemplated hereby and under the other Loan Documents and to enter into such other agreements on behalf of the Administrative Agent as may be necessary or appropriate in the reasonable judgment of the Administrative Agent to complete the production, distribution or exploitation of any Drug Application, the Product or Intellectual Property constituting Collateral of such Grantor; and (ii) the right to execute such other and further mortgages, pledges and assignments of the Collateral, and related instruments or agreements, as the Administrative Agent may reasonably require for the purpose of perfecting, protecting, maintaining or enforcing the security interests granted to the Administrative Agent (for the benefit of the Secured Parties) hereunder and under the other Loan Documents, including without limitation, the execution of Transfer Letters or any other transfer forms with respect to any Drug Application or any other permit, in the name of such Grantor or in the name of Administrative Agent, solely in each case, to the extent permitted by applicable Law.

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

**SECTION 10 Remedies.**

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

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

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

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

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

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

(vi) The Administrative Agent may sell, resell, lease, use, assign, transfer or otherwise dispose of any or all of the Collateral in its then condition or following any commercially reasonable preparation or processing (utilizing in connection therewith any of such Grantor's assets, without charge or liability to the Administrative Agent therefor) at public or private sale or at any broker's board or any securities exchange, by one or more Contracts, in one or more parcels, at the same or different times, for cash or credit or for future delivery without assumption of any credit risk, all as the Administrative Agent deems advisable; provided that such Grantor shall be credited with the net proceeds of a sale only when such proceeds are finally collected by the Administrative Agent. The Administrative Agent and each of the other Secured Parties shall have the right upon any such public sale, and, to the extent permitted by Law, upon any such private sale, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption, which right or equity of redemption such Grantor hereby releases, to the extent permitted by Law. The Administrative Agent shall give such Grantor such notice of any public or private sale as may be required by the NY UCC or other applicable Law. Such Grantor recognizes that the Administrative Agent may be unable to make a public sale of any or all of the Pledged Collateral, by reason of prohibitions contained in applicable securities laws or otherwise, and expressly agrees that a private sale to a restricted group of purchasers for investment and not with a view to any distribution thereof shall be considered a commercially reasonable sale. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives and releases (to the extent permitted by Law) all rights of redemption, stay, valuation and appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Administrative Agent shall give each applicable Grantor not less than ten (10) days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the NY UCC or its equivalent in other jurisdictions) of the Administrative Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Administrative Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, and by the Administrative Agent in its own right or by one or more agents or contractors, upon any premises owned, leased or occupied by any Grantor, the Administrative Agent or any such agent or contractor, and any such sale may include any other property, in each case, as the Administrative Agent may (in its sole and absolute discretion) determine. The Administrative Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Administrative Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Administrative Agent until the sale price is paid by the purchaser or purchasers thereof, but the Administrative Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by Law, private) sale made pursuant to this Agreement, any Secured Party may bid for or purchase, free (to the extent permitted by applicable Law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all said rights being also hereby waived and released to the extent permitted by applicable Law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Administrative Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that, after the Administrative Agent shall have entered into such an agreement, all Events of Default shall have been remedied and the Obligations shall have been indefeasibly paid in full in cash. As an alternative to exercising the power of sale herein conferred upon it, the Administrative Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this **Section 10(a)** shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the NY UCC or its equivalent in other jurisdictions. Neither the Administrative Agent nor the Secured Parties shall be required to marshal any present or future Collateral or to resort to such Collateral in any particular order.

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

(b) **License.** For the purpose of enabling the Administrative Agent to exercise its rights and remedies under this Agreement, the Credit Agreement or the other Loan Documents, and solely upon the occurrence and during the continuance of an Event of Default, each Grantor hereby grants to the Administrative Agent an irrevocable, worldwide, non-exclusive license sublicensable (through multiple tiers), fully paid-up, royalty-free license or sublicense (exercisable without payment or royalty or other compensation to such Grantor) in the Drug Applications and Intellectual Property owned by or licensed to such Grantor, for any purpose in connection with the Administrative Agent's exercise of such rights and remedies hereunder, including to use, license or sublicense, or grant a covenant not to assert, release or other similar right or immunity under any Drug Application and Intellectual Property Collateral and permitting the Administrative Agent to access (and for the Administrative Agent to provide access to) all media in which any of the licenses items may be recorded or stored and to all computer software, programs, hardware and other information technology assets used in connection therewith; provided, however, that nothing in this **Section 10(b)** shall require a Grantor to grant any license or sublicense that (i) violates the express terms of any Contract between a Grantor and a third party governing such Grantor's use of such Intellectual Property Collateral, or gives such third party any right of acceleration, modification or cancellation therein, or (ii) is prohibited by any applicable Law; provided, further, that such licenses or sublicenses to be granted hereunder with respect to Trademarks shall be subject to maintenance of commercially reasonable quality standards with respect to the goods and services on which such Trademarks are used to the extent necessary to preserve the validity of such Trademarks.

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

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

(e) **Transfer Letters.**

(i) For the purpose of enabling the Administrative Agent to exercise the rights and remedies under this **Section 10** at such time as the Administrative Agent shall be lawfully entitled to exercise such rights and remedies (including to sell, assign, convey, transfer any Collateral), the Administrative Agent shall be entitled to complete any blank information in the Transfer Letters and remit such Transfer Letters to the FDA on behalf of the Grantors in connection with any such sale or transfer of Collateral.

(ii) During the continuation of an Event of Default, and solely in connection with the Administrative Agent's exercise of remedies with respect to Collateral in a bona fide sale, license or other disposition approved in writing by the Administrative Agent, upon the request of the Administrative Agent, the Grantors shall use commercially reasonable efforts to (a) interface with any appropriate Governmental Authority, landlord, warehouse or bailee in connection with the Administrative Agent's efforts to transition the Collateral to new ownership and (b) provide such other assistance as the Administrative Agent shall reasonably request in connection with the Administrative Agent's efforts to transition the Collateral to new ownership, including without limitation, using commercially reasonable efforts to make available to Administrative Agent or actual purchasers (or potential purchasers who have executed a confidentiality agreement in form and substance reasonably acceptable to the Grantors) of Collateral the books and records, drug master files and other applicable computer files relating to the Collateral as well as key employees of Grantors with material knowledge of manufacturing the Collateral, in each case, to the extent permitted by applicable Law, regulatory requirements and contractual confidentiality obligations.

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

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

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

**SECTION 14 Costs and Expenses; Indemnification.**

(a) **Costs and Expenses.** Each Grantor agrees to reimburse the Administrative Agent for its costs and expenses to the extent required pursuant to Section 14.03(a) of the Credit Agreement.

(b) **Indemnification.** Each Grantor, jointly and severally, agrees to indemnify the Indemnified Party to the extent required pursuant to Section 14.03(b) of the Credit Agreement.

(c) **[Reserved].**

(d) **[Reserved].**

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

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

**SECTION 16 Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; provided that Section 5-1401 of the New York General Obligations Law shall apply.

**SECTION 17 Submission to Jurisdiction.**

(a) **Submission to Jurisdiction.** Each party hereby irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or tort or otherwise, against such other party in any way relating to this Agreement or any Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Notwithstanding the foregoing, nothing in this Agreement or in any other Loan Document shall limit the right of the Administrative Agent or any Secured Party (a) to bring any action or proceeding in any jurisdiction to realize upon, enforce or foreclose any Lien in the Collateral, to repossess Collateral, or to obtain provisional or injunctive relief with respect to the Collateral, or (b) to enforce any judgment in any jurisdiction. All other actions, litigations or proceedings relating to this Agreement or any Loan Document shall be brought exclusively in the courts specified above.

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

(c) **Process.** Each party hereby consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 12. Nothing in this Agreement shall in any way be deemed to limit the ability of the parties hereto to serve any process or summons in any manner permitted by any Law.

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

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

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

**SECTION 21 Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof. The words "execution," "execute," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

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

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

**SECTION 24 Accession.** At such time following the date hereof as any Person (an “*Acceding Grantor*”) is required to accede hereto pursuant to the terms of Section 8.11 of the Credit Agreement, such Acceding Grantor shall execute and deliver to the Administrative Agent an accession agreement substantially in the form of **Exhibit A** (an “*Accession Agreement*”), signifying its agreement to be bound by the provisions of this Agreement as a Grantor to the same extent as if such Acceding Grantor had originally executed this Agreement as of the date hereof.

**SECTION 25 Termination.** Upon the termination of the Commitments of the Lenders and payment in full of all Secured Obligations (other than any inchoate indemnification and expense reimbursement obligations for which no claim has been made), the security interests created by this Agreement shall automatically terminate and the Administrative Agent shall promptly execute and deliver to and authorize the filing by each Grantor such documents and instruments reasonably requested by such Grantor as shall be necessary to evidence the termination or release of all security interests given by such Grantor or the release of security interest in such Collateral, as the case may be, to the Administrative Agent hereunder and deliver to such Grantor, at the expense of the Borrower, any portion of the released Collateral that is in the possession of the Administrative Agent. Any execution and delivery of such documents pursuant to this **Section 25** shall be without recourse to or representation or warranty by the Administrative Agent or any Secured Party. The Borrower shall reimburse the Administrative Agent upon demand for all reasonable and documented costs and out of pocket expenses, including the reasonable fees, charges and expenses of counsel, incurred by it in connection with any action contemplated by this **Section 25**.

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

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

Notwithstanding the foregoing, the Administrative Agent shall not be required to take any action under this **Section 25** unless the applicable Grantor shall have delivered to the Administrative Agent together with such request, which may be incorporated into such request, a certificate of an authorized officer of the Borrower or such Grantor certifying that the transaction giving rise to such termination or release is permitted by the Credit Agreement and was, or will concurrently with the release be, consummated in compliance with the Loan Documents.

**SECTION 26 Right of Set-Off.** Section 4.03 of the Credit Agreement is incorporated herein by reference and shall apply, *mutatis mutandis*, to this Agreement as if fully set forth herein.

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

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

**GRANTOR:**

**AQUESTIVE THERAPEUTICS, INC.**

By: /s/ Daniel Barber

Name: Daniel Barber

Title: President and Chief Executive Officer

[Signature Page to Security Agreement (Credit Agreement and Guaranty)]

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**ADMINISTRATIVE AGENT:**

**OAKTREE FUND ADMINISTRATION, LLC**

By: Oaktree Capital Management, L.P.  
Its: Managing Member

By: /s/ Mary Gallegly  
Name: Mary Gallegly  
Title: Managing Director

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

[Signature Page to Security Agreement (Credit Agreement and Guaranty)]

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**SCHEDULE 1  
TO THE SECURITY AGREEMENT**

*[Intentionally Omitted]*

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**SCHEDULE 2  
TO THE SECURITY AGREEMENT**

**PATENTS**

*[Intentionally Omitted]*

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**TRADEMARKS**

*[Intentionally Omitted]*

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**COPYRIGHTS**

*[Intentionally Omitted]*

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**DRUG APPLICATIONS**

*[Intentionally Omitted]*

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**SCHEDULE 3  
TO THE SECURITY AGREEMENT**

**PLEGDED SHARES**

*[Intentionally Omitted]*

**PARTNERSHIP AND LLC COLLATERAL**

*[Intentionally Omitted]*

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**SCHEDULE 4  
FINANCING STATEMENTS**

*[Intentionally Omitted]*

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EXHIBIT A

TO THE SECURITY AGREEMENT

FORM OF ACCESSION AGREEMENT

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

Re: AQUESTIVE THERAPEUTICS, INC., as the Borrower

Ladies and Gentlemen:

This Accession Agreement is made and delivered as of \_\_\_\_\_, 20[●] pursuant to **Section 24** of that certain Security Agreement, dated as of May 12, 2026 (as amended, modified, renewed or extended from time to time, the "**Security Agreement**"), between each Grantor party thereto (each a "**Grantor**" and collectively, the "**Grantors**"), and Oaktree Fund Administration, LLC (in such capacity, together with its successors and assigns, the "**Administrative Agent**"). All capitalized terms used in this Accession Agreement and not otherwise defined herein shall have the meanings assigned to them in either the Security Agreement or the Credit Agreement (as defined in the Security Agreement), as the context may require.

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

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

The undersigned agrees to reimburse the Administrative Agent for its reasonable and documented out-of-pocket expenses in connection with this Accession Agreement, including the reasonable fees, other charges and disbursements of counsel for the Administrative Agent, in each case, to the extent required pursuant to Section 14.03 of the Credit Agreement.

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

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

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

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

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

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

[ACCEDING GRANTOR]

By:

\_\_\_\_\_  
Name:

Title:

Address for Notices:

\_\_\_\_\_

Attn: \_\_\_\_\_

Tel.: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

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EXHIBIT B

TO THE SECURITY AGREEMENT

FORM OF PLEDGE SUPPLEMENT

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

Re: AQUESTIVE THERAPEUTICS, INC., as the Borrower

Ladies and Gentlemen:

This Pledge Supplement (this "**Pledge Supplement**") is made and delivered as of \_\_\_\_\_, 20[●] pursuant to **Section 3(i)** of that certain Security Agreement, dated as of May 12, 2026 (as amended, modified, renewed or extended from time to time, the "**Security Agreement**"), among each Grantor party thereto (each a "**Grantor**" and collectively, the "**Grantors**"), and Oaktree Fund Administration, LLC, as administrative agent for the Secured Parties (in such capacity, together with its successors and assigns, the "**Administrative Agent**"). All capitalized terms used in this Pledge Supplement and not otherwise defined herein shall have the meanings assigned to them in either the Security Agreement or the Credit Agreement (as defined in the Security Agreement), as the context may require.

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

The undersigned agrees to reimburse the Administrative Agent for its reasonable and documented out-of-pocket expenses in connection with this Pledge Supplement, including the reasonable fees, other charges and disbursements of counsel for the Administrative Agent, in each case, to the extent required pursuant to Section 14.03 of the Credit Agreement.

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

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

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

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

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

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

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**SUPPLEMENT TO SCHEDULE  
3 TO THE SECURITY AGREEMENT**

**PARTNERSHIP AND LLC COLLATERAL**

Limited Liability Company Interests Constituting Collateral

<u>Grantor</u>	<u>Name of Issuer of Interests</u>	<u>Number of Units Held by Grantor</u>	<u>Date Units Issued to Grantor</u>	<u>Percentage Ownership Interest</u>

Partnership Interests Constituting Collateral

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

**PLEDGED SHARES**

Pledged Shares Held by each Grantor

<u>Grantor</u>	<u>Name of Issuer of Pledged Shares</u>	<u>Number and Class of Pledged Shares</u>	<u>Certificate Numbers</u>	<u>Certificate Dates</u>	<u>Percentage Ownership Interest</u>

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EXHIBIT C

TO THE SECURITY AGREEMENT

FORM OF COPYRIGHT SECURITY AGREEMENT

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

WITNESSETH:

WHEREAS, the Copyright Grantors are party to a Security Agreement dated as of May 12, 2026 (the “*Security Agreement*”) in favor of the Administrative Agent, pursuant to which the Copyright Grantors are required to execute and deliver this Copyright Security Agreement (capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Security Agreement);

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

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

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

(b) to the extent not covered by **clause (a)**, all income, fees, royalties and other payments now or hereafter due and payable with respect to any of the foregoing;

(c) to the extent not covered by **clause (a)**, all causes of action arising prior to or after the date hereof for infringement, misappropriation or other violation of any of the Copyrights, together with the right to seek and retain any past or future damages in connection therewith; and

(d) all exclusive Licenses pursuant to which such Copyright Grantor receives exclusive rights in, to or under any Copyrights material to such Copyright Grantor, including, without limitation, the Licenses listed on **Schedule 1** attached hereto

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Notwithstanding the foregoing, the Copyright Collateral shall not include any Excluded Assets.

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

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

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

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

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

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

[COPYRIGHT GRANTOR(S)]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

**COPYRIGHTS**

Copyright Registrations

Title of Work	Reg. No.	Reg. Date	Owner

Exclusive Copyright Licenses

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EXHIBIT D

TO THE SECURITY AGREEMENT

FORM OF TRADEMARK SECURITY AGREEMENT

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

WITNESSETH:

WHEREAS, the Trademark Grantors are party to a Security Agreement, dated as of May 12, 2026 (the “*Security Agreement*”) in favor of the Administrative Agent, pursuant to which the Trademark Grantors are required to execute and deliver this Trademark Security Agreement (capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Security Agreement);

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

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

(a) all Trademarks owned by such Trademark Grantor, including, without limitation, the registered and applied-for Trademarks owned by such Trademark Grantor listed on **Schedule 1** attached hereto; provided, that no Lien or security interest is granted hereunder with respect to any United States “intent-to-use” trademark or service mark application filed pursuant to Section 1(b) of the Lanham Act prior to the filing and acceptance by the US Patent and Trademark Office of an “Amendment to Allege Use” or a “Statement of Use” pursuant to Sections 1(c) or 1(d) of the Lanham Act;

(b) to the extent not covered by **clause (a)**, all income, fees, royalties and other payments now or hereafter due and payable with respect to any of the foregoing;

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

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(d) to the extent not covered by **clause (a)**, all causes of action arising prior to or after the date hereof for actual or alleged infringement, dilution or other violation of any of the Trademarks or unfair competition regarding the same, together with the right to seek and retain any past or future damages in connection therewith.

Notwithstanding the foregoing, the Trademark Collateral shall not include any Excluded Assets.

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

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

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

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

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

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

[TRADEMARK GRANTOR(S)]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_



EXHIBIT E

TO THE SECURITY AGREEMENT

FORM OF PATENT SECURITY AGREEMENT

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

WITNESSETH:

WHEREAS, the Patent Grantors are party to a Security Agreement dated as of May 12, 2026 (the “*Security Agreement*”) in favor of the Administrative Agent, pursuant to which the Patent Grantors are required to execute and deliver this Patent Security Agreement (capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Security Agreement);

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

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

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

(b) to the extent not covered by **clause (a)**, all income, fees, royalties and other payments now or hereafter due and payable with respect to any of the foregoing; and

(c) to the extent not covered by **clause (a)**, all causes of action arising prior to or after the date hereof for actual or alleged infringement or other violation of any of the Patents, together with the right to seek and retain any past or future damages in connection therewith.

Notwithstanding the foregoing, the Patent Collateral shall not include any Excluded Assets.

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

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

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

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

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

[PATENT GRANTOR(S)]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

PATENTS

**Patents and Patent Applications**

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

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KPMG LLP  
Suite 4000  
150 John F. Kennedy Parkway  
Short Hills, NJ 07078-2702

**Consent of Independent Registered Public Accounting Firm**

We consent to the use of our report dated March 4, 2026, with respect to the financial statements of Aquestive Therapeutics, Inc., incorporated herein by reference, and to the reference to our firm under the heading "Experts" in the prospectus.

/s/ KPMG LLP

Short Hills, New Jersey  
June 26, 2026

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## CALCULATION OF FILING FEE TABLE

FORM S-3  
(Form Type)Aquestive Therapeutics, Inc.  
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered and Carry Forward Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee	Carry Forward Form Type	Carry Forward File Number	Carry Forward Initial effective date	Filing Fee Previously Paid In Connection with Unsold Securities to be Carried Forward
<b>Newly Registered Securities</b>												
Fees to Be Paid	Equity	Common stock, par value \$0.001 per share <sup>(1)</sup>	Rule 457(c)	230,271 <sup>(2)</sup>	\$4.91 <sup>(3)</sup>	\$1,130,630.61 <sup>(3)</sup>	0.00013810	\$156.14				
Fees Previously Paid	N/A	N/A	N/A	N/A	N/A	N/A		N/A				
<b>Carry Forward Securities</b>												
Carry Forward Securities	N/A	N/A	N/A	N/A		N/A			N/A	N/A	N/A	N/A
	<b>Total Offering Amounts</b>							\$156.14				
	<b>Total Fees Previously Paid</b>							—				
	<b>Total Fee Offsets</b>							—				
	<b>Net Fee Due</b>							\$156.14				

(1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement also covers such an indeterminate amount of shares of common stock as may become issuable to prevent dilution resulting from stock splits, stock dividends and similar events.

(2) Represents shares of common stock issuable upon exercise of warrants to purchase common stock offered by the selling stockholder.

(3) Estimated solely for the purpose of calculating the registration fee, based on the average of the high and low prices of the shares of common stock on The Nasdaq Global Market on June 23, 2026 (such date being within five business days of the date that this registration statement was first filed with the Securities and Exchange Commission, in accordance with Rule 457(c) under the Securities Act).