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

FORM 10-Q

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

For the quarterly period ended June 30, 2024
or

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

For the transition period from _____to ____.
Commission File Number: 001-39614

TARSUS PHARMACEUTICALS, INC.

(Exact name of Registrant as specified in its charter)

Delaware	**81-4717861**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
15440 Laguna Canyon Road, Suite 160 **Irvine, California**	
(Address of principal executive offices)	**92618** **(Zip Code)**

(949) 418-1801
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, $0.0001 par value per share	TARS	The Nasdaq Global Market LLC (Nasdaq Global Select Market)

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☒

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

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

As of August 2, 2024, the number of outstanding shares of the registrant's common stock, par value $0.0001 per share, was 38,041,737.

SUMMARY OF RISKS ASSOCIATED WITH OUR BUSINESS

We face risks and uncertainties associated with our business, many of which are beyond our control. Some of the more significant risks associated with our business include the following:

- We are a commercial-stage biopharmaceutical company with a limited operating history and a single product approved for commercial sale. We have incurred significant losses and negative cash flows from operations since our inception and anticipate that we will continue to incur significant expenses and losses for the foreseeable future.
- Due to the recently initiated commercialization of XDEMVY and our continued development of our pipeline of product candidates through clinical trials and other indications, our capital requirements are difficult to predict and may change. We may need to obtain substantial additional funding to achieve our goals and a failure to obtain this necessary capital when needed on acceptable terms, or at all, could force us to delay, reduce or eliminate our product development programs, commercialization efforts or other operations.
- We have only recently obtained regulatory approval for XDEMVY in the U.S. and we have limited experience as a commercial company generating revenue from product sales. If the commercial launch of XDEMVY is unsuccessful or any future approved products are unsuccessful, we may never be profitable.
- We are heavily dependent on the successful commercialization of XDEMVY and the development, regulatory approval, and commercialization of our current and future product candidates. XDEMVY remains subject to ongoing post-marketing review and extensive regulation.
- We may not be successful in educating eye care providers ("ECPs"), and the market about the need for treatments specifically for *Demodex* blepharitis and other diseases or conditions targeted by XDEMVY or our product candidates. XDEMVY or other product candidates that we may develop may fail to achieve market acceptance by ECPs, other healthcare providers and patients, or adequate formulary coverage, pricing or reimbursement by third-party payers and others in the medical community, and the market opportunity for these products may be smaller than we estimate. XDEMVY and any product candidates for which we obtain marketing approval may become subject to unfavorable pricing regulations, third-party coverage or reimbursement practices or healthcare reform initiatives, which could harm our business.
- The sizes of the market opportunity for XDEMVY for the treatment of *Demodex* blepharitis and TP-03 for the treatment of Meibomian Gland Disease ("MGD"), as well as our other product or product candidates, have not been established with precision and may be smaller than we estimate, possibly materially. If our estimates of the sizes overestimate these markets, our sales growth may be adversely affected. We may also not be able to grow the markets for our product candidates as intended or at all.
- The development and commercialization of our products, including XDEMVY, for the treatment of *Demodex* blepharitis, TP-03 for the potential treatment of MGD, TP-04 for the potential treatment of rosacea and TP-05 for potential Lyme disease prophylaxis and community malaria reduction, is dependent on intellectual property we license from Elanco Tiergesundheit AG ("Elanco").
- We expect to expand our development, regulatory and operational capabilities, and, as a result, we may encounter difficulties in managing our growth, which could disrupt our operations.
- We contract with third parties for the commercial manufacture of XDEMVY and for the manufacture of our product candidates for preclinical studies, clinical trials and for eventual commercialization. This reliance on third parties increases the risk that we will not have sufficient quantities of XDEMVY or our product candidates or compounds or that such supply will not be available to us at an acceptable cost, which could delay, prevent or impair our commercialization or development efforts.
- Clinical drug development is a lengthy, expensive and risky process with uncertain timelines and uncertain outcomes, and results of earlier studies and trials may not be predictive of future results. If clinical trials of our product candidates do not meet safety or efficacy endpoints or are prolonged or delayed, we may be unable to obtain required regulatory approvals, and therefore be unable to commercialize our product candidates on a timely basis or at all.

- Any termination or suspension of, or delays in the commencement or completion of, our planned clinical trials could result in increased costs to us, delay or limit our ability to generate revenue and adversely affect our commercial prospects.
- We rely on third parties to conduct our clinical trials and perform some of our research and preclinical studies. If these third parties do not satisfactorily carry out their contractual duties or fail to meet expected deadlines, our development programs may be delayed or subject to increased costs, each of which may have an adverse effect on our business and prospects.
- If we are unable to obtain and maintain sufficient intellectual property protection for XDEMVY or our product candidates, or if the scope of the intellectual property protection is not sufficiently broad, our competitors could develop and commercialize products similar or identical to ours, and our ability to successfully commercialize our products may be adversely affected.
- Patent terms may be inadequate to protect our competitive position on our product candidates and preclinical programs for an adequate amount of time.
- The concentration of our stock ownership will likely limit your ability to influence corporate matters, including the ability to influence the outcome of director elections and other matters requiring stockholder approval.

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TARSUS PHARMACEUTICALS, INC.

CONDENSED BALANCE SHEETS
(In thousands, except share and par value amounts)

	June 30, 2024 (unaudited)	December 31, 2023
ASSETS		
Current assets:		
Cash and cash equivalents	$ 181,095	$ 224,947
Marketable securities	142,485	2,495
Accounts receivable, net	29,529	16,621
Inventory	2,195	3,107
Other receivables	1,312	1,093
Prepaid expenses	5,972	7,868
Total current assets	362,588	256,131
Inventory, non-current	2,533	—
Property and equipment, net	2,241	1,468
Intangible assets, net	3,667	3,867
Operating lease right-of-use assets	1,969	1,880
Long-term investments	3,000	631
Other assets	846	1,514
Total assets	$ 376,844	$ 265,491
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and other accrued liabilities	$ 43,526	$ 23,691
Accrued payroll and benefits	8,045	13,245
Total current liabilities	51,571	36,936
Term loan, net	71,578	29,819
Other long-term liabilities	1,449	1,748
Total liabilities	124,598	68,503
Commitments and contingencies (*Note 7*)		
Stockholders' equity:		
Preferred stock, $0.0001 par value; 10,000,000 authorized; no shares issued and outstanding	—	—
Common stock, $0.0001 par value; 200,000,000 shares authorized; 38,030,385 shares issued and outstanding at June 30, 2024 (unaudited); 34,211,190 shares issued and outstanding at December 31, 2023	6	5
Additional paid-in capital	566,093	441,641
Accumulated other comprehensive loss	(176)	(2)
Accumulated deficit	(313,677)	(244,656)
Total stockholders' equity	252,246	196,988
Total liabilities and stockholders' equity	$ 376,844	$ 265,491

See accompanying notes to these unaudited condensed financial statements.

TARSUS PHARMACEUTICALS, INC.

CONDENSED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(Unaudited)
(In thousands, except share and per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Revenues:				
Product sales, net	$ 40,813	$ —	$ 65,533	$ —
License fees and collaboration revenue	—	—	2,894	2,500
Total revenues	40,813	—	68,427	2,500
Operating expenses:				
Cost of sales	3,004	—	4,658	—
Research and development	12,319	12,546	24,385	24,902
Selling, general and administrative	58,792	20,275	110,370	35,371
Total operating expenses	74,115	32,821	139,413	60,273
Loss from operations before other income (expense)	(33,302)	(32,821)	(70,986)	(57,773)
Other income (expense):				
Interest income	4,130	2,226	7,247	4,519
Interest expense	(2,109)	(815)	(3,092)	(1,499)
Loss on debt extinguishment	(1,944)	—	(1,944)	—
Other (expense) income, net	(59)	(47)	546	(41)
Realized/unrealized (loss) gain on equity investments	(6)	15	(591)	(50)
Change in fair value of equity warrants issued by licensee	—	18	(201)	1
Total other income, net	12	1,397	1,965	2,930
Net loss	$ (33,290)	$ (31,424)	$ (69,021)	$ (54,843)
Other comprehensive loss:				
Unrealized (loss) gain on marketable securities and cash equivalents	(113)	47	(174)	51
Comprehensive loss	$ (33,403)	$ (31,377)	$ (69,195)	$ (54,792)
Net loss per share, basic and diluted	$ (0.88)	$ (1.17)	(1.89)	(2.05)
Weighted-average shares outstanding, basic and diluted	37,823,233	26,815,733	36,530,756	26,779,203

See accompanying notes to these unaudited condensed financial statements.

TARSUS PHARMACEUTICALS, INC.

CONDENSED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited)
(In thousands, except share data)

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance as of December 31, 2023	34,211,190	$ 5	$ 441,641	$ (2)	$ (244,656)	$ 196,988
Net loss	—	—	—	—	(35,731)	(35,731)
Recognition of stock-based compensation expense	—	—	5,519	—	—	5,519
Issuance of common stock, net of issuance costs of $6.7 million	3,281,250	1	98,328	—	—	98,329
Issuance of pre-funded warrants, net of issuance costs of $0.6 million	—	—	9,365	—	—	9,365
Exercise of vested stock options	49,310	—	802	—	—	802
Issuance of common stock upon the vesting of restricted stock units	207,718	—	—	—	—	—
Other comprehensive loss	—	—	—	(61)	—	(61)
Balance as of March 31, 2024	37,749,468	$ 6	$ 555,655	$ (63)	$ (280,387)	$ 275,211
Net loss	—	—	—	—	(33,290)	(33,290)
Recognition of stock-based compensation expense	—	—	7,481	—	—	7,481
Issuance of common stock upon public offering	—	—	3	—	—	3
Exercise of vested stock options	99,678	—	1,818	—	—	1,818
Issuance of common stock upon the vesting of restricted stock units	115,251	—	—	—	—	—
Shares issued in connection with the employee stock purchase plan	65,988	—	1,136	—	—	1,136
Other comprehensive loss	—	—	—	(113)	—	(113)
Balance as of June 30, 2024	38,030,385	$ 6	$ 566,093	$ (176)	$ (313,677)	$ 252,246

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance as of December 31, 2022	26,727,458	$ 5	$ 301,732	$ (74)	$ (108,763)	$ 192,900
Net loss	—	—	—	—	(23,419)	(23,419)
Recognition of stock-based compensation expense	—	—	3,906	—	—	3,906
Exercise of vested stock options	6,443	—	13	—	—	13
Issuance of common stock upon the vesting of restricted stock units	66,611	—	—	—	—	—
Other comprehensive gain	—	—	—	4	—	4
Balance as of March 31, 2023	26,800,512	$ 5	$ 305,651	$ (70)	$ (132,182)	$ 173,404
Net loss	—	—	—	—	(31,424)	(31,424)
Recognition of stock-based compensation expense	—	—	5,192	—	—	5,192
Exercise of vested stock options	16,118	—	45	—	—	45
Issuance of common stock upon the vesting of restricted stock units	45,653	—	—	—	—	—
Shares issued in connection with the employee stock purchase plan	37,289	—	465	—	—	465
Other comprehensive gain	—	—	—	47	—	47
Balance as of June 30, 2023	26,899,572	$ 5	$ 311,353	$ (23)	$ (163,606)	$ 147,729

See accompanying notes to these unaudited condensed financial statements.

TARSUS PHARMACEUTICALS, INC.

CONDENSED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands)

	Six Months Ended June 30,	
	2024	**2023**
Cash Flows From Operating Activities:		
Net loss	$ (69,021)	$ (54,843)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	309	286
Amortization of intangible assets	200	—
Amortization of debt-related costs	215	173
Stock-based compensation	13,000	9,098
Loss on debt extinguishment	1,944	—
Non-cash lease expense	295	285
Realized/unrealized loss on equity investments	591	50
Net amortization/accretion of marketable securities	(1,588)	(2,551)
Change in fair value of equity warrants issued by licensee	201	(1)
Unrealized gain from transactions denominated in a foreign currency	(2)	(1)
Changes in operating assets and liabilities:		
Accounts receivable, net	(12,908)	—
Inventory	(1,621)	—
Other receivables	(218)	3,336
Prepaid expenses	1,832	(235)
Other non-current assets	589	(506)
Accounts payable and other accrued liabilities	19,422	(637)
Accrued payroll and benefits	(5,200)	(213)
Other long-term liabilities	(233)	(37)
Net cash used in operating activities	(52,193)	(45,796)
Cash Flows From Investing Activities:		
Proceeds from maturities of marketable securities	13,040	105,180
Purchases of marketable securities	(151,576)	(28,667)
Purchases of long-term investments	(3,000)	—
Purchases of property and equipment	(1,213)	(1,127)
Net cash (used in) provided by investing activities	(142,749)	75,386
Cash Flows From Financing Activities:		
Proceeds from issuance of common stock, net of paid issuance costs	98,330	—
Proceeds from issuance of pre-funded warrants, net of paid issuance costs	9,365	—
Proceeds from sale of common stock under employee stock purchase plan	1,136	465
Proceeds from exercise of equity awards	2,620	58
Proceeds from term loan	75,000	5,000
Payments for debt extinguishment	(31,877)	—
Payment of term loan issuance costs	(3,484)	—
Net cash provided by financing activities	151,090	5,523
Net (decrease) increase in cash and cash equivalents	(43,852)	35,113
Cash and cash equivalents — beginning of period	224,947	71,660
Cash and cash equivalents — end of period	$ 181,095	$ 106,773
Supplemental Disclosures Noncash Investing and Financing Activities:		
Operating lease right-of-use asset obtained in exchange for operating lease liability	$ 384	$ 1,846
Interest expense paid in cash	$ 1,336	$ 1,302
Additions of property and equipment included within accounts payable and other accrued liabilities	$ 3	$ 21
Offering costs included within accounts payable and accrued liabilities	$ 139	$ —

See accompanying notes to these unaudited condensed financial statements.

TARSUS PHARMACEUTICALS, INC.

NOTES TO THE FINANCIAL STATEMENTS
(all tabular amounts presented in thousands, except share, per share, per unit, and number of years)
(Unaudited)

1. DESCRIPTION OF BUSINESS AND PRESENTATION OF FINANCIAL STATEMENTS

Description of Business

Tarsus Pharmaceuticals, Inc. (“Tarsus” or the “Company”) is a commercial stage biopharmaceutical company focused on the development and commercialization of therapeutics, starting with eye care. The Company launched XDEMVY® (lotilaner ophthalmic solution) 0.25%, formerly known as TP-03, for the treatment of *Demodex* blepharitis, in August 2023, after receiving United States ("U.S.") Food and Drug Administration ("FDA") approval in July 2023.

Follow-On Public Offerings

In August 2023, the Company completed a follow-on public offering under its shelf registration statement on Form S-3 (the "2021 Shelf Registration Statement") of 5,714,285 shares of common stock at a public offering price of $17.50 per share. In September 2023, the underwriters partially exercised the underwriters option to purchase additional shares resulting in the Company's issuance of an additional 355,164 shares of common stock at the public offering price of $17.50 per share. The aggregate net proceeds received by the Company were $99.3 million, after deducting underwriting discounts, commissions, and other offering-related expenses.

In November 2023, the Company filed a shelf registration statement on Form S-3 that was declared effective by the Securities and Exchange Commission ("SEC") on November 21, 2023, (the "2023 Shelf Registration Statement"), which replaced the 2021 Shelf Registration Statement, and permits the Company to offer up to $300.0 million of common stock, preferred stock, debt securities and warrants in one or more offerings and in any combination, including in units from time to time.

In February 2024, the Company filed an automatic shelf registration on Form S-3 ASR (the "2024 Shelf Registration Statement"). On March 5, 2024 the Company completed an underwritten follow-on public offering under the 2024 Shelf Registration Statement of 2,812,500 shares of the Company’s common stock, par value $0.0001 per share, and, in lieu of common stock to a certain investor, pre-funded warrants to purchase 312,500 shares of its common stock (the “March 2024 Public Offering”). The price to the public was $32.00 per share and $31.9999 per pre-funded warrant, which was the price to the public of each share of common stock sold in the March 2024 Public Offering, minus the $0.0001 exercise price per pre-funded warrant. The pre-funded warrants are exercisable, subject to certain beneficial ownership restrictions, at any time after their original issuance and will not expire; as of June 30, 2024, 312,500 of pre-funded warrants are exercisable. The Company also granted the underwriters a 30-day option to purchase up to 468,750 additional shares of its common stock at the public offering price of $32.00 per share, which the underwriters exercised in full and was completed on March 5, 2024. The aggregate net proceeds received by the Company were $107.7 million, after deducting underwriting discounts, commissions, and other estimated offering-related expenses.

Open Market Sales Agreement

As part of the 2023 Shelf Registration Statement, the Company concurrently filed a sales agreement prospectus covering the sale of up to $100.0 million of common stock pursuant to an Open Market Sale Agreement (the "2023 ATM Prospectus") with Jefferies LLC ("Jefferies"), which replaced the November 1, 2021 Open Market Sale Agreement™ (the "2021 ATM Prospectus"). Under the terms of the 2023 ATM Prospectus, Jefferies will act as the Company's sales agent and is entitled to compensation for its services equal to 3% of the gross proceeds of any shares of common stock sold.

During the three and six months ended June 30, 2024, there were no sales of the Company's common stock pursuant to the 2023 ATM Prospectus. During the year ended December 31, 2023, the Company sold 1,000,000 shares of common stock under the 2023 ATM Prospectus for net proceeds of $19.2 million, after deducting broker commissions and offering-related expenses.

Liquidity

The Company has a limited operating history, limited history of product sales and has accumulated losses and negative cash flows from operations since inception. The Company has funded its inception-to-date operations through its Initial Public Offering ("IPO"), subsequent follow-on public offerings, and the 2023 ATM Prospectus, as well as from proceeds from product sales, the development and license agreement (the "China Out-License"), and draws on the current loan and security agreement (the "2024 Credit Facility") with Pharmakon Advisors, LP ("Pharmakon") and the previous loan and security agreement with Hercules Capital, Inc. ("Hercules") and Silicon Valley Bank, a division of First-Citizens Bank & Trust Company ("SVB") (collectively the "Credit Facilities"). The Company estimates that its existing capital resources will be sufficient to meet projected operating expense requirements for at least 12 months from the issuance date of the accompanying Condensed Financial Statements that have been prepared on a going-concern basis.

The Company plans to fund its operations, capital funding and other liquidity needs using existing cash and investments and, to the extent available, cash generated from commercial operations. Management expects the Company to continue to incur operating losses for the foreseeable future and may be required to raise additional capital to fund its ongoing operations. However, no assurance can be given as to whether financing will be available on terms acceptable to the Company, or at all. If the Company is unable to raise additional funds as required, it may need to delay, reduce, or terminate some or all of its development programs and clinical trials. The Company may also be required to sell or license its rights to product candidates in certain territories or indications that it would otherwise prefer to develop and commercialize on its own and/or enter into collaborations and other arrangements to address its liquidity needs, which could materially and adversely affect its business and financial prospects, or even its ability to remain a going concern.

Operating Segment

The Company operates one reportable operating segment focused on the development and commercialization of therapeutics. To date, the Company has operated, managed and organized its business and financial information on an aggregate basis for the purpose of evaluating financial performance and the allocation of capital and personnel resources. The Company's chief operating decision-maker, its Chief Executive Officer, reviews its operating results for the purpose of allocating resources and evaluating financial performance.

Emerging Growth Company Status

The Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"). Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. The Company has irrevocably elected to not take this exemption. As a result, it will adopt new or revised accounting standards on the relevant effective dates on which adoption of such standards is required for other public companies that are not emerging growth companies.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND USE OF ESTIMATES

Basis of Presentation

The accompanying Condensed Financial Statements have been prepared in accordance with generally accepted accounting principles ("GAAP") in the U.S. for interim financial information pursuant to Form 10-Q and with the rules and regulations of the SEC. Accordingly, the accompanying Condensed Financial Statements do not include all of the information and footnotes required by GAAP for complete financial statements and should be read in conjunction with the audited financial statements and the related notes thereto in the Company's Annual Report on Form 10-K for the year ended December 31, 2023, as filed with the SEC on February 27, 2024.

The interim Condensed Balance Sheet as of June 30, 2024, the Condensed Statements of Operations and Comprehensive Loss, and the Condensed Statements of Stockholders' Equity for the three and six months ended June 30, 2024 and 2023, and the Condensed Statements of Cash Flows for the six months ended June 30, 2024 and 2023 are unaudited. These unaudited interim financial statements have been prepared on the same basis as the Company's annual financial statements and,

in the opinion of management, reflect all adjustments, which consist of only normal and recurring adjustments for the fair presentation of its financial information.

The financial data and other information disclosed in these notes related to the three and six month periods are also unaudited. The Condensed Balance Sheet as of December 31, 2023 has been derived from the audited financial statements at that date but does not include all information and footnotes required by GAAP for annual financial statements. The condensed interim operating results for three and six months ended June 30, 2024 are not necessarily indicative of results to be expected for the year ending December 31, 2024 or any other interim or annual period.

Use of Estimates

The preparation of financial statements in conformity with GAAP and with the rules and regulations of the SEC requires management to make informed estimates and assumptions that affect the amounts reported in these Condensed Financial Statements and Notes. These estimates and assumptions are based upon historical experience, knowledge of current events and various other factors believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities and the recording of expenses that are not readily apparent from other sources and involve judgments with respect to numerous factors that are difficult to predict and may materially differ from the amounts ultimately realized and reported due to the inherent uncertainty of any estimate or assumption. On an ongoing basis, management evaluates its estimates, including those related to recognition of revenue, clinical trial accruals, contract manufacturing accruals, expected demand for inventory, fair value of assets and liabilities, income taxes and stock-based compensation. Management bases its estimates on historical experience and on various other market-specific and relevant assumptions that management believes to be reasonable under the circumstances. Actual results could differ materially from those estimates and assumptions used in the preparation of the accompanying Condensed Financial Statements under different assumptions and conditions.

The Company’s Condensed Financial Statements as of and for the three and six months ended June 30, 2024, reflect the Company’s estimates of the impact of the macroeconomic and geopolitical environment, including the impact of inflation, higher interest rates, and foreign exchange rate fluctuations. The duration and the scope of these conditions cannot be predicted; therefore, the extent to which these conditions will directly or indirectly impact the Company’s business, results of operations and financial condition, is uncertain. The Company is not aware of any specific event or circumstance that would require an update to its estimates, judgments and assumptions or a revision of the carrying value of the Company’s assets or liabilities as of the issuance date of the accompanying Condensed Financial Statements.

The accounting policies and estimates that most significantly impact the presented amounts within these accompanying Condensed Financial Statements are further described below:

Cash and Cash Equivalents

Cash and cash equivalents consist of bank deposits and highly liquid investments, including money market fund accounts, that are readily convertible into cash without penalty, with original maturities of three months or less from the purchase date. The carrying amounts reported in the accompanying Condensed Balance Sheets for cash and cash equivalents are valued at cost, which approximate their fair value.

Marketable Securities and Long-Term Investments

Marketable securities consist primarily of short-term fixed income investments carried at estimated fair value as determined based upon quoted market prices or pricing models for similar securities (see *Note 3*). Management determines the appropriate classification of its investments in fixed income securities at the time of purchase. Available-for-sale securities with original maturities beyond three months at the date of purchase, including those that have maturity dates beyond one year from the balance sheet date, are classified as current assets on the accompanying Condensed Balance Sheets due to their highly liquid nature and availability for use in current operations.

Marketable securities are recorded at fair value with unrealized gains and losses reported as a component of accumulated other comprehensive loss within the accompanying Condensed Statements of Stockholders' Equity until realized.

The Company periodically evaluates whether declines in fair values of its available-for-sale securities below their book value are other-than-temporary. This evaluation consists of several qualitative and quantitative factors regarding the severity and duration of the unrealized loss as well as the Company's ability and intent to hold the available-for-sale security until a forecasted recovery occurs. The cost of debt securities is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization and accretion, as well as interest and dividends, are included in interest income. Realized gains and losses as well as credit losses, if any, on marketable securities identified on a specific identification basis are included in other income (expense) on the accompanying Condensed Statements of Operations and Comprehensive Loss. The Company evaluated the underlying credit quality and credit ratings of the issuers during the period. To date, the Company has not identified any other-than-temporary declines in fair value of its investments and no credit losses associated with credit risk have occurred or have been recorded. Interest earned on marketable securities is included in interest income within the accompanying Condensed Statements of Operations and Comprehensive Loss.

In April 2024, the Company made a preferred stock investment in a privately-held eye care company which does not meet the criteria for in-substance common stock. This preferred stock investment was included in long-term investments in the accompanying Condensed Balance Sheet given the Company's intent to hold these securities for longer than one year. In accordance with the measurement alternative under the Accounting Standards Codification 321, *Investments— Equity Securities*, at each subsequent reporting period the Company records its preferred stock investment at cost, plus or minus changes resulting from observable price changes in orderly transactions for identical or similar equity financings at each subsequent reporting period. In addition, at each subsequent reporting period the Company will assess for possible impairment indicators. If the Company determines that the preferred stock fair value is less than its carrying value, it will recognize an impairment loss through other income (expense) on the Condensed Statements of Operations and Comprehensive Loss. As of June 30, 2024, there have been no observable transactions or impairment indicators that would result in a change to the fair value of the Company's preferred stock investment. As of December 31, 2023, there were no preferred stock investments.

As of December 31, 2023, the LianBio common stock was classified as long-term investments due to the Company's intent at that time to hold these shares for longer than one year. These equity securities were designated as available-for-sale with associated unrealized gains or losses reported in other income (expense) within the Condensed Statements of Operations and Comprehensive Loss.

Accounts Receivable, Net

Accounts receivable generally consists of amounts due from the Company's customers, which includes pharmaceutical wholesalers and specialty pharmacy providers related to product sales of XDEMVY in the U.S. Payment terms are typically 30-60 days following delivery to customers. Accounts receivable are recorded net of discounts, chargebacks, allowances and other adjustments. The Company monitors the financial performance and creditworthiness of its customers so it can properly assess and respond to changes in their credit profile. The Company estimates the allowance for credit losses based on existing contractual payment terms, actual payment patterns of customers and individual customer circumstances. Amounts determined to be uncollectible are written off against the reserve when it is probable that the receivable will not be collected. The Company did not record a reserve for estimated credit losses as of and during the three and six months ended June 30, 2024.

Inventory

Inventory is valued at the lower-of-cost or net realizable value, with cost determined on a first-in, first-out basis. The Company performs an assessment of the recoverability of capitalized inventory during each reporting period, and adjusts the value for any excess and obsolete inventory to net realizable value in the period in which the impairment is first identified and such charges are recorded as a component of cost of sales in the Condensed Statements of Operations and Comprehensive Loss. The determination of whether inventory costs will be realizable requires estimates by management. If actual market conditions are less favorable than projected by management, write-downs of inventory may be required. The Company capitalizes inventory costs associated with products following regulatory approval when future commercialization is considered probable and the future economic benefit is expected to be realized. Product that may be used in clinical development programs are excluded from inventory and the costs are charged to research and development expense in the Condensed Statements of Operations and Comprehensive Loss as incurred, as long as they do not have an alternative use. Prior to FDA approval of XDEMVY in July 2023, costs related to the production of inventory were recorded as research and development expense on the Condensed Statements of Operations and Comprehensive Loss in the period incurred. The Company evaluates inventory levels

(all tabular amounts presented in thousands, except share, per share, per unit, and number of years)

that would be sold within one year. The portion of inventory that is not expected to be sold or used within one year is classified as inventory, non-current on the accompanying Condensed Balance Sheet.

Intangible Assets, Net

Intangible assets are measured at fair value as of the acquisition date or, in the case of commercial milestone payments, the date they become due. The evaluation of intangible assets includes assessing the amortization period for which the asset is expected to contribute to the future cash flows of the Company. Intangible assets with finite useful lives are amortized over their estimated useful lives, primarily on a straight-line basis when the Company is unable to reliably estimate the pattern of cash flow. The carrying value of intangible assets as a result of achieving certain commercial milestones was $3.7 million and $3.9 million as of June 30, 2024 and December 31, 2023, respectively, and are amortized to cost of sales over their useful life of 10 years from the date of first commercial sale (see *Note 7*). Amortization expense for the three and six months ended June 30, 2024 was $0.1 million and $0.2 million; no amortization expense was recorded for the three and six months ended June 30, 2023.

As of June 30, 2024, the expected future amortization expense for the Company's intangible assets is as follows:

	Amounts
2024 (remaining six months)	$ 200
2025	400
2026	400
2027	400
2028	400
Thereafter	1,867
Total future amortization	$ 3,667

Long-lived intangible assets are evaluated for impairment whenever events or changes in circumstance indicate that the carrying value of an asset might not be fully recoverable. To do so, the Company compares the carrying value of the intangible asset to the undiscounted net cash flows over its remaining useful life, and if not recoverable, will estimate the fair value of the asset. If the fair value is less than the carrying amount, an impairment loss is recognized in the Condensed Statements of Operations and Comprehensive Loss. There have been no impairments of intangible assets for the three and six months ended June 30, 2024 and 2023.

Fair Value Measurements

Assets and liabilities recorded at fair value on a recurring basis in the balance sheets are categorized based upon the level of judgment associated with the inputs used to measure their fair values. Fair value is defined as the exchange price that would be received for an asset or an exit price that would be paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The authoritative guidance on fair value measurements establishes a three-tier fair value hierarchy for disclosure of fair value measurements as follows:

- *Level 1:* Quoted prices (unadjusted) in active markets for identical assets or liabilities that are publicly accessible at the measurement date.
- *Level 2:* Observable prices that are based on inputs not quoted on active markets, but that are corroborated by market data. These inputs may include quoted prices for similar assets or liabilities or quoted market prices in markets that are not active to the general public.
- *Level 3:* Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The carrying amounts for financial instruments consisting of cash, cash equivalents, accounts receivable, net, accounts payable and accrued liabilities approximate fair value due to the short maturities for each. The Company's equity warrant holdings disclosed as other assets are carried at fair value based on unobservable market inputs (see *Note 3*).

Assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurements. The Company reviews the fair value hierarchy classification on a quarterly basis. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain assets or liabilities within the fair value hierarchy. The Company did not have any transfers of assets and liabilities between the levels of the fair value hierarchy during the years presented.

Property and Equipment, Net

Property and equipment, net are stated at historical cost less accumulated depreciation. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets that range from three to five years. Leasehold improvements are amortized on a straight-line basis over the shorter of the remaining lease term or the estimated useful lives of related improvements. The Company evaluates the recoverability of its property and equipment, net whenever events or changes in circumstances of the business indicate that the asset's carrying amount may not be recoverable. Recoverability of these assets is measured by a comparison of the carrying amounts to the sum of the future undiscounted cash flows the assets are expected to generate over the remaining useful lives of the assets. If a long-lived asset fails a recoverability test, the Company measures the amount by which the carrying value of the asset exceeds its fair value. There were no impairments recognized during the three and six months ended June 30, 2024 and 2023.

Leases

The Company determines if an arrangement is or contains a lease at inception. Right-of-use assets ("ROU assets") represent the Company's right to control an underlying asset for the lease term and lease liabilities represent the Company's obligation to make lease payments arising from the lease. ROU assets and liabilities are recognized at the commencement date based on the present value of lease payments over the initial non-cancelable lease term, unless there is a renewal option that is reasonably certain to be exercised. The Company uses its incremental borrowing rate at the lease commencement date in determining the discount rate utilized to present value the future minimum lease payments since an implicit interest rate in each at-market lease agreement was not determinable. The Company has lease agreements with both lease and non-lease components, which are accounted for as a single component for all asset classes. Lease expense for the Company's operating leases are recognized on a straight-line basis over the lease term.

The Company's variable lease costs, consisting primarily of real estate taxes, insurance costs, and common area maintenance, are expensed as incurred and excluded from the reported ROU assets and lease liabilities amounts presented in the accompanying Condensed Balance Sheets. The current and noncurrent portion of the operating lease liability are included in accounts payable and other accrued liabilities and other long-term liabilities, respectively, in the accompanying Condensed Balance Sheets. Rent expense is allocated to research and development and general and administrative expenses in the accompanying Condensed Statements of Operations and Comprehensive Loss.

Concentration Risk

Credit Risk

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash, cash equivalents, marketable securities and accounts receivable. The Company maintains cash held on deposit at financial institutions in the U.S. These deposits are insured by the Federal Deposit Insurance Corporation ("FDIC") in an amount up to $250,000 for any depositor. To the extent the Company holds cash deposits in amounts that exceed the FDIC insurance limitation, it may incur a loss in the event of a failure of any of the financial institutions where it maintains deposits. The Company invests its excess cash in highly liquid investments, including money market fund accounts, that are readily convertible into cash without penalty.

Management believes the Company is not exposed to significant credit risk due to the financial position of the depository institutions, but will continue to monitor regularly and adjust, if needed, to mitigate risk, including any ongoing or new events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions. The Company has established guidelines regarding diversification of its investments and their maturities, which are designed to maintain principal and maximize liquidity. To date, the Company has not experienced any losses associated with this credit risk and continues to assess that this exposure is not significant.

Major Customers

The Company entered into agreements with certain limited specialty pharmacies and specialty distributors for the sale of XDEMVY in the U.S. The Company's four largest customers each individually accounted for more than 10% of total gross product sales, which on a combined basis accounted for 91.3% and 88.9% of gross product sales for the three and six months ended June 30, 2024, respectively. The Company did not record any product sales for the three and six months ended June 30, 2023.

As of June 30, 2024, amounts due from these four customers each exceeded 10% of gross accounts receivable and accounted for approximately 86.2% of the accounts receivable balance on a combined basis. As of December 31, 2023, the Company had five customers which each exceeded 10% of gross accounts receivable and accounted for approximately 100% of the accounts receivable balance on a combined basis.

Major Suppliers

The Company does not currently own manufacturing facilities and depends on an outsourced manufacturing strategy for the production of XDEMVY for commercial use and for the production of its other product candidates for clinical trials. The Company enters into agreements with third-party manufacturers that are approved for the commercial production of XDEMVY and third-party suppliers that are approved for XDEMVY's active pharmaceutical ingredient. Although there are potential sources of supply other than the Company's existing manufacturers and suppliers, any new supplier would be required to qualify under applicable regulatory requirements. The loss of certain manufacturers and third-party suppliers could result in a temporary disruption of the Company’s commercialization efforts.

Revenue Recognition

(i) Product Sales, Net

The Company recognizes product sales, net of XDEMVY when a customer obtains control of promised goods or services, which occurs at a point in time, typically upon delivery of the Company's product to the customer. The Company records the amount of revenue that reflects the consideration that it expects to receive in exchange for those goods or services. The Company applies the following five-step model in order to determine this amount: (i) identification of the promised goods in the contract; (ii) determination of whether the promised goods are performance obligations, including whether they are capable of being distinct; (iii) measurement of the transaction price, including the constraint on variable consideration; (iv) allocation of the transaction price to the performance obligations; and (v) recognition of revenue as each performance obligation is satisfied.

The Company sells XDEMVY to customers in the U.S., which became available for commercial sale during the third quarter of 2023. The Company sells XDEMVY to a limited number of specialty pharmacies and distributors (i.e., its customers) who in turn sell it directly to clinics, hospitals, pharmacies and federal healthcare programs. Revenue from product sales is primarily recognized upon physical delivery of the product (when the customer obtains control of the product), in return for agreed-upon consideration. Shipping and handling activities are considered to be fulfillment activities rather than a separate performance obligation and are recorded within selling, general and administrative expenses in the accompanying Condensed Statements of Operations and Comprehensive Loss.

Revenues from product sales are recorded at the net sales price, or the transaction price, which may include fixed or variable consideration for (i) invoice discounts for prompt payment and distribution service fees, (ii) government and private payer rebates, chargebacks, discounts and fees, (iii) product returns and (iv) costs of co-pay assistance programs for patients, as

well as other incentives. Estimates of variable consideration are calculated based on the actual product sales each reporting period and the nature of the variable consideration related to those sales. Where appropriate, the Company utilizes the expected value method to determine the appropriate amount for estimates of variable consideration based on factors such as the current contractual and statutory requirements, specific known market events and trends, industry data and forecasted customer buying and payment patterns. The amount of variable consideration that is included in the transaction price may be constrained and is included in product sales, net only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. These estimates reflect the Company's best estimate of the amount of consideration to which the Company expects to be entitled based on the terms of the contract. Actual amounts of consideration ultimately received may differ materially from estimates. If actual results in the future vary from estimates, the Company will adjust these estimates, which would affect product sales, net and earnings in the period such variances are adjusted. The Company categorizes product sales deduction estimates as follows:

Distribution Service Fees: The Company engages with wholesalers and specialty pharmacies to distribute its products to end customers. The Company pays the wholesalers and certain specialty pharmacies a fee for services such as: inventory management, chargeback administration, and service level commitments. The Company estimates the amount of distribution services fees to be paid to the customers and adjusts the transaction price with the amount of such estimate at the time of sale to the customer. An accrued liability is recorded for unpaid distribution service fees.

Prompt Pay Discounts: The Company provides its customers with a percentage discount on their invoice if the customers pay within the agreed upon timeframe. The Company expects that its customers will earn prompt pay discounts. The Company estimates the probability of customers paying promptly based on the percentage of discount outlined in the purchase agreement between the two parties, and deducts the full amount of these discounts from gross product sales and accounts receivable at the time revenue is recognized.

Product Returns: The Company's customers are contractually permitted to return the product within the contractual allowable time before and after the applicable expiration date. In the initial sales period, the Company estimates its provision for returns based on industry data and adjusts the transaction price at the time of the product sale to the customer. Once sufficient history has been collected for product returns, the Company will utilize that history to inform its returns estimate. Once the product is returned, it is destroyed since it cannot be resold.

Chargebacks: A chargeback is the difference between the Company's invoice price to the wholesaler and the wholesaler's customer's contract price. The wholesaler tracks these sales and charges back the Company for the difference between the negotiated prices paid between the wholesaler's customers and wholesaler's acquisition cost. The Company estimates the percentage of goods sold that are eligible for chargeback and adjusts the transaction price and accounts receivable at the time of sale of the product to the customer.

Co-payment Assistance: Patients who meet certain eligibility requirements may receive co-payment assistance. The Company records contra-revenue for co-payment assistance based on actual program participation and estimates of program redemption using data provided by third-party administrators. An accrued liability is recorded on unredeemed co-payment assistance related to products for which control has been transferred to the customer.

Rebates and Discounts: The Company accrues rebates for contractually agreed-upon discounts with commercial insurance companies and mandated discounts under government programs such as the Medicaid Drug Rebate Program, Medicare Part D Prescription Drug Program, and other government health care programs in the U.S. The Company's estimates for expected utilization of commercial insurance rebates are based on data received from its customers. The Company's estimates for rebates under government programs are based on statutory discount rates and expected utilization as well as historical data it has accumulated since product launch. The Company's rebate calculations may require estimates, including estimates of customer mix, to determine which product sales will be subject to rebates and the amount of such rebates. The Company updates its estimates and assumptions on a quarterly basis and records any necessary adjustments to revenue in the period identified. Rebates are generally invoiced and paid in arrears so that the accrual balance consists of an estimate of the amount expected to be incurred for the current quarter's activity, plus an accrual balance for known prior quarters' unpaid rebates. An accrued liability is recorded for unpaid rebates related to product for which control has transferred to the customer.

(ii) License Fees and Collaboration Revenue

China Out-License

License fees and collaboration revenue in the accompanying Condensed Statements of Operations and Comprehensive Loss has historically primarily related to the China Out-License that allows the third-party licensee to market the Company's TP-03 product candidate (representing functional intellectual property) in the People's Republic of China, Hong Kong, Macau, and Taiwan (the "China Territory") — see *Note 8*. The accounting and reporting of revenue for out-license arrangements requires significant judgment for: (a) identification of the number of performance obligations within the contract; (b) the contract's transaction price for allocation (including variable consideration); (c) the stand-alone selling price for each identified performance obligation; and (d) the timing and amount of revenue recognition in each period.

The China Out-License was analyzed under GAAP to determine whether the promised goods or services are distinct or must be accounted for as part of a combined performance obligation. In making these assessments, the Company considers factors such as the stage of development of the underlying intellectual property and the capabilities of the customer to develop the intellectual property on their own, and/or whether the required expertise is readily available. If the license is not distinct, the license is combined with other promised goods or services as a combined performance obligation for revenue recognition.

The China Out-License arrangement included the following forms of consideration: (i) non-refundable upfront license payment; (ii) equity-based consideration; (iii) sales-based royalties; (iv) sales-based threshold milestones; (v) one-time payment for executing a drug supply agreement; (vi) development milestone payments; (vii) regulatory milestone payments and the issuance of a related patent; and (viii) a one-time termination payment to transition the rights to develop and commercialize TP-03 in China for the treatment of *Demodex* blepharitis and MGD to Xi An Grand Chang An Pharmaceutical Co., Ltd ("GrandPharma"). Revenue is recognized in proportion to the allocated transaction price when (or as) the respective performance obligation is satisfied. The Company evaluates the progress related to each milestone at each reporting period and, if necessary, adjusts the probability of achievement and related revenue recognition. The measure of progress, and thereby periods over which revenue is recognized, is subject to estimates by management and may change over the course of the agreement.

Contractual Terms for Receipt of Payments

A performance obligation is a promise in a contract to transfer a distinct good or service and is the unit of accounting. A contract's transaction price is allocated among each distinct performance obligation based on relative standalone selling price and recognized when, or as, the applicable performance obligation is satisfied.

The contractual terms that establish the Company's right to collect specified amounts from its customers and that require contemporaneous evaluation and documentation under GAAP for the corresponding timing and amount of revenue recognition, are as follows:

Upfront License Fees: The Company determines whether non-refundable license fee consideration is recognized at the time of contract execution (i.e., when the license is transferred to the customer and the customer is able to use and benefit from the license) or over the actual (or implied) contractual period of the China Out-License. The Company also evaluates whether it has any other requirements to provide substantive services that are inseparable from the performance obligation of the license transfer to determine whether any combined performance obligation is satisfied over time or at a point in time. Upfront payments may require deferral of revenue recognition to a future period until the Company performs obligations under these arrangements.

Development Milestones: The Company utilizes the most likely amount method to estimate the amount of consideration to which it will be entitled for achievement of development milestones as these represent variable consideration. For those payments based on development milestones (e.g., patient dosing in a clinical study or the achievement of statistically significant clinical results), the Company assesses the probability that the milestone will be achieved, including its ability to control the timing or likelihood of achievement, and any associated revenue constraint. Given the high degree of uncertainty around the occurrence of these events, the Company determines the milestone and other contingent amounts to be constrained

until the uncertainty associated with these payments is resolved. At each reporting period, the Company re-evaluates this associated revenue recognition constraint. Any resulting adjustments are recorded to revenue on a cumulative catch-up basis, and reflected in the financial statements in the period of adjustment.

Regulatory Milestones: The Company utilizes the most likely amount method to estimate the consideration to which it will be entitled and recognizes revenue in the period regulatory approval occurs (the performance obligation is satisfied) as these represent variable consideration. Amounts constrained as variable consideration are included in the transaction price to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. The Company evaluates whether the milestones are considered probable of being reached and not otherwise constrained. Accordingly, due to the inherent uncertainty of achieving regulatory approval, associated milestones are deemed constrained for revenue recognition until achievement.

Royalties: Under the sales-or-usage-based royalty exception the Company recognizes revenue based on the contractual percentage of the licensee's sale of products to its customers at the later of (i) the occurrence of the related product sales or (ii) the date upon which the performance obligation to which some or all of the royalty has been allocated has been satisfied or partially satisfied. To date, the Company has not recognized any royalty revenue from the China Out-License.

Sales Threshold Milestones: Similar to royalties, applying the sales-or-usage-based royalty exception, the Company recognizes revenue from sales threshold milestones at the later of (i) the period the licensee achieves the one-time annual product sales levels in their territories for which the Company is contractually entitled to a specified lump-sum receipt, or (ii) the date upon which the performance obligation to which some or all of the milestone has been allocated has been satisfied or partially satisfied. To date, the Company has not recognized any sales threshold milestone revenue from the China Out-License.

The Company re-evaluates the measure of progress to each performance obligation in each reporting period as uncertain events are resolved and other changes in circumstances occur.

Other License Fees and Collaboration Revenue

License fees and collaboration revenue also includes revenue recognized from satisfaction of performance obligations under an existing clinical supply agreement. The Company recognizes revenue when a customer obtains control of the promised good or service. There was no revenue recognized under this arrangement for the three and six months ended June 30, 2024 and 2023, respectively.

Cost of Sales

Cost of sales consists of direct and indirect costs related to the manufacturing and distribution of XDEMVY, including raw materials, third-party manufacturing costs, packaging services, freight, third-party royalties payable on the Company's product sales, net and amortization of capitalized intangible assets associated with XDEMVY. Cost of sales may also include period costs related to certain inventory warehouse and distribution operations and inventory adjustment charges. The Company began capitalizing inventory costs upon FDA approval of XDEMVY in July 2023. Prior to FDA approval of XDEMVY, manufacturing and other inventory costs were recorded to research and development expenses in the Condensed Statements of Operations and Comprehensive Loss. Therefore, cost of sales of XDEMVY will reflect a lower average per unit cost until the related inventory is sold.

Selling, General and Administrative

Selling, general and administrative costs consist of salaries, benefits, stock-based compensation and other personnel-related costs for the Company's executive, finance, sales and marketing, and other administrative functions. Selling, general and administrative expenses also include sales and marketing costs to support our commercial launch, consulting fees, legal services, rent and other facilities costs, patient assistance donations, the U.S. healthcare reform federal excise fee on Branded Prescription Pharmaceutical Manufacturers and Importers, and other general operating expenses not otherwise classified as research and development expenses. Advertising costs are expensed as incurred.

Research and Development Costs

Research and development costs are expensed as incurred or as certain upfront or milestone payments become contractually due to licensors upon the achievement of clinical or regulatory events. Research and development expenses include internal costs directly attributable to in-development programs, including the costs of salaries, payroll taxes, employee benefit and other employee-related costs (including stock-based compensation expense), license fees, materials, supplies and the cost of services provided by outside contractors to conduct nonclinical studies, clinical trials and contract manufacturing activities. All costs associated with research and development are expensed as incurred. The Company accrues these costs based on factors such as estimates of the work completed and in accordance with agreements established with third-party service providers under the service agreements. As it relates to clinical trials, the financial terms of these contracts are subject to negotiations which vary from contract to contract and may result in payment flows that do not match the periods over which materials or services are provided under such contracts. Payments made prior to the receipt of goods or services to be used in research and development are capitalized until the goods or services are received. Such payments are evaluated for current or long-term classification based on when they will be realized. The Company's objective is to reflect the appropriate expense in its financial statements by matching those expenses with the period in which the services and efforts are expended. The Company accounts for these expenses according to the progress of the trial as measured by patient progression and the timing of various aspects of the trial taking into consideration discussions with applicable personnel and outside service providers. The clinical trial accrual is dependent in part upon the timely and accurate reporting of progress and efforts incurred from contract research organizations ("CROs"), contract manufacturers and other third-party vendors. Although estimates are expected to be materially consistent with actual amounts incurred, the Company's understanding of the status and timing of services performed relative to the actual status and timing of services performed can vary and may result in changes in estimates in any particular period. The Company makes significant judgments and estimates in determining the accrued liabilities balance at each reporting period. As actual costs become known, the Company adjusts its accrued liabilities. To date, there have been no material differences between estimates of such expenses and the amounts actually incurred.

The Company has entered into, and may continue to enter into, license agreements to access and utilize certain technology. In each case, the Company evaluates if the license agreement results in the acquisition of an asset or a business. To date, none of the Company's license agreements have been considered an acquisition of a business. For asset acquisitions, the upfront payments to acquire such licenses, as well as any future milestone payments made before product approval that do not meet the definition of a derivative, are immediately recognized as research and development expense in the Condensed Statements of Operations and Comprehensive Loss when paid or become payable, provided there is no alternative future use of rights in other research and development projects.

Stock-Based Compensation

The Company recognizes stock-based compensation expense for equity awards granted to employees, consultants, and members of its Board of Directors. Stock option awards are at an exercise price of not less than 100% of the fair market value of common stock on the respective date of grant. The grant date is the date the terms of the award are formally approved by the Company’s Board of Directors or its designee. The Company uses the Black-Scholes option pricing model to estimate the fair value of stock option awards as of the date of grant. The fair value of restricted stock units is representative of the closing market price of the Company's common stock on the date preceding the award grant date.

Stock awards granted typically have one to four-year service conditions and a contractual term of 10 years. Any performance conditions for vesting are explicitly stated in each award agreement and are associated with clinical, business development, or operational milestones. For stock-based awards that vest subject to the satisfaction of a service requirement, the related expense is recognized on a straight-line basis over each award’s actual or implied vesting period. For stock-based awards that vest subject to a performance condition, the Company recognizes related expense on an accelerated attribution method, if and when it concludes that it is highly probable that the performance condition will be achieved. At each reporting period, the Company reassesses the probability of the achievement of the performance vesting conditions. As applicable, the Company reverses previously recognized expense for unvested awards in the same period of forfeiture.

The measurement of the fair value of stock option awards and recognition of stock-based compensation expense requires assumptions to be estimated by management that involve inherent uncertainties and the application of management’s judgment, including (a) the fair value of the Company’s common stock on the date of the option grant for all awards granted

prior to the IPO, (b) the expected term of the stock option until its exercise by the recipient, (c) stock price volatility over the expected term, (d) the prevailing risk-free interest rate over the expected term, and (e) expected dividend payments over the expected term.

All stock-based compensation expense is reported in the accompanying Condensed Statements of Operations and Comprehensive Loss within cost of sales, research and development expense or selling, general and administrative expense, based upon the assigned department of the award recipient. The measurement of the fair value of stock option awards and recognition of stock-based compensation expense requires assumptions to be estimated by management that involve inherent uncertainties and the application of management's judgment, including:

Fair Value of Common Stock — The fair value of the Company's common stock is based on the closing quoted market price of its common stock as reported by the Nasdaq Global Select Market on the date of the option grant.

Expected Term — The Company's expected term represents the period that the Company's stock option awards are expected to be outstanding. Management estimates the expected term of awarded stock options utilizing the simplified method (based on the mid-point between the vesting date and the end of the contractual term) to determine the expected term since the Company does not yet have sufficient exercise history.

Expected Volatility — Prior to 2023, the Company did not have sufficient trading history for its common stock to use its own historical volatility. Management estimated the expected volatility based on a designated peer-group of publicly-traded companies for a look-back period (from the date of grant) that corresponded with the expected term of the awarded stock option. Beginning in January 2023, the Company began using its own historical stock price for expected volatility.

Risk-Free Interest Rate — The Company estimates the risk-free interest rate based upon the U.S. Department of Treasury yield curve in effect at award grant date for the time period that corresponds with the expected term of the awarded stock option.

Dividend Yield — The Company's expected dividend yield is zero because it has never paid cash dividends and does not expect to for the foreseeable future.

Income Taxes

Income taxes are accounted for using the asset and liability method. Deferred tax assets and liabilities are recorded based on the estimated future tax effects of temporary differences between the tax basis of assets and liabilities and amounts reported in the financial statements, as well as operating losses and tax credit carry forwards using enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period of enactment. Realization of deferred tax assets is dependent upon future earnings, the timing and amount of which are uncertain due to the Company's historical operating performance and recorded cumulative net losses in prior fiscal periods. A valuation allowance is recorded to reduce deferred tax assets, because based upon a weighting of positive and negative factors, it is more likely than not that these deferred tax assets will not be realized. If or when the Company were to determine that deferred tax assets are realizable, an adjustment to the corresponding valuation allowance would increase the net income in the period that such determination was made.

The Company's income tax returns are based on calculations and assumptions that are subject to examination by the Internal Revenue Service and other tax authorities. In addition, the calculation of the Company's tax liabilities involves dealing with uncertainties in the application of complex tax regulations. The Company recognizes liabilities for uncertain tax positions based on a two-step process. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement. While the Company believes it has appropriate support for the positions taken on its tax returns, the Company regularly assesses the potential outcomes of examinations by tax authorities in determining the adequacy of its provision for income taxes. The Company continually assesses the likelihood and amount of

potential revisions and adjusts the income tax provision, income taxes payable and deferred taxes in the period in which the facts that give rise to a revision become known.

Interest and penalties related to unrecognized tax benefits, if any, are recorded as a component of income tax expense.

Net Loss per Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of shares of common stock outstanding for the period, without consideration for potential dilutive shares of common stock. Diluted net loss per share is computed by dividing the net loss by the weighted-average number of common stock equivalents outstanding for the period determined using the treasury-stock method and if-converted method as applicable.

Due to net losses in all periods presented, all otherwise potentially dilutive securities are antidilutive, and accordingly, the reported basic net loss per share equals diluted net loss per share.

Comprehensive Loss

Comprehensive loss represents (i) net loss for the periods presented, and (ii) unrealized gains or losses on the Company's reported available-for-sale debt securities.

Recently Issued or Effective Accounting Standards

Recently issued or effective accounting pronouncements that impact, or may have an impact, on the Company’s financial statements have been discussed within the footnote to which each relates. Outside of the pronouncement below, other recent accounting pronouncements not disclosed in these Condensed Financial Statements have been determined by the Company’s management to have no impact, or an immaterial impact, on its current financial position, results of operations, or cash flows.

In November 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2023-07, *Segment Reporting (Topic 280) - Improvements to Reportable Segment Disclosures*. This Update requires publicly traded entities to provide enhanced disclosures about significant segment expenses regularly reviewed by the chief operating decision maker (CODM), including public traded entities with a single reportable segment. The amendments in this update are effective for fiscal years beginning after December 15, 2024, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. Management is currently assessing the impact of this standard on the Company’s financial statements.

In December 2023, the FASB issued ASU No. 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosure* ("ASU 2023-09"). ASU 2023-09 requires annual disclosures of specific categories in the rate reconciliation, additional information for reconciling items that meet a quantitative threshold and a disaggregation of income taxes paid, net of refunds. The standard also eliminates certain existing disclosure requirements related to uncertain tax positions and unrecognized deferred tax liabilities and is effective for the Company beginning with the Company's Annual Report on Form 10-K for the year ended 2025. Early adoption is permitted. ASU 2023-09 should be applied prospectively. Retrospective adoption is permitted. The Company is currently assessing the impact this standard will have on the Company's financial statements.

3. FAIR VALUE MEASUREMENTS

Financial assets and liabilities subject to fair value measurements on a recurring basis and the level of inputs used in such measurements by major security type are presented in the following table:

(all tabular amounts presented in thousands, except share, per share, per unit, and number of years)

	June 30, 2024			
	Level 1	Level 2	Level 3	Total
Assets:				
Money market funds[1]	$ 181,095	$ —	$ —	$ 181,095
U.S. Treasury securities	25,031	—	—	25,031
Commercial paper	—	41,847	—	41,847
Corporate debt securities	—	51,855	—	51,855
Government-related debt securities	—	23,752	—	23,752
Total assets measured at fair value	$ 206,126	$ 117,454	$ —	$ 323,580

[1] This balance includes cash requirements settled on a nightly basis.

	December 31, 2023			
	Level 1	Level 2	Level 3	Total
Assets:				
Money market funds[1]	$ 224,947	$ —	$ —	$ 224,947
Government-related debt securities	—	2,495	—	2,495
Common stock in LianBio	631	—	—	631
Equity warrants (for LianBio shares)	—	—	225	225
Total assets measured at fair value	$ 225,578	$ 2,495	$ 225	$ 228,298

[1] This balance includes cash requirements settled on a nightly basis.

Money Market Funds and U.S. Treasury Securities

Money market funds and U.S. Treasury securities are highly liquid investments and are actively traded with readily-available market prices that are publicly observable and independently validated as of the measurement date. This approach results in the classification of these securities as Level 1 of the fair value hierarchy.

Commercial Paper, Corporate Debt Securities and Government-related Debt Securities

Commercial paper, corporate debt securities and government-related debt securities were valued using Level 2 inputs that utilized industry standard valuation models, including both income and market-based approaches, for which all significant inputs are observable, either directly or indirectly, to estimate fair value. The Company reviews trading activity and pricing for these investments as of each measurement date.

LianBio Common Stock and Equity Warrants

In March 2021, contemporaneous with the China Out-License transaction, the Company and LianBio, executed a warrant agreement for the Company to purchase, in three tranches, common shares in LianBio at an exercise price equal to common stock par value, which converted into warrants of the parent company of LianBio (a pharmaceutical company focused on the Greater China and other Asian markets; Nasdaq: LIAN; any references to common stock or warrants of LianBio shall refer to common stock or warrants of the publicly-traded parent of LianBio) in connection with LianBio's previous initial public offering. The first two tranches were vested exercised, and converted into 156,746 shares of LianBio common stock as of December 31, 2022 and were recognized at fair value within long-term investments in the Condensed Balance Sheets as of December 31, 2023. As of December 31, 2023, LianBio common stock was classified within Level 1 of the fair value hierarchy, given its publicly reported price.

On February 13, 2024, LianBio announced its plan to wind down its operations. On March 14, 2024, LianBio's Board of Directors made a special cash dividend payment to the Company for $0.7 million (equivalent to $4.80 per share), which was recorded to other income (expense) in the Condensed Statements of Operations and Comprehensive Loss for the six months ended June 30, 2024. LianBio was delisted from Nasdaq in March 2024 and trades on the over-the-counter markets. In March 2024, the Company executed an agreement with GrandPharma, a subsidiary of Grand Pharmaceutical Group Limited, and LianBio to transition the rights to develop and commercialize TP-03 in China for the treatment of Demodex blepharitis and MGD from LianBio to GrandPharma (the "Novation Agreement"). In June 2024, the Company sold its LianBio common stock

(all tabular amounts presented in thousands, except share, per share, per unit, and number of years)

and recognized a realized loss within other income (expense) in the Condensed Statements of Operations and Comprehensive Loss during the three and six months ended June 30, 2024, which was not material.

Simultaneous with the execution of the Novation Agreement, the Company entered into an agreement with LianBio to terminate the unvested third tranche of the equity warrants related to the purchase of 78,373 shares of LianBio common stock (the "Warrant Termination Agreement") for a cancellation payment of $0.4 million (see Note 8). Upon execution of the Warrant Termination Agreement the Company recorded the final change in fair value of the equity warrant to other income (expense) in the Condensed Statements of Operations and Comprehensive Loss for the six months ended June 30, 2024, and removed the equity warrant from other assets in the Condensed Balance Sheet.

The fair value and amortized cost of cash equivalents and available-for-sale investments by major security type are presented in the following table:

	June 30, 2024			
	Amortized cost	Unrealized gains	Unrealized losses	Estimated fair value
Cash equivalents:				
Money market funds[1]	$ 181,095	$ —	$ —	$ 181,095
Total cash equivalents	$ 181,095	$ —	$ —	$ 181,095
Marketable securities:				
U.S. Treasury securities	$ 25,070	$ —	$ (39)	$ 25,031
Commercial paper	41,894	—	(47)	41,847
Corporate debt securities	51,918	1	(64)	51,855
Government-related debt securities	23,778	—	(26)	23,752
Total marketable securities	$ 142,660	$ 1	$ (176)	$ 142,485

[1] This balance includes cash requirements settled on a nightly basis.

	December 31, 2023			
	Amortized cost	Unrealized gains	Unrealized losses	Estimated fair value
Cash equivalents:				
Money market funds[1]	$ 224,947	$ —	$ —	$ 224,947
Total cash equivalents	$ 224,947	$ —	$ —	$ 224,947
Marketable securities:				
Government-related debt securities	$ 2,496	$ —	$ (1)	$ 2,495
Total marketable securities	$ 2,496	$ —	$ (1)	$ 2,495
Long-term investments:				
Common stock in LianBio	$ 1,108	$ —	$ (477)	$ 631
Total long-term investments	$ 1,108	$ —	$ (477)	$ 631

[1] This balance includes cash requirements settled on a nightly basis.

As of June 30, 2024, substantially all available-for-sale debt securities had a maturity of 12 months or less. Two securities have a contractual maturity between one and three years, with an estimated fair market value of $10.3 million and amortized cost of $10.3 million. As of December 31, 2023, all available-for-sale debt securities had a maturity of 12 months or less. As of June 30, 2024 and December 31, 2023, the Company had thirty-two available-for-sale debt securities and one available-for-sale debt security, respectively, in a continuous gross unrealized loss position for less than one year. As of June 30, 2024 and December 31, 2023, unrealized credit losses on these securities were not material. Further, the Company does not intend to sell these investments prior to maturity and it is not more likely than not that the Company will be required to sell these investments before recovery of their amortized cost basis. Accordingly, the Company did not recognize any other-than-temporary impairment losses.

(all tabular amounts presented in thousands, except share, per share, per unit, and number of years)

4. BALANCE SHEET ACCOUNT DETAIL

The composition of selected captions within the accompanying Condensed Balance Sheets are summarized below:

Inventory

Inventory consists of the following:

	June 30, 2024	December 31, 2023
Current assets		
Raw materials	$ —	$ 2,533
Work in progress	1,195	392
Finished goods	1,000	182
Inventory	2,195	3,107
Non-current assets		
Raw materials	2,533	—
Inventory, non-current	2,533	—
Total inventory	$ 4,728	$ 3,107

Property and Equipment, Net

Property and equipment, net consists of the following:

	June 30, 2024	December 31, 2023
Furniture and fixtures	$ 1,397	$ 1,251
Office equipment	1,044	660
Laboratory equipment	167	167
Leasehold improvements	680	680
Manufacturing equipment	551	—
Property and equipment, at cost	3,839	2,758
(Less): Accumulated depreciation and amortization	(1,598)	(1,290)
Property and equipment, net	$ 2,241	$ 1,468

Depreciation expense for the three months ended June 30, 2024 and 2023 was $0.1 million and $0.2 million, respectively, and for the six months ended June 30, 2024 and 2023 was $0.3 million and $0.3 million, respectively.

Accounts Payable and Other Accrued Liabilities

Accounts payable and other accrued liabilities consists of the following:

	June 30, 2024	December 31, 2023
Trade accounts payable and other	$ 26,653	$ 18,149
Accrued product sales deductions	15,801	4,867
Accrued clinical studies	467	277
Operating lease liability, current	605	398
Accounts payable and other accrued liabilities	$ 43,526	$ 23,691

(all tabular amounts presented in thousands, except share, per share, per unit, and number of years)

5. STOCK-BASED COMPENSATION

Common Stock Outstanding and Reserves for Future Issuance

As of June 30, 2024, the Company had 38,030,385 shares of common stock issued and outstanding, which excludes 312,500 of pre-funded warrants that remain exercisable at period end and are reserved for future issuance. As of December 31, 2023, the Company had 34,211,190 shares of common stock issued and outstanding, respectively. Each share of common stock is entitled to one vote.

The Company's outstanding equity awards and shares reserved for future issuance under its 2020 and 2016 Equity Incentive Plans and 2020 Employee Stock Purchase Plan ("ESPP") are summarized below:

	June 30, 2024	December 31, 2023
Common stock awards reserved for future issuance under 2020 and 2016 Equity Incentive Plans	7,402,839	7,054,222
Common stock awards reserved for future issuance under the 2020 Employee Stock Purchase Plan	2,793,446	2,859,434
Stock options issued and outstanding (unvested and vested) under 2020 and 2016 Equity Incentive Plans	5,116,594	4,760,366
Restricted stock units issued and outstanding (unvested) under 2020 Equity Incentive Plan	1,900,370	1,708,725
Total shares of common stock reserved	17,213,249	16,382,747

Stock-Based Compensation Expense

Stock-based compensation expense for stock options, restricted stock units, and the ESPP was recognized in the accompanying Condensed Statements of Operations and Comprehensive Loss as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Cost of sales	$ 190	$ —	$ 325	$ —
Research and development	1,866	1,491	3,331	2,654
Selling, general and administrative	5,425	3,701	9,344	6,444
Total stock-based compensation	$ 7,481	$ 5,192	$ 13,000	$ 9,098

The fair value of granted stock options was estimated as of the date of grant using the Black-Scholes option-pricing model, based on the following inputs:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Expected term (in years)	6.25	6.25	6.25	6.25
Weighted average risk-free interest rate	4.29 %	3.64 %	4.10 %	4.05 %
Weighted average volatility	70.5 %	70.7 %	71.2 %	71.5 %
Dividend yield rate	— %	— %	— %	— %
Weighted-average grant-date fair value per stock option	$ 33.71	$ 15.55	$ 34.95	$ 15.20

TARSUS PHARMACEUTICALS, INC.

NOTES TO THE FINANCIAL STATEMENTS
(all tabular amounts presented in thousands, except share, per share, per unit, and number of years)
(Unaudited)

Stock Option Activity

Stock option activity for the period presented was as follows:

	Number of Shares	Weighted-Average Exercise Price/Share	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value[1]
Outstanding — December 31, 2023	4,760,366	$ 16.62	7.53	$ 34,128
Granted	694,197	34.95		
Exercised	(148,988)	17.57		
Forfeited	(188,981)	22.51		
Outstanding — June 30, 2024	5,116,594	18.86	7.33	$ 58,522
Exercisable — June 30, 2024	3,125,047	$ 15.49	6.42	$ 45,679
Unvested — June 30, 2024	1,991,547	$ 24.14	8.75	$ 12,843

[1] The aggregate intrinsic value is calculated as the difference between the exercise price of the options and the fair value of the Company's common stock as of June 30, 2024.

As of June 30, 2024, there was approximately $29.8 million of unrecognized compensation expense related to unvested stock options, which the Company expects to recognize over a weighted average period of 2.4 years.

Restricted Stock Unit Activity

Restricted stock unit activity for the period presented was as follows:

	Number of Shares	Weighted-Average Grant Date Fair Value
Outstanding— December 31, 2023	1,708,725	$ 16.31
Granted	669,056	35.79
Vested	(322,969)	16.23
Forfeited	(154,442)	18.31
Outstanding — June 30, 2024	1,900,370	$ 22.99

As of June 30, 2024, there was approximately $39.4 million of unrecognized compensation expense related to unvested restricted stock units, which the Company expects to recognize over a weighted average period of 3.3 years.

Employee Stock Purchase Plan

Stock-based compensation expense related to the ESPP was $0.3 million and $0.1 million, respectively, for the three months ended June 30, 2024 and 2023, and was $0.5 million and $0.1 million, respectively, for the six months ended June 30, 2024 and 2023.

6. NET LOSS PER SHARE

The following table sets forth the computation of basic and diluted net loss per share:

(all tabular amounts presented in thousands, except share, per share, per unit, and number of years)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Net loss	$ (33,290)	$ (31,424)	$ (69,021)	$ (54,843)
Weighted-average shares outstanding—basic and diluted[1]	37,823,233	26,815,733	36,530,756	26,779,203
Net loss per share—basic and diluted	$ (0.88)	$ (1.17)	$ (1.89)	$ (2.05)

[1] Weighted-average shares outstanding includes pre-funded warrants issued on March 5, 2024.

The following outstanding and potentially dilutive securities were excluded from the calculation of diluted net loss per share because their impact under the treasury stock method and if-converted method would have been anti-dilutive for each period presented:

	As of June 30,	
	2024	2023
Stock options, unexercised—vested and unvested	5,116,594	4,719,149
Restricted stock units—unvested	1,900,370	1,391,888
Total	7,016,964	6,111,037

7. COMMITMENTS & CONTINGENCIES

Lease Agreements

In the ordinary course of business, the Company enters into lease agreements with unaffiliated third parties for its facilities and office equipment. In March 2024, the Company executed an amendment for an additional office suite. This amendment was accounted for as a lease modification and resulted in the recognition of an operating lease ROU asset valued at $0.4 million as of the execution date. As of June 30, 2024, the Company had six active leases for adjacent office and laboratory suites in Irvine, California with a lease term through January 2027.

The below table summarizes the components of total lease expense:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Operating lease expense	$ 219	$ 176	$ 398	$ 346
Variable lease expense	118	90	221	171
Total lease expense	$ 337	$ 266	$ 619	$ 517

As of June 30, 2024, the Company's facility leases had a remaining lease term of 2.6 years and a weighted-average incremental borrowing rate of 10%.

The below table summarizes the (i) minimum lease payments over the next five years and thereafter, (ii) lease arrangement imputed interest, and (iii) present value of future lease payments:

(all tabular amounts presented in thousands, except share, per share, per unit, and number of years)

	June 30, 2024
2024 (remaining six months)	$ 468
2025	961
2026	994
2027	83
2028	—
Total future lease payments, undiscounted	2,506
(Less): Imputed interest	(288)
(Less): Tenant improvement allowance	(164)
Present value of operating lease payments	$ 2,054
Operating lease liability, current	605
Operating lease liability, noncurrent	1,449
Total operating lease liability	$ 2,054

In-License Agreements for Lotilaner

Elanco In-License Agreement for Skin and Eye Disease or Conditions in Humans

In January 2019, the Company executed a license agreement with Elanco Tiergesundheit AG (“Elanco”) for exclusive worldwide rights to certain intellectual property for the development and commercialization of lotilaner in the treatment or cure of any eye or skin disease or condition in humans, as amended in June 2022 (the "Eye and Derm Elanco Agreement"). The Company has sole financial responsibility for related development, regulatory, and commercialization activities.

In March 2023, a clinical milestone was triggered to Elanco under the Eye and Derm Elanco Agreement upon enrollment of the first patient in the Phase 2a Galatea trial, evaluating the potential treatment of rosacea. The related milestone payment of $1.0 million was included in research and development expense in the accompanying Condensed Statements of Operations and Comprehensive Loss for the six months ended June 30, 2023.

The Company has made cash payments to Elanco under the Eye and Derm Elanco Agreement comprised of $1.0 million upfront upon contract execution in January 2019 and a total of $4.0 million for three specified clinical milestone achievements in September 2020, April 2021, and March 2023, which were all recorded in research and development expense in the Condensed Statements of Operations and Comprehensive Loss. During 2023, a milestone of $4.0 million was achieved and paid to Elanco upon the first commercial sale of XDEMVY in the U.S., which was recorded as an intangible asset in the accompanying Condensed Balance Sheets as of June 30, 2024 and December 31, 2023. The Company is amortizing the intangible asset to cost of sales over its useful life of 10 years from the date of the first commercial sale.

The Company is obligated to make further cash payments to Elanco of $2.0 million under the Eye and Derm Elanco Agreement upon achievement of the last clinical milestone in the treatment of human skin diseases using lotilaner and a maximum of $75.0 million for various commercial and sales threshold milestones for the treatment of human skin diseases and the treatment of blepharitis in humans using lotilaner.

In addition, the Company is obligated to pay tiered contractual royalties to Elanco in the mid to high single digits of its net sales. If the Company received certain types of payments from its sublicensees, it was obligated to pay Elanco a variable percentage in the low to mid double-digits of such proceeds, until achievement of the first applicable regulatory approval of a product covered under the license, which occurred in July 2023 with FDA approval of XDEMVY. As a result of the commercialization of XDEMVY, the Company began accruing royalties payable to Elanco during the third quarter of 2023, which are recorded to cost of sales in the accompanying Condensed Statement of Operations and Comprehensive Loss for the three and six months ended June 30, 2024, and accounts payable and other accrued liabilities in the accompanying Condensed Balance Sheets as of June 30, 2024 and December 31, 2023. Royalty expense during the three and six months ended June 30, 2024 was $2.1 million and $3.3 million, respectively; no royalty expense was recorded for the three and six months ended June 30, 2023.

Elanco In-License Agreement for All Other Diseases or Conditions in Humans

In September 2020, the Company executed a license agreement with Elanco granting it a worldwide license to certain intellectual property for the development and commercialization of lotilaner for the treatment, palliation, prevention, or cure of all other diseases and conditions in humans (i.e., beyond that of the eye or skin), as amended in June 2022 (the "All Human Uses Elanco Agreement"). In September 2020, the Company issued Elanco 222,460 shares of its common stock with an estimated fair value of $3.1 million ($14.0003 per share, approximating the issuance price of the Company's Series C preferred stock in September 2020).

The Company made cash payments under the All Human Uses Elanco Agreement of $0.5 million related to a clinical milestone that was triggered in December 2022 upon enrollment of the first patient in the Phase 2a Carpo trial, for the potential treatment of Lyme disease. The Company is required to make further cash payments under this agreement upon the achievement of various clinical milestones up to an aggregate maximum of $4.0 million and various commercial and sales threshold milestones for an aggregate maximum of $77.0 million. In addition, the Company will be obligated to pay contractual royalties to Elanco in the single digits of its product sales, net. If the Company receives certain types of payments from its sublicensees, it will also be obligated to pay Elanco a variable percentage in the low to mid double-digits of such proceeds, until achievement of the first applicable regulatory approval of a product covered under the license.

Employment Agreements

The Company has entered into employment agreements, including severance and change in control agreements, with six of its executive officers. These agreements provide for the payment of certain benefits upon separation of employment under specified circumstances, such as termination without cause, or termination in connection with a change in control event.

Litigation Contingencies

From time to time, the Company may be subject to various litigation and related matters arising in the ordinary course of business. The Company is currently not aware of any such matters where there is at least a reasonable probability that a material loss, if any, has been or will be incurred for financial statement recognition.

Indemnities and Guarantees

The Company has certain indemnity commitments, under which it may be required to make payments to its officers and directors in relation to certain transactions to the maximum extent permitted under applicable laws. The duration of these indemnities varies, and in certain cases, are indefinite and do not provide for any limitation of maximum payments. The Company has not been obligated to make any such payments to date and no liabilities have been recorded for this contingency in the accompanying Condensed Balance Sheets.

8. OUT-LICENSE AGREEMENTS

Out-License of TP-03 Commercial Rights in the China Territory in March 2021

In March 2021, the Company entered into the China Out-License agreement with LianBio for its exclusive development and commercialization rights of TP-03 (lotilaner ophthalmic solution, 0.25%) in the China Territory for the treatment of *Demodex* blepharitis and Meibomian Gland Disease. LianBio was contractually responsible for all clinical development and commercialization activities and costs within the China Territory.

The Company assessed this arrangement and identified the following material promises under the arrangement: (i) the exclusive license to research, develop, manufacture, commercialize, make, offer for sale, sell, and import TP-03 in the China Territory; and (ii) the research and development services in the form of clinical study materials for the respective Phase 2b/3 trial ("Saturn-1") and Phase 3 ("Saturn-2") TP-03 trials. The promises to provide research and development services for Saturn-1 and Saturn-2 clinical trials were evaluated and determined to be distinct promises in the contract and each of the two clinical trials are separate performance obligations apart from the promise to provide the license.

The assessment of the initial transaction price for the China Out-License agreement included an analysis of amounts the Company expected to receive, which at contract inception consisted of: (i) the upfront cash payment of $15.0 million; (ii) a second cash payment of $10.0 million; (iii) a $10.0 million milestone that was determined to be within the control of the Company; and (iv) $1.2 million representing the initial fair value of the equity warrant.

The Company accounted for each performance obligation as follows:

Out-License

The Company determined that this license was distinct based on an evaluation of the delivery of the functional license that was in the later stages of development, and it met the criteria for being distinct from the research and development services required under the China Out-License agreement. The Company determined the standalone selling price of this license using a discounted projected sales model and recognized as license fees and collaboration revenue the total allocated transaction price at contract inception, upon delivery of the license.

Research and Development Services

The standalone selling price of these performance obligations was determined using the adjusted market assessment approach. The Company analyzed costs expected to be incurred for each of the clinical trials through completion to estimate the price that a customer would be willing to pay for these services in order to benefit from the clinical trials. The Company determined that LianBio simultaneously benefited from the research and development services that are satisfied over time, as they were able to request and access the clinical trial data at any point through the trial completion. Therefore, the Company recognized the amounts allocated to the respective research and development performance obligations for Saturn-1 and Saturn-2 within license fees and collaboration revenue as the research and development services were provided using an input method, based on the costs incurred for each clinical trial and the total costs expected to be incurred to satisfy each performance obligation. The Company believes this method most faithfully depicted its performance in transferring the promised services during the expected period of time that each clinical trial was ongoing. The Company monitored the expected completion dates for each clinical trial and updated its estimated time to completion at each reporting period, as necessary.

In February 2023, a specified milestone event was triggered based upon the signing of an agreement for which the Company has no ongoing obligations, resulting in $2.5 million recognized as license fees and collaboration revenue in the accompanying Condensed Statements of Operations and Comprehensive Loss for the six months ended June 30, 2023.

In February 2024, LianBio announced its plan to wind down its operations and in March 2024 made a special cash dividend payment to the Company of $0.7 million (equivalent to $4.80 per share - see *Note 3*). In March 2024, the Company executed the Novation Agreement and upon execution of the Novation Agreement, the China Out-License agreement with LianBio was assigned to GrandPharma and a one-time payment of $2.5 million (the "Termination Payment") was made to the Company from LianBio in April 2024. This Termination Payment was recorded as license fees and collaboration revenue in the Condensed Statements of Operations and Comprehensive Loss for the six months ended June 30, 2024. The Novation Agreement amended the $15.0 million future development milestone payable on China regulatory approval of the China Out-License agreement with a combined condition of patent issuance related to TP-03 in China.

Simultaneous with the execution of the Novation Agreement, the Company entered into the Warrant Termination Agreement for a total cancellation payment of $0.4 million (the "Warrant Cancellation Payment"). This Warrant Cancellation Payment was recorded as license fees and collaboration revenue in the Condensed Statements of Operations and Comprehensive Loss for the six months ended June 30, 2024 and cash and cash equivalents in the Condensed Balance Sheets as of June 30, 2024.

Through June 30, 2024, the Company received aggregate payments from LianBio totaling $86.1 million, comprised of (i) initial consideration of $15.0 million, (ii) $67.5 million for the achievement of specified milestones, (iii) $2.5 million upon execution of the Novation Agreement, (iv) $0.4 million upon execution of the Warrant Termination Agreement, and (v) $0.7 million related to a special cash dividend.

(all tabular amounts presented in thousands, except share, per share, per unit, and number of years)

As of June 30, 2024 the Company is eligible to receive further consideration from GrandPharma upon the achievement of additional TP-03 events, including: (i) additional regulatory and/or patent milestones of up to an aggregate of $20.0 million; (ii) China-based TP-03 sales threshold milestone payments of up to an aggregate of $100.0 million; and (iii) tiered low-to-high-teen royalties for China Territory TP-03 product sales. The variable consideration related to the remaining milestone payments was fully constrained as of June 30, 2024.

9. CREDIT FACILITY AGREEMENTS

In February 2022, the Company executed the Credit Facility with Hercules and SVB (the "2022 Credit Facility") and concurrently made a $20.0 million initial draw. The 2022 Credit Facility was amended in January 2023 and August 2023. As amended, the 2022 Credit Facility set a maximum interest rate, updated the terms of prepayment and extended the period for the Company to drawdown the $25.0 million tranche associated with the submission of the New Drug Application ("NDA") for TP-03. In each of March 2023 and September 2023, the Company made separate draws of $5.0 million (including SVB's commitment of $1.25 million) from this $25.0 million tranche associated with the NDA submission of TP-03. The Company did not incur any lender fees as part of the 2022 Credit Facility.

In April 2024, the Company executed a loan and security agreement (the "2024 Credit Facility") with Pharmakon with maturity in April 2029. Upon execution, the Company made a $75.0 million draw from the initial tranche of the 2024 Credit Facility, a portion of which was utilized to repay all outstanding indebtedness on the 2022 Credit Facility, resulting in total net proceeds of $39.6 million. The 2024 Credit Facility provides for three potential additional term loan tranches in principal amounts up to $25.0 million, $50.0 million, and $50.0 million, respectively, subject to customary conditions to funding and, in the case of the last two tranches, achieving minimum net product sales milestones. The three potential additional tranches may be requested on or prior to December 31, 2024, June 30, 2025, and December 31, 2025, respectively.

Under the 2024 Credit Facility, the outstanding principal draws accrue interest at a floating rate based upon the secured overnight financing rate (“SOFR”), plus a margin of 6.75% per annum. The SOFR is subject to a 3.75% floor. Under the First Amendment of the 2022 Credit Facility, the outstanding principal draws accrued interest at a floating interest rate per annum equal to the greater of either (i) The Wall Street Journal ("WSJ") prime rate plus 4.45% with an aggregate cap of 11.45%, or (ii) 8.45%. At the execution date of the 2022 Credit Facility, the WSJ prime rate was 3.25% and increased to 8.50% as of the date of its extinguishment.

The Company was required to pay a specified fee upon the earlier of (i) February 2, 2027 or (ii) the date the Company prepays, in full or in part, the outstanding principal balance of the 2022 Credit Facility ("End of Term Charge"). As the 2022 Credit Facility was paid in full upon the signing of the 2024 Credit Facility agreement, the End of Term Charge of $1.4 million was paid on April 19, 2024, which was derived by multiplying 4.75% by the $30.0 million outstanding principal balance. Prior to being paid, the End of Term Charge was accreted to interest expense over the expected maturity date. The Company recognized a loss on debt extinguishment of $1.9 million during the three and six months ended June 30, 2024 in the Condensed Statements of Operations and Comprehensive Loss.

As of June 30, 2024 and 2023, the effective interest rates for the full term of the 2024 Credit Facility and the 2022 Credit Facility was 13.37% and 12.12%, respectively. The Company recognized interest expense on the accompanying Condensed Statements of Operations and Comprehensive Loss in connection with the Credit Facilities as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Interest expense for term loan(s)	$ 2,008	$ 724	$ 2,877	$ 1,326
Accretion of end of term charge	—	63	80	116
Amortization of debt issuance costs	101	28	135	57
Total interest expense related to term loan	$ 2,109	$ 815	$ 3,092	$ 1,499

The carrying value of the Credit Facilities consists of principal outstanding less legal and administrative issuance costs that were recorded as a debt discount to the term loan, net and will continue to be accreted to interest expense using the

(all tabular amounts presented in thousands, except share, per share, per unit, and number of years)

effective interest method during its term. The principal balance of the Credit Facilities and related accretion and amortization are reported on a combined basis as term loan, net on the accompanying Condensed Balance Sheets as follows:

	June 30, 2024	December 31, 2023
Term loan, gross	$ 75,000	$ 30,000
Debt issuance costs	(3,523)	(875)
Accretion of end of term charge	—	438
Accumulated amortization of debt issuance costs	101	256
Term loan, net	$ 71,578	$ 29,819

10. RELATED PARTY TRANSACTIONS

Equity Investment in Privately-held Eye Care Company

In April 2024, the Company participated in an equity round of an early clinical-stage private eye care company. Pursuant to the terms of a Preferred Stock Purchase Agreement the Company purchased $3.0 million of preferred stock. Drs. Azamian and Link are board members and the Company's former director, Michael Ackermann, is an executive and board member of this private company. The Company owns a small minority of this private company.

Consulting Agreements

The Company has a preexisting consulting agreement with a board member who was appointed in December 2021. During the year ended December 31, 2023, this consulting agreement provided for annual cash compensation of approximately $0.2 million and option grants to purchase 45,134 shares of the Company’s common stock, with exercise prices ranging from $2.01 to $34.72 per share.

On January 30, 2024, this consulting agreement with the board member was amended to provide for annual cash compensation of approximately $0.4 million and an additional option grant to purchase 10,000 shares of the Company’s common stock, with an exercise price of $27.49 per share. This amended consulting agreement may be terminated by either party with ten days' notice and contains standard confidentiality, indemnification, and intellectual property assignment provisions in favor of the Company.

The accompanying Condensed Statements of Operations and Comprehensive Loss includes selling, general and administrative expenses related to this consulting agreement of $0.2 million and $0.1 million for the three months ended June 30, 2024 and 2023, respectively, and $0.3 million and $0.2 million, for the six months ended June 30, 2024 and 2023, respectively.

Sponsorship Activities

In May 2023, a board member of the Company was appointed president of the American Society of Cataract and Refractive Surgery ("ASCRS"), a society dedicated to meeting the needs of anterior segment ophthalmic surgeons. On April 5, 2024, this board member's term as president ended with ASCRS.

The accompanying Condensed Statements of Operations and Comprehensive Loss includes selling, general, and administrative expenses related to sponsorship and event-related activities associated with ASCRS as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
ASCRS expenses	$ 215	$ 28	$ 272	$ 217
	$ 215	$ 28	$ 272	$ 217

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

Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains certain forward-looking statements. All statements other than statements of historical facts contained in this report, including statements regarding our future results of operations and financial position, future revenue, business strategy, product candidates, planned preclinical studies and clinical trials, results of clinical trials, research and development costs, regulatory approvals, timing and likelihood of success, as well as plans and objectives of management for future operations, are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that are in some cases beyond our control and may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

The words “anticipate,” “believe,” contemplate,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will,” or “would,” or the negative of these terms or other similar expressions are intended to identify forward-looking statements. Factors that may cause actual results to differ from expected results, include, among others:

- our ability to successfully commercialize XDEMVY®, formerly known as TP-03, for the treatment of *Demodex* blepharitis;
- the prevalence of *Demodex* blepharitis and the size of the market opportunity for XDEMVY;
- our plans relating to commercializing XDEMVY and our product candidates, if approved, including commercialization timelines and sales strategy;
- any statements regarding our ability to achieve distribution and patient access for our products including XDEMVY and timing and breadth of payer coverage; our expectations of the potential market size, pricing, gross-to-net yields, eye care provider and patient acceptance of our product and product candidates, opportunity and patient populations for our product and product candidates, including XDEMVY;
- the rate and degree of market acceptance and clinical utility of XDEMVY and our product candidates;
- the likelihood of our clinical trials demonstrating safety and efficacy of our product candidates, and other positive results;
- the timing and progress of our current clinical trials and timing of initiation of our future clinical trials, and the reporting of data from our current and future trials;
- the timing or likelihood of regulatory filings and approval for our product candidates and our ability to meet existing or future regulatory standards or comply with post-approval requirements;
- our plans relating to the clinical development of our current and future product candidates, including the size, number and disease areas to be evaluated;
- the impact of health epidemics on our business and operations;
- the impact of unfavorable global and geopolitical economic conditions on our business and operations;
- the success of competing therapies that are or may become available;
- our estimates of the number of patients in the United States ("U.S.") or globally, as applicable, who suffer from *Demodex* blepharitis, Meibomian Gland Disease ("MGD"), rosacea, Lyme disease and malaria and the number of patients that will enroll in our clinical trials;
- the beneficial characteristics, safety, efficacy, therapeutic effects and potential advantages of our product candidates;
- our ability to obtain and maintain regulatory approval of our product and our product candidates to meet existing or future regulatory standards;
- our plans relating to the further development and manufacturing of our product and product candidates, including additional indications for which we may pursue;
- our ability to identify additional products, product candidates or technologies with significant commercial potential that are consistent with our commercial objectives;
- the expected potential benefits of strategic collaborations with third parties (including, for example, the receipt of payments, achievement and timing of milestones under license agreements, and the ability of our third party collaborators to commercialize our product candidates in the territories under license) and our ability to attract collaborators with development, regulatory and commercialization expertise;
- existing regulations and regulatory developments in the U.S. and other jurisdictions;

- our plans and ability to obtain or protect intellectual property rights, including extensions of existing patent terms where available;
- our continued reliance on third parties to conduct additional clinical trials of our product candidates, and for the manufacture of our product candidates for preclinical studies and clinical trials;
- the need to hire additional personnel and our ability to attract and retain such personnel;
- the accuracy of our estimates regarding expenses, future revenue, capital requirements and needs for additional financing;
- our financial performance;
- the sufficiency of our existing capital resources to fund our future operating expenses and capital expenditure requirements;
- our competitive position; and
- our anticipated use of our existing resources and the proceeds from our initial public offering ("IPO, our subsequent follow-on public offerings in May 2022 (the "May 2022 Public Offering"), August 2023 (the "August 2023 Public Offering"), and March 2024 (the "March 2024 Public Offering", collectively the “Follow-On Public Offerings”), as well as proceeds from our sales agreement prospectus (the "2023 ATM Prospectus"), and drawdowns from our loan and security agreement (the "2024 Credit Facility") with funds associated with Pharmakon Advisors, LP ("Pharmakon").

We have based these forward-looking statements largely on our current expectations and projections about our business, the industry in which we operate and financial trends that we believe may affect our business, financial condition, results of operations and growth prospects, and these forward-looking statements are not guarantees of future performance or development. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in the section titled “Risk Factors” elsewhere in this report. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this report may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee that the future results, advancements, discoveries, levels of activity, performance or events and circumstances reflected in the forward-looking statements will be achieved or occur. Moreover, except as required by law, neither we nor any other person assumes responsibility for the accuracy and completeness of the forward-looking statements. We undertake no obligation to update publicly any forward-looking statements for any reason after the date of this report to conform these statements to actual results or to changes in our expectations.

You should read this report and the documents that we reference in this report and have filed with the Securities and Exchange Commission ("SEC") as exhibits to this report with the understanding that our actual future results, levels of activity, performance and events and circumstances may be materially different from what we expect.

References in this Quarterly Report on Form 10-Q to the terms, “Tarsus,” the “Company,” “we,” “our,” and “us” refer to Tarsus Pharmaceuticals, Inc., unless the context otherwise indicates.

Overview

Our Business

We are a commercial stage biopharmaceutical company focused on the development and commercialization of therapeutics, starting with eye care. Our commercial product, XDEMVY (lotilaner ophthalmic solution) 0.25%, formerly known as TP-03, was approved by the U.S. Food and Drug Administration ("FDA") in July 2023 for the treatment of *Demodex* blepharitis caused by the infestation of *Demodex* mites. Blepharitis ("Blephar" is a reference to eyelid and “itis” is a reference to inflammation) is an ophthalmic lid margin disease characterized by inflammation of the eyelid margin, redness and ocular irritation, including a specific type of eyelash dandruff called collarettes, which are pathognomonic for *Demodex* blepharitis. Poorly controlled and progressive blepharitis can lead to corneal damage over time and, in extreme cases, blindness. There may be as many as approximately 25 million people in the U.S. who suffer from *Demodex* blepharitis. XDEMVY is the first and

only therapeutic approved by the FDA and we believe is the definitive standard of care for the treatment of *Demodex* blepharitis.

XDEMVY targets and eradicates the root cause of *Demodex* blepharitis — *Demodex* mite infestation. The active pharmaceutical ingredient ("API") of XDEMVY, lotilaner, paralyzes and eradicates mites and other parasites through the inhibition of parasite-specific gamma-aminobutyric acid-gated chloride ("GABA-Cl") channels with no GABA-Cl inhibition in humans.

To date, we have completed seven clinical trials that include a Phase 3 Saturn-2 trial, a Phase 2b/3 Saturn-1 trial, four Phase 2 trials, and a Phase 1 trial for XDEMVY in *Demodex* blepharitis, all of which met their primary, secondary and/or certain exploratory endpoints, with the drug well tolerated throughout each trial. We have also completed, and/or have ongoing clinical trials for TP-03 for the potential treatment of MGD, TP-04 for the potential treatment of rosacea and TP-05 for potential Lyme disease prophylaxis, among others.

We intend to further advance our pipeline with the lotilaner API to address several diseases in human medicine, including eye care, dermatology, and infectious disease prevention. We are investigating the development of our product candidates to address targeted diseases with high unmet medical needs, which currently include TP-03 for the potential treatment of MGD, TP-04, a novel gel formulation of lotilaner for the potential treatment of rosacea, and TP-05, a novel investigative oral formulation of lotilaner, for potential Lyme disease prophylaxis and community malaria reduction.

Recent Business and Clinical Highlights

XDEMVY:

- During the three and six months ended June 30, 2024 we recognized $40.8 million and $65.5 million, respectively, in net product sales, an increase of 65% when comparing the first and second quarters of 2024.
- Delivered more than 37,000 bottles of XDEMVY to patients during the second quarter of 2024.
- Gross-to-net discounts improved substantially to 44% during the second quarter of 2024 from 55% during the first quarter of 2024.
- Approximately 11,000 ECPs have started patients on XDEMVY launch-to-date with more than 60% of ECPs prescribing XDEMVY to multiple patients as of August 7, 2024.
- We significantly expanded payer coverage of XDEMVY among commercial and now Medicare payers.
    - Secured several new contracts in the second quarter of 2024, including another major commercial plan with more than 20 million covered lives, and one major Medicare payer with more than 10 million covered lives. We expect to begin recognizing the benefits of these major contracts during the third quarter of 2024.
    - Remain well positioned for even broader coverage and a steady state gross-to-net discount percentage in the low 40's in 2025.
- On track with plans to deploy approximately 50 additional sales force representatives and leaders by the end of the third quarter of 2024.

TP-03 Meibomian Gland Disease, Ersa Trial: In December 2023, we announced positive topline results of the Ersa Phase 2a clinical trial evaluating TP-03 (lotilaner ophthalmic solution, 0.25%) administered twice daily or three times a day for 12 weeks for the treatment of MGD in patients with *Demodex* mites. TP-03 demonstrated statistically significant and clinically meaningful improvements compared to baseline in two objective measures of the disease – the presence and quality of liquid secretion as measured by the Meibomian Gland Secretion Score and the number of glands secreting normal (clear) liquid and was well tolerated. We plan to discuss and determine the potential regulatory path with the FDA by the end of 2024.

TP-04 Rosacea, Galatea Trial: On February 27, 2024, we announced positive topline results from the Galatea trial evaluating TP-04, a novel gel formulation of lotilaner, for the treatment of rosacea which demonstrated statistically significant improvements ($p<0.05$) in inflammatory lesions and Investigator's Global Assessment score (change in baseline and success rate) were observed compared to vehicle at week 12. TP-04 was generally well tolerated. We plan to discuss and determine the potential regulatory path with the FDA by the end of 2024.

TP-05 Lyme Disease, Carpo Trial: On February 22, 2024, we announced positive topline results from the Carpo trial, which demonstrated statistical significance in the mortality of ticks compared to vehicle ($p<0.001$), regardless of treatment arm, and was well tolerated. The Carpo trial is designed to evaluate TP-05, a novel investigative oral, non-vaccine pharmacological prophylactic for the potential prevention of Lyme disease in humans. The Carpo trial evaluated the efficacy of TP-05 in killing lab grown, non-disease carrying ticks after they have attached to the skin of healthy volunteers, as well as confirm the safety, tolerability, and blood concentration of TP-05. We plan to discuss and determine the potential regulatory path with the FDA by the end of 2024.

We believe TP-05 is currently the only non-vaccine, drug-based prophylaxis in development that targets ticks, and potentially prevents Lyme disease transmission. It is designed to rapidly and durably provide systemic blood levels of lotilaner potentially sufficient to kill infected ticks attached to the human body before they can transmit the Borrelia bacteria that causes Lyme disease.

TP-03 China Territory Out-License: In February 2024, LianBio Ophthalmology Limited ("LianBio") announced its plan to wind down its operations. In March 2024, LianBio's Board of Directors made a special cash dividend payment to the Company of $0.7 million (equivalent to $4.80 per share, the fair value of the LianBio common stock).

On March 26, 2024, we executed an agreement with Xi An Grand Chang An Pharmaceutical Co., Ltd. ("GrandPharma"), a subsidiary of Grand Pharmaceutical Group Limited, and LianBio to transition the rights to develop and commercialize TP-03 in China for the treatment of *Demodex* blepharitis and MGD (the "Novation Agreement"). Upon execution of the Novation Agreement, the development and license agreement with LianBio (the "China Out-License"), was assigned to GrandPharma and a one-time payment of $2.5 million (the "Termination Payment") was recorded as license fees and collaboration revenue in the Condensed Statements of Operations and Comprehensive Loss for the six months ended June 30, 2024. Additionally, the Novation Agreement amended the $15.0 million future development milestone related to the approval of TP-03 for the treatment of *Demodex* blepharitis in the China Territory, as defined in the China Out-License, with a combined condition of issuance of a patent related to TP-03. All references to the China Out-License in this Quarterly Report on Form 10-Q shall refer to the China Out-License, as assigned from LianBio to GrandPharma, pursuant to the Novation Agreement.

Simultaneous with the execution of the Novation Agreement, we entered into an agreement with LianBio to terminate the third tranche of the equity warrants related to the purchase of 78,373 shares of LianBio common stock for a total cancellation payment of $0.4 million (the "Warrant Termination Payment"), which is recorded as license fees and collaboration revenue in the Condensed Statements of Operations and Comprehensive Loss for the six months ended June 30, 2024. In June 2024, we sold our shares of LianBio common stock (see *Note 3*).

Corporate and Financial Overview

We were incorporated as a Delaware corporation in November 2016, and our headquarters are located in Irvine, California. Since our inception, we have devoted substantially all of our resources to organizing and staffing our company, acquiring intellectual property, clinical development of our product candidates, commercializing XDEMVY, building our research and development capabilities, raising capital, and enhancing our corporate infrastructure.

To date we have financed our operations through private placements of preferred stock, convertible promissory notes, net proceeds from issuance of common stock in our IPO, our subsequent Follow-On Public Offerings in May 2022, August 2023, and March 2024, and our 2023 ATM Prospectus, as well as proceeds from net product sales, our China Out-License, and drawdowns from our Credit Facilities.

We have incurred significant net operating losses ("NOLs") in every year since our inception and expect to continue to incur significant operating expenses as we commercialize XDEMVY for *Demodex* blepharitis and as we advance our other product candidates through clinical trials, regulatory submissions, and potential commercialization. Our net loss was $33.3 million and $31.4 million for the three months ended June 30, 2024 and 2023, respectively, and $69.0 million and $54.8 million for the six months ended June 30, 2024 and 2023, respectively. Our net losses may fluctuate significantly from quarter to quarter and year to year and could be substantial. We anticipate that our operating expenses will increase significantly as we:

- commercialize XDEMVY and our other products for which we obtain regulatory approvals;
- maintain regulatory approval for XDEMVY and seek regulatory approval for our other product candidates that successfully complete clinical development, if any;

- advance the clinical development of TP-03 for the potential treatment of MGD, TP-04 for the potential treatment of rosacea and TP-05 for the potential Lyme disease prophylaxis;
- engage with contract manufacturers to ensure a sufficient supply chain capacity to provide commercial quantities of XDEMVY and any other products for which we may obtain marketing approval;
- maintain, expand and protect our intellectual property portfolio;
- hire additional staff, including clinical, scientific, technical, regulatory, marketing, sales, operations, financial, and other support personnel, to execute our business plan; and
- add information systems and personnel to support our product development and commercialization efforts, and to enable us to operate as a public company.

We began generating product sales during the three months ended September 30, 2023 following the FDA approval of XDEMVY in July 2023 and our subsequent commercial launch in August 2023. Our reported revenue within license fees and collaboration revenue is from our China Out-License and clinical supply agreement; we expect to report additional revenue under this caption in future periods from GrandPharma related to the Novation Agreement.

Until such time as we can generate significant revenue from product sales and achieve profitability, if ever, we expect to finance our operations through public equity or debt financings, or collaborations, strategic alliances, or licensing arrangements with third parties. Adequate funding may not be available to us when needed on acceptable terms, or at all. If we raise additional funds through collaborations, strategic alliances, or licensing arrangements with third parties, we may have to relinquish valuable rights to our intellectual property, future revenue streams, research programs or product candidates or grant licenses on terms that may not be favorable to us. If we are unable to raise additional capital or enter into such agreements as and when needed, we could be forced to significantly delay, scale back, or discontinue our product development and/or commercialization plans, which would negatively and adversely affect our financial condition.

Because of the numerous risks and uncertainties associated with drug product development and commercialization, we are unable to accurately predict the timing or amount of increased expenses or when or if we will be able to achieve or maintain profitability. Even if we are able to generate significant revenue from net product sales we may not become profitable. If we fail to become profitable or are unable to sustain profitability on a continuing basis, then we may be unable to continue our operations at planned levels.

As of June 30, 2024, our aggregate cash, cash equivalents and marketable securities was $323.6 million – see the section below titled "*Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources.*"

Impact of the Macroeconomic Environment

Recently, the economy has experienced downward pressure, and together with high rates of inflation and energy supply issues experienced in certain regions, war and geopolitical conflicts, have led to regional and/or global macroeconomic challenges, the effects of which may be of an extended duration.

In addition, we may be exposed to credit risk on deposits at financial institutions to the extent our account balances exceed the amount insured by the Federal Deposit Insurance Corporation ("FDIC"). We maintain cash held in deposit at financial institutions in the U.S. While these deposits are insured by the FDIC in an amount up to $250,000 for any depositor, to the extent we hold cash deposits in amounts that exceed the FDIC insurance limitation, we may incur a loss in the event of a failure of any of the financial institutions where we maintain deposits. We invest our excess cash in highly liquid investments, including money market fund accounts, that are readily convertible into cash without penalty. We believe the Company is not exposed to significant credit risk due to the financial position of the depository institutions and the types of accounts we hold, but we will continue to monitor regularly and adjust, if needed, to mitigate risk, including any ongoing or new events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions.

See the section titled *Risk Factors* in Item 1A of Part II of this Quarterly Report on Form 10-Q, for a further discussion of the potential adverse impact of unfavorable global and geopolitical economic conditions on our business, results of operations and financial condition.

Components of our Results of Operations

Comparison of the Three Months Ended

	Three Months Ended June 30,		
	2024	2023	Change
	(in thousands)		
Revenues:			
Product sales, net	$ 40,813	$ —	*
Total revenues	40,813	—	40,813
Operating expenses:			
Cost of sales	3,004	—	*
Research and development	12,319	12,546	(227)
Selling, general and administrative	58,792	20,275	38,517
Total operating expenses	74,115	32,821	41,294
Loss from operations before other income (expense)	(33,302)	(32,821)	(481)
Other income (expense):			
Interest income	4,130	2,226	1,904
Interest expense	(2,109)	(815)	(1,294)
Loss on debt extinguishment	(1,944)	—	(1,944)
Other income, net	(59)	(47)	(12)
Realized/unrealized (loss) gain on equity investments	(6)	15	(21)
Change in fair value of equity warrants issued by licensee	—	18	(18)
Total other income, net	12	1,397	(1,385)
Net loss	$ (33,290)	$ (31,424)	$ (1,866)

* Not meaningful for further disclosure.

Product Sales, Net

During the three months ended June 30, 2024 we recognized revenue of $40.8 million from product sales, net of rebates, chargebacks, discounts, and other adjustments driven by approximately 37,000 bottles of XDEMVY delivered to patients. During the three months ended June 30, 2023, there were no product sales, net recognized.

Cost of Sales

For the three months ended June 30, 2024, we recognized $3.0 million in cost of sales for XDEMVY. Cost of sales consists of direct and indirect costs related to the manufacturing and distribution of XDEMVY, including raw materials, third-party manufacturing costs, packaging services, and freight-in, as well as third-party royalties payable on our product sales, net and amortization of capitalized intangible assets associated with XDEMVY. During the three months ended June 30, 2023, there were no cost of sales recognized.

Research and Development Expenses

	Three Months Ended June 30,		
	2024	2023	Change
Direct external expenses:			
TP-03 program	$ 3,983	$ 4,349	$ (366)
TP-04 program	125	796	(671)
TP-05 program	474	984	(510)
Other early-stage programs	281	—	281
Indirect expenses:			
Compensation and personnel-related	6,672	5,866	806
Other	784	551	233
Total research and development expenses	$ 12,319	$ 12,546	$ (227)

Research and development expenses decreased by $0.2 million for the three months ended June 30, 2024, as compared to the prior year period. This decrease was primarily due to (i) $0.4 million of decreased TP-03 program expenses primarily due to completion of the Ersa Phase 2a trial, partially offset by Phase 4 studies, (ii) $0.7 million of decreased TP-04 program expenses related to completion of the Galatea trial, and (iii) $0.5 million of decreased TP-05 program expenses including $0.2 million for the food effect study and $0.4 million for the Carpo trial. These decreases were partially offset by (i) $0.8 million of increased payroll and personnel-related costs (including increased stock-based compensation expense of $0.4 million) related to 10 employee additions period over period to drive our product development initiatives, (ii) $0.2 million of other indirect expenses, and (iii) $0.3 million of increased early-stage programs.

Selling, General and Administrative Expenses

Selling, general and administrative expenses increased by $38.5 million for the three months ended June 30, 2024, as compared to the prior year period. The increase was primarily due to (i) $11.0 million of increased payroll and employee-related costs (including increased stock-based compensation expense of $1.7 million) for 153 commercial and corporate employee additions, period over period, to support our business growth and commercial leadership hires for our commercial launch of XDEMVY, (ii) $13.8 million of increased commercial and marketing costs as we continued our commercial expansion for the commercial launch of XDEMVY, and (iii) $13.6 million of increased information technology applications, legal, professional and other corporate expenses. Our field sales headcount and associated vendor expenses have continued to increase during 2024 due to further growth and expansion of our commercial activities for XDEMVY.

Other Income, Net

Other income, net decreased by $1.4 million primarily due to $1.9 million of loss on debt extinguishment related to the Credit Facility (as defined below), and $1.3 million of increased interest expense related to the Credit Facilities (as defined below), partially offset by $1.9 million of increased interest income earned on our cash, cash equivalents and marketable securities.

Comparison of the Six Months Ended

	Six Months Ended June 30,		
	2024	2023	Change
	(in thousands)		
Revenues:			
Product sales, net	$ 65,533	$ —	*
License fees and collaboration revenue	2,894	2,500	394
Total revenues	68,427	2,500	65,927
Operating expenses:			
Cost of sales	4,658	—	*
Research and development	24,385	24,902	(517)
Selling, general and administrative	110,370	35,371	74,999
Total operating expenses	139,413	60,273	79,140
Loss from operations before other income (expense)	(70,986)	(57,773)	(13,213)
Other income (expense):			
Interest income	7,247	4,519	2,728
Interest expense	(3,092)	(1,499)	(1,593)
Loss on debt extinguishment	(1,944)	— —	(1,944)
Other (expense) income, net	546	(41)	587
Realized/unrealized (loss) gain on equity investments	(591)	(50)	(541)
Change in fair value of equity warrants issued by licensee	(201)	1	(202)
Total other income, net	1,965	2,930	(965)
Net loss	$ (69,021)	$ (54,843)	$ (14,178)

* Not meaningful for further disclosure.

Product Sales, Net

During the six months ended June 30, 2024 we recognized revenue of $65.5 million from product sales, net of rebates, chargebacks, discounts, and other adjustments driven by approximately 63,000 bottles of XDEMVY delivered to patients. During the six months ended June 30, 2023, there were no product sales, net recognized.

License Fees and Collaboration Revenue

For the six months ended June 30, 2024 we recognized $2.9 million of license fees and collaboration revenue including, (i) $2.5 million for the Termination Payment related to the Novation Agreement, and (ii) $0.4 million for the Warrant Termination Payment. For the six months ended June 30, 2023 we recognized $2.5 million related to the achievement of a contractual milestone under the China Out-License. These allocated amounts represented the satisfaction of the transfer of license rights to LianBio and the completion of related performance obligations.

We will recognize additional license fees and collaboration revenue under the Novation Agreement to the extent other events occur, specifically related to (i) milestone achievement of certain regulatory events in the China Territory, and (ii) royalties and milestones from our licensee's product sales of TP-03 in the China Territory.

Cost of Sales

For the six months ended June 30, 2024, we recognized $4.7 million in cost of sales of XDEMVY. Cost of sales consists of direct and indirect costs related to the manufacturing and distribution of XDEMVY, including raw materials, third-party manufacturing costs, packaging services, and freight-in, as well as third-party royalties payable on our product sales, net and amortization of capitalized intangible assets associated with XDEMVY. For the six months ended June 30, 2023, there were no cost of sales recognized.

Research and Development Expenses

	Six Months Ended June 30,		
	2024	2023	Change
Direct external expenses:			
TP-03 program	$ 7,488	$ 7,353	$ 135
TP-04 program	675	1,396	(721)
TP-05 program	1,000	3,158	(2,158)
Other early-stage programs	360	180	180
Indirect expenses:			
Compensation and personnel-related	13,427	11,107	2,320
Other	1,435	708	727
Elanco milestone expenses	—	1,000	(1,000)
Total research and development expenses	$ 24,385	$ 24,902	$ (517)

Research and development expenses decreased by $0.5 million for the six months ended June 30, 2024, as compared to the prior year period. The decrease was primarily due (i) $1.0 million of prior period milestone expense related to our Eye and Derm Agreement with Elanco, (ii) $2.2 million of decreased TP-05 program expenses including $1.2 million for the food effect study and $1.1 million for the Carpo trial, and (iii) $0.7 million of decreased TP-04 program expenses related to completion of the Galatea trial. These decreases were partially offset by (i) $2.3 million of increased indirect expenses related to payroll and personnel-related costs (including increased stock-based compensation expense of $0.7 million) for 10 employee additions period-over-period to drive our product development initiatives, (ii) $0.7 million of other indirect expenses, and (iii) $0.1 million of increased TP-03 program expenses.

Selling, General and Administrative Expenses

Selling, general and administrative expenses increased by $75.0 million for the six months ended June 30, 2024, as compared to the prior year period. The increase was primarily due to (i) $22.4 million of increased payroll and employee-related costs (including increased stock-based compensation expense of $2.9 million) for 153 commercial and corporate employee additions period-over-period to support our business growth and commercial leadership hires for our commercial launch of XDEMVY, (ii) $26.0 million of increased commercial and marketing costs as we continued our commercial expansion for the commercial launch of XDEMVY, and (iii) $26.4 million of increased information technology applications,

legal, professional and other corporate expenses. Our field sales headcount and associated vendor expenses have continued to increase during 2024 due to further growth and expansion of our commercial activities for XDEMVY.

Other Income, Net

Other income, net decreased by $1.0 million primarily due to (i) increased interest expense of $1.6 million related to the Credit Facilities, (ii) $0.6 million change in fair value of the LianBio common stock, and (iii) $0.2 million change in fair value related to the final mark-to-market adjustment on the unvested third tranche equity warrant. These decreases to other income, net were partially offset by (i) $2.7 million of increased interest income earned on our cash, cash equivalents and marketable securities, and (ii) $0.6 million of other income, net substantially related to dividend income from LianBio.

Liquidity and Capital Resources

Sources of Liquidity

Overview

Since our inception, we have financed our operations substantially through private placements of preferred stock, net proceeds from the issuance of common stock through our IPO, Follow-on Public Offerings, and the 2023 ATM Prospectus, as well as proceeds from net product sales, the China Out-License, and drawdowns from our Credit Facilities. As of June 30, 2024, we had cash, cash equivalents and marketable securities of $323.6 million.

Follow-On Public Offerings

In August 2023, we completed the August 2023 Public Offering in which 5,714,285 shares of our common stock were sold at a public offering price of $17.50 per share. In September 2023, the underwriters partially exercised an option to purchase an additional 355,164 shares of our common stock at the public offering price of $17.50 per share. After giving effect to the exercise of the underwriters' option, we sold a total of 6,069,449 shares and received aggregate net proceeds of $99.3 million, after deducting underwriting discounts, commissions, and other offering-related expenses.

In February 2024, we filed an automatic shelf registration statement on Form S-3 ASR (the "2024 Shelf Registration Statement"). In March 2024 we completed the March 2024 Public Offering, an underwritten follow-on public offering under the 2024 Shelf Registration Statement on Form S-3 of 2,812,500 shares of our common stock, par value $0.0001 per share, and, in lieu of common stock to a certain investor, pre-funded warrants to purchase 312,500 shares of our common stock. The price to the public was $32.00 per share and $31.9999 per pre-funded warrant, which was the price to the public of each share of common stock sold in the March 2024 Public Offering, minus the $0.0001 exercise price per pre-funded warrant. We also granted the underwriters a 30-day option to purchase up to 468,750 additional shares of its common stock at the public offering price of $32.00 per share, which the underwriters exercised in full in March 2024. We received $107.7 million in aggregate net proceeds, after deducting underwriting discounts, commissions, and other estimated offering-related expenses.

Open Market Sales Agreement

During the year ended December 31, 2023, we sold 1,000,000 shares of our common stock for $20.00 per share under a sales agreement prospectus filed in November 2023, pursuant to the 2023 Shelf Registration Statement (defined below) covering the sale of up to $100.0 million of our common stock pursuant to the 2023 ATM Prospectus with Jefferies LLC ("Jefferies"). This resulted in net proceeds of $19.2 million, after deducting broker commissions and offering related expenses.

During the three and six months ended June 30, 2024, there were no sales of our common stock pursuant to the 2023 ATM Prospectus.

China Out-License

As of the date of this filing, we have received $86.1 million of total proceeds in connection with our China Out-License comprised of (i) $15.0 million of initial consideration, (ii) $67.5 million for the achievement of specified milestones, (iii) $0.7 million related to a special cash dividend, (iv) $2.5 million related to the Novation Agreement, and (v) $0.4 million related to the Warrant Termination Agreement.

As of June 30, 2024 the Company is eligible to receive further consideration from GrandPharma upon the achievement of additional TP-03 events, including: (i) $20.0 million of potential future regulatory and/or patent milestones; (ii)

$100.0 million of potential future China-based TP-03 sales threshold milestones; and (iii) tiered low-to-high-teen royalties for China Territory TP-03 product sales.

Credit Facilities

In February 2022, we executed the Credit Facility with Hercules Capital, Inc. and SVB (the "2022 Credit Facility"). Concurrent with the execution of the 2022 Credit Facility we drew $20.0 million. The 2022 Credit Facility was amended in January 2023 and August 2023. The Credit Facility, as amended, set a maximum interest rate, updated the terms of prepayment and included an extended period to drawdown the tranche associated with the New Drug Application("NDA") submission. In March 2023 and September 2023, respectively, we made draws of $5.0 million (including SVB's commitment of $1.25 million) from the $25.0 million tranche associated with the NDA submission of TP-03. We did not incur any lender fees as part of the 2022 Credit Facility.

In April 2024, the Company executed the 2024 Credit Facility with Pharmakon with maturity in April 2029. Upon execution, we made a $75.0 million draw from the initial tranche, a portion of which was utilized to repay all outstanding indebtedness associated with the 2022 Credit Facility, for total net proceeds of $39.6 million. The 2024 Credit Facility provides for three potential additional term loan tranches in principal amounts up to $25.0 million, $50.0 million, and $50.0 million, respectively, subject to customary conditions to funding and, in the case of the last two tranches, achieving minimum net sales milestones. The three additional tranches may be requested on or prior to December 31, 2024, June 30, 2025 and December 31, 2025, respectively.

The 2024 Credit Facility bears interest at a floating rate based upon the secured overnight financing rate (“SOFR”), plus a margin of 6.75% per annum. The SOFR is subject to a 3.75% floor. The 2024 Credit Facility contains representations and warranties, affirmative and negative covenants in each case. There is also no warrant coverage to the lenders and no financial covenants associated with the financing.

Funding Requirements

Liquidity

Our operating expenditures currently consist of cost of sales, research and development costs (including activities within our preclinical, clinical, regulatory, and drug manufacturing initiatives) and selling, general and administrative costs. Our use of cash is impacted by the timing and extent of payments for each of these activities and other business requirements. We have incurred significant losses and negative cash flows from operations since our inception and had an accumulated deficit of $313.7 million and $244.7 million as of June 30, 2024 and December 31, 2023.

We believe that our cash, cash equivalents and marketable securities of $323.6 million as of June 30, 2024 is sufficient to fund our current and planned operations for at least the next twelve months from this Quarterly Report on Form 10-Q. We also anticipate having additional availability from our 2024 Credit Facility of at least $25.0 million on or prior to December 31, 2024 and another $100 million contingent on reaching certain sales milestones. Our cash runway estimate is predicated on current assumptions for future revenue, operating expenses, and debt availability and may require future adjustments. Accordingly, we may be required to raise additional capital earlier than we currently expect based on our cash requirements and market dynamics.

Shelf Registration Statements

In February 2024, we filed the 2024 Shelf Registration Statement, which permits us to offer and sell from time to time, in one or more series of issuances and on terms that we will determine at the time of the offering, our common stock, preferred stock, debt securities, warrants, units or any combination of such securities.

In November 2023, we filed a shelf registration statement on Form S-3 that was declared effective by the SEC on November 21, 2023, (the "2023 Shelf Registration Statement"), which replaced the November 2021 Shelf Registration Statement, as defined below, and permits us to offer up to $300.0 million of common stock, preferred stock, debt securities and warrants in one or more offerings and in any combination, including in units from time to time.

As part of the 2023 Shelf Registration Statement, we concurrently filed the 2023 ATM Prospectus with Jefferies covering the sale of up to $100.0 million of our common stock pursuant to an Open Market Sale Agreement™ we entered into with Jefferies in 2021 (the “ATM Sales Agreement”). Under the terms of the 2023 ATM Prospectus and ATM Sales Agreement, Jefferies will act as the Company's sales agent and is entitled to compensation for its services equal to 3% of the

gross proceeds of any shares of common stock sold. In December 2023, we sold 1,000,000 shares of our common stock under the 2023 ATM Prospectus for $20.00 per share and received net proceeds of $19.2 million, after deducting broker commission and offering-related expenses.

In November 2021, we filed a shelf registration statement on Form S-3 that was declared effective by the SEC on November 5, 2021 (the "2021 Shelf Registration Statement"), which permitted us to offer up to $300.0 million of common stock, preferred stock, debt securities and warrants in one or more offerings and in any combination, including in units from time to time. The 2023 Shelf Registration Statement replaced the 2021 Shelf Registration Statement.

Also, as part of the 2021 Shelf Registration Statement, we concurrently filed a sales agreement prospectus (the "2021 ATM Prospectus") covering the sale of up to $100.0 million of our common stock pursuant to the ATM Sales Agreement. We did not sell any shares of our common stock under the 2021 ATM Prospectus. In July 2023, in connection with the August 2023 Public Offering, we terminated the sales agreement prospectus relating to the 2021 ATM Prospectus.

Other Liquidity Risks

We expect to incur significant operating losses for the foreseeable future, and for these losses to further increase, as we expand our clinical development programs for our other product candidates and given the commercial launch of XDEMVY. We may also encounter unforeseen expenses, difficulties, complications, delays and other currently unknown factors that could adversely affect our business.

We may require additional capital to fully develop our product candidates and to execute our business strategy. Our requirements of a future capital raise will depend on many factors, including:

- the amount of revenue received from commercial sales of XDEMVY or our product candidates, should any of our product candidates receive marketing approval;
- the cost and timing associated with commercializing XDEMVY or our product candidates, if they receive marketing approval;
- the scope, timing, rate of progress and costs of our drug discovery efforts, preclinical development activities, laboratory testing and clinical trials for our product candidates;
- the number and scope of clinical programs we decide to pursue;
- the cost, timing and outcome of preparing for and undergoing regulatory review of our product candidates;
- the scope and costs of development and commercial manufacturing activities;
- the achievement of milestones or occurrence of other developments that trigger payments under any collaboration agreements we might have at such time and availability of our 2024 Credit Facility;
- the extent to which we acquire or in-license other product candidates and technologies;
- the costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending intellectual property-related claims;
- our ability to establish and maintain collaborations on favorable terms, if at all;
- our efforts to enhance operational systems and our ability to attract, hire and retain qualified personnel, including personnel to support the development of our product candidates and, ultimately, the sale of our products, following FDA approval;
- our implementation of various computerized information systems;
- impact of health epidemics on our clinical development or operations; and
- the costs associated with being a public company.

A change in the outcome of any of these or other variables with respect to the development of any of our product candidates could significantly change the costs and timing associated with the development of that product candidate. Furthermore, our operating plans may change in the future, and we will continue to require additional capital to meet operational needs and capital requirements associated with such operating plans. If we raise additional funds by issuing equity securities, our stockholders may experience dilution. Any future debt financing into which we enter may impose upon us additional covenants that restrict our operations, including limitations on our ability to incur liens or additional debt, pay dividends, repurchase our common stock, make certain investments or engage in certain merger, consolidation or asset sale transactions. Any debt financing or additional equity that we raise may contain terms that are not favorable to us or our stockholders.

Adequate funding may not be available to us on acceptable terms or at all. Our potential inability to raise capital when needed could have a negative impact on our financial condition and our ability to pursue our business strategies. If we are unable to raise additional funds as required, we may need to delay, reduce, or terminate some or all development programs and clinical trials. We may also be required to sell or license our rights to product candidates in certain territories or indications that we would otherwise prefer to develop and commercialize ourselves. If we are required to enter into collaborations and other arrangements to address our liquidity needs, we may have to give up certain rights that limit our ability to develop and commercialize our product candidates or may have other terms that are not favorable to us or our stockholders, which could materially and adversely affect our business and financial prospects. See the section titled "Risk Factors" in this report for additional risks associated with our substantial capital requirements.

Summary Statements of Cash Flows

The following table sets forth the primary sources and uses of cash and cash equivalents for each of the periods presented below:

	Six Months Ended June 30,	
	2024	2023
	(in thousands)	
Net cash (used in) provided by:		
Operating activities	$ (52,193)	$ (45,796)
Investing activities	(142,749)	75,386
Financing activities	151,090	5,523
Net (decrease) increase in cash and cash equivalents	$ (43,852)	$ 35,113

Net Cash Used in Operating Activities

Net cash used in operating activities was $52.2 million for the six months ended June 30, 2024, which primarily consisted of our net loss of $69.0 million, partially offset by a net increase in net operating assets and liabilities of $1.7 million and a net increase in non-cash and other charges of $15.2 million. The increase in net operating assets and liabilities was primarily due to an increase in accounts payable and other accrued liabilities of $19.4 million and a decrease in prepaid expenses of $1.8 million, partially offset by cash decreases including $12.9 million of accounts receivable, $5.2 million of accrued payroll and benefits and $1.6 million of inventory. The net non-cash and other charges were primarily related to stock-based compensation expense of $13.0 million and a loss on debt extinguishment of $1.9 million.

Net cash used in operating activities was $45.8 million for the six months ended June 30, 2023, which primarily consisted of our net loss of $54.8 million, partially offset by net increases in non-cash and other charges of $7.3 million and net operating assets and liabilities of $1.7 million. The net increase in non-cash and other charges were primarily related to stock-based compensation expense of $9.1 million and depreciation expense of $0.3 million, partially offset by net amortization/accretion on marketable securities of $2.6 million. The net increase in net operating assets and liabilities was primarily due to a decrease in other receivables of $3.3 million, partially offset by a decrease in accounts payable and other accrued liabilities of $0.6 million and an increase in other non-current assets of $0.5 million.

Net Cash (Used in) Provided by Investing Activities

Net cash used in investing activities was $142.7 million for the six months ended June 30, 2024, and primarily relates to $151.6 million of purchased marketable securities, $3.0 million of purchased long-term investments, and $1.2 million

of purchased manufacturing equipment, office equipment, and furniture and fixtures, partially offset by $13.0 million of proceeds from maturities of investments.

Net cash provided by investing activities was $75.4 million for the six months ended June 30, 2023, and primarily related to $105.2 million of proceeds from maturities of investments, partially offset by $28.7 million of purchased investments and $1.1 million of purchased furniture, fixtures and leasehold improvements for our laboratory and administrative offices.

Net Cash Provided by Financing Activities

Net cash provided by financing activities was $151.1 million for the six months ended June 30, 2024, and primarily relates to (i) $98.3 million of net proceeds from the issuance of common stock related to the March 2024 Public Offering, (ii) $9.4 million of net proceeds from the issuance of pre-funded warrants related to the March 2024 Public Offering, (iii) $75.0 million of proceeds from an initial draw against our 2024 Credit Facility, (iv) $2.6 million of proceeds from employee stock option exercises and (v) $1.1 million of proceeds from our ESPP, partially offset by (i) $31.9 million of payments on the 2022 Credit Facility, and (ii) $3.5 million of cash paid for loan issuance costs on the 2024 Credit Facility.

Net cash provided by financing activities was $5.5 million for the six months ended June 30, 2023, which primarily relates to (i) $5.0 million of proceeds from our 2022 Credit Facility and (ii) $0.5 million of proceeds from our ESPP.

Critical Accounting Policies, Significant Judgments and Use of Estimates

Our management's discussion and analysis of financial condition and results of operations is based on our Condensed Financial Statements, which have been prepared in conformity with U.S. generally accepted accounting principles ("GAAP"). The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of these Condensed Financial Statements, as well as the reported revenue earned and expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ materially from these estimates under different assumptions or conditions. A summary of our critical accounting policies is presented in our filed Annual Report on Form 10-K for the year ended December 31, 2023.

While our significant accounting policies are described in the notes to our financial statements also included in this Annual Report on Form 10-Q, we believe these critical accounting policies are the most important to understanding and evaluating our reported financial results.

Recent Accounting Pronouncements

A description of recent accounting pronouncements that may potentially impact our financial position, results of operations or cash flows is disclosed in the notes to which they relate within these accompanying Condensed Financial Statements.

Indemnification Agreements

As permitted under Delaware law and in accordance with our bylaws, we indemnify our officers and directors for certain events or occurrences while the officer or director is or was serving in such capacity. We are also party to indemnification agreements with our officers and directors. We believe the fair value of the indemnification rights and agreements is minimal. Accordingly, we have not recorded any liabilities for these indemnification rights and agreements as of June 30, 2024.

JOBS Act Accounting Election

The JOBS Act permits an emerging growth company such as us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We have irrevocably elected to opt out of this provision and, as a result, we will comply with new or revised accounting standards as required when they are adopted.

We will remain an emerging growth company until the *earliest of* (1) December 31, 2025, which is the last day of our first fiscal year following the fifth anniversary of the completion of our IPO, (2) the last day of our first fiscal year (a) in which we have total annual gross revenues of at least $1.235 billion or (b) in which we are deemed to be a large accelerated filer, which means the market value of our common stock that is held by non-affiliates exceeds $700 million, as of the prior

June 30th and (3) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period.

On June 28, 2024, the last business day of the second quarter in 2024, the aggregate market value of the shares of our common stock held by non-affiliates exceeded $700 million. As a result, we will be deemed a large accelerated filer as of December 31, 2024, as defined in Rule 12b-2 under the Exchange Act. As such, we will no longer (i) qualify as an emerging growth company, (ii) qualify as a smaller reporting company, and (iii) be exempt from providing an auditor's attestation report on internal control over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are a smaller reporting company as defined by Rule 12b-2 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and are not required to provide the information required under this item.

Item 4. Controls and Procedures

Conclusions Regarding the Effectiveness of Disclosure Controls and Procedures

We maintain a system of disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed in the reports that we file or submit under the Exchange Act, is processed, recorded, summarized and reported within the time periods specified in the SEC's rules and forms. These disclosure controls and procedures include, among other processes, controls and procedures designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer (our principal executive officer and principal financial officer, respectively), as appropriate, to allow for timely decisions regarding required disclosure.

Our management carried out an evaluation, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of June 30, 2024. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of June 30, 2024, the Company's disclosure controls and procedures were effective to provide reasonable assurance that information we are required to disclose in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting (as defined by Exchange Act Rule 13a-15(f) and 15d-15(f) during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, do not expect that our disclosure controls or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls is also based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions, over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings

We are not currently a party to any material legal proceedings. From time to time, we may become involved in legal proceedings arising in the ordinary course of our business. Regardless of outcome, litigation can have an adverse impact on us due to defense and settlement costs, diversion of management resources, negative publicity, reputational harm and other factors.

Item 1A. Risk Factors

Investing in our common stock is speculative and involves a high degree of risk. Before investing in our common stock, you should consider carefully the risks described below, together with the other information contained in this Quarterly Report on Form 10-Q, including our financial statements and the related notes. If any of the following risks occur, our business, financial condition, results of operations and future growth prospects could be materially and adversely affected. In these circumstances, the market price of our common stock could decline, and you may lose all or part of your investment. The risks described below are not the only ones we face. Additional risks that we are unaware of, or that we currently believe are not material, may also become important factors that affect us. This Quarterly Report on Form 10-Q also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of a number of factors, including the risks described below. See "Note Regarding Forward-Looking Statements."

Risks Related to our Business and Operations

We are an early commercial-stage biopharmaceutical company with a limited operating history and a single product approved for commercial sale. We have incurred significant losses and negative cash flows from operations since our inception and anticipate that we will continue to incur significant expenses and losses for the foreseeable future.

We have one product, XDEMVY, which obtained FDA approval for the treatment of *Demode*x blepharitis in the U.S. in July 2023. We have incurred net losses each year since our company's formation in 2016. We have funded our operations primarily from the sale and issuance of redeemable convertible preferred stock, convertible promissory notes and the sale of our common stock in our IPO, subsequent Follow-On Public Offerings, and under our 2023 ATM Prospectus, as well as proceeds from product sales, net, our China Out-License and draws from our Credit Facilities. For the three and six months ended June 30, 2024 and 2023 our net losses were $33.3 million and $31.4 million, respectively. As of June 30, 2024 and December 31, 2023, we had an accumulated deficit of $313.7 million and $244.7 million, respectively. Additionally, the net losses we incur may fluctuate significantly from quarter to quarter such that a period-to-period comparison of our results of operations may not be a good indicator of our future performance. The size of our future net losses will depend, in part, on the rate of future growth of our expenses and our ability to generate revenue. We initiated sales and marketing activities to commercialize XDEMVY in August 2023. We expect to incur operating losses over the next several years and for the foreseeable future until our revenue from product sales from XDEMVY and any other approved products exceeds expenses, which may never occur. We may never achieve profitability and, even if we do, we may not be able to sustain or increase our profitability. Our prior losses, combined with expected future losses, have had and will continue to have an adverse effect on our accumulated deficit and working capital.

We expect to continue incurring significant expenses and increasing operating losses for the foreseeable future. We expect that our expenses will increase substantially if and as we:

- continue to commercialize XDEMVY and any other products for which we may obtain marketing approval;
- enhance our product development and planned future commercialization efforts of our product candidates, including through hiring additional clinical, regulatory, quality control and scientific personnel;
- seek marketing approvals and reimbursement for our product candidates;
- prepare for and initiate additional preclinical, clinical and other studies for our product candidates;
- change or add additional manufacturers or suppliers, some of which may require additional permits or other governmental approvals;

- create additional infrastructure to support our operations as a public company, including adding operational, financial and management information systems and personnel;
- seek to identify, assess, acquire or develop additional product candidates;
- acquire or in-license other product candidates and technologies;
- make milestone or other payments in connection with the development or approval of our product candidates;
- maintain, protect, enforce and expand our intellectual property portfolio; and
- experience any delays or encounter issues with any of the above.

Because of the numerous risks and uncertainties associated with biopharmaceutical product development, we are unable to accurately predict the timing or amount of increased expenses or when, or if, we will be able to achieve profitability. Our expenses could increase beyond our expectations if, among other things:

- there are any delays in establishing appropriate manufacturing arrangements for or completing the development of any of our product candidates;
- we are required by regulatory authorities to perform clinical trials or studies in addition to, or different than, those that we currently expect; or
- there are any third-party challenges to our intellectual property or we need to defend against any intellectual property-related claim.

We expect to continue to expend substantial resources in connection with our commercialization efforts. If we are successful in commercializing more product candidates, we expect to incur substantial additional research and development and other expenditures to develop and market additional product candidates or to expand the approved indications of any marketed product. We may encounter unforeseen expenses, difficulties, complications, delays and other unknown factors that may adversely affect our business.

We expect to expand our development, regulatory, operational, sales, marketing, and distribution capabilities and, as a result, we may encounter difficulties in managing our growth, which could disrupt our operations.

As we advance our research and development programs and commercialization efforts, we expect to experience continued growth in the number of our employees and the scope of our operations, particularly in the areas of clinical development, quality, regulatory affairs, manufacturing, quality control, sales, marketing, and distribution. To manage our anticipated future growth, we must:

- identify, recruit, integrate, maintain and motivate additional qualified personnel;
- manage our development efforts effectively, including the initiation and execution of clinical trials for our product candidates; and
- improve our operational, financial and management controls, reporting systems and procedures.

Our future financial performance and our ability to develop, manufacture and commercialize our product candidates will depend, in part, on our ability to effectively manage any future growth, and our management may also have to divert financial and other resources, and a disproportionate amount of its attention away from day-to-day activities in order to devote a substantial amount of time, to managing these growth activities. If we do not effectively manage the expansion of our operations, we could experience weaknesses in our infrastructure, operational mistakes, loss of business opportunities, loss of employees and reduced productivity among remaining employees. The expansion of our operations also could lead to significant costs and may divert our management and business development resources. Any inability to manage growth could delay the execution of our business plans or disrupt our operations.

We currently rely, and for the foreseeable future will continue to rely, in substantial part on certain third-party contract organizations, advisors and consultants to provide certain services, including assuming substantial responsibilities for the conduct of our clinical trials and the manufacture of our product candidates. We cannot assure you that the services of such

third-party contract organizations, advisors and consultants will continue to be available to us on a timely basis when needed, or that we can find qualified replacements. In addition, if we are unable to effectively manage our outsourced activities or if the quality or accuracy of the services provided by our vendors or consultants is compromised for any reason, our clinical trials may be extended, delayed or terminated, and we may not be able to successfully commercialize XDEMVY, obtain marketing approval of our product candidates or otherwise advance our business. We cannot assure you that we will be able to properly manage our existing vendors or consultants or find other competent outside vendors and consultants on economically reasonable terms, or at all.

Many of the biotechnology and pharmaceutical companies that we compete against for qualified personnel and consultants have greater financial and other resources, different risk profiles and a longer history in the industry than we do. If we are unable to continue to attract and retain high quality personnel and consultants, the rate and success at which we can discover and develop product candidates and operate our business will be limited. If we are not able to effectively expand our organization by hiring new employees and expanding our groups of consultants and contractors, we may not be able to successfully implement the tasks necessary to further develop and commercialize our product candidates and, accordingly, may not achieve our research, development and commercialization goals.

Our future success depends on our ability to retain key employees, consultants and advisors and to attract, retain and motivate qualified personnel.

We are highly dependent on the expertise of our executive officers, as well as the other members of our scientific and clinical teams and certain advisors to develop and soundly execute our business strategy. Although we have employment offer letters with each of our executive officers, each of them may terminate their employment with us at any time. We do not maintain key person insurance for any of our executives or employees.

Recruiting and retaining qualified scientific, clinical, and sales and marketing personnel, are critical to our success. The loss of the services of our executive officers or other key employees could impede the achievement of our research, development and commercialization objectives and seriously harm our ability to successfully implement our business strategy. Furthermore, replacing executive officers and key employees may be difficult and may take an extended period of time because of the limited number of individuals in our industry with the breadth of skills and experience required to successfully develop, gain regulatory approval for and commercialize our product candidates. Competition to hire qualified personnel in our industry is intense, and we may be unable to hire, train, retain or motivate these key personnel on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies for similar personnel.

Furthermore, to the extent we hire personnel from competitors, we may be subject to allegations that they have been improperly solicited or that they have divulged proprietary or other confidential information, or that their former employers own their research output. We also experience competition for the hiring of scientific and clinical personnel from universities and research institutions. In addition, we rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategy. Our consultants and advisors may be employed by employers other than us and may have commitments under consulting or advisory contracts with other entities that may limit their availability to us. If we are unable to continue to attract and retain high quality personnel, our ability to pursue our growth strategy will be limited, and our business, prospects, financial condition and results of operations may be adversely affected.

Many of our employees have become or will become vested in a substantial amount of our common stock or a number of common stock options. Our employees may be more likely to leave us if the shares they own have significantly appreciated in value relative to the original purchase prices of the shares, or if the exercise prices of the options that they hold are significantly below the market price of our common stock. Our future success also depends on our ability to continue to attract and retain additional executive officers and other key employees.

Our information technology systems, or those of our third-party contract research organizations ("CROs") or other contractors or consultants, may fail or suffer security breaches, loss or leakage of data, and other disruptions, which could result in a material disruption of XDEMVY and our product candidates' development programs, compromise sensitive information related to our business or prevent us from accessing critical information, potentially exposing us to liability or otherwise adversely affecting our business.

We are increasingly dependent upon information technology systems, infrastructure and data to operate our business. In the ordinary course of business, we collect, store and transmit confidential information (including but not limited to intellectual property, proprietary business information and personal information). It is critical that we do so in a secure manner to maintain the confidentiality, availability and integrity of such confidential information. We also have outsourced elements of

our operations to third parties, and as a result we manage a number of third-party contractors who have access to our confidential information.

Despite the implementation of security measures, given their size and complexity and the increasing amounts of confidential information that they maintain, our internal information technology systems and those of our third-party CROs, contract manufacturing organizations ("CMOs"), and other contractors and consultants are potentially vulnerable to breakdown or other damage or interruption from service interruptions, system malfunction, natural disasters, interruptions or cyber incidents resulting from the conflict between Russia and Ukraine, conflict in the Middle East, terrorism, war and telecommunication and electrical failures, as well as security breaches from inadvertent or intentional actions by our employees, contractors, consultants, business partners, and/or other third parties, or from cyber-attacks by malicious third parties (including the deployment of harmful malware, ransomware, denial-of-service attacks, social engineering and other means to affect service reliability and threaten the confidentiality, integrity and availability of information), which may compromise our system infrastructure or lead to data leakage. Further, due to the political uncertainty involving Russia and Ukraine and conflict in the Middle East, there is an increased likelihood that escalation of tensions could result in cyber-attacks that could either directly or indirectly impact our operations. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability and reputational damage and the commercial operations of XDEMVY and further development of our product candidates could be delayed.

While we have not experienced any such system failure, accident or security breach to date, we cannot assure you that our data protection efforts and our investment in information technology and cybersecurity will prevent significant breakdowns, data leakages, breaches in our systems or other cyber incidents that could have a material adverse effect upon our reputation, business, operations or financial condition, whether due to a loss of our trade secrets or other proprietary information or other similar disruptions. Our inability to use or access our information systems at critical points in time could adversely affect the timely and efficient operation of our business. Any delayed sales, significant costs or lost customers resulting from these technology failures could adversely affect our business, operations, and financial results. For example, if such an event were to occur and cause interruptions in our operations, it could result in a material disruption to our commercial operations of XDEMVY and further development of our product candidates could be delayed. In addition, the loss of clinical trial data for our product candidates could result in delays in our marketing approval efforts and significantly increase our costs to recover or reproduce the data. Furthermore, significant disruptions of our information technology systems or security breaches could result in the loss, misappropriation, and/or unauthorized access, use, or disclosure of, or the prevention of access to, confidential information (including trade secrets or other intellectual property, proprietary business information, and personal information), which could result in financial, legal, business, and reputational harm to us. For example, any such event that leads to unauthorized access, use, or disclosure of personal information, including personal information regarding our clinical trial subjects or employees, could harm our reputation directly, compel us to comply with federal and/or state breach notification laws and foreign law equivalents, subject us to mandatory corrective action, and otherwise subject us to liability under laws and regulations that protect the privacy and security of personal information, including private lawsuits or class actions under the California Consumer Privacy Act ("CCPA"), which could result in significant legal and financial exposure and reputational damages that could potentially have an adverse effect on our business.

We maintain specific coverage to mitigate losses associated with certain cybersecurity incidents that impact our or our third parties' systems, networks, and technologies.

Product liability lawsuits against us could cause us to incur substantial liabilities, could divert our resources and could limit or delay our commercialization of XDEMVY or any product candidates that we may develop.

We face an inherent risk of product liability exposure related to the commercialization of XDEMVY and the testing of our product candidates in human clinical trials and will continue to face risk if we commercially sell any future products we may develop. The sale of XDEMVY and any approved products in the future as well as the use of product candidates by us in clinical trials may expose us to liability claims. These claims might be made by patients that use the product, healthcare providers, pharmaceutical companies or others selling such products. On occasion, large judgments have been awarded in class action lawsuits based on products that had unanticipated adverse effects. If we cannot successfully defend ourselves against claims that XDEMVY or our product candidates caused injuries, we could incur substantial liabilities. Regardless of merit or eventual outcome, product liability claims may result in:

- the inability or delay of our efforts to commercialize XDEMVY or any products that we may develop;
- decreased demand for XDEMVY or any product candidates or products that we may develop;

- withdrawal of regulatory approval, recall, restriction on the approval or a black box warning or contraindication for XDEMVY or any future product candidates, if approved;
- delay, variation or termination of clinical trials;
- injury to our reputation and significant negative media attention;
- withdrawal of clinical trial subjects or challenges with clinical trial enrollment;
- initiation of investigations by regulators;
- significant costs to defend the related litigation and diversion of management's time and our resources;
- substantial monetary awards to study subjects or patients;
- product recalls, withdrawals or new labeling requirements, marketing or promotional restrictions; and
- loss of revenue.

Although we maintain product liability insurance coverage, it may not be adequate to cover all liabilities that we may incur. We anticipate that we will need to increase our insurance coverage as our product candidates advance through clinical trials. Insurance coverage is increasingly expensive, thus we may not be able to maintain insurance coverage at a reasonable cost or in an amount adequate to satisfy any liability that may arise. If a successful product or clinical trial liability claim or series of claims is brought against us for uninsured liabilities or in excess of insured liabilities, our assets may not be sufficient to cover such claims and our business operations could be impaired.

Our employees, independent contractors, including our CROs and CMOs, commercial partners, consultants, suppliers, service providers, and other vendors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could have an adverse effect on our results of operations.

We are exposed to the risk that our employees, independent contractors, including our CROs and CMOs, commercial partners, consultants, suppliers, service providers, and other vendors may engage in misconduct or other illegal activity. Misconduct by these parties could include intentional, reckless and/or negligent conduct or other unauthorized activities that violate the laws and regulations of the FDA and other similar foreign regulatory authorities, including those laws that require the reporting of true, complete, and accurate information to such foreign regulatory authorities; manufacturing standards; U.S. federal and state healthcare fraud and abuse, data privacy laws and other similar non-U.S. laws; or laws that require the true, complete, and accurate reporting of financial information or data. Activities subject to these laws also involve the improper use or misrepresentation of information obtained in the course of clinical trials, the creation of fraudulent data in our nonclinical studies or clinical trials, or illegal misappropriation of product, which could result in regulatory sanctions and cause serious harm to our reputation. It is not always possible to identify and deter misconduct by employees and other third parties, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. In addition, we are subject to the risk that a person or government could allege such fraud or other misconduct, even if none occurred. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and financial results, including, without limitation, the imposition of significant civil, criminal and administrative penalties, damages, monetary fines, disgorgements, possible exclusion from participation in Medicare, Medicaid and other U.S. healthcare programs, imprisonment, other sanctions, contractual damages, reputational harm, future earnings and curtailment of our operations, any of which could adversely affect our ability to operate our business and our results of operations.

Health epidemics may affect our ability to initiate and complete preclinical studies and clinical trials, disrupt regulatory activities, disrupt our manufacturing and supply chain or have other adverse effects on our business and operations. In addition, health epidemics could cause substantial disruption in the financial markets and may adversely impact economies worldwide, both of which could result in adverse effects on our business and operations.

Our business, operations and clinical development timelines could be adversely affected by health epidemics in regions where we have concentrations of clinical trial sites or other business operations, and could cause significant disruption in the operations of CROs upon whom we rely. Moreover, our clinical development timelines and plans could be affected by health epidemics as we and the third-party manufacturers and clinical research organizations that we engage may face disruptions. Site initiation and patient enrollment could be delayed or suspended due to prioritization of hospital resources

toward the health epidemics or patients not having a desire to enroll in clinical trials due to concerns. In addition, some patients may not be able to comply with clinical trial protocols and the ability to conduct follow up visits with treated patients may be limited if patients do not want to participate in follow up visits due to concerns regarding health epidemics or if quarantines impede patient movement or interrupt healthcare services. There may be shortages in the raw materials used in the manufacturing of our product candidates or laboratory supplies for our preclinical studies and clinical trials, in each case, because of ongoing efforts to address the outbreak.

We cannot assure that the inability to collect such clinical data would not have an adverse impact on our clinical trial results. Similarly, our ability to recruit and retain patients and principal investigators and site staff who, as healthcare providers, may have heightened exposure to health epidemics could be adversely impacted.

We may experience disruptions that could severely impact our business, preclinical studies, and clinical trials, including:

- delays in receiving approval from local regulatory authorities to initiate our planned clinical trials, including receiving any required investigational new drug ("IND");
- delays or difficulties in enrolling and retaining patients in our clinical trials;
- delays or difficulties in clinical site initiation, including difficulties in recruiting clinical site investigators and clinical site staff;
- manufacturing disruptions;
- delays in clinical sites receiving the supplies and materials needed to conduct our clinical trials;
- delays in the transport of clinical trial materials;
- changes in local regulations as part of a response to a health epidemic which may require us to change the ways in which our clinical trials are conducted, which may result in unexpected costs, or to discontinue the clinical trials altogether;
- diversion of healthcare resources away from the conduct of clinical trials, including the diversion of hospitals serving as our clinical trial sites and hospital staff supporting the conduct of our clinical trials;
- difficulties recruiting or retaining patients for our planned clinical trials if patients are affected by the virus or are fearful of visiting or traveling to clinical trial sites because of the outbreak;
- interruption of or changes in key clinical trial activities, such as clinical trial site monitoring, implementation of virtual monitoring, use of local testing labs, or home delivery of study drugs, due to limitations on travel imposed or recommended by federal or state governments, employers and others, use of new digital technologies for subject visits or interruption of clinical trial subject visits and study procedures, the occurrence of which could affect the integrity of clinical trial data;
- risk that participants enrolled in our clinical trials will acquire a particular disease related to a health epidemic while the clinical trial is ongoing, which could impact the results of the clinical trial, including by increasing the number of observed adverse events;
- delays in necessary interactions with local regulators, ethics committees and other important agencies and contractors due to limitations in employee resources or forced furlough of government employees;
- limitations in employee resources that would otherwise be focused on the conduct of our clinical trials, including because of sickness of employees or their families or the desire of employees to avoid contact with large groups of people;
- interruption or delays in the operations of the FDA which may impact review and approval timelines;
- delays in regulatory approvals for our product candidates due to the FDA focusing on clinical trials related to therapies and vaccines targeting health epidemics;

- refusal of the FDA to accept data, including from clinical trials in affected geographies or failure to comply with updated FDA guidance and expectations related to the conduct of clinical trials during a health epidemic; and

- interruption or delays to our sourced discovery and clinical activities.

The response to a health epidemic may redirect resources with respect to regulatory matters in a way that would adversely impact our ability to pursue marketing approvals. In addition, we may face impediments to regulatory meetings and potential approvals due to measures intended to limit in-person interactions. Furthermore, third parties, including manufacturers, medical institutions, clinical investigators, CROs and consultants with whom we conduct business, are similarly adjusting their operations and assessing their capacity in light of a health epidemic. If these third parties continue to experience shutdowns or business disruptions, our ability to conduct our business in the manner and on the timelines presently planned could be materially and negatively impacted.

The extent to which the health epidemic impacts our business, clinical trials, results of operations and financial condition will depend on future developments, which are highly uncertain and cannot be predicted, including, but not limited to, the duration of the pandemic, its severity, the actions to contain the virus or address its impact, and how quickly and to what extent government orders and mandates are lifted and normal economic and operating activities can resume. Further, while the potential economic impact of any health epidemic may be difficult to assess or predict, it could result in significant disruptions of global financial markets, which could reduce our ability to access capital, which could in the future negatively affect our liquidity. To the extent a health epidemic adversely affects our business, clinical trials, results of operations and financial condition, it may also have the effect of heightening many of the other risks described in this "Risk Factors" section. The ultimate impact of a health epidemic is highly uncertain and subject to change.

We or the third parties upon whom we depend on may be adversely affected by earthquakes, fires or other natural disasters, or geopolitical events and our business continuity and disaster recovery plans may not adequately protect us from a serious disaster.

Any unplanned event, such as earthquakes, fires, flood, explosion, extreme weather, health epidemics, pandemics, power outages, telecommunication failures, war or other military conflict, terrorist activities or other natural or manmade accidents or incidents could severely disrupt our operations, and have a material adverse effect on our business, results of operations, financial condition and prospects. If a natural disaster, power outage or other event occurred that prevented us from using all or a significant portion of our headquarters, that damaged critical infrastructure, such as the manufacturing facilities of our third-party contract manufacturers, or that otherwise disrupted operations, it may be difficult or, in certain cases, impossible for us to continue our business for a substantial period of time. The disaster recovery and business continuity plans we have in place currently are limited and are unlikely to prove adequate in the event of a serious disaster or similar event. We may incur substantial expenses as a result of the limited nature of our disaster recovery and business continuity plans, which, particularly when taken together with our lack of earthquake insurance, could have a material adverse effect on our business.

Unfavorable global and geopolitical economic conditions could adversely affect our business, financial condition or results of operations.

Our results of operations could be adversely affected by general conditions in the global and geopolitical economy and in the global financial markets. Financial pressures may cause government or other third-party payers to more aggressively seek cost containment measures in healthcare and other settings. As a result of global economic conditions, some third-party payers may delay or be unable to satisfy their reimbursement obligations. Job losses or other economic hardships (including inflation) may also affect patients' ability to afford healthcare as a result of increased co-pay or deductible obligations, greater cost sensitivity to existing co-pay or deductible obligations, lost healthcare insurance coverage or for other reasons. We believe such conditions have led and could continue to lead to reduced demand for our products, which could have a material adverse effect on our product sales, net, business and results of operations. The current inflationary environment related to increased aggregate demand, supply chain constraints and the effects from the armed conflict in Ukraine (including the effects of the sanctions that were implemented in response to the conflict and the resulting impacts on the commodity market and supply chains) and Israel have also increased our operating expenses and may continue to affect our operating expenses. Our operational costs, including the cost of energy, materials, labor, distribution and our other operational and facilities costs are subject to market conditions and are being adversely affected by inflationary pressures. Global and geopolitical economic conditions may also adversely affect the ability of our distributors, customers and suppliers to obtain the liquidity required to buy inventory or raw materials and to perform their obligations under agreements with us, which could disrupt our operations. Although we monitor our distributors', customers' and suppliers' financial condition and their liquidity to mitigate our business risks, some of our distributors, customers and suppliers may become insolvent, which could have a material adverse effect on our product sales, business and results of operations. A significant worsening of global and geopolitical economic conditions could precipitate or materially amplify the other risks described herein.

We maintain a significant portfolio of investments disclosed as cash equivalents and marketable securities on our accompanying Balance Sheets. The value of our investments may be adversely affected by interest rate fluctuations, inflation, downgrades in credit ratings, illiquidity in the capital markets, health epidemics and other factors that may result in other-than-temporary declines in the value of our investments. Any of those events could cause us to record impairment charges with respect to our investment portfolio or to realize losses on sales of investments.

Risks Related to Development and Commercialization

We obtained regulatory approval for XDEMVY in the U.S. in July 2023 and commenced the commercial launch of XDEMVY in August 2023. We have limited experience as a commercial company and generating revenue from product sales. If the commercial launch of XDEMVY is unsuccessful or any future approved products are unsuccessful, we may never be profitable.

We received approval by the FDA for XDEMVY for the treatment of *Demodex* blepharitis in the U.S. and began generating revenue from product sales during the third quarter of 2023. Our ability to become and remain profitable is heavily dependent on our ability to continue to generate revenue from XDEMVY. The success of our commercialization will depend on a number of factors, including, among others, the continued development of our commercial organization, including our internal sales and marketing team and distribution capabilities, our ability to navigate the significant expenses and risks involved with the development and management of such capabilities, satisfying any post-marketing regulatory requirements, our ability to secure and maintain adequate healthcare coverage and the acceptance of XDEMVY by patients, ECPs and third-party payers. Further, our commercial success is dependent on our ability to educate ECPs, patients and others in the medical community about *Demodex* blepharitis. If XDEMVY, or any other future approved product, does not achieve an adequate level of acceptance, coverage, pricing or reimbursement, we may not generate significant revenue from product sales and we may not be profitable. Even if we successfully commercialize XDEMVY in the U.S., we may be unable to achieve or maintain profitability, unless XDEMVY is approved in other jurisdictions or for additional indications. Because of the uncertainties and risks associated with these activities, we are unable to accurately and precisely predict the timing and amount of revenues from product sales of XDEMVY, or any future approved products, or if or when we might achieve profitability.

If we are unsuccessful in accomplishing our objectives, or if our commercialization efforts do not develop as planned, we may not be able to successfully commercialize XDEMVY or any future approved products, we may require significant additional capital and financial resources, we may not become profitable, and we may not be able to compete against more established companies in our industry. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis.

We are heavily dependent on the successful commercialization of XDEMVY and the development, regulatory approval, and commercialization of our current and future product candidates.

We currently have one product approved for commercial sale, XDEMVY, which was approved by the FDA in July 2023 for the treatment of *Demodex* blepharitis in the U.S. The success of our business, including our ability to generate revenue from product sales in the future, will primarily depend on the successful commercialization of XDEMVY and the successful development, regulatory approvals and commercialization of our product candidates in one or more jurisdictions. Our ability to generate revenue and achieve profitability depends significantly on our ability, or any future collaborator's ability, to achieve a number of challenging objectives, including:

- timely receipt of regulatory approvals from applicable regulatory authorities for our product candidates for which we successfully complete clinical development;
- successful and timely completion of preclinical and clinical development of our product candidates;
- successfully educating ECPs about *Demodex* blepharitis and related diagnosis;
- successful commercial launch following any regulatory approval, including leveraging our commercial infrastructure in-house or with one or more collaborators;
- commercial acceptance of XDEMVY and any of our other product candidates by patients, the medical community and third-party payers, including our planned direct-to-consumer television advertising campaign;
- establishing and maintaining relationships with CROs and clinical sites for the clinical development, both in the U.S. and internationally, of our product candidates;

- making any required post-marketing approval commitments to applicable regulatory authorities;
- establishing and maintaining commercially viable supply and manufacturing relationships with third parties that can provide adequate, in both amount and quality, products and services to support clinical development and meet the market demand for product candidates that we develop, if approved;
- obtaining an IND prior to commencing clinical trials in the U.S. for drug for a particular indication, such as TP-04 for the potential treatment of rosacea and TP-05 for potential Lyme disease prophylaxis and community malaria reduction;
- a continued acceptable safety and efficacy profile both prior to and following any marketing approval of our product candidates;
- identifying, assessing and developing new product candidates;
- obtaining, maintaining and expanding patent protection, trade secret protection and regulatory exclusivity, both in the U.S. and internationally;
- protecting our rights in our intellectual property portfolio;
- defending against third-party interference or infringement claims, if any;
- obtaining favorable terms in any collaboration, licensing or other arrangements that may be necessary or desirable to develop, manufacture or commercialize our existing or acquired product candidates;
- obtaining coverage and adequate reimbursement for customers and patients from government and third-party payers for XDEMVY and other potential product candidates that we develop;
- addressing any competing therapies and technological and market developments; and
- attracting, hiring and retaining qualified personnel.

We may never be successful in achieving our objectives and, even if we do, may never generate significant revenue that is large enough to achieve profitability. If we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis and we will continue to incur substantial research and development and other expenditures to develop and market additional product candidates. In addition, as a young business, we may encounter unforeseen expenses, difficulties, complications, delays and other known and unknown challenges. Our failure to become and remain profitable would decrease the value of our company and could impair our ability to maintain or further our research and development efforts, raise additional necessary capital, grow our business, retain key employees and continue our operations.

We may not be successful in educating ECPs and the market about the need for treatments specifically for Demodex blepharitis and other diseases or conditions targeted by XDEMVY or our product candidates. XDEMVY or other product candidates that we may develop may fail to achieve market acceptance by ECPs, other healthcare providers and patients, or adequate formulary coverage, pricing or reimbursement by third-party payers and others in the medical community, and the market opportunity for these products may be smaller than we estimate.

XDEMVY, or any current or future product candidate that receives marketing approval, may fail to gain sufficient market acceptance by ECPs or other healthcare providers, patients, third-party payers and others in the medical community. Before the approval of XDEMVY, there was no FDA-approved prescription therapeutic for *Demodex* blepharitis and the only other current treatments include over-the-counter and off-label remedies such as tea tree oil, lid wipes and artificial tears, as well as off-label prescription products. Efforts to educate the medical community, patients and third-party payers on the benefits of XDEMVY and our other product candidates may require significant resources and may not be successful.

Although XDEMVY is approved for the treatment of *Demodex* blepharitis, ECPs and potential patients may not have sufficient information about, or recognize the need for a treatment specifically targeting *Demodex* blepharitis. It is possible that ECPs may continue to rely on other treatments for treating symptoms consistent with *Demodex* blepharitis. A key tenet of our continued commercialization strategy is to educate ECPs on *Demodex* blepharitis and how to diagnose it with a simple slit lamp examination as well as raise patient awareness of *Demodex* blepharitis. However, our efforts may prove to be unsuccessful, and we may not be able to develop this new market for XDEMVY. We may still not achieve success in

promotional efforts for XDEMVY, and ECPs may continue to use existing treatments rather than XDEMVY or any other product candidate and potential patients may not inquire as to XDEMVY. It is also possible that ECPs and patients may not be willing to adopt XDEMVY for the treatment of *Demodex* blepharitis because of the possibility that the disease will recur despite mite eradication.

In addition, if generic versions of any products that compete with XDEMVY or any of our product candidates are approved for marketing by the FDA or comparable foreign regulatory authorities, they could be offered at a substantially lower price than we expect to offer for XDEMVY or our other product candidates, if approved. As a result, ECPs, patients and third-party payers may choose to rely on such products rather than XDEMVY or our product candidates, if approved.

If XDEMVY or any other product candidate that we develop does not achieve an adequate level of acceptance, formulary coverage, pricing or reimbursement we may not generate significant product revenues and we may not become profitable. The degree of market acceptance of XDEMVY or any other product candidate that we develop, if approved for commercial sale, will depend on a number of factors, including:

- the efficacy, safety and potential advantages of XDEMVY, or our product candidates, if approved, compared to alternative treatments, including the existing standard-of-care, and the perceptions by members of the healthcare community of the same;
- our ability to offer our products for sale at competitive prices, particularly in light of the lower cost of alternative treatments;
- the clinical indications for which the product is approved;
- the convenience and ease of administration compared to alternative treatments;
- the willingness of the target patient population to try new therapies and of ECPs to prescribe these therapies;
- the strength and effectiveness of our marketing and distribution support, which may be adversely impacted by health epidemics;
- publicity concerning our products or competing products and treatments;
- the timing of market introduction of competitive products;
- the perception by patients or physicians that the diseases we are targeting, including *Demodex* blepharitis, are not burdensome;
- the potential for our competitors to limit our access to the market through anti-competitive contracts or other arrangements;
- the availability of third-party formulary coverage and adequate reimbursement;
- product labeling or product insert requirements of the FDA or other regulatory authorities;
- the prevalence and severity of any side effects; and
- any restrictions on the use of our products, if approved, together with other medications.

The sales, marketing, and distribution of XDEMVY or any future approved products may be unsuccessful or less successful than anticipated. If we are unable to establish sales and marketing capabilities for our future approved products or enter into agreements with third parties to sell and market XDEMVY or any future approved products on acceptable terms, we may be unable to successfully commercialize XDEMVY or any future approved products.

We began commercializing our first product, XDEMVY, in the U.S. in July 2023. The success of our commercialization efforts for XDEMVY and any future approved products is subject to the effective execution of our business plan, including, among others, the continued development of our internal sales, marketing and distribution capabilities. For example, we have established an internal infrastructure as well as an ECP-focused sales and distribution infrastructure to market XDEMVY and our product candidates in the U.S., and have completed hiring in areas to support commercialization, including

sales management, sales representatives, marketing, access and reimbursement, sales support and distribution. There are significant risks involved with establishing our own sales, marketing, and distribution capabilities, including our ability to hire, retain and appropriately incentivize qualified individuals, provide adequate training to sales and marketing personnel, and effectively manage geographically dispersed sales and marketing teams to generate sufficient demand. Any failure or delay in the development of these capabilities could or negatively affect the success of our commercialization efforts and business. For example, the commercialization of XDEMVY may not develop as planned or anticipated, which may require us to, among other items, adjust or amend our business plan and strategies and incur significant expenses.

Further, given our limited experience commercializing products, we do not have a track record of successfully executing on the commercialization of an approved product. If we are unsuccessful in accomplishing our objectives and executing on our business plan, or if the commercialization of XDEMVY or any future approved products does not develop as planned, we may require significant additional capital and financial resources, we may not become profitable, and we may not be able to compete against more established companies in our industry.

Additionally, if we choose to collaborate, either globally or on a territory-by-territory basis, with third parties that have direct sales forces and established distribution systems, either to augment our own sales force and distribution systems or in lieu of our own sales force and distribution systems, we will be required to negotiate and enter into arrangements with such third parties relating to the proposed collaboration. If we are unable to enter into such arrangements when needed, on acceptable terms, or at all, we may not be able to successfully commercialize any of our product candidates that receive regulatory approval or any such commercialization may experience delays or limitations. If we are unable to successfully commercialize our approved product candidates, either on our own or through collaborations with one or more third parties, our future product revenue will suffer and we may incur significant additional losses.

Further, in order to continue to commercialize XDEMVY or commercialize any product candidates, if approved, we must continue to build marketing, sales, distribution, managerial and other non-technical capabilities or make arrangements with third parties to perform these services for each of the territories in which we may have approval to sell and market our product candidates. We may not be successful in accomplishing these required tasks.

The sizes of the market opportunities for our product or product candidates, particularly XDEMVY for the treatment of* Demodex *blepharitis and TP-03 for the treatment of MGD, may be smaller than we estimate, possibly materially. If we overestimate the size of these markets, our sales growth may be adversely affected. We may also not be able to grow the markets for our product candidates as intended or at all.

Our assessment of the potential market opportunity for XDEMVY and other product candidates that we develop is based on industry and market data that we obtained from industry publications and research, surveys and studies conducted by third parties and our own internal epidemiology and market research studies. Industry publications and third-party research, surveys and studies generally indicate that their information has been obtained from sources believed to be reliable, although they do not guarantee the accuracy or completeness of such information. While we believe these industry publications and third-party research, surveys and studies are reliable, we have not independently verified such data. Similarly, although the studies we have conducted are based on information that we believe to be complete and reliable, we cannot guarantee that such information is accurate or complete. The potential market opportunities for the treatment of *Demodex* blepharitis and for the treatment of MGD is difficult to precisely estimate, because patients often have multiple ocular surface diseases and the symptoms have significant overlap, leading to frequent misdiagnosis of the various conditions. Therefore, our estimates of the potential market opportunities for our product candidates include several key assumptions based on our industry knowledge, industry publications, third-party research and our own epidemiology studies and market research, which may be based on a small sample size and fail to accurately reflect market opportunities. While we believe that our internal assumptions and the bases of the studies and research we have conducted are reasonable, no independent source has verified such assumptions or bases. If any of our assumptions or estimates, or these publications, research, surveys or studies prove to be inaccurate, then the actual market for XDEMVY or any of our other product candidates may be smaller than we expect, and as a result our revenue from product sales may be limited and it may be more difficult for us to achieve or maintain profitability.

Due to the patients presenting at ECP clinics with multiple ocular surface diseases, there is overlap in market size estimates for blepharitis and MGD. Therefore, if XDEMVY receives regulatory approval for the treatment of both *Demodex* blepharitis and MGD, our opportunity could be less than our forecasts because the actual market for XDEMVY might be significantly smaller than our estimates.

Even though we obtained regulatory approval with respect to XDEMVY for Demodex blepharitis, we may not be able to obtain regulatory approval for additional indications, such as MGD, or we may be required to conduct additional trials, which would limit our ability to realize the full market potential of XDEMVY or increase the costs of developing TP-03 for MGD.

We are exploring the therapeutic potential for TP-03 in MGD as an additional indication. If we are successful, the indication for use of TP-03 could potentially be broadened beyond the treatment of *Demodex* blepharitis to include MGD as an additional indication. However, there can be no assurance that we will obtain approval for any other indication, including MGD or for any broadened indication beyond the treatment of *Demodex* blepharitis. If we fail to maintain required approvals for these additional or broadened indications, or if regulatory approvals are delayed, we will not realize the full market potential of TP-03. Additionally, the FDA or other comparable foreign regulatory authority may require us to conduct additional clinical trials before seeking regulatory approval.

We face significant competition, and if our competitors develop and market technologies or products more rapidly than we do or that are more effective, safer or less expensive than the product candidates we develop, our commercial opportunities will be negatively impacted. XDEMVY and our product candidates, if approved, will also compete with existing branded, generic and off-label products.

The development and commercialization of new drug products is highly competitive. We face competition with respect to XDEMVY and our product candidates that we may seek to develop or commercialize in the future, from many different sources, including major pharmaceutical companies, specialty pharmaceutical companies and biotechnology companies worldwide and existing treatments. Potential competitors also include academic institutions, government agencies and other public and private research organizations that conduct research, seek patent protection and establish collaborative arrangements for research, development, manufacturing and commercialization.

Our commercial opportunity could be reduced or eliminated if our competitors develop and commercialize products that are safer, more effective, have fewer or less severe side effects, are more convenient or are less expensive than our products. Our competitors may obtain FDA approval or other regulatory authority approval for their products more rapidly than we may obtain approval for our product candidates, which could result in our competitors establishing a strong market position before we are able to enter the market.

In addition, our ability to compete may be affected in many cases by insurers or other third-party payers, particularly Medicare and other comparable foreign regulatory authorities, seeking to encourage the use of generic products. Generic products are currently being used for certain of the indications that we are pursuing, and additional products are expected to become available on a generic basis over the coming years.

Many of the companies against which we are competing or against which we may compete in the future have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, conducting clinical trials, obtaining regulatory approvals and marketing approved products than we do. Mergers and acquisitions in the pharmaceutical and biotechnology industries may result in even more resources being concentrated among a smaller number of our competitors. Smaller and early stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies. These third parties compete with us in recruiting and retaining qualified scientific and management personnel, establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs.

Additionally, while XDEMVY is approved for the treatment of blepharitis or *Demodex* blepharitis specifically, a number of other treatments are currently available for blepharitis in the U.S. Current treatments for blepharitis in the U.S. include over the counter remedies such as tea tree oil, lid wipes and artificial tears, as well as off-label prescription products. If ECPs were to continue to prescribe these other existing treatments instead of XDEMVY, our business would be adversely affected.

Although we obtained FDA approval of XDEMVY, and even if we obtain FDA approval of any of our product candidates, we may never obtain approval or authorization for such product candidates, including XDEMVY, in any other jurisdiction or commercialize such product candidates in the U.S. or in any other jurisdiction, which would limit our ability to realize their full market potential.

In order to market any products, including XDEMVY, outside of the U.S., we will need to comply with additional onerous but varying regulatory requirements of other countries regarding safety and efficacy on a country-by-country basis. Approval by the FDA in the U.S. does not ensure approval by comparable regulatory authorities in other countries or

jurisdictions nor does it ensure that we will be able to successfully commercialize XDEMVY or any other approved products in the U.S. or in other jurisdictions. In addition, clinical trials conducted in one country may not be accepted by regulatory authorities in other countries, and regulatory approval in one country does not mean that regulatory approval will be obtained in any other country. Further, successful commercialization in the U.S. does not guarantee successful commercialization in other jurisdictions. Approval procedures vary among countries and can involve additional product testing and validation and additional administrative review periods. Seeking foreign regulatory approvals could result in significant delays, difficulties and costs for us and may require additional preclinical studies or clinical trials which would be costly and time consuming. Regulatory requirements can vary widely from country to country and could delay or prevent the introduction of our products in those countries. Satisfying these and other regulatory requirements is costly, time consuming, uncertain and subject to unanticipated delays. In addition, our failure to obtain regulatory approval in any country may delay or have negative effects on the process for regulatory approval in other countries. We do not have any product candidates approved for sale in international markets, and we do not have experience in obtaining regulatory approval in international markets. If we, or our collaboration partners, fail to comply with regulatory requirements in international markets or to obtain and maintain required approvals, or if regulatory approvals in international markets are delayed, our ability to realize the full market potential of our products will be harmed.

Our future product candidates may cause significant adverse events, toxicities or other undesirable side effects which may delay or prevent marketing approval or cause us to abandon or limit further clinical development or commercialization of those product candidates. In addition, significant adverse events, toxicities or other undesirable side effects may be identified during post-marketing surveillance for XDEMVY, or future approved products, which could result in regulatory action or negatively affect our ability to market the product.

Adverse events or other undesirable side effects caused by our product candidates could cause us or regulatory authorities to interrupt, delay or halt clinical trials and could result in a more restrictive label or the delay or denial of regulatory approval by the FDA, the European Commission or other comparable foreign regulatory authorities.

During the conduct of clinical trials, subjects report changes in their health, including illnesses, injuries, and discomforts, to their study doctor. Often, it is not possible to determine whether or not the product candidate being studied caused these conditions. It is possible that as we test our product candidates in larger, longer and more extensive clinical trials, or as use of these product candidates becomes more widespread if they receive regulatory approval, illnesses, injuries, discomforts and other adverse events that were not observed in earlier trials, as well as conditions that did not occur or went undetected in previous trials, will be reported by subjects. Many times, side effects are only detectable after investigational products are tested in large-scale, Phase 3 clinical trials or, in some cases, after they are made available to patients on a commercial scale after approval.

Our understanding of the relationship between our product candidates and these adverse events may change as we gather more information, and additional unexpected adverse events or an increase in adverse event rates may occur. If additional clinical experience indicates that any of our product candidates have side effects or causes serious or life-threatening side effects, participant recruitment for trials and the ability of enrolled subjects to complete trials could be negatively impacted, and the development of the product candidate may fail or be delayed, which would severely harm our business, prospects, operating results and financial condition.

Additionally, if we or others later identify undesirable side effects or adverse events caused by XDEMVY or one of our product candidates that receives marketing approval, a number of potentially significant negative consequences could result, including, but not limited to:

- regulatory authorities may withdraw approvals of such product or require additional warnings on the label such as a black box warning, a contraindication or other limitations on the product's approved use, or issue safety alerts, Dear Healthcare Provider letters, press releases or other communications containing warnings or other safety information about the product;
- the product may be seized by regulatory authorities;
- there may be a recall of the product;
- we may be required to change the way the product is administered or conduct additional clinical trials or post-approval studies;

- we may be required to create and implement a Risk Evaluation Mitigation Strategy ("REMS") plan, which could include a medication guide outlining the risks of such side effects for distribution to patients, a communication plan for healthcare providers, including ECPs, and/or other elements to assure safe use;
- the product may become less competitive;
- we could be sued and held liable for harm caused to patients; and
- our reputation may suffer and there may be resulting harm to physician or patient acceptance of our product.

Any of these events could prevent us from achieving or maintaining market acceptance of the particular product candidate, if approved, and could significantly harm our business, results of operations, and prospects.

As we participate in the Medicaid Drug Rebate Program and other governmental pricing programs, failure to comply with obligations under these programs could result in additional reimbursement requirements, penalties, sanctions and fines, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Under the Medicaid Drug Rebate Program, a participating manufacturer is required to pay a rebate to each state Medicaid program for its covered outpatient drugs that are dispensed to Medicaid beneficiaries and paid for by the state Medicaid program as a condition of having federal funds being made available for drugs under Medicaid and Medicare Part B ("Medicare Part B"). Those rebates are based on pricing data reported by the manufacturer on a monthly and quarterly basis to the Centers for Medicare and Medicaid Services ("CMS"). These data include the average manufacturer price and, in the case of innovator products, the best price for each drug, which, in general, represents the lowest price available from the manufacturer to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity in the U.S. in any pricing structure, calculated to include all sales and associated rebates, discounts, and other price concessions. If we fail to pay the required rebate amount or report pricing data on a timely basis, we may be subject to civil monetary penalties and/or termination from the Medicaid Drug Rebate Program. Additionally, civil monetary penalties can be applied if we are found to have knowingly submitted any false price or product information to the government, if we fail to submit the required price data on a timely basis, or if we misclassify or misreport product information. CMS could also decide to terminate our Medicaid Drug Rebate Program, in which case federal payments may not be available under Medicaid or Medicare Part B for our covered outpatient drugs.

The Affordable Care Act of 2010 ("ACA") made significant changes to the Medicaid Drug Rebate Program, and CMS issued a final regulation to implement the changes to the Medicaid Drug Rebate Program under the ACA. CMS also issued a final regulation that modified prior Medicaid Drug Rebate Program regulations to permit reporting multiple best price figures with regard to value based purchasing arrangements; and provide definitions for “line extension,” “new formulation,” and related terms, with the practical effect of expanding the scope of drugs considered to be line extensions that are subject to an alternative rebate formula. While the regulatory provisions that purported to affect the applicability of the best price and average manufacturer price exclusions of manufacturer-sponsored patient benefit programs, in the context of pharmacy benefit managers ("PBM") “accumulator” programs were invalidated by a court, such programs may continue to negatively affect us in other ways. Our failure to comply with these price reporting and rebate payment options, as well as PBM “accumulator” programs, could negatively impact our financial results.

Federal law requires that a manufacturer also participate in the 340B Drug Pricing program ("340B program") in order for federal funds to be available for the manufacturer’s drugs under Medicaid and Medicare Part B. The 340B program requires participating manufacturers to agree to charge no more than the 340B “ceiling price” ("340B ceiling price") for the manufacturer’s covered outpatient drugs to a specified “covered entities,” including community health centers and other entities that receive certain federal grants, as well as hospitals that serve a disproportionate share of low-income patients. The 340B ceiling price is calculated using a statutory formula, which is based on the average manufacturer price and rebate amount for the covered outpatient drug as calculated under the Medicaid Drug Rebate Program. If we are found to have knowingly and intentionally charged 340B program covered entities more than the statutorily mandated ceiling price, we could be subject to significant civil monetary penalties and/or such failure also could be grounds for Health Resources and Services Administration to terminate our agreement to participate in the 340B program, in which case our covered outpatient drugs would no longer be eligible for federal payment under the Medicaid or Medicare Part B program.

Further, the Inflation Reduction Act of 2022 ("IRA") established a Medicare Part D Prescription Drug Program ("Medicare Part D") inflation rebate scheme (the first rebate period was in the fourth quarter of 2022 through the third quarter of 2023) and a drug price negotiation program, with the first negotiated prices to take effect in 2026. It also makes several

changes to the Medicare Part D benefit, including the creation of a new manufacturer discount program in place of the current coverage gap discount program (beginning in 2025). Manufacturers may be subject to civil monetary penalties for certain violations of the negotiation and inflation rebate provisions and an excise tax during a noncompliance period under the negotiation program. Drug manufacturers may also be subject to civil monetary penalties with respect to their compliance with the new Medicare Part D manufacturer drug discount program.

Pricing and rebate calculations are complex, vary across products and programs, and are often subject to interpretation by the manufacturer, governmental agencies, and courts. A manufacturer that becomes aware that its Medicaid reporting for a prior quarter was incorrect, or has changed as a result of recalculation of the pricing data, is obligated to resubmit corrected data up to three years after those data originally were due. Restatements and recalculations increase the costs for complying with the laws and policies governing the Medicaid Drug Rebate program and could result in an overage or underage in our rebate liability for past quarters. They also may affect the 340B ceiling price and therefore liability under the 340B program.

The Company accrues rebates for contractually agreed-upon discounts with commercial insurance companies and mandated discounts under government programs such as the Medicaid Drug Rebate Program, Medicare Part D, and other government health care programs in the U.S. The Company's estimates for expected utilization of commercial insurance rebates are based on data received from its customers. The Company's estimates for rebates under government programs are based on statutory discount rates and expected utilization as well as historical data it has accumulated since product launch. The Company's rebate calculations may require estimates, including estimates of customer mix, to determine which product sales will be subject to rebates and the amount of such rebates. The Company updates its estimates and assumptions on a quarterly basis and records any necessary adjustments to revenue in the period identified. Rebates are generally invoiced and paid in arrears so that the accrual balance consists of an estimate of the amount expected to be incurred for the current quarter's activity, plus an accrual balance for known prior quarters' unpaid rebates. If actual rebates vary from estimates, due to government invoicing delays or otherwise, the Company may need to adjust accruals, potentially adversely, which would affect product sales, net in the period of adjustment. An accrued liability is recorded for unpaid rebates related to product for which control has transferred to the customer.

Finally, in order to be eligible to have its products paid for with federal funds under the Medicaid and Medicare programs and purchased by the Department of Veterans Affairs ("VA"), Department of Defense ("DoD"), Public Health Service, and Coast Guard (collectively, the "Big Four agencies") and certain federal grantees, a manufacturer is required to participate in the VA Federal Supply Schedule ("FSS") pricing program, established under Section 603 of the Veterans Health Care Act of 1992. Under this program, the manufacturer is obligated to make its covered drugs available for procurement on an FSS contract and charge a price to the Big Four agencies that is no higher than the Federal Ceiling Price ("FCP"), which is a price calculated pursuant to a statutory formula. The FCP is derived from a calculated price point called the "non-federal average manufacturer price" ("Non FAMP"), which the manufacturer calculates and reports to the VA on a quarterly and annual basis. Pursuant to applicable law, knowing provision of false information in connection with a Non FAMP filing can subject a manufacturer to significant penalties for each item of false information. The FSS contract also contains extensive disclosure and certification requirements. If we overcharge the government in connection with the FSS contract or Tricare Retail Pharmacy Rebate Program, whether due to a misstated FCP or otherwise, we will be required to refund the difference to the government. Failure to make necessary disclosures and/or to identify contract overcharges can result in allegations against us under the False Claims Act and other laws and regulations. Unexpected refunds to the government, and any response to government investigation or enforcement action, would be expensive and time-consuming, and could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Under Section 703 of the National Defense Authorization Act for Fiscal Year 2008, the manufacturer is required to pay quarterly rebates to DoD on utilization of its innovator products that are dispensed through DoD's Tricare network pharmacies to Tricare beneficiaries. The rebates are calculated as the difference between the annual Non FAMP and FCP for the calendar year that the product was dispensed. A manufacturer that overcharges the government in connection with the FSS contract or Tricare Retail Pharmacy Rebate Program, whether due to a misstated FCP or otherwise, is required to refund the difference to the government. Failure to make necessary disclosures and/or to identify contract overcharges can result in allegations against us under the False Claims Act and other laws and regulations

We may expend our limited resources on the commercialization of XDEMVY for the treatment of Demodex blepharitis and fail to capitalize on product candidates or indications that may be more profitable or for which there is a greater likelihood of success.

Because we have limited financial and managerial resources, we must prioritize our research programs and will need to focus our product candidates on the potential treatment of certain indications. We are currently focused on the

commercialization, of XDEMVY for the treatment of *Demodex* blepharitis. As a result, we may forego or delay pursuit of opportunities with other product candidates or for other indications that later prove to have greater commercial potential. Our resource allocation decisions may cause us to fail to capitalize on the most viable commercial products or profitable market opportunities. Our spending on current and future research and development programs for TP-03 and other product candidates may not yield any commercially viable products. If we do not accurately evaluate the commercial potential or target market for XDEMVY, TP-03 for other indications and other product candidates, we may also relinquish valuable rights to that product candidate through collaboration, licensing or other royalty arrangements in cases in which it would have been more advantageous for us to retain sole development and commercialization rights to such product candidate.

The terms of approvals and ongoing regulation of XDEMVY and any other current product candidates or product candidates we develop could require substantial expenditure of resources and may limit how we manufacture and market our products, which could materially impair our ability to generate revenue from product sales.

XDEMVY, and any other product candidate for which we obtain regulatory approval, along with the manufacturing processes, post-approval clinical data, labeling, advertising, and promotional activities for such product, will be subject to continual requirements of and review by the FDA, the European Medical Agency ("EMA") and other regulatory authorities. These requirements include submissions of safety and other post-marketing information and reports, registration and listing requirements, current good manufacturing practice ("cGMP") requirements relating to quality control, quality assurance and corresponding maintenance of records and documents, and requirements regarding the distribution of samples to physicians and recordkeeping. Even if regulatory approval of a product candidate is granted, the approval may be subject to limitations on the indicated uses for which the product may be marketed or to the conditions of approval, or contain requirements for costly post-marketing testing and surveillance to monitor the safety or efficacy of the product.

Accordingly, we and our contract manufacturers will continue to expend time, money, and effort in all areas of regulatory compliance, including manufacturing, production, product surveillance, and quality control for XDEMVY and any other approved products. If we are not able to comply with post-approval regulatory requirements, we could have the regulatory approvals for our products, including XDEMVY, withdrawn by regulatory authorities and our ability to market XDEMVY or any future products could be limited, which could adversely affect our ability to achieve or sustain profitability. Further, the cost of compliance with post-approval regulations may have a negative effect on our business, operating results, financial condition, and prospects.

If XDEMVY or any of our product candidates that are approved for marketing are found to have been improperly promoted for off-label uses by us, or if ECPs misuse our products or use our products off-label, we may become subject to prohibitions on the sale or marketing of our products, product liability claims and significant fines, penalties and sanctions, and our brand and reputation could be harmed.

The FDA and other foreign regulatory authorities strictly regulate the marketing of and promotional claims that are made about drug products. In particular, a product may not be promoted for uses or indications that are not approved by the FDA or such other foreign regulatory authorities as reflected in the product's approved labeling. Any regulatory approval that the FDA or a foreign regulatory authority grants is limited to those specific diseases and indications for which a product is deemed to be safe and effective. For example, the FDA-approved label for XDEMVY is limited to the treatment of *Demodex* blepharitis, and we are not permitted to promote XDEMVY for any other uses, unless and until such uses are approved.

In addition, although we believe XDEMVY and our product candidates may exhibit a lower risk of side effects or more favorable tolerability profile or better symptomatic improvement than other products for the indications we are studying, without head-to-head data, we will be unable to make comparative claims for XDEMVY or our product candidates, if approved. If we receive regulatory approval for any of our products and are found to have promoted XDEMVY or any of our products or product candidates, if approved, for off-label uses, we may become subject to significant liability, which would materially harm our business. Both federal and state governments have levied large civil and criminal fines against companies for alleged improper promotion and have enjoined several companies from engaging in off-label promotion. If we become the target of such an investigation or prosecution based on our marketing and promotional practices, we could face similar sanctions, which would materially harm our business. In addition, our management's attention could be diverted from our business operations, significant legal expenses could be incurred, and our brand and reputation could be damaged. The FDA has also previously requested that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed. If we are deemed by the FDA to have engaged in the promotion of our products for off-label use, we could be subject to FDA regulatory or enforcement actions, including the issuance of an untitled letter, a warning letter, injunction, seizure, civil fine, or criminal penalties. It is also possible that other federal, state, or foreign enforcement authorities might take action if they determine our business activities constitute promotion of an off-label use, which could result in significant penalties, including criminal, civil or administrative penalties, damages, fines, disgorgement, exclusion from participation in government healthcare programs and the curtailment or restructuring of our operations. We

cannot, however, prevent an ECP from using XDEMVY or our product candidates in ways that fall outside the scope of the approved indications, as he or she may deem appropriate in his or her medical judgment. ECPs may also misuse XDEMVY or our product candidates, if approved, or use improper techniques, which may lead to adverse results, side effects or injury and, potentially, subsequent product liability claims. Furthermore, the use of XDEMVY or our product candidates, if approved, for indications other than those approved by the FDA and/or other regulatory authorities may not effectively treat such conditions, which could harm our brand and reputation among ECPs and patients.

Clinical drug development is a lengthy, expensive and risky process with uncertain timelines and uncertain outcomes, and results of earlier studies and trials may not be predictive of future results. If clinical trials of our product candidates do not meet safety or efficacy endpoints or are prolonged or delayed, we may be unable to obtain required regulatory approvals, and therefore be unable to commercialize our product candidates on a timely basis or at all.

Before obtaining marketing approval from regulatory authorities for the sale of our product candidates, we must conduct extensive clinical trials to demonstrate the safety and efficacy of the product candidates in humans. The research and development of drugs is an extremely risky industry. Only a small percentage of product candidates that enter the development process ever receive marketing approval. Failure or delay can occur at any time during the clinical trial process. To date, we have focused substantially all of our efforts and financial resources on identifying, acquiring, and developing our product candidates, including conducting preclinical studies and clinical trials. Clinical testing is expensive and can take many years to complete, and we cannot be certain that any clinical trials will be conducted as planned or completed on schedule, if at all. Furthermore, product candidates are subject to continued preclinical safety studies, which may be conducted concurrently with our clinical testing. The outcomes of these safety studies may delay the launch of or enrollment in future clinical trials and could impact our ability to continue to conduct our clinical trials. Our inability to successfully complete preclinical and clinical development could result in additional costs to us and negatively impact our ability to generate revenue. Our future success is dependent on our ability to successfully develop, obtain regulatory approval for, and then successfully commercialize product candidates. We currently generate revenue from product sales for one product, and we may never be able to develop or commercialize additional marketable products.

The results of preclinical and early clinical trials of our product candidates and other products with the same mechanism of action may not be predictive of the results of later-stage clinical trials. For example, we may not be able to replicate the safety and efficacy results of our Phase 2b/3 clinical trials for *Demodex* blepharitis in clinical trials for other indications in the future. Clinical trial failure may result from a multitude of factors including flaws in trial design, dose selection, placebo effect, patient enrollment criteria and other challenges with enrolling and maintaining trial subjects, relatively smaller sample size in earlier trials, and failure to demonstrate favorable safety or efficacy traits. As such, failure in clinical trials can occur at any stage of testing. A number of companies in the biopharmaceutical industry have suffered setbacks in the advancement of clinical trials due to lack of efficacy or adverse safety profiles, notwithstanding promising results in earlier trials, and we cannot be certain that we will not face similar setbacks. Based upon negative or inconclusive results, we may decide, or regulators may require us, to conduct additional clinical trials or preclinical studies. In addition, data obtained from clinical trials are susceptible to varying interpretations, and regulators may not interpret our data as favorably as we do, which may further delay, limit or prevent marketing approval. Furthermore, as more product candidates within a particular class of drugs proceed through clinical development to regulatory review and approval, the amount and type of clinical data that may be required by regulatory authorities may increase or change. The outcome of preclinical testing and early clinical trials may not be predictive of the success of later clinical trials, and preliminary or interim results of a clinical trial do not necessarily predict final results. For example, our product candidates may fail to show the desired safety and efficacy in clinical development despite positive results in preclinical studies or having successfully advanced through initial clinical trials. The failure of any of our product candidates to demonstrate safety and efficacy in any clinical trial could negatively impact the perception of our other product candidates or cause regulatory authorities to require additional testing before approving any of our product candidates.

If we are unable to complete preclinical or clinical trials of current or future product candidates, due to safety concerns, or if the results of these trials are not satisfactory to convince regulatory authorities of their safety or efficacy, we will not be able to obtain marketing approval for commercialization. Even if we are able to obtain marketing approvals for any of our product candidates, those approvals may be for indications that are not as broad as desired or may contain other limitations that would adversely affect our ability to generate revenue from sales of those products. Moreover, if we are not able to differentiate our product against other approved products within the same class of drugs, or if any of the other circumstances described above occur, our business would be materially harmed and our ability to generate revenue from that class of drugs would be severely impaired.

Each of our product candidates will require additional clinical development, management of clinical, preclinical (for some of our product candidates) and/or manufacturing activities, regulatory approval in multiple jurisdictions, achieving and maintaining commercial-scale supply, building of a commercial organization, substantial investment and significant

marketing efforts before we generate any revenues from product sales. We are not permitted to market or promote any of our product candidates before we receive regulatory approval from the FDA or comparable foreign regulatory authorities, and we may never receive such regulatory approval for any of our product candidates. We may experience delays in our ongoing clinical trials, and we do not know whether planned clinical trials will begin on time, need to be redesigned, enroll patients on time or be completed on schedule, if at all. Any recommendations by the FDA regarding our applications or clinical trials could cause delay of any regulatory approval by the FDA and cause our expenses to increase. We may experience numerous unforeseen events during, or as a result of, clinical trials that could delay or prevent our ability to receive marketing approval or commercialize our product candidates, or any other product candidates that we may develop, including:

- we may experience delays in or failure to reach agreement on acceptable terms with prospective CROs, vendors and clinical sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs, vendors and trial sites;
- we may fail to obtain sufficient enrollment in our clinical trials, our enrollment needs may grow larger than we anticipate, or participants may fail to complete our clinical trials at a higher rate than we anticipate;
- clinical trials of our product candidates may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical trials or abandon product development programs;
- we may decide, or regulators or institutional review boards ("IRBs) or ethics committees may require us, to suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements or a finding that the participants are being exposed to unacceptable health risks;
- regulators or IRBs or ethics committees may not authorize us or our investigators to commence a clinical trial at a prospective clinical trial site or at all or may require us to perform additional or unanticipated clinical trials to obtain approval or we may be subject to additional post-marketing testing requirements to maintain regulatory approval;
- regulators may revise the requirements for approving our product candidates, or such requirements may not be as we anticipate;
- the cost of clinical trials of our product candidates may be greater than we anticipate, and we may need to delay or suspend one or more trials until we complete additional financing transactions or otherwise receive adequate funding;
- the supply or quality of our product candidates or other materials necessary to conduct clinical trials of our product candidates may be insufficient or inadequate or may be delayed;
- our product candidates may have undesirable side effects or other unexpected characteristics, causing us or our investigators, regulators or IRBs or ethics committees to suspend or terminate trials;
- regulatory authorities may determine that the planned design of our clinical trials is flawed or inadequate;
- regulatory authorities may suspend or withdraw their approval of a product or impose restrictions on its distribution;
- we may not be able to timely or at all obtain INDs for a product candidate;
- we may modify a preclinical study or clinical trial protocol;
- third-party contractors may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all;
- we may be unable to establish clinical endpoints that applicable regulatory authorities consider clinically meaningful, or, if we seek accelerated approval, biomarker efficacy endpoints that applicable regulatory authorities consider likely to predict clinical benefit;

- we may experience delays due to the outbreak of health epidemics, including with respect to the conduct of ongoing clinical trials, receipt of product candidates or other materials, submission of NDAs, filing of INDs, and starting any clinical trials for other indications or programs; and

- we may experience manufacturing delays due to health epidemics in our supply chain caused by a shortage of raw materials, a lack of employees on site at our suppliers due to illness, or a lack of productivity at our suppliers due to local or national government quarantine restrictions on coming to the workplace.

If we are required to conduct additional clinical trials or other testing of our product candidates beyond those that we currently contemplate, if we are unable to successfully complete clinical trials of our product candidates or other testing, if the results of these trials or tests are not positive or are only modestly positive, if there are safety concerns or if we determine that the observed safety or efficacy profile would not be competitive in the marketplace, we may:

- incur unplanned costs;

- be delayed in obtaining marketing approval for our product candidates;

- not obtain marketing approval at all;

- obtain marketing approval in some countries and not in others;

- obtain approval for indications or patient populations that are not as broad as intended or desired;

- obtain approval with labeling that includes significant use or distribution restrictions or safety warnings;

- be subject to additional post-marketing testing requirements; or

- have the product removed from the market after obtaining marketing approval.

We cannot be certain whether any of our planned clinical trials will begin on schedule or any preclinical studies we plan to initiate will begin on our intended schedule, or whether any such studies or clinical trials will need to be restructured or will be completed on schedule, or at all. If we experience delays in the completion of, or termination of, any clinical trial of our product candidates, or are unable to achieve clinical endpoints due to unforeseen events, such as health epidemics, the commercial prospects of our product candidates will be harmed, and our ability to generate product revenues from any of these product candidates will be delayed. In addition, any delays in completing our clinical trials will increase our costs, slow down our product candidate development and approval process and jeopardize our ability to generate additional revenue from product sales. Significant clinical trial delays could also allow our competitors to bring products to market before we do or shorten any periods during which we have the exclusive right to commercialize our product candidates and impair our ability to commercialize our product candidates and may harm our business and results of operations.

Our product candidates still require significant testing. We only recently began clinical trials to test TP-04 and TP-05 in humans and, as a company, we have limited experience in this area.

We are early in our development efforts for our product candidates and indications, including TP-03 for the treatment of MGD, TP-04 for the treatment of rosacea and TP-05 for potential Lyme disease prophylaxis and community malaria reduction. The risk of failure for product candidates in early development is high. Extensive clinical trials are necessary to demonstrate the safety and efficacy of such product candidates in humans. Clinical trials may fail to demonstrate that such product candidates are safe for humans and effective for indicated uses. Further, we intend to leverage data from the TP-03 preclinical studies and clinical safety assessments for the treatment of *Demodex* blepharitis to satisfy the preclinical study requirements for TP-03 for the treatment of MGD, and TP-04 and TP-05 and other indications. For MGD, we announced the enrollment of our first patient in the Phase 2a Ersa trial studying TP-03 for the potential treatment of MGD and in December 2023 reported positive topline results. For rosacea, we conducted the Phase 1 Galatea trial with TP-04 and initiated the Phase 2a Galatea trial, for the treatment of rosacea in March 2023. In February 2024, we announced positive topline results and plan to discuss and determine the potential regulatory path with the FDA. With respect to Lyme disease, in December 2022 we announced positive topline results from the completed Callisto trial and enrollment of the first patient in the Carpo trial. The Carpo trial, evaluating TP-05, a novel investigative oral, non-vaccine pharmacological prophylactic for the potential prevention of Lyme disease in humans is a randomized, double-blind, placebo-controlled trial that evaluated the efficacy of TP-05 in killing lab grown, non-disease carrying ticks after they have attached to the skin of healthy volunteers, as well as confirm the safety, tolerability, and blood concentration of TP-05. In February 2024, we announced positive topline results from the Carpo trial and plan to discuss and determine the potential regulatory path with the FDA. The FDA may reject our use of data from

TP-03 preclinical studies for the treatment of *Demodex* blepharitis for other indications or require additional studies to augment the data to advance for clinical development. The FDA may also reject our use of data from preclinical studies conducted by third parties for Lyme disease and require us to conduct additional preclinical studies before advancing to additional clinical trials. In addition, data from preclinical studies conducted by third parties may not be as reliable as data from studies conducted by us and since we did not conduct the studies, there may be weaknesses in the studies design or results that we may not be aware of.

In part because of our limited infrastructure, experience conducting clinical trials as a company and regulatory interactions, we cannot be certain that our clinical trials will be completed on time, that our planned clinical trials will be initiated on time, if at all, that our planned development programs would be acceptable to the FDA or other comparable foreign regulatory authorities, or that, if approval is obtained, such product candidates can be successfully commercialized.

We have and may continue to encounter difficulties or delays enrolling patients in our clinical trials, which could cause delays in or adverse effects of our clinical development activities.

We have and may continue to experience difficulties in patient enrollment in our clinical trials for a variety of reasons. The timely completion of clinical trials in accordance with their protocols depends, among other things, on our ability to enroll a sufficient number of patients who remain in the study until its conclusion. We have and may continue to experience difficulties in patient enrollment in our clinical trials for a variety of reasons. For example, we recently experienced delays related to our Carpo trial with topline results pushed out to February 2024 as a result of patient enrollment delays. The enrollment of patients depends on many factors, including:

- the patient eligibility criteria defined in the protocol;
- size of the patient population required for analysis of the trial's primary endpoints;
- the proximity of patients to study sites;
- the design of the trial;
- our ability to recruit clinical trial investigators with the appropriate competencies and experience;
- clinicians' and patients' perceptions as to the potential advantages of the product candidate being studied in relation to other available therapies, including any new drugs that may be approved for the indications we are investigating;
- our ability to obtain and maintain patient consents;
- costs to, or lack of adequate compensation for, prospective patients;
- difficulties of enrolling patients or patients continuing to participate in follow-up visits due to ongoing or new health epidemics; and
- the risk that patients enrolled in clinical trials will drop out of the trials before completion.

In addition, our clinical trials may compete with other clinical trials for product candidates that are in the same therapeutic areas as our product candidates, and this competition would reduce the number and types of
patients available to us, because some patients who might have opted to enroll in our trials may instead opt to enroll in a trial being conducted by one of our competitors. Since the number of qualified clinical investigators is limited, we expect to conduct some of our clinical trials at the same clinical trial sites that some of our competitors use, which will reduce the number of patients who are available for our clinical trials in such clinical trial site. Moreover, potential patients and their doctors may be inclined to use existing therapies rather than enroll patients in any future clinical trial.

Delays in patient enrollment may result in increased costs or may affect the timing or outcome of the planned clinical trials, which could prevent completion of these trials and adversely affect our ability to advance the development of our product candidates.

Any termination or suspension of, or delays in the commencement or completion of, our planned clinical trials could result in increased costs to us, delay or limit our ability to generate revenue from product sales and adversely affect our commercial prospects.

Before we can initiate clinical trials in the U.S. for our product candidates, we must submit the results of preclinical testing and any previous clinical studies to the FDA along with other information, including information about product candidate chemistry, manufacturing and controls and our proposed clinical trial protocol, as part of an IND. The initiation of clinical trials in the 27 member states of the EU (the "EU Member States") will be subject to similar requirements concerning approval by competent national authorities and the receipt of a positive opinion from the relevant ethics committees. We do not know whether our planned trials will begin on time or be completed on schedule, if at all. The commencement and completion of clinical trials can be delayed for a number of reasons, including delays related to:

- the FDA or comparable foreign regulatory authorities placing the clinical trial on hold;
- subjects failing to enroll or remain in our trial at the rate we expect;
- subjects choosing an alternative treatment or other product candidates, or participating in competing clinical trials;
- lack of adequate funding to continue the clinical trial;
- subjects experiencing severe or unexpected drug-related adverse effects;
- failure to demonstrate efficacy of the product;
- any interruptions or delays in the supply of our product candidates for our clinical trials;
- a facility manufacturing any of our product candidates or any of their components being ordered by the FDA or comparable foreign regulatory authorities to temporarily or permanently shut down due to violations of cGMP regulations or other applicable requirements, or infections or cross-contaminations of product candidates in the manufacturing process;
- any changes to our manufacturing process that may be necessary or desired;
- any failure or delay in reaching an agreement with CROs, vendors and clinical trial sites;
- third-party clinical investigators losing the licenses or permits necessary to perform our clinical trials, not performing our clinical trials on our anticipated schedule or consistent with the clinical trial protocol, good clinical practices ("GCP") or regulatory requirements or other third parties not performing data collection or analysis in a timely or accurate manner;
- third-party contractors becoming debarred, disqualified or suspended or otherwise penalized by the FDA or other comparable foreign regulatory authorities for violations of applicable regulatory requirements, in which case we may need to find a substitute contractor, and we may not be able to use some or all of the data produced by such contractors in support of our marketing applications;
- one or more IRBs, other ethics committees refusing to approve, suspending or terminating the trial at an investigational site, precluding enrollment of additional subjects, or withdrawing its approval of the trial; or
- changes in regulatory requirements and policies, which may require us to amend clinical trial protocols to comply with these changes and resubmit our clinical trial protocols to IRBs or ethics committees for reexamination.

Any delays in completing our clinical trials will increase our costs, slow down our product candidate development and approval process and jeopardize the commercial prospects of our product candidates and our ability to generate revenue from product sales.

In addition, many of the factors that cause, or lead to, termination or suspension of, or a delay in the commencement or completion of, clinical trials may also ultimately lead to the denial of regulatory approval of a product candidate. For example, if we make manufacturing or formulation changes to our product candidates, we may need to conduct

additional studies to bridge our modified product candidates to earlier versions. Further, if one or more clinical trials are delayed, our competitors may be able to bring products to market before we do, and the commercial viability of our product candidates could be significantly reduced. Any of these occurrences may harm our business, financial condition and prospects significantly. Any termination of any clinical trial of our product candidates will harm our commercial prospects and our ability to generate revenue from product sales.

Our future growth may depend, in part, on our ability to penetrate foreign markets, where we would be subject to additional regulatory burdens and other risks and uncertainties.

Our future profitability may depend, in part, on our ability to commercialize our product candidates in foreign markets for which we may rely on collaboration with third parties, such as our China Out-License. We are evaluating the opportunities for the development and commercialization of our product candidates in other foreign markets. We are not permitted to market or promote any of our product candidates before we receive regulatory approval from the applicable regulatory authority in that foreign market, and we may never receive such regulatory approval for any of our product candidates. To obtain separate regulatory approvals in other countries we may be required to comply with numerous and varying regulatory requirements of such countries regarding the safety and efficacy of our product candidates and governing, among other things, clinical trials and commercial sales, pricing and distribution of our product candidates, and we cannot predict success in these jurisdictions. If we obtain approval of our product candidates and ultimately commercialize our product candidates in foreign markets, we would be subject to additional risks and uncertainties, including:

- our customers' ability to obtain reimbursement for our product candidates in foreign markets;
- our inability to directly control commercial activities if we are relying on third parties;
- the burden of complying with complex and changing foreign regulatory, tax, accounting and legal requirements;
- different medical practices and customs in foreign countries affecting acceptance in the marketplace;
- import or export licensing requirements;
- longer accounts receivable collection times;
- longer lead times for shipping;
- language barriers for technical training and the need for language translations;
- reduced protection of intellectual property rights in some foreign countries;
- the existence of additional potentially relevant third-party intellectual property rights;
- foreign currency exchange rate fluctuations; and
- the interpretation of contractual provisions governed by foreign laws in the event of a contract dispute.

For example, the pharmaceutical industry in the China Territory is subject to comprehensive government regulation and supervision, encompassing the approval, registration, manufacturing, packaging, licensing and marketing of new drugs. In recent years, the regulatory framework in the China Territory regarding the pharmaceutical industry has undergone significant changes, and we expect that it will continue to undergo significant changes. Any such changes or amendments may result in increased compliance costs on our business or cause delays in or prevent the successful development of TP-03 by GrandPharma under the China Out-License and reduce the current benefits we believe are available to us. The China Territory authorities have become increasingly vigilant in enforcing laws in the pharmaceutical industry and any failure by GrandPharma or our other partners to maintain compliance with applicable laws and regulations or obtain and maintain required licenses and permits may result in the suspension or termination of our partner's business activities in the China Territory. Additionally, to the extent that we enter into collaborations with third parties for development and/or commercialization of our products or product candidates in foreign markets, we will be unable to directly control development and commercial activities or whether such third parties continue to develop or commercialize such products or product candidates. For example, on February 13, 2024, LianBio announced its completion of a comprehensive strategic review and determined to initiate the wind down of its operations, including the sale of remaining pipeline assets, the delisting of its American Depositary Shares, deregistration under Section 12(b) of the Exchange Act, and workforce reductions. In March 2024, we executed the Novation Agreement with GrandPharma and LianBio to transition the rights to develop and commercialize TP-03 in China for the treatment of *Demodex*

blepharitis and MGD. As of the date of this filing, it is uncertain if and when we will receive any future milestone consideration under the China Out-License.

Another example of the changing regulatory requirements is that in the European Union ("EU"), the European Commission has presented a proposal to reform the current EU pharmaceutical legislation. The proposal intends to reduce the regulatory data protection period and orphan market exclusivity period for new medicinal products. It is currently uncertain if the proposal will be adopted in its current form and it is uncertain if and when the revised legislation would enter into force.

Foreign sales of our product candidates could also be adversely affected by the imposition of governmental controls, political and economic instability, trade restrictions and changes in tariffs. In some countries, particularly the countries in Europe, the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a drug. To obtain reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidate to other available therapies. If reimbursement of our products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be harmed, possibly materially.

We have conducted a number of our completed clinical trials for our product candidates at sites outside the U.S., and the FDA may not accept data from trials conducted in such locations.

Although the FDA may accept data from clinical trials conducted outside the U.S., acceptance of this data is subject to conditions imposed by the FDA. For example, the clinical trial must be well designed and conducted and be performed by qualified investigators in accordance with certain ethical and policy principles, including GCP standards. Among other requirements, the trial data must be applicable to the U.S. population and U.S. medical practice in ways that the FDA deems clinically meaningful. In addition, while these clinical trials are subject to the applicable local laws, FDA acceptance of the data will depend on its determination that the trials also complied with certain U.S. laws and regulations. There can be no assurance the FDA will accept data from clinical trials conducted outside of the U.S. There can also be no assurance that the comparable foreign regulatory authority in any jurisdiction in which we seek regulatory approval for our product candidates will accept data from clinical trials conducted outside such jurisdiction. If the FDA or any such foreign regulatory authority does not accept the data from any trial that we have conducted outside the U.S., it would likely result in the need for additional trials, which would be costly and time-consuming and could delay or permanently halt our development of the applicable product candidates.

In addition, there are risks inherent in conducting clinical trials in multiple jurisdictions, inside and outside of the U.S. and if we conduct trials outside of the U.S., we may face risks, such as:

- regulatory and administrative requirements of the jurisdiction where the trial is conducted that could burden or limit our ability to conduct our clinical trials;
- foreign exchange rate fluctuations;
- manufacturing, customs, shipment and storage requirements;
- cultural or legal differences in the standards for medical practice and clinical research;
- diminished protection of intellectual property in some countries;
- different cultural attitudes to self-reported adverse events (such as burning, stinging, blurry vision) leading to a different safety profile; and
- the risk that the patient populations in such trials are not considered representative as compared to the patient population in the target markets where approval is being sought.

Managing our obligations under our in-license and out-license agreements and other strategic agreements may divert management time and attention, causing delays or disruptions to our business.

We have entered into two license agreements with Elanco Tiergesundheit AG (“Elanco”): (i) a license agreement for exclusive worldwide rights to certain intellectual property for the development and commercialization of lotilaner in the treatment or cure of any eye or skin disease or condition in humans, as amended in June 2022 ("Eye and Derm Elanco Agreement") and (ii) a license agreement with Elanco granting it a worldwide license to certain intellectual property for the development and commercialization of lotilaner for the treatment, palliation, prevention, or cure of all other diseases and

conditions in humans (i.e., beyond that of the eye or skin), as amended in June 2022 (the "All Human Uses Elanco Agreement" and with the Eye and Derm Elanco Agreement, the "Elanco Agreements"), and have also entered into the China Out-License as discussed elsewhere herein. We also may in the future enter into in-license or out-license agreements with multiple licensors and strategic agreements, which, subject us to various obligations, including diligence obligations, reporting and notification obligations, payment obligations for achievement of certain milestone as well as other material obligations. We may need to devote substantial time and attention to ensuring that we successfully integrate these transactions into our existing operations and are compliant with our obligations under these agreements, which may divert management's time and attention away from our research and development programs or other day-to-day activities.

Our in-license, out-license, and strategic agreements are also complex and certain provisions in those agreements may be susceptible to multiple interpretations. In the event of any disagreement about the interpretation of these provisions, our management may need to devote a disproportionate amount of its attention to resolving these disagreements. Such disruptions may cause delays in our research and development programs and other business objectives.

Our operating activities may be restricted by certain covenants in our license and other strategic agreements, which could limit our development and commercial opportunities.

In connection with our in-license, out-license, or other collaborations or strategic alliances, we may agree to and be bound by negative covenants which may limit our development and commercial opportunities. For example, pursuant to the Elanco Agreements, we made certain covenants to only engage with third party suppliers previously approved by Elanco, and only under certain circumstances. These provisions may inhibit our development efforts, prevent us from forming strategic collaborations to develop and potentially commercialize any other product candidates and may materially harm our business, financial condition, results of operations and prospects.

Interim top-line and preliminary results from our clinical trials that we announce or publish from time to time may change as more participant data become available and are subject to audit and verification procedures, which could result in material changes in the final data.

From time to time, we may publish interim top-line or preliminary results from our clinical trials. Interim results from clinical trials that we may complete are subject to the risk that one or more of the clinical outcomes may materially change as participant enrollment continues and more participant data become available. We also make assumptions, estimations, calculations, and conclusions as part of our analyses of data, and we may not have received or had the opportunity to fully evaluate all data. Preliminary or top-line results also remain subject to audit and verification procedures that may result in the final data being materially different from the preliminary data we previously published. As a result, interim and preliminary data should be viewed with caution until the final data are available. Adverse differences between preliminary or interim data and final data could be material and could significantly harm our reputation and business prospects and may cause the trading price of our common stock to fluctuate significantly.

Risks Related to our Financial Position and Need for Additional Capital

Our limited operating history may make it difficult for you to evaluate the success of our business to date and to assess our future viability.

We commenced activities in 2016. Our limited operating history may make it difficult to evaluate the success of our business to date and to assess our future viability. Our operations to date have been limited to organizing our company, raising capital, identifying and developing product candidates, establishing licensing arrangements and/or acquiring necessary technology, undertaking research, preclinical studies and clinical trials of our product candidates, establishing arrangements for the manufacture of XDEMVY and other product candidates and longer-term planning for commercialization efforts of XDEMVY and our other potential product candidates. Our prospects must be considered in light of the uncertainties, risks, expenses and difficulties frequently encountered by companies in their early stages of operations. We have limited experience in obtaining marketing approvals, manufacturing commercial scale product or arranging for a third party to do so on our behalf, or conducting sales, marketing and distribution activities necessary for successful product commercialization. Consequently, any predictions made about our future success or viability may not be as accurate as they could be if we had a longer operating history or a history of successfully developing, obtaining marketing approval for and commercializing products. In addition, as our business grows, we may encounter unforeseen expenses, difficulties, complications, delays and other known and unknown obstacles. We may not be successful as we transition from a company with a research and development focus to a company capable of supporting commercial activities.

Due to the ongoing commercialization of XDEMVY and our continued development of our pipeline of product candidates through clinical trials and other indications, our capital requirements are difficult to predict and may change. We may need to obtain substantial additional funding to achieve our goals and a failure to obtain this necessary capital when needed on acceptable terms, or at all, could force us to delay, reduce or eliminate our product development programs, commercialization efforts or other operations.

Since our inception, we have funded our operations through private placements of preferred stock, convertible promissory notes, the sale of our common stock in our IPO and the Follow-On Public Offerings, and the 2023 ATM Prospectus, as well as proceeds from product sales, net, our China Out-License, and draws on our Credit Facilities. We expect our expenses to increase substantially and we will require a larger amount of capital to fund our commercialization efforts, the development of our product candidates and the maintenance and expansion of our operations and capabilities. These expenditures will include costs associated with marketing and selling any products approved for sale, including XDEMVY, conducting non-clinical studies and clinical trials, obtaining regulatory approvals, securing manufacturing and supply of product candidates, costs associated with in-licensing assets consistent with our core strategy and other unanticipated costs. Further, as a public company, we incur significant legal, accounting and other costs associated with operating as a public company.

We believe that our cash, cash equivalents and marketable securities of $323.6 million as of June 30, 2024 and expected sales of XDEMVY is sufficient to fund our current and planned operations for at least the next twelve months from the date of filing this Quarterly Report on Form 10-Q.

We will need to raise substantial additional capital to complete the development and commercialization of XDEMVY and our other product candidates through one or more of: equity offerings, draws from our Credit Facilities, marketing and distribution arrangements and other collaborations, strategic alliances and licensing arrangements or other sources.

Due to the complexities of our transition to a commercial-stage company, it is challenging to estimate the actual amounts necessary to successfully commercialize any products approved for sale. We may need to raise additional funds earlier than currently anticipated if we choose to pursue additional indications for our product candidates, acquire new product candidates or otherwise expand our business more rapidly than we presently planned. We have based these estimates on assumptions that may prove to be incorrect or require adjustment because of our ongoing business decisions, and we could utilize our available capital resources sooner than we currently expect. Our future capital requirements will depend on many factors, including:

- the cost and timing, receipt and amount of sales and marketing capabilities of any current and future products, including the success of our commercialization efforts involving XDEMVY;
- market acceptance of our current and future products, including XDEMVY, and the impact of any competing products;
- the ability of patients or healthcare providers to obtain coverage of or sufficient reimbursement for any current or future products;
- the scope and costs of manufacturing development and commercial manufacturing activities and our ability to scale them up;
- the scope, rate of progress, costs and results of our drug discovery, preclinical development activities, laboratory testing and clinical trials for our product candidates;
- the number and scope of clinical programs we decide to pursue;
- the extent to which we acquire or in-license other product candidates and technologies;
- the cost, timing and outcome of regulatory review of our product candidates, including the potential for regulatory authorities to require that we conduct more studies and trials than those that we currently expect to conduct and the costs of post-marketing studies or REMS that could be required by regulatory authorities;
- suspensions or delays in enrollment of our ongoing and future clinical trials, issues with data collection, or changes to the number of subjects we decide to enroll in clinical trials, including as a result of health pandemics, competing trials, or otherwise;

- the costs of commercialization activities for any current or future products that are approved for sale, including marketing, sales, and distribution costs, and any discounts or rebates to obtain access;
- potential changes in the regulatory environment and enforcement rules;
- the costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending intellectual property-related claims;
- our ability to establish and maintain collaborations on favorable terms, if at all;
- our ability to satisfy our outstanding debt obligations;
- our efforts to enhance operational systems and our ability to attract, hire and retain qualified personnel, including personnel to support the sales and marketing activities associated with the commercialization of our products, including XDEMVY, and the development of our product candidates;
- potential changes in pharmaceutical pricing and reimbursement infrastructure;
- the costs related to any future collaboration or licensing partners upon the achievement of negotiated milestones;
- the costs associated with any product liability or other lawsuits related to our products;
- the expense needed to attract and retain skilled personnel; and
- the costs associated with being a public company.

Commercialization efforts of any current or future products, including our commercialization efforts involving XDEMVY, identifying potential product candidates and conducting preclinical studies and clinical trials is a time consuming, expensive and uncertain process that takes years to complete, and we may never generate the necessary data or results required to obtain marketing approval for our product candidates. In addition, our product candidates, if approved, may not achieve adequate product sales or commercial success. Although we initiated commercialization of XDEMVY for the treatment of *Demodex* blepharitis in August 2023, we will need to continue to sustain our existing capital resources to fund our future operating expenses and capital expenditure requirements. Adequate additional financing may not be available to us on acceptable terms, or at all, and may be impacted by the economic climate and market conditions. If we are unable to raise capital when needed or on attractive terms, we would be forced to delay, limit, reduce or eliminate our research and development programs or future commercialization efforts or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves. In addition, attempting to secure additional financing may divert the time and attention of management from day-to-day activities and distract from our research and development efforts. Alternatively, we may seek additional capital due to favorable market conditions or strategic considerations, even if we believe we have sufficient funds for our current or future operating plans.

Raising additional capital may cause dilution to our stockholders, restrict our operations or require us to relinquish rights to our technologies or product candidates.

Until such time we can generate substantial revenue from product sales, including from XDEMVY, our only approved product, we expect to finance our cash needs through possible combinations of equity offerings, debt financings, collaborations, strategic alliances and licensing arrangements. To the extent that we raise additional capital through the sale of equity or convertible debt securities, your ownership interest will be diluted and the terms of these securities may include liquidation or other preferences that adversely affect your rights as a common stockholder. For example, in May 2022, August 2023, and March 2024, we completed the Follow-On Public Offerings, in which we received total proceeds of $74.2 million, $99.3 million, and $107.7 million, respectively (after deducting underwriting discounts, commissions and other estimated offering-related expenses) through the issuance of 5,889,832 shares of our common stock in the May 2022 Public Offering, 6,069,449 shares of our common stock in the August 2023 Public Offering, and 3,281,250 shares of our common stock, and in lieu of common stock to a certain investor, pre-funded warrants to purchase 312,500 shares of our common stock in the March 2024 Public Offering. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions. For example, the 2024 Credit Facility restricts our ability to pursue certain transactions that we may believe to be in our best interests without the prior written consent of Pharmakon, including but not limited to: disposing of assets, engaging in mergers, acquisitions, and similar transactions, incurring additional indebtedness, granting liens, making

investments, paying dividends or making distributions or certain other restricted payments in respect of equity, prepaying other indebtedness, entering into restrictive agreements, undertaking fundamental changes or amending certain material contracts, in each case subject to certain customary exceptions and negotiated carve outs.

If we raise funds through collaborations, strategic alliances or licensing arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs or product candidates or grant licenses on terms that may not be favorable to us. If we raise funds through research grants, we may be subject to certain requirements, which may limit our ability to use the funds or require us to share information from our research and development. Raising additional capital through any of these or other means could adversely affect our business and the holdings or rights of our stockholders, and may cause the market price of our shares to decline. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or continued and future commercialization efforts or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

Adverse developments affecting the financial services industry, such as actual events or concerns involving liquidity, defaults or non-performance by financial institutions or transactional counterparties, could adversely affect our business and our financial condition and results of operations.

Actual events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions, transactional counterparties or other companies in the financial services industry or the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks, have in the past and may in the future lead to market-wide liquidity problems. For example, in March 2023, SVB was closed by the California Department of Financial Protection and Innovation, which appointed the FDIC, as receiver, and SVB was subsequently transferred into a new entity, Silicon Valley Bridge Bank ("SVBB"). On March 12, 2023, the Department of the Treasury, the Federal Reserve, and the FDIC jointly released a statement that depositors at SVB would have access to their funds, even those in excess of the standard FDIC insurance limits, under a systemic risk exception. Such parties also announced, among other items, that SVBB has assumed the obligations and commitments of former SVB and commitments to advance under existing credit agreements with former SVB will be honored by SVBB in accordance with and pursuant to the terms of such credit agreements. In March 2023, First Citizens Bank assumed all of SVBB's obligations and commitments, and SVBB began operating as SVB, a division of First Citizens Bank. Unless otherwise noted herein, all references to SVB or Silicon Valley Bank shall refer to Silicon Valley Bank, a division of First Citizens Bank. In light of the foregoing, the Company does not believe it has exposure to loss as a result of SVB's receivership.

We currently maintain cash held on deposit at financial institutions in the U.S., including at SVB. These deposits are insured by the FDIC in an amount up to $250,000 for any depositor. To the extent we hold cash deposits in amounts that exceed the FDIC insurance limitation, we may incur a loss in the event of a failure of any of the financial institutions where we maintain deposits, to the extent such loss exceeds the FDIC insurance limitation, and such a failure could have a material adverse effect upon our liquidity, operations and our results of operations.

Additionally, we and other parties with whom we conduct business may be unable to access funds in such deposit account or other accounts, including money market funds, held with a financial institution or lending arrangements with such a financial institution. Our ability and any of our counter-party's ability to pay their obligations to us or to enter into new commercial arrangements requiring additional payments to us could be adversely affected. In this regard, counterparties to SVB credit agreements and arrangements, and third parties such as beneficiaries of letters of credit (among others), may experience direct impacts from financial institutions in the future and uncertainty remains over liquidity concerns in the broader financial services industry.

Inflation and rapid increases in interest rates have led to a decline in the trading value of previously issued government securities with interest rates below current market interest rates. Although the U.S. Department of Treasury, FDIC and Federal Reserve Board have announced a program to provide up to $25 billion of loans to financial institutions secured by certain of such government securities held by financial institutions to mitigate the risk of potential losses on the sale of such instruments, widespread demands for customer withdrawals or other liquidity needs of financial institutions for immediately liquidity may exceed the capacity of such program. There is no guarantee that the U.S. Department of Treasury, FDIC and Federal Reserve Board will provide access to uninsured funds in the future in the event of the closure of other banks or financial institutions, or that they would do so in a timely fashion.

Our existing indebtedness may limit our flexibility in financing and operating our business and adversely affect our business, financial condition and results of operations.

On April 19, 2024 we entered into the 2024 Credit Facility with Pharmakon. The 2024 Credit Facility provides a $75.0 million initial term loan which was drawn in April 2024, a portion of which was utilized to repay all outstanding indebtedness, for total net proceeds of $39.6 million. The 2024 Credit Facility provides for three potential additional term loan tranches in principal amounts up to $25.0 million, $50.0 million, and $50.0 million, respectively, subject to customary conditions to funding and, in the case of the last two tranches, achieving minimum net sales milestones, which may be requested on or prior to December 31, 2024, June 30, 2025 and December 31, 2025, respectively. The 2024 Credit Facility contains representations and warranties, affirmative and negative covenants in each case, which is customary for financings of this type. However, there are no financial covenants. The 2024 Credit Facility contains representations and warranties, affirmative and negative covenants in each case customary for financings of this type. Certain of the customary negative covenants limit our ability to, among other things, dispose of assets, engage in mergers, acquisitions, and similar transactions, incur additional indebtedness, grant liens, make investments, pay dividends or make distributions or certain other restricted payments in respect of equity, prepay other indebtedness, enter into restrictive agreements, undertake fundamental changes or amend certain material contracts, in each case subject to certain customary exceptions and negotiated carve outs. However, there are no financial covenants.

Such restrictions could limit our ability to take certain actions and could reduce our flexibility to run and manage our business which could have an adverse effect on our results of operations. Our obligations under the 2024 Credit Facility are secured by a lien in substantially all of our assets, subject to certain exclusions. If we were unable to repay amounts due under the 2024 Credit Facility, Pharmakon could proceed against such assets. Any declaration by Pharmakon of an event of default could significantly harm our business and prospects and could cause the price of our common stock to decline.

We may engage in acquisitions or strategic partnerships that could disrupt our business, cause dilution to our stockholders, reduce our financial resources, cause or to incur debt or assume contingent liabilities, and subject us to other risks.

In the future, we may enter into transactions to acquire other businesses, product candidates, products or technologies or enter into strategic partnerships, including licensing. If we do identify suitable acquisition or partnership candidates, we may not be able to make such acquisitions or partnerships on favorable terms, or at all. Any acquisitions or partnerships we make may not strengthen our competitive position, and these transactions may be viewed negatively by customers or investors. We may decide to incur debt in connection with an acquisition or issue our common stock or other equity securities to the stockholders of the acquired company, which would reduce the percentage ownership of our existing stockholders. For example, our 2024 Credit Facility may restrict our ability to pursue certain mergers, acquisitions or consolidations without obtaining the prior consent of Pharmakon or repaying our outstanding loan amounts.

We could incur losses resulting from undiscovered liabilities of the acquired business or partnership that are not covered by the indemnification we may obtain from the seller or our partner. In addition, we may not be able to successfully integrate any acquired personnel, technologies and operations into our existing business in an effective, timely and non-disruptive manner. Acquisitions or partnerships may also divert management attention from day-to-day responsibilities, lead to a loss of key personnel, increase our expenses and reduce our cash available for operations and other uses. We cannot predict the number, timing or size of future acquisitions or partnerships or the effect that any such transactions might have on our operating results.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.

We have incurred substantial losses during our history which we expect to continue, we do not expect to become profitable in the near future, and we may never achieve profitability. Under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, if a corporation undergoes an "ownership change," generally defined as a greater than 50 percentage point change (by value) in its equity ownership by certain stockholders over a three-year period, the corporation's ability to use its pre-change NOL carryforwards, and other pre-change tax attributes (such as research tax credits) to offset its post-change income or taxes may be limited. We have not yet completed an ownership change analysis. If a requisite ownership change occurs, the amount of remaining tax attribute carryforwards available to offset taxable income and reduce income tax expense in future years may be restricted or eliminated. Similar provisions of state tax law may also apply to limit our use of accumulated state tax attributes. In addition, at the state level, there may be periods during which the use of NOLs is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed. As a result, even if we attain profitability, we may be unable to use a material portion of our NOLs and other tax attributes, which could adversely affect our future cash flows.

We may be subject to adverse legislative or regulatory tax changes that could negatively impact our financial condition.

The rules dealing with U.S. federal, state, and local income taxation are complex and are constantly under review by legislators, the U.S. Department of Treasury, and the Internal Revenue Service. Changes to tax laws (which may have retroactive application) have occurred and are likely to continue to occur in the future, which could adversely affect our shareholders.

Risks Related to Reliance on Third Parties

We rely on third parties to conduct our clinical trials and perform some of our research and preclinical studies. If these third parties do not satisfactorily carry out their contractual duties or fail to meet expected deadlines, our development programs may be delayed or subject to increased costs, each of which may have an adverse effect on our business and prospects.

We do not have the ability to independently conduct our clinical trials. We currently rely on third parties, such as CROs, clinical data management organizations, medical institutions and clinical investigators, to conduct our current and planned clinical trials of TP-03, TP-04 and TP-05 and other product candidates, and we expect to continue to rely upon third parties to conduct additional clinical trials of potential future product candidates. Third parties have a significant role in the conduct of our clinical trials and the subsequent collection and analysis of data. These third parties are not our employees, and except for remedies available to us under our agreements with such third party, we have limited ability to control the amount or timing of resources that any such third party will devote to our clinical trials. Some of these third parties may terminate their engagements with us at any time. If we need to enter into alternative arrangements with a third party, it would delay our development activities.

Our reliance on these third parties for such development activities will reduce our control over these activities but will not relieve us of our regulatory responsibilities. For example, we will remain responsible for ensuring that each of our clinical trials is conducted in accordance with the general investigational plan and protocols for the trial. Moreover, the FDA requires us to comply with GCP standards, regulations for conducting, recording and reporting the results of clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of trial participants are protected. The EC also requires us to comply with similar standards. Regulatory authorities enforce these GCP requirements through periodic inspections of trial sponsors, principal investigators and trial sites. If we or any of our CROs fail to comply with applicable GCP requirements, the clinical data generated in our clinical trials may be deemed unreliable and the FDA, EC or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials comply with GCP or other applicable regulations. In addition, our clinical trials must be conducted with product produced under current applicable cGMP regulations. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the marketing approval process. We also are required to register certain ongoing clinical trials and post the results of certain completed clinical trials on a government-sponsored database, ClinicalTrials.gov, within certain timeframes. Failure to do so can result in fines, adverse publicity and civil and criminal sanctions.

The third parties we rely on for these services may also have relationships with other entities, some of which may be our competitors. In addition, the operations of our CROs and other third-party service providers may be constrained or disrupted by health epidemics. If these third parties do not successfully carry out their contractual duties, meet expected deadlines or conduct our clinical trials in accordance with regulatory requirements or our stated protocols, we will not be able to obtain, or may be delayed in obtaining, marketing approvals for our product candidates and will not be able to, or may be delayed in our efforts to, successfully commercialize our product candidates.

If any of our relationships with these third parties terminate, we may not be able to enter into arrangements with alternative third parties or do so on commercially reasonable terms. Switching or adding additional CROs, investigators and other third parties involves additional cost and requires management time and focus. In addition, there is a natural transition period when a new CRO commences work. As a result, delays can occur, which could materially impact our ability to meet our desired clinical development timelines. Although we plan to carefully manage our relationships with our CROs, investigators and other third parties, we may nonetheless encounter challenges or delays in the future, which could have a material and adverse impact on our business, financial condition and prospects.

In addition, principal investigators for our clinical trials may serve as scientific advisors or consultants to us from time to time and receive compensation in connection with such services. Under certain circumstances, we may be required to report some of these relationships to the FDA. The FDA may conclude that a financial relationship between us and a principal investigator has created a conflict of interest or otherwise affected interpretation of the trial. The FDA may therefore question the integrity of the data generated at the applicable clinical trial site and the utility of the clinical trial itself may be jeopardized. This could result in a delay in approval, or rejection, of our marketing applications by the FDA and may ultimately lead to the denial of marketing approval of any product candidates.

We contract with third parties for the commercial manufacture of XDEMVY and for the manufacture of our product candidates for preclinical studies, clinical trials and eventual commercialization. This reliance on third parties increases the risk that we will not have sufficient quantities of XDEMVY or our product candidates or compounds or that such supply will not be available to us at an acceptable cost, which could delay, prevent or impair our commercialization or development efforts.

We do not have any, and have no plans to acquire any, manufacturing facilities. We produce in our laboratory relatively small quantities of compounds for evaluation in our research programs. We rely, and expect to continue to rely, on third parties for the commercial manufacture of XDEMVY and the manufacture of our product candidates for preclinical and clinical testing, as well as for commercial manufacture of our product candidates, if approved. We currently have limited manufacturing arrangements and expect that XDEMVY and each of our product candidates will only be covered by single source suppliers for the foreseeable future. For example, we purchase our API for XDEMVY, lotilaner, from Elanco, who sources through a single source supplier. This reliance increases the risk that we will not have sufficient quantities of XDEMVY or our product candidates or any future approved products, or such quantities at an acceptable cost or quality, which could delay, prevent or impair our commercialization or development efforts.

Furthermore, all entities involved in the preparation of XDEMVY for commercial sale or other therapeutics for clinical trials or commercial sale, including our existing contract manufacturers for XDEMVY and our product candidates, are subject to extensive regulation. Components of a finished therapeutic product approved for commercial sale or used in clinical trials must be manufactured in accordance with cGMP requirements. These regulations govern manufacturing processes and procedures, including record keeping, and the implementation and operation of quality systems to control and assure the quality of XDEMVY, investigational products and future products approved for sale. Poor control of production processes can lead to the introduction of contaminants, or to inadvertent changes in the properties or stability of XDEMVY or our product candidates that may not be detectable in final product testing. We or our contract manufacturers must supply all necessary documentation in support of an NDA on a timely basis and must adhere to the FDA's Good Laboratory Practice regulations and cGMP regulations enforced by the FDA through its facilities inspection program. Foreign regulatory authorities, including the European Commission and the competent authorities of the EU Member States, may require compliance with similar requirements. The facilities and quality systems of our third-party contractor manufacturers must pass a pre-approval inspection for compliance with the applicable regulations as a condition of marketing approval of our product candidates. We do not control the manufacturing process of, and are completely dependent on, our contract manufacturing partners for compliance with cGMP regulations. We have little or no control over the production processes of third-party manufacturers, CMOs or other suppliers. The third-party manufacturing facilities used in the production of API and our drug products are located outside of the U.S. and require FDA approval, which our third-party manufacturers may have limited experience with obtaining. Our CMOs and other suppliers are subject to inspection by the FDA and may receive observations that they may not be able to resolve in a timely or effective manner, which could impact whether our products can be approved on a timely basis, if at all.

In the event that any of our manufacturers fails to comply with such requirements or to perform its obligations to us in relation to quality, timing or otherwise, or if our supply of XDEMVY, components or other materials becomes limited or interrupted for other reasons, we may be forced to manufacture XDEMVY or other materials ourselves, for which we currently do not have the capabilities or resources, or enter into an agreement with another third party, which we may not be able to do on commercially reasonable terms, if at all. In particular, any replacement of our manufacturers could require significant effort and expertise because there may be a limited number of qualified replacements. In some cases, the technical skills or technology required to manufacture XDEMVY or our product candidates may be unique or proprietary to the original manufacturer and we may have difficulty transferring such skills or technology to another third party and a feasible alternative may not exist. These factors would increase our reliance on such manufacturer or require us to obtain a license from such manufacturer in order to have another third party manufacture XDEMVY or our product candidates. If we elect to or are required to change manufacturers for any reason, we will be required to verify that the new manufacturer maintains facilities and procedures that comply with quality standards and with all applicable regulations and guidelines. If any of our current contract manufacturers cannot perform as agreed, we may be required to replace such manufacturers. Although we believe that there are several potential alternative manufacturers who could manufacture XDEMVY or our product candidates, we may incur added costs and delays in identifying and qualifying any such replacement or be unable to reach agreement with an alternative manufacturer.

Our or a third party's failure to execute on our manufacturing requirements, to do so on commercially reasonable terms and comply with cGMP could adversely affect our business in a number of ways, including:

- an inability to meet commercial demands for XDEMVY or any other future product that is approved;
- requirements to cease development or to recall batches of XDEMVY or our product candidates;
- an inability to initiate or continue clinical trials of our product candidates under development;

- delay in submitting regulatory applications, or receiving marketing approvals, for our product candidates;
- loss of the cooperation of an existing or future collaborator, including by Elanco Agreements; and
- subjecting third-party manufacturing facilities or our manufacturing facilities to additional inspections by regulatory authorities.

XDEMVY, our product candidates and any future products that we may develop may compete with other products and product candidates for access to manufacturing facilities. As a result, we may not obtain access to these facilities on a priority basis or at all. There are a limited number of manufacturers that operate under cGMP regulations and that might be capable of manufacturing for us. Any performance failure on the part of our existing or future manufacturers could prevent or delay commercialization efforts of XDEMVY or any future products, if approved, clinical development of product candidates or marketing approval of current or future product candidates.

We or our third-party manufacturers may encounter shortages in the raw materials or API necessary to produce XDEMVY or our product candidates in the quantities needed in sufficient quantities for our commercialization or to meet an increase in demand, or for our clinical trials, as a result of capacity constraints or delays or disruptions in the market for the raw materials or APIs, including shortages caused by the purchase of such raw materials or APIs by our competitors or others. The failure of us or our third-party manufacturers to obtain the raw materials or APIs necessary to manufacture sufficient quantities of XDEMVY or our product candidates, may have a material adverse effect on our business.

We, or our third-party manufacturers, may be unable to successfully scale-up manufacturing of XDEMVY or our product candidates in sufficient quality and quantity, which would delay or prevent us from commercializing, conducting clinical trials and developing our product candidates.

In order to successfully commercialize XDEMVY and to conduct clinical trials of our product candidates, we will need to manufacture XDEMVY and our product candidates in large quantities. We, or our manufacturing partners, may be unable to maintain or successfully increase the manufacturing capacity for XDEMVY or any of our product candidates in a timely or cost-effective manner, or at all. In addition, quality issues may arise during scale-up activities. If we, or our manufacturing partners, are unable to successfully scale up the manufacture of XDEMVY or our product candidates in sufficient quality and quantity, the commercialization of XDEMVY or the development, testing and clinical trials of that product candidate may be delayed or become infeasible, and commercialization of XDEMVY or marketing approval or commercial launch of any resulting product may be delayed or not obtained, which could significantly harm our business.

Changes in methods of product candidate manufacturing or formulation may result in additional costs or delay.

As product candidates progress through preclinical to late stage clinical trials to marketing approval and commercialization, it is common that various aspects of the development program, such as manufacturing methods and formulation, are altered along the way in an effort to optimize yield, manufacturing batch size, minimize costs and achieve consistent quality and results. Such changes carry the risk that they will not achieve these intended objectives. Any of these changes could cause our product candidates to perform differently and affect the results of planned clinical trials or other future clinical trials conducted with the altered materials. This could delay completion of clinical trials, require the conduct of bridging clinical trials or the repetition of one or more clinical trials, increase clinical trial costs, delay approval of our product candidates and jeopardize our ability to commercialize our product candidates and generate revenue.

Risks Related to Intellectual Property

Changes in patent law in the U.S. and other jurisdictions could diminish the value of patents in general, thereby impairing our ability to protect XDEMVY or our product candidates.

As is the case with other biopharmaceutical companies, our success is heavily dependent on intellectual property, particularly patents. Obtaining and enforcing patents in the biopharmaceutical industry involves both technological and legal complexity and is therefore costly, time-consuming and inherently uncertain. Changes in either the patent laws or interpretation of the patent laws in the U.S. could increase the uncertainties and costs. Recent patent reform legislation in the U.S. and other countries, including the Leahy-Smith America Invents Act (the "Leahy-Smith Act"), signed into law on September 16, 2011, could increase those uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. The Leahy-Smith Act includes a number of significant changes to U.S. patent law. These include provisions that affect the way patent applications are prosecuted, redefine prior art and provide more efficient and cost-effective avenues for competitors to challenge the validity of patents. These include allowing third-party submission of prior art to the U.S. Patent and Trademark Office ("USPTO") during patent prosecution and additional procedures to attack the validity of a

patent by USPTO administered post-grant proceedings, including post-grant review, *inter partes* review, and derivation proceedings. After March 2013, under the Leahy-Smith Act, the U.S. transitioned to a first inventor to file system in which, assuming that the other statutory requirements are met, the first inventor to file a patent application will be entitled to the patent on an invention regardless of whether a third party was the first to invent the claimed invention. However, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business, financial condition, results of operations and prospects.

The U.S. Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. Depending on future actions by the U.S. Congress, the U.S. courts, the USPTO and the relevant law-making bodies in other countries, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce our existing patents and patents that we might obtain in the future.

The U.S. federal government retains certain rights in inventions produced with its financial assistance under the Bayh-Dole Act of 1980 (the "Bayh-Dole Act"). The federal government retains a nonexclusive, nontransferable, irrevocable, paid-up license for its own benefit. The Bayh-Dole Act also provides federal agencies with “march-in rights.” March-in rights allow the government, in specified circumstances, to require the contractor or successors in title to the patent to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants. If the patent owner refuses to do so, the government may grant the license itself. If, in the future, we co-own or license in technology that is critical to our business that is developed in whole or in part with federal funds subject to the Bayh-Dole Act, our ability to enforce or otherwise exploit patents covering such technology may be adversely affected.

Additionally, the new unitary patent system that came into effect in Europe in June 2023 has increased the complexity and uncertainty of European patent laws and would significantly impact European patents, including those granted before the introduction of such a system. Under the unitary patent system, European applications will have the option, upon grant of a patent, of becoming a Unitary Patent which will be subject to the jurisdiction of the Unitary Patent Court (“UPC”). As the UPC is a new court system, there is no precedent for the court, increasing the uncertainty of any litigation. Patents granted before the implementation of the UPC will have the option of opting out of the jurisdiction of the UPC and remaining as national patents in the UPC countries. Patents that remain under the jurisdiction of the UPC will be potentially vulnerable to a single UPC-based revocation challenge that, if successful, could invalidate the patent in all countries who are signatories to the UPC. We cannot predict with certainty the long-term effects of any potential changes.

The development and commercialization of our products, including our lead product XDEMVY, for the treatment of Demodex blepharitis, TP-03 for the potential treatment of MGD, TP-04 for the potential treatment of rosacea and TP-05 for potential Lyme disease prophylaxis and community malaria reduction, is dependent on intellectual property we license from Elanco. If we breach our agreements with Elanco or the agreements are terminated, we could lose license rights that are important to our business.

Pursuant to the Elanco Agreements we acquired exclusive, worldwide, sublicensable licenses to certain intellectual property of Elanco for the development, marketing and commercialization of lotilaner for (i) the treatment, prevention, palliation or cure of any eye or skin disease or condition in humans and (b) all other applications in humans, respectively. The Elanco Agreements impose various development, regulatory, commercial diligence, financial and other obligations on us. If we fail to comply with our obligations under the Elanco Agreements, or otherwise materially breach either Elanco Agreement, and fail to remedy such failure or cure such breach within 60 days, Elanco will have the right to terminate the applicable Elanco Agreement. If we fail to meet any milestones by the achievement deadlines set forth in either Elanco Agreement for any reason other than those outside of our reasonable control, and such milestones remain unmet for 120 days after Elanco notifies us thereof, Elanco may terminate the applicable Elanco Agreement.

If either Elanco Agreement is terminated, or if our field of use in the Eye and Derm Elanco Agreement is reduced to eye and skin conditions only by Elanco, we would lose our applicable license in the country where such license was terminated and all rights therein to the licensed intellectual property would revert to Elanco. The loss of the license from Elanco would prevent us from developing and commercializing TP-03, TP-04 and TP-05 in any country where the license is terminated and could subject us to claims of breach of contract and patent infringement by Elanco if any continued research, development, manufacture or commercialization of TP-03, TP-04 or TP-05 is covered by the affected patents. If Elanco terminates the Eye and Derm Elanco Agreement for our failure to achieve a development milestone by the specified achievement deadline, then we must grant Elanco a non-exclusive, sublicensable, royalty-free license to our patents and know-how relating to lotilaner to develop, manufacture and commercialize lotilaner and any licensed products for the treatment, palliation, prevention or cure of any eye or skin disease or condition in humans. If Elanco terminates the All Human Uses Elanco Agreement for our failure to achieve a development milestone by the specified achievement deadline, then we must grant Elanco a non-exclusive, sublicensable, royalty-free license to our patents and know-how relating to lotilaner to develop, manufacture and commercialize

lotilaner and any licensed products for all applications in humans other than the treatment, palliation, prevention or cure of any eye or skin disease or condition. Accordingly, the loss of our license or the termination of our license for skin diseases and conditions or of our license for other use in humans with Elanco would materially harm our business.

If we are unable to obtain and maintain sufficient intellectual property protection for XDEMVY or our product candidates, or if the scope of the intellectual property protection is not sufficiently broad, our competitors could develop and commercialize products similar or identical to ours, and our ability to successfully commercialize our products may be adversely affected.

We rely upon a combination of patents, trademarks, trade secret protection, and confidentiality agreements to protect the intellectual property related to XDEMVY, our development programs and product candidates. Our success depends in large part on our ability to obtain and maintain patent protection in the U.S. and other countries with respect to XDEMVY, our product candidates and research programs. We seek to protect our proprietary position by filing patent applications in the U.S. and abroad related to our novel discoveries and technologies that are important to our business. Our pending and future patent applications may not result in patents being issued that protect XDEMVY or our product candidates or their intended uses or that effectively prevent others from commercializing competitive technologies, products or product candidates.

Obtaining and enforcing patents is expensive and time-consuming, and we may not be able to file and prosecute all necessary or desirable patent applications, or maintain and/or enforce patents that may issue based on our patent applications, at a reasonable cost or in a timely manner. Moreover, in some circumstances, we do not have the right to control the preparation, filing and prosecution of patent applications, or to maintain, enforce and defend the patents, covering technology that we license from third parties. It is also possible that we will fail to identify patentable aspects of our research and development results before it is too late to obtain patent protection. Although we enter into non-disclosure and confidentiality agreements with parties who have access to patentable aspects of our research and development output, such as our employees, corporate collaborators, outside scientific collaborators, CROs, CMOs, consultants, advisors and other third parties, any of these parties may breach these agreements and disclose such results before a patent application is filed, thereby jeopardizing our ability to seek patent protection.

The patent position of biotechnology and pharmaceutical companies generally is highly uncertain, involves complex legal and factual questions and has in recent years been the subject of much litigation, resulting in court decisions, including U.S. Supreme Court decisions, which have increased uncertainties as to the ability to enforce patent rights in the future. In addition, the scope of patent protection outside of the U.S. is uncertain and laws of foreign countries may not protect our rights to the same extent as the laws of the U.S., or vice versa. For example, European patent law restricts the patentability of methods of treatment of the human body more than U.S. law does. With respect to both owned and in-licensed patent rights, we cannot predict whether the patent applications we and our licensors are currently pursuing or will pursue will issue as patents in any particular jurisdiction or whether the claims of any issued patents will provide sufficient protection from competitors. As noted above, the Novation Agreement amended the $15.0 million future development milestone payable on China regulatory approval of the China Out-License agreement with a combined condition of patent issuance related to TP-03 in China. If we are not able to obtain the aforementioned patent issuance in China, the likelihood we achieve the associated milestone, as well as commercialization in the China Territory would be substantially decreased.

Further, we may not be aware of all third-party intellectual property rights potentially relating to XDEMVY or our product candidates or their intended uses, and as a result the impact of such third-party intellectual property rights upon the patentability of our own patents and patent applications, as well as the impact of such third-party intellectual property upon our ability to commercialize our products, is highly uncertain. Because we have not yet conducted a formal patent landscape analysis related to XDEMVY or our product candidates, we may not be aware of issued patents that a third party might assert are infringed by XDEMVY or one of our current or future product candidates, which could materially impair our ability to commercialize XDEMVY or our product candidates. Even if we diligently search third-party patents for potential infringement by our products or product candidates, including XDEMVY, TP-03, TP-04 or TP-05, we may not successfully find patents that our products or product candidates, including XDEMVY, TP-03, TP-04 or TP-05, may infringe. If we are unable to confirm that our products do not infringe third-party patents, others could preclude us from commercializing XDEMVY or our product candidates. In addition, publications of discoveries in the scientific literature often lag behind the actual discoveries and patent applications in the U.S. and other jurisdictions are typically not published until 18 months after filing or, in some cases, not published at all. Therefore, we cannot know with certainty whether we were the first to make the inventions claimed in our patents or pending patent applications, or that we were the first to file for patent protection of such inventions. As a result, the issuance, scope, validity, enforceability and commercial value of our patent rights are highly uncertain. Our patents or pending patent applications may be challenged in the courts or patent offices in the U.S. and abroad. For example, we may be subject to a third party pre-issuance submission of prior art to the USPTO, or become involved in post-grant review or interference procedures, oppositions, derivations, revocations, reexaminations, or inter partes review proceedings, in the U.S. or elsewhere, challenging our patent rights or the patent rights of others. An adverse determination in any such submission, proceeding or litigation could reduce the scope of, or invalidate, our patent rights, allow third parties to commercialize our technology or

product candidates and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize drugs without infringing third-party patent rights. If the breadth or strength of protection provided by our patents and patent applications is threatened, regardless of the outcome, it could dissuade companies from collaborating with us to license, develop or commercialize XDEMVY or our current or future product candidates.

Our owned and licensed patent estate includes patent applications, many of which are at an early stage of prosecution. The coverage claimed in a patent application can be significantly reduced before the patent is issued, and its scope can be reinterpreted after issuance. Even if our owned and in-licensed patent applications issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors from competing with us or otherwise provide us with any competitive advantage. The issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability, and our owned and in-licensed patents may be challenged in the courts or patent offices in the U.S. and abroad. Such challenges may result in loss of exclusivity or ability to sell our products without infringing third-party patents or patent claims being narrowed, invalidated, or held unenforceable, in whole or in part, which could limit our ability to stop others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection of our technology and products. In addition, given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized. Furthermore, our competitors may be able to circumvent our patents by developing similar or alternative technologies or products in a non-infringing manner. As a result, our owned and in-licensed patent portfolio may not provide us with sufficient rights to exclude others from commercializing technology and products similar or identical to any of our technology and product candidates.

Furthermore, while we seek to protect the trademarks we use in the U.S. and in other countries, we may be unsuccessful in obtaining registrations and/or otherwise protecting these trademarks. If that were to happen, we may be prevented from using our names, brands and trademarks unless we enter into appropriate royalty, license or coexistence agreements, which may not be available or may not be available on commercially reasonable terms. Over the long term, if we are unable to establish name recognition based on our trademarks, trade names, service marks and domain names, then we may not be able to compete effectively, resulting in a material adverse effect on our business. Our registered or unregistered trademarks or trade names may be challenged, infringed, diluted or declared generic, or determined to be infringing on other marks. We rely on both registration and common law protection for our trademarks. We may not be able to protect our rights to these trademarks and trade names or may be forced to stop using these names, which we need to build name recognition among potential partners or customers in our markets of interest. At times, competitors may adopt trademarks and trade names similar to ours, thereby impeding our ability to build brand identity and possibly leading to market confusion. During trademark registration proceedings, we may receive rejections. Although we would be given an opportunity to respond to those rejections, we may be unable to overcome such rejections. In addition, in the USPTO and in comparable agencies in many foreign jurisdictions, third parties are given an opportunity to oppose pending trademark applications and to seek to cancel registered trademarks. Opposition or cancellation proceedings may be filed against our trademarks, and our trademarks may not survive such proceedings. Effective trademark protection may not be available or may not be sought in every country in which our products are made available. Any name we propose to use for our products in the U.S. must be approved by the FDA, regardless of whether we have registered it, or applied to register it, as a trademark. The FDA typically conducts a review of proposed product names, including an evaluation of potential for confusion with other product names. If the FDA objects to any of our proposed product names, we may be required to expend significant additional resources in an effort to identify a usable substitute name that would qualify under applicable trademark laws, that does not infringe the existing rights of third parties and that is acceptable to the FDA. If we are unable to establish name recognition based on our trademarks and trade names, we may not be able to compete effectively and our business may be adversely affected.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

Periodic maintenance fees, renewal fees, annuities fees and various other governmental fees on patents and/or patent applications are due to be paid to the USPTO and foreign patent agencies in several stages over the lifetime of the patent and/or patent application. The USPTO and various foreign governmental patent agencies also require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. In certain circumstances, we rely on our licensing partners to pay these fees to, or comply with the procedural and documentary rules of, the relevant patent agency While an inadvertent lapse can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. Non-compliance events that could result in abandonment or lapse of a patent or patent application include, but are not limited to, failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. In such an event, potential competitors might be able to enter the market with similar or identical products or technology. If we or our licensors fail to maintain the patents and patent applications relating to XDEMVY or our product

candidates, our competitive position, business, financial condition, results of operations and prospects would be adversely affected.

We may not identify relevant third-party patents or may incorrectly interpret the relevance, scope or expiration of a third-party patent which might adversely affect our ability to develop and market our products.

We cannot guarantee that any of our patent searches or analyses, including the identification of relevant patents, the scope of patent claims or the expiration of relevant patents, are complete or thorough, nor can we be certain that we have identified each and every third party patent and pending application in the U.S. and abroad that is relevant to or necessary for the commercialization of XDEMVY or our product candidates in any jurisdiction. Because we have not yet conducted a formal patent landscape analysis related to XDEMVY or our product candidates, we may not be aware of issued patents that a third party might assert are infringed by one of XDEMVY or our current or future product candidates, which could materially impair our ability to commercialize XDEMVY or our product candidates. Even if we diligently search third-party patents for potential infringement by our products, including XDEMVY, or product candidates, we may not successfully find patents that our products or product candidates may infringe. If we are unable to confirm that our products, including XDEMVY, do not infringe third-party patents, others could preclude us from commercializing XDEMVY or our product candidates.

The scope of a patent claim is determined by an interpretation of the law, the written disclosure in a patent and the patent's prosecution history. Our interpretation of the relevance or the scope of a patent or a pending application may be incorrect, which may negatively impact our ability to market our products. We may incorrectly determine that our products are not covered by a third-party patent or may incorrectly predict whether a third party's pending application will issue with claims of relevant scope. Our determination of the expiration date of any patent in the U.S. or abroad that we consider relevant may be incorrect, which may negatively impact our ability to develop and market XDEMVY or our product candidates. Our failure to identify and correctly interpret relevant patents may negatively impact our ability to develop and market our products, including XDEMVY.

We may wish to acquire rights to future assets through in-licensing or may attempt to form collaborations in the future with respect to XDEMVY or our product candidates, but may not be able to do so, which may cause us to alter or delay our commercialization or development plans.

The commercialization of XDEMVY and the development and potential commercialization of our product candidates will require substantial additional capital to fund expenses. In 2019 and 2020, we entered into the Eye and Derm Elanco Agreement and the All Human Uses Elanco Agreement, respectively. We have utilized these license rights in developing and marketing XDEMVY, and our TP-03,TP-04 and TP-05 product candidates. We may, in the future, decide to collaborate with other biopharmaceutical companies for the development and potential commercialization of XDEMVY in other jurisdictions or our product candidates. We will face significant competition in seeking appropriate collaborators. We may not be successful in our efforts to establish a strategic partnership or other alternative arrangements for our product candidates because they may be deemed to be at too early of a stage of development for collaborative effort and third parties may not view our product candidates as having the requisite potential to demonstrate safety and efficacy. If and when we collaborate with a third party for the commercialization of XDEMVY in other jurisdictions or the development and commercialization of a product candidate, we can expect to relinquish some or all of the control over the future success of XDEMVY or that product candidate to the third party. Our ability to reach a definitive agreement for a collaboration will depend, among other things, upon our assessment of the collaborator's resources and expertise, the terms and conditions of the proposed collaboration and the proposed collaborator's evaluation of a number of factors. Those factors may include the following:

- the potential market for the product candidate;
- the costs and complexities of manufacturing and delivering such product candidate to patients;
- the design or results of clinical trials;
- the likelihood of approval by the FDA or comparable foreign regulatory authorities;
- the potential of competing products;
- the existence of uncertainty with respect to our ownership of technology or other rights, which can exist if there is a challenge to such ownership without regard to the merits of the challenge; and
- industry and market conditions generally.

The collaborator may also consider alternative product candidates or technologies for similar indications that may be available to collaborate on and whether such a collaboration could be more attractive than the one with us for XDEMVY or our product candidate. We may also be restricted under any license agreements from entering into agreements on certain terms or at all with potential collaborators. Collaborations are complex and time-consuming to negotiate and document. In addition, there have been a significant number of recent business combinations among large pharmaceutical companies that have resulted in a reduced number of potential future collaborators and changes to the strategies of the combined company. As a result, we may not be able to negotiate collaborations on a timely basis, on acceptable terms, or at all. If we are unable to do so, we may have to curtail the development of such product candidate, reduce or delay one or more of our other development programs, delay the commercialization or reduce the scope of any planned sales or marketing activities for such product candidate, or increase our expenditures and undertake development, manufacturing or commercialization activities at our own expense. If we elect to increase our expenditures to fund development, manufacturing or commercialization activities on our own, we may need to obtain additional capital, which may not be available to us on acceptable terms or at all. If we do not have sufficient funds, we may not be able to further develop our product candidates or bring them to market and generate product revenue.

Collaborations that we have entered into and may enter in the future may not be successful, and any success will depend heavily on the efforts and activities of such collaborators. Collaborations pose a number of risks, including the following:

- collaborators have significant discretion in determining the amount and timing of efforts and resources that they will apply to these collaborations;
- collaborators may not perform their obligations as expected;
- collaborators may not pursue development of our product candidates or may elect not to continue or renew development programs based on results of clinical trials or other studies, changes in the collaborators' strategic focus or available funding, or external factors, such as an acquisition or business combination, that divert resources or create competing priorities;
- collaborators may not pursue commercialization of any product or product candidates that achieve marketing approval or may elect not to continue or renew commercialization programs based on results of clinical trials or other studies, changes in the collaborators' strategic focus or available funding, or external factors, such as an acquisition or business combination, that may divert resources or create competing priorities;
- collaborators may delay clinical trials, provide insufficient funding for a clinical trial program, stop a clinical trial or abandon a product candidate, repeat or conduct new clinical trials or require a new formulation of a product candidate for clinical testing;
- we may not have access to, or may be restricted from disclosing, certain information regarding product candidates being developed or commercialized under a collaboration and, consequently, may have limited ability to inform our stockholders about the status of such product candidates on a discretionary basis;
- collaborators could independently develop, or develop with third parties, products that compete directly or indirectly with XDEMVY or our product candidates and products if the collaborators believe that the competitive products are more likely to be successfully developed or can be commercialized under terms that are more economically attractive than ours;
- product candidates discovered in collaboration with us may be viewed by our collaborators as competitive with their own product candidates or products, which may cause collaborators to cease to devote resources to the commercialization of our product candidates;
- a collaborator may fail to comply with applicable regulatory requirements regarding the development, manufacture, distribution or marketing of a product candidate or product;
- a collaborator may seek to renegotiate or terminate their relationship with us due to unsatisfactory clinical results, manufacturing issues, a change in business strategy, a change of control or other reasons;
- a collaborator with marketing and distribution rights to one or more of our product candidates that achieve marketing approval may not commit sufficient resources to the marketing and distribution of such product or products;

- disagreements with collaborators, including disagreements over intellectual property or proprietary rights, contract interpretation or the preferred course of development, might cause delays or terminations of the research, development or commercialization of product candidates, might lead to additional responsibilities for us with respect to product candidates, or might result in litigation or arbitration, any of which would be time-consuming and expensive;

- collaborators may not properly obtain, maintain, enforce, defend or protect our intellectual property or proprietary rights or may use our proprietary information in such a way as to potentially lead to disputes or legal proceedings that could jeopardize or invalidate our intellectual property or proprietary information or expose us to potential litigation;

- disputes may arise with respect to the ownership of intellectual property developed pursuant to our collaborations;

- collaborators may infringe, misappropriate or otherwise violate the intellectual property or proprietary rights of third parties, which may expose us to litigation and potential liability; and

- collaborations may be terminated for the convenience of the collaborator, and, if terminated, we could be required to raise additional capital to pursue further development or commercialization of the applicable product candidates.

Collaboration agreements may not lead to development or commercialization of our products or product candidates in the most efficient manner, or at all. If any collaborations that we enter into do not result in the successful development and commercialization of products or if one of our collaborators terminates its agreement with us, we may not receive any future research funding or milestone or royalty payments under the collaboration. If we do not receive the funding we expect under these agreements, our development of our product candidates could be delayed and we may need additional resources to develop our product candidates. All of the risks relating to product development, regulatory approval and commercialization described in this report also apply to the activities of our collaborators.

In the future, we may need to obtain additional licenses of third-party technology that may not be available to us or are available only on commercially unreasonable terms or we may fail to comply with our obligations under such agreements and our business could be harmed.

In addition to the Elanco Agreements, from time to time we may be required to license technology from additional third parties to further develop or commercialize our product candidates. Should we be required to obtain licenses to any third-party technology, including any such patents required to manufacture, use or sell our product candidates, such licenses may not be available to us on commercially reasonable terms, or at all.

If we are unable to license such technology, or if we are forced to license such technology on unfavorable terms, our business could be materially harmed. If we are unable to obtain a necessary license, we may be unable to develop or commercialize the affected product candidates, which could materially harm our business and the third parties owning such intellectual property rights could seek either an injunction prohibiting our sales or an obligation on our part to pay royalties and/or other forms of compensation. Even if we are able to obtain a license, it may be non-exclusive, thereby giving our competitors access to the same technologies licensed to us.

If we are unable to obtain rights to required third-party intellectual property rights or maintain the existing intellectual property rights we have, we may be required to expend significant time and resources to redesign our technology, product candidates, or the methods for manufacturing them or to develop or license replacement technology, all of which may not be feasible on a technical or commercial basis. If we are unable to do so, we may be unable to develop or commercialize the affected technology and product candidates, which could harm our business, financial condition, results of operations and prospects significantly.

Additionally, if we fail to comply with our obligations under any license agreements, our counterparties may have the right to terminate these agreements, in which event we might not be able to develop, manufacture or market, or may be forced to cease developing, manufacturing or marketing, any product that is covered by these agreements or may face other penalties under such agreements. Such an occurrence could materially adversely affect the value of the product candidate being developed under any such agreement. Termination of these agreements or reduction or elimination of our rights under these agreements, or restrictions on our ability to freely assign or sublicense our rights under such agreements when it is in the interest of our business to do so, may result in our having to negotiate new or reinstated agreements with less favorable terms, cause us to lose our rights under these agreements, including our rights to important intellectual property or technology or

impede, or delay or prohibit the further development or commercialization of one or more product candidates that rely on such agreements.

If we enter into in-bound intellectual property license agreements, we may not be able to fully protect the licensed intellectual property rights or maintain those licenses. In each of the Elanco Agreements, Elanco retains, and future licensors could retain, the right to prosecute and defend the intellectual property rights licensed to us, in which case we would depend on the ability of our licensors to obtain, maintain and enforce such licensed intellectual property. These licensors may determine not to pursue litigation against other companies or may pursue such litigation less aggressively than we would. If our licensors do not adequately protect such licensed intellectual property, competitors may be able to use such intellectual property and erode or negate any competitive advantage we may have, which could materially harm our business, negatively affect our position in the marketplace, limit our ability to commercialize our products and product candidates and delay or render impossible our achievement of profitability. Further, entering into such license agreements could impose various diligence, commercialization, royalty or other obligations on us. Future licensors may allege that we have breached our license agreement with them, and accordingly seek to terminate our license, which could adversely affect our competitive business position and harm our business prospects.

In addition to the above risks, intellectual property rights that we license in the future may include sublicenses under intellectual property owned by third parties, in some cases through multiple tiers. The actions of our licensors may therefore affect our rights to use our sublicensed intellectual property, even if we are in compliance with all of the obligations under our license agreements. Should our licensors or any of the upstream licensors fail to comply with their obligations under the agreements pursuant to which they obtain the rights that are sublicensed to us, or should such agreements be terminated or amended, our ability to develop and commercialize our product candidates may be materially harmed.

Disputes may arise regarding intellectual property subject to a licensing agreement, including:

- the scope of rights granted under the license agreement and other interpretation related issues;
- the extent to which our technology and processes infringe intellectual property of the licensor that is not subject to the licensing agreement;
- the sublicensing of patent and other rights;
- our diligence obligations under the license agreement and what activities satisfy those diligence obligations;
- the inventorship and ownership of inventions and know-how resulting from the joint creation or use of intellectual property by our licensors and us and our partners; and
- the priority of invention of patented technology.

In addition, the agreements under which we currently license intellectual property or technology from third parties are complex, and certain provisions in such agreements may be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology, or increase what we believe to be our financial or other obligations under the relevant agreement, either of which could have a material adverse effect on our business, financial condition, results of operations and prospects. Moreover, if disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on commercially acceptable terms, we may be unable to successfully develop and commercialize the affected technology and product candidates, which could have a material adverse effect on our business, financial conditions, results of operations and prospects.

We cannot ensure that patent rights relating to inventions described and claimed in our pending patent applications will issue or that our patents or patents based on our patent applications will not be challenged and rendered invalid and/or unenforceable.

Although we have pending U.S. and foreign patent applications in our portfolio, we cannot predict:

- if and when patents may issue based on our patent applications;
- the scope of protection of any patent issuing based on our patent applications;

- whether the claims of any patent issuing based on our patent applications will provide protection against competitors;
- whether or not third parties will find ways to invalidate or circumvent our patent rights;
- whether or not others will obtain patents claiming aspects similar to those claimed in our patents and patent applications;
- whether we will need to initiate litigation or administrative proceedings to enforce and/or defend our patent rights which will be costly whether we win or lose; and/or
- whether the patent applications that we own or in-license will result in issued patents with claims that cover our products or product candidates or uses thereof in the U.S. or in other foreign countries.

We cannot be certain that the claims in our pending patent applications directed to our products or product candidates and/or technologies will be considered patentable by the USPTO or by patent offices in foreign countries. One aspect of the determination of patentability of our inventions depends on the scope and content of the "prior art," information that was or is deemed available to a person of skill in the relevant art prior to the priority date of the claimed invention. There may be prior art of which we are not aware that may affect the patentability of our patent claims or, if issued, affect the validity or enforceability of a patent claim. Even if the patents do issue based on our patent applications, third parties may challenge the validity, enforceability or scope thereof, which may result in such patents being narrowed, invalidated or held unenforceable. Furthermore, even if they are unchallenged, patents in our portfolio may not adequately exclude third parties from practicing relevant technology or prevent others from designing around our claims. If the breadth or strength of our intellectual property position with respect to our product candidates is threatened, it could dissuade companies from collaborating with us to develop and threaten our ability to commercialize our product candidates. In the event of litigation or administrative proceedings, we cannot be certain that the claims in any of our issued patents will be considered valid by courts in the U.S. or foreign countries.

If we are sued for infringing, misappropriating or otherwise violating intellectual property rights of third parties, such litigation could be costly and time consuming and could prevent or delay us from developing or commercializing our product candidates.

Our commercial success depends, in part, on our ability to develop, manufacture, market and sell our product candidates without infringing, misappropriating or otherwise violating the intellectual property and other proprietary rights of third parties. Third parties may allege that we have infringed or misappropriated their intellectual property. Litigation or other legal proceedings relating to intellectual property claims, with or without merit, are unpredictable and generally expensive and time consuming and, even if resolved in our favor, are likely to divert significant resources from our core business, including distracting our technical and management personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the market price of our common stock.

Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to adequately conduct such litigation or proceedings. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources and more mature and developed intellectual property portfolios. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our ability to compete in the marketplace.

There is a substantial amount of intellectual property litigation in the biotechnology and biopharmaceutical industries, and we may become party to, or threatened with, litigation or other adversarial proceedings regarding intellectual property rights with respect to our product candidates. Third parties may assert infringement claims against us based on existing or future intellectual property rights, regardless of merit. The pharmaceutical and biotechnology industries have produced a significant number of patents, and it may not always be clear to industry participants, including us, which patents are directed to various types of products or methods of use. As the pharmaceutical and biotechnology industries expand and more patents are issued, the risk increases that our technologies or product candidates that we may identify may be subject to claims of infringement of the patent rights of third parties. The scope of patents is subject to interpretation by the courts, and the interpretation is not always uniform. The legal threshold for initiating litigation or contested proceedings is low, so even lawsuits or proceedings with a low probability of success might be initiated and require significant resources to defend. If we were sued for patent infringement, we would need to demonstrate that our product candidates, products or methods either do not infringe the patent claims of the relevant patent or that the patent claims are invalid or unenforceable, and we may not be

able to do this. Proving invalidity may be difficult. For example, in the U.S., proving invalidity in court requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents. Even if we are successful in these proceedings, we may incur substantial costs and the time and attention of our management and scientific personnel could be diverted in pursuing these proceedings, which could have a material adverse effect on our business and operations. In addition, we may not have sufficient resources to bring these actions to a successful conclusion.

If we are found to infringe a third party's intellectual property rights, we could be forced, including by court order, to cease developing, manufacturing or commercializing the infringing product candidate or product. Alternatively, we may be required to obtain a license from such third party in order to use the infringing technology and continue developing, manufacturing or marketing the infringing product candidate. However, we may not be able to obtain any required license on commercially reasonable terms or at all. Even if we were able to obtain a license, it could be non-exclusive, thereby giving our competitors access to the same technologies licensed to us and could require us to make substantial licensing and royalty payments. We could be forced, including by court order, to cease developing, manufacturing and commercializing the infringing technology or product. In addition, we could be found liable for monetary damages, including treble damages and attorneys' fees if we are found to have willfully infringed a patent. A finding of infringement could prevent us from commercializing our product candidates or force us to cease some of our business operations, which could materially harm our business. Claims that we have misappropriated the confidential information or trade secrets of third parties could have a similar negative impact on our business, financial condition, results of operations and prospects.

If we do not obtain patent term extension for any product candidates we may develop, our business may be materially harmed.

In the U.S., the term of a patent that covers an FDA-approved drug may be eligible for limited patent term extension, which permits patent term restoration as compensation for the patent term lost during the FDA regulatory review process. The Drug Price Competition and Patent Term Restoration Act of 1984, also known as the Hatch-Waxman Act, permits a patent term extension of up to five years beyond the expiration of the patent. The length of the patent term extension is related to the length of time the drug is under regulatory review. Patent extension cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval, and only one patent applicable to an approved drug may be extended and only those claims covering the approved drug, a method for using it, or a method for manufacturing it may be extended. Similar provisions are available in Europe and certain other non-U.S. jurisdictions to extend the term of a patent that covers an approved drug. While we may apply for patent term extensions on patents covering XDEMVY and other product candidates that may receive FDA approval, there is no guarantee that the applicable authorities will agree with our assessment of whether such extensions should be granted, and even if granted, the length of such extensions. We may not be granted patent term extension either in the U.S. or in any foreign country because of, for example, failing to exercise due diligence during the testing phase or regulatory review process, failing to apply within applicable deadlines, failing to apply prior to expiration of relevant patents or otherwise failing to satisfy applicable requirements. Moreover, the term of extension, as well as the scope of patent protection during any such extension, afforded by the governmental authority could be less than we request. If we are unable to obtain any patent term extension or the term of any such extension is less than we request, our competitors may obtain approval of competing products following the expiration of our patent rights, and our business, financial condition, results of operations and prospects could be materially harmed.

We may become involved in lawsuits to protect or enforce our patents and other intellectual property rights, which could be expensive, time-consuming and unsuccessful.

Competitors may infringe, misappropriate or otherwise violate our patents, trademarks, copyrights or other intellectual property. It may be difficult to detect infringers who do not advertise the components that are used in their products. Moreover, it may be difficult or impossible to obtain evidence of infringement in a competitor's or potential competitor's product. To counter infringement or unauthorized use, we may be required to file infringement or other intellectual property-related claims, which can be expensive and time consuming and divert the time and attention of our management and scientific personnel. There can be no assurance that we will have sufficient financial or other resources to file and pursue such infringement claims, which typically last for years before they are concluded. Any claims we assert against perceived infringers could provoke these parties to assert counterclaims against us alleging that we infringe their patents, in addition to counterclaims asserting that our patents are invalid or unenforceable, or both. In any patent infringement proceeding, there is a risk that a court will decide that a patent of ours is invalid or unenforceable, in whole or in part, and that we do not have the right to stop the other party from making, using, or selling the invention at issue. In patent litigation in the U.S., defendant counterclaims alleging invalidity or unenforceability are commonplace. Grounds for a validity challenge could be an alleged failure to meet any of several statutory requirements, including lack of novelty, obviousness, or non-enablement. Grounds for an unenforceability assertion could be an allegation that someone connected with prosecution of the patent withheld material information from the USPTO, or made a misleading statement, during prosecution. Third parties may institute such claims before administrative bodies in the U.S. or abroad, even outside the context of litigation. Such mechanisms include re-

examination, post-grant review, *inter partes* review, interference proceedings, derivation proceedings, and equivalent proceedings in foreign jurisdictions (e.g., opposition proceedings). The outcome following legal assertions of invalidity and unenforceability is unpredictable. There is also a risk that, even if the validity of such patents is upheld, the court will construe the patent's claims narrowly or decide that we do not have the right to stop the other party from making, using or selling the invention at issue on the grounds that our patent claims do not cover the invention. An adverse outcome in a litigation or proceeding involving our patents could limit our ability to assert our patents against those parties or other competitors, and may curtail or preclude our ability to exclude third parties from making, using and selling similar or competitive products. Any of these occurrences could adversely affect our competitive business position, business prospects and financial condition. Similarly, if we assert trademark infringement claims, a court may determine that the marks we have asserted are invalid or unenforceable, or that the party against whom we have asserted trademark infringement has superior rights to the marks in question. In this case, we could ultimately be forced to cease use of such trademarks, which could materially harm our business and negatively affect our position in the marketplace.

Even if we establish infringement, the court may decide not to grant an injunction against further infringing activity and instead award only monetary damages, which may or may not be an adequate remedy. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during litigation. There also could be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of shares of our common stock. Moreover, we cannot assure you that we will have sufficient financial or other resources to file and pursue such infringement claims, which typically last for years before they are concluded. Even if we ultimately prevail in such claims, the monetary cost of such litigation and the diversion of the attention of our management and scientific personnel could outweigh any benefit we receive as a result of the proceedings.

Because of the expense and uncertainty of litigation, we may not be in a position to enforce our intellectual property rights against third parties.

Because of the expense and uncertainty of litigation, we may conclude that even if a third party is infringing our issued patent, any patents that may be issued as a result of our pending or future patent applications or other intellectual property rights, the risk-adjusted cost of bringing and enforcing such a claim or action may be too high or not in the best interest of our company or our stockholders. In such cases, we may decide that the more prudent course of action is to simply monitor the situation or initiate or seek some other non-litigious action or solution.

Changes in patent law in the U.S. and other jurisdictions could diminish the value of patents in general, thereby impairing our ability to protect our product candidates.

As is the case with other biopharmaceutical companies, our success is heavily dependent on intellectual property, particularly patents. Obtaining and enforcing patents in the biopharmaceutical industry involves both technological and legal complexity and is therefore costly, time-consuming and inherently uncertain. Changes in either the patent laws or interpretation of the patent laws in the U.S. could increase the uncertainties and costs. Recent patent reform legislation in the U.S. and other countries, including the Leahy-Smith Act signed into law on September 16, 2011, could increase those uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. The Leahy-Smith Act includes a number of significant changes to U.S. patent law. These include provisions that affect the way patent applications are prosecuted, redefine prior art and provide more efficient and cost-effective avenues for competitors to challenge the validity of patents. These include allowing third-party submission of prior art to the USPTO during patent prosecution and additional procedures to attack the validity of a patent by USPTO administered post-grant proceedings, including post-grant review, *inter partes* review, and derivation proceedings. After March 2013, under the Leahy-Smith Act, the U.S. transitioned to a first inventor to file system in which, assuming that the other statutory requirements are met, the first inventor to file a patent application will be entitled to the patent on an invention regardless of whether a third party was the first to invent the claimed invention. However, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business, financial condition, results of operations and prospects.

The U.S. Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. Depending on future actions by the U.S. Congress, the U.S. courts, the USPTO and the relevant law-making bodies in other countries, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce our existing patents and patents that we might obtain in the future.

The U.S. federal government retains certain rights in inventions produced with its financial assistance under the Bayh-Dole Act. The federal government retains a nonexclusive, nontransferable, irrevocable, paid-up license for its own benefit. The Bayh-Dole Act also provides federal agencies with "march-in rights". March-in rights allow the government, in specified circumstances, to require the contractor or successors in title to the patent to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant or applicants. If the patent owner refuses to do so, the government may grant the license itself. If, in the future, we co-own or license in technology that is critical to our business that is developed in whole or in part with federal funds subject to the Bayh-Dole Act, our ability to enforce or otherwise exploit patents covering such technology may be adversely affected.

We may not be able to protect our intellectual property rights throughout the world.

Patents are of national or regional effect, and filing, prosecuting and defending patents on all of our product candidates throughout the world would be prohibitively expensive, and the laws of foreign countries may not protect our rights to the same extent as the laws of the U.S. As such, we may not be able to prevent third parties from practicing our inventions in all countries outside the U.S., or from selling or importing products made using our inventions in and into the U.S. or other jurisdictions. Further, the legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents, trade secrets and other intellectual property protection, particularly those relating to pharmaceuticals or biologics, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. In addition, certain jurisdictions do not protect to the same extent or at all inventions that constitute new methods of treatment. As such, we may not be able to prevent third parties from practicing our inventions in all countries outside the U.S., or from selling or importing products made using our inventions in and into the U.S. or other jurisdictions. Furthermore, certain foreign and developing countries, including China and India, have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In those countries, we and our licensors may have limited remedies if patents are infringed or if we or our licensors are compelled to grant a license to a third party, which could materially diminish the value of those patents. This could limit our potential revenue opportunities. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

We may rely on trade secret and proprietary know how which can be difficult to trace and enforce, and if we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed.

In addition to seeking patents for some of our technology and product candidates, we may also rely on trade secrets, including unpatented know-how, technology and other proprietary information, to maintain our competitive position. Elements of our product candidate, including processes for their preparation and manufacture, may involve proprietary know-how, information, or technology that is not covered by patents, and thus for these aspects we may consider trade secrets and know-how to be our primary intellectual property. Any disclosure, either intentional or unintentional, by our employees, the employees of third parties with whom we share our facilities or third party consultants and vendors that we engage to perform research, clinical trials or manufacturing activities, or misappropriation by third parties (such as through a cybersecurity breach) of our trade secrets or proprietary information could enable competitors to duplicate or surpass our technological achievements, thus eroding our competitive position in our market.

Trade secrets and know-how can be difficult to protect. We require our employees to enter into written employment agreements containing provisions of confidentiality and obligations to assign to us any inventions generated in the course of their employment. We further seek to protect our potential trade secrets, proprietary know-how, and information in part, by entering into non-disclosure and confidentiality agreements with parties who are given access to them, such as our corporate collaborators, outside scientific collaborators, CROs, CMOs, consultants, advisors and other third parties. With our consultants, contractors, and outside scientific collaborators, these agreements typically include invention assignment obligations. While it is our policy to require our employees and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing an enforceable agreement with each party who in fact conceives or develops intellectual property that we regard as our own. Despite these efforts, our assignment agreements may not be self-executing and any of these parties may breach the agreements and disclose our proprietary information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. If we fail in bringing or defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights. Such an outcome could materially, and adversely affect our business, financial condition, results of operations, and growth prospects. Even if we are successful in defending against such claims, litigation could result in substantial costs and distraction to management and other employees. The assignment risks of this paragraph could also pertain to any intellectual property licensed-in to us. In addition, some courts inside and outside the U.S. are less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor or other third party, we would have no right to prevent them from using that technology or

information to compete with us. If any of our trade secrets were to be disclosed to or independently developed by a competitor or other third party, our competitive position would be harmed.

We may be subject to claims that our employees, consultants or independent contractors have wrongfully used or disclosed confidential information of third parties.

We employ individuals who were previously employed at other biotechnology or biopharmaceutical companies, or at research institutions. Although we seek to protect our ownership of intellectual property rights by ensuring that our agreements with our employees, collaborators, and other third parties with whom we do business include provisions requiring such parties to assign rights in inventions to us, we may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise used or disclosed confidential information of our employees' former employers or other third parties. We or our licensors may also be subject to claims that former employers or other third parties have an ownership interest in our patents. Litigation may be necessary to defend against these claims. There is no guarantee of success in defending these claims, and if we or our licensors fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, valuable intellectual property. Even if we are successful, litigation could result in substantial cost and be a distraction to our management and other employees.

Intellectual property rights do not necessarily address all potential threats to our competitive advantage.

The degree of future protection afforded by our intellectual property rights is uncertain because intellectual property rights have limitations, and may not adequately protect our business or permit us to maintain our competitive advantage. For example:

- others may be able to make product candidates that are similar to ours but that are not covered by the claims of the patents that we own or have exclusively licensed;
- we or our licensors or future collaborators might not have been the first to make the inventions covered by the issued patent or pending patent application that we own or have exclusively licensed;
- we or our licensors or future collaborators might not have been the first to file patent applications covering certain of our inventions;
- others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing our intellectual property rights;
- it is possible that our pending patent applications will not lead to issued patents;
- issued patents that we own or have exclusively licensed may be held invalid or unenforceable, as a result of legal challenges by our competitors;
- our competitors might conduct research and development activities in countries where we do not have patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- we cannot ensure that any of our patents, or any of our pending patent applications, if issued, or those of our licensors, will include claims having a scope sufficient to protect our product candidates;
- we cannot ensure that any patents issued to us or our licensors will provide a basis for an exclusive market for our commercially viable product candidates or will provide us with any competitive advantages;
- the U.S. Supreme Court, other U.S. federal courts, U.S. Congress, the USPTO or similar foreign authorities may change the standards of patentability and any such changes could narrow or invalidate, or change the scope of, our or our licensors' patents;
- patent terms may be inadequate to protect our competitive position on our product candidates for an adequate amount of time;
- we cannot ensure that our commercial activities or product candidates will not infringe upon the patents of others;

- we cannot ensure that we will be able to successfully commercialize our product candidates on a substantial scale, if approved, before the relevant patents that we own or license expire;
- we may choose not to file a patent in order to maintain certain trade secrets or know-how, and a third party may subsequently file a patent covering such intellectual property;
- we may not develop additional proprietary technologies that are patentable; and
- the patents of others may have an adverse effect on our business.

Should any of these events occur, they could significantly harm our business, results of operations and prospects.

Patent terms may be inadequate to protect our competitive position on our product candidates and preclinical programs for an adequate amount of time.

Patent rights are of limited duration. In the U.S., if all maintenance fees are timely paid, the natural expiration of a patent is generally 20 years from its earliest U.S. non-provisional filing date. Various extensions may be available, but the life of a patent, and the protection it affords, is limited. A patent term extension based on regulatory delay may be available in the U.S. However, only a single patent can be extended for each marketing approval, and any patent can be extended only once, for a single product. Moreover, the scope of protection during the period of the patent term extension does not extend to the full scope of the claim, but instead only to the scope of the product as approved. Laws governing analogous patent term extensions in foreign jurisdictions vary widely, as do laws governing the ability to obtain multiple patents from a single patent family. Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such product candidates are commercialized. Even if patents covering our product candidates are obtained, once the patent life has expired for a product, we may be open to competition from biosimilar or generic products. Additionally, we may not receive an extension if we fail to apply within applicable deadlines, fail to apply prior to expiration of relevant patents or otherwise fail to satisfy applicable requirements. If we are unable to obtain patent term extension or restoration, or the term of any such extension is less than we request, the period during which we will have the right to exclusively market our product will be shortened and our competitors may obtain approval of competing products following our patent expiration, and our revenue could be reduced, possibly materially.

Risks Related to Government Regulation

Our industry is highly regulated by the FDA and comparable foreign regulatory authorities. We must comply with extensive, strictly enforced regulatory requirements to develop, obtain, and maintain marketing approval for XDEMVY or any of our product candidates, if approved.

XDEMVY and any product candidates we develop and the activities associated with their development and commercialization, including their design, testing, manufacturing, safety, efficacy, recordkeeping, labeling, storage, approval, advertising, promotion, sale, and distribution are very heavily regulated. We have not received approval to market any product candidates from regulatory authorities in any jurisdiction. We have only limited experience in filing and supporting the applications necessary to gain marketing approvals and have relied and expect to continue to rely on third-party CROs to assist us in this process. Securing FDA or comparable foreign regulatory approval such as a marketing authorization from the European Commission or the competent authorities of the individual EU Member States requires the submission of extensive preclinical and clinical data and supporting information for each therapeutic indication to establish the product candidate's safety and efficacy for its intended use. Securing regulatory approval also requires the submission of information about the product manufacturing process to, and inspection of manufacturing facilities by, the relevant regulatory authority. It takes years to complete the testing of a new drug and development delays and/or failure can occur at any stage of testing. Any of our present and future clinical trials may be delayed, halted, not authorized, or approval of any of our products may be delayed or may not be obtained due to any of the following:

- any preclinical study or clinical trial may fail to produce safety and efficacy results satisfactory to the FDA or comparable foreign regulatory authorities;
- preclinical and clinical data can be interpreted in different ways, which could delay, limit or prevent marketing approval;
- negative or inconclusive results from a preclinical study or clinical trial or adverse events during a clinical trial could cause a preclinical study or clinical trial to be repeated or a development program to be terminated, even if

other studies or trials relating to the development program are ongoing or have been completed and were successful;

- the FDA or comparable foreign regulatory authorities can place a clinical hold on a trial if, among other reasons, it finds that subjects enrolled in the trial are or would be exposed to an unreasonable and significant risk of illness or injury;

- the facilities that we utilize, or the processes or facilities of third-party vendors, including without limitation the contract manufacturers who are or will be manufacturing drug substance and drug product for us or any potential collaborators, may not satisfactorily complete inspections by the FDA or comparable foreign regulatory authorities; and

- we may encounter delays or rejections based on changes in FDA regulations, standards or policies or the regulations, standards or policies of comparable foreign regulatory authorities during the period in which we develop a product candidate or the period required for review of any final marketing approval before we are able to market any product candidate.

In addition, information generated during the clinical trial process is susceptible to varying interpretations that could delay, limit, or prevent marketing approval at any stage of the approval process.

Moreover, early positive preclinical or clinical trial results may not be replicated in later clinical trials. As more product candidates within a particular class of drugs proceed through clinical development to regulatory review and approval, the amount and type of clinical data that may be required by regulatory authorities may increase or change. Failure to demonstrate adequately the quality, safety and efficacy of any of our product candidates would delay or prevent marketing approval of the applicable product candidate. We cannot assure you that if clinical trials are completed, either we or our potential collaborators will submit applications for required authorizations to manufacture or market potential products or that any such application will be reviewed and approved by appropriate regulatory authorities in a timely manner, if at all. Changes in marketing approval policies during the development period, changes in or the enactment of additional statutes or regulations, or changes in regulatory review for each submitted product application, may cause delays in the approval or rejection of an application.

Changes in healthcare law and implementing regulations, as well as changes in healthcare policy, may impact our business in ways that we cannot currently predict, and may have a significant adverse effect on our business and results of operations.

In the U.S. and some foreign jurisdictions, there have been, and continue to be, several legislative and regulatory changes and proposed changes regarding the healthcare system that could restrict or regulate post-approval activities, impact pricing and reimbursement and affect our ability to profitably sell XDEMVY or any other product candidates for which we obtain marketing approval and prevent or delay marketing approval of product candidates. Among policy makers and payers both federally and on the state level in the U.S. and elsewhere, including in the EU, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality and/or expanding access. In the U.S., the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives.

The ACA substantially changed the way healthcare is financed by both the government and private insurers, and significantly impacts the U.S. pharmaceutical industry. The ACA, among other things: (i) introduced a new average manufacturer price definition for drugs and biologics that are inhaled, infused, instilled, implanted or injected and not generally dispensed through retail community pharmacies; (ii) increased the minimum Medicaid rebates owed by manufacturers under the Medicaid Drug Rebate Program and expanded rebate liability from fee-for-service Medicaid utilization to include the utilization of Medicaid managed care organizations as well; (iii) established a branded prescription drug fee that pharmaceutical manufacturers of branded prescription drugs must pay to the federal government; (iv) expanded the list of covered entities eligible to participate in the 340B program; (v) established a new Medicare Part D coverage gap discount program, in which manufacturers must agree to offer 70% (increased from 50% in 2019) point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for the manufacturer's outpatient drugs to be covered under Medicare Part D (which, under the IRA, will be replaced by a new manufacturer discount program starting in 2025); (vi) expanded eligibility criteria for Medicaid programs by, among other things, allowing states to offer Medicaid coverage to additional individuals and by adding new mandatory eligibility categories for individuals with income at or below 133% of the federal poverty level, thereby potentially increasing manufacturers' Medicaid rebate liability; (vii) created a licensure framework for follow on biologic products; and (viii) established a Center for Medicare & Medicaid Innovation, at the

CMS to test innovative payment and service delivery models to lower Medicare and Medicaid spending, potentially including prescription drug spending.

Since its enactment, there have been judicial challenges to certain aspects of the ACA, as well as efforts by Congress to modify, and agencies to alter the implementation of, certain aspects of the ACA. For example, Congress eliminated the tax penalty for not complying with the ACA's individual mandate to carry health insurance. Further, the Bipartisan Budget Act of 2018, among other things, amended the ACA, effective January 1, 2019, to increase from 50 percent to 70 percent the point-of-sale discount that is owed by pharmaceutical manufacturers who participate in Medicare Part D to close the coverage gap in most Medicare drug plans, commonly referred to as the "donut hole" (which, under the IRA, will be replaced by a new manufacturer discount program starting in 2025). In the future, Congress may consider other legislation to modify elements of the ACA or other health care reform measures, agencies may further alter their implementation of elements of the ACA or other such measures, and other judicial challenges to elements of the ACA or other such measures may be brought. The extent to which any such changes may impact our business or financial condition is uncertain.

It is possible that the ACA, as currently enacted or may be amended in the future, as well as other healthcare reform measures including those that may be adopted in the future, may result in more rigorous coverage criteria, and less favorable payment methodologies, or other downward pressure on coverage and payment and the price that we receive for any approved product. Any reduction in reimbursement or restriction on coverage under Medicare or other government programs may result in a similar reduction or restriction by private payers.

Other legislative changes have been proposed and adopted since the ACA was enacted. These changes include aggregate reductions to Medicare payments to providers of up to 2% per fiscal year pursuant to the Budget Control Act of 2011 and subsequent laws. Subsequent legislation extended the 2% reduction, generally to 2031. Sequestration is currently set at 2% and will increase to 2.25% for the first half of fiscal year 2030, to 3% for the second half of fiscal year 2030, and to 4% for the remainder of the sequestration period that lasts through the first six months of fiscal year 2031. The American Taxpayer Relief Act of 2012 among other things, also reduced Medicare payments to several types of providers, including hospitals, imaging centers and cancer treatment centers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. New laws may result in additional reductions in Medicare and other healthcare funding, which may materially adversely affect customer demand and affordability for our products and related services and, accordingly, the results of our financial operations. Additional changes that may affect our business include the expansion of new programs such as Medicare payment for performance initiatives for physicians under the Medicare Access and CHIP Reauthorization Act of 2015 which first affected physician payment in 2019. It is unclear how the introduction of the Medicare quality payment program will impact our business.

The IRA introduces several changes to the Medicare Part D benefit, including a limit on annual out-of-pocket costs and a change in manufacturer liability under the program which could negatively affect the profitability of our product candidates. The IRA sunsets the current Medicare Part D coverage gap discount program starting in 2025 and replaces it with a new manufacturer discount program. Failure to pay a discount under this new program will be subject to a civil monetary penalty. In addition, the IRA establishes a Medicare Part B inflation rebate scheme and a Medicare Part D inflation rebate scheme, under which, generally speaking, manufacturers will owe rebates if the price of a Medicare Part B or Part D drug increases faster than the pace of inflation. Failure to timely pay a Medicare Part B or Part D inflation rebate is subject to a civil monetary penalty. The IRA also creates a drug price negotiation program under which the prices for Medicare units of certain high Medicare spend drugs and biologics without generic or biosimilar competition will be capped by reference to, among other things, a specified Non FAMP starting in 2026. Failure to comply with requirements under the drug price negotiation program is subject to an excise tax and/or a civil monetary penalty. This or any other legislative change could impact the market conditions for our products.

In the EU, the European Commission has published a proposal that intends to reduce the regulatory data protection period and orphan market exclusivity period for new medicinal products. Although it is currently uncertain if the proposal will be adopted in its current form and it is uncertain if and when the revised legislation would enter into force, this reform can impact our product candidates in the EU.

There has been heightened governmental scrutiny over the manner in which drug manufacturers set prices for their marketed products, which have resulted in several Congressional inquiries and proposed bills and initiatives, as well as state efforts, designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drug products. Individual states in the U.S. have become increasingly active in passing legislation and implementing regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures. Additionally, states have

established Prescription Drug Affordability Boards (or similar entities) to review high-cost drugs and, in some cases, set upper payment limits.

We expect that these and other healthcare reform measures in the future, may result in more rigorous coverage criteria and lower reimbursement, and in additional downward pressure on the price that we receive for any approved product. Any reduction in reimbursement from Medicare or other government-funded programs may result in a similar reduction in payments from private payers. The implementation of cost containment measures or other healthcare reforms may hinder us in generating revenue, attaining profitability or commercializing our drugs, once marketing approval is obtained.

In the EU, the European Commission has published a proposal that intends to reduce the regulatory data protection period for new medicinal products, which would allow generic competitors to obtain marketing authorization for generic products relying on our data earlier than under the current laws and we may be faced with earlier generic competition and lower prices for our product on the EU market. The legislative process for this reform is expected to take several years. Although it is currently uncertain if the proposal will be adopted in its current form and it is uncertain if and when the revised legislation would enter into force, this reform could impact our product candidates in the EU.

In the EU, coverage and reimbursement status of any product candidates for which we obtain regulatory approval are provided for by the national laws of EU Member States. The requirements may differ across the EU Member States. In markets outside of the U.S. and the EU, reimbursement and healthcare payment systems vary significantly by country, and many countries have instituted price ceilings on specific products and therapies. Also, at the national level, actions have been taken to enact transparency laws regarding payments between pharmaceutical companies and health care professionals.

We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action in the U.S., the EU or any other jurisdiction. If we or any third parties we may engage with are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we or such third parties are not able to maintain regulatory compliance, our product candidates may lose any regulatory approval that may have been obtained and we may not achieve or sustain profitability.

Our employees, independent contractors, clinical trial investigators, CROs, consultants, vendors and any potential commercial partners may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements and insider trading.

We are exposed to the risk of fraud or other misconduct by our employees, clinical trial investigators, CROs, consultants, vendors and any potential commercial partners. Misconduct by these parties could include intentional, reckless and/or negligent conduct or disclosure of unauthorized activities to us that violates: (i) FDA laws and regulations or those of comparable foreign regulatory authorities, including those laws that require the reporting of true, complete and accurate information, (ii) manufacturing standards, (iii) federal and state health and data privacy, security, fraud and abuse, government price reporting, transparency reporting requirements, and other healthcare laws and regulations in the U.S. and abroad or (iv) laws that require the true, complete and accurate reporting of financial information or data. Specifically, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Activities subject to these laws could also involve the improper use or misrepresentation of information obtained in the course of clinical trials, creation of fraudulent data in preclinical studies or clinical trials or illegal misappropriation of drug product, which could result in regulatory sanctions and cause serious harm to our reputation. It is not always possible to identify and deter misconduct by employees and other third parties, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to comply with such laws or regulations. We adopted a code of conduct applicable to all of our employees immediately following the completion of our IPO, as well as a disclosure program and other applicable policies and procedures, but it is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to comply with these laws or regulations. Additionally, we are subject to the risk that a person or government could allege such fraud or other misconduct, even if none occurred. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant civil, criminal and administrative penalties, damages, monetary fines, disgorgements, possible exclusion from participation in Medicare, Medicaid, other U.S. federal healthcare programs or healthcare programs in other jurisdictions, integrity oversight and reporting obligations to resolve allegations of non-compliance, individual imprisonment, other sanctions, contractual damages, reputational harm, diminished profits and future earnings, and curtailment of our operations.

If we fail to comply with environmental, health and safety laws and regulations, we could become subject to fines or penalties or incur costs that could have a material adverse effect on the success of our business.

We, and the third parties with whom we share our facilities, are subject to numerous environmental, health and safety laws and regulations, including those governing laboratory procedures and the handling, use, storage, treatment and disposal of hazardous materials and wastes. Each of our operations involve the use of hazardous and flammable materials, including chemicals and biological and radioactive materials. Each of our operations also produce hazardous waste products. We generally contract with third parties for the disposal of these materials and wastes. We cannot eliminate the risk of contamination or injury from these materials. We could be held liable for any resulting damages in the event of contamination or injury resulting from the use of hazardous materials by us or the third parties with whom we share our facilities, and any liability could exceed our resources. We also could incur significant costs associated with civil or criminal fines and penalties.

Although we maintain general liability insurance as well as workers' compensation insurance to cover us for costs and expenses we may incur due to injuries to our employees resulting from the use of hazardous materials, this insurance may not provide adequate coverage against potential liabilities. We do not maintain insurance for environmental liability or toxic tort claims that may be asserted against us in connection with our storage or disposal of biological, hazardous or radioactive materials.

In addition, we may incur substantial costs in order to comply with current or future environmental, health and safety laws and regulations. These current or future laws and regulations may impair our research and development. Failure to comply with these laws and regulations also may result in substantial fines, penalties or other sanctions.

Further, with respect to the operations of our current and any future third-party contract manufacturers, it is possible that if they fail to operate in compliance with applicable environmental, health and safety laws and regulations or properly dispose of wastes associated with our products, we could be held liable for any resulting damages, suffer reputational harm or experience a disruption in the manufacture and supply of our product candidates or products. In addition, our supply chain may be adversely impacted if any of our third-party contract manufacturers become subject to injunctions or other sanctions as a result of their non-compliance with environmental, health and safety laws and regulations. For example, we source our API for XDEMVY, lotilaner, from Elanco, who sources through a single source supplier. If such manufacturers become subject to such injunctions or sanctions due to non-compliance, it could delay, prevent or impair our commercialization efforts, which could have an adverse effect on our business.

The pharmaceutical legislation reform as proposed by the European Commission in April 2023 would, if adopted, also impose stricter rules regarding the 'Environmental Risk Assessment' that pharmaceutical manufacturers are obliged to perform. Under the proposal for new legislation, non-compliance with the Environmental Risk Assessment requirements could result in the withdrawal or refusal of a marketing authorization.

We may be subject to federal, state and foreign healthcare and abuse laws and false claims laws, as well as information privacy and security laws and regulations. If we are unable to comply, or have not fully complied, with such laws, we could face substantial penalties, criminal sanctions, contractual damages, reputational harm, and diminished profits and future earnings.

ECPs and third-party payers will play a primary role in the recommendation and prescription of XDEMVY and any future product candidates we may develop and any product candidates for which we obtain marketing approval. Our arrangements with ECPs, patients, third-party payers and customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations that may affect our business or financial arrangements and relationships through which we market, sell and distribute our products. As a biopharmaceutical company, federal and state healthcare laws and regulations pertaining to fraud and abuse are applicable to our business and may affect our ability to operate.

We have entered into consulting and scientific advisory board arrangements with physicians and other ECPs, including some who could influence the use of XDEMVY or our product candidates, if approved. Because of the complex and far-reaching nature of these laws, regulatory agencies may view these transactions as prohibited arrangements that must be restructured, or discontinued, or for which we could be subject to other significant penalties. We could be adversely affected if regulatory agencies interpret our financial relationships with providers who may influence the ordering of and use of XDEMVY or our product candidates, if approved, to be in violation of applicable laws.

The scope and enforcement of each of these laws is uncertain and subject to rapid change in the current environment of healthcare reform. Various state and federal regulatory and enforcement agencies continue actively to investigate violations of health care laws and regulations, and the U.S. Congress continues to strengthen the arsenal of enforcement tools. Responding to investigations can be time- and resource-consuming and can divert management's attention

from the business. Any such investigation or settlement could increase our costs or otherwise have an adverse effect on our business.

Efforts to ensure that our collaborations or business arrangements with third parties, and our business generally, comply with applicable healthcare laws and regulations will likely be costly. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other current or future governmental laws and regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, disgorgements, individual imprisonment, exclusion from government funded healthcare programs, such as Medicare and Medicaid, contractual damages, reputational harm, diminished profits and future earnings, additional reporting obligations and oversight if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws, and the curtailment or restructuring of our operations, any of which could substantially disrupt our operations.

Inadequate funding for the FDA and other government agencies could hinder their ability to hire and retain key leadership and other personnel, prevent new products and services from being developed or commercialized in a timely manner or otherwise prevent those agencies from performing normal business functions on which the operation of our business may rely, which could negatively impact our business.

The ability of the FDA to review and approve new products can be affected by a variety of factors, including government budget and funding levels, ability to hire and retain key personnel and accept the payment of user fees, and statutory, regulatory, and policy changes. Average review times at the agency have fluctuated in recent years as a result. In addition, government funding of the SEC and other government agencies on which our operations may rely, including those that fund research and development activities, is subject to the political process, which is inherently fluid and unpredictable.

Disruptions at the FDA and other agencies may also slow the time necessary for new products to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. If a prolonged government shutdown occurs, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business. Further, in our operations as a public company, future government shutdowns could impact our ability to access the public markets and obtain necessary capital in order to properly capitalize and continue our operations.

We are subject to certain U.S. and foreign anti-corruption, anti-money laundering, export control, sanctions, and other trade laws and regulations. We can face serious consequences for violations.

U.S. and foreign anti-corruption, anti-money laundering, export control, sanctions, and other trade laws and regulations, which we collectively refer to as "Trade Laws", prohibit, among other things, companies and their employees, agents, clinical research organizations, legal counsel, accountants, consultants, contractors, and other partners from authorizing, promising, offering, providing, soliciting, or receiving directly or indirectly, corrupt or improper payments or anything else of value to or from recipients in the public or private sector. Violations of Trade Laws can result in substantial criminal fines and civil penalties, imprisonment, the loss of trade privileges, debarment, tax reassessments, breach of contract and fraud litigation, reputational harm, and other consequences. We have direct or indirect interactions with officials and employees of government agencies or government-affiliated hospitals, universities, and other organizations. We also expect our non-U.S. activities to increase over time. We expect to rely on third parties for research, preclinical studies, and clinical trials and/or to obtain necessary permits, licenses, patent registrations, and other marketing approvals. We can be held liable for the corrupt or other illegal activities of our personnel, agents, or partners, even if we do not explicitly authorize or have prior knowledge of such activities.

For XDEMVY, or if we receive marketing approval for another product candidate, we are and will continue being subject to ongoing regulatory obligations and continued regulatory review, which may result in significant additional expense and subject us to restrictions, withdrawal from the market, or penalties if we fail to comply with applicable regulatory requirements or if we experience unanticipated problems with our product candidates, when and if approved.

Obtaining coverage and reimbursement approval for a product from a government or other third-party payer is a time-consuming and costly process that could require us to provide supporting scientific, clinical and cost effectiveness data for the use of our products to the payer. There may be significant delays in obtaining such coverage and reimbursement for newly approved products, and coverage may be more limited than the purposes for which the product is approved by the FDA or comparable foreign regulatory authorities. Moreover, eligibility for coverage and reimbursement does not imply that a product will be paid for in all cases or at a rate that covers our costs, including research, development, intellectual property, manufacture, sale and distribution expenses. Interim reimbursement levels for new products, if applicable, may also not be

sufficient to cover our costs and may not be made permanent. Reimbursement rates may vary according to the use of the product and the clinical setting in which it is used, may be based on reimbursement levels already set for lower cost products and may be incorporated into existing payments for other services. Net prices for products may be reduced by mandatory discounts or rebates required by government healthcare programs or private payers, by any future laws limiting drug prices and by any future relaxation of laws that presently restrict imports of product from countries where they may be sold at lower prices than in the U.S.

There is significant uncertainty related to the insurance coverage and reimbursement of newly approved products. Third-party payers often rely upon Medicare coverage policy and payment limitations in setting reimbursement policies, but also have their own methods and approval process apart from Medicare coverage and reimbursement determinations.

Coverage and reimbursement by a third-party payer may depend upon a number of factors, including the third-party payer's determination that use of a product is:

- a covered benefit under its health plan;
- safe, effective and medically necessary;
- appropriate for the specific patient;
- cost-effective; and
- neither experimental nor investigational.

We cannot be sure that reimbursement will be available for XDEMVY or any other product that we commercialize and, if coverage and reimbursement are available, what the level of reimbursement will be. Obtaining reimbursement for our products may be particularly difficult because of the higher prices often associated with branded therapeutics and therapeutics administered under the supervision of a physician. Our inability to promptly obtain coverage and adequate reimbursement rates from both government-funded and private payers for any approved products that we develop could have a material adverse effect on our operating results, our ability to raise capital needed to commercialize products and our overall financial condition.

Reimbursement may impact the demand for, and the price of, XDEMVY or any other product for which we obtain marketing approval. Assuming we obtain coverage for XDEMVY or another given product by a third-party payer, the resulting reimbursement payment rates may not be adequate or may require co-payments that patients find unacceptably high. Patients who are prescribed medications for the treatment of their conditions, and their prescribing physicians, generally rely on third-party payers to reimburse all or part of the costs associated with those medications. Patients are unlikely to use our products unless coverage is provided and reimbursement is adequate to cover all or a significant portion of the cost of our products. Therefore, coverage and adequate reimbursement is critical to new product acceptance. Coverage decisions may depend upon clinical and economic standards that disfavor new products when more established or lower cost therapeutic alternatives are already available or subsequently become available.

We expect to experience pricing pressures in connection with the sale of XDEMVY or any of our other product candidates due to the trend toward managed healthcare, the increasing influence of health maintenance organizations, and additional legislative changes. The downward pressure on healthcare costs in general, particularly prescription medicines, medical devices and surgical procedures and other treatments, has become very intense. As a result, increasingly high barriers are being erected to the successful commercialization of new products. Further, the adoption and implementation of any future governmental cost containment or other health reform initiative may result in additional downward pressure on the price that we may receive for any approved product.

Outside of the U.S., many countries require approval of the sale price of a product before it can be marketed and the pricing review period only begins after marketing or product licensing approval is granted. To obtain reimbursement or pricing approval in some of these countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidate to other available therapies. In some foreign markets, prescription pharmaceutical pricing remains subject to continuing governmental control even after initial approval is granted. As a result, we might obtain marketing approval for a product candidate in a particular country, but then be subject to price regulations that delay our commercial launch of the product, possibly for lengthy time periods, and negatively impact the revenue, if any, we are able to generate from the sale of the product in that country. Adverse pricing limitations may hinder our ability to recoup our investment in one or more product candidates, even if such product candidates obtain marketing approval.

Failure to comply with health and data protection laws and regulations could lead to government enforcement actions (which could include civil or criminal penalties), significant fines, private litigation, and/or adverse publicity and could negatively affect our financial condition, operating results and business.

We and any potential collaborators may be subject to federal, state, and foreign data protection laws and regulations (i.e., laws and regulations that address privacy and data security). In the U.S., numerous federal and state laws and regulations, including federal health information privacy laws, state data breach notification laws, state health information privacy laws, and federal and state consumer protection laws (e.g., Section 5 of the Federal Trade Commission Act), that govern the collection, use, disclosure, and protection of health-related and other personal information could apply to our operations or the operations of our collaborators. In addition, we may obtain health information from third parties (including research institutions from which we obtain clinical trial data) that are subject to privacy and security requirements under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Though we are not directly subject to HIPAA information privacy and security provisions – other than with respect to providing certain employee benefits, depending on the facts and circumstances, we could be subject to criminal penalties if we knowingly receive individually identifiable health information maintained by a HIPAA-covered entity in a manner that is not authorized or permitted by HIPAA.

Furthermore, states are constantly adopting new laws or amending existing laws, requiring attention to frequently changing regulatory requirements. For example, in California, the CCPA, as amended by the California Privacy Rights Act ("CPRA"), creates transparency requirements, grants to California consumers (as that term is broadly defined) several rights with regard to their personal information, and places increased privacy and security obligations on entities handling personal data of consumers or households. The CCPA requires covered companies to provide disclosures to California consumers, and provides such consumers with ways to opt-out of certain sales of personal information. The CPRA introduced significant amendments to the CCPA and established and funded the CPPA. The amendments introduced by the CPRA went into effect on January 1, 2023, and implementing regulations continue to be introduced by the CPPA. Failure to comply with the CCPA may result in, among other things, significant civil penalties and injunctive relief, or potential statutory or actual damages. In addition, California residents have the right to bring a private right of action in connection with certain types of incidents. These claims may result in significant liability and potential damages. Other states including Virginia, Colorado, Utah, Indiana, Iowa, Tennessee, Montana, Texas, and Connecticut, have enacted privacy laws similar to the CCPA that impose new obligations or limitations in areas affecting our business and we continue to assess the impact of these state legislations on our business as additional information and guidance becomes available. Similarly, there are a number of legislative proposals in the U.S, at both the federal and state level, that could impose new obligations or limitations in areas affecting our business. The CCPA and other state laws could impact our business activities depending on how they are interpreted and exemplify the vulnerability of our business to not only cyber threats but also the evolving regulatory environment related to personal data and protected health information. The CCPA may increase our compliance costs and potential liability, and similar laws have been proposed at the federal level and have been proposed and enacted in other states.

The Federal Trade Commission ("FTC") also sets expectations for failing to take appropriate steps to keep consumers' personal information secure, or failing to provide a level of security commensurate to promises made to individual about the security of their personal information (such as in a privacy notice) may constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act. The FTC expects a company's data security measures to be reasonable and appropriate in light of the sensitivity and volume of consumer information it holds, the size and complexity of its business, and the cost of available tools to improve security and reduce vulnerabilities. Individually identifiable health information is considered sensitive data that merits stronger safeguards. With respect to privacy, the FTC also sets expectations that companies honor the privacy promises made to individuals about how the company handles consumers' personal information; any failure to honor promises, such as the statements made in a privacy policy or on a website, may also constitute unfair or deceptive acts or practices in violation of the FTC Act. While we do not intend to engage in unfair or deceptive acts or practices, the FTC has the power to enforce promises as it interprets them, and events that we cannot fully control, such as data breaches, may result in FTC enforcement. Enforcement by the FTC under the FTC Act can result in civil penalties or enforcement actions.

Activities outside of the U.S. require adherence to local and national data protection standards, impose additional compliance requirements and generate additional risks of enforcement for non-compliance. EU Member States and the United Kingdom ("UK"), as well as other jurisdictions where we may in the future operate, have adopted data protection laws and regulations, which impose significant compliance obligations. For example, the EU General Data Protection Regulation ("GDPR") imposes certain obligations and restrictions on the ability to collect, analyze, use, store, disclose, transfer, or otherwise process personal data, including health-related information from clinical trial subjects. The GDPR imposes a broad range of obligations and restrictions relating to the processing and protection of personal data, including obligations to having a legal basis for processing personal data (which may result in some instances in obtaining the consent of the individuals to whom the personal data relates), providing detailed information about the processing activities disclosed to the individuals, dealing with restrictions on sharing of personal data with third parties, and the transferring of personal data out of the EU, having contractual arrangements in place where required (such as with clinical trial sites and vendors), reporting in certain instances personal data breaches to data protection authorities and/or affected individuals, appointing data protection officers, conducting

data protection impact assessments, responding to privacy rights requests, and keeping records of processing activities. The GDPR may increase our responsibility and liability in relation to personal data that we process and we may be required to expend significant capital and other resources to ensure ongoing compliance with applicable privacy and data security laws, to protect against security breaches and hackers, or to alleviate problems caused by such breaches. This may be onerous and if our efforts to comply with the GDPR or other applicable EU laws and regulations are not successful, it could adversely affect our business. Recent scrutiny and reevaluation of legal mechanisms to allow for the transfer of personal data from the European Economic Area ("EEA"), Switzerland, or UK to the U.S. may impact our ability to transfer personal data or otherwise may cause us to incur significant costs to do so legally. Although there are legal mechanisms to allow for the transfer of personal data from the EEA, Switzerland, and the UK to the U.S., uncertainty about compliance with EU data protection laws remains and data protection authorities from the different EU Member States may interpret the GDPR differently, and guidance on implementation and compliance practices are often updated or otherwise revised, which adds to the complexity of processing personal data in the EU. Enforcement by EU and UK regulators is generally active, and failure to comply with the GDPR or applicable EU Member State/UK local law may result in substantial fines, amongst other things (such as notices requiring compliance within a certain timeframe). The GDPR provides for fines and other administrative penalties in the event of any non-compliance, including fines of up to 10,000,000 Euros or up to 2% of our total worldwide annual turnover for certain comparatively minor offenses, or up to 20,000,000 Euros or up to 4% of our total worldwide annual turnover for more serious offenses. The GDPR also confers a private right of action on data subjects and consumer associations to lodge complaints with data protection authorities, seek judicial remedies, and obtain compensation for damages resulting from violations of the GDPR. Further, the UK Government may amend/update UK data protection laws, which may result in changes to our business operations and potentially incur commercial cost.

Additionally, European/UK data protection laws, including the GDPR, generally restrict the transfer of personal data from the EEA (including the EU), UK, and Switzerland, to the U.S. and most other countries (except those deemed to be adequate by the European Commission/UK Secretary of State as applicable) unless the parties to the transfer have implemented specific safeguards to protect the transferred personal data. This may cause us to incur significant compliance costs for implementing lawful transfer mechanisms, conducting data transfer impact assessments, and implementing additional measures where necessary to ensure that personal data transferred are adequately protected in a manner essentially equivalent to the EU. The GDPR provides different transfer mechanisms we can use to lawfully transfer personal data from the EU to countries outside the EU. An example is relying on adequacy decisions of the European Commission, such as the EU-U.S. Data Privacy Framework which was adopted by the European Commission in 2023 ("EU-U.S. Data Privacy Framework"). The adequacy decision concludes that the U.S. ensures an adequate level of protection (compared to that of the EU) for personal data transferred from the EU to U.S. companies participating in the EU-U.S. Data Privacy Framework. The adequacy decisions of the European Commission are subject to periodic reviews and may be amended or withdrawn. Another example of a lawful transfer mechanism under the GDPR is using the EU Standard Contractual Clauses (“EU SCCs”) as approved by the European Commission in 2021. In order to use the EU SCCs mechanism, the exporter and the importer must ensure that the importer may guarantee a level of personal data protection in the importing country’s level of protection must be adequate that is essentially equivalent to that of the EEA. It follows from case law of the Court of Justice of the European Union and the European Data Protection Board that compliance with EU data transfer obligations involves conducting transfer impact assessments, which includes documenting detailed analyses of data access and protection laws in the countries in which data importers are located, which can be costly and time-consuming. Data importers must also expend resources in analyzing their ability to comply with transfer obligations, including implementing new safeguards and controls to further protect personal data In the UK, international transfer mechanisms have been approved, including: the International Data Transfer Agreement and the International Data Transfer Addendum to the EU SCCs. The UK Information Commissioner’s Office has issued and maintains guidance on how to approach undertaking risk assessments for transfers of UK data to non-adequate countries outside the UK.

A lack of valid transfer mechanisms for data subject to EU/UK data protection laws could increase exposure to enforcement actions as described above, and may affect our business operations and require commercial cost (including potentially limiting our ability to collaborate/work with certain third parties and/or requiring an increase in our data processing capabilities in the EU/UK). Further, the EU/UK data protection laws (including laws on international data transfers as set out above) may also be updated/revised, accompanied by new guidance and/or judicial/regulatory interpretations, which could entail further impacts on our compliance efforts and increased cost.

Failure to comply with U.S. and international data protection laws and regulations could result in government enforcement actions (which could include civil or criminal penalties), significant fines, private litigation, and/or adverse publicity and could negatively affect our financial condition, operating results and business. Moreover, clinical trial subjects about whom we or our potential collaborators obtain personal data, as well as the providers who share this personal data with us, may contractually limit our ability to use and disclose the personal data. Claims that we have violated individuals’ privacy rights, failed to comply with data protection laws, or breached our contractual obligations, even if we are not found liable, could be expensive and time-consuming to defend and could result in adverse publicity that could harm our business. We cannot assure you that our third-party service providers with access to our or our customers’, suppliers’, trial patients’ and employees’ personally identifiable and other sensitive or confidential information in relation to which we are responsible will not breach

contractual obligations imposed by us, or that they will not experience data security breaches or attempts thereof, which could have a corresponding effect on our business, including putting us in breach of our obligations under privacy and data protection laws and regulations and/or which could in turn adversely affect our business, results of operations and financial condition. We cannot assure you that our contractual measures and our own privacy and security- related safeguards will protect us from the risks associated with the third-party processing, storage and transmission of such information. Furthermore, the laws are not consistent, and compliance in the event of a widespread data breach is costly.

Risks Related to Ownership of our Common Stock

The stock price of our common stock may be volatile or may decline regardless of our operating performance and you could lose all or part of your investment.

The market price of our common stock may fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

- our failure to achieve product development or commercialization goals or regulatory approval milestones in the timeframe we announce;
- overall performance of the equity markets;
- our operating performance and the performance of other similar companies;
- results from our ongoing clinical trials and future clinical trials with our current and future product candidates or of our competitors;
- delays in the commencement, enrollment and the ultimate completion of clinical trials;
- changes in our projected operating results that we provide to the public, our failure to meet these projections or changes in recommendations by securities analysts that elect to follow our common stock;
- regulatory actions with respect to our product or product candidates;
- regulatory or legal developments in the U.S. and other countries;
- the level of expenses related to future product candidates or clinical development programs;
- changes in hospital or ECP practices;
- announcements of acquisitions, strategic alliances or significant agreements by us or by our competitors;
- developments or disputes concerning patent applications, issued patents or other intellectual property or proprietary rights;
- recruitment or departure of key personnel;
- the economy as a whole and market conditions in our industry;
- variations in our financial results or the financial results of companies that are perceived to be similar to us;
- financing or other corporate transactions, or inability to obtain additional funding;
- trading activity by a limited number of stockholders who together beneficially own a majority of our outstanding common stock;
- the expiration of market standoff or contractual lock-up agreements;
- the size of our market float; and
- any other factors discussed in this report.

In addition, the stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many biopharmaceutical companies. Stock prices of many biopharmaceutical companies have fluctuated in a manner unrelated or disproportionate to the operating performance of those companies. In the past, stockholders have filed securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business and adversely affect our business.

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business. If securities or industry analysts cease coverage of us, the trading price for our common stock would be negatively affected. If one or more of the analysts who cover us downgrade our common stock or publish inaccurate or unfavorable research about our business, our common stock price would likely decline. If one or more of these analysts cease coverage of us or fail to publish reports on us regularly, demand for our common stock could decrease, which might cause our common stock price and trading volume to decline.

We are currently an "emerging growth company" and "smaller reporting company" and we cannot be certain if the reduced reporting requirements applicable to emerging growth companies will make our common stock less attractive to investors.

We are currently an emerging growth company as defined in the JOBS Act and we intend to take advantage of some of the exemptions from reporting requirements that are applicable to other public companies that are not emerging growth companies, including:

- the option to present only two years of audited financial statements, in addition to any required unaudited interim financial statements, with correspondingly reduced “Management’s Discussion and Analysis of Financial Condition and Results of Operations” disclosure;
- not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act");
- not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor’s report providing additional information about the audit and the financial statements;
- not being required to disclose certain executive compensation-related items such as the correlation between executive compensation and performance and comparisons of the chief executive officer’s compensation to median employee compensation; and
- not being required to submit certain executive compensation matters to stockholder advisory votes, such as "say-on-pay," "say-on-frequency," and "say-on-golden parachutes."

The JOBS Act permits an emerging growth company such as us, to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We have irrevocably elected to opt out of this provision and, as a result, we will comply with new or revised accounting standards as required when they are adopted.

We cannot predict if investors will find our common stock less attractive because we will rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile. We may take advantage of these reporting exemptions until we are no longer an emerging growth company. We will remain an emerging growth company until the earlier of (1) December 31, 2025, the last day of the fiscal year following the fifth anniversary of the completion of our IPO, (b) the last day of the fiscal year (a) in which we have total annual gross revenue of at least $1.235 billion or (b) in which we are deemed to be a large accelerated filer, which means the market value of our common stock that is held by non-affiliates exceeds $700 million as of the prior June 30th and (2) the date on which we have issued more than $1.0 billion in non-convertible debt during the prior three-year period. We are also a smaller reporting company as defined in the Exchange Act. We may take advantage of certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as our voting and non-voting common stock held by non-affiliates is less than $250.0 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than $100.0 million during the most recently completed fiscal year and our voting

and non-voting common stock held by non-affiliates is less than $700.0 million measured on the last business day of our second fiscal quarter.

As of December 31, 2024, we will be considered a large accelerated filer as defined in Rule 12b-2 under the Exchange Act. As such, we will no longer (i) qualify as an emerging growth company, (ii) qualify as a smaller reporting company, (iii) be exempt from providing an auditor's attestation report on internal control over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act, or (iv) be able to take advantage of the exemptions from reporting requirements that are applicable to other public companies, including those provided above. See the Risk Factor below titled "As of December 31, 2024, we will no longer qualify as an emerging growth company or a smaller reporting company and, as a result, will no longer able to avail ourselves of certain reduced reporting requirements applicable to emerging growth companies or smaller reporting companies, subject to applicable transition relief."

Investors may find our common stock less attractive to the extent we rely on the exemptions and relief granted by the JOBS Act. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may decline or become more volatile.

As of December 31, 2024, we will no longer qualify as an emerging growth company or a smaller reporting company and, as a result, will no longer able to avail ourselves of certain reduced reporting requirements applicable to emerging growth companies or smaller reporting companies, subject to applicable transition relief.

On June 28, 2024, the last business day of the second quarter of 2024, the aggregate market value of the shares of our common stock held by non-affiliate stockholders exceeded $700.0 million. As a result, we will be considered a large accelerated filer as of December 31, 2024, as defined in Rule 12b-2 under the Exchange Act, and will cease to be an emerging growth company at that time. We are also currently a smaller reporting company as defined in the Exchange Act. However, effective December 31, 2024, due to large accelerated filer status, we will no longer qualify as a smaller reporting company and accordingly will no longer be permitted to take advantage of the reduced reporting requirements for smaller reporting companies, subject to a transition period that allows us to use smaller reporting company scaled disclosure for our Annual Report on Form 10-K for the year ending December 31, 2024.

As a result of our loss of emerging growth company and smaller reporting company status, we expect our operating costs to increase as our compliance, reporting and other costs increase.

We incur significant costs as a result of operating as a public company and our management devotes substantial time to new compliance initiatives and corporate governance practices. We expect to incur increased costs once we no longer qualify as an emerging growth company or a smaller reporting company.

We incur significant legal, accounting and other costs operating as a public company and our management devotes substantial time to new compliance initiatives and corporate governance practices. As of December 31, 2024, we will be considered a large accelerated filer and will no longer qualify as an emerging growth company or a smaller reporting company. As a result, we will be subject to the additional reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Protection Act, as well as rules adopted, and to be adopted, by the SEC and Nasdaq. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, we expect these additional rules and regulations to substantially increase our legal and financial compliance costs and to make some activities more time-consuming and costly, which will increase our operating expenses. For example, the loss of emerging growth company status, we will be required to include an attestation report on internal control over financial reporting issued by our independent registered public accounting firm in addition to making a formal assessment of the effectiveness of our internal control over financial reporting in order to comply with SEC rules that implement Section 404 of the Sarbanes-Oxley Act. To achieve compliance with Section 404 within the prescribed period, we will be engaging in a process to document and evaluate our internal control over financial reporting, which is both costly and challenging. In this regard, we will need to continue to dedicate internal resources, potentially engage outside consultants and adopt a detailed work plan to assess and document the adequacy of our internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing that controls are designed and operating effectively, and implement a continuous reporting and improvement process for internal control over financial reporting.

In addition, any failure to comply with the additional compliance requirements associated with losing emerging growth company and smaller reporting company status in a timely manner, or at all, could have an adverse effect on our business and results of operations and could cause a decline in the price of our common stock.

Sales of a substantial number of shares of our common stock in the public market could cause the price of our common stock to fall.

Sales of a substantial number of shares of our common stock in the public market could cause our stock price to decline. Sales of a substantial number of shares of our common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock. As of June 30, 2024, we had 38,030,385 shares of common stock outstanding. Shares held by directors, executive officers and other affiliates will be subject to volume limitations under Rule 144 under the Securities Act of 1933 (the "Securities Act") and various vesting agreements.

We have registered and intend to continue to register all shares of common stock that we may issue under our equity compensation plans. Once we register these shares, they can be freely sold in the public market upon issuance, subject to volume limitations applicable to affiliates. We cannot predict what effect, if any, sales of our shares in the public market or the availability of shares for sale will have on the market price of our common stock. However, future sales of substantial amounts of our common stock in the public market, including shares issued upon exercise of our outstanding warrant or options, or the perception that such sales may occur, could adversely affect the market price of our common stock. We also expect that significant additional capital may be needed in the future to continue our planned operations. To raise capital, we may sell common stock, including pursuant to our ATM program, convertible securities or other equity securities in one or more transactions at prices and in a manner we determine from time to time. For example, in March 2024 we completed a follow-on public offering of 3.3 million shares of our common stock at a public offering price of $32.00 per share and, in lieu of common stock to a certain investor, pre-funded warrants to purchase 312,500 shares of our common stock at a price of $31.9999 per pre-funded warrant, for aggregate net proceeds of approximately $107.7 million (after deducting underwriting discounts, commissions and other estimated offering-related expenses) and in the fourth quarter of 2023 we raised approximately $19.2 million, after deducting broker commissions and fees, through sales under our ATM program. To the extent that additional capital is raised through the sale and issuance of shares or other securities convertible into shares, our stockholders will be diluted. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock.

The concentration of our stock ownership will likely limit your ability to influence corporate matters, including the ability to influence the outcome of director elections and other matters requiring stockholder approval.

Our officers, directors and holders of more than 5% of our outstanding common stock acting together, will, due to their holdings of our common stock, have significant influence over all matters that require approval by our stockholders, including the election of directors and approval of significant corporate transactions. Corporate actions might be taken even if other stockholders oppose them. This concentration of ownership might also have the effect of delaying or preventing a change of control of our company that other stockholders may view as beneficial.

Requirements associated with being a public company will increase our costs significantly, as well as divert significant company resources and management attention.

As a public company, we are subject to the reporting requirements of the Exchange Act, or the other rules and regulations of the SEC, or any securities exchange relating to public companies. Compliance with the various reporting and other requirements applicable to public companies requires considerable time and attention of management and we will incur significant legal, accounting and other expenses. We cannot assure you that we will satisfy our obligations as a public company on a timely basis.

In addition, as a public company, it may be more difficult or more costly for us to obtain certain types of insurance, including directors' and officers' liability insurance, and we may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. The impact of these events could also make it more difficult for us to attract and retain qualified personnel to serve on our board of directors, our board committees or as executive officers.

If we fail to maintain proper and effective internal controls, our ability to produce accurate and timely financial statements could be impaired, which could result in sanctions or other penalties that would harm our business.

We are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act and the rules and regulations of The Nasdaq Global Market LLC. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal controls over financial reporting. We must perform system and process

design evaluation and testing of the effectiveness of our internal controls over financial reporting to allow management to report on the effectiveness of our internal controls over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act. Therefore, we will need to continue to dedicate internal resources, including through hiring additional financial and accounting personnel, potentially engaging outside consultants, continue to assess and document the adequacy of internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing that controls are functioning as documented and implement a continuous reporting and improvement process for internal control over financial reporting. This requires us to incur substantial professional fees and internal costs to maintain compliance.

We may discover weaknesses in our system of internal financial and accounting controls and procedures that could result in a material misstatement of our financial statements. Our internal control over financial reporting will not prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud will be detected.

If we are not able to comply with the requirements of Section 404 of the Sarbanes-Oxley Act in a timely manner, or if we are unable to maintain proper and effective internal controls over financial reporting, we may not be able to produce timely and accurate financial statements. If that were to happen, our investors could lose confidence in our reported financial information, the market price of our stock could decline and we could be subject to sanctions or investigations by the SEC or other regulatory authorities including equivalent foreign authorities.

We do not intend to pay dividends for the foreseeable future.

We have never declared nor paid cash dividends on our capital stock. We currently intend to retain any future earnings to finance the operation and expansion of our business, and we do not expect to declare or pay any dividends in the foreseeable future. Our 2024 Credit Facility also contains a negative covenant that prohibits us from paying dividends subject to limited exceptions. Consequently, stockholders must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment.

We could be subject to securities class action litigation.

In the past, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us because biopharmaceutical companies have experienced significant stock price volatility in recent years. If we face such litigation, it could result in substantial costs and a diversion of management's attention and resources, which could harm our business.

Our operating results may fluctuate significantly, which makes our future operating results difficult to predict and could cause our operating results to fall below expectations or our guidance.

Our quarterly and annual operating results may fluctuate significantly in the future, which makes it difficult for us to predict our future operating results. Our operating results may fluctuate due to a variety of factors, many of which are outside of our control and may be difficult to predict, including the following:

- the cost of manufacturing XDEMVY or our other product candidates, which may vary depending on the quantity of production and the terms of our agreements with manufacturers;
- the level of demand for XDEMVY or our product candidates should they receive approval, which may vary significantly;
- the risk/benefit profile, cost and reimbursement policies with respect to XDEMVY or our product candidates, if approved, and existing and potential future drugs that compete with our product candidates;
- the gross-to-net yields for XDEMVY or our other product candidates, if approved;
- the timing and success or failure of clinical trials for our product candidates or competing product candidates, or any other change in the competitive landscape of our industry, including consolidation among our competitors or partners;

- our ability to successfully recruit patients for preclinical studies and clinical trials, and any delays caused by difficulties in such recruitment efforts;
- our ability to obtain regulatory approval for our product candidates, and the timing and scope of any such approvals we may receive;
- the timing and cost of, and level of investment in, research and development activities relating to our product candidates, which may change from time to time;
- our ability to attract, hire and retain qualified personnel;
- expenditures that we will or may incur to develop additional product candidates;
- the changing and volatile U.S., EU and global economic environments, including the impact of current or future health pandemics; and
- future accounting pronouncements or changes in our accounting policies.

The cumulative effects of these factors could result in large fluctuations and unpredictability in our quarterly and annual operating results. As a result, comparing our operating results on a period-to-period basis may not be meaningful. This variability and unpredictability could also result in our failing to meet the expectations of industry or financial analysts or investors for any period. If our revenue or operating results fall below the expectations of analysts or investors or below any forecasts we may provide to the market, or if the forecasts we provide to the market are below the expectations of analysts or investors, the price of our common stock could decline substantially. Such a stock price decline could occur even when we have met any previously publicly stated guidance we may provide.

Delaware law and provisions in our amended and restated certificate of incorporation and amended and restated bylaws could make a merger, tender offer or proxy contest difficult, thereby depressing the trading price of our common stock.

Our status as a Delaware corporation and the anti-takeover provisions of the Delaware General Corporation Law may discourage, delay or prevent a change in control by prohibiting us from engaging in a business combination with an interested stockholder for a period of three years after the person becomes an interested stockholder, even if a change of control would be beneficial to our existing stockholders. In addition, our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that may make the acquisition of our company more difficult, including the following:

- a classified board of directors with three-year staggered terms, which could delay the ability of stockholders to change the membership of a majority of our board of directors;
- the ability of our board of directors to issue shares of preferred stock and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquiror;
- the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of our board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- the requirement that a special meeting of stockholders may be called only by a majority vote of our entire board of directors, the chairman of our board of directors or our chief executive officer, which could delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors;
- the requirement for the affirmative vote of holders of at least 66 2/3% of the voting power of all of the then-outstanding shares of the voting stock, voting together as a single class, to amend the provisions of our amended and restated certificate of incorporation or our amended and restated bylaws, which may inhibit the ability of an acquiror to effect such amendments to facilitate an unsolicited takeover attempt; and

- advance notice procedures with which stockholders must comply to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting, which may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of us.

In addition, as a Delaware corporation, we are subject to Section 203 of the Delaware General Corporation Law. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us for a certain period of time. A Delaware corporation may opt out of this provision by express provision in its original certificate of incorporation or by amendment to its certificate of incorporation or bylaws approved by its stockholders. However, we have not opted out of this provision.

These and other provisions in our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law could make it more difficult for stockholders or potential acquirors to obtain control of our board of directors or initiate actions that are opposed by our then-current board of directors, including delay or impede a merger, tender offer or proxy contest involving our company. The existence of these provisions could negatively affect the price of our common stock and limit opportunities for you to realize value in a corporate transaction.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware and the U.S. federal district courts are the exclusive forums for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware is the exclusive forum for any derivative action or proceeding brought on our behalf, any action asserting a breach of fiduciary duty, any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our certificate of incorporation or our bylaws or any action asserting a claim against us that is governed by the internal affairs doctrine.

This provision would not apply to suits brought to enforce a duty or liability created by the Exchange Act. Furthermore, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all such Securities Act actions. Accordingly, both state and federal courts have jurisdiction to entertain such claims. To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our certificate of incorporation will further provide that the U.S. federal district courts will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions. In such instance, we would expect to vigorously assert the validity and enforceability of the exclusive forum provisions of our certificate of incorporation. This may require significant additional costs associated with resolving such action in other jurisdictions and there can be no assurance that the provisions will be enforced by a court in those other jurisdictions.

This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees and may discourage these types of lawsuits. Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions.

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

Use of Proceeds from Initial Public Offering

There has been no material change in the planned use of proceeds from our IPO as described in the Registration Statement on Form S-1 (File No. 333-249076), declared effective by the SEC on October 15, 2020, and the related final prospectus, dated October 15, 2020, filed with the SEC on October 16, 2020, pursuant to Rule 424(b) of the Securities Act.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

None.

Item 5. Other Information.

Securities Trading Plans of Directors and Executive Officers

During the three months ended June 30, 2024, none of our officers or directors, as defined in Rule 16a-1(f), informed us of the adoption or termination of a Rule 10b5-1 trading arrangement or a non-Rule 10b5-1 trading arrangement, each as defined in Regulation S-K Item 408.

Item 6. Exhibits

Exhibit Number	Description	Form	File Number	Incorporated by Reference Exhibit	Date	Filed Herewith
10.1#	Loan and Security Agreement, dated April 19, 2024, by and among Tarsus Pharmaceuticals, Inc and Biopharma Credit PLC, Biopharma Credit Investments V and BPCR Limited Partnership					X
31.1	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
31.2	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
32.1*	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
32.2*	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
101.INS	Inline XBRL Instance Document - The instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document.					X
101.SCH	Inline XBRL Taxonomy Extension Schema With Embedded Linkbase Documents.					X
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).					X

* The certifications attached as Exhibit 32.1 and 32.2 that accompany this Quarterly Report on Form 10-Q are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of Tarsus Pharmaceuticals, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Quarterly Report on Form 10-Q, irrespective of any general incorporation language contained in such filing.

\# Pursuant to Item 601(b)(10) of Regulation S-K, certain confidential portions of this exhibit have been omitted by means of marking such portions with asterisks as the identified confidential portions are both not material and are the type of information that the Registrant treats as private or confidential. The Registrant agrees to supplementally furnish an unredacted copy of this exhibit to the SEC upon its request.

SIGNATURES

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

TARSUS PHARMACEUTICALS, INC.

Date: August 8, 2024

/s/ Bobak Azamian, M.D., Ph.D.
Bobak Azamian, M.D., Ph.D.
President, Chief Executive Officer and Chairman
(Principal Executive Director)

Date: August 8, 2024

/s/ Jeffrey Farrow
Jeffrey Farrow
Chief Financial Officer and Chief Strategy Officer
(Principal Financial Officer and Principal Accounting Officer)

Exhibit 10.1

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) THE TYPE OF INFORMATION THAT THE REGISTRANT TREATS AS PRIVATE AND CONFIDENTIAL. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***]".

LOAN AGREEMENT

Dated as of April 18, 2024

among

TARSUS PHARMACEUTICALS, INC.

(as ***Borrower***, and a ***Credit Party***),

THE GUARANTORS SIGNATORY HERETO OR OTHERWISE PARTY HERETO FROM TIME TO TIME

(as additional ***Credit Parties***),

BIOPHARMA CREDIT PLC

(as ***Collateral Agent***),

BPCR LIMITED PARTNERSHIP

(as a ***Lender***)

and

BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP

(as a ***Lender***)

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LOAN AGREEMENT

THIS LOAN AGREEMENT (this "**Agreement**"), dated as of April 18, 2024 (the "**Effective Date**") by and among TARSUS PHARMACEUTICALS, INC., a Delaware corporation (as "**Borrower** and a Credit Party"), the Guarantors signatory hereto or otherwise party hereto from time to time, as additional Credit Parties, BIOPHARMA CREDIT PLC, a public limited company incorporated under the laws of England and Wales (as the "**Collateral Agent**"), BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP, a Cayman Islands exempted limited partnership (as a "**Lender**") and BPCR LIMITED PARTNERSHIP, a limited partnership established under the laws of England and Wales (as a "**Lender**"), provides the terms on which each Lender shall make, and Borrower shall repay, the Credit Extensions (as hereinafter defined).

1 ACCOUNTING AND OTHER TERMS

Except as otherwise expressly provided herein, all accounting terms not otherwise defined in this Agreement shall have the meanings assigned to them in conformity with GAAP. Calculations and determinations must be made following GAAP. If at any time any change in GAAP would affect the computation of any financial requirement set forth in any Loan Document (including for purposes of measuring compliance with any provision of Section 6), and either Borrower or the Collateral Agent shall so request, the Collateral Agent and Borrower shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in GAAP; provided, that, until so amended, (x) such requirement shall continue to be computed in accordance with GAAP prior to such change therein and (y) all financial statements, Compliance Certificates and similar documents provided, delivered or submitted hereunder shall be provided, delivered or submitted together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts referred to herein, including in Section 5 and Section 6 shall be made, without giving effect to any (a) election under ASC 825-10 (or any other Financial Accounting Standards Board Accounting Standards Codification ("**ASC**") or Financial Accounting Standard or Applicable Accounting Standard (including IFRS 9) having a similar result or effect) to value any Indebtedness or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value" and (b) any treatment of Indebtedness in respect of convertible debt instruments under ASC 470-20 (or any other ASC or Financial Accounting Standard or Applicable Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. Notwithstanding anything to the contrary above or in the definition of "Capital Lease Obligations", all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the effectiveness of ASC 842 shall continue to be accounted for as operating leases for all purposes hereunder or under any other Loan Documents (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with ASC 842 (on a prospective or retroactive basis or otherwise) to be treated as Capital Leases. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to "Dollars" or "$" are United States Dollars, unless otherwise noted.

It is understood and agreed that Borrower, or any such other Credit Party may from time to time update certain information in the Perfection Certificate, the Disclosure Letter or such other disclosure schedules attached to Loan Documents after the Effective Date to the extent expressly permitted by one or more provisions in this Agreement and the other Loan Documents to reflect changes since the Effective Date, provided that in no event may the Perfection Certificate, the Disclosure Letter or such other disclosure schedules be updated in a manner that would reflect or evidence a Default or Event of Default (with or without such update).

For purposes of Sections 5 and 6 hereof and solely with respect to the amount of any Indebtedness, Investment or other transaction made or consummated in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred after the time such Indebtedness, Investment or other transaction is incurred, made or consummated (so long as such Indebtedness, Investment or other transaction, at the time incurred, made or consummated, was permitted hereunder) solely as a result of changes in rates of currency exchange occurring over time.

The Collateral Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Collateral Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to Borrower. The Collateral Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

2 LOANS AND TERMS OF PAYMENT

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

2.2. Term Loans.

(a) Availability. Subject to the terms and conditions of this Agreement (including Sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7):

(i) Borrower agrees to request in accordance with Section 3.7, and each Lender severally agrees to make, a term loan to Borrower on the Tranche A Closing Date in an original principal amount equal to such Lender's Tranche A Commitment (collectively, the "**Tranche A Loan**");

(ii) At Borrower's request pursuant to Section 3.7, each Lender severally agrees to make a term loan to Borrower on the Tranche B Closing Date in an original principal amount equal to such Lender's Tranche B Commitment (or such lesser amounts as Borrower may request) (collectively, the "**Tranche B Loan**");

(iii) At Borrower's request pursuant to Section 3.7, each Lender severally agrees to make a term loan to Borrower on the Tranche C Closing Date in an original principal amount equal to such Lender's Tranche C Commitment (or such lesser amounts as Borrower may request) (collectively, the "**Tranche C Loan**"); and

(iv) At Borrower's request pursuant to Section 3.7, each Lender severally agrees to make a term loan to Borrower on the Tranche D Closing Date in an original principal amount equal to such Lender's Tranche D Commitment (or such lesser amounts as Borrower may request) (collectively, the "**Tranche D Loan**").

After repayment or prepayment (in whole or in part), no Term Loan (or any portion thereof) may be re-borrowed.

(b) Repayment.

(i) The Term Loans, including all unpaid principal thereunder (and, for the avoidance of doubt, all accrued and unpaid interest, all due and unpaid Lender Expenses and any and all other

outstanding amounts payable under the Loan Documents), are due and payable in full on the Term Loan Maturity Date.

(ii) The Term Loans may be prepaid only in accordance with Section 2.2(c), except as provided in Section 8.1.

(c) Prepayment of Term Loans.

(i) Borrower shall have the option, at any time after the Tranche A Closing Date, to prepay, in whole and not in part, outstanding principal amounts under the Term Loans advanced by Lenders under this Agreement; provided that (A) Borrower provides written notice to the Collateral Agent of its election (which shall be irrevocable unless the Collateral Agent otherwise consents in writing) to prepay, in whole, the Term Loans at least five (5) Business Days prior to such prepayment (which notice shall include the amount of the outstanding principal amount of the Term Loans to be prepaid), and (B) the prepayment of such principal amount shall be accompanied by any and all accrued and unpaid interest thereon through the date of prepayment, any and all amounts payable in connection with such prepayment pursuant to Section 2.2(e) and Section 2.2(f) (as applicable) and any and all other amounts payable or accrued and not yet paid under this Agreement and the other Loan Documents (including pursuant to Section 2.4). The Collateral Agent will promptly notify each Lender of its receipt of such notice, and the amount of such Lender's Applicable Percentage of such prepayment. Notwithstanding anything to the contrary in this Section 2.2(c)(i), Borrower may rescind any notice of prepayment delivered pursuant to this Section 2.2(c)(i) if such prepayment would have resulted from a refinancing of the Term Loans or other contingent transaction, which refinancing or transaction shall not be consummated or shall otherwise be delayed (in which case, a new notice shall be required to be sent in connection with any subsequent prepayment).

(ii) Borrower shall promptly, and in any event no later than ten (10) Business Days prior to the consummation of such Change in Control, notify the Collateral Agent in writing of the occurrence (or anticipated occurrence) of a Change in Control, which notice shall include reasonable detail as to the nature, timing and other circumstances of such Change in Control (such notice, a "**Change in Control Notice**"). Borrower shall prepay in full all of the Term Loans advanced by Lenders under this Agreement, immediately upon (and concurrent with) the consummation of such Change in Control, in an amount equal to the sum of (A) all unpaid principal and any and all accrued and unpaid interest thereon through the date of prepayment (such interest to be calculated based on Term SOFR for the Interest Period during which such Change in Control is consummated), and (B) any and all amounts payable with respect to the prepayment under this Section 2.2(c)(ii) pursuant to Section 2.2(e) and Section 2.2(f) (as applicable), together with any and all other amounts payable or accrued and not yet paid under this Agreement and the other Loan Documents (including pursuant to Section 2.4). The Collateral Agent will promptly notify each Lender of its receipt of the Change in Control Notice, and the amount of such Lender's Applicable Percentage of such prepayment.

(d) Prepayment Application. Any prepayment of the Term Loans pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a) (together with the accompanying Makewhole Amount, Prepayment Premium or Additional Consideration that is payable pursuant to Section 2.2(e), Section 2.2(f) and Section 2.7, as applicable) shall be paid to Lenders in accordance with their respective Applicable Percentages for application to the Obligations in the following order: (i) first, to due and unpaid Lender Expenses; (ii) second, to accrued and unpaid interest at the Default Rate incurred pursuant to Section 2.3(b), if any; (iii) third, without duplication of amounts paid pursuant to sub-clause (ii) above, to accrued and unpaid interest at the Term Loan Rate; (iv) fourth, to accrued and unpaid Additional Consideration, if any; (v) fifth, to the Prepayment Premium; (vi) sixth, to the Makewhole Amount, if applicable; (vii) seventh, to the outstanding principal amount of the Term Loans being prepaid (in such order as the Collateral Agent or the Required Purchasers may direct); and (viii) eighth, to any remaining amounts then due and payable under this Agreement and the other Loan Documents.

(e) Makewhole Amount.

(i) Any prepayment of the Tranche A Loan by Borrower (A) pursuant to Section 2.2(c), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), in

each case occurring prior to the 2nd-year anniversary of the Tranche A Closing Date shall, in any such case, be accompanied by payment of an amount equal to the Tranche A Makewhole Amount.

(ii) Any prepayment of the Tranche B Loan by Borrower (A) pursuant to Section 2.2(c), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), in each case occurring prior to the 2nd-year anniversary of the Tranche B Closing Date shall, in any such case, be accompanied by payment of an amount equal to the Tranche B Makewhole Amount.

(iii) Any prepayment of the Tranche C Loan by Borrower (A) pursuant to Section 2.2(c), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), in each case occurring prior to the 2nd-year anniversary of the Tranche C Closing Date shall, in any such case, be accompanied by payment of an amount equal to the Tranche C Makewhole Amount.

(iv) Any prepayment of the Tranche D Loan by Borrower (A) pursuant to Section 2.2(c), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), in each case occurring prior to the 2nd-year anniversary of the Tranche D Closing Date shall, in any such case, be accompanied by payment of an amount equal to the Tranche D Makewhole Amount.

(f) Prepayment Premium.

(i) Any prepayment of the Tranche A Loan by Borrower (A) pursuant to Section 2.2(c), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), shall, in any such case, be accompanied by payment of an amount equal to the Tranche A Prepayment Premium.

(ii) Any prepayment of the Tranche B Loan by Borrower (A) pursuant to Section 2.2(c), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), shall, in any such case, be accompanied by payment of an amount equal to the Tranche B Prepayment Premium.

(iii) Any prepayment of the Tranche C Loan by Borrower (A) pursuant to Section 2.2(c), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), shall, in any such case, be accompanied by payment of an amount equal to the Tranche C Prepayment Premium.

(iv) Any prepayment of the Tranche D Loan by Borrower (A) pursuant to Section 2.2(c), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), shall, in any such case, be accompanied by payment of an amount equal to the Tranche D Prepayment Premium.

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

(g) Any Makewhole Amount or Prepayment Premium payable as a result of any prepayment of the Term Loans pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), shall be presumed to be the liquidated damages sustained by each applicable Lender as the result of the early redemption and repayment of such Term Loan Notes and Borrower agrees that it is reasonable under the circumstances currently existing. BORROWER EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE REQUIREMENTS OF LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF ANY MAKEWHOLE AMOUNT OR PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH PREPAYMENT OR ACCELERATION OR OTHERWISE. Borrower expressly agrees that (to the fullest extent it may lawfully do so) that: (i) each Makewhole Amount and Prepayment Premium is reasonable and is the product of an arm's-length transaction among sophisticated business people, ably represented by counsel; (ii) each Makewhole Amount and Prepayment Premium shall be payable notwithstanding the then-prevailing market rates at the time payment thereof is made; (iii) there has been a course of

conduct among Lenders and Borrower giving specific consideration in this transaction for such agreement to pay each Makewhole Amount and Prepayment Premium; and (iv) Borrower shall be estopped hereafter from claiming differently than as agreed to in this Section 2.2(g) and Section 8.6. Borrower expressly acknowledges that its agreement to pay the Makewhole Amount and Prepayment Premium, as the case may be, to applicable Lenders as herein described is a material inducement to such Lenders to make any Credit Extension. Without affecting any of any Lender's rights or remedies hereunder or in respect hereof, if Borrower fails to pay the applicable Makewhole Amount or Prepayment Premium when due, then the amount thereof shall thereafter bear interest until paid in full at the Default Rate.

2.3. Payment of Interest on the Credit Extensions.

(a) Interest Rate.

(i) Subject to Section 2.3(b) below, the principal amount outstanding under each Term Loan shall accrue interest at a *per annum* rate equal to Term SOFR for the Interest Period therefor *plus* the Applicable Margin (the "**Term Loan Rate**"), which interest shall be payable quarterly in arrears in accordance with this Section 2.3.

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

(iii) Interest is due and payable quarterly on each Interest Date, as calculated by the Collateral Agent (which calculations shall be deemed correct absent manifest error; provided that the Collateral Agent shall provide evidence of such calculation upon Borrower's written request), commencing on the first Interest Date during the calendar quarter during which the Tranche A Closing Date occurs; provided, however, that if any such date is not a Business Day, the applicable interest shall be due and payable on the immediately preceding Business Day.

(b) Default Rate. In the event Borrower fails to pay any of the Obligations when due, or upon the commencement and during the continuance of an Insolvency Proceeding of Borrower, or upon the occurrence and during the continuation of any other Event of Default (after giving effect to any applicable grace or cure period, if any), immediately (and without notice or demand by any Lender or the Collateral Agent for payment thereof to Borrower), any and all past due Obligations shall accrue interest at a rate *per annum* which is three percentage points (3.00%) above the rate that is otherwise applicable thereto (the "**Default Rate**"), and, notwithstanding anything to the contrary in Section 2.3(a) above, such interest shall be payable entirely in cash on demand of any Lender or the Collateral Agent. Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment of any Obligations and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Collateral Agent or any Lender.

(c) 360-Day Year. Interest payable under each Term Loan shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed.

(d) Payments. Except as otherwise expressly provided herein, all Term Loan payments and any other payments hereunder by (or on behalf of) Borrower shall be made on the date specified herein to such bank account of each applicable Lender as such Lender (or the Collateral Agent) shall have designated in a written notice to Borrower delivered on or before the Tranche A Closing Date (which such notice may be updated by such Lender (or the Collateral Agent) by written notice to Borrower from time to time after the Tranche A Closing Date). Except as otherwise expressly provided herein, interest is payable quarterly on each Interest Date provided, however, that if any such date is not a Business Day, the applicable interest shall be due and payable on the immediately preceding Business Day. Payments of principal or interest received after 11:00 a.m. on such date are considered received at the opening of business on the next Business Day. When any payment is due on a day that is not a Business Day, such payment is due on the immediately preceding Business Day. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest made hereunder and pursuant to any other Loan Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

(e) Conforming Changes. In connection with the use or administration of Term SOFR, the Collateral Agent will have the right to make Conforming Changes 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 or any other Loan Document. The Collateral Agent will promptly notify Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

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

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of Benchmark Replacement for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of Benchmark Replacement for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5^{th}) Business Day after the date notice of such Benchmark Replacement is provided to Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Collateral Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

(ii) Conforming Changes. In connection with the implementation and administration of a Benchmark Replacement, the Collateral Agent will have the right to make Conforming Changes 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 or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Collateral Agent will promptly notify Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Collateral Agent will notify Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to sub-clause (iv) below and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Collateral Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.3(f), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.3(f).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Collateral Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Collateral Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to sub-clause (A) above either (1) is

subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Collateral Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

2.4. Expenses. Borrower shall pay to or reimburse (or pay directly on behalf of) each Lender and the Collateral Agent, as applicable, all of such Person's reasonable and documented Lender Expenses incurred through and after the Effective Date, promptly after receipt of a written demand therefor by such Lender or the Collateral Agent (with, in the case of any Lender, a copy of such demand to the Collateral Agent), setting forth in reasonable detail such Person's Lender Expenses.

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

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

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

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

2.6. Taxes; Withholding, Etc.

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

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

(c) Borrower shall indemnify each Lender for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.6(c)) paid by such Lender and any liability (including any reasonable expenses) arising therefrom or with respect thereto whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Any indemnification payment pursuant to this Section 2.6(c) shall be made to the applicable Lender within thirty (30) days from written demand therefor. A certificate as to the amount of such payment or liability delivered to the Credit Parties by a Lender (with a copy to the Withholding Agent, if not a Credit Party), or by the Withholding Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

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

(i) If any Lender is organized under the laws of the United States, such Lender shall deliver to Borrower, on or prior to, the Tranche A Closing Date and, the date on which a Lender Transfer involving such Lender occurs, as applicable, and at such other times as may be necessary in the determination of Borrower, upon request in writing by Borrower (in the reasonable exercise of its discretion), two (2) executed copies of Internal Revenue Service ("**IRS**") Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

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

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, a properly completed and duly executed copy of IRS Form W-8BEN or IRS Form W-

8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, a properly completed and duly executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) a completed and duly executed copy of IRS Form W-8ECI;

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

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

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

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

(v) 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 Borrower in writing of its legal inability to do so.

(e) If any party hereto determines, in its discretion exercised in good faith, that it has received a refund of any Taxes or a credit or offset for any Taxes as to which it has been indemnified pursuant to this Section 2.6 (including by the payment of additional amounts pursuant to this Section 2.6), it shall pay to the indemnifying party an amount equal to such refund, credit or offset (but only to the extent of indemnity payments made, or additional amounts paid, under this Section 2.6 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified

party, shall repay to such indemnified party the amount paid over pursuant to this clause (e) in the event that such indemnified party is required to repay, credit or offset such refund to such Governmental Authority and the requirement to repay such refund to such Governmental Authority is not due to the indemnified party's failure to timely provide complete and accurate IRS forms and other documentation required pursuant to Section 2.6(d) or Section 2.8. Notwithstanding anything to the contrary in this clause (e), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (e) if the payment of such amount would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such tax had never been paid. This clause (e) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(f) Borrower shall use reasonable efforts to furnish any information to assist any Lender (i) in the computation of accruals with respect to any "original issue discount" or "market discount" arising with respect to the Term Loans for U.S. federal income tax purposes, and (ii) with its compliance with any associated tax reporting or filing requirements of such Lender or its partners, members or beneficial owners.

(g) Borrower is currently treated as a corporation for U.S. federal income tax purposes. Borrower shall not take any affirmative action (including not making any election under Section 301.7701-3(c) of the Treasury Regulations (or any successor provision) by way of filing an IRS Form 8832) to change its U.S. entity tax classification without the prior written consent of the Required Lenders.

(h) Each party's obligations under this Section 2.6 shall survive any assignment of rights by, or the replacement of, a Lender, the termination of the Term Loan Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

2.7. Additional Consideration. As additional consideration for the obligation of each Lender to fund its Applicable Percentage of the Term Loans and the funding of its Applicable Percentage of the Term Loans pursuant to Section 2.2(a) and Section 3.7:

(a) on the Tranche A Closing Date, Borrower shall pay to each Lender an amount equal to the product of (i) the sum of such Lender's Tranche A Commitment, *multiplied by* (b) 0.0250 (each such product, the "**Tranche A Additional Consideration**");

(b) on the Tranche B Closing Date, Borrower shall pay to each Lender an amount equal to the product of (i) the sum of such Lender's Tranche B Commitment, *multiplied by* (b) 0.0250 (each such product, the "**Tranche B Additional Consideration**");

(c) on the Tranche C Closing Date, Borrower shall pay to each Lender an amount equal to the product of (i) the sum of such Lender's Tranche C Commitment, *multiplied by* (b) 0.0250 (each such product, the "**Tranche C Additional Consideration**"); and

(d) on the Tranche D Closing Date, Borrower shall pay to each Lender an amount equal to the product of (i) the sum of such Lender's Tranche D Commitment, *multiplied by* (b) 0.0250 (each such product, the "**Tranche D Additional Consideration**").

Any and all Additional Consideration shall be fully earned when paid and shall not be refundable for any reason whatsoever and such Additional Consideration shall be treated as "original issue discount" with respect to the applicable Term Loan for U.S. federal income tax purposes, unless otherwise required by Requirements of Law. The Additional Consideration payable hereunder shall be deducted, as applicable, from the proceeds of the Tranche A Loan (with respect to the Tranche A Additional Consideration), the Tranche B Loan (with respect to the Tranche B Additional Consideration), the Tranche C Loan (with respect to the Tranche C Additional Consideration) and the Tranche D Loan (with respect to the Tranche D Additional Consideration), in each case, to be advanced to Borrower pursuant to Section 2.2(a) and Section 3.7.

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

(a) Evidence of Debt; Register. Subject to Section 12.11, Borrower will maintain at all times at its principal executive office in the United States a register that identifies each beneficial owner that is entitled to a payment of principal and stated interest on each Term Loan (the "**Register**") and provides for the registration and transfer of Term Loan Notes so that each Term Loan is at all times in "registered form" within the meaning of Section 5f.103-1(c) of the Treasury Regulations (or any amended or successor version) and Section 163(f), 871(h)(2) and 881(c)(2) of the IRC and any related regulations (and any other relevant or successor provisions of the IRC or such regulations). Each Term Loan: (i) shall, pursuant to this clause (a), be registered as to both principal and any stated interest with Borrower or its agent, and (ii) shall be transferred or exchanged by any Lender only by surrender of the old instrument at the principal executive office of Borrower (or at the place of payment named in the Term Loan Note, if any), accompanied, if so required by Borrower in the case of a Lender Transfer, by a written instrument of transfer in form reasonably satisfactory to Borrower duly executed by the holder thereof or by such holder's attorney duly authorized in writing, and Borrower will execute and deliver in exchange therefor a new Term Loan Note or Term Loan Notes, in such denomination(s) as may be requested by such holder, of like tenor and in the same aggregate outstanding principal amount as the aggregate outstanding principal amount of the Term Loan Note(s) so surrendered. Any Term Loan Note issued in exchange for any other Term Loan Note or upon transfer thereof shall carry the rights to unpaid interest and interest to accrue that were carried by the Term Loan Note so exchanged or transferred, and neither gain nor loss of interest shall result from any such transfer or exchange. Any transfer tax or governmental charge relating to such transaction shall be paid by the holder requesting the exchange. The entries in the Register shall be conclusive and binding for all purposes, including as to the outstanding principal amount of the Term Loan Note and the payment of interest, principal and other sums due hereunder absent manifest error and Borrower, Lenders and any of their respective agents shall treat the Person recorded in the Register as the sole and exclusive record and beneficial holder and owner of such Term Loan Note or any other Loan Document (including this Agreement), and a Lender hereunder, for all purposes whatsoever.

(b) Term Loan Notes. Borrower shall execute and deliver to each Lender to evidence such Lender's Term Loans: (i) on the Tranche A Closing Date, a Tranche A Note, (ii) on the Tranche B Closing Date, a Tranche B Note; (iii) on the Tranche C Closing Date, a Tranche C Note and (iv) on the Tranche D Closing Date, a Tranche D Note (each, a "**Term Loan Note**"). All amounts due under the Term Loan Notes shall be repayable as set forth in this Agreement and interest shall accrue on the principal amount of the Term Loans represented by the Term Loan Notes, in each case, in accordance with the terms of this Agreement. All Term Loan Notes shall rank for all purposes *pari passu* with each other.

3 CONDITIONS OF TERM LOANS

3.1. Conditions Precedent to Tranche A Loan. Each Lender's obligation to advance its Applicable Percentage of the Tranche A Loan Amount is subject to the satisfaction (or waiver in accordance with Section 11.5 hereof) of the following conditions:

(a) the Collateral Agent's and each Lender's receipt of:

(i) on the Effective Date, copies of the Loan Agreement, the Disclosure Letter, the Perfection Certificate for Borrower and its Subsidiaries and the Advance Request Form for the Tranche A Loan, in each case (x) dated as of the Effective Date, (y) executed (where applicable) and delivered by each applicable Credit Party, and (z) in form and substance reasonably satisfactory to the Collateral Agent; and

(ii) on the Tranche A Closing Date, copies of the other Loan Documents (including the schedules thereto), including the Tranche A Notes executed by Borrower, the Collateral Documents (but excluding any Control Agreements, Collateral Access Agreements and any other Loan Document described in Schedule 5.14 of the Disclosure Letter to be delivered after the Tranche A Closing Date), in each case (x) dated as of the Tranche A Closing Date, (y) executed (where applicable) and delivered by each applicable Credit Party, and (z) in form and substance reasonably satisfactory to the Collateral Agent,

(b) the Collateral Agent's receipt of (i) true, correct and complete copies of the Operating Documents of each of the Credit Parties, and (ii) a Secretary's Certificate, dated the Tranche A Closing Date, certifying

that the foregoing copies are true, correct and complete (such Secretary's Certificate to be in form and substance reasonably satisfactory to the Collateral Agent);

(c) on the Tranche A Closing Date and without limiting the generality of clause (a) above, the Collateral Agent's and each Lender's receipt of the Disclosure Letter, if and to the extent any update thereto is necessary between the Effective Date and the Tranche A Closing Date (provided, that in no event may the Disclosure Letter be updated in a manner that would reflect or evidence a Default or Event of Default (with or without such update) and the Perfection Certificate for Borrower and its Subsidiaries, if and to the extent any update thereto is necessary between the Effective Date and the Tranche A Closing Date (provided, that in no event may the Perfection Certificate be updated in a manner that would reflect or evidence a Default or an Event of Default (with or without such update));

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

(e) the Collateral Agent's receipt of a Secretary's Certificate with completed Borrowing Resolutions with respect to the Loan Documents and the Tranche A Loan for each Credit Party, in form and substance reasonably satisfactory to the Collateral Agent;

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

(g) the Collateral Agent's receipt on the Tranche A Closing Date of an opinion of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, and Rutan and Tucker LLP, counsel to all of the Credit Parties, dated the Tranche A Closing Date and addressed to the Collateral Agent and each Lender, each in form and substance reasonably satisfactory to the Collateral Agent;

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

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

(j) concurrent with the funding of the Tranche A Loan, payment of the Tranche A Additional Consideration, which such payment shall be deducted from the proceeds of the Tranche A Loan;

(k) concurrent with the funding of the Tranche A Loan, payment of any and all Lender Expenses then due as specified in Section 2.4 hereof, which such payment shall be deducted from the proceeds of the Tranche A Loan;

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

(m) the Collateral Agent's receipt on the Tranche A Closing Date of: (i) a payoff letter in respect of all Indebtedness and any and all other amounts outstanding under the Existing Credit Agreement and the

termination of all extensions of credit thereunder, executed and delivered by all parties thereto, and evidence of the repayment in full of all such Indebtedness and other amounts pursuant to such payoff letter prior to or concurrent with the funding of the Tranche A Loan on the Tranche A Closing Date (which evidence shall be in the form of a funds flow showing payment in full of any and all amounts described or otherwise referred to in the payoff letter); and (ii) evidence that all Liens on or security interests in any and all collateral securing the payment of any such Indebtedness and any guaranty or other obligations of Borrower or any of its Subsidiaries under the Existing Credit Agreement in favor of any Person have been effectively terminated as of the Tranche A Closing Date following such repayment in full of all such Indebtedness and other amounts pursuant to such payoff letter; and

(n) the Collateral Agent's receipt of a certificate, dated the Tranche A Closing Date and signed by a Responsible Officer of Borrower, confirming satisfaction of the conditions precedent set forth in this Section 3.1 and in Section 3.5, Section 3.6 and Section 3.7 (such certificate to be in form and substance reasonably satisfactory to the Collateral Agent).

3.2. Conditions Precedent to Tranche B Loan. Each Lender's obligation to advance its Applicable Percentage of the Tranche B Loan Amount is subject to the satisfaction (or waiver in accordance with Section 11.5 hereof) of the following conditions:

(a) each Lender's receipt of the Tranche B Note, executed by Borrower, and the Collateral Agent's and such Lender's receipt of an updated Disclosure Letter, if and to the extent any update thereto is necessary between the Tranche A Closing Date and the Tranche B Closing Date (provided, that in no event may the Disclosure Letter be updated in a manner that would reflect or evidence a Default or Event of Default (with or without such update)) (to be in form and substance reasonably satisfactory to the Collateral Agent);

(b) the Collateral Agent's receipt of an updated Perfection Certificate for Borrower and its Subsidiaries, if and to the extent any update thereto is necessary between the Tranche A Closing Date and the Tranche B Closing Date (provided, that in no event may the Perfection Certificate be updated in a manner that would reflect or evidence a Default or an Event of Default (with or without such update)) (to be in form and substance reasonably satisfactory to the Collateral Agent);

(c) the Collateral Agent's receipt of a Secretary's Certificate with completed Borrowing Resolutions with respect to the Tranche B Loan for each Credit Party, in form and substance reasonably satisfactory to the Collateral Agent;

(d) concurrent with the funding of the Tranche B Loan, payment of the Tranche B Additional Consideration, which such payment shall be deducted from the proceeds of the Tranche B Loan;

(e) concurrent with the funding of the Tranche B Loan, payment of any and all Lender Expenses then due as specified in Section 2.4 hereof, which such payment shall be deducted from the proceeds of the Tranche B Loan;

(f) no prepayment of the Tranche A Loan has been made;

(g) the Collateral Agent's receipt of a certificate, dated the Tranche B Closing Date and signed by a Responsible Officer of Borrower, confirming there is no Adverse Proceeding pending or, to the Knowledge of Borrower, threatened, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, except as set forth on Schedule 4.7 of the Disclosure Letter delivered in accordance with Section 3.1(l) or, to the extent updated, clause (a) above (such certificate to be in form and substance reasonably satisfactory to the Collateral Agent); and

(h) the Collateral Agent's receipt of a certificate, dated the Tranche B Closing Date and signed by a Responsible Officer of Borrower, confirming satisfaction of the conditions precedent set forth in this Section 3.2 and in Section 3.5, Section 3.6 and Section 3.7 (such certificate to be in form and substance reasonably satisfactory to the Collateral Agent).

3.3. Conditions Precedent to Tranche C Loan. Each Lender's obligation to advance its Applicable Percentage of the Tranche C Loan Amount is subject to the satisfaction (or waiver in accordance with Section 11.5 hereof) of the following conditions:

(a) each Lender's receipt of the Tranche C Note, executed by Borrower, and the Collateral Agent's and such Lender's receipt of an updated Disclosure Letter, if and to the extent any update thereto is necessary between the Tranche B Closing Date and the Tranche C Closing Date (provided, that in no event may the Disclosure Letter be updated in a manner that would reflect or evidence a Default or Event of Default (with or without such update)) (to be in form and substance reasonably satisfactory to the Collateral Agent);

(b) the Collateral Agent's receipt of an updated Perfection Certificate for Borrower and its Subsidiaries, if and to the extent any update thereto is necessary between the Tranche B Closing Date and the Tranche C Closing Date (provided, that in no event may the Perfection Certificate be updated in a manner that would reflect or evidence a Default or an Event of Default (with or without such update)) (to be in form and substance reasonably satisfactory to the Collateral Agent);

(c) The Collateral Agent's receipt of a Secretary's Certificate with completed Borrowing Resolutions with respect to the Tranche C Loan for each Credit Party, in form and substance reasonably satisfactory to the Collateral Agent;

(d) concurrent with the funding of the Tranche C Loan, payment of the Tranche C Additional Consideration, which such payment shall be deducted from the proceeds of the Tranche C Loan;

(e) concurrent with the funding of the Tranche C Loan, payment of any and all Lender Expenses then due as specified in Section 2.4 hereof, which such payment shall be deducted from the proceeds of the Tranche C Loan;

(f) no prepayment of the Tranche A Loan or the Tranche B Loan has been made;

(g) the Collateral Agent's receipt of a certificate, dated the Tranche C Closing Date and signed by a Responsible Officer of Borrower, confirming there is no Adverse Proceeding pending or, to the Knowledge of Borrower, threatened, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, except as set forth on Schedule 4.7 of the Disclosure Letter delivered in accordance with Section 3.1(l) or, to the extent updated, clause (a) above (such certificate to be in form and substance reasonably satisfactory to the Collateral Agent);

(h) trailing twelve-month Product Net Sales, tested at the date of the Advance Request Form for the Tranche C Loan delivered by Borrower in accordance with Section 3.7, exceed $90,000,000; and

(i) the Collateral Agent's receipt of a certificate, dated the Tranche C Closing Date and signed by a Responsible Officer of Borrower, confirming satisfaction of the conditions precedent set forth in this Section 3.3 and in Section 3.5, Section 3.6 and Section 3.7 (such certificate to be in form and substance reasonably satisfactory to the Collateral Agent).

3.4. Conditions Precedent to Tranche D Loan. Each Lender's obligation to advance its Applicable Percentage of the Tranche D Loan Amount is subject to the satisfaction (or waiver in accordance with Section 11.5 hereof) of the following conditions:

(a) each Lender's receipt of the Tranche D Note, executed by Borrower, and the Collateral Agent's and such Lender's receipt of an updated Disclosure Letter, if and to the extent any update thereto is necessary between the Tranche C Closing Date and the Tranche D Closing Date (provided, that in no event may the Disclosure Letter be updated in a manner that would reflect or evidence a Default or Event of Default (with or without such update)) (to be in form and substance reasonably satisfactory to the Collateral Agent);

(b) the Collateral Agent's receipt of an updated Perfection Certificate for Borrower and its Subsidiaries, if and to the extent any update thereto is necessary between the Tranche C Closing Date and the Tranche D Closing Date (provided, that in no event may the Perfection Certificate be updated in a manner that would reflect or evidence a Default or an Event of Default (with or without such update)) (to be in form and substance reasonably satisfactory to the Collateral Agent);

(c) The Collateral Agent's receipt of a Secretary's Certificate with completed Borrowing Resolutions with respect to the Tranche D Loan for each Credit Party, in form and substance reasonably satisfactory to the Collateral Agent;

(d) concurrent with the funding of the Tranche D Loan, payment of the Tranche D Additional Consideration, which such payment shall be deducted from the proceeds of the Tranche D Loan;

(e) concurrent with the funding of the Tranche D Loan, payment of any and all Lender Expenses then due as specified in Section 2.4 hereof, which such payment shall be deducted from the proceeds of the Tranche D Loan;

(f) no prepayment of the Term Loans has been made;

(g) the Collateral Agent's receipt of a certificate, dated the Tranche D Closing Date and signed by a Responsible Officer of Borrower, confirming there is no Adverse Proceeding pending or, to the Knowledge of Borrower, threatened, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, except as set forth on Schedule 4.7 of the Disclosure Letter delivered in accordance with Section 3.1(l) or, to the extent updated, clause (a) above (such certificate to be in form and substance reasonably satisfactory to the Collateral Agent);

(h) trailing twelve-month Product Net Sales, tested at the date of the Advance Request Form for the Tranche D Loan delivered by Borrower in accordance with Section 3.7, exceed $125,000,000; and

(i) the Collateral Agent's receipt of a certificate, dated the Tranche D Closing Date and signed by a Responsible Officer of Borrower, confirming satisfaction of the conditions precedent set forth in this Section 3.4 and in Section 3.5, Section 3.6 and Section 3.7 (such certificate to be in form and substance reasonably satisfactory to the Collateral Agent).

3.5. Additional Conditions Precedent to Term Loans. Each Lender's obligation to advance its Applicable Percentage of each Term Loan is subject to the satisfaction (or waiver in accordance with Section 11.5 hereof) of the following additional conditions:

(a) the representations and warranties made by the Credit Parties in Section 4 of this Agreement and in the other Loan Documents are true and correct in all material respects on the applicable Closing Date, unless any such representation or warranty is stated to relate to a specific earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (it being understood that any representation or warranty that is qualified as to "materiality," "Material Adverse Change," or similar language shall be true and correct in all respects (as so qualified), in each case, on the applicable Closing Date (both with and without giving effect to the Term Loans) or as of such earlier date, as applicable); and

(b) there shall not have occurred any (i) Material Adverse Change, (ii) Default or Event of Default or (iii) Withdrawal Event.

3.6. Covenant to Deliver. The Credit Parties agree to deliver to the Collateral Agent or each Lender, as applicable, each item required to be delivered to Collateral Agent or each Lender, as applicable, under this Agreement as a condition precedent to any Credit Extension; provided, however, that any such items set forth on Schedule 5.14 of the Disclosure Letter shall be delivered to the Collateral Agent within the time period prescribed therefor on such schedule. The Credit Parties expressly agree that a Credit Extension made prior to the receipt by the Collateral Agent or any Lender, as applicable, of any such item shall not constitute a waiver by the Collateral Agent

or any Lender of the Credit Parties' obligation to deliver such item, and the making of any Credit Extension in the absence of any such item required to have been delivered by the date of such Credit Extension shall be in the applicable Lender's sole discretion.

3.7. Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of each Term Loan set forth in this Agreement, to obtain any Term Loan, Borrower shall deliver to the Collateral Agent and Lenders by electronic mail or facsimile a completed Advance Request Form for such Term Loan executed by a Responsible Officer of Borrower (which notice shall be irrevocable on and after the date on which such notice is given and Borrower shall be bound to make a borrowing in accordance therewith), in which case each Lender agrees to advance its Applicable Percentage of such Term Loan to Borrower on the Tranche A Closing Date, Tranche B Closing Date or Tranche C Closing Date, as applicable, by wire transfer of same day funds in Dollars, to such account(s) in the United States as may be designated in writing to the Collateral Agent by Borrower prior to the Tranche A Closing Date, Tranche B Closing Date, Tranche C Closing Date or Tranche D Closing Date, as applicable; provided, however, that, with respect to the Tranche B Loan, Borrower shall deliver to the Collateral Agent and Lenders by electronic mail or facsimile, at its option should it wish to obtain the Tranche B Loan, such completed Advance Request Form no later than December 31, 2024; provided, further, that, with respect to the Tranche C Loan, Borrower shall deliver to the Collateral Agent and Lenders by electronic mail or facsimile, at its option should it wish to obtain the Tranche C Loan, such completed Advance Request Form no earlier than the date on which trailing twelve-month Product Net Sales exceed $90,000,000 and no later than June 30, 2025; provided, finally, that, with respect to the Tranche D Loan, Borrower shall deliver to the Collateral Agent and Lenders by electronic mail or facsimile, at its option should it wish to obtain the Tranche D Loan, such completed Advance Request Form no earlier than the date on which trailing twelve-month Product Net Sales exceed $125,000,000 and no later than December 31, 2025.

4 REPRESENTATIONS AND WARRANTIES

In order to induce each Lender and the Collateral Agent to enter into this Agreement and for each Lender to make the Credit Extensions to be made on the applicable Closing Date, each Credit Party, jointly and severally with each other Credit Party, represents and warrants to each Lender and the Collateral Agent that the following statements are true and correct as of the Effective Date and on the applicable Closing Date on which each Term Loan is made (both with and without giving effect to the Term Loans) except as otherwise specified below:

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

4.2. Equity Interests. All of the outstanding Equity Interests in each Subsidiary of Borrower which are required to be pledged pursuant to the Collateral Documents, have been duly authorized and validly issued, are (where required by Requirements of Law to be) fully paid and, in the case of Equity Interests representing corporate interests, are non-assessable and, as of the Effective Date and each applicable Closing Date, all such Equity Interests owned directly by Borrower or any other Credit Party are owned free and clear of all Liens except for Permitted Liens. Schedule 4.2 of the Disclosure Letter identifies each Person, the Equity Interests in which as of the applicable Closing Date are required to be pledged on the applicable Closing Date (or otherwise within the timing requirements of Sections 5.12, 5.13 or 5.14, if and only to the extent applicable thereto) pursuant to the Collateral Documents.

4.3. Authorization; No Conflict. Except as set forth on Schedule 4.3 of the Disclosure Letter, the execution, delivery and performance by each Credit Party of the Loan Documents to which it is a party, and the consummation of the transactions contemplated thereby, (a) have been duly authorized by all necessary corporate or

other organizational action and (b) do not and will not (i) contravene the terms of any of such Credit Party's Operating Documents, (ii) conflict with or result in any breach or contravention of, or require any payment to be made under (A) after giving effect to the payoff and termination of the Existing Credit Agreement, any provision of any security issued by such Credit Party or of any agreement, instrument or other undertaking to which such Credit Party is a party or affecting such Credit Party or the assets or properties of such Credit Party or any of its Subsidiaries or (B) any order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which such Credit Party or any of its properties or assets are subject, (iii) result in the creation of any Lien (other than under or otherwise permitted under the Loan Documents) or (iv) violate any Requirements of Law, except, in the cases of clauses (b)(ii) and (b)(iv) above, to the extent that such conflict, breach, contravention, payment or violation could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

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

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

4.6. Collateral. In connection with this Agreement, Borrower has delivered to the Collateral Agent a completed certificate signed by a Responsible Officer of Borrower (as may be updated from time to time in accordance with the terms herein, the "**Perfection Certificate**"). Each Credit Party, jointly and severally, represents and warrants to the Collateral Agent and each Lender that:

(a) (i) Its exact legal name is that indicated on the Perfection Certificate and on the signature page thereof; (ii) it is an organization or company of the type and is organized or incorporated in the jurisdiction set forth in the Perfection Certificate; (iii) the Perfection Certificate accurately sets forth its organizational identification number or accurately states that it has none; (iv) the Perfection Certificate accurately sets forth as of the applicable Closing Date its place of business, or, if more than one, its chief executive office as well as its mailing address (if different than its chief executive office); (v) except as set forth in the Perfection Certificate, it (and each of its predecessors) has not, in the five (5) years prior to the applicable Closing Date, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (vi) all other information set forth on the Perfection Certificate pertaining to it and its Subsidiaries is accurate and complete in all material respects.

(b) (i) It has good and valid title to, has rights in, and subject to Permitted Subsidiary Distribution Restrictions, Permitted Negative Pledges and the occurrence of the applicable Closing Date, the power to transfer, each item of the Collateral (including, for the avoidance of doubt, each item of Current Company IP (other

than Excluded Property) upon which it grants a Lien under any Collateral Document, free and clear of any and all Liens except Permitted Liens and except for such irregularities or defects in title as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, and (ii) as of the Effective Date and each applicable Closing Date, it has no deposit accounts maintained at a bank or other depository or financial institution which are not Excluded Accounts other than the deposit accounts described in the Perfection Certificate delivered to the Collateral Agent in connection herewith.

(c) A true, correct and complete list of each pending, registered, issued or in-licensed Patent (including any Patents that are or are intended to be listed in the FDA's so-called "Orange Book" as covering Product in the Territory) and each pending, registered, or issued to Borrower or its Subsidiaries or in-licensed Copyright and Trademark to Borrower or its Subsidiaries, in each case that relates to any aspect of the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, packaging, labeling, promotion, advertising, offer for sale or lease, distribution or sale or lease of Product, and regulatory exclusivities that are listed in the FDA's so called "Orange Book" as covering Product in the Territory, and any other pending, registered, issued or in licensed Patent (including any Patents that are or are intended to be listed in the FDA's so-called "Orange Book" as covering Product), Copyright and Trademark to Borrower or its Subsidiaries, that, individually or taken together with any other such Patents, Copyrights or Trademarks, is material to the business of Borrower and its Subsidiaries, taken as a whole, and in each case, is owned or co-owned by or exclusively or non-exclusively licensed to any Credit Party or any of its Subsidiaries (excluding, in all events, any such Intellectual Property related to TP-05 and the confidential exclusive license agreement disclosed by Borrower to Collateral Agent prior to the Closing Date) (collectively, the "**Current Company IP**"), including its name/title, current owner or co-owners (including ownership interest), registration, patent or application number, and registration or application date, in each jurisdiction where issued or filed, is set forth on Schedule 4.6(c) of the Disclosure Letter. Except as set forth on Schedule 4.6(c) of the Disclosure Letter, (i) (A) each item of Current Company IP owned or co-owned by a Credit Party or any of its Subsidiaries is valid, subsisting and enforceable (or will be enforceable upon issuance) and no such item of Current Company IP has in any respect lapsed, expired, been cancelled, held unpatentable, held unenforceable or held invalidated or become abandoned or unenforceable, and, to the Knowledge of any Credit Party, no circumstance or grounds exist that would invalidate or reduce, in whole or in part, the validity, enforceability, subsistence or scope of any such Current Company IP, or reduce the ownership or use of such Current Company IP, by any Credit Party or any of its Subsidiaries, and (B), no written notice has been received challenging validity, patentability, enforceability, inventorship or ownership (other than from patent and trademark offices through the normal prosecution practices), or relating to any lapse, expiration, invalidation, cancellation, abandonment or unenforceability, of any such item of Current Company IP owned or co-owned by a Credit Party or any of its Subsidiaries, and (ii) to the Knowledge of any Credit Party, (A) each item of Current Company IP that is exclusively or nonexclusively licensed from another Person is valid, subsisting and enforceable and no item of Current Company IP that is exclusively or nonexclusively in-licensed by a Credit Party or any of its Subsidiaries has in any respect lapsed, expired, has been cancelled, held unpatentable, held unenforceable or held invalidated, or has become abandoned(other than through the lapse, expiration or abandonment of such Current Company IP in the exercise of normal prosecution practices and reasonable business judgment of licensor) , and (B) no written notice has been received challenging the validity, patentability, enforceability, inventorship or ownership, or relating to any lapse, expiration, invalidation, cancellation, abandonment or unenforceability, of any item of Current Company IP that is exclusively or nonexclusively in-licensed by a Credit Party or any of its Subsidiaries (other than from patent and trademark offices through the licensor's normal prosecution practices). To the Knowledge of each Credit Party, there are no published patents, patent applications, articles or prior art references that could reasonably be expected to materially adversely affect the exploitation of any Product. Except as set forth on Schedule 4.6(c) of the Disclosure Letter, (x) each Person who has or has had any rights in or to owned Current Company IP or any trade secrets owned by any Credit Party or any of its Subsidiaries, including each inventor named on the Patents within such owned Current Company IP filed by any Credit Party or any of its Subsidiaries, and has executed an agreement assigning his, her or its entire right, title and interest in and to such owned Current Company IP and such trade secrets, and the inventions, improvements, ideas, discoveries, writings, works of authorship, information and other intellectual property embodied, described or claimed therein, to the stated owner thereof, and (y) to the Knowledge of each Credit Party, no such Person has any contractual or other obligation that would preclude or conflict with such assignment or the exploitation of any Product or entitle such Person to ongoing payments.

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

(e) There are no maintenance, annuity or renewal fees that are currently overdue beyond their allotted grace period for any of the Current Company IP which is owned by or exclusively licensed to any Credit Party or any of its Subsidiaries, nor have any applications or registrations therefor lapsed or become abandoned, been cancelled or expired (other than through the lapse, expiration or abandonment of such Current Company IP in the exercise of normal prosecution practices and reasonable business judgment of the Credit Parties, their respective Subsidiaries or the licensor).

(f) There are no unpaid fees, royalties or indemnification payments under any Company IP Agreement that have become due or overdue. Each Company IP Agreement is in full force and effect and, to the Knowledge of each Credit Party, is legal, valid, binding, and enforceable in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability. No Credit Party nor any of its Subsidiaries, as applicable, is in breach of or default under any Company IP Agreement to which it is a party or may otherwise be bound, and to the Knowledge of each Credit Party, no circumstances or grounds exist that could give rise to a claim of breach or right of rescission, termination, non-renewal, revision, or amendment of any of the Company IP Agreements, including the execution, delivery and performance of this Agreement and the other Loan Documents.

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

(h) No Credit Party or any of its Subsidiaries has undertaken or omitted to undertake any acts, and, to the Knowledge of such Credit Party, no circumstance or grounds exist that would invalidate or reduce, in whole or in part, the enforceability or scope of any Credit Party's or any of its Subsidiary's (i) right or entitlement to the Current Company IP in any manner that could reasonably be expected to materially adversely affect any aspect of the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, packaging, labelling, promotion, advertising, offer for sale or lease, distribution or sale or lease of any Product, or (ii) in the case of Current Company IP owned or co-owned by or exclusively or non-exclusively licensed to any Credit Party or any of its Subsidiaries, except as set forth on Schedule 4.6(h) of the Disclosure Letter, such Credit Party's or Subsidiary's entitlement to own or license and exploit such Current Company IP in any manner.

(i) Except as set forth on Schedule 4.6(i) of the Disclosure Letter, to the Knowledge of any Credit Party, there is no product or other technology of any third party that infringes or could reasonably be expected to infringe a Patent within the Current Company IP.

(j) Except as noted on Schedule 4.6(j) of the Disclosure Letter, no Credit Party is a party to, nor is it bound by, any Restricted License.

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

(l) There are no pending or, to the Knowledge of such Credit Party, threatened (in writing) claims against Borrower or any of its Subsidiaries alleging (i) that any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, packaging, labelling, promotion, advertising, offer for sale or lease, distribution or sale or lease of any Product in the Territory infringes or violates (or in the past infringed or violated), or form a reasonable basis for a claim of infringement or violation of, any of the rights of any third parties in or to any Intellectual Property ("**Third Party IP**") or constitutes a misappropriation of (or in the past constituted a misappropriation of) any Third Party IP, or (ii) that any Current Company IP is invalid,

unpatentable or unenforceable (other than from patent and trademark offices through the normal prosecution practices).

(m) The manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale or lease, distribution or sale or lease of any Product in the Territory has not in the past and does not, to the Knowledge of Borrower, infringe or violate (or in the past infringed or violated) or form a reasonable basis for a claim of infringement or violation of, any of the rights of third parties in or to any Third Party IP (including any issued or registered Third Party IP) or, to the Knowledge of Borrower, constitutes a misappropriation of (or in the past constituted a misappropriation of) any Third Party IP.

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

(o) To the Knowledge of Borrower, (i) there is no, nor has there been any, infringement or violation by any Person of any of the Company IP or the rights therein, and (ii) there is no, nor has there been any, misappropriation by any Person of any of the Company IP or the subject matter thereof.

(p) Each Credit Party and each of its Subsidiaries has taken all commercially reasonable measures customary in the pharmaceutical industry to protect the confidentiality and value of all trade secrets owned or licensed by such Credit Party or any of its Subsidiaries, or used or held for use by such Credit Party or any of its Subsidiaries, in each case relating to any aspect of the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, packaging, labeling, promotion, advertising, offer for sale or lease, distribution or sale or lease of any Product in the Territory. Any use or disclosure by a Credit Party or any of its Subsidiaries of any such trade secrets to any third party has been pursuant to the terms of a written agreement with such third party including reasonable confidentiality, access, use and non-disclosure provisions, and to the Knowledge of each Credit Party, no Credit Party or any of its Subsidiaries has suffered any material data breach or other incident that has resulted in any loss, unauthorized access, use, disclosure or modification of any such trade secrets.

(q) To the Knowledge of each Credit Party, any Product made, used or sold under the Patents within the Current Company IP has been marked with the proper patent notice.

(r) To the Knowledge of each Credit Party, at the time of any shipment of any Product occurring prior to the applicable Closing Date, the units thereof so shipped complied with their relevant specifications and were developed and manufactured in accordance with current FDA Good Manufacturing Practices, FDA Good Clinical Practices, FDA Good Laboratory Practices, and other Requirements of Law.

(s) With respect to the Current Company IP consisting of Patents, except as set forth on Schedule 4.6(s) of the Disclosure Letter:

(i) to the Knowledge of such Credit Party, all prior art material to such Patents was adequately disclosed, to the extent such disclosure is required, to the relevant patent office or considered by the respective patent offices during prosecution of such Patents;

(ii) subsequent to the issuance of such Patents, no Credit Party nor any Subsidiary nor any of their respective 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;

(iii) to the Knowledge of such Credit Party, no subject matter designated allowable or allowed by the U.S. Patent and Trademark Office of such Patents is subject to any competing conception claims of allowable or allowed subject matter of any patent applications or patents of any third party and

have not been the subject of any interference, and such Patents are not and have not been the subject of any re-examination, opposition or any other post-grant proceedings;

(iv) if any of such Patents is terminally disclaimed to another patent or patent application, all patents and patent applications subject to such terminal disclaimer are included in the Collateral; and

(v) neither any Credit Party nor any Subsidiaries has received an opinion, whether preliminary in nature or qualified in any manner, which concludes that a challenge to the validity or enforceability, subsistence or scope of any such Patents is more likely than not to succeed.

(t) (A) Neither any Credit Party nor any Subsidiary, nor to the Knowledge of such Credit Party any of their respective agents or representatives, have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable or reduce, in whole or in part, the validity, enforceability, subsistence or scope of any such Patent and (B) to the Knowledge of such Credit Party, no prior owner of any such Patent of any Credit Party or any of its Subsidiaries, nor any of such prior owner's agents or representatives, have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable or reduce, in whole or in part, the validity, enforceability, subsistence or scope of any such Patent.

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

4.7. Adverse Proceedings, Compliance with Laws.

(a) As of the Tranche A Closing Date, (i) except as set forth on Schedule 4.7 of the Disclosure Letter, there are no Adverse Proceedings pending or, to the Knowledge of Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Borrower or any of its Subsidiaries; and (ii) neither Borrower nor any of its Subsidiaries (A) is in violation of any Requirements of Law, excluding any Requirement of Law which is being contested in good faith by appropriate proceedings, or (B) is subject to or in default with respect to any final judgments, orders, writs, injunctions, settlement agreements, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(b) As of each Closing Date other than the Tranche A Closing Date, (i) except as set forth on Schedule 4.7 of the Disclosure Letter, there are no Adverse Proceedings pending or, to the Knowledge of Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Borrower or any of its Subsidiaries that, if adversely determined, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change; and (ii) neither Borrower nor any of its Subsidiaries (A) is in violation of any Requirements of Law, excluding any Requirement of Law which is being contested in good faith by appropriate proceedings, where such violation, individually or together with any other such violation, could reasonably be expected to result in a Material Adverse Change, or (B) is subject to or in default with respect to any final judgment, order, writ, injunction, settlement agreement, decree, rule or regulation of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign that, individually or together with any other such judgments, orders, writs, injunctions, settlement agreements, decrees, rules or regulations, could reasonably be expected to result in a Material Adverse Change.

(c) Each of Borrower and its Subsidiaries (and, to Borrower's Knowledge, each other party thereto) is in compliance with the terms of all settlement agreements (if any) relating to any Adverse Proceeding to which Borrower or any Subsidiary is a party.

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

(a) The Exchange Act Documents filed by Borrower with the SEC since December 31, 2023, when they were filed with the SEC, conformed in all material respects to the requirements of the Exchange Act, and as of the time they were filed with the SEC, none of such documents contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein (excluding any projections and forward-looking statements, estimates, budgets and general economic or industry data of a general nature), in the light of the circumstances under which they were made, not misleading; provided, that, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projections are not a guarantee of financial performance and are subject to uncertainties and contingencies, many of which are beyond the control of Borrower or any Subsidiary, and neither Borrower nor any Subsidiary can give any assurance that such projections will be attained, that actual results may differ in a material manner from such projections and any failure to meet such projections shall not be deemed to be a breach of any representation or covenant herein).

(b) The Borrower's audited annual financial statements as of December 31, 2023 (including the related notes thereto) of Borrower and its Subsidiaries included in the Exchange Act Documents present fairly in all material respects the consolidated financial condition of Borrower and such Subsidiaries and their consolidated results of operations as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified. Such financial statements have been prepared in conformity with GAAP applied on a consistent basis throughout the periods covered thereby, except as otherwise disclosed therein and, in the case of unaudited, interim financial statements, subject to normal year-end audit adjustments and the exclusion of certain footnotes.

(c) Borrower acknowledges that its management is responsible for the preparation and fair presentation of the financial statements of Borrower and each of its Subsidiaries delivered to the Collateral Agent pursuant to Section 5.2(a), in each case, in conformance with GAAP. Borrower has, suitable for a company of its size and stage of development, designed, implemented and maintained internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

(d) Since December 31, 2023, there has not occurred any change or event that has had or could reasonably be expected to have, either alone or in conjunction with any other change(s), event(s) or failure(s), a Material Adverse Change.

(e) The Books of Borrower and each of its Subsidiaries in existence immediately prior to the Effective Date and each applicable Closing Date contain full, true and correct entries of all dealings and transactions in relation to its business and activities in conformity in all material respects with GAAP and Requirements of Law.

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

4.10. Payment of Taxes. All foreign, federal and state income and other material Tax returns and reports (or extensions thereof) of each Credit Party and each of its Subsidiaries required to be filed by any of them have been timely filed (taking into account any valid extensions) and are correct in all material respects, and all material Taxes which are due and payable by any Credit Party or any of its Subsidiaries and all material assessments, fees and other governmental charges upon any Credit Party or any of its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable except where the validity or amount thereof is being contested in good faith by appropriate proceedings; provided that (a) the applicable Credit Party has set aside on its books adequate reserves therefor in conformity with GAAP and (b) the failure to pay such Taxes, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change. To the Knowledge of Borrower, there is no proposed Tax assessment against any Credit Party or any of its Subsidiaries that, if made, would reasonably be expected to result in a Material Adverse Change.

4.11. Environmental Matters. Neither Borrower nor any of its Subsidiaries nor any of their respective Facilities or operations is subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. There are and, to the Knowledge of Borrower, have been, no conditions, occurrences, or Hazardous Materials Activities that would reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. To the Knowledge of Borrower, no predecessor of Borrower or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, which would reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change (but, for the avoidance of doubt, neither Borrower nor any of its Subsidiaries has, directly or indirectly, undertaken any investigation of or made any inquiries to, or relating to, any of its or its Subsidiaries' predecessors), and neither Borrower's nor any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260–270 or any foreign or United States state equivalents, which would reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. No event or condition has occurred or is occurring with respect to any Credit Party relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity that, individually or in the aggregate, has resulted in, or could reasonably be expected to result in, a Material Adverse Change

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

4.13. Regulatory Compliance. No Credit Party is or is required to be registered as, or is a company "controlled" by, an "investment company" as defined in, or is subject to regulation under, the Investment Company Act of 1940, as amended. Except as could not reasonably be expected to result in a Material Adverse Change, each Credit Party has complied with the Federal Fair Labor Standards Act (and any foreign or United States state equivalent). Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, each Plan is in compliance with the applicable provisions of ERISA, the IRC and other Requirements of Law, respectively. (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) neither any Credit Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 *et seq*. of ERISA with respect to a Multiemployer Plan; and (iii) neither any Credit Party nor any ERISA Affiliate has engaged in a transaction that would be subject to Section 4069 or 4212(c) of ERISA, except, with respect to each of clauses (i), (ii) and (iii) above, as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

4.14. Margin Stock. No Credit Party is engaged principally, or as one of its important activities, in extending credit for the purpose of, whether immediate or ultimate, purchasing or carrying Margin Stock. No Credit Party owns any Margin Stock. No Credit Party or any of its Subsidiaries has taken or permitted to be taken any action that might cause any Loan Document to violate Regulation T, U or X of the Federal Reserve Board.

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

percentage of such ownership. Schedule 4.15 of the Disclosure Letter includes a complete and accurate list of Borrower and each of its Subsidiaries, setting forth (a) its name and jurisdiction of incorporation, organization or formation, (b) the number of authorized and issued shares (or equivalent) of each class (where applicable) of its Equity Interests outstanding, (c) the percentage of its outstanding shares of each class owned (directly or indirectly) by Borrower or any other Credit Party and the certificate numbers(s) for the same (if any), and (d) the number and effect, if exercised, of all of its outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect to its issued Equity Interests. Except as set forth on Schedule 4.15 of the Disclosure Letter, each Credit Party is a Registered Organization.

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

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

4.18. Anti-Corruption Laws; Anti-Money Laundering Laws; Sanctions; Export and Import Laws.

(a) None of Borrower, its Subsidiaries, their respective directors or officers or, to the Knowledge of Borrower, any agent or employee of Borrower or any Subsidiary of Borrower, has (i) used any corporate funds of Borrower or any of its Subsidiaries for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or, to the Knowledge of Borrower, indirect unlawful payment to any foreign or domestic government official or employee or any Person from corporate funds of Borrower or any of its Subsidiaries, (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**"),the U.K. Bribery Act ("**UKBA**"), or any other applicable anti-corruption laws ("**Anti-Corruption Laws**") or (iv) made any bribe, improper rebate, payoff, influence payment, kickback or other unlawful payment, and no part of the proceeds of any Credit Extension will be used, directly or, to the Knowledge of Borrower, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business, or to obtain any improper advantage, in violation of Anti-Corruption Laws. No action, suit or proceeding by or before any Governmental Authority or any arbitrator involving Borrower or any of its Subsidiaries with respect to Anti-

Corruption Laws is pending or to the Knowledge of Borrower, threatened in writing nor, to the Knowledge of Borrower, is there a basis for such action, suit, or proceeding.

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

(c) None of Borrower, its Subsidiaries, or their respective directors or officers or, to the Knowledge of Borrower, any agent or employee of Borrower or any Subsidiary of Borrower, is, or is owned or controlled by individuals or entities that are, the target or subject of any economic, trade or financial sanctions or restrictive measures administered and enforced by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("**OFAC**"), the U.S. Department of State, the United Nations Security Council, the European Union, and each member state thereof or His Majesty's Treasury of the United Kingdom (collectively "**Sanctions**"). Neither Borrower nor any of its Subsidiaries: (i) has assets located in, or otherwise directly or indirectly derives revenues from or engages in, investments, dealings, activities, or transactions in or with, any Sanctioned Country; or (ii) directly or indirectly derives revenues from, conducts any business or engages in investments, dealings, activities, or transactions with, any Blocked Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person. Borrower will not, directly or indirectly (including through an agent or any other Person), use the proceeds of any Term Loans, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, for (i) the purpose of financing the activities of any Person that is the target or subject of Sanctions or in any country or territory that at the time of such funding, is the subject of Sanctions, (ii) use in any Sanctioned Country, or (iii) any purpose that could cause any Person to be in violation of Sanctions. No action, suit or proceeding by or before any Governmental Authority or any arbitrator involving Borrower or any of its Subsidiaries with respect to Sanctions is pending or to the Knowledge of Borrower, threatened in writing, nor, to the Knowledge of Borrower, is there a basis for such action, suit or proceeding.

(d) Borrower will not, directly or, to the Knowledge of Borrower, indirectly (including through an agent or any other Person), use the proceeds of the Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, for (i) any payments to any government official or employee, political party, official of a political party, candidate for political office or anyone else, in order to obtain, retain or direct business, or to obtain any improper advantage in violation of Anti-Corruption Laws, (ii) in violation of any Anti-Money Laundering Laws, or (iii) in violation of Sanctions.

(e) Borrower, its Subsidiaries, their respective officers and directors, and to the Knowledge of Borrower, their respective agents and employees, are in compliance with Sanctions. Borrower and its Subsidiaries have instituted and maintain policies and procedures reasonably designed to ensure compliance with Sanctions, Anti-Money Laundering Laws, Export and Import Laws, and Anti-Corruption Laws.

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

4.19. Health Care Matters.

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

(b) *Compliance with FDA Laws*. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, is in compliance in all material respects with all applicable FDA Laws, including the applicable requirements of the Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.) (the "**FDCA**") and the regulations

promulgated thereunder; Canadian Laws including the Food and Drugs Act (R.S.C., 1985, c. F-27) and the regulations promulgated thereunder; EU Laws including the EU Community Code on medicinal products (Directive 2001/83/EC), the European Medicines Agency Regulation (Regulation (EC) No 726/2004), the Manufacturing Directive (Commission Directive 2003/94/EC), the Clinical Trials Regulation (Regulation (EU) No 536/2014), and related implementing legislation of individual EU Member States and related guidance at EU level and national level in individual EU Member States; U.K. Laws (including the Medicines Act 1968, Human Medicines Regulations 2012 and related implementing legislation and regulations promulgated thereunder); including as relating to any research, development, testing, approval, licensure, clearance, authorization, designation, exclusivity, post-approval (or post-licensure, post-authorization, or post-clearance, as applicable) monitoring and requirements, reporting, manufacture, production, packaging, labeling, use, commercialization, marketing, promotion, advertising, importing, exporting, storage, transport, offer for sale or lease, distribution or sale or lease of any Product in the Territory. Any Product distributed or sold in the Territory at all times during the past five (5) years has been (i) manufactured and developed in all material respects in accordance with current FDA Good Manufacturing Practices, FDA Good Clinical Practices and FDA Good Laboratory Practices (as applicable), and (ii) if and to the extent such Product is required to be approved or licensed by the relevant Governmental Authority pursuant to FDA Laws, Canadian Laws, EU Laws, U.K. Laws or other foreign law equivalents, in order to be legally marketed in the applicable jurisdiction for such Product's intended uses, such Product has been approved or licensed for such intended uses, meets in all material respects any additional conditions of approval, clearance, authorization, or licensure by the competent Governmental Authority, and no inquiries regarding material issues have been initiated by any competent Governmental Authority.

(c) *Applicability of Controlled Substances Act.* The Product does not contain a controlled substance (as that term is defined under the Controlled Substances Act (21 U.S.C. § 801 et seq.)).

(d) *Material Statements*. Within the past five (5) years, neither any Credit Party, nor, to the Knowledge of Borrower, any Subsidiary or any officer, Affiliate or employee of any Credit Party or Subsidiary in its capacity as a Subsidiary or as an officer, Affiliate or employee of a Credit Party or Subsidiary (as applicable), nor, to the Knowledge of Borrower, any agent of any Credit Party or Subsidiary, (i) has made an untrue statement of a material fact or a fraudulent statement to any Governmental Authority under any Health Care Law, (ii) has failed to disclose a material fact to any Governmental Authority under any Health Care Law, or (iii) has otherwise committed an act, made a statement or failed to make a statement that, at the time such statement or disclosure was made (or, in the case of such failure, should have been made) or such act was committed, could reasonably be expected to constitute a material violation of any Health Care Law.

(e) *Proceedings; Audits*. Except as has been set forth on Schedule 4.19(e) of the Disclosure Letter: (i) there is no Adverse Proceeding pending or, to the Knowledge of Borrower, threatened in writing, against any Credit Party or any of its Subsidiaries relating to any allegations of non-compliance with any Health Care Laws, Data Protection Laws, FDA Laws, Canadian Laws, EU Laws or U.K. Laws; and (ii) to the Knowledge of Borrower, there are no facts, circumstances or conditions that, individually or in the aggregate, would reasonably be expected to form the basis for any such Adverse Proceeding.

(f) *Recalls, Safety Notices, Etc*. Except as has been set forth on Schedule 4.19(f) of the Disclosure Letter, neither any Credit Party nor any of its Subsidiaries has initiated or otherwise engaged in any recalls, field notifications, safety warnings, "dear doctor" letters, investigator notices, safety alerts or other notices of action, including as a result of any Risk Evaluation and Mitigation Strategy (or foreign equivalent) proposed or enforced by the FDA, Health Canada, the European Commission, the EMA, the competent authorities of the EU Member States, the Medicines and Healthcare products Regulatory Agency (MHRA) or any other equivalent foreign Governmental Authority relating to an alleged lack of safety or regulatory compliance of any Product.

(g) *Preclinical Studies / Clinical Trials*. All pre-clinical and clinical studies (including trials) relating to Product conducted by or on behalf of any Credit Party or any of its Subsidiaries have been, or are being, conducted in compliance in all material respects with all Requirements of Law, including the applicable requirements of FDA Laws, Canadian Laws, EU Laws, U.K. Laws, FDA Good Laboratory Practices, FDA Good Clinical Practices, regulations under the Common Rule (including 45 C.F.R. part 46), and the Animal Welfare Act and applicable experimental protocols, procedures and controls, United States state equivalents and equivalent foreign laws and applicable regulations. Except as set forth on Schedule 4.19(g) of the Disclosure Letter, during the past five (5) years, no clinical study involving Product conducted by or on behalf of any Credit Party or any of its Subsidiaries has been

terminated or suspended by any Regulatory Agency and neither any Credit Party nor any of its Subsidiaries has received any notice that the FDA (or foreign equivalent), any other Governmental Authority or any institutional review board, ethics committee or safety monitoring committee (or foreign equivalent) has recommended, initiated or, to the Knowledge of Borrower threatened to initiate any action to suspend or terminate any clinical study conducted by or on behalf of any Credit Party or any of its Subsidiaries or to otherwise restrict the preclinical research on or clinical study of Product. Except as set forth on Schedule 4.19(g) of the Disclosure Letter, neither any Credit Party nor any of its Subsidiaries has a reasonable expectation that there are grounds for imposition of a clinical hold, as described in 21 C.F.R. § 312.42 (or foreign equivalent), or a withdrawal of an Investigational New Drug Application, as defined in 21 C.F.R. § 312.38 (or foreign equivalent), for Product. With respect to any clinical hold (or foreign equivalent) described on Schedule 4.19(g) of the Disclosure Letter and except as set forth on Schedule 4.19(g) of the Disclosure Letter, none of the safety issues raised by a Governmental Authority in the context thereof placed on products under development by any Credit Party or any of its Subsidiaries could reasonably be expected to materially and adversely impact the research, development, testing, manufacture, approval, clearance, authorization, exclusivity, licensure, designation, post-approval (or post-licensure, post-authorization or post-clearance, as applicable) monitoring and commitments, reporting, production, packaging, labeling, use, commercialization, marketing, promotion, advertising, importing, exporting, storage, transport, offer for sale or lease, distribution or sale or lease of Product in the Territory. Any clinical hold (or foreign equivalent) placed on products under development by any Credit Party or any of its Subsidiaries, or terminations of clinical trials by any Credit Party or any of its Subsidiaries, could not reasonably be expected to materially and adversely impact the financial condition of any Credit Party and its Subsidiaries (taken as a whole), or the ability of any Credit Party and its Subsidiaries (taken as a whole) to fulfill the payment obligations under the Loan Agreement or any other Loan Documents.

(h) *Advertising / Promotion*. For the past five (5) years, each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, officers, employees and agents has advertised, promoted, marketed and distributed Product in the Territory in compliance in all material respects with the applicable requirements of FDA Laws, Canadian Laws, EU Laws, U.K. Laws, and other Requirements of Law. Except as set forth on Schedule 4.19(h) of the Disclosure Letter, for the past five (5) years, neither any Credit Party nor, to the Knowledge of Borrower, any of its Subsidiaries, officers, employees or agents has received any written notice of or is subject to any civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand letter, warning letter, untitled letter, proceeding or request for information from the FDA (or foreign equivalents) or any other Governmental Authority concerning noncompliance with any applicable FDA Laws, Canadian Laws, EU Laws, U.K. Laws or other Requirements of Law with regard to advertising, promoting, marketing or distributing Product in the Territory.

(i) *Recordkeeping / Reporting*. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, has maintained records relating to the research, development, testing, manufacture, recall, production, handling, labeling, packaging, storage, supply, promotion, distribution, marketing, commercialization, import, export and sale of Product in the Territory, in compliance in all material respects with applicable requirements of the FDA Laws, Canadian Laws, EU Laws, U.K. Laws, Health Care Laws, and other Requirements of Law, and each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, has submitted to the FDA (or foreign equivalents) and other Governmental Authorities (including Regulatory Agencies) in a timely manner all material notices and annual or other reports required to be made, including adverse experience reports, annual reports, and safety reports required to be made for Product.

(j) *Prohibited Transactions; No Whistleblowers*. Except as set forth on Schedule 4.19(j) of the Disclosure Letter, within the past five (5) years, to the Knowledge of Borrower, neither any Credit Party, any Subsidiary, any officer, Affiliate or employee of a Credit Party or Subsidiary, nor any other Person acting on behalf of any Credit Party or any Subsidiary, directly or indirectly: (i) has offered or paid any remuneration, in cash or in kind, to, or made any financial arrangements with, any past, present or potential patient, supplier, physician or contractor, in order to illegally obtain business or payments from such Person in material violation of any Health Care Law; (ii) has given or made, or is party to any illegal agreement to give or make, any illegal gift or gratuitous payment of any kind, nature or description (whether in money, property or services) to any past, present or potential patient, supplier, physician or contractor, or any other Person in material violation of any Health Care Law; (iii) has given or made, or is party to any agreement to give or make on behalf of any Credit Party or any of its Subsidiaries, any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift is or was a material violation of the laws of any Governmental Authority having jurisdiction over such payment, contribution or

gift; (iv) has established or maintained any unrecorded fund or asset for any purpose or made any materially misleading, false or artificial entries on any of its books or records for any reason; or (v) has made, or is party to any agreement to make, any payment to any Person with the intention or understanding that any part of such payment would be in material violation of any Health Care Law. To the Knowledge of Borrower, there are no actions pending or threatened (in writing) against any Credit Party or any of its Subsidiaries or any of their respective Affiliates under any foreign, federal or United States state healthcare whistleblower statute, including under the False Claims Act of 1863 (31 U.S.C. § 3729 et seq.).

(k) *Exclusion*. Except as set forth on Schedule 4.19(k) of the Disclosure Letter, neither any Credit Party nor, to the Knowledge of Borrower, any Subsidiary or any officer, Affiliate or employee of Borrower or any Subsidiary having authority to act on behalf of any Credit Party or any Subsidiary, is or, to the Knowledge of Borrower, has been threatened in writing to be: (i) excluded from any Governmental Payor Program pursuant to 42 U.S.C. § 1320a-7b and related regulations; (ii) "suspended" or "debarred" from selling any products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation relating to debarment and suspension applicable to federal government agencies generally (42 C.F.R. Subpart 9.4), or other U.S. Requirements of Law; (iii) debarred, disqualified, suspended or excluded from participation in Medicare, Medicaid or any other Governmental Payor Program or is listed on the General Services Administration list of excluded parties; (iv) debarred by FDA (or foreign equivalent) or (v) a party to any other action or proceeding by any Governmental Authority that would prohibit the applicable Credit Party or Subsidiary from distributing or selling any Product in the Territory or providing any services to any governmental or other purchaser pursuant to any Health Care Laws.

(l) *Health Information*. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, to the extent applicable, has implemented written policies and procedures, as well as such training as is customary in the pharmaceutical industry, which satisfy the requirements of all Requirements of Law (including HIPAA, Section 5 of the FTC Act, CCPA, CMIA, GDPR, and PIPEDA, as applicable) and is otherwise adequate to assure continued compliance and to detect non-compliance. Neither any Credit Party, nor, to the Knowledge of such Credit Party, any Subsidiary that is not a Credit Party, is a "covered entity" or "business associate" as defined in HIPAA (45 C.F.R. § 160.103).

(m) *Corporate Integrity Agreement*. Neither any Credit Party or Subsidiary, nor any of their respective Affiliates, nor, to the Knowledge of Borrower, any of their respective officers, directors, managing employees or agents , is a party to or has any ongoing reporting or disclosure obligations under, or is otherwise subject to, any order, individual integrity agreement, corporate integrity agreement, monitoring agreement, deferred prosecution agreement, consent decree, settlement order or other similar agreements, or any order, in each case imposed by any Governmental Authority concerning compliance with any laws, rules or regulations, issued under or in connection with a Governmental Payor Program.

4.20. Regulatory Approvals or Licensures.

(a) Except as set forth on Schedule 4.20(a) of the Disclosure Letter, each Credit Party and each Subsidiary involved in any research, development, testing, post-approval (or post-licensure, post-authorization, or post-clearance, as applicable) monitoring and requirements, manufacture, production, packaging, labeling, use, commercialization, marketing, promotion, advertising, importing, exporting, storage, transport, offer for sale or lease, distribution or sale or lease of Product in the Territory has all Regulatory Approvals or Licensures material to the conduct of its business and operations.

(b) To the Knowledge of Borrower, each licensee of a Credit Party or a Subsidiary of any Intellectual Property relating to Product, is in compliance with, and at all times during the past five (5) years, has complied with, all applicable foreign, federal, state and local laws, rules and regulations governing any aspect of the research, development, testing, approval, licensure, clearance, authorization, post-approval (or post-licensure, post-authorization, or post-clearance, as applicable) monitoring and requirements, reporting, manufacture, production, packaging, labeling, use, commercialization, designation, exclusivity, marketing, promotion, advertising, importing, exporting, storage, transport, offer for sale or lease, distribution or sale or lease of Product in the Territory, including all such regulations promulgated by each applicable Regulatory Agency (including the FDA, Health Canada, the European Commission, the EMA, the competent authorities of the EU Member States and the MHRA or any other applicable foreign equivalents), except where any instance of failure to comply with any such laws, rules or regulations

could not, whether individually or taken together with any other such failures, reasonably be expected to result in a Material Adverse Change. Except as set forth on Schedule 4.20(b) of the Disclosure Letter, for the last five (5) years, no Credit Party or its Subsidiaries has received any written notice from any Regulatory Agency citing action or inaction by any Credit Party or any of its Subsidiaries that would constitute a violation of any applicable foreign, federal, state or local laws, rules, or regulations, including a Warning Letter or Untitled Letter from FDA (or equivalent communication from any other Regulatory Agency).

4.21. Supply and Manufacturing.

(a) Except as set forth on Schedule 4.21(a) of the Disclosure Letter, to the Knowledge of any Credit Party, Product in the past five (5) years, has been manufactured in sufficient quantities and of a sufficient quality to satisfy demand of Product in the Territory, without the occurrence of any event or series of related events causing inventory of Product to have become exhausted prior to satisfying such demand. To the Knowledge of Borrower, no event or circumstances (or series of related events or circumstances) has occurred that has caused or could reasonably be expected to cause (i) Product to be manufactured in a quantity or of a quality insufficient to satisfy current demand of such Product in the Territory or (ii) inventory of Product in the Territory to have become exhausted prior to satisfying such demand of such Product in the Territory.

(b) Except as set forth on Schedule 4.21(b) of the Disclosure Letter, to the Knowledge of Borrower, in the past five (5) years (i) no manufacturer (including a contract manufacturer), licensing partner, or producer of Product has been or is currently subject to a material Regulatory Agency shutdown or voluntary shutdown, restriction or import or export prohibition, (ii) no manufacturer (including a contract manufacturer), licensing partner, or producer of Product has received a Form FDA-483 or is currently subject to (1) a Form FDA-483 with respect to any Product or (2) other written Regulatory Agency notice of inspectional observations, Warning Letter, Untitled Letter or request to make changes to Product that could impact any Product, in either case of sub-clause (1) or (2) above with respect to any facility manufacturing or producing Product for import, distribution, sale or lease in the Territory, and (ii) with respect to each such Form FDA-483 received (if any) or other written Regulatory Agency notice (if any), all scientific and technical violations or other issues relating to FDA Good Manufacturing Practice requirements documented therein, and any disputes regarding any such violations or issues, have been corrected or otherwise resolved or are subject to and in the process of ongoing and sufficient corrections and corrective actions.

(c) Except as disclosed in Schedule 4.21(c) of the Disclosure Letter, no Credit Party or any of its Subsidiaries has received any notice, oral or written, from any party to any Manufacturing Agreement containing any indication by or intent or threat of, such party to reduce or cease, in any material respect, the supply of Product or the active pharmaceutical ingredient incorporated therein in the Territory or any other raw materials needed to fulfill its contractual obligations related to Product in any Manufacturing Agreement through calendar year 2029 (or such earlier date in accordance with the terms and conditions of such Manufacturing Agreement, as applicable).

4.22. Cybersecurity and Data Protection.

(a) Except as set forth in Schedule 4.22(a) of the Disclosure Letter, to the Knowledge of Borrower, the information technology systems used in the business of each of Borrower and its Subsidiaries ("**Systems**") operate and perform in all material respects as required to permit each of Borrower and its Subsidiaries to conduct their respective businesses as presently conducted in the Territory. To the Knowledge of Borrower, no System contains any material ransomware, disabling codes or instructions, spyware, Trojan horses, worms, viruses or other software routines that are designed or intended to delete, destroy, disable, interfere with, perform unauthorized modifications to, or provide unauthorized access to any data, files, software, system, network, or other device. Borrower and its Subsidiaries have and maintain back-up systems, consistent with the industry in which Borrower and each of its Subsidiaries operate and the size and condition of Borrower and its Subsidiaries, designed to provide continuing availability of the material functionality provided by the Systems in the event of any malfunction of, or other event interrupting access to or the functionality of, such Systems. Borrower and its Subsidiaries use commercially reasonable efforts to promptly implement material security patches that are generally available for the Systems.

(b) Except as set forth on Schedule 4.22(b) of the Disclosure Letter, Borrower and each of its Subsidiaries has implemented and maintains a commercially reasonable, data privacy and information security

program ("**Security Program**") including commercially reasonable administrative, technical and physical safeguards designed to protect the integrity and availability of the Systems and designed to protect against (i) any unauthorized, accidental, or unlawful access to or acquisition, use, disclosure, transmission, retention, processing, loss, destruction, or modification of Personal Data that would require notification to any affected individuals or any Governmental Authority under any applicable Data Protection Law (each, a "**Personal Data Breach**"), (ii) any unauthorized, accidental, or unlawful access to or acquisition, use, disclosure, or loss of Sensitive Information that is not Personal Data, and (iii) any security incidents that would result in unauthorized, accidental, or unlawful access to or acquisition, use, control, disruption, destruction, or modification of any of the Systems (including cyber-attacks) that would reasonably be expected to result in a material and adverse effect on the operation of Borrower's or any of its Subsidiaries' business operations as currently conducted (sub-clauses (i) through (iii), collectively, "**Security Incidents**").

(c) Borrower and each of its Subsidiaries has conducted commercially reasonable privacy and security audits and penetration tests at reasonable intervals on all Systems that maintain, store, access, or process Sensitive Information, in each case consistent with the industry in which Borrower and each of its Subsidiaries operate and the size and condition of Borrower and its Subsidiaries. Except as set forth on Schedule 4.22(c) of the Disclosure Letter, Borrower and each of its Subsidiaries has taken commercially reasonable steps to remediate all material privacy or data security issues identified as "critical," "high risk," or similar level of risk rating raised in any such audits or penetration tests (including any third-party audits of the Systems).

(d) Borrower and each of its Subsidiaries has conducted commercially reasonable privacy and data security diligence, consistent with the industry in which Borrower and each of its Subsidiaries operate and the size and condition of Borrower and its Subsidiaries, on all vendors (including clinical trial investigators, contract research organizations, clinical data management organizations, content management systems and other service providers and contractors) that (i) collect, create, receive, access, maintain, store, or otherwise process Sensitive Information for or on behalf of Borrower or any of its Subsidiaries, or (ii) access or maintain the Systems. Except as set forth on Schedule 4.22(d) of the Disclosure Letter, neither Borrower nor any of its Subsidiaries has, in the past five (5) years, received notice from any vendor that such vendor experienced a Security Incident impacting Borrower's or any of its Subsidiaries' Sensitive Information.

(e) Except as set forth on Schedule 4.22(e) of the Disclosure Letter, to the Knowledge of Borrower, neither Borrower nor any of its Subsidiaries, has in the past five (5) years suffered any (i) Personal Data Breaches, or (ii) other Security Incidents that could reasonably be expected to result in a material and adverse effect on Borrower's or any of its Subsidiaries' business operations, such as a material disruption of drug development, manufacturing or commercialization programs relating to Product.

(f) Except as set forth on Schedule 4.22(f) of the Disclosure Letter, Borrower and each of its Subsidiaries is in material compliance with (i) the requirements of their respective Security Programs, (ii) their respective contractual obligations regarding privacy, security, or notification of breaches of Personal Data, (iii) their respective contractual non-disclosure obligations, (iv) their respective publicly available privacy notices and policies, and (v) the requirements of all applicable Data Protection Laws.

(g) Except as set forth on Schedule 4.22(g) of the Disclosure Letter, in the past five (5) years: (i) neither Borrower nor any of its Subsidiaries has received any written third party claims or, to the Knowledge of Borrower, any threat (in writing) of a third party claim, related to any Personal Data Breaches or other Security Incidents; and (ii) neither Borrower nor any of its Subsidiaries has received any written notice of any claims or investigations (including investigations by any Governmental Authority) relating to any Personal Data Breaches or other Security Incidents, except, in each case of sub-clauses (i) and (ii) above as could not reasonably be expected to be material to Borrower and its Subsidiaries, taken as a whole.

(h) In the past five (5) years, Borrower and each of its Subsidiaries has maintained any database registrations required under applicable Data Protection Laws material to Borrower and its Subsidiaries.

4.23. Additional Representations and Warranties.

(a) As of the Effective Date and the Tranche A Closing Date, except as set forth on Schedule 4.23(a) of the Disclosure Letter, after giving effect to consummation of the transactions contemplated by this Agreement on the Tranche A Closing Date, (i) there is no Indebtedness for borrowed money owed to Borrower or any of its Subsidiaries other than Permitted Indebtedness or Permitted Investments, or owed by Borrower or any of its Subsidiaries, other than Permitted Indebtedness, and (ii) all Indebtedness and any and all other amounts outstanding under the Existing Credit Agreement are paid or repaid in full, no further extension of credit is available thereunder and all Liens on or security interests in any and all collateral securing the payment of any such Indebtedness and any guaranty and other obligation of Borrower or any of its Subsidiaries thereunder in favor of any Person have been terminated.

(b) As of each Closing Date other than the Tranche A Closing Date, there is no Indebtedness for borrowed money (x) owed to Borrower or any of its Subsidiaries other than Permitted Indebtedness or Permitted Investments, or (y) owed by Borrower or any of its Subsidiaries other than Permitted Indebtedness.

(c) As of the Effective Date and each applicable Closing Date, there are no Hedging Agreements.

(d) Except as has been disclosed in the Exchange Act Documents, there is no registration rights agreement, investors' rights agreement or other similar agreement relating to, governing or otherwise affecting the ownership of the capital stock or other equity ownership interests of any Credit Party.

5 AFFIRMATIVE COVENANTS

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

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

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

(a) Financial Statements.

(i) Annual Financial Statements. As soon as available, but in any event within ninety (90) days after the end of each fiscal year of Borrower (or such earlier date on which Borrower is required to file a Form 10-K under the Exchange Act, as applicable), beginning with the fiscal year ending December 31, 2024, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated statements of income, cash flows and stockholders' equity for such fiscal year, setting forth in each case, certified by a Responsible Officer of Borrower, in comparative form the figures for the previous fiscal year, all prepared in accordance with GAAP, with such consolidated financial statements to be audited and accompanied by (x) a report and opinion of Ernst & Young or another independent certified public accounting firm of recognized national standing (which report and opinion shall be prepared in accordance with GAAP and shall not be subject to any qualification as to "going concern" or scope of audit), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries as of the dates and for the periods specified in accordance with GAAP, and (y) if and only if Borrower is required to comply with the

internal control provisions pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 requiring an attestation report of such independent certified public accounting firm, an attestation report of such independent certified public accounting firm as to Borrower's internal controls pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 attesting to management's assessment that such internal controls meet the requirements of the Sarbanes-Oxley Act of 2002; provided, however, that Borrower shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been made available within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC);

(ii) Quarterly Financial Statements. As soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of Borrower (or such earlier date on which Borrower is required to file a Form 10-Q under the Exchange Act, as applicable), beginning with the fiscal quarter ending March 31, 2024, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such fiscal quarter, and the related consolidated statements of income and cash flows and for such fiscal quarter and (in respect of the second and third fiscal quarters of such fiscal year) for the then-elapsed portion of Borrower's fiscal year, setting forth in each case in comparative form the figures for the comparable period or periods in the previous fiscal year, all prepared in accordance with GAAP and, beginning with the fiscal quarter ending June 30, 2024 not subject to any qualification or statement as to "going concern," subject to normal year-end audit adjustments and the absence of disclosures normally made in footnotes; provided, however, that Borrower shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been made available within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC). Such consolidated financial statements shall be certified by a Responsible Officer of Borrower as, to his or her knowledge, fairly presenting, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries as of the dates and for the periods specified in accordance with GAAP consistently applied, and on a basis consistent with the audited consolidated financial statements referred to under Section 5.2(a)(i), subject to normal year-end audit adjustments and the absence of footnotes (but not, for the avoidance of doubt, subject to any qualification or statement as to "going concern"); provided, however, that such certification by a Responsible Officer of Borrower shall be deemed to have made if a similar certification is required under the Sarbanes-Oxley Act of 2002 and such certification shall have been made available within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC);

(iii) Quarterly Compliance Certificate. Upon delivery (or within five (5) Business Days following any deemed delivery) of financial statements pursuant to Section 5.2(a)(i) or Section 5.2(a)(ii), a duly completed Compliance Certificate signed by a Responsible Officer of Borrower, certifying, among other things, that (A) such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries as of applicable the dates and for the applicable periods in accordance with GAAP consistently applied, and are not subject to any qualification or statement as to "going concern" or scope of audit, and (B) no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto; and

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

(b) Notice of Defaults or Events of Default, ERISA Events, Withdrawal Events and Material Adverse Changes. Written notice as promptly as practicable (and in any event within five (5) Business Days) after a

Responsible Officer of any Credit Party shall have obtained Knowledge thereof, of the occurrence of any (i) Default or Event of Default, (ii) ERISA Event, (iii) Withdrawal Event or (iv) Material Adverse Change.

(c) Legal Action Notice. Promptly (and in any event within five (5) Business Days) upon any Credit Party's receipt or otherwise obtaining Knowledge thereof, deliver to the Collateral Agent written notice of (which shall be deemed given to the extent timely reported in a Form 8-K under the Exchange Act and available on the SEC's EDGAR system (or any successor system adopted by the SEC)): (i) correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other material inquiry by such agency regarding financial or other operational results of Borrower or any Subsidiary of Borrower; or (ii) any legal action, litigation, investigation or proceeding pending or threatened in writing against Borrower or any of its Subsidiaries or licensing partners (A) that could reasonably be expected to result in uninsured damages or costs to Borrower or any of its Subsidiaries, individually or together with any other such action, litigation, investigation or proceeding, in an amount in excess of the materiality thresholds applied by Borrower in accordance with the Exchange Act and related regulations and standards for purposes of its Exchange Act Reporting, or (B) that alleges violations of any Requirements of Law, including Health Care Laws, FDA Laws, Canadian Laws, EU Laws, U.K. Laws, Data Protection Laws or any other applicable statutes, rules, regulations, standards, guidelines, policies and orders, or applicable foreign equivalents, administered or issued by any U.S. or foreign Governmental Authority, which, individually or together with any other such allegations, could reasonably be expected to result in a Material Adverse Change; and in each case of sub-clause (i) or (ii) above, provide such additional information (including a description in reasonable detail regarding any material development) as the Collateral Agent may reasonably request in relation thereto; provided, however, that neither Borrower nor any other Credit Party shall be obligated to disclose any information that is reasonably subject to the assertion of attorney-client privilege or attorney work-product.

(d) Competing Product. If the Credit Party or any of its Subsidiaries develops or obtains rights to any approved product that is a Competing Product in the United States, or any product candidate that if approved by a Regulatory Agency would be a Competing Product in the United States at any time on or prior to the Term Loan Maturity Date, in any case, the Parties agree that the definition of Product will be deemed to include such Competing Product.

(e) Accounting Changes. Written notice of any material change in accounting policies or financial reporting practices by Borrower or any Subsidiary no later than ten (10) Business Days prior to the date the Borrower files its 10-K or 10-Q, as applicable, for the period in which the Borrower or its Subsidiary, as applicable, implements such material change in accounting policies or financial reporting practices.

(f) Bank Accounts. Within ten (10) days of opening any bank account of a Credit Party other than the bank accounts set forth on Schedule 6.2(c) of the Disclosure Letter (which bank accounts constitute all of the deposit accounts, securities accounts or other similar accounts maintained by any Credit Party on the Tranche A Closing Date) that is not an Excluded Account, written notice of the establishment of such bank account, which shall describe in reasonable detail such bank account.

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

5.4. Insurance. Maintain with financially sound and reputable independent insurance companies or underwriters, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons of comparable size engaged in the same or similar business, of such types and in such

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

5.5. Operating Accounts. In the case of any Credit Party, promptly, and in no event later than thirty (30) days after establishment of any new Collateral Account at or with any bank or other depository or financial institution located in the United States, subject such account to a Control Agreement or other appropriate instrument that is reasonably acceptable to the Collateral Agent. Except as otherwise provided in the last sentence of this paragraph, for each Collateral Account that each Credit Party at any time maintains, such Credit Party shall, within thirty (30) days of establishing such Collateral Account, cause the applicable bank or other depository or financial institution at or with which any Collateral Account is maintained, to execute and deliver, and such Credit Party shall execute and deliver, to the Collateral Agent, a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect the Collateral Agent's Lien, for the benefit of Lenders and the other Secured Parties, in such Collateral Account in accordance with the terms hereunder, which Control Agreement may not be terminated without the prior written consent of the Collateral Agent. The provisions of the previous two (2) sentences shall not apply to (1) accounts exclusively used for payroll, payroll Taxes and other employee wage and benefit payments to or for the benefit of any Credit Party's employees (2) zero balance accounts, (3) accounts (including trust accounts) used exclusively for escrow, customs, insurance or fiduciary purposes, (4) merchant accounts, (5) accounts used exclusively for compliance with any Requirements of Law to the extent such Requirements of Law prohibit the granting of a Lien thereon, (6) accounts which constitute cash collateral in respect of a Permitted Lien, (7) as of the end of any fiscal quarter (commencing with the quarter ended prior to the Tranche A Closing Date), any other account used in the ordinary course of business or in furtherance of a *bona fide* general corporate purpose that has a cash balance (based on the average weekly cash balance held in such account during such fiscal quarter) that does not, together with other such accounts excluded pursuant to this sub-clause (7), exceed $5,000,000 in the aggregate; provided, that, if the cash balance (based on the average weekly cash balance held in such account during such fiscal quarter) in accounts previously excluded under this sub-clause (7) exceeds such aggregate threshold at the end of any subsequent fiscal quarter, Borrower shall (x) no later than the date the applicable Compliance Certificate is required to be delivered with respect to such fiscal quarter, designate such accounts as no longer being Excluded Accounts, with the effect that the accounts which remain as Excluded Accounts pursuant to sub-clause (7) are in compliance with the requirements for exclusion under sub-clause (7), and (y) such designated accounts shall be deemed to be Collateral Accounts on the date of such designation (or the date such designation is required to be made) and Borrower shall comply with the requirements of this Section 5.5 with respect to such accounts, and (8) accounts not otherwise described in sub-clauses (1) through (7) above constituting Excluded Property (all such accounts in sub-clauses (1) through (8) above, collectively, the "**Excluded Accounts**"). Notwithstanding the foregoing, the Credit Parties shall have until the date that is ninety (90) days following (i) the Tranche A Closing Date to comply with the provisions of this Section 5.5 with regards to Collateral Accounts (other than Excluded Accounts) of the Credit Parties in existence on the Tranche A Closing Date (or opened during such 90-day period and (ii) the closing date of any Acquisition or other Investment to comply with the provisions of this Section 5.5 with regards to Collateral Accounts (other than Excluded Accounts) of the Credit Parties acquired in connection with such Acquisition or other Investment.

5.6. Compliance with Laws.

(a) Comply in all respects with the Requirements of Law and all orders, writs, injunctions, decrees and judgments applicable to it or to its business or its assets or properties (including, as applicable, Environmental Laws, ERISA, Anti-Money Laundering Laws, OFAC, FCPA, Health Care Laws, FDA Laws, Data Protection Laws and the Federal Fair Labor Standards Act, Canadian Laws, EU Laws, U.K. Laws and any foreign equivalents thereof), including in connection with governing the research, development, testing, approval, licensure, clearance, authorization, exclusivity, licensure, designation, post-approval (or post-licensure, post-authorization, or post-clearance, as applicable) monitoring or commitments, reporting, manufacture, production, packaging, labeling,

use, commercialization, marketing, promotion, advertising, importing, exporting, storage, transport, offer for sale or lease, distribution or sale or lease of Product in the Territory, except, in each case, if the failure to comply therewith could not, individually or taken together with any other such failures, reasonably be expected to result in a Material Adverse Change.

(b) Borrower and its Subsidiaries have instituted and shall maintain policies and procedures reasonably designed to ensure compliance with Sanctions, Anti-Money Laundering Laws, Export and Import Laws and Anti-Corruption Laws.

5.7. Protection of Intellectual Property Rights.

(a) Except as expressly permitted under clause (b) below, use commercially reasonable efforts to: (i) protect, defend and maintain the validity and enforceability of the Company IP material to any aspect of the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale or lease, distribution or sale or lease of any Product, including defending any future or current oppositions, interference proceedings, reissue proceedings, reexamination proceedings, *inter partes* review proceedings, derivative proceedings, post-grant review proceedings, cancellation proceedings, injunctions, lawsuits, paragraph IV patent certifications or lawsuits under the Hatch-Waxman Act, hearings, investigations, complaints, arbitrations, mediations, demands, International Trade Commission investigations, decrees, or any other disputes, disagreements, or claims, challenging the legality, validity, patentability, enforceability, inventorship or ownership of any Company IP; (ii) maintain the confidential nature of any material trade secrets and trade secret rights used in any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale or lease, distribution or sale or lease of any Product; and (iii) not allow any Company IP material to any aspect of the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale or lease, distribution or sale or lease of any Product to be abandoned, disclaimed, forfeited or dedicated to the public (other than through the abandonment of Current Company IP in the exercise of the Credit Parties' normal prosecution practices and reasonable business judgment, e.g., the abandonment of a continuation application that is no longer needed to maintain the pendency of another patent application) or any Company IP Agreement to be terminated by any Credit Party or any of its Subsidiaries, as applicable, without the Collateral Agent's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that with respect to any such Company IP that is not owned by a Credit Party or any of its Subsidiaries, the obligations in sub-clauses (i) and (iii) above shall apply only to the extent a Credit Party or any of its Subsidiaries have the right to take such actions or to cause any licensee or other third party to take such actions pursuant to applicable agreements or contractual rights.

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

would not otherwise terminate or otherwise violate the terms of the applicable agreements. Each Credit Party agrees to (1) notify the Collateral Agent in writing, promptly (and in any event within ten (10) Business Days) after a Responsible Officer of any Credit Party obtains Knowledge of, and (2) keep the Collateral Agent reasonably informed regarding, (x) any infringement or violation of any of the rights of any Credit Party or its Subsidiary in or to any material Company IP, or any misappropriation by any Person of any material Company IP or any of the subject matter thereof, and (y) any Product that infringes or violates any Third Party IP or constitutes a misappropriation of any Third Party IP.

(c) Use commercially reasonable efforts to protect, defend and maintain market and data exclusivity for the manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale or lease, distribution or sale or lease of Product through the Term Loan Maturity Date, and use commercially reasonable efforts to not allow for the manufacture, production, use, commercialization, marketing, importing, storage, transport offer for sale or lease, distribution or sale or lease of an equivalent or bioequivalent version of Product before the Term Loan Maturity Date, without the Collateral Agent's prior written consent. Borrower agrees to (i) promptly notify the Collateral Agent in writing of, (ii) keep the Collateral Agent reasonably informed regarding, and (iii) at the request of the Collateral Agent in writing, consult with and consider in good faith any comments of the Collateral Agent regarding, the commencement of any material filings or submissions in any opposition, interference proceeding, reissue proceeding, reexamination proceeding, *inter partes* review proceeding, post-grant review proceeding, derivation proceeding, cancellation proceeding, injunction, lawsuit, hearing, investigation, complaint, arbitration, mediation, demand, International Trade Commission investigation, decree, or any other dispute, disagreement, or claim, in each case challenging the legality, validity, patentability, enforceability, inventorship or ownership of any material Company IP (including any claim in any Patent within the Company IP that is material to any aspect of the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, packaging, labelling, promotion, advertising, offer for sale or lease, distribution or sale or lease of Product).

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

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

5.10. Use of Proceeds. (a) Use the proceeds of the Term Loans solely to repay all Indebtedness and any and all other amounts outstanding under the Existing Credit Agreement and any and all costs and expenses associated therewith, and to fund its general corporate requirements, including Permitted Acquisitions or in-licenses of assets related to any line of business of Borrower and its Subsidiaries, and (b) not use the proceeds of the Term Loans or any other Credit Extensions, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any Margin Stock, for the purpose of extending credit to any other Person for the purpose of purchasing or carrying any Margin Stock or for any other purpose that might cause any Term Loan or other Credit Extension to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board. If requested by the Collateral Agent, Borrower shall complete and sign Part I of a copy of Federal Reserve Form G-3 referred to in Regulation U and deliver such copy to the Collateral Agent.

5.11. Further Assurances. Promptly upon the reasonable written request of the Collateral Agent, execute, acknowledge and deliver such further documents and do such other acts and things in order to effectuate or carry out more effectively the purposes of this Agreement and the other Loan Documents at its expense, including after the Tranche A Closing Date taking such steps as are reasonably deemed necessary or desirable by the Collateral Agent to maintain, protect and enforce its Lien, for the benefit of Lenders and the other Secured Parties, on Collateral securing the Obligations created under the Collateral Documents and the other Loan Documents in accordance with the terms of the Collateral Documents and the other Loan Documents, subject to Permitted Liens.

5.12. Additional Collateral; Guarantors.

(a) Each Credit Party (other than Borrower) shall, and Borrower and each other Credit Party shall cause each of its Subsidiaries (other than Excluded Subsidiaries) to: (i) guarantee the Obligations; (ii) grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a first priority security interest in and Lien upon (subject to Permitted Liens), and pledge to the Collateral Agent for the benefit of Lenders and the other Secured Parties, all of such Credit Party's or Subsidiary's properties and assets constituting Collateral (including the certificated and uncertificated Equity Interests (other than Excluded Equity Interests) in such Subsidiary), whether now existing or hereafter acquired or existing (including in connection with an Asset Acquisition), to secure such guaranty; and (iii) subject to the timing requirements of Sections 5.13 and 5.14 if and only to the extent applicable, execute and deliver to the Collateral Agent a joinder or pledge amendment to the Security Agreement (in the form(s) attached thereto) and such other Collateral Documents or other documents required under the terms of the Loan Documents or as the Collateral Agent may reasonably request, including (x) in connection with each pledge of certificated Equity Interests, such certificate(s) together with stock powers or assignments, as applicable, properly endorsed for transfer to the Collateral Agent or duly executed in blank, in each case reasonably satisfactory to the Collateral Agent, and (y) in connection with each pledge of uncertificated Equity Interests of a Person organized in the U.S., other than Existing Uncertificated Pledged Stock (as defined in the Security Agreement), an executed uncertificated stock control agreement among the issuer, the registered owner and the Collateral Agent, substantially in the form attached to the Security Agreement.

(b) Borrower and each other Credit Party shall, and shall cause each of its Subsidiaries (other than Excluded Subsidiaries) to: (i) grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a first priority security interest in and Lien upon (subject to Permitted Liens, the limitations set forth herein and the limitations set forth in the other Loan Documents), and pledge to the Collateral Agent for the benefit of Lenders and the other Secured Parties, all of such Credit Party's or Subsidiary's properties and assets constituting Collateral (including the certificated and uncertificated Equity Interests (other than Excluded Equity Interests) in such Subsidiary), whether now existing or hereafter acquired or existing (including in connection with an Asset Acquisition), to secure the payment and performance in full of all of the Obligations; and (ii) subject to the timing requirements of Sections 5.13 and 5.14 if and only to the extent applicable, execute and deliver to the Collateral Agent a joinder or pledge amendment to the Security Agreement (in the form(s) attached thereto) and such other Collateral Documents or other documents required under the terms of the Loan Documents or as the Collateral Agent may reasonably request, including (x) in connection with each pledge of certificated Equity Interests, such certificate(s) together with stock powers or assignments, as applicable, properly endorsed for transfer to the Collateral Agent or duly executed in blank, in each case reasonably satisfactory to the Collateral Agent, and (y) in connection with each pledge of uncertificated Equity Interests of a Person organized in the U.S., other than Existing Uncertificated Pledged Stock (as defined in the Security Agreement), that is a Credit Party, an executed uncertificated stock control agreement among the issuer, the registered owner and the Collateral Agent, substantially in the form attached to the Security Agreement.

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

(d) Any document, agreement or instrument executed or issued pursuant to this Section 5.12 shall be a Loan Document for all purposes under this Agreement and the other Loan Documents.

5.13. Formation or Acquisition of Subsidiaries; Discretionary Guarantors. If (i) any Credit Party or any of its Subsidiaries at any time after the Tranche A Closing Date incorporates, organizes, forms or acquires (including by a Stock Acquisition) a Subsidiary (including by division), other than an Excluded Subsidiary (a "**New Subsidiary**"), (ii) Borrower elects, in its sole discretion, to designate an Excluded Subsidiary as a Credit Party (such designated Subsidiary, a "**Discretionary Guarantor**"), or (iii) any Credit Party makes an Asset Acquisition other than assets constituting Excluded Property, such Credit Party shall (x) notify the Collateral Agent in writing promptly, and in no event later than five (5) Business Days (or such later date as the Collateral Agent may agree in its sole discretion) prior to such incorporation, organization, formation or acquisition, designation or Asset Acquisition, as applicable and (y) as promptly as practicable but in no event later than thirty (30) days (or such longer period as Collateral Agent may agree in its sole discretion) after such incorporation, organization, formation or acquisition, designation or Asset Acquisition: (a) without limiting the generality of clause (c) below, such Credit Party will cause such New Subsidiary, Discretionary Guarantor or Credit Party, as applicable, to the extent required or applicable to execute and deliver to the Collateral Agent a joinder to the Security Agreement (in the form attached thereto), any relevant IP Agreement or other Collateral Documents, as applicable, and such other Collateral Documents or other documents as the Collateral Agent may reasonably request; (b) such New Subsidiary or Discretionary Guarantor, as applicable, will deliver (or cause to be delivered) to the Collateral Agent (i) true, correct and complete copies of the Operating Documents of such New Subsidiary or Discretionary Guarantor, as applicable, (ii) a Secretary's Certificate, certifying that the copies of the Operating Documents of such New Subsidiary or Discretionary Guarantor, as applicable, are true, correct and complete (such Secretary's Certificate to be in form and substance reasonably satisfactory to the Collateral Agent) and (iii) a good standing certificate for such New Subsidiary or Discretionary Guarantor, as applicable, certified by the Secretary of State (or the equivalent thereof) of its jurisdiction of organization, incorporation or formation (where applicable in the subject jurisdiction); and (c) such Credit Party (will cause such New Subsidiary or Discretionary Guarantor, as applicable, to satisfy all requirements contained in this Agreement (including Section 5.12) and each other Loan Document if and to the extent applicable to such New Subsidiary or Discretionary Guarantor. The parties hereto agree that any New Subsidiary or Discretionary Guarantor, as applicable, shall constitute a Credit Party for all purposes hereunder as of the date of the execution and delivery of any joinder contemplated by clause (a) above or the date such New Subsidiary or Discretionary Guarantor, as applicable, provides any guarantee of the Obligations as contemplated by Section 5.12. Any document, agreement or instrument executed or issued pursuant to this Section 5.13 shall be a Loan Document for all purposes under this Agreement and the other Loan Documents.

5.14. Post-Closing Requirements. Borrower will, and will cause each of its Subsidiaries to, take each of the actions set forth on Schedule 5.14 of the Disclosure Letter within the time period prescribed therefor on such schedule (or such longer period as the Collateral Agent may agree in its sole discretion), which shall include, among other things, that (a) notwithstanding anything to the contrary in Section 5.5, the Credit Parties shall have until the date that is ninety (90) days following the Tranche A Closing Date (or such longer period as the Collateral Agent may agree in its sole discretion) to comply with the provisions of Section 5.5 with regards to Collateral Accounts of the Credit Parties in existence on the Tranche A Closing Date or opened during such 90-day period (or such longer period as the Collateral Agent may agree in its sole discretion), and (b) notwithstanding anything to the contrary in Section 3.1(m)(ii), the Credit Parties shall have until the date that is ten (10) Business Days following the Tranche A Closing Date to comply with the provisions of Section 3.1(m)(ii) solely with respect to the execution and delivery of the termination of control agreements attached as Schedule A to that certain payoff letter described in Section 3.1(m)(i). All representations and warranties and covenants contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to take the actions set forth on Schedule 5.14 of the Disclosure Letter within the time periods set forth therein, rather than elsewhere provided in the Loan Documents, such that to the extent any such action set forth in Schedule 5.14 of the Disclosure Letter is not overdue, the applicable Credit Party shall not be in breach of any representation or warranty or covenant contained in this Agreement or any other Loan Document applicable to such action for the period from the Tranche A Closing Date until the date on which such action is required to be fulfilled as set forth on Schedule 5.14 of the Disclosure Letter.

5.15. Environmental.

(a) Deliver to the Collateral Agent:

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

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

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

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

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

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

5.16. Inventory; Returns; Maintenance of Properties. Keep all Inventory in good and marketable condition, free from material defects and otherwise keep all Inventory in compliance with all applicable FDA Laws, Canadian Laws, EU Laws, U.K. Laws, and other applicable, foreign equivalents, except where the failure to do so could not reasonably be expected to result in a Material Adverse Change. Returns and allowances between a Credit Party and its Account Debtors shall follow such Credit Party's customary practices. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear, casualty and condemnation excepted, all material tangible properties used or useful in its respective business, and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof except where failure to do so could not reasonably be expected to result in a Material Adverse Change.

5.17. Regulatory Obligations, Maintenance of Regulatory Approval or Licensure, Manufacturing, Marketing, and Distribution.

(a) (i) Comply with Governmental Authority post-marketing approval, authorization, clearance, or licensure requirements for the Product in the Territory, as applicable, (ii) maintain all Regulatory Approvals or Licensures required or otherwise material to manufacture, market, and distribute Product in the Territory, and (iii) continue the manufacturing, marketing, and distribution of the Product in the Territory in sufficient quantities to satisfy current or future demand of the Product in the Territory.

(b) Deliver to the Collateral Agent, as promptly as practicable after a Responsible Officer of Borrower shall have obtained Knowledge thereof, written notice describing in reasonable detail any instance where any Credit Party or any of its Subsidiaries or licensing partners: (i) has a reasonable expectation that there are grounds for imposition of a clinical hold, as described in 21 C.F.R. § 312.42 or foreign equivalent, withdrawal of an Investigational New Drug Application, as defined in 21 C.F.R. § 312.380 or foreign equivalent, withdrawal or suspension of a Product approval or licensure, as described in 21 C.F.R. Part 314 or foreign equivalent, or a recall, as defined in 21 C.F.R. § 7.3 or foreign equivalent, in each case with respect to Product, or (ii) has been issued a Warning Letter or Untitled Letter or Form FDA-483 from FDA (or equivalent communication from any other Regulatory Agency) with respect to Product.

6 NEGATIVE COVENANTS

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

6.1. Dispositions. Convey, sell, lease, transfer, exchange, assign, covenant not to sue, enter into a coexistence agreement, exclusively or nonexclusively license out, or otherwise dispose of (including any sale-leaseback or any transfer of assets pursuant to a plan of division), whether in one or a series of transactions (collectively, "**Transfer**"), all or any part of its properties or assets constituting Collateral (including, for the avoidance of doubt, any Equity Interests constituting Collateral issued by any Subsidiary which are owned or otherwise held by such Credit Party) or any Company IP that does not constitute Collateral under the Loan Documents but is related to any aspect of the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale or lease, distribution or sale or lease of Product in the Territory; except, in each case of this Section 6.1, for Permitted Transfers (unless otherwise expressly prohibited under in Section 6.6(b)).

6.2. Fundamental Changes; Location of Collateral.

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

(b) Maintain its primary Books at or deliver any Collateral with a fair market value (reasonably determined in good faith by a Responsible Officer of Borrower), individually or together with any other Collateral, in excess of $5,000,000 to any mortgaged or leased locations or any warehouse, processor or bailee, as applicable, unless,

subject to the timing requirements of Section 5.12, 5.13 or 5.14 if and only to the extent applicable, such Credit Party uses commercially reasonable efforts to obtain a Collateral Access Agreement for such mortgaged or leased location or such warehouse, processor or bailee governing such Books or such Collateral (as applicable), in form and substance reasonably satisfactory to the Collateral Agent. Notwithstanding anything to the contrary herein, such obligation to deliver Collateral Access Agreements will not apply to (i) any inventory or assets while in transit, or (ii) inventory or other assets delivered to customers or service providers or other vendors, pursuant to customary consignment or other usage arrangements.

(c) Establish or maintain any bank account of any Credit Party other than the bank accounts set forth on Schedule 6.2(c) of the Disclosure Letter (which bank accounts constitute all of the deposit accounts, securities accounts or other similar accounts maintained by any Credit Party on the Tranche A Closing Date), unless, in the case of any account that is not an Excluded Account, such account is made subject to a Control Agreement in accordance with, and to the extent required by, Section 5.5 hereof (irrespective, for the avoidance of doubt, of whether such Credit Party has delivered to the Collateral Agent written notice regarding such account in accordance with Section 5.2(f)(iv) hereof).

(d) Maintain cash in any bank account located in other than the United States that would be in excess of the lesser of the amount of cash that would be appropriate for (i) the continued operations in the ordinary course of business or in furtherance of a *bona fide* general corporate purpose of such Credit Party or Subsidiary and (ii) such other business needs of such Person, as reasonably determined by a Responsible Officer of Borrower in good faith, consistent with prudent cash management practices and not with an intent to hinder the security interests available under the Loan Documents.

(e) Take any action or engage in any transaction (or series of actions or transactions), whether by reorganization, sale of assets, merger, dissolution, amendment of Operating Documents or otherwise, the primary purpose of which is to evade, avoid or seek to avoid the performance or observance of any of the covenants, agreements, or obligations of any Credit Party under the Loan Documents (including under the Collateral Documents).

6.3. Mergers, Acquisitions, Liquidations or Dissolutions.

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

(i) (x) any Subsidiary of Borrower may merge or consolidate with or into a Credit Party, provided that the Credit Party is the surviving entity, and (y) any Subsidiary of Borrower may liquidate or dissolve, provided that prior to or concurrent with such liquidation or dissolution, the remaining assets of such Subsidiary shall be distributed to another Subsidiary, provided, further, that if the liquidating or dissolving Subsidiary is a Credit Party, the assets of such Subsidiary shall be distributed to an existing or newly-formed Credit Party;

(ii) any Subsidiary of Borrower may merge or consolidate with any other Subsidiary of Borrower, provided that if any party to such merger or consolidation is a Credit Party then either (x) such Credit Party is the surviving entity or (y) the surviving or resulting entity satisfies each of the applicable requirements of Section 5.13 substantially contemporaneously with the completion of such merger or consolidation;

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

(iv) any Subsidiary that is not a Credit Party may be dissolved or liquidated; provided, that, (x) all of its assets and business are transferred to one or more Credit Parties or none or more non-Credit Parties and (y) neither such dissolution or liquidation nor such transfer could reasonably be expected to result in a Material Adverse Change; and

(v) any Permitted Acquisition or Permitted Investment may be structured as a merger or consolidation; or

(b) Make, or permit any of its Subsidiaries to make, Acquisitions outside the ordinary course of business, including any purchase of all or substantially all of the assets of, or any division or line of business of, any other Person, other than Permitted Acquisitions or Permitted Investments. For the avoidance of doubt, nothing in this Section 6.3 shall prohibit any Credit Party or its Subsidiaries from entering into agreements for the in-licensing of assets in related lines of business; provided, that, in each case of this clause (b), no Indebtedness not otherwise permitted hereunder is incurred or assumed in connection therewith.

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

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

6.6. No Further Negative Pledges; Negative Pledge.

(a) Enter into any agreement, document or instrument directly or indirectly prohibiting (or having the effect of prohibiting) or limiting the ability of such Credit Party or Subsidiary to create, incur, assume or suffer to exist any Lien upon any Collateral, whether now owned or hereafter acquired, in favor of the Collateral Agent, for the benefit of Lenders and the other Secured Parties, with respect to the Obligations or under the Loan Documents, in each case of this Section 6.6, other than Permitted Negative Pledges.

(b) Notwithstanding Section 6.1, Transfer or create, incur, allow or suffer to exist any Lien on, any Equity Interests constituting Collateral issued by any Subsidiary which are owned or otherwise held by such Credit Party, except for: (i) Permitted Liens; (ii) transfers between or among Credit Parties, provided that any and all steps as may be required to be taken in order to create and maintain a first priority security interest in and Lien upon such Equity Interests in favor of the Collateral Agent, for the benefit of Lenders and the other Secured Parties, are taken contemporaneously with the completion of any such transfer; and (iii) sales, assignments, transfers, exchanges or other dispositions to qualify directors if required by Requirements of Law or otherwise permitted under this Agreement, provided that such sale, assignment, transfer, exchange or other disposition shall be for the minimum number of Equity Interests as are necessary for such qualification under Requirements of Law.

6.7. Maintenance of Collateral Accounts. Maintain any Collateral Account except in accordance with the terms of Section 5.5 hereof.

6.8. Distributions; Investments.

(a) Pay any dividends or make any distribution or payment on, or redeem, retire or repurchase any of its Equity Interests, except, in each case of this Section 6.8, for Permitted Distributions.

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

For the avoidance of doubt, nothing in this Section 6.8 shall prohibit any Credit Party or its Subsidiaries from entering into in-licensing agreements; provided, however, that, in each case, no Indebtedness that is not Permitted Indebtedness is incurred or assumed in connection therewith.

6.9. No Restrictions on Subsidiary Distributions. Enter into any agreement, document or instrument directly or indirectly prohibiting (or having the effect of prohibiting) or limiting the ability of any Subsidiary of Borrower to (a) pay dividends or make any other distributions on any of such Subsidiary's Equity Interests owned by Borrower or any other Subsidiary of Borrower, (b) repay or prepay any Indebtedness owed by such Subsidiary to Borrower or any other Subsidiary of Borrower, (c) make loans or advances to Borrower or any other Subsidiary of Borrower, or (d) transfer, lease or license any Collateral to Borrower or any other Subsidiary of Borrower, except, in each case of this Section 6.9, for Permitted Subsidiary Distribution Restrictions.

6.10. Subordinated Debt; Permitted Convertible Indebtedness.

(a) Make or permit any voluntary or optional prepayment or repayment of the outstanding principal amount of any Subordinated Debt other than in accordance with the express terms of a subordination, intercreditor or other similar agreement relating to such Subordinated Debt, if any, that is in form and substance reasonably satisfactory to the Collateral Agent;

(b) Make or permit any payment of interest (including accrued and unpaid interest) in cash on or in respect of any Subordinated Debt at any time that a Default or Event of Default shall have occurred and be continuing other than in accordance with the express terms of a subordination, intercreditor or other similar agreement relating to such Subordinated Debt, if any, that is in form and substance reasonably satisfactory to the Collateral Agent;

(c) Create, incur or assume or otherwise become directly liable for any Subordinated Debt, or guaranty or otherwise become directly or indirectly liable for any Subordinated Debt of another Credit Party or Subsidiary, in each case (i) except to the extent permitted under Section 6.4 and (ii), with respect to any Subsidiary, only if such Subsidiary is a Guarantor hereunder;

(d) Amend, restate, supplement or otherwise modify any terms, conditions or other provisions of any Subordinated Debt, or any agreement, instrument or other document relating thereto, in any manner which would contravene in any respect any of the foregoing clauses of this Section 6.10 or adversely affect the payment or priority subordination thereof (as applicable) to Obligations owed to Lenders, in each case except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt, if any, is subject, without the prior written consent of the Collateral Agent (in its sole discretion); or

(e) Make or cause any of its Subsidiaries to make (or exercise any option with respect thereto) any payment, prepayment, repurchase or redemption for cash of any Indebtedness under any Permitted Convertible Indebtedness unless and until all of the Obligations are paid in full; provided, that nothing in this Section 6.10(d) shall (i) prohibit or otherwise restrict cash payments in lieu of any fractional share issuable upon conversion thereof, or any ordinary course fees or other expenses in connection therewith, or (ii) prohibit the conversion of such Permitted Convertible Debt to equity pursuant to the terms thereof.

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

6.12. Compliance.

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

(b) With respect to any ERISA Affiliate, cause or suffer to exist (i) any event that would result in the imposition of a Lien under ERISA on any assets or properties of any Credit Party or a Subsidiary of a Credit Party with respect to any Plan or (ii) any other ERISA Event that, in the case of sub-clauses (i) and (ii) above, could reasonably be expected to, individually or in the aggregate, result in a Material Adverse Change; or

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

6.13. Compliance with Sanctions and Anti-Money Laundering Laws.

(a) The Collateral Agent and each Lender hereby notifies each Credit Party that pursuant to the requirements of Sanctions and Anti-Money Laundering Laws, and such Person's policies and practices, the Collateral Agent and each Lender is required to obtain, verify and record certain information and documentation that identifies each Credit Party and its principals, which information includes the name and address of each Credit Party and its principals and such other information that will allow the Collateral Agent and each Lender to identify such party in accordance with Sanctions and Anti-Money Laundering Laws.

(b) No Credit Party will, nor will any Credit Party permit any of its Subsidiaries or controlled Affiliates to, directly or indirectly, enter into any documents or contracts with any Blocked Person.

(c) Each Credit Party shall promptly (but in any event within three (3) Business Days) notify the Collateral Agent and each Lender in writing upon any Responsible Officer of any Credit Party becoming aware that any Credit Party or any Subsidiary or Affiliate of any Credit Party is a Blocked Person or Credit Party or any Subsidiary or Affiliate of any Credit Party or any of their respective directors, officers or employees is (i) is convicted on, (ii) pleads nolo contendere to, (iii) is indicted on, or (iv) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering.

(d) No Credit Party will, nor will any Credit Party permit any of its Subsidiaries or controlled Affiliates to, directly or indirectly, (i) conduct any prohibited business or engage in any prohibited investment, activity, transaction or dealing with any Blocked Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any investment, activity, transaction or dealing relating to, any property or interests in property blocked pursuant to Sanctions, or (iii) engage in or conspire to engage in any investment, activity, transaction or dealing that evades or avoids or violates, or has the purpose of evading or avoiding, or attempts to violate, any prohibitions under Sanctions or applicable Anti-Money Laundering Laws.

(e) Borrower will not, directly or, to the Knowledge of Borrower, indirectly (including through an agent or any other Person), use any of the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds of any Credit Extension to any Subsidiary, joint venture partner or other Person, (i) for any payments to any government official or employee, political party, official of a political party, candidate for political office or anyone else, in order to obtain, retain or direct business, or to obtain any improper advantage, in violation in any respect of Anti-Corruption Laws, (ii) in violation in any respect of any Anti-Money Laundering Laws, (iii) in violation of Sanctions or (iv) in violation of Export or Import Laws.

(f) Borrower shall not, and shall not permit any of its Subsidiaries to, directly or, to the Knowledge of Borrower, indirectly, fund all or part of any repayment of the Credit Extensions or other payments under this Agreement out of proceeds derived from criminal activity or activity or transactions in violation in any respect of Anti- Corruption Laws, Export or Import Laws, Anti-Money Laundering Laws or Sanctions, or that would otherwise cause any Person (including any Person participating in the Credit Extensions, whether as agent, lender, sponsor, underwriter, advisor, investor, or otherwise) to be in violation in any respect of Anti-Corruption Laws, Export or Import Laws, Anti-Money Laundering Laws or Sanctions.

6.14. Material Contracts. (a) Waive, amend, cancel or terminate, exercise or fail to exercise, any material rights constituting or relating to any of the Material Contracts or (b) breach, default under, or take any action or fail to take any action that, with the passage of time or the giving of notice or both, would constitute a default or event of default under any of the Material Contracts, in each case of this Section 6.14, which, individually or taken together with any other such waivers, amendments, cancellations, terminations, exercises or failures, could reasonably be expected to have a Material Adverse Change.

7 EVENTS OF DEFAULT

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

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

7.2. Covenant Default.

(a) The Credit Parties: (i) subject to clause (b) below, fail or neglect to perform any obligation in Sections 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.10, 5.12, 5.13, 5.14 5.16 or 5.17 or (ii) violate or breach any covenant or agreement in Section 6;

(b) Any (i) audited consolidated financial statements delivered (or otherwise made available) to the Collateral Agent pursuant to Section 5.2(a)(i) (including any report or opinion accompanying such statements), (ii) unaudited consolidated financial statements delivered (or otherwise made available) to the Collateral Agent pursuant to Section 5.2(a)(ii) or (iii) consolidated financial statements attached to a Compliance Certificate delivered to the Collateral Agent pursuant to Section 5.2(a)(iii), in each case, (x) are subject to any qualification or statement as to "going concern" and (y) such qualification or statement is not removed in the consolidated financial statements of Borrower and its Subsidiaries (including any report or opinion accompanying such statements) for the immediately succeeding fiscal quarter; or

(c) The Credit Parties fail or neglect to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents on its part to be performed, kept or observed and such failure or neglect is capable of being cured and continues for twenty (20) days, after the earlier of the date on which (i) a Responsible Officer of any Credit Party becomes aware of such failure or neglect and (ii) written notice thereof shall have been given to Borrower by the Collateral Agent or any Lender. Cure periods provided under this Section 7.2(c) shall not apply, among other things, to any of the covenants referenced in clause (a) or clause (b) above.

7.3. Withdrawal Event; Material Adverse Change. A (a) Withdrawal Event occurs, or (b) a Material Adverse Change occurs.

7.4. Attachment; Levy; Restraint on Business.

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

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

7.5. Insolvency.

(a) An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking: (i) relief in respect of any Credit Party, or of a substantial part of the property of any Credit Party, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership, examinership or other similar law; (ii) the voluntary or involuntary appointment of a receiver, interim receiver, receiver and manager, administrative receiver, administrator, trustee, custodian, sequestrator, conservator, examiner or other similar official for or in respect of any Credit Party or for all or a substantial part of the property or assets or undertakings of any Credit Party; (iii) issuance of a warrant of attachment, execution, distraint or similar process against all or a substantial part of the property or assets or undertakings of any Credit Party; or (iv) the winding-up or liquidation of any Credit Party; and in each case of sub-clause (i) through (iv) above, such proceeding or petition shall continue undismissed or unstayed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

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

(c) Any Credit Party or any Subsidiary shall be insolvent as defined in any statute of the Bankruptcy Code or in the fraudulent conveyance or fraudulent transfer statutes of the State of Delaware or other applicable jurisdiction of organization; or

(d) An affirmative vote by the applicable Board of Directors to commence any case, proceeding or other action described in clause (a) above or any other action by any Credit Party or any Subsidiary to otherwise cause, consent to, approve or acquiesce in any of the acts described in clauses (a) through (c) above.

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

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

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

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

7.10. ERISA Event. An ERISA Event occurs that, individually or taken together with any other ERISA Events, results or could reasonably be expected to result in a Material Adverse Change or the imposition of a Lien under Section 303(k) of ERISA on any Collateral that, individually or together with any other such Lien, could reasonably be expected to result in a Material Adverse Change.

8 RIGHTS AND REMEDIES UPON AN EVENT OF DEFAULT

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

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

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

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

(d) make any payments and do any acts it considers necessary or reasonable to protect the Collateral or the Collateral Agent's security interest, for the benefit of Lenders and the other Secured Parties, in the Collateral. Borrower shall assemble the Collateral if the Collateral Agent or the Required Lenders requests and make it available as the Collateral Agent designates or the Required Lenders designate. The Collateral Agent or its agents or representatives may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien that appears to be prior or superior to its security interest, for the benefit of Lenders and the other Secured Parties, and pay all expenses incurred. Borrower grants the Collateral Agent an irrevocable, royalty-free license or other right to enter, use, operate and occupy (and for its agents or representatives to enter, use, operate and occupy), without charge, any such premises to exercise any of the Collateral Agent's or any Lender's rights or remedies under this Section 8.1 (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, advertise for sale, sell, assign, license out, convey, transfer or grant options to purchase any Collateral);

(e) apply to the Obligations (i) any balances and deposits of Borrower it holds, (ii) any amount held by the Collateral Agent owing to or for the credit or the account of Borrower or (iii) any balance from any Collateral Account of any Credit Party or instruct the bank at which any such Collateral Account is maintained to pay the balance of any such Collateral Account to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, or to any Lender on behalf of itself and the other Secured Parties, as the Collateral Agent shall direct;

(f) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. With respect to any and all Intellectual Property owned or held by any Credit Party and included in Collateral, each Credit Party hereby grants to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, to the maximum extent permitted an irrevocable, non-exclusive, assignable, royalty-free license or other right to use (and for its agents or representatives to use), without charge, including the right to sublicense, use and practice, any and all of such Credit Party's rights to such Intellectual Property in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, advertise for sale, sell, assign, license out, convey, transfer or grant options to purchase any Collateral, and access to all media in which any of the licensed items may be recorded or stored and to all Software and programs used for the compilation or printout thereof; and in connection with the Collateral Agent's exercise of its rights or remedies under this Section 8.1 (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, license out, convey, transfer or grant options to purchase any Collateral), each Credit Party's rights under all licenses and all franchise contracts inure to the benefit of all Secured Parties;

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

(h) demand and receive possession of the Books of any Credit Party regarding Collateral; and

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

Each of the Collateral Agent and Lender agrees that in connection with any foreclosure or other exercise of rights under this Agreement or any other Loan Document with respect to any Intellectual Property included in the Collateral, the rights of the licensees under any license of such Intellectual Property will not be terminated, limited or otherwise adversely affected so long as no default exists thereunder in a way that would permit the licensor to terminate such license (commonly termed a non-disturbance). Without limitation to any other provision herein or in any other Loan Document, while an Event of Default occurs and continues, at the Collateral Agent's or the Required Lenders' request, representatives from Borrower and the Collateral Agent shall promptly meet (in person or telephonically) to discuss in good faith how to collect, receive, appropriate and realize upon Borrower's rights and interests in, to and under any Company IP Agreement constituting Collateral, including in connection with any foreclosure or other exercise of the Collateral Agent's or any Lender's rights with respect thereto. If Borrower and the Collateral Agent do not mutually agree with respect thereto within ten (10) Business Days after such request by the Collateral Agent (or such later date as agreed by the Collateral Agent), then the Collateral Agent may request Borrower to, and Borrower (promptly following the receipt of such request) shall, use reasonable best efforts to obtain the written consent of any counterparty to the exercise by the Collateral Agent or any Lender of any and all rights and remedies under this Agreement or any other Loan Document with respect to any Company IP Agreement constituting Collateral, in form and substance reasonably satisfactory to the Collateral Agent.

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

appointment of the Collateral Agent and any Related Party thereof as Borrower's attorney in fact, and all of the Collateral Agent's (or such Related Party's) rights and powers, coupled with an interest, are irrevocable until all Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) have been fully repaid and performed and each Lender's obligation to provide Credit Extensions terminates.

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

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

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

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

9 NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered

or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address (if any) indicated below. Any party to this Agreement may change its mailing or electronic mail address or facsimile number by giving all other parties hereto written notice thereof in accordance with the terms of this Section 9.

If to Borrower or any other Credit Party:

Tarsus Pharmaceuticals, Inc.
15440 Laguna Canyon Rd., Suite 160
Irvine, CA 92618
Attn: Chief Legal Officer
Telephone: [***]
Facsimile: [***]
Email: [***]

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

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
3570 Carmel Mountain Road
Suite 200
San Diego, CA 92130
Attn: Ryan J. Gunderson
Telephone: [***]
Facsimile: [***]
Email: [***]

If to Collateral Agent: BioPharma Credit PLC
c/o Link Group, Company Matters Ltd.
6th Floor
65 Gresham Street
London EC2V 7NQ
United Kingdom
Attn: Company Secretary
Tel: [***]
Fax: [***]
Email: [***]

with copies (which shall not constitute notice) to:

Pharmakon Advisors, LP
110 East 59th Street, #2800
New York, NY 10022
Attn: Pedro Gonzalez de Cosio
Phone: [***]
Fax: [***]
Email: [***]
and

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

Fax: [***]
Email: [***]

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

with copies (which shall not constitute notice) to:

Pharmakon Advisors, LP
110 East 59th Street, #2800
New York, NY 10022
Attn: Pedro Gonzalez de Cosio
Phone: [***]
Fax: [***]
Email: [***]

and

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

10 CHOICE OF LAW, VENUE, AND JURY TRIAL WAIVER

THE LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY PRINCIPLES OF CONFLICTS OF LAW THAT COULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION. Each party hereto submits to the exclusive jurisdiction of the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Requirements of Law, in such Federal court; provided, however, that nothing in this Agreement shall be deemed to operate to preclude the Collateral Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of the Collateral Agent or any Lender. Each Credit Party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each Credit Party hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or *forum non conveniens* and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Each Credit Party hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to such party at the address set forth in (or otherwise provided in accordance with the terms of) Section 9 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of such party's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY REQUIREMENTS OF LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY CLAIM, SUIT, ACTION OR PROCEEDING WITH RESPECT TO, OR DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN OR RELATED HERETO OR THERETO (WHETHER FOUNDED IN CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO OTHER PARTY AND NO RELATED PARTY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) ACKNOWLEDGES

THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10 AND (C) HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

11 GENERAL PROVISIONS

11.1. Successors and Assigns.

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

(b) No Credit Party may transfer, pledge or assign this Agreement or any other Loan Document or any rights or obligations hereunder or thereunder without the prior written consent of each Lender. Subject to Section 11.1(d), any Lender may at any time sell, transfer, assign or pledge this Agreement or any other Loan Document or any of its rights or obligations hereunder or thereunder, including with respect to any Term Loan (or any portion thereof), to any Person without Borrower's prior written consent, including to grant a participation in all or any part of, or any interest in, Lender's obligations, rights or benefits under this Agreement and the other Loan Documents, including with respect to any Term Loan (or any portion thereof) (any such sale, transfer, assignment, pledge or grant of a participation, a "**Lender Transfer**"); provided, however, that no Lender may make a Lender Transfer to a Disqualified Assignee without Borrower's prior written consent except after the occurrence and during the continuance of an Event of Default (in which case such consent is not required).

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

(d) Borrower shall record any Lender Transfer in the Register. Each Lender shall provide Borrower and the Collateral Agent with written notice of a Lender Transfer delivered no later than five (5) Business Days prior to the date on which such Lender Transfer is proposed to be consummated. If any Lender sells a participation, such Lender shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each participant and principal amounts (and stated interest) of each participant's interest in the Term Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided, however, that such Lender shall have no obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in "registered form" within the meaning of Section 5f.103-1(c) of the Treasury Regulations (or any amended or successor version) or Section 163(f), 871(h)(2) and 881(c)(2) of the IRC and any related regulations (and any other relevant or successor provisions of the IRC or such regulations). The entries in the Participant Register shall be conclusive absent manifest error, and the Collateral Agent and each Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(e) Any attempted transfer, pledge or assignment of this Agreement or any other Loan Document or any rights or obligations hereunder or thereunder in violation of this Section 11.1 shall be null and void.

11.2. Indemnification.

(a) Borrower agrees to indemnify and hold harmless each of the Collateral Agent, Lenders and its and their respective Affiliates (and its or their respective successors and assigns) and each manager, member, partner, controlling Person, director, officer, employee, agent or sub-agent, advisor and affiliate thereof (each such Person, an "**Indemnified Person**") from and against any and all Indemnified Liabilities; provided, however, that Borrower shall have no obligation to any Indemnified Person hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities (i) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Person (or the gross negligence or willful misconduct of such Indemnified Person's affiliates or controlling Persons or any of their respective managers, members, partners, controlling Persons, directors, officers, employees, agents or sub-agents, advisors or affiliates), (ii) result from a claim brought by Borrower against an Indemnified Person for material breach in bad faith of any of such Indemnified Person's obligations hereunder or under any other Loan Document, if Borrower has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction, or (iii) result from a claim not involving an act or omission of Borrower or any of its Subsidiaries that is brought by an Indemnified Person against another Indemnified Person (other than against the Collateral Agent in its capacity as such). This Section 11.2(a) shall not apply with respect to Taxes other than any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, costs, expenses and disbursements arising from any non-Tax claim.

(b) Borrower agrees that neither it nor any of its Subsidiaries will settle, compromise, or consent to the entry of any judgment in any pending or threatened claim, action, or proceeding in respect of which indemnification or contribution could be sought by an Indemnified Person under Section 11.2(a) (whether or not any Indemnified Person is an actual or potential party to such claim, action, or proceeding) without the prior written consent of the applicable Indemnified Person, unless such settlement, compromise, or consent includes an unconditional release of such Indemnified Person and its Subsidiaries and Affiliates from all liability arising out of such claim, action, or proceeding, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the parties hereto agree that the applicable Indemnified Person will be deemed to have consented to such settlement, compromise or consent unless it has delivered to Borrower a written notice of objection within ten (10) Business Days following its receipt of the written request therefor from Borrower, which such request shall describe such settlement, compromise or consent in reasonable detail.

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

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

11.3. Severability of Provisions. In case any provision in or obligation hereunder or under any other Loan Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability

of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

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

11.5. Amendments in Writing; Integration.

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

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

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

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

11.8. Confidentiality. Any information regarding the Credit Parties and their Subsidiaries and their businesses provided to the Collateral Agent or any Lender by or on behalf of any Credit Party pursuant to the Loan Documents shall be deemed "Confidential Information"; provided, however, that Confidential Information does not include information that is either: (i) in the public domain or already in the possession of the Collateral Agent, any Lender or any of their respective Affiliates when disclosed to the Collateral Agent, any Lender or any of their respective Affiliates, or becomes part of the public domain after disclosure to the Collateral Agent, any Lender or any of their respective Affiliates, in each case, other than as a result of a breach by the Collateral Agent, any Lender or any of their respective Affiliates of the obligations under this Section 11.8; or (ii) disclosed to the Collateral Agent, any Lender or any of their respective Affiliates by a third party if the Collateral Agent, such Lender or such Affiliate, as applicable, does not know, following reasonable inquiry, that the third party is prohibited from disclosing the information. Neither the Collateral Agent nor any Lender shall disclose any Confidential Information to a third party or use Confidential Information for any purpose other than the administration of the Loan Documents, the exercise of its rights or remedies under the Loan Documents or the performance of its duties or obligations under the Loan Documents. The foregoing in this Section 11.8 notwithstanding, the Collateral Agent and each Lender may disclose Confidential Information: (a) to any of its Subsidiaries or Affiliates; (b) to prospective transferees, purchasers or

participants of any interest in the Term Loans (including, for the avoidance of doubt, in connection with any proposed Lender Transfer), provided, that no such disclosure to any Competitors shall be permitted hereunder without Borrower's prior written consent (which such consent shall not be required after the occurrence and during the continuance of an Event of Default; (c) as required by law, regulation, subpoena, or other order, provided, that (x) prior to any disclosure under this clause (c), the Collateral Agent or such Lender, as applicable, agrees to endeavor to provide Borrower with prior written notice thereof, and with respect to any law, regulation, subpoena or other order, to the extent that the Collateral Agent or such Lender is permitted to provide such prior notice to Borrower pursuant to the terms hereof, and (y) any disclosure under this clause (c) shall be limited solely to that portion of the Confidential Information as may be specifically compelled by such law, regulation, subpoena or other order; (d) as the Collateral Agent or any Lender otherwise deems necessary or prudent under Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or Export and Import Laws to applicable regulatory or governmental authorities or pursuant to court order or proceeding, (e) to the extent requested by regulators having jurisdiction over the Collateral Agent or such Lender or as otherwise required in connection with the Collateral Agent's or such Lender's examination or audit by such regulators (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (f), as the Collateral Agent or such Lender considers reasonably necessary in exercising any rights or remedies under the Loan Documents or in connection with any proceeding relating to the Agreement or any other Loan Documents; (g) to any other party hereto; (h) to third-party service providers of the Collateral Agent or such Lender; and (i) to any of the Collateral Agent's or such Lender's Related Parties; provided, however, that the third parties to which Confidential Information is disclosed pursuant to clauses (a), (b), (h) and (i) are bound by obligations of confidentiality and non-use that are no less restrictive than those contained herein. The provisions of this Section 11.8 shall survive the termination of this Agreement.

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

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

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

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

11.12. Electronic Execution of Documents. The words "execution," "signed," "signature," and words of like import in this Agreement and the other Loan Documents shall be deemed to include electronic signatures or electronic records, 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 Requirements of 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.

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

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

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

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

12 COLLATERAL AGENT

12.1. Appointment and Authority. Each of the Lenders hereby irrevocably appoints BioPharma Credit PLC to act on its behalf as the Collateral Agent hereunder and under the other Loan Documents and authorizes the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except for the first two (2) sentences of Section 12.6 and the penultimate paragraph of Section 12.8, the provisions of this Section 12 are solely for the benefit of the Collateral Agent and Lenders, and neither Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions. Subject to Section 12.8 and Section 11.5, any action required or permitted to be taken by the Collateral Agent hereunder shall be taken with the prior approval of the Required Lenders.

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

12.3. Exculpatory Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) to release any Guarantor from its obligations under the Security Agreement if such Person ceases to be a Subsidiary (or becomes an Excluded Subsidiary (to the extent not designated by Borrower to be a Discretionary Guarantor)) as a result of a transaction permitted hereunder or upon payment in full of the Obligations (other than unasserted inchoate indemnity obligations);

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

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

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

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

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

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

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

13 DEFINITIONS

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

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

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

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

"**Additional Consideration**" means, individually or collectively, as the context dictates, the Tranche A Additional Consideration, the Tranche B Additional Consideration, the Tranche C Additional Consideration and the Tranche D Additional Consideration.

"**Advance Request Form**" means a Loan Advance Request Form in substantially the form attached hereto as Exhibit A.

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

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

"**Agreement**" is defined in the preamble hereof.

"**Anti-Money Laundering Laws**" is defined in Section 4.18(b).

"**Applicable Margin**" means, for any day, as to any Term Loan, a rate *per annum* equal to six and three-quarters percent (6.75%).

"**Applicable Percentage**" means at any time: (a) with respect to the Tranche A Loan or the Tranche A Loan Amount, the percentage equal to a fraction, the numerator of which is (i) on or prior to the Tranche A Closing Date, the amount of such Lender's Tranche A Commitment at such time and the denominator of which is the Tranche A Loan Amount at such time or (ii) thereafter, the outstanding principal amount of such Lender's portion of the Tranche A Loan at such time, and the denominator of which is the aggregate outstanding principal amount of the Tranche A Loan at such time; (b) with respect to the Tranche B Loan or the Tranche B Loan Amount, the percentage equal to a fraction, the numerator of which is (i) on or prior to the Tranche B Closing Date, the amount of such Lender's Tranche B Commitment at such time and the denominator of which is the Tranche B Loan Amount at such time or (ii) thereafter, the outstanding principal amount of such Lender's portion of the Tranche B Loan at such time, and the denominator of which is the aggregate outstanding principal amount of the Tranche B Loan at such time; (c) with respect to the Tranche C Loan or the Tranche C Loan Amount, the percentage equal to a fraction, the numerator of which is (i) on or prior to the Tranche C Closing Date, the amount of such Lender's Tranche C Commitment at such time and the denominator of which is the Tranche C Loan Amount at such time or (ii) thereafter, the outstanding principal amount of such Lender's portion of the Tranche C Loan at such time, and the denominator of which is the aggregate outstanding principal amount of the Tranche C Loan at such time; (d) with respect to the Tranche D Loan or the Tranche D Loan Amount, the percentage equal to a fraction, the numerator of which is (i) on or prior to the Tranche D Closing Date, the amount of such Lender's Tranche D Commitment at such time and the denominator of which is the Tranche D Loan Amount at such time or (ii) thereafter, the outstanding principal amount of such Lender's portion of the Tranche D Loan at such time, and the denominator of which is the aggregate outstanding principal amount of the Tranche D Loan at such time; and (e) with respect to the Term Loans and the Term Loan Commitments, the percentage equal to a fraction, the numerator of which is, the sum of the amount of such Lender's outstanding Term Loan Commitments and the amount of such Lender's portion of the outstanding principal amount of the Term Loans at such time, and the denominator of which is the sum of the amount of all outstanding Term Loan Commitments and the aggregate outstanding principal amount of the Term Loans at such time.

"**Asset Acquisition**" means, with respect to Borrower or any of its Subsidiaries, any purchase, exclusive in license or other acquisition of any properties or assets of any other Person (including any purchase or other acquisition of any business unit, line of business or division of such Person). For the avoidance of doubt, "Asset Acquisition" includes any co-promotion or co-marketing arrangement pursuant to which Borrower or any Subsidiary acquires rights to promote or market the products of another Person.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if the then-current Benchmark is a term rate, any tenor for such Benchmark or that is or may be used for determining the length of an Interest Period or (b) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.3(f).

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

"Benchmark" means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.3(f).

"**Benchmark Replacement**" means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Collateral Agent for the applicable Benchmark Replacement Date:

(a) Daily Simple SOFR; and

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Collateral Agent and Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment;

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

"**Benchmark Replacement Adjustment**" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement (other than Daily Simple SOFR), the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Collateral Agent and Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

"**Benchmark Replacement Date**" means a date and time determined by the Collateral Agent in its reasonable discretion, which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); and

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) above with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"**Benchmark Transition Event**" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"**Benchmark Unavailability Period**" means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.3(f) and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.3(f).

"**Blocked Person**" means an individual or entity that is, or is owned or controlled by individuals or entities that are: (i) the subject or target of blocking or asset-freezing Sanctions or (ii) located, organized or resident in a Sanctioned Country.

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

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

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

"**Borrower**" is defined in the preamble hereof.

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

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

"**Canadian Laws**" means all applicable statutes (including the Food and Drugs Act), rules and regulations implemented, administered, or enforced by Health Canada (and any provincial equivalents), and as interpreted through applicable guidance documents by Health Canada.

"**Capital Lease**" means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a capital lease on the balance sheet of that Person.

"**Cash Equivalents**" means

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

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

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

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

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

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

(g) other investments in accordance with Borrower's investment policy, as delivered to Collateral Agent on or before the Effective Date or otherwise approved in writing by the Collateral Agent (such approval not to be unreasonably withheld).

"**CCPA**" means the provisions of the California Consumer Privacy Act, as amended by the California Privacy Rights Act and codified at Cal. Civ. Code § 1798.100 et seq., together with any effective implementing regulations.

"**Change in Control**" means: (a) a transaction or series of transactions (including any merger or consolidation involving Borrower) whereby any "person" or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) (i) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of a more than fifty percent (50.0%) of any class of outstanding Equity Interests of Borrower ordinarily entitled to vote in the election of directors (or compatible voting Equity Interests), or (ii) obtains the power (whether or not exercised) to elect a majority of directors of Borrower; (b) a sale, directly or indirectly, of all or substantially all of the consolidated assets of

Borrower and its Subsidiaries in one transaction or a series of transactions (whether by way of merger, stock purchase, asset purchase or otherwise); or (c) a merger or consolidation involving Borrower in which Borrower is not the surviving Person or in which Persons holding more than fifty percent (50.0%) of the power to elect a majority of directors of Borrower immediately prior to such merger or consolidation do not continue to hold at least fifty percent (50.0%) of such power immediately after such merger or consolidation.

"**Change in Control Notice**" is defined in Section 2.2(c)(ii).

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

"**Closing Date**" means the Tranche A Closing Date, the Tranche B Closing Date, the Tranche C Closing Date or the Tranche D Closing Date, as applicable.

"**CMIA**" means the California Confidentiality of Medical Information Act, codified at Cal. Civ. Code pt. 2.6 § 56 et seq.

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

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

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

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

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

"**Common Rule**" means the U.S. Federal Policy for the Protection of Human Subjects, codified at 45 C.F.R. part 46, and any foreign (or United States state) equivalents.

"**Company IP**" means any and all of the following, and unless otherwise stated herein, as they exist worldwide: (a) Current Company IP; (b) improvements, continuations, continuations-in-part, divisions, provisionals or any substitute applications with respect to any Current Company IP, including any patent issued with respect to any of the Current Company IP, including any patent right claiming the composition of matter of, or the method of making or using, any Product, any reissue, reexamination, renewal or patent term extension or adjustment (including any supplementary protection certificate) of any such patent, and any confirmation patent or registration patent or patent of addition based on any such patent and all foreign and international counterparts of any of the foregoing; (c) trade secrets or trade secret rights, including any rights to unpatented inventions, know-how, show-how, operating manuals, confidential or proprietary information, research in progress, algorithms, data, databases, data collections, designs, processes, procedures, methods, protocols, materials, formulae, drawings, schematics, blueprints, flow charts, models, strategies, prototypes, techniques, and the results of experimentation and testing, including samples, in each case, as specifically related to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale or lease, distribution or sale or lease of any Product; (d) any and all IP Ancillary Rights (other than immaterial IP Ancillary Rights or Intellectual Property) specifically relating to any of the foregoing; and (e) regulatory filings, submissions and approvals related to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale or lease, distribution or sale or lease of any Product and all data provided in any of the foregoing.

"**Company IP Agreement**" means each contract or agreement, pursuant to which Borrower or any of its Subsidiaries has the legal right to exploit Current Company IP or other Intellectual Property that is owned by another Person and is material to the business of any Credit Party and its Subsidiaries, or to research, develop, manufacture, produce, use, supply, commercialize, market, import, store, transport, offer for sale or lease, distribute or sell or lease Product, including (a) the Development and License Agreement, dated March 26, 2021, between Borrower and LianBio Ophthalmology, and (b) the Amended and Restated License Agreement, dated June 3, 2022, between Borrower and Elanco Tiergesundheit AG.

"**Compliance Certificate**" means that certain certificate in the form attached hereto as Exhibit E.

"**Competing Product**" means a product approved or marketed for use in the treatment of treatment of Demodex blepharitis.

"**Competitor**" means, at any time of determination, any Person that is an operating company directly and primarily engaged in the same or substantially the same line of business as Borrower and its Subsidiaries as of such time.

"**Conforming Changes**" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods and other technical, administrative or operational matters) that the Collateral Agent decides (after consultation with Borrower) may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Collateral Agent in a manner substantially consistent with market practice (or, if the Collateral Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Collateral Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Collateral Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

"**Contingent Obligation**" means, for any Person, (a) any direct or indirect liability, contingent or not, of that Person for any indebtedness, lease, dividend, letter of credit or other obligation of another Person directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable (other than by endorsements of instruments in the course of collection) and (b) any obligation of

that Person to pay an earn-out payment, milestone payment or similar contingent payment or contingent compensation (including purchase price adjustments but excluding royalties payable and milestones based on net sales payable) to a counterparty incurred or created in connection with an Acquisition, Transfer, or Investment or otherwise in connection with any collaboration, development or similar agreement, in each instance where such contingent payment or compensation becomes due and payable upon the occurrence of an event or the performance of an act (and not solely with the passage of time) including such contingent payment or compensation becoming due and payable upon the occurrence of a successful performance milestone event such as positive clinical data, a product approval or the achievement of a minimum sales threshold (and not solely with the passage of time). The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable by a Responsible Officer of such Person, the amount required to be shown as a liability on the balance sheet of such Person in accordance with GAAP (or, if not required to be so shown, the maximum reasonably anticipated amount reasonably determined by a Responsible Officer of such Person in good faith); but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

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

"**Copyrights**" means any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret (and all related IP Ancillary Rights).

"**Credit Party**" means Borrower and each Guarantor.

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

"**CSA**" is defined in Section 4.19(c).

"**Current Company IP**" is defined in Section 4.6(c).

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

"**Data Protection Laws**" means any and all applicable foreign or domestic (including U.S. federal, state and local), statutes, ordinances, orders, rules, regulations, judgments, Governmental Approvals, or any other requirements of Governmental Authorities relating to privacy, security (including cybersecurity), notification of breaches of, registration of databases containing, confidentiality of, acquisition (including remote acquisition) of, or access to Personal Data or other Sensitive Information, including, to the extent applicable to Borrower or any of its Subsidiaries, HIPAA, FDA's Digital Health Technologies for Remote Data Acquisition in Clinical Investigations Guidance (Dec. 2023), Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45) and other consumer protection laws, PIPEDA, GDPR, Chinese personal information protection and data protection laws (including Requirements of Law in mainland China, Hong Kong and Macau as separate jurisdictions), Taiwan personal data protection laws, CCPA and other comprehensive state privacy laws, and CMIA and other U.S. state medical information privacy laws, and including any required policies and procedures.

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

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

"**Disclosure Letter**" means the disclosure letter, dated the Effective Date, delivered by the Credit Parties to the Collateral Agent, as updated on the Closing Date (if required and as permitted).

"**Discretionary Guarantor**" is defined in Section 5.13.

"**Disqualified Assignee**" means (a) any Competitor, or (b) any financial institution or lender listed on Schedule 13.1 of the Disclosure Letter as of the Tranche A Closing Date.

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

"**Effective Date**" is defined in the preamble hereof.

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

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

"**Equity Interests**" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in such Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire (by purchase, conversion, dividend, distribution or otherwise) any of the foregoing (and all other rights, powers, privileges, interests, claims and other property in any manner arising therefrom or relating thereto); provided that Equity Interests shall not include any Permitted Convertible Indebtedness.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, and the regulations promulgated thereunder.

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

"**ERISA Event**" means (a) any "reportable event," as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived by regulation); (b) with respect to a Plan, the failure by Borrower or its Subsidiaries or their ERISA Affiliates to satisfy the minimum funding standard of Section 412 of the IRC and Section 302 of ERISA, whether or not waived; (c) the failure by Borrower or its Subsidiaries or their ERISA Affiliates to make by its due date a required installment under Section 430(j) of the IRC with respect to any Plan or to make any required contribution to a Multiemployer Plan; (d) the filing pursuant to Section 412(c) of the IRC or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the incurrence by Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by Borrower or its

Subsidiaries or any of their respective ERISA Affiliates from the Pension Benefit Guaranty Corporation (referred to and defined in ERISA) or a plan administrator of any notice relating to the intention to terminate any Plan under Section 4041 or any Multiemployer Plan under 4041A of ERISA or to appoint a trustee to administer any Plan under Section 4042 of ERISA, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan under Section 4041 Section or 4042 of ERISA; (g) the incurrence by Borrower or its Subsidiaries or any of their respective ERISA Affiliates of any liability with respect to the withdrawal from any Plan pursuant to Section 4063 of ERISA or Multiemployer Plan; (h) the receipt by Borrower or its Subsidiaries or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, within the meaning of Section 4245 of ERISA; (i) the "substantial cessation of operations" by Borrower or its Subsidiaries or their ERISA Affiliates within the meaning of Section 4062(e) of ERISA with respect to a Plan; or (j) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the IRC or Section 406 of ERISA) with respect to a Plan which could reasonably be expected to result in a material liability to Borrower or its Subsidiaries.

"**EU Laws**" means all applicable statutes, rules and regulations implemented administered or enforced by the European Commission (solely with respect to Health Care Laws), the European Medicines Agency ("**EMA**") or the competent authorities of the EU Member States including, but not limited to, the EU Community Code on medicinal products (Directive 2001/83/EC), the European Medicines Agency Regulation (Regulation (EC) No 726/2004), the Manufacturing Directive (Commission Directive 2003/94/EC), the Clinical Trials Regulation (Regulation (EU) No 536/2014), and related implementing legislation of individual EU Member States.

"**Event of Default**" is defined in Section 7.

"**Exchange Act**" means the Securities Exchange Act of 1934.

"**Exchange Act Documents**" means any and all documents filed by Borrower with the SEC pursuant to the Exchange Act.

"**Excluded Accounts**" is defined in Section 5.5.

"**Excluded Equity Interests**" means, collectively: (i) any Equity Interests in any Subsidiary with respect to which the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, such Equity Interests, to secure the Obligations (and any guaranty thereof) are validly prohibited by Requirements of Law; (ii) any Equity Interests in any Subsidiary with respect to which the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, such Equity Interests, to secure the Obligations (and any guaranty thereof) require the consent, approval or waiver of any Governmental Authority or other third party and such consent, approval or waiver has not been obtained by Borrower following Borrower's commercially reasonable efforts to obtain the same; (iii) any Equity Interests in any Subsidiary that is a non-Wholly-Owned Subsidiary that the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, such Equity Interests, to secure the Obligations (and any guaranty thereof) are validly prohibited by, or would give any third party (other than Borrower or an Affiliate of Borrower) the right to terminate its obligations under, the Operating Documents or the joint venture agreement or shareholder agreement with respect to, or any other contract with such third party relating to such non-Wholly-Owned Subsidiary, including any contract evidencing Indebtedness of such non-Wholly-Owned Subsidiary (other than customary non-assignment provisions which are ineffective under Article 9 of the Code or other Requirements of Law), but only, in each case, to the extent, and for so long as such Operating Document, joint venture agreement, shareholder agreement or other contract is in effect; and (iv) any Equity Interests in any other Subsidiary with respect to which, Borrower and the Collateral Agent reasonably determine by mutual agreement that the cost of granting the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a security interest in and Lien upon, and pledging to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, such Equity Interests, to secure the Obligations (and any guaranty thereof) are excessive, relative to the value to be afforded to the Secured Parties thereby.

"**Excluded Property**" has the meaning set forth for such term in the Security Agreement.

"**Excluded Subsidiaries**" means, collectively: (i) any Subsidiary with respect to which the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, such Subsidiary's properties and assets subject or purported to be subject from time to time to a Lien under any Collateral Document and the Equity Interests in such Subsidiary to secure the Obligations (and any guaranty thereof) are validly prohibited by Requirements of Law; (ii) any Subsidiary with respect to which the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, such Subsidiary's properties and assets subject or purported to be subject from time to time to a Lien under any Collateral Document and the Equity Interests in such Subsidiary to secure the Obligations (and any guaranty thereof) require the consent, approval or waiver of any Governmental Authority or other third party (other than Borrower or an Affiliate of Borrower) and such consent, approval or waiver has not been obtained by Borrower or such Subsidiary following Borrower's and such Subsidiary's commercially reasonable efforts to obtain the same; (iii) any Subsidiary that is a non-Wholly-Owned Subsidiary, with respect to which, the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, the properties and assets of such non-Wholly-Owned Subsidiary, to secure the Obligations (and any guaranty thereof) are validly prohibited by, or would give any third party (other than Borrower or an Affiliate of Borrower) the right to terminate its obligations under, such non-Wholly-Owned Subsidiary's Operating Documents or the joint venture agreement or shareholder agreement with respect thereto or any other contract with such third party relating to such non-Wholly-Owned Subsidiary, including any contract evidencing Indebtedness of such non-Wholly-Owned Subsidiary (other than customary non-assignment provisions which are ineffective under Article 9 of the Code or other Requirements of Law), but only, in each case, to the extent, and for so long as such Operating Document, joint venture agreement, shareholder agreement or other contract is in effect; (iv) any Subsidiary that owns properties and assets with an aggregate fair market value (as reasonably determined in good faith by a Responsible Officer of Borrower) of less than $5,000,000; (v) any Subsidiary that is not a United States Person within the meaning of Section 7701(a)(30) of the IRC; and (vi) any other Subsidiary with respect to which, Borrower and the Collateral Agent reasonably determine by mutual agreement that the cost (including Tax costs) of granting the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a security interest in and Lien upon, and pledging to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, such Subsidiary's properties and assets subject or purported to be subject from time to time to a Lien under any Collateral Document and the Equity Interests of such Subsidiary to secure the Obligations (and any guaranty thereof) are excessive relative to the value to be afforded to the Secured Parties thereby. Notwithstanding the foregoing or any other provision of this Agreement, (1) no Subsidiary existing as of the Effective Date or organized, formed or acquired (including by Acquisition), directly or indirectly, by any Credit Party from and after the Effective Date, that at any time (A) owns, co-owns or otherwise maintains any material Company IP, (B) licenses any Company IP from any third party, (C) enters into any Material Contract or otherwise becomes a party thereto or bound thereby or (D) otherwise engages in any business operations material to any aspect of the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, packaging, labelling, promotion, advertising, offer for sale or lease, distribution or sale or lease of Product shall be (or shall be deemed to be) an Excluded Subsidiary for any purpose under the Loan Documents without the prior written consent of the Collateral Agent or the Required Lenders, and (2) no Subsidiary that is not a United States Person within the meaning of Section 7701(a)(30) of the IRC existing as of the Effective Date or organized, formed or acquired (including by Acquisition), directly or indirectly, by any Credit Party from and after the Effective Date shall continue to be (or to be deemed as) an Excluded Subsidiary hereunder at such time after the Tranche A Closing Date that such entity owns properties and assets with an aggregate fair market greater than $5,000,000 (as reasonably determined in good faith by a Responsible Officer of Borrower); and, additionally, in each case of sub-clauses (1) and (2) above, Borrower shall cause such entity, within the time periods required by Section 5.12, 5.13 or 5.14, as and to the extent applicable, to become a Guarantor in accordance therewith.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Lender or required to be withheld or deducted from a payment to Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed by the United States or as a result of Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of Lender with respect to any

Obligation pursuant to a law in effect on the date on which (i) Lender acquires such interest in any Obligation or (ii) Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.6, amounts with respect to such Taxes were payable either to Lender's assignor immediately before Lender became a party hereto or to Lender immediately before it changed its lending office, (c) Taxes attributable to Lender's failure to comply with Section 2.6(d), and (d) any U.S. federal withholding Taxes imposed under FATCA.

"**Existing Credit Agreement**" means, collectively, that certain Loan and Security Agreement, dated February 2, 2022, by and among Borrower, Hercules Capital, Inc. and Silicon Valley Bank, as amended by that certain First Amendment to Loan and Security Agreement, dated as of January 5, 2023, by and among Registrant Hercules Capital, Inc. and Silicon Valley Bank, and that certain Second Amendment to Loan and Security Agreement, dated as of August 28, 2023, by and among Registrant, Hercules Capital, Inc. and First-Citizens Bank & Trust Company, together with all other instruments, documents and agreements delivered by Borrower, in each case, in order to grant or perfect a Lien on any collateral as security for the obligations under the Existing Credit Agreement, and all amendments, restatements, modifications or supplements thereof or thereto.

"**Export and Import Laws**" means any applicable law, regulation, order or directive that applies to the import, export, re-export, transfer, disclosure or provision of goods, software, technology or technical assistance including, without limitation, restrictions or controls administered pursuant to the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774, administered by the U.S. Department of Commerce, Bureau of Industry and Security; U.S. Customs regulations; and similar import and export laws, regulations, orders and directives of other jurisdictions to the extent applicable.

"**Facility**" means, with respect to any Credit Party, any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by such Credit Party or any of its Subsidiaries or any of their respective predecessors or Affiliates.

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

"**FCPA**" is defined in Section 4.18(a).

"**FDA**" means the United States Food and Drug Administration (and any United States state and foreign equivalents, including Health Canada, the United Kingdom Medicines and Healthcare Products Regulatory Agency, European Medicines Agency, the Competent Authorities of the Member States of the European Economic Area, China's National Medical Products Administration and State Administration of Market Regulation, and Human Genetic Resources Administration of China).

"**FDA Good Clinical Practices**" means the standards set forth in 21 C.F.R. Parts 50, 56, 312, 314 and 316 (and any foreign equivalents), and as interpreted through FDA's applicable guidance documents (and foreign equivalents).

"**FDA Good Laboratory Practices**" means the standards set forth in 21 C.F.R. Part 58 (and any foreign equivalents), and as interpreted through FDA's applicable guidance documents (and foreign equivalents).

"**FDA Good Manufacturing Practices**" means the standards set forth in 21 C.F.R. Parts 210 and 211 (and any foreign equivalents), and as interpreted through FDA's applicable guidance documents (and foreign equivalents).

"**FDA Laws**" means all applicable statutes (including the FDCA), rules and regulations implemented, administered, or enforced by the FDA or any United States state or foreign equivalents, and as interpreted through FDA's applicable guidance documents (and United States state and foreign equivalents).

"**FDCA**" is defined in Section 4.19(b).

"**Federal Reserve Board**" means the Board of Governors of the Federal Reserve System.

"**Floor**" means a rate of interest equal to three and three-quarters percent (3.75%) *per annum*.

"**Foreign Lender**" means a Lender that is not a "United States person" as defined in Section 7701(a)(30) of the IRC.

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

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

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

"**Governmental Authority**" means any nation or government, any state or other political subdivision thereof, any agency (including Regulatory Agencies, data protection authorities, and agencies acting as supervisory governmental organizations on issues of privacy protection), government department, authority (including state attorneys general), instrumentality, regulatory body, ministry, commission, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"**Governmental Payor Programs**" means all governmental third party payor programs in which any Credit Party or its Subsidiaries participates, including Medicare, Medicaid, TRICARE or any other U.S. federal or state health care programs or foreign equivalents in the Territory.

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

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

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

"**Health Care Laws**" means, collectively: (a) applicable federal, state or local laws, rules, regulations, orders, ordinances, statutes and requirements issued under or in connection with Medicare, Medicaid or any other

Governmental Payor Program; (b) applicable federal and state laws and regulations governing the confidentiality of health information, including HIPAA; (c) applicable federal, state and local fraud and abuse laws of any Governmental Authority, including the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7(b)), the civil False Claims Act (31 U.S.C. § 3729 et seq.), Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes, and also any other U.S. or foreign laws or regulations that are applicable to health care fraud, abuse, corruption, waste, bribery, inducements, false statements, or false claims; (d) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173) and the regulations promulgated thereunder and any other federal, state or local laws or regulations (or foreign equivalents thereof) governing the disclosure of payments or providing other items of value or remuneration or drug product samples to health care professionals; (e) the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h); (f) all applicable reporting and disclosure requirements, including those arising under the Medicaid Drug Rebate Program (e.g., Monthly and Quarterly Average Manufacturer Price, Baseline Average Manufacturer Price, and Rebate Per Unit, as applicable), Medicare Part B (Quarterly Average Sales Price), Section 602 of the Veteran's Health Care Act (Public Health Service 340B Quarterly Ceiling Price), Section 603 of the Veteran's Health Care Act (Quarterly and Annual Non-Federal Average Manufacturer Price and Federal Ceiling Price), Best Price, Federal Supply Schedule Contract Prices and Tricare Retail Pharmacy Refunds, and Medicare Part D; (g) RESERVED; (h) applicable federal, state or local laws, rules, regulations, ordinances, statutes and requirements relating to (*i*) the regulation of managed care, third party payors and Persons bearing the financial risk for the provision or arrangement of health care services, (*ii*) billings to insurance companies, health maintenance organizations and other Managed Care Plans or otherwise relating to insurance fraud and (*iii*) any insurance, health maintenance organization or managed care Requirements of Law; (i) regulations for the protection of human research subjects (including 45 C.F.R. part 46, and any foreign or United States state equivalents); (j) requirements for licensure or permitting of personnel who are engaged in marketing, sales. or medical activities under federal, state, or local laws (or foreign equivalents); (k) requirements concerning disclosure of drug pricing information and other company information to the public, customers, prescribers or to state and local agencies under federal, state, or local laws (or foreign equivalents); (l) laws and regulations requiring the adoption of compliance codes or policies and (m) any other Requirements of Law (including any applicable Canadian Laws, EU Laws, U.K. Laws, or other foreign equivalents) relating to research, development, testing, approval, exclusivity, licensure, clearance, authorization, designation, post-approval (or post-licensure, post-clearance, or post-approval, as applicable) monitoring or commitments, reporting, manufacture, production, packaging, labeling, use, commercialization, marketing, promotion, advertising, importing, exporting, storage, transport, distribution, sale or lease or offer for sale or lease, or payment of or for Product.

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

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

"**Indebtedness**" means, with respect to any Person, without duplication: (a) all indebtedness for advanced or borrowed money of, or credit extended to, such Person; (b) all obligations issued, undertaken or assumed by such Person as the deferred purchase price of assets, properties, services or rights (other than (i) accrued expenses and trade payables entered into in the ordinary course of business which are not more than one hundred and eighty (180) days past due or subject to a bona fide dispute, (ii) obligations to pay for services provided by employees and individual independent contractors in the ordinary course of business which are not more than one hundred twenty (120) days past due or subject to a bona fide dispute, (iii) liabilities associated with customer prepayments and deposits and (iv) prepaid or deferred revenue arising in the ordinary course of business), including (A) any obligation or liability to pay deferred purchase price or other similar deferred consideration for such assets, properties, services or rights where such deferred purchase price or consideration becomes due and payable solely upon the passage of time, and (B) any obligation described in clause (b) of the definition of Contingent Obligation that becomes due and payable (or that becomes due and payable) solely with the passage of time (and not the occurrence of an event or the performance of

an act); (c) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder and all reimbursement or payment obligations with respect to letters of credit, surety bonds, performance bonds and other similar instruments issued by such Person; (d) all obligations of such Person evidenced by notes, bonds, debentures or other debt securities or similar instruments (including debt securities convertible into Equity Interests, including Permitted Convertible Indebtedness)), including obligations so evidenced incurred in connection with the acquisition of properties, assets or businesses; (e) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement or incurred as financing, in either case with respect to property acquired by such Person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property); (f) all capital lease obligations of such Person; (g) the principal balance outstanding under any synthetic lease, off-balance sheet loan or similar off balance sheet financing product by such Person; (h) all obligations of such Person, whether or not contingent, to purchase, redeem, retire, defease or otherwise acquire for value any of its own Equity Interests (or any Equity Interests of a direct or indirect parent entity thereof) prior to the date that is one hundred and eighty (180) days after the Term Loan Maturity Date, valued at, in the case of redeemable preferred Equity Interests, the greater of the voluntary liquidation preference and the involuntary liquidation preference of such Equity Interests plus accrued and unpaid dividends; (i) all indebtedness referred to in clauses (a) through (h) above of other Persons secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in assets or properties (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness of such other Persons; and (j) all Contingent Obligations of such Person. For the avoidance of doubt, "Indebtedness" shall include Permitted Convertible Indebtedness.

"**Indemnified Liabilities**" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims, actions, judgments, suits, costs, reasonable and documented out-of-pocket fees, expenses and disbursements of any kind or nature whatsoever (including the reasonable and documented fees and disbursements of one primary legal counsel for Indemnified Persons plus, as applicable, one local legal counsel in each relevant material jurisdiction and one intellectual property legal counsel, and in the case of an actual or perceived conflict of interest, one additional legal counsel for such affected Indemnified Persons), incurred by any Indemnified Person or asserted against any Indemnified Person by any Person (including Borrower or any other Credit Party) relating to or arising out of or in connection with, or as a result of, this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby (including any Lender's agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Loan Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of any guaranty of the Obligations)), including (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Term Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by Borrower or any of its Subsidiaries, or any liability relating to any Environmental Law, any Release of Hazardous Materials or any Hazardous Materials Activity, (iv) any actual or prospective claim, suit, litigation, investigation, hearing or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by, commenced or threatened in writing by any Person (including Borrower or any of its affiliates), and regardless of whether any Indemnified Person is or is designated as a party or a potential party thereto, and (v) the enforcement of the indemnity hereunder, in each case whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations, on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnified Person, in any manner.

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

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

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

"**Intellectual Property**" means all:

(a) Copyrights, Trademarks, and Patents;

(b) trade secrets and trade secret rights, including any rights to unpatented inventions, know-how, show-how and operating manuals;

(c) (i) all computer programs, including source code and object code versions, (ii) all data, databases and compilations of data, whether machine readable or otherwise, and (iii) all documentation, training materials and configurations related to any of the foregoing (collectively, "**Software**");

(d) all right, title and interest arising under any contract or Requirements of Law in or relating to Internet domain names;

(e) design rights;

(f) IP Ancillary Rights (including all IP Ancillary Rights related to any of the foregoing); and

(g) any similar or equivalent rights to any of the foregoing anywhere in the world.

"**Interest Date**" means the last day of each calendar quarter, commencing with the last day of the calendar quarter during which the Tranche A Closing Date occurs.

"**Interest Period**" means, (a) (i) with respect to the Tranche A Loan, the period commencing on (and including) the Tranche A Closing Date and ending on (and including) the first Interest Date following the Tranche A Closing Date, and (ii) with respect to the Tranche B Loan, the period commencing on (and including) the Tranche B Closing Date and ending on (and including) the first Interest Date following the Tranche B Closing Date, (iii) with respect to the Tranche C Loan, the period commencing on (and including) the Tranche C Closing Date and ending on (and including) the first Interest Date following the Tranche C Closing Date, and (iv) with respect to the Tranche D Loan, the period commencing on (and including) the Tranche D Closing Date and ending on (and including) the first Interest Date following the Tranche D Closing Date, and (b) thereafter, with respect to each Term Loan, each period beginning on (and including) the first day following the end of the preceding Interest Period and ending on the earlier of (and including) (x) the next Interest Date and (y) the Term Loan Maturity Date.

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

"**Inventory**" means all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes all merchandise (including Product), materials (including raw materials), parts, components (including component materials and component raw materials), supplies, packing and shipping materials, work in process and finished products, technology (including software, systems, and solutions), and all elements needed to fulfill obligations related to Product under any Manufacturing Agreements including such inventory as is temporarily out of a Credit Party's or Subsidiary's custody or possession or in transit (prior to title having transferred) and including any returned goods and any documents of title representing any of the above.

"**Investment**" means (a) any beneficial ownership interest in any Person (including Equity Interests), (b) any Acquisition or (c) the making of any advance, loan, extension of credit or capital contribution in or to, any Person. The amount of an Investment shall be the amount actually invested (which, in the case of any Investment by a Credit Party or any of its Subsidiaries constituting the contribution of an asset or property, shall be based on the good faith estimate of the fair market value of such asset or property at the time such Investment is made as reasonably determined in good faith by a Responsible Officer of such Credit Party), less the amount of cash received or returned for such Investment, without adjustment for subsequent increases or decreases in the value of such Investment or write-ups, write-downs or write-offs with respect thereto; provided that in no event shall such amount be less than zero.

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

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

"**IRC**" means the Internal Revenue Code of 1986.

"**IRS**" is defined in Section 2.6(d)(i).

"**Knowledge**" means, with respect to any Person, the actual knowledge, after reasonable investigation, of the Responsible Officers of such Person; provided, that, with respect to Borrower, reasonable investigation means that Borrower has also affirmatively sought out information from other Credit Parties or their Subsidiaries on the relevant subject matter if and to the extent relevant.

"**Lender**" means each Person signatory hereto as a "Lender" and its successors and assigns.

"**Lender Expenses**" means, collectively:

(a) all reasonable and documented out-of-pocket fees and expenses of the Collateral Agent and, as applicable, each Lender (and their respective successors and assigns) and their respective Related Parties (including the reasonable and documented out-of-pocket fees, expenses and disbursements of legal counsel (it being agreed that such legal counsel fees, expenses and disbursements shall be limited to one primary legal counsel, one local legal counsel in each applicable jurisdiction and one intellectual property legal counsel (as and to the extent applicable) for the Collateral Agent, Lenders and Related Parties, taken as a whole and in the case of an actual or perceived conflict of interest, one additional legal counsel for such affected Indemnified Persons), manufacturing consultants or intellectual property experts (it being agreed that such consultant or expert fees, expenses and disbursements shall be limited to one such consultant and one such expert for the Collateral Agent, Lenders and such Related Parties, taken as a whole) therefor, (i) incurred in connection with developing, preparing, negotiating, syndicating, executing and delivering, and interpreting, investigating and administering, the Loan Documents (or any term or provision thereof), any commitment, proposal letter, letter of intent or term sheet therefor or any other document prepared in connection therewith, (ii) incurred in connection with the consummation and administration of any transaction contemplated therein, (iii) incurred in connection with the performance of any obligation or agreement contemplated therein, (iv) incurred in connection with any modification or amendment of any term or provision of, or any supplement to, or the termination (in whole or in part) of, any Loan Document, (v) incurred in connection with internal audit reviews and Collateral audits, or (vi) otherwise incurred with respect to the Credit Parties in connection with the Loan Documents, including any filing or recording fees and expenses; and

(b) all reasonable and documented out-of-pocket costs and expenses incurred by the Collateral Agent and each Lender (and their respective successors and assigns) and their respective Related Parties (including the reasonable and documented out-of-pocket fees, expenses and disbursements of one primary legal counsel, one local legal counsel in each applicable jurisdiction and one intellectual property legal counsel (as and to the extent applicable) for the Collateral Agent, Lenders and Related Parties, taken as a whole and in the case of an actual or perceived conflict of interest, one additional legal counsel for such affected Indemnified Persons) in connection with (i) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out," (ii) the enforcement or protection or preservation of any right or remedy under any Loan Document, any Obligation, with respect to any of the Collateral or any other related right or remedy, or (iii) the commencement, defense, conduct of, intervention in, or the taking of any other action with respect to, any proceeding (including any Insolvency Proceeding) related to any Credit Party or any Subsidiary of any Credit Party in respect of any Loan Document or Obligation, or

otherwise in connection with any Loan Document or Obligation (or the response to and preparation for any subpoena or request for document production relating thereto).

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

"**Lien**" means a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind or assignment for security purposes, whether voluntarily incurred or arising by operation of law or otherwise against any property or assets.

"**Loan Documents**" means, collectively, this Agreement, the Disclosure Letter, the Term Loan Notes, the Security Agreement, the IP Agreements, the Perfection Certificates, any Control Agreement, any other Collateral Document, any guaranties executed by a Guarantor in favor of the Collateral Agent for the benefit of Lenders and the other Secured Parties in connection with this Agreement, and any other present or future agreement between or among a Credit Party, the Collateral Agent and any Lender in connection with this Agreement, including in each case, for the avoidance of doubt, any annexes, exhibits or schedules thereto.

"**Makewhole Amount**" means the Tranche A Makewhole Amount, the Tranche B Makewhole Amount, the Tranche C Makewhole Amount or the Tranche D Makewhole Amount (as applicable) or any combination thereof, as the context dictates.

"**Managed Care Plans**" means all health maintenance organizations, preferred provider organizations, individual practice associations, competitive medical plans and similar arrangements.

"**Manufacturing Agreement**" means (a) any manufacturing or supply contract or agreement entered into by any Credit Party or any of its Subsidiaries with third parties for (i) the clinical or the commercial supply in the Territory of any Product for any indication or (ii) for the commercial manufacture or in-bound supply of any active pharmaceutical ingredient or any other raw materials or other component materials incorporated therein that was included in the NDA for the Product (with the Manufacturing Agreements in effect as of the Effective Date being set forth in Schedule 12.1 of the Disclosure Letter), and (b) any future contract or agreement entered into after the Effective Date by any Credit Party or any of its Subsidiaries with third parties for (i) the clinical or commercial manufacture or in-bound supply in the Territory of Product for any indication or (ii) the commercial manufacture or in-bound supply of any active pharmaceutical ingredient or any other raw materials or other component materials incorporated therein that was included in the NDA for Product.

"**Market Capitalization**" means, as of any date of determination, an amount equal to (a) the total number of issued and outstanding shares of common stock of Borrower on such date, *multiplied by* (b) the arithmetic mean of the closing prices per share of such common stock on the NASDAQ exchange (or, if the primary listing of such capital stock is on another exchange, on such other exchange) for the thirty (30) consecutive Trading Days immediately preceding such date.

"**Margin Stock**" means "margin stock" within the meaning of Regulations U and X of the Federal Reserve Board as now and from time to time hereafter in effect.

"**Material Adverse Change**" means any material adverse change in or material adverse effect on: (a) the business, operations, condition (financial or otherwise), properties or assets (including all or any portion of the Collateral), liabilities (actual or contingent), operations or performance of the Credit Parties, taken as a whole, since December 31, 2023; (b) without limiting the generality of clause (a) above, any (i) the rights or remedies of the Credit Parties, taken as a whole, in or related to the research, development, exclusivity, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale or lease, distribution or sale or lease of Product in the Territory or (ii) the period of regulatory exclusivity granted by the FDA (or foreign equivalent) for Product in the Territory; (c) the ability of the Credit Parties, taken as a whole, to fulfill the payment or performance obligations under the Loan Agreement or any other Loan Document; (d) the binding nature or validity of, or the ability of the Collateral Agent or any Lender to enforce, any of the Loan Documents or any of its rights or remedies thereunder; or (e) the validity, perfection or priority of Liens in favor of the Collateral Agent (except to the extent expressly permitted under the Loan Documents), for the benefit of Lenders and the other Secured Parties, except, in

the case of each of clauses (d) and (e) above, to the extent directly resulting from any act or omission to act on the part of the Collateral Agent. Notwithstanding the foregoing, the occurrence of any of the following shall not, in and of itself, constitute or be deemed to constitute a Material Adverse Change: (x) the failure to satisfy the conditions precedent set forth in Section 3.3(h) or Section 3.4(h); (y) adverse results or delays with respect to, or the failure to achieve, any clinical or non-clinical trial goals or objectives with respect to products other than Product; and (z) the denial, delay or limitation of approval by the FDA or other regulatory agency with respect to any proposed pharmaceutical product other than Product.

"**Material Contract**" means any contract or other arrangement to which any Credit Party or any of its Subsidiaries is a party (other than the Loan Documents) or by which any of its assets or properties are bound, in each case, relating to any aspect of the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale or lease, distribution or sale or lease of Product in the Territory, for which the breach of, default or nonperformance under, cancellation or termination of or the failure to renew could reasonably be expected to result in a Material Adverse Change. For the avoidance of doubt, each Manufacturing Agreement and each Company IP Agreement is a Material Contract.

"**Medicaid**" means the health care assistance program established by Title XIX of the SSA (42 U.S.C. 1396 et seq.).

"**Medicare**" means the health insurance program for the aged and disabled established by Title XVIII of the SSA (42 U.S.C. 1395 et seq.).

"**Mortgage**" means any deed of trust, leasehold deed of trust, mortgage, leasehold mortgage, deed to secure debt, leasehold deed to secure debt or other document creating a Lien on real estate or any interest in real estate.

"**Multiemployer Plan**" means a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which Borrower or its Subsidiaries or their respective ERISA Affiliates is then making or accruing an obligation to make contributions; (b) to which Borrower or its Subsidiaries or their respective ERISA Affiliates has within the preceding five (5) plan years made contributions; or (c) with respect to which Borrower or its Subsidiaries could incur material liability.

"**NDA**" means a new drug application, submitted to the FDA pursuant to 21 U.S.C. § 355 seeking authorization to market a new drug in the United States or any foreign equivalent.

"**Obligations**" means, collectively, the Credit Parties' obligations to pay when due any and all debts, principal, interest, Lender Expenses, the Additional Consideration, the Makewhole Amount, the Prepayment Premium and any other fees, expenses, indemnities and amounts any Credit Party owes any Lender or the Collateral Agent now or later, under this Agreement or any other Loan Document, including interest accruing after Insolvency Proceedings begin (whether or not allowed), and to perform Borrower's duties under the Loan Documents.

"**OFAC**" is defined in Section 4.18(c).

"**Operating Documents**" means, collectively with respect to any Person such Person's formation documents as certified with the Secretary of State or other applicable Governmental Authority of such Person's jurisdiction of formation on a date that is no earlier than thirty (30) days prior to the date on which such documents are due to be delivered under this Agreement and, (a) if such Person is a corporation, its bylaws (or similar organizational regulations) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), in each case, with all current amendments, restatements, supplements or modifications thereto.

"**ordinary course of business**" means, in respect of any transaction involving any Person, the ordinary course of such Person's business, and undertaken by such Person in good faith and not for purposes of evading any covenant, prepayment obligation or restriction in any Loan Document.

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

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing, mortgage or property Taxes, charges or similar levies or similar Taxes that arise from any payment made hereunder, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"**Participant Register**" is defined in Section 11.1(d).

"**Patents**" means all patents and patent applications (including any improvements, continuations, continuations-in-part, divisions, provisionals or any substitute applications), any patent issued with respect to any of the foregoing patent applications, any reissue, reexamination, renewal or patent term extension or adjustment (including any supplementary protection certificate) of any such patent, and any confirmation patent or registration patent or patent of addition based on any such patent, and all foreign and international counterparts of any of the foregoing. For the avoidance of doubt, patents and patent applications under this definition include all those filed with the U.S. Patent and Trademark Office or which could be nationalized in the United States.

"**Patriot Act**" is defined in Section 3.1(i).

"**PCI Cap**" means, as of the date of the pricing of any Permitted Convertible Indebtedness or other date of determination, as applicable, an amount not to exceed the lesser of $250,000,000 and the product of Market Capitalization immediately prior to such date, *multiplied by* 0.20; provided, however, that in any case (x) no Default or Event of Default has occurred and is continuing as of such date and (y) no Material Adverse Change or Withdrawal Event has occurred as of such date.

"**Perfection Certificate**" is defined in Section 4.6.

"**Periodic Term SOFR Determination Day**" has the meaning specified in the definition of "Term SOFR".

"**Permitted Acquisition**" means any Acquisition, so long as:

(a) no Default or Event of Default shall have occurred and be continuing as of, or could reasonably be expected to result from, the consummation of such Acquisition;

(b) the properties or assets being acquired or licensed, or the Person whose Equity Interests are being acquired, are useful in or engaged in, as applicable, (i) the same, similar or a related line of business as that then-conducted by Borrower or its Subsidiaries, or (ii) a line of business that is ancillary to and in furtherance of a line of business as that then-conducted by Borrower or its Subsidiaries;

(c) in the case of an Asset Acquisition, the subject assets are being acquired or licensed by a Credit Party, and such Credit Party shall have executed and delivered or authorized, as applicable, any and all security agreements, financing statements and any other documentation reasonably requested by the Collateral Agent, in order to include the newly acquired or licensed assets within the Collateral, as applicable, to the extent required by Section 5.12;

(d) in the case of a Stock Acquisition, the subject Equity Interests are being acquired in such Acquisition directly by a Credit Party, and such Credit Party shall have complied with its obligations under Section 5.13; and

(e) any Indebtedness or Liens assumed in connection with such Acquisition are otherwise permitted under Section 6.4 or 6.5, respectively.

"**Permitted Convertible Indebtedness**" means Indebtedness of Borrower having a feature which entitles the holder thereof in certain circumstances to convert or exchange all or a portion of such Indebtedness into Equity Interests in Borrower (or other securities or property following a merger event or other change of the common stock of Borrower), cash or any combination of cash and such Equity Interests (or such other securities or property) based on the market price of such Equity Interests (or such other securities or property); provided, however, that (a) such Indebtedness shall be unsecured, (b) such Indebtedness shall not be guaranteed by any Subsidiary of Borrower, (c) RESERVED, (d) such Indebtedness shall not include covenants and defaults (other than covenants and defaults customary for convertible indebtedness but not customary for loans, as determined by Borrower in its good faith judgment) that are, taken as a whole, more restrictive on the Credit Parties than the provisions of this Agreement (as determined by Borrower in its good faith judgment), (e) immediately prior to and after giving effect to the incurrence of such Indebtedness, no Default or Event of Default shall have occurred and be continuing or could reasonably be expected to occur as a result therefrom (after giving effect to this Agreement), (f) such Indebtedness shall not (i) mature or be mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, (ii) be redeemable at the option of the holder thereof, in whole or in part, (iii) provide for scheduled cash interest payments or (iv) provide for the scheduled payment of dividends or distributions in cash, in each case of the foregoing sub-clauses (i), (ii), (iii) and (iv), earlier than six (6) months after the Term Loan Maturity Date (it being understood, for the avoidance of doubt, that (w) a redemption right of Borrower in respect of such Indebtedness, (x) conversion rights of holders in respect of such Indebtedness, (y) acceleration rights of holders of such Indebtedness upon the occurrence of an event of default specified in the agreement governing such Indebtedness and (z) the obligation to pay customary amounts to holders of such Indebtedness in connection with a "change of control" or similar event, in each case, shall not be considered in connection with the determination of scheduled maturity date for purposes of this clause (f)); and (g) Borrower shall have delivered to the Collateral Agent a certificate of a Responsible Officer of Borrower certifying as to the foregoing clauses (a) through (f) with respect to any such Indebtedness.

"**Permitted Distributions**" means, in each case subject to Section 6.8 if applicable:

(a) dividends, distributions or other payments by any Wholly-Owned Subsidiary on its Equity Interests to, or the redemption, retirement or purchase by any Wholly-Owned Subsidiary of its Equity Interests from, Borrower or any other Wholly-Owned Subsidiary;

(b) dividends, distributions or other payments by any non-Wholly-Owned Subsidiary on its Equity Interests to, or the redemption, retirement or purchase by any non-Wholly-Owned Subsidiary of its Equity Interests from, Borrower or any other Subsidiary or each other owner of such non-Wholly-Owned Subsidiary's Equity Interests based on their relative ownership interests of the relevant class of such Equity Interests;

(c) redemptions by Borrower in whole or in part any of its Equity Interests for another class of its Equity Interests or rights to acquire its Equity Interests or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests;

(d) any such payments arising from a Permitted Acquisition or other Permitted Investment by Borrower or any of its Subsidiaries;

(e) the payment of dividends by Borrower solely in non-cash pay and non-redeemable capital stock (including, for the avoidance of doubt, dividends and distributions payable solely in Equity Interests);

(f) cash payments in lieu of the issuance of fractional shares arising out of stock dividends, splits or combinations or in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests;

(g) in connection with any Acquisition or other Investment by Borrower or any of its Subsidiaries, (i) the receipt or acceptance of the return to Borrower or any of its Subsidiaries of Equity Interests of Borrower constituting a portion of the purchase price consideration in settlement of indemnification claims, or as a result of a

purchase price adjustment (including earn-outs or similar obligations) and (ii) payments or distributions to equity holders pursuant to appraisal rights required under Requirements of Law;

(h) the distribution of rights pursuant to any shareholder rights plan or the redemption of such rights for nominal consideration in accordance with the terms of any shareholder rights plan;

(i) dividends, distributions or payments on its Equity Interests by any Subsidiary to any Credit Party;

(j) dividends, distributions or payments on its Equity Interests by any Subsidiary that is not a Credit Party to any other Subsidiary that is not a Credit Party;

(k) purchases of Equity Interests of Borrower or its Subsidiaries in connection with the exercise of stock options by way of cashless exercise, or in connection with the satisfaction of withholding Tax obligations;

(l) issuance to directors, officers, employees or contractors of Borrower of common stock of Borrower upon the vesting of restricted stock, restricted stock units, or other rights to acquire common stock of Borrower pursuant to plans or agreements approved by Borrower's Board of Directors or stockholders;

(m) the repurchase, retirement or other acquisition or retirement for value of Equity Interests of Borrower or any of its Subsidiaries held by any future, present or former employee, consultant, officer or director (or spouse, ex-spouse or estate of any of the foregoing or trust for the benefit of any of the foregoing or any lineal descendants thereof) of Borrower or any of its Subsidiaries pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any stock subscription or shareholder agreement or employment agreement; provided, however, that the aggregate payments made under this clause (m) do not exceed in any calendar year the sum of (i) $3,000,000 plus (ii) the amount of any payments received in such calendar year under key-man life insurance policies; and

(n) dividends or distributions on its Equity Interests by Borrower payable solely in additional shares of its common stock within sixty (60) days after the date of declaration thereof.

"**Permitted Indebtedness**" means:

(a) Indebtedness of the Credit Parties to Secured Parties under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and shown on Schedule 12.2 of the Disclosure Letter; provided, however, that no Indebtedness of any Credit Party or any Subsidiary under the Existing Credit Agreement existing on the Tranche A Closing Date or any time thereafter, which shall be repaid in full pursuant to Section 5.10(a), shall be "Permitted Indebtedness" for purposes of Section 6.4 or any other purposes under this Agreement (other than for purposes of the representations and warranties set forth in Section 4) or the other Loan Documents;

(c) Indebtedness not to exceed $10,000,000 in the aggregate at any time outstanding to trade creditors incurred in the ordinary course of business and more than one hundred twenty (120) days past due;

(d) Indebtedness not to exceed $10,000,000 in the aggregate at any time outstanding, consisting of (i) Indebtedness incurred to finance the purchase, construction, repair, or improvement of fixed assets and (ii) capital lease obligations;

(e) unsecured (other than rights of setoff) Indebtedness in connection with corporate credit cards, purchasing cards or bank card products;

(f) guarantees of Permitted Indebtedness;

(g) Indebtedness assumed in connection with any Permitted Acquisition or Permitted Investment, so long as such Indebtedness (i) was not incurred in connection with, or in anticipation of, such Acquisition or Investment and (ii) is at all times Subordinated Debt;

(h) Indebtedness of Borrower or any of its Subsidiaries with respect to letters of credit outstanding and secured solely by cash or Cash Equivalents entered into in the ordinary course of business;

(i) Indebtedness owed (i) by a Credit Party to another Credit Party, (ii) by a Subsidiary of Borrower that is not a Credit Party to another Subsidiary of Borrower that is not a Credit Party, (iii) by a Credit Party to a Subsidiary of Borrower that is not a Credit Party or (iv) by a Subsidiary of Borrower that is not a Credit Party to a Credit Party, not to exceed $10,000,000 in the aggregate at any time outstanding;

(j) Indebtedness consisting of Contingent Obligations set forth in clause (a) of the definition of Contingent Obligation (i) of a Credit Party of Permitted Indebtedness (or obligations that are not Indebtedness) of another Credit Party, (ii) of a Subsidiary of Borrower which is not a Credit Party of Permitted Indebtedness (or obligations that are not Indebtedness) of another Subsidiary of Borrower which is not a Credit Party, (iii) of a Subsidiary of Borrower which is not a Credit Party of Permitted Indebtedness (or obligations that are not Indebtedness) of a Credit Party, (iv) of a Credit Party of lease obligations of a Subsidiary of Borrower which is not a Credit Party, or (v) of a Credit Party of Permitted Indebtedness (or obligations that are not Indebtedness) of a Subsidiary of Borrower which is not a Credit Party not to exceed $10,000,000 in the aggregate at any time outstanding;

(k) Indebtedness consisting of Contingent Obligations set forth in clause (b) of the definition of Contingent Obligation;

(l) Indebtedness of any Person that becomes a Subsidiary (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Subsidiary in a transaction permitted hereunder) of Borrower after the Effective Date, or Indebtedness of any Person that is assumed after the Effective Date by any Subsidiary in connection with an acquisition of assets by such Subsidiary; provided that such Indebtedness is at all times Subordinated Debt;

(m) (i) Indebtedness with respect to workers' compensation claims, payment obligations in connection with health, disability or other types of social security benefits, unemployment or other insurance obligations, reclamation and statutory obligations or (ii) Indebtedness related to employee benefit plans, including annual employee bonuses, accrued wage increases and 401(k) plan matching obligations; in each case, incurred in the ordinary course of business;

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

(o) Indebtedness in respect of netting services, overdraft protection and other cash management services, in each case in the ordinary course of business;

(p) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(q) Indebtedness consisting of guarantees resulting from endorsement of negotiable instruments for collection by any Credit Party in the ordinary course of business;

(r) unsecured Indebtedness incurred in connection with any items of Permitted Distributions in clause (m) of the definition of Permitted Distributions;

(s) Subordinated Debt, not to exceed $10,000,000 in the aggregate at any time outstanding, or such greater amount, as otherwise agreed to in writing by the Collateral Agent;

(t) Permitted Convertible Indebtedness in an aggregate amount not to exceed at any time the PCI Cap;

(v) other indebtedness not to exceed $5,000,000 in the aggregate at any time outstanding; and

(v) subject to the proviso immediately below, extensions, refinancings, renewals, modifications, amendments, restatements and, in the case of any items of Permitted Indebtedness in clause (b) of the definition of Permitted Indebtedness or Permitted Indebtedness constituting notes governed by an indenture, exchanges, of any items of Permitted Indebtedness in clauses (a) through (v) above, provided, that in the case of clauses (b) and (g) above, the principal amount thereof is not increased (other than by any reasonable amount of premium (if any), interest (including post-petition interest), fees, expenses, charges or additional or contingent interest reasonably incurred in connection with the same and the terms thereof).

Notwithstanding the foregoing, "Permitted Indebtedness" shall not include any Hedging Agreements.

"**Permitted Investments**" means:

(a) Investments (including Investments in Subsidiaries) existing on the Effective Date and shown on Schedule 12.3 of the Disclosure Letter, and any extensions, renewals or reinvestments thereof;

(b) Investments consisting of cash and Cash Equivalents;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

(d) subject to Section 5.5, Investments consisting of deposit accounts or securities accounts;

(e) Investments in connection with Permitted Transfers;

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors;

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(h) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this clause (h) shall not apply to Investments of any Credit Party in any of its Subsidiaries;

(i) joint ventures or strategic alliances consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support;

(j) Investments (i) required in connection with a Permitted Acquisition (including the formation of any Subsidiary for the purpose of effectuating such Permitted Acquisition, the capitalization of such Subsidiary whether by capital contribution or intercompany loans, in each case, to the extent otherwise permitted by the terms of this Agreement, related Investments in Subsidiaries necessary to consummate such Permitted Acquisition, and the receipt of any non-cash consideration in a Permitted Acquisition), and (ii) consisting of earnest money deposits required in connection with a Permitted Acquisition or other acquisition of properties or assets not otherwise prohibited hereunder;

(k) Investments constituting the formation of any Subsidiary for the purpose of consummating a merger or acquisition transaction permitted by Section 6.3(a)(i) through (iv) hereof, which such transaction is otherwise a Permitted Investment;

(l) Investments of any Person that (i) becomes a Subsidiary of Borrower (or of any Person not previously a Subsidiary of Borrower that is merged or consolidated with or into a Subsidiary of Borrower in a transaction permitted hereunder) after the Effective Date, or (ii) are assumed after the Effective Date by any Subsidiary

of Borrower in connection with an acquisition of assets from such Person by such Subsidiary, in either case, in a Permitted Acquisition; provided, that in each case, any such Investment (x) exists at the time such Person becomes a Subsidiary of Borrower (or is merged or consolidated with or into a Subsidiary of Borrower) or such assets are acquired, (y) was not made in contemplation of or in connection with such Person becoming a Subsidiary of Borrower (or merging or consolidating with or into a Subsidiary of Borrower) or such acquisition of assets, and (z) could not reasonably be expected to result in a Default or an Event of Default;

(m) Investments arising as a result of the licensing of Intellectual Property in the ordinary course of business and not prohibited hereunder;

(n) Investments by (i) any Credit Party in any other Credit Party, (ii) any Subsidiary of Borrower which is not a Credit Party in another Subsidiary of Borrower which is not a Credit Party, (iii) any Subsidiary of Borrower which is not a Credit Party in any Credit Party and (iv) any Credit Party in a Subsidiary of Borrower which is not a Credit Party not to exceed $10,000,000 in the aggregate at any time;

(o) Repurchases of capital stock of Borrower or any of its Subsidiaries deemed to occur upon the exercise of options, warrants or other rights to acquire capital stock of Borrower or such Subsidiary solely to the extent that shares of such capital stock represent a portion of the exercise price of such options, warrants or such rights;

(p) Reserved;

(q) Investments consisting of co-promotion, co-commercialization or co-development agreements for in an arm's length transaction entered into on commercially reasonable terms, provided, however, that (x) no Contingent Obligations are made in connection therewith and (y) no other Indebtedness that is not Permitted Indebtedness is incurred in connection therewith;

(r) Investments made in connection with the in-licensing of assets related to any line of business of Borrower and its Subsidiaries, provided, however, that (x) no Contingent Obligations are made in connection therewith and (y) no other Indebtedness that is not Permitted Indebtedness is incurred in connection therewith;

(s) Investments made in private company equity fundraisings in the issuers of the Existing Uncertificated Pledged Stock (as defined in the Security Agreement), not to exceed $10,000,000 in the aggregate at any time; and

(t) other Investments, not to exceed $10,000,000 in the aggregate at any time outstanding.

provided, however that, none of the foregoing Investments shall be a "Permitted Investment" if any Indebtedness or Liens assumed in connection with such Investment are not otherwise permitted under Section 6.4 or 6.5, respectively.

Notwithstanding the foregoing, "Permitted Investments" shall not include any Hedging Agreements.

"**Permitted Liens**" means:

(a) Liens in favor and for the benefit of any Lender and the other Secured Parties securing the Obligations pursuant to any Loan Document;

(b) Liens existing on the Effective Date and set forth on Schedule 12.4 of the Disclosure Letter; provided, however, that no Liens on any of the collateral securing the payment of any Indebtedness of any Credit Party or any Subsidiary under the Existing Credit Agreement existing on the Tranche A Closing Date or any time thereafter, which such Indebtedness shall be repaid in full pursuant to Section 5.10(a), shall be a "Permitted Lien" for purposes of Section 6.5 or any other purposes under this Agreement (other than for purposes of the representations and warranties set forth in Section 4) or the other Loan Documents;

(c) Liens for Taxes, assessments or governmental charges (i) which are not yet delinquent or (ii) which are being contested in good faith and by appropriate proceedings promptly instituted and diligently conducted; provided that adequate reserves therefor have been set aside on the books of the applicable Person and maintained in conformity with GAAP, if required; provided, further, that in the case of a Tax, assessment or charge that has or may become a Lien against any Collateral, such contest proceedings conclusively operate to stay the sale or forfeiture of any portion of any Collateral to satisfy such Tax, assessment or charge;

(d) pledges or deposits made in the ordinary course of business (other than Liens imposed by ERISA) in connection with workers' compensation, payroll Taxes, unemployment insurance, old-age pensions, or other similar social security legislation, (ii) pledges or deposits made in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Borrower or any of its Subsidiaries, (iii) subject to Section 6.2(b), statutory or common law Liens of landlords, and (iv) pledges or deposits to secure performance of tenders, bids, leases, statutory or regulatory obligations, surety and appeal bonds, government contracts, performance and return-of-money bonds and other obligations of like nature, in each case other than for borrowed money and entered into in the ordinary course of business;

(e) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under either Section 7.4 or 7.7;

(f) Liens (including the right of set-off) in favor of banks or other financial institutions incurred on deposits made in accounts held at such institutions in the ordinary course of business; provided that such Liens (i) are not given in connection with the incurrence of any Indebtedness, (ii) relate solely to obligations for administrative and other banking fees and expenses incurred in the ordinary course of business in connection with the establishment or maintenance of such accounts and (iii) are within the general parameters customary in the banking industry;

(g) Liens that are contractual rights of set-off (i) relating to pooled deposit or sweep accounts of Borrower or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or (ii) relating to purchase orders and other agreements entered into with customers of Borrower or any of its Subsidiaries in the ordinary course of business;

(h) Liens solely on any cash earnest money deposits made by Borrower or any of its Subsidiaries in connection with any Permitted Acquisition, Permitted Investment or other acquisition of assets or properties not otherwise prohibited under this Agreement;

(i) Liens existing on assets or properties at the time of its acquisition or existing on the assets or properties of any Person at the time such Person becomes a Subsidiary of Borrower, in each case after the Effective Date; provided that (i) neither such Lien was created nor the Indebtedness secured thereby was incurred in contemplation of such acquisition or such Person becoming a Subsidiary of Borrower, (ii) such Lien does not extend to or cover any other assets or properties (other than the proceeds or products thereof and other than after-acquired assets or properties subject to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that requires, pursuant to its terms and conditions in effect at such time, a pledge of after-acquired assets or properties, it being understood that such requirement shall not be permitted to apply to any assets or properties to which such requirement would not have applied but for such acquisition), (iii) the Indebtedness and other obligations secured thereby is permitted under Section 6.4 hereof and (iv) such Liens are of the type otherwise permitted under Section 6.5 hereof;

(j) Liens securing Indebtedness permitted under clause (d)(i) of the definition of "Permitted Indebtedness" (including any extensions, refinancings, modifications, amendments or restatements of such Indebtedness permitted under clause (r) of the definition of "Permitted Indebtedness"); provided, that such Lien does not extend to or cover any assets or properties other than those described in clause (d)(i) of the definition of "Permitted Indebtedness";

(k) servitudes, easements, rights-of-way, restrictions and other similar encumbrances on real property imposed by Requirements of Law and encumbrances consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor defects or other irregularities in title which, in the aggregate, are not

material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any Credit Party or any Subsidiary of any Credit Party;

(l) to the extent constituting a Lien, escrow arrangements securing indemnification obligations associated with any Permitted Acquisition or Permitted Investment;

(m) licenses, sublicenses, leases or subleases of personal property (other than relating to Intellectual Property) granted to third parties in the ordinary course of business, in each case which do not interfere in any material respect with the operations of the business of any Credit Party or any of its Subsidiaries and do not prohibit granting the Collateral Agent a security interest therein for the benefit of the Lenders and other Secured Parties;

(n) Liens on cash or other current assets pledged to secure (i) Indebtedness in respect of corporate credit cards, purchasing cards or bank card products, or (ii) Indebtedness in the form of letters of credit or bank guarantees;

(o) Liens on any properties or assets of Borrower or any of its Subsidiaries which do not constitute Collateral under the Loan Documents, other than (i) any Company IP that does not constitute Collateral under the Loan Documents but is related to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale or lease, distribution or sale or lease of Product in the Territory and (ii) Equity Interests of any Subsidiary;

(p) Liens on any properties or assets of Borrower or any of its Subsidiaries imposed by law or regulation which were incurred in the ordinary course of business, including landlords', carriers', warehousemen's, mechanics', materialmen's, contractors', suppliers of materials', architects' and repairmen's Liens, and other similar Liens arising in the ordinary course of business; provided that such Liens (i) do not materially detract from the value of such properties or assets subject thereto or materially impair the use of such properties or assets subject thereto in the operations of the business of Borrower or such Subsidiary or (ii) are being contested in good faith by appropriate proceedings, which conclusively operate to stay the sale or forfeiture of any portion of such properties or assets subject thereto and for which adequate reserves have been set aside on the books of the applicable Person and maintained in conformity with GAAP, if required; and

(q) subject to the provisos immediately below, the modification, replacement, extension or renewal of the Liens described in clauses (a) through (p) above; provided, however, that any such modification, replacement, extension or renewal must (i) be limited to the assets or properties encumbered by the existing Lien (and any additions, accessions, parts, improvements and attachments thereto and the proceeds thereof) and (ii) not increase the principal amount of any Indebtedness secured by the existing Lien (other than by any reasonable premium or other reasonable amount paid and fees and expenses reasonably incurred in connection therewith); provided, further, that to the extent any of the Liens described in clauses (a) through (p) above secure Indebtedness of a Credit Party, such Liens, and any such modification, replacement, extension or renewal thereof, shall constitute Permitted Liens if and only to the extent that such Indebtedness is permitted under Section 6.4 hereof.

"**Permitted Negative Pledges**" means:

(a) prohibitions or limitations with regard to specific properties or assets encumbered by Permitted Liens, if and only to the extent each such prohibition or limitation applies only to such properties or assets;

(b) prohibitions or limitations set forth in any lease, license or other similar agreement entered into in the ordinary course of business;

(c) prohibitions or limitations relating to Permitted Indebtedness, in the case of each such agreement if and only to the extent such prohibitions or limitations, taken as a whole, are not materially more restrictive than the prohibitions and limitations set forth in this Agreement and the other Loan Documents, taken as a whole (as reasonably determined by a Responsible Officer of Borrower in good faith); provided, however, that no prohibition or limitation relating to Indebtedness of any Credit Party or any Subsidiary under the Existing Credit Agreement existing on the Tranche A Closing Date or any time thereafter, which such Indebtedness shall be repaid in full pursuant to Section

5.10(a), shall be a "Permitted Negative Pledge" for purposes of Section 6.6 or any other purpose under this Agreement (other than for purposes of the representations and warranties set forth in Section 4) or the other Loan Documents;

(d) customary provisions restricting assignments, subletting, sublicensing or other transfer of properties or assets subject thereto set forth in leases, subleases, licenses and other similar agreements that are not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such restriction applies only to the properties or assets subject to such leases, subleases, licenses or agreements, and customary provisions restricting assignment, pledges or transfer of any agreement entered into in the ordinary course of business;

(e) prohibitions or limitations imposed by Requirements of Law;

(f) prohibitions or limitations that exist as of the Effective Date under Indebtedness existing on the Effective Date;

(g) customary prohibitions or limitations arising in connection with any Permitted Transfer or contained in any agreement relating to any Permitted Transfer pending the consummation of such Permitted Transfer;

(h) customary provisions in shareholders' agreements, joint venture agreements, organizational documents or similar binding agreements relating to, or any agreement evidencing Indebtedness of, any joint venture entity or non-Wholly-Owned Subsidiary and applicable solely to such joint venture entity or non-Wholly-Owned Subsidiary and the Equity Interests issued thereby;

(i) customary net worth provisions set forth in real property leases entered into by Subsidiaries of Borrower, so long as such net worth provisions could not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(j) customary net worth provisions set forth in customer agreements entered into in the ordinary course of business that are not otherwise prohibited under this Agreement or any other Loan Document, so long as such net worth provisions could not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(k) restrictions on cash or other deposits (including escrowed funds) imposed by agreements entered into in the ordinary course of business that are not otherwise prohibited under this Agreement or any other Loan Document;

(l) prohibitions or limitations set forth in any agreement in effect at the time any Person becomes a Subsidiary (but not any amendment, modification, restatement, renewal, extension, supplement or replacement expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Subsidiary and each such prohibition or limitation does not apply to Borrower or any other Subsidiary (other than such Person and any other Person that is a Subsidiary of such first Person at the time such first Person becomes a Subsidiary);

(m) prohibitions or limitations imposed by any Loan Document;

(n) customary provisions set forth in joint venture agreements or agreements governing minority investments that are not otherwise prohibited by this Agreement or any other Loan Document, if and only to the extent each such prohibition or limitation applies only to the joint venture entity or minority investment that is the subject of such agreement;

(o) limitations imposed with respect to any license acquired in a Permitted Acquisition;

(p) customary provisions restricting assignments or other transfer of properties or assets subject thereto set forth in any agreement entered into in the ordinary course of business, if and only to the extent each such restriction applies only to the properties or assets subject to such agreement;

(q) prohibitions or limitations imposed by any agreement evidencing any Permitted Indebtedness of the type described in any of clause (d) of the definition of Permitted Indebtedness; and

(r) prohibitions or limitations imposed by any amendments, modifications, restatements, renewals, extensions, supplements or replacements of any of the agreements referred to in clauses (a) through (p) above, except to the extent that any such amendment, modification, restatement, renewal, extension, supplement or replacement expands the scope of any such prohibition or limitation.

"**Permitted Subsidiary Distribution Restrictions**" means, in each case notwithstanding Section 6.8:

(a) prohibitions or limitations with regard to specific properties or assets encumbered by Permitted Liens, if and only to the extent each such prohibition or limitation applies only to such properties or assets;

(b) prohibitions or limitations set forth in any lease, license or other similar agreement entered into in the ordinary course of business;

(c) prohibitions or limitations relating to Permitted Indebtedness, in the case of each such agreement if and only to the extent such prohibitions or limitations, taken as a whole, are not materially more restrictive than the prohibitions and limitations set forth in this Agreement and the other Loan Documents, taken as a whole (as reasonably determined by a Responsible Officer of Borrower in good faith); provided, however, that no prohibition or limitation relating to Indebtedness of any Credit Party or any Subsidiary under the Existing Credit Agreement existing on the Tranche A Closing Date or any time thereafter, which such Indebtedness shall be repaid in full pursuant to Section 5.10(a), shall be a "Permitted Negative Pledge" for purposes of Section 6.9 or any other purpose under this Agreement (other than for purposes of the representations and warranties set forth in Section 4) or the other Loan Documents;

(d) customary provisions restricting assignments, subletting, sublicensing or other transfer of properties or assets subject thereto set forth in leases, subleases, licenses and other similar agreements that are not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such restriction applies only to the properties or assets subject to such leases, subleases, licenses or agreements, and customary provisions restricting assignment, pledges or transfer of any agreement entered into in the ordinary course of business;

(e) prohibitions or limitations on the transfer or assignment of any properties, assets or Equity Interests set forth in any agreement entered into in the ordinary course of business that is not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such prohibition or limitation applies only to such properties, assets or Equity Interests;

(f) prohibitions or limitations imposed by Requirements of Law;

(g) prohibitions or limitations that exist as of the Effective Date under Indebtedness existing on the Effective Date;

(h) customary prohibitions or limitations arising in connection with any Permitted Transfer or contained in any agreement relating to any Permitted Transfer pending the consummation of such Permitted Transfer;

(i) customary provisions in shareholders' agreements, joint venture agreements, organizational documents or similar binding agreements relating to, or any agreement evidencing Indebtedness of, any joint venture entity or non-Wholly-Owned Subsidiary and applicable solely to such joint venture entity or non-Wholly-Owned Subsidiary and the Equity Interests issued thereby;

(j) customary net worth provisions set forth in real property leases entered into by Subsidiaries of Borrower, so long as such net worth provisions could not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(k) customary net worth provisions set forth in customer agreements entered into in the ordinary course of business that are not otherwise prohibited under this Agreement or any other Loan Document, so long as such net worth provisions could not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(l) restrictions on cash or other deposits (including escrowed funds) imposed by agreements entered into in the ordinary course of business that are not otherwise prohibited under this Agreement or any other Loan Document;

(m) prohibitions or limitations set forth in any agreement in effect at the time any Person becomes a Subsidiary (but not any amendment, modification, restatement, renewal, extension, supplement or replacement expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Subsidiary and each such prohibition or limitation does not apply to Borrower or any other Subsidiary (other than such Person and any other Person that is a Subsidiary of such first Person at the time such first Person becomes a Subsidiary);

(n) prohibitions or limitations imposed by any Loan Document;

(o) customary provisions set forth in joint venture agreements or agreements governing minority investments that are not otherwise prohibited by this Agreement or any other Loan Document, if and only to the extent each such prohibition or limitation applies only to the joint venture entity or minority investment that is the subject of such agreement;

(p) customary provisions restricting assignments or other transfer of properties or assets subject thereto set forth in any agreement entered into in the ordinary course of business, if and only to the extent each such restriction applies only to the properties or assets subject to such agreement;

(q) prohibitions or limitations imposed by any agreement evidencing any Permitted Indebtedness of the type described in any of clause (d) of the definition of Permitted Indebtedness; and

(r) prohibitions or limitations imposed by any amendments, modifications, restatements, renewals, extensions, supplements or replacements of any of the agreements referred to in clauses (a) through (p) above, except to the extent that any such amendment, modification, restatement, renewal, extension, supplement or replacement expands the scope of any such prohibition or limitation.

"**Permitted Transfers**" means:

(a) Transfers of any properties or assets which do not constitute Collateral under the Loan Documents, other than any Company IP that does not constitute Collateral under the Loan Documents but is related to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale or lease, distribution or sale or lease of any Product in the Territory;

(b) Transfers of Inventory in the ordinary course of business;

(c) Transfers of surplus, damaged, worn out or obsolete equipment that is, in the reasonable judgment of Borrower exercised in good faith, no longer economically practicable to maintain or useful in the ordinary course of business, and Transfers of other properties or assets in lieu of any pending or threatened institution of any proceedings for the condemnation or seizure of such properties or assets or for the exercise of any right of eminent domain;

(d) Transfers made in connection with Permitted Liens;

(e) Transfers of cash and Cash Equivalents in the ordinary course of business for equivalent value and in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;

(f) Transfers (i) between or among Credit Parties, provided that, with respect to any properties or assets constituting Collateral under the Loan Documents, any and all steps as may be required to be taken in order to create and maintain a first priority security interest in and Lien upon such properties and assets in favor of the Collateral Agent for the benefit of Lenders and the other Secured Parties are taken contemporaneously with the completion of any such Transfer, and (ii) between or among non-Credit Parties;

(g) the sale or issuance of Equity Interests of any Subsidiary of Borrower to any Credit Party or Subsidiary, provided, that any such sale or issuance by a Credit Party shall be to another Credit Party;

(h) the discount without recourse or sale or other disposition of unpaid and overdue accounts receivable arising in the ordinary course of business in connection with the compromise, collection or settlement thereof and not part of a financing transaction;

(i) any abandonment, cancellation, non-renewal or discontinuance of use or maintenance of Company IP that Borrower reasonably determines in good faith (i) is no longer economically practicable to maintain or useful in the ordinary course of business and that (ii) could not reasonably be expected to be adverse to the rights, remedies and benefits available to, or conferred upon, the Collateral Agent or any Lender under any Loan Document in any material respect;

(j) Transfers by Borrower or any of its Subsidiaries pursuant to: (i) a non-exclusive license of (or grant of a covenant not to sue with respect to) Intellectual Property or a non-exclusive grant of development, manufacturing, production, commercialization, marketing, co-promotion, distribution, sale or similar commercial rights to third parties in the ordinary course of business consistent with general market practice, in each case except to the extent relating in any way to any Product with respect to geography within the Territory; (ii) an exclusive license of (or grant of a covenant not to sue with respect to) Intellectual Property or an exclusive grant of development, manufacturing, production, commercialization, marketing, co-promotion, distribution, sale or similar commercial rights, to third parties, in each case except to the extent relating in any way to any Product with respect to geography within the Territory; (iii) a non-exclusive license of (or grant of a covenant not to sue with respect to) technology or Intellectual Property to third parties for developing technology or providing technical support in the ordinary course of business consistent with general market practice, in each case except to the extent relating in any way to any Product with respect to geography within the Territory; and (iv) a non-exclusive or an exclusive manufacturing license to third parties in the ordinary course of business consistent with general market practice, in each case except to the extent relating in any way to any Product with respect to geography within the Territory; provided, that an exclusive or non-exclusive license out of Intellectual Property relating to any Product with respect to geography outside of the Territory that is not otherwise prohibited under this Agreement or any other Loan Document shall constitute a Permitted Transfer; provided, further, that a Transfer of Intellectual Property unrelated in any way to any Product with respect to geography within or outside the Territory that is not otherwise prohibited under this Agreement or any other Loan Document shall constitute a Permitted Transfer;

(k) intercompany licenses or grants of rights of distribution, co-promotion or similar commercial rights between or among the Credit Parties, or (ii) between or among the Credit Parties and Subsidiaries that are not Credit Parties entered into prior to the Effective Date, and renewals, replacements and extensions thereof (including additional licenses or grants in relation to new territories) on comparable terms in the ordinary course of business; and

(l) Transfers of (i) TP-05 and (ii) any other products or product candidates described in sub-clause (a)(iii) of the definition of Product outside the United States.

"**Person**" means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Personal Data**" means information protected as "personal data," "personal information," "personally identifiable information," "protected health information," "medical information," "identifiable private information," "bulk sensitive personal data," "United States government-related data," or any similar terms, under applicable Data Protection Laws, including customer, consumer, patient, clinical trial participant and employee information collected, created, received, maintained, stored, transmitted, or otherwise processed by or for Borrower or any of its Subsidiaries.

"**Personal Data Breach**" is defined in Section 4.22(b).

"**PIPEDA**" means the Canada Personal Information Protection and Electronic Documents Act, including any applicable Canadian provincial privacy, security, or breach notification laws.

"**Plan**" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the IRC or Section 302 of ERISA which is maintained or contributed to by Borrower or its Subsidiaries or their respective ERISA Affiliates or with respect to which Borrower or its Subsidiaries have any liability (including under Section 4069 of ERISA).

"**Prepayment Premium**" means the Tranche A Prepayment Premium, the Tranche B Prepayment Premium, Tranche C Prepayment Premium or the Tranche D Prepayment Premium (as applicable) or any combination thereof, as the context dictates.

"**Private Third Party Payor Programs**" means all U.S. third party payor programs in which any Credit Party or its Subsidiaries participates, including Managed Care Plans, or any other private insurance programs, but excluding all Governmental Payor Programs.

"**Product**" means, collectively, (a)(i) the pharmaceutical product known as XDEMVY® (lotilaner ophthalmic solution) 0.25%, formerly known as TP-03 (and foreign-named equivalents) and any successors thereto, including the product approved by the FDA under NDA 217603 and any supplements thereto (ii) any pharmaceutical product for the treatment of Demodex blepharitis, and (iii) any pharmaceutical product that contains lotilaner (but excluding TP-05), including as an active ingredient thereof, in each case of sub-clauses (i), (ii) and (iii) above, in any dosage form, dosing regimen, strength or route of administration, in each case, intended for use in humans; and (b) any Competing Product pursuant to Section 5.2(d).

"**Product Net Sales**" means, solely with respect to sales of Product described in clause (a)(i) of the definition of Product, as of any date of determination, the net consolidated product revenue (consistent with the calculation of same in the Borrower's financial statements) of Borrower and its Subsidiaries of such Product for the period in question (excluding, for the avoidance of doubt, any (i) upfront or milestone payments received by Borrower or any of its Subsidiaries, (ii) advancements, payments or reimbursements of expenses of Borrower or any of its Subsidiaries, and (iii) any other non-sales-based revenue or proceeds received by Borrower or any of its Subsidiaries), as the context dictates, determined on a consolidated basis in accordance with GAAP as set forth in Borrower's financial statements or as otherwise evidenced in a manner reasonably satisfactory to the Required Lenders.

"**Register**" is defined in Section 2.8(a).

"**Registered Organization**" means any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

"**Regulatory Agency**" means a U.S. or foreign Governmental Authority with responsibility for the approval of the marketing and sale of pharmaceuticals or other regulation of pharmaceuticals, or otherwise having authority to regulate Product, including the FDA, Health Canada, European Medicines Agency, National Medical Products Administration in China and Medicines and Healthcare products Regulatory Agency in the UK.

"**Regulatory Approvals or Licensures**" means all U.S., Canada, EU, UK and any other foreign approvals, exclusivities, authorizations, designations, licensures or clearances (including approval under FDCA § 505 or Orphan Drug exclusive approval under 21 C.F.R. § 316.34 or any foreign equivalents); Orphan Drug designation under 21 C.F.R. § 316.24 or any foreign equivalents); Fast Track designation, Breakthrough Therapy designation, and Priority Review designation under 21 U.S.C. § 356 and any corresponding regulations and as interpreted through guidance documents by FDA (and foreign equivalents); and Qualified Infectious Disease Product designation under 21 U.S.C. § 355f (including an award of "GAIN" exclusivity) and any corresponding regulations and as interpreted through guidance documents by FDA (and foreign equivalents)); and any product or establishment licenses, approvals, registrations or authorizations of any Regulatory Agency necessary for the manufacture, use, storage, import, export, transport, offer for sale or lease, distribution or sale or lease of any Product.

"**Related Parties**" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater, in each case, in the United States.

"**Required Lenders**" means, prior to the Closing Date, Lenders obligated with respect to greater than fifty percent (50%) of the sum of the Term Loan Commitments and the outstanding principal amount of the Term Loans and, thereafter, Lenders representing greater than fifty percent (50%) of the outstanding principal amount of the Term Loans.

"**Requirements of Law**" means, as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, order, policy, rule or regulation or determination of an arbitrator or a court or other Governmental Authority (including Environmental Laws, Health Care Laws, Data Protection Laws, FDA Laws, Canadian Laws, EU Laws, U.K. Laws, and all other applicable statutes, rules, regulations, standards, guidelines, policies and orders administered or issued by any foreign Governmental Authority), in each case, applicable to and binding upon such Person or any of its assets or properties or to which such Person or any of its assets or properties are subject, including, with respect to Borrower, the rules or requirements of any applicable U.S. national securities exchange applicable to Borrower or any of its Equity Interests.

"**Responsible Officers**" means, with respect to any Credit Party, collectively, the Chief Executive Officer, President, Chief Financial Officer, Chief Strategy Officer, Chief Commercial Officer, Chief Operating Officer, Chief Information Security Officer, Compliance Officer, General Counsel, Chief Medical Officer and Chief Medical Advisor of such Credit Party or, if none, of Borrower.

"**Restricted License**" means any material license or other agreement of the kind or nature subject or purported to be subject from time to time to a Lien under any Collateral Document, with respect to which a Credit Party is the licensee, (a) that prohibits or otherwise restricts such Credit Party from granting a security interest in such Credit Party's interest in such license or agreement in a manner enforceable under Requirements of Law, or (b) for which a breach of or default under could interfere with the Collateral Agent's or any Lender's right to sell any Collateral.

"**Sanctioned Country**" means, at any time, a country or territory which is itself the subject or target of comprehensive Sanctions (currently, those portions of the Donetsk People's Republic, the Luhansk People's Republic, Kherson and Zaporizhzhia regions (and such other regions) of Ukraine over which any Sanctions authority of the United States, the European Union or the United Kingdom imposes comprehensive Sanctions, Crimea, Cuba, Iran, Syria and North Korea),or any country or territory whose government is the subject of Sanctions (including, Venezuela) or that is otherwise the subject of broad Sanctions restrictions (including, Afghanistan and Belarus).

"**Sanctions**" is defined in Section 4.18(c).

"**SEC**" shall mean the Securities and Exchange Commission and any analogous Governmental Authority.

"**Secured Parties**" means each Lender, each other Indemnified Person and each other holder of any Obligation of a Credit Party.

"**Securities Account**" means any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

"**Securities Act**" means the Securities Act of 1933.

"**Security Agreement**" means the Guaranty and Security Agreement, dated as of the Tranche A Closing Date, by and among the Credit Parties and the Collateral Agent, in form and substance substantially similar to Exhibit C attached hereto or in such form or substance as the Credit Parties and the Collateral Agent may otherwise agree.

"**Security Incidents**" is defined in Section 4.22(b).

"**Security Program**" is defined in Section 4.22(b).

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

"**SOFR**" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"**SOFR Administrator**" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"**Solvent**" means, with respect to any Person as of any date of determination, that, as of such date, (a) the value of the assets (including goodwill minus disposition costs) of such Person (both at fair value and present fair saleable value), on a going concern basis, is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person, (b) such Person is able to generally pay all liabilities (including trade debt) of such Person as such liabilities become absolute and mature in the ordinary course of business and (c) such Person does not have unreasonably small capital after giving due consideration to the prevailing practice in the industry in which it is engaged or will be engaged. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"**SSA**" means the Social Security Act of 1935, codified at Title 42, Chapter 7, of the United States Code.

"**Stock Acquisition**" means the purchase or other acquisition by Borrower or any of its Subsidiaries of all of the Equity Interests (by merger, stock purchase or otherwise) in any other Person.

"**Subordinated Debt**" means any Indebtedness in the form of or otherwise constituting term debt incurred by any Credit Party or any Subsidiary thereof (including any Indebtedness incurred in connection with any Acquisition or other Investment) that: (a) is subordinated in right of payment to the Obligations at all times until all of the Obligations have been paid, performed or discharged in full and Borrower has no further right to obtain any Credit Extension hereunder, pursuant to a subordination, intercreditor or other similar agreement that is in form and substance reasonably satisfactory to the Collateral Agent (which agreement shall include turnover provisions that are reasonably satisfactory to the Collateral Agent); (b) except as permitted by clause (d) below, is not subject to scheduled amortization, redemption (mandatory), sinking fund or similar payment and does not have a final maturity, in each case, before a date that is at least 180 days following the Term Loan Maturity Date; (c) does not include covenants (including financial covenants) and agreements (excluding agreements with respect to maturity, amortization, pricing and other economic terms) that, taken as a whole, are more restrictive or onerous on the Credit Parties in any material respect than the comparable covenants and agreements, taken as a whole, in the Loan Documents (as reasonably determined by a Responsible Officer of such Credit Party in good faith); (d) is not subject to repayment or prepayment, including pursuant to a put option exercisable by the holder of any such Indebtedness, prior to a date that is at least 180 days following the final maturity thereof except in the case of an event of default or change of control (or, in each case, the equivalent thereof, however described); and (e) does not provide or otherwise include provisions having the effect of providing that a default or event of default (or the equivalent thereof, however described) under or in respect of such Indebtedness shall exist, or such Indebtedness shall otherwise become due prior to its scheduled maturity or the holder or holders thereof or any trustee or agent on its or their behalf shall be permitted (with or without the giving of notice, the lapse of time or both) to cause any such Indebtedness to become due, or to require the prepayment,

repurchase, redemption or defeasance thereof, prior to its scheduled maturity, in any such case upon the occurrence of a Default or Event of Default hereunder unless and until the Obligations have been declared, or have otherwise automatically become, immediately due and payable pursuant to Section 8.1(a). Notwithstanding the foregoing, Indebtedness under Permitted Convertible Indebtedness shall not constitute Subordinated Debt.

"**Subsidiary**" means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which more than fifty percent (50.0%) of whose shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors (or similar body) of such corporation, partnership or other entity are at the time owned, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of a Credit Party.

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

"**Term Loan**" means each of the Tranche A Loan, the Tranche B Loan, the Tranche C Loan and the Tranche D Loan, as applicable, and "**Term Loans**" means, collectively, the Tranche A Loan and, to the extent funded, each of the Tranche B Loan, the Tranche C Loan and the Tranche D Loan.

"**Term Loan Commitment**" mean each of the Tranche A Loan Commitment, the Tranche B Loan Commitment, the Tranche C Loan Commitment and the Tranche D Loan Commitment, as applicable, and "**Term Loan Commitments**" means, collectively, the Tranche A Loan Commitment, the Tranche B Loan Commitment, the Tranche C Loan Commitment and the Tranche D Loan Commitment.

"**Term Loan Maturity Date**" means the date of the 5th-year anniversary of the Tranche A Closing Date.

"**Term Loan Rate**" is defined in Section 2.3(a)(i).

"**Term SOFR**" means, for any day in any calendar month, the Term SOFR Reference Rate for a tenor of three (3) months to the applicable Interest Period on the day (such day, the "**Periodic Term SOFR Determination Day**") that is two (2) U.S. Government Securities Business Days' prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator 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 Periodic Term SOFR Determination Day; provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"**Term SOFR Administrator**" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Collateral Agent in its reasonable discretion).

"**Term SOFR Reference Rate**" means the forward-looking term rate based on SOFR.

"**Territory**" means, with respect to Product, the United States.

"**Third Party IP**" is defined in Section 4.6(l).

"**TP-05**" is defined as the drug product candidate TP-05, a novel investigative oral formulation of lotilaner, described in ClinicalTrials.gov ID NCT05387083; provided that, in no event shall TP-05 include any drug product approved or studied for an indication for which XDEMVY or any successor product is approved.

"**Trademark License**" means any agreement, whether written or oral, providing for the grant by or to a Person of any right to use any Trademark.

"**Trademarks**" means (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, service marks, elements of package or trade dress of goods or services, logos and other source or business identifiers, together with the goodwill associated therewith, all registrations and recordings thereof, and all applications in connection therewith, in the United States Patent and Trademark Office or in any similar office or agency of the United States or any state thereof or in any similar office or agency anywhere in the world in which foreign counterparts are registered or issued, and (b) all renewals thereof.

"**Trading Day**" means a day on which exchanges in the United States are open for the buying and selling of securities.

"**Tranche A Closing Date**" means the date on which the Tranche A Loan is advanced by Lenders, which, as indicated in the completed Advance Request Form in the form of Exhibit A hereto for the Tranche A Loan delivered by Borrower to the Collateral Agent, and subject to the satisfaction of the conditions precedent to the Tranche A Loan set forth in Section 3.1, Section 3.5, Section 3.6 and Section 3.7, shall be the Effective Date.

"**Tranche A Commitment**" means, with respect to any Lender, the commitment of such Lender to make the Credit Extensions relating to the Tranche A Loan on the Tranche A Closing Date in the aggregate principal amount set forth opposite such Lender's name on Exhibit D attached hereto.

"**Tranche A Loan**" is defined in Section 2.2(a)(i).

"**Tranche A Loan Amount**" means an original principal amount equal to Seventy-Five Million Dollars ($75,000,000.00).

"**Tranche A Makewhole Amount**" means, as of any date of determination occurring prior to the 2nd-year anniversary of the Tranche A Closing Date, an amount equal to the sum of all interest that would have accrued and been payable from such date through the 2nd-year anniversary of the Tranche A Closing Date.

"**Tranche A Note**" means a promissory note in substantially the form attached hereto as Exhibit B-1, as it may be amended, restated, supplemented or otherwise modified from time to time.

"**Tranche A Prepayment Premium**" means, with respect to any prepayment of the Tranche A Loan by Borrower pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), an amount equal to the product of the amount of any principal so prepaid, *multiplied by*:

(a) if such prepayment occurs prior to the 3rd-year anniversary of the Tranche A Closing Date, 0.03;

(b) if such prepayment occurs on or after the 3rd-year anniversary of the Tranche A Closing Date but prior to the 4th-year anniversary of the Tranche A Closing Date, 0.02; and

(c) if such prepayment occurs on or after the 4th-year anniversary of the Tranche A Closing Date Tranche A Closing Date but prior to the Term Loan Maturity Date, 0.01.

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

"**Tranche B Closing Date**" means the date on which the Tranche B Loan is advanced by Lenders, which, at Borrower's option and as indicated in the Advance Request Form for the Tranche B Loan and subject to the satisfaction

of the conditions precedent to the Tranche B Loan set forth in Section 3.2, Section 3.5, Section 3.6 and Section 3.7, shall be sixty (60) days (or such shorter period as may be agreed to by Lenders) following the delivery by Borrower to Collateral Agent of a completed Advance Request Form in the form of Exhibit A hereto for the Tranche B Loan and, in no event, later than March 1, 2025.

"**Tranche B Commitment**" means, with respect to any Lender, the commitment of such Lender to make the Credit Extensions relating to the Tranche B Loan on the Tranche B Closing Date in the aggregate principal amount set forth opposite such Lender's name on Exhibit D attached hereto; provided, however, that the parties hereto agree that such commitment, and any obligations of such Lender hereunder with respect thereto, shall terminate automatically without any further action by any party hereto and be of no further force and effect if Borrower does not timely deliver an Advance Request Form to the Collateral Agent on or before December 31, 2024 with respect to the request to fund the Tranche B Loan Amount on a Tranche B Closing Date (in which case, for purposes of this Agreement, such Lender's Tranche B Commitment would become zero).

"**Tranche B Loan**" is defined in Section 2.2(a)(ii).

"**Tranche B Loan Amount**" means an original principal amount equal to up to Twenty-Five Million Dollars ($25,000,000.00).

"**Tranche B Makewhole Amount**" means, as of any date of determination occurring prior to the 2nd-year anniversary of the Tranche B Closing Date, an amount equal to the sum of all interest that would have accrued and been payable from such date through the 2nd-year anniversary of the Tranche B Closing Date.

"**Tranche B Note**" means a promissory note in substantially the form attached hereto as Exhibit B-2, as it may be amended, restated, supplemented or otherwise modified from time to time.

"**Tranche B Prepayment Premium**" means, with respect to any prepayment of the Tranche B Loan by Borrower pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), an amount equal to the product of the amount of any principal so prepaid, *multiplied by*:

(a) if such prepayment occurs prior to the 3rd-year anniversary of the Tranche B Closing Date, 0.03;

(b) if such prepayment occurs on or after the 3rd-year anniversary of the Tranche B Closing Date but prior to the 4th-year anniversary of the Tranche B Closing Date, 0.02; and

(c) if such prepayment occurs on or after the 4th-year anniversary of the Tranche B Closing Date but prior to the Term Loan Maturity Date, 0.01.

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

"**Tranche C Closing Date**" means the date on which the Tranche C Loan is advanced by Lenders, which, subject to the satisfaction of the conditions precedent to the Tranche C Loan set forth in Section 3.3, Section 3.5, Section 3.6 and Section 3.7, shall be sixty (60) days (or such shorter period as may be agreed to by Lenders) following the delivery by Borrower to Collateral Agent of a completed Advance Request Form in the form of Exhibit A hereto for the Tranche C Loan and, in no event, later than August 29, 2025.

"**Tranche C Commitment**" means, with respect to any Lender, the commitment of such Lender to make the Credit Extensions relating to the Tranche C Loan on the Tranche C Closing Date in the aggregate principal amount set forth opposite such Lender's name on Exhibit D attached hereto; provided, however, that the parties hereto agree that such commitment, and any obligations of such Lender hereunder with respect thereto, shall terminate automatically without any further action by any party hereto and be of no further force and effect if Borrower does not timely deliver an Advance Request Form to the Collateral Agent on or before June 30, 2025 with respect to the request to fund the Tranche C Loan Amount on a Tranche C Closing Date (in which case, for purposes of this Agreement, such Lender's Tranche C Commitment would become zero).

"**Tranche C Loan**" is defined in Section 2.2(a)(iii).

"**Tranche C Loan Amount**" means an original principal amount equal to up to Fifty Million Dollars ($50,000,000.00).

"**Tranche C Makewhole Amount**" means, as of any date of determination occurring prior to the 2nd-year anniversary of the Tranche C Closing Date, an amount equal to the sum of all interest that would have accrued and been payable from such date through the 2nd-year anniversary of the Tranche C Closing Date.

"**Tranche C Note**" means a promissory note in substantially the form attached hereto as Exhibit B-3, as it may be amended, restated, supplemented or otherwise modified from time to time.

"**Tranche C Prepayment Premium**" means, with respect to any prepayment of the Tranche C Loan by Borrower pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), an amount equal to the product of the amount of any principal so prepaid, *multiplied by*:

(a) if such prepayment occurs prior to the 3rd-year anniversary of the Tranche C Closing Date, 0.03;

(b) if such prepayment occurs on or after the 3rd-year anniversary of the Tranche C Closing Date but prior to the 4th-year anniversary of the Tranche C Closing Date, 0.02; and

(c) if such prepayment occurs on or after the 4th-year anniversary of the Tranche C Closing Date but prior to the Term Loan Maturity Date, 0.01.

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

"**Tranche D Closing Date**" means the date on which the Tranche D Loan is advanced by Lenders, which, subject to the satisfaction of the conditions precedent to the Tranche D Loan set forth in Section 3.4, Section 3.5, Section 3.6 and Section 3.7, shall be sixty (60) days (or such shorter period as may be agreed to by Lenders) following the delivery by Borrower to Collateral Agent of a completed Advance Request Form in the form of Exhibit A hereto for the Tranche D Loan and, in no event, later than March 1, 2026.

"**Tranche D Commitment**" means, with respect to any Lender, the commitment of such Lender to make the Credit Extensions relating to the Tranche D Loan on the Tranche D Closing Date in the aggregate principal amount set forth opposite such Lender's name on Exhibit D attached hereto.

"**Tranche D Loan**" is defined in Section 2.2(a)(iv).

"**Tranche D Loan Amount**" means an original principal amount equal to up to Fifty Million Dollars ($50,000,000.00).

"**Tranche D Makewhole Amount**" means, as of any date of determination occurring prior to the 2nd-year anniversary of the Tranche D Closing Date, an amount equal to the sum of all interest that would have accrued and been payable from such date through the 2nd-year anniversary of the Tranche D Closing Date.

"**Tranche D Note**" means a promissory note in substantially the form attached hereto as Exhibit B-4, as it may be amended, restated, supplemented or otherwise modified from time to time.

"**Tranche D Prepayment Premium**" means, with respect to any prepayment of the Tranche D Loan by Borrower pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), an amount equal to the product of the amount of any principal so prepaid, *multiplied by*:

(a) if such prepayment occurs prior to the 3rd-year anniversary of the Tranche D Closing Date, 0.03;

(b) if such prepayment occurs on or after the 3rd-year anniversary of the Tranche D Closing Date but prior to the 4th-year anniversary of the Tranche D Closing Date, 0.02; and

(c) if such prepayment occurs on or after the 4th-year anniversary of the Tranche D Closing Date but prior to the Term Loan Maturity Date, 0.01.

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

"**Transfer**" is defined in Section 6.1.

"**Treasury Regulations**" mean those regulations promulgated pursuant to the IRC.

"**TRICARE**" means, collectively, a program of medical benefits covering former and active members of the uniformed services and certain of their dependents, financed and administered by the United States Departments of Defense, Health and Human Services and Transportation, and all laws applicable to such programs.

"**UKBA**" is defined in Section 4.18(a).

"**Unadjusted Benchmark Replacement**" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"**U.K. Laws**" means all applicable statutes, rules and regulations implemented administered or enforced by the MHRA, the National Health Services, or the competent authorities of the United Kingdom's constituent countries, including, but not limited to, the Human Medicines Regulations 2012 (SI 2012/1916), and related implementing legislation.

"**United States**" or "**U.S.**" means the United States of America, its fifty (50) states, the District of Columbia and Puerto Rico.

"**United Kingdom**" or "**U.K.**" means the United Kingdom, its constituent countries, and any other jurisdiction within the United Kingdom.

"**U.S. Government Securities Business Day**" means any day except for (a) a Saturday, (b) a Sunday or (c) 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.

"**Wholly-Owned Subsidiary**" means, with respect to any Person, a Subsidiary of such Person, all of the Equity Interests of which (other than directors' qualifying shares or nominee or other similar shares required pursuant to Requirements of Law) are owned by such Person or another Wholly-Owned Subsidiary of such Person. Unless the context otherwise requires, each reference to a Wholly-Owned Subsidiary herein shall be a reference to a Wholly-Owned Subsidiary of a Credit Party.

"**Withdrawal Event**" means (a) any voluntary withdrawal or removal of Product described in clause (a)(i) of the definition of Product by any Credit Party or any of its Subsidiaries in the Territory, (b) the loss of marketing authorization for such Product in the Territory, or (c) the receipt by any Credit Party or any of its Subsidiaries of any written notice from the FDA or any other Regulatory Agency of a pending recommendation or a final decision to withdraw marketing authorization for such Product in the Territory.

"**Withdrawal Liability**" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

TARSUS PHARMACEUTICALS, INC.,
as Borrower

By_____/s/ Bobak Azamian_____

Name: Bobak Azamian, M.D., Ph.D.

Title: Chief Executive Officer and Chairman

BIOPHARMA CREDIT PLC,
as Collateral Agent

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By /s/ Pedro Gonzalez de Cosio
Name: Pedro Gonzalez de Cosio
Title: Managing Member

BPCR LIMITED PARTNERSHIP,
as a Lender

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By /s/ Pedro Gonzalez de Cosio
Name: Pedro Gonzalez de Cosio
Title: Managing Member

BIOPHARMA CREDIT PLC INVESTMENTS V (MASTER) LP,
as a Lender

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By /s/ Pedro Gonzalez de Cosio
Name: Pedro Gonzalez de Cosio
Title: CEO and Managing Member

EXHIBIT A

LOAN ADVANCE REQUEST FORM

Reference is made to that certain Loan Agreement, dated as of April 18, 2024, by and among TARSUS PHARMACEUTICALS, INC, a Delaware corporation ("**Borrower**"), the Guarantors signatory thereto or otherwise party thereto from time to time, as additional Credit Parties, BIOPHARMA CREDIT PLC (in its capacity as "**Collateral Agent**"), BPCR LIMITED PARTNERSHIP (a "**Lender**") and BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP (a "**Lender**"), acting by its General Partner, BioPharma Credit Investments V GP LLC (the "**Loan Agreement**"); with any capitalized term not otherwise defined herein having the meaning ascribed to such term in the Loan Agreement. This Loan Advance Request is being delivered pursuant to Section 3.7 of the Loan Agreement.

The undersigned, being the duly elected and acting _____ of Borrower does hereby certify to each Lender and the Collateral Agent, solely in his/her capacity as an authorized officer of Borrower and not in his/her personal capacity, that, on [the Tranche A Closing Date] [[_____, 20__] (the "**Tranche B Closing Date**")] [[_____, 20__] (the "**Tranche C Closing Date**")] [[_____, 20__] (the "**Tranche D Closing Date**")]:

1. Borrower hereby requests a borrowing of [the Tranche A Loan] [the Tranche B Loan] [the Tranche C Loan] [the Tranche D Loan];

2. the representations and warranties made by the Credit Parties in Section 4 of the Loan Agreement and in the other Loan Documents are true and correct in all material respects, unless any such representation or warranty is stated to relate to a specific earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (it being understood that any representation or warranty that is qualified as to "materiality," "Material Adverse Change," or similar language shall be true and correct in all respects on the Tranche [A][B][C][D] Closing Date or as of such earlier date, as applicable);

3. no Default or Event of Default has occurred since the [Effective Date] [Tranche A Closing Date] [Tranche B Closing Date] [Tranche C Closing Date] or is occurring as of the date hereof;

4. each of the Credit Parties is in compliance with the covenants and requirements contained in Sections 5 and 6 of the Loan Agreement;

4. all conditions referred to in Section 3 of the Loan Agreement to the making of the Tranche [A][B][C][D] Loan to be made on the Tranche [A][B][C][D] Closing Date have been satisfied (or waived in writing by the Required Lenders);

5. no Material Adverse Change has occurred since the [Effective Date] [Tranche A Closing Date] [Tranche B Closing Date] [Tranche C Closing Date];

6. the undersigned is a Responsible Officer of Borrower; and

7. the proceeds of the [Tranche A Loan] [Tranche B Loan] [Tranche C Loan] [Tranche D Loan] shall be disbursed as set forth on Attachment A hereto.

Dated: _____, 202_

[Signature page follows]

TARSUS PHARMACEUTICALS, INC.,
as Borrower

By_____

Name:_____

Title:_____

EXHIBIT B-1

THIS TRANCHE A NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). HOLDERS OF THIS TRANCHE A NOTE SHOULD CONTACT JEFF FARROW, CHIEF FINANCIAL OFFICER, TARSUS PHARMACEUTICALS, INC., 15440 LAGUNA CANYON RD., SUITE 160, IRVINE, CA 92618 IN WRITING TO OBTAIN (1) THE ISSUE PRICE AND ISSUE DATE OF THIS TRANCHE A NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THIS TRANCHE A NOTE AND (3) THE YIELD TO MATURITY OF THIS TRANCHE A NOTE.

TRANCHE A NOTE

$37.500,000.00 Dated: [_____], 2024

FOR VALUE RECEIVED, the undersigned, TARSUS PHARMACEUTICALS, INC., a Delaware corporation ("**Borrower**"), HEREBY PROMISES TO PAY to [BPCR LIMITED PARTNERSHIP] [BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP] ("**Lender**"), or its registered assignees, the principal amount of THIRTY-SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS ($37,500,000.00), plus interest on the aggregate unpaid principal amount hereof at a per annum rate equal to at a *per annum* rate equal to Term SOFR *plus* the Applicable Margin, and in accordance with the terms of the Loan Agreement dated as of April 18, 2024 by and among Borrower, Lender and the other parties thereto (as may be amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount, all accrued and unpaid interest hereunder, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents shall be due and payable on the Term Loan Maturity Date. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Borrower shall pay all principal of the Tranche A Loan on the Term Loan Maturity Date. All unpaid principal with respect to the Tranche A Loan (and, for the avoidance of doubt, all accrued and unpaid interest, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents) is due and payable in full on the Term Loan Maturity Date. Interest shall accrue on this Tranche A Note commencing on, and including, the date of this Tranche A Note, and shall accrue on this Tranche A Note, or any portion thereof, for the day on which this Tranche A Note or such portion is paid. Interest on this Tranche A Note shall be payable in accordance with Section 2.3 of the Loan Agreement.

Principal, interest and all other amounts due with respect to this Tranche A Note are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Tranche A Note.

The Loan Agreement, among other things, (a) provides for the making of secured Term Loans by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Tranche A Note may not be prepaid except as set forth in Section 2.2(c) of the Loan Agreement or as expressly provided in Section 8.1 of the Loan Agreement.

This Tranche A Note and the obligation of Borrower to repay the unpaid principal amount of this Tranche A Note, interest thereon, and all other amounts due Lender under the Loan Agreement are secured pursuant to the Collateral Documents.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Tranche A Note are hereby waived.

THIS TRANCHE A NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Note Register; Ownership of Note. The ownership of an interest in this Tranche A Note shall be registered on a record of ownership maintained by Borrower. Notwithstanding anything else in this Tranche A Note to the contrary, the

right to the principal of, and stated interest on, this Tranche A Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Tranche A Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Tranche A Note on the part of any other Person.

IN WITNESS WHEREOF, Borrower has caused this Tranche A Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

TARSUS PHARMACEUTICALS, INC.,
as Borrower

By: _____

Name: _____

Title: _____

EXHIBIT B-2

THIS TRANCHE B NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). HOLDERS OF THIS TRANCHE B NOTE SHOULD CONTACT JEFF FARROW, CHIEF FINANCIAL OFFICER, TARSUS PHARMACEUTICALS, INC., 15440 LAGUNA CANYON RD., SUITE 160, IRVINE, CA 92618 IN WRITING TO OBTAIN (1) THE ISSUE PRICE AND ISSUE DATE OF THIS TRANCHE B NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THIS TRANCHE B NOTE AND (3) THE YIELD TO MATURITY OF THIS TRANCHE B NOTE.

TRANCHE B NOTE

$_____.00 Dated: [_____], 20__

FOR VALUE RECEIVED, the undersigned, TARSUS PHARMACEUTICALS, INC., a Delaware corporation ("**Borrower**"), HEREBY PROMISES TO PAY to [BPCR LIMITED PARTNERSHIP] [BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP] ("**Lender**"), or its registered assignees, the principal amount of [● ($_____.00)], plus interest on the aggregate unpaid principal amount hereof at a per annum rate equal to at a *per annum* rate equal to Term SOFR *plus* the Applicable Margin, and in accordance with the terms of the Loan Agreement dated as of April 18, 2024 by and among Borrower, Lender and the other parties thereto (as may be amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount, all accrued and unpaid interest hereunder, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents shall be due and payable on the Term Loan Maturity Date. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Borrower shall pay all principal of the Tranche B Loan on the Term Loan Maturity Date. All unpaid principal with respect to the Tranche B Loan (and, for the avoidance of doubt, all accrued and unpaid interest, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents) is due and payable in full on the Term Loan Maturity Date. Interest shall accrue on this Tranche B Note commencing on, and including, the date of this Tranche B Note, and shall accrue on this Tranche B Note, or any portion thereof, for the day on which this Tranche B Note or such portion is paid. Interest on this Tranche B Note shall be payable in accordance with Section 2.3 of the Loan Agreement.

Principal, interest and all other amounts due with respect to this Tranche B Note are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Tranche B Note.

The Loan Agreement, among other things, (a) provides for the making of secured Term Loans by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Tranche B Note may not be prepaid except as set forth in Section 2.2(c) of the Loan Agreement or as expressly provided in Section 8.1 of the Loan Agreement.

This Tranche B Note and the obligation of Borrower to repay the unpaid principal amount of this Tranche B Note, interest thereon, and all other amounts due Lender under the Loan Agreement are secured pursuant to the Collateral Documents.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Tranche B Note are hereby waived.

THIS TRANCHE B NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Note Register; Ownership of Note. The ownership of an interest in this Tranche B Note shall be registered on a record of ownership maintained by Borrower. Notwithstanding anything else in this Tranche B Note to the contrary, the right to the principal of, and stated interest on, this Tranche B Note may be transferred only if the transfer is registered

on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Tranche B Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Tranche B Note on the part of any other Person.

IN WITNESS WHEREOF, Borrower has caused this Tranche B Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

TARSUS PHARMACEUTICALS, INC.,
as Borrower

By: _____

Name: _____

Title: _____

EXHIBIT B-3

THIS TRANCHE C NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). HOLDERS OF THIS TRANCHE C NOTE SHOULD CONTACT JEFF FARROW, CHIEF FINANCIAL OFFICER, TARSUS PHARMACEUTICALS, INC., 15440 LAGUNA CANYON RD., SUITE 160, IRVINE, CA 92618 IN WRITING TO OBTAIN (1) THE ISSUE PRICE AND ISSUE DATE OF THIS TRANCHE C NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THIS TRANCHE C NOTE AND (3) THE YIELD TO MATURITY OF THIS TRANCHE C NOTE.

TRANCHE C NOTE

$_____.00 Dated: [_____], 20__

FOR VALUE RECEIVED, the undersigned, TARSUS PHARMACEUTICALS, INC., a Delaware corporation ("**Borrower**"), HEREBY PROMISES TO PAY to [BPCR LIMITED PARTNERSHIP] [BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP] ("**Lender**"), or its registered assignees, the principal amount of [● ($_____.00)], plus interest on the aggregate unpaid principal amount hereof at a per annum rate equal to at a *per annum* rate equal to Term SOFR *plus* the Applicable Margin, and in accordance with the terms of the Loan Agreement dated as of April 18, 2024 by and among Borrower, Lender and the other parties thereto (as may be amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount, all accrued and unpaid interest hereunder, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents shall be due and payable on the Term Loan Maturity Date. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Borrower shall pay all principal of the Tranche C Loan on the Term Loan Maturity Date. All unpaid principal with respect to the Tranche C Loan (and, for the avoidance of doubt, all accrued and unpaid interest, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents) is due and payable in full on the Term Loan Maturity Date. Interest shall accrue on this Tranche C Note commencing on, and including, the date of this Tranche C Note, and shall accrue on this Tranche C Note, or any portion thereof, for the day on which this Tranche C Note or such portion is paid. Interest on this Tranche C Note shall be payable in accordance with Section 2.3 of the Loan Agreement.

Principal, interest and all other amounts due with respect to this Tranche C Note are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Tranche C Note.

The Loan Agreement, among other things, (a) provides for the making of secured Term Loans by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Tranche C Note may not be prepaid except as set forth in Section 2.2(c) of the Loan Agreement or as expressly provided in Section 8.1 of the Loan Agreement.

This Tranche C Note and the obligation of Borrower to repay the unpaid principal amount of this Tranche C Note, interest thereon, and all other amounts due Lender under the Loan Agreement are secured pursuant to the Collateral Documents.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Tranche C Note are hereby waived.

THIS TRANCHE C NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Note Register; Ownership of Note. The ownership of an interest in this Tranche C Note shall be registered on a record of ownership maintained by Borrower. Notwithstanding anything else in this Tranche C Note to the contrary, the right to the principal of, and stated interest on, this Tranche C Note may be transferred only if the transfer is registered

on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Tranche C Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Tranche C Note on the part of any other Person.

IN WITNESS WHEREOF, Borrower has caused this Tranche C Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

TARSUS PHARMACEUTICALS, INC.,
as Borrower

By: _____

Name: _____

Title: _____

EXHIBIT B-4

THIS TRANCHE D NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). HOLDERS OF THIS TRANCHE D NOTE SHOULD CONTACT JEFF FARROW, CHIEF FINANCIAL OFFICER, TARSUS PHARMACEUTICALS, INC., 15440 LAGUNA CANYON RD., SUITE 160, IRVINE, CA 92618 IN WRITING TO OBTAIN (1) THE ISSUE PRICE AND ISSUE DATE OF THIS TRANCHE D NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THIS TRANCHE D NOTE AND (3) THE YIELD TO MATURITY OF THIS TRANCHE D NOTE.

TRANCHE D NOTE

$_____.00 Dated: [_____], 20__

FOR VALUE RECEIVED, the undersigned, TARSUS PHARMACEUTICALS, INC., a Delaware corporation ("**Borrower**"), HEREBY PROMISES TO PAY to [BPCR LIMITED PARTNERSHIP] [BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP] ("**Lender**"), or its registered assignees, the principal amount of [● ($_____.00)], plus interest on the aggregate unpaid principal amount hereof at a per annum rate equal to at a *per annum* rate equal to Term SOFR *plus* the Applicable Margin, and in accordance with the terms of the Loan Agreement dated as of April 18, 2024 by and among Borrower, Lender and the other parties thereto (as may be amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount, all accrued and unpaid interest hereunder, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents shall be due and payable on the Term Loan Maturity Date. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Borrower shall pay all principal of the Tranche D Loan on the Term Loan Maturity Date. All unpaid principal with respect to the Tranche D Loan (and, for the avoidance of doubt, all accrued and unpaid interest, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents) is due and payable in full on the Term Loan Maturity Date. Interest shall accrue on this Tranche D Note commencing on, and including, the date of this Tranche D Note, and shall accrue on this Tranche D Note, or any portion thereof, for the day on which this Tranche D Note or such portion is paid. Interest on this Tranche D Note shall be payable in accordance with Section 2.3 of the Loan Agreement.

Principal, interest and all other amounts due with respect to this Tranche D Note are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Tranche D Note.

The Loan Agreement, among other things, (a) provides for the making of secured Term Loans by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Tranche D Note may not be prepaid except as set forth in Section 2.2(c) of the Loan Agreement or as expressly provided in Section 8.1 of the Loan Agreement.

This Tranche D Note and the obligation of Borrower to repay the unpaid principal amount of this Tranche D Note, interest thereon, and all other amounts due Lender under the Loan Agreement are secured pursuant to the Collateral Documents.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Tranche D Note are hereby waived.

THIS TRANCHE D NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Note Register; Ownership of Note. The ownership of an interest in this Tranche D Note shall be registered on a record of ownership maintained by Borrower. Notwithstanding anything else in this Tranche D Note to the contrary, the right to the principal of, and stated interest on, this Tranche D Note may be transferred only if the transfer is registered

on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Tranche D Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Tranche D Note on the part of any other Person.

IN WITNESS WHEREOF, Borrower has caused this Tranche D Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

TARSUS PHARMACEUTICALS, INC.,
as Borrower

By: _____

Name: _____

Title: _____

EXHIBIT C

FORM OF SECURITY AGREEMENT

GUARANTY AND SECURITY AGREEMENT

Dated as of April __, 2024

by

TARSUS PHARMACEUTICALS, INC.

(as *Borrower* and a *Grantor*),

and

EACH OTHER GRANTOR FROM TIME TO TIME PARTY HERETO

in favor of

BIOPHARMA CREDIT PLC

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

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GUARANTY AND SECURITY AGREEMENT, dated as of April __, 2024, by TARSUS PHARMACEUTICALS, INC., a Delaware limited liability company ("Borrower" and a Grantor), and each other Person that becomes a party hereto in the capacity of a Grantor hereunder pursuant to Section 8.6, in favor of BIOPHARMA CREDIT PLC, a public limited company incorporated under the laws of England and Wales (as the "Collateral Agent") on behalf of Lenders and each other Secured Party.

W I T N E S S E T H:

WHEREAS, pursuant to the Loan Agreement dated as of April __, 2024 (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Loan Agreement") by and among Borrower, the Collateral Agent, Lenders and the other parties thereto, Lenders have agreed to make extensions of credit to Borrower upon the terms and subject to the conditions set forth therein;

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

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

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

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

ARTICLE 1

DEFINED TERMS

Section 1.1 Definitions. Capitalized terms used herein without definition are used as defined in the Loan Agreement and the terms of the lead-in paragraph of Section 13.1 of the Loan Agreement are incorporated herein by reference.

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

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

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

"Applicable IP Office" means, as applicable, the United States Patent and Trademark Office or the United States Copyright Office.

"Collateral" has the meaning specified in Section 3.1.

"Collateral Agent" means BioPharma Credit PLC, together with its successors and permitted assigns.

"Excluded Property" means, collectively:

(i) any "intent-to-use" application for registration of a United States Trademark for which a "Statement of Use" pursuant to Section 1(d) of the Lanham Act, 15 U.S.C. § 1051 (or any successor provision) or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act, 15 U.S.C. § 1051 (or any successor provision) has not been filed with and accepted by the Applicable IP Office, solely to the extent, if any, that, and only during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use United States Trademark application under Requirements of Law; provided, however, that upon filing and acceptance by the Applicable IP Office of such statement of use or amendment to allege use (as applicable), such intent-to-use application shall be considered Collateral for all purposes under the Loan Documents;

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

(iii) any rights or interests in any permit, lease, license, contract, instrument or other agreement held by any Grantor with respect to which, the grant to the Collateral Agent, in favor of and for the benefit of Lenders and other Secured Parties, of a security interest in and Lien thereupon, and the pledge to the Collateral Agent thereof, in favor of and for the benefit of Lenders and other Secured Parties, to secure the Obligations (and any guaranty thereof) require the consent, authorization, approval or waiver of any Governmental Authority or other third party (other than Borrower or a directly or indirectly controlled Affiliate of Borrower);

(iv) any other asset or property subject or purported to be subject to a Lien under any Collateral Document held by any Grantor with respect to which, the grant to the Collateral Agent, in favor of and for the benefit of Lenders and other Secured Parties, of a security interest in and Lien thereupon, and the pledge to the Collateral Agent thereof, in favor of and for the benefit of Lenders and other Secured Parties, to secure the Obligations (and any guaranty thereof) require the consent, authorization, approval or waiver of any Governmental Authority or other third party (other than Borrower or an Affiliate of Borrower);

(v) any property or asset subject or purported to be subject to a Lien under any Collateral Document held by any Grantor that is a non-Wholly-Owned Subsidiary with respect to which, the grant to the Collateral Agent, in favor of and for the benefit of Lenders and other Secured Parties, of a security interest therein and Lien thereupon, and the pledge to the Collateral Agent thereof, in favor of and for the benefit of Lenders and other Secured Parties, to secure the Obligations (and any guaranty thereof) are validly prohibited by, or would give any third party (other than Borrower or an Affiliate of Borrower) the right to terminate its obligations under, the Operating Documents of, the joint venture agreement or shareholder agreement with respect to, or any other contract with such third party relating to such non-Wholly-Owned Subsidiary (other than customary non-assignment provisions which are ineffective under Article 9 of the Code or other Requirements of Law), but only, in each case, to the extent, and for so long as such Operating Documents, joint venture agreement, shareholder agreement or other contract is in effect;

(vi) any asset or property subject or purported to be subject to a Lien under any Collateral Document held by any Grantor with respect to which, the cost, difficulty, burden or consequences (including

adverse Tax consequences to Borrower or any its Subsidiaries) of granting the Collateral Agent, in favor of and for the benefit of Lenders and other Secured Parties, a security interest therein and Lien thereupon, and pledging to the Collateral Agent thereof, in favor of and for the benefit of Lenders and other Secured Parties, to secure the Obligations (and any guaranty thereof) are excessive relative to the value to be afforded to Secured Parties thereby;

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

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

(ix) leasehold interests in real property;

(x) fee interests in real property (1) in the case of such real property located in the United States, with a fair market value (reasonably determined in good faith by a Responsible Officer of Borrower or other Grantor, as applicable) less than or equal to $5,000,000 and (2) in the case of such real property located in any non-U.S. jurisdiction, all such real property;

(xi) Vehicles;

(xii) any letter of credit with an amount less than $500,000 and all letter-of-credit rights with respect thereto;

(xiii) commercial tort claims with a predicted value of less than $5,000,000 (as reasonably determined by a Responsible Officer of Borrower in good faith and based upon reasonable assumptions);

(xiv) any other asset or property (other than Intellectual Property and real property) as to which the creation or attachment of a Lien is not governed by Article 9 of the Code;

(xv) Excluded Equity Interests;

(xvi) Excluded Accounts;

(xvii) all insurance policies in respect of business interruption insurance and the proceeds of such policies;

(xviii) any asset or property of any Excluded Subsidiary and any Equity Interests issued by any Excluded Subsidiary, in each case, other than any Excluded Subsidiary that becomes a Discretionary Guarantor (but only for so long as such Subsidiary is a Discretionary Guarantor); and

(xix) any other asset or property held by any Grantor (including any asset or property not located in the United States) with respect to which Borrower and Collateral Agent reasonably determine by mutual written agreement that the grant to Collateral Agent, in favor of and for the benefit of Lenders and other Secured Parties, of a security interest therein and Lien thereupon, and the pledge to Collateral Agent, in favor of and for the benefit of Lenders and other Secured Parties, thereof, to secure the Obligations (and any guaranty thereof) are specifically prohibited by Requirements of Law, but only, in each such case, to the extent, and for so long as, such prohibition is not rendered or deemed ineffective by the Code (or any other applicable Requirements of Law) notwithstanding such prohibition;

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

"Existing Pledged Uncertificated Stock" means the Borrower's Equity Interests in (i) [***], and (ii) [***], as in existence on the date hereof.

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

"Grantor" means Borrower and each other Person that becomes a party hereto in the capacity as a "Grantor" pursuant to Section 8.6, and "Grantors" means, collectively, Borrower and each other such Person.

"Guaranteed Obligations" has the meaning set forth in Section 2.1.

"Guarantor" means each Grantor (other than Borrower), and "Guarantors" means, collectively, Grantors (other than Borrower).

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

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

"IP Security Agreement" means an intellectual property security agreement in the form attached hereto as Annex 3, and "IP Security Agreements" means, collectively, all such intellectual property security agreements.

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

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

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

"Pledged Collateral" means, collectively, the Pledged Stock and the Pledged Debt Instruments.

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

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

"Pledged Stock" means all Pledged Certificated Stock and all Pledged Uncertificated Stock.

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

"Secured Obligations" has the meaning set forth in Section 3.2.

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

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

Section 1.2 Certain Other Terms.

(a) For the purposes of and as used in this Agreement: (i) references to any Person include its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities; (ii) each authorization herein shall be deemed irrevocable and coupled with an interest; and (iii) where the context requires, provisions relating to any Collateral when used in relation to a Grantor shall refer to such Grantor's Collateral or any relevant part thereof.

(b) Other Interpretive Provisions.

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

(ii) This Agreement. The words "hereof", "herein", "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

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

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

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

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

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

ARTICLE 2

GUARANTY

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

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

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

(a) subject to compliance with Section 11.5 of the Loan Agreement and Section 8.5 hereof (as applicable), (i) modify, amend, supplement or otherwise change, (ii) accelerate or otherwise change the time of

payment or (iii) waive or otherwise consent to noncompliance with, any Guaranteed Obligation or any Loan Document;

(b) apply to the Guaranteed Obligations any sums by whomever paid or however realized to any Guaranteed Obligation in such order as provided in the Loan Documents;

(c) refund at any time any payment received by any Secured Party in respect of any Guaranteed Obligation;

(d) in accordance with the terms of the Loan Documents: (i) sell, exchange, enforce, waive, substitute, liquidate, terminate, release, abandon, fail to perfect, subordinate, accept, substitute, surrender, exchange, affect, impair or otherwise alter or release any Collateral for any Guaranteed Obligation or any other guaranty therefor in any manner, (ii) receive, take and hold additional Collateral to secure any Guaranteed Obligation, (iii) add, release or substitute any one or more other Guarantors, makers or endorsers of any Guaranteed Obligation or any part thereof and (iv) otherwise deal in any manner with Borrower or any other Guarantor, maker or endorser of any Guaranteed Obligation or any part thereof; and

(e) subject to Section 11.1 of the Loan Agreement, settle, release, compromise, collect or otherwise liquidate the Guaranteed Obligations.

Section 2.4 Guaranty Absolute and Unconditional. Each Guarantor hereby waives and agrees not to assert any defense (other than the indefeasible payment in full of the Guaranteed Obligations (other than contingent indemnification or reimbursement obligations to the extent no claim giving rise thereto has been asserted)), whether arising in connection with or in respect of any of the following clauses (a) through (f) or otherwise, and hereby agrees that its obligations under this Guaranty are irrevocable, absolute and unconditional and shall not be discharged as a result of or otherwise affected by any of the following clauses (a) through (f) (which may not be pleaded and evidence of which may not be introduced in any proceeding with respect to this Guaranty, in each case except as otherwise agreed in writing by the Collateral Agent):

(a) the invalidity or unenforceability of any obligation of Borrower or any other Guarantor under any Loan Document or any other agreement or instrument relating thereto (including any amendment, consent or waiver thereto), or any security for, or other guaranty of, any Guaranteed Obligation or any part thereof, or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations or any part thereof;

(b) the absence of (i) any attempt to collect any Guaranteed Obligation or any part thereof from Borrower or any other Guarantor or other action to enforce the same or (ii) any action to enforce any Loan Document or any Lien thereunder;

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

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

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

(f) any other defense, setoff, counterclaim or any other circumstance that might otherwise constitute a legal or equitable discharge of Borrower, any other Guarantor or any other Subsidiary of Borrower, in each case other than the indefeasible payment in full of the Guaranteed Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted).

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

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

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

ARTICLE 3

GRANT OF SECURITY INTEREST

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

(a) all accounts;

(b) all as-extracted collateral;

(c) all chattel paper, including electronic chattel paper or tangible chattel paper;

(d) all checks;

(e) all deposit accounts;

(f) all documents;

(g) all encumbrances;

(h) all equipment;

(i) all fixtures;

(j) all general intangibles (including all Company IP Agreements and any other agreements or contracts of any kind, in each case, to the extent constituting general intangibles);

(k) all goods;

(l) all Intellectual Property and IP Licenses (including any IP Licenses under the Company IP Agreements to which a Grantor is a party and the rights of such Grantor thereunder, and all of a Grantor's right, title and interest in, to and under any Internet Domain Names and Software), in each case, including any similar or equivalent rights to those set forth in any of clauses (a) through (f) of the definition of "Intellectual Property";

(m) all instruments (including all promissory notes and similar instruments);

(n) all right, title and interest in, to and under any NDA relating to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory;

(o) all inventory;

(p) all investment property (including Pledged Collateral, Pledged Investment Property, Equity Interests, securities, securities accounts and security entitlements with respect thereto and financial assets carried therein, and all commodity accounts and commodity contracts);

(q) all money (including cash and cash equivalents);

(r) all letters of credit with an amount greater than or equal to $500,000 and all letter-of-credit rights and supporting obligations with respect thereto;

(s) fee interests in real property located in the United States with a fair market value (reasonably determined in good faith by a Responsible Officer of Borrower or other Grantor, as applicable) greater than $5,000,000;

(t) all commercial tort claims with a predicted value of $5,000,000 or more (as reasonably determined by a Responsible Officer of Borrower in good faith and based upon reasonable assumptions) described on Schedule 4 of the Security Disclosure Letter;

(u) all books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time pertain to or evidence or contain information relating to any of the other property described in this Section 3.1;

(v) all property of such Grantor held by the Collateral Agent for the benefit of Lenders and any other Secured Party, including all property of every description, in the custody of or in transit to the Collateral Agent for the benefit of Lenders and any other Secured Party for any purpose, including safekeeping, collection or pledge, for the account of such Grantor or as to which such Grantor may have any right or power, including cash;

(w) all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing;

(x) to the extent not otherwise included, all personal property of such Grantor, whether tangible or intangible and wherever located, and all proceeds, products, accessions, rents, issues and profits of any and all of the foregoing and all collateral security, supporting obligations and guarantees given by any Person with respect to any of the foregoing; and

(y) to the extent not otherwise included, all other properties or assets of whatever kind and nature subject or purported to be subject from time to time to a Lien under any Collateral Document;

excluding, however, in all cases, all Excluded Property.

Section 3.2 Grant of Security Interest in Collateral. Without limiting any other security interest granted to the Collateral Agent, in favor of and for the benefit of Lenders and other Secured Parties, each Grantor, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations of such Grantor (the "Secured Obligations"), hereby pledges, hypothecates and grants to the Collateral Agent, in favor and for the benefit of Lenders and other Secured Parties, to secure the payment and performance in full of all of the Obligations for the benefit of Lenders and other Secured Parties, a first priority Lien (subject only to Permitted Liens) on and continuing security interest in, all of its right, title and interest in, to and under the Collateral of such Grantor, wherever located, whether now owned or hereafter acquired or arising; provided, however, notwithstanding the foregoing, no Lien or security interest is hereby granted on, and "Collateral" shall not include, any Excluded Property; provided, further, that if and when any property or asset shall cease to be Excluded Property, a first priority Lien (subject only to Permitted Liens) on and security interest in such property or asset shall be deemed granted therein and, therefore, "Collateral" shall then include any such property or asset.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

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

Section 4.1 Title; No Other Liens. Except for the Lien granted to the Collateral Agent for the benefit of Lenders and other Secured Parties pursuant to this Agreement and any other Permitted Liens under any Loan Document (including Section 4.2 hereof), such Grantor owns or otherwise has the rights it purports to have in each item of the Collateral, free and clear of any and all Liens or claims of others and except for such irregularities or defects in title as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change. Such Grantor (a) is the record and beneficial owner of the Collateral pledged by it hereunder constituting instruments or certificates and (b) except for Permitted Subsidiary Distribution Restrictions, has rights in or the power to transfer each other item of Collateral in which a Lien is granted by it hereunder, free and clear of any other Lien other than any Permitted Liens.

Section 4.2 Perfection and Priority. Other than in respect of money and other Collateral subject to Section 9-311(a)(1) of the Code, the security interest granted to the Collateral Agent pursuant to this Agreement constitutes a valid and continuing first priority perfected security interest (subject, in the case of priority only, to Permitted Liens that are expressly permitted by the terms of the Loan Agreement or this Agreement, or that by operation of law, have superior priority to the Lien and security interest granted to the Collateral Agent for the benefit of Lenders and other Secured Parties) in favor of and for the benefit of Lenders and other Secured Parties in

all Collateral, subject, for the following Collateral, to the occurrence of the following: (a) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the Code, the completion of the filings and other actions specified on Schedule 2 of the Security Disclosure Letter (which, in the case of all filings and other documents referred to on such schedule, have been duly authorized by the applicable Grantor); (b) with respect to any Collateral Account over which a Control Agreement is required pursuant to Section 5.5 of the Loan Agreement, the execution of Control Agreements; (c) in the case of all United States Trademarks, Patents and Copyrights for which Code filings are insufficient to effectuate perfection, all appropriate filings having been made with the Applicable IP Office, as applicable; (d) in the case of all Pledged Certificated Stock, Pledged Debt Instruments and Pledged Investment Property (other than any Pledged Debt Instrument or Pledged Investment Property that is not evidenced by a physical copy as of the date hereof), the delivery to the Collateral Agent, for the benefit of Lenders and other Secured Parties, of such Pledged Certificated Stock, Pledged Debt Instruments and Pledged Investment Property consisting of instruments and certificates, in each case, properly endorsed for transfer to the Collateral Agent or in blank; (e) in the case of all Pledged Uncertificated Stock (other than the Existing Pledged Uncertificated Stock), the delivery to the Collateral Agent, for the benefit of Lenders and other Secured Parties, of an executed uncertificated stock control agreement among the issuer, the registered owner and the Collateral Agent, substantially in the form attached as Annex 4 hereto; (f) in the case of letter-of-credit rights that are Collateral hereunder and are not supporting obligations of Collateral, the execution of a contractual obligation granting control to Collateral Agent, for the benefit of Lenders and other Secured Parties, over such letter-of-credit rights; (g) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Collateral Agent to the extent requested by Collateral Agent, for the benefit of Lenders and other Secured Parties, over such electronic chattel paper; and (h) in the case of all other instruments that are not Pledged Stock, if any, the delivery thereof to the Collateral Agent, for the benefit of Lenders and other Secured Parties, of such instruments. Such Lien on and security interest in Pledged Stock shall be prior to all other Liens on such Collateral, subject to Permitted Liens having priority over the Collateral Agent's Lien by operation of law or as and to the extent expressly permitted by any Loan Document. Subject to Section 3.2 and this Section 4.2 above, all actions by each Grantor expressly required to be taken under the Loan Documents on or prior to the date hereof, or necessary or desirable under the Code and requested by the Collateral Agent on or prior to the date hereof, to protect and perfect the first priority Lien on and security interest in the Collateral granted hereunder have been duly taken.

Section 4.3 Pledged Stock.

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

(b) All Pledged Certificated Stock required to be delivered on or prior to the date hereof has been delivered to (or otherwise in accordance with the written direction of) the Collateral Agent, for the benefit of Lenders and other Secured Parties, in accordance with Section 5.2(a), and (ii) with respect to all Pledged Uncertificated Stock (other than the Existing Pledged Uncertificated Stock), uncertificated stock control agreements

in the form attached as Annex 4 hereto have been delivered to the Collateral Agent, for the benefit of Lenders and other Secured Parties, in accordance with Section 5.2(a).

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

Section 4.4 Pledged Debt Instruments.

(a) (i) To the Knowledge of the Borrower, all Pledged Debt Instruments constituting Indebtedness owed to a Grantor have been duly authorized, authenticated or issued and delivered by the issuer(s) of such Indebtedness, and is the legal, valid and binding obligation of such issuer(s) and such issuer(s) is not in default thereunder, subject as to the enforcement of remedies to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) Except as set forth on Schedule 3 of the Security Disclosure Letter (or any update thereof or supplement thereto permitted to be made pursuant to the Loan Agreement and received by the Collateral Agent in accordance with the Loan Agreement), none of the Pledged Debt Instruments constituting Indebtedness owed to such Grantor is subordinated in right of payment to any other Indebtedness or subject to the terms of an indenture (or similar agreement or instrument).

(c) All Pledged Debt Instruments constituting Indebtedness owed to such Grantor (other than any Pledged Debt Instrument that is not evidenced by a physical copy as of the date hereof) evidencing Indebtedness or other monetary obligations in an amount, individually or together with one or more other Pledged Debt Instruments, exceeding $5,000,000 (as reasonably determined by a Responsible Officer of Borrower in good faith) and required to be delivered on or prior to the date hereof have been delivered to the Collateral Agent, for the benefit of Lenders and other Secured Parties, in accordance with Section 5.2(a).

ARTICLE 5

COVENANTS

Each Grantor agrees with the Collateral Agent to the following, until the indefeasible payment in full of the Secured Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) and unless the Collateral Agent, on behalf of Lenders and other Secured Parties, otherwise consents in writing:

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

(a) Except as otherwise (x) mutually agreed in writing between Borrower and the Collateral Agent not to be required under this Agreement or the other Loan Documents, (y) mutually agreed in writing between Borrower and the Collateral Agent to be effected solely by filings of financing statements under the Code or amendments thereto to be made by the Collateral Agent or any Lender or its Related Party pursuant to Section 7.2, or (z) as otherwise expressly provided in Sections 5.11, 5.12 or 5.14 of the Loan Agreement, as applicable, such Grantor, in order to grant and maintain a security interest to the Collateral Agent pursuant to this Agreement which constitutes a valid and continuing first priority perfected security interest as described in Section 4.2 (subject only to Permitted Liens), shall promptly:

(i) after the creation or acquisition of any deposit account over which a Control Agreement is required pursuant to Section 5.5 of the Loan Agreement, execute and deliver to the Collateral Agent, for the benefit of Lenders and other Secured Parties, in accordance with Section 5.5 of the Loan Agreement, Control Agreements in form and substance reasonably satisfactory to the Collateral Agent;

(ii) in accordance with the requirements in Section 5.3 (as applicable), with respect to any Trademarks, Patents and Copyrights or any IP Rights relating to the Product, execute and deliver to the Collateral Agent, for the benefit of Lenders and other Secured Parties, all appropriate IP Security Agreements, in form and substance reasonably satisfactory to the Collateral Agent, for the filing thereof by the Collateral Agent or its Related Party, and such Grantor hereby duly authorizes the Collateral Agent and its Related Party to file such IP Security Agreements with the Applicable IP Office;

(iii) with respect to any Pledged Certificated Stock, deliver to the Collateral Agent, for the benefit of Lenders and other Secured Parties, such Pledged Certificated Stock consisting of instruments and certificates, in each case, properly endorsed for transfer to the Collateral Agent or in blank and in form and substance reasonably satisfactory to the Collateral Agent;

(iv) with respect to any Pledged Uncertificated Stock (other than the Existing Pledged Uncertificated Stock), deliver to the Collateral Agent, for the benefit of Lenders and other Secured Parties, an executed uncertificated stock control agreement among the issuer, the registered owner and the Collateral Agent in the form attached as Annex 4 hereto (and otherwise in form and substance reasonably satisfactory to the Collateral Agent);

(v) with respect to any Pledged Debt Instruments and Pledged Investment Property, in each case evidencing Indebtedness or with a fair market value, as applicable, in excess of $5,000,000 (as reasonably determined by a Responsible Officer of Borrower in good faith), deliver to the Collateral Agent, for the benefit of Lenders and other Secured Parties, such Pledged Debt Instruments or Pledged Investment Property (as applicable) consisting of instruments and certificates, in each case, properly endorsed for transfer to the Collateral Agent and in form and substance reasonably satisfactory to the Collateral Agent; and

(vi) maintain the security interest created by this Agreement as a first priority perfected security interest as described in Section 4.2 (subject to Permitted Liens) and take commercially reasonable efforts to warrant and defend the Collateral covered by such security interest and such priority (subject to Permitted Liens) against the claims and demands of all Persons (other than Secured Parties).

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

(c) At any time and from time to time, upon the reasonable written request of the Collateral Agent, such Grantor shall, for the purpose of obtaining or preserving the full benefits of this Agreement and the other Collateral Documents and of the rights and powers herein and therein granted, (i) promptly and duly execute and deliver, and have recorded, such further documents, including an authorization to file (or, as applicable, the filing) of any financing statement or amendment under the Code (or other filings under similar Requirements of Law) in effect in the U.S. or any other jurisdiction with respect to the security interest created hereby and (ii) take such further action as the Collateral Agent may reasonably request in writing that is consistent with the requirements hereof and of the other Loan Documents, including executing and delivering any Control Agreements required by Section 5.5 of the Loan Agreement with respect to the Collateral Accounts, in each case of sub-clause (i) and (ii) above, subject to the terms of Sections 5.11 and 5.12 of the Loan Agreement.

Section 5.2 Pledged Collateral and Pledged Investment Property.

(a) Delivery of Pledged Collateral and Pledged Investment Property. Without limitation to Section 5.1 above, such Grantor shall promptly, and no later than, in the case of clause (i) below, sixty (60) days and, in the case of sub-clause (ii) below, ninety (90) days, in each case after acquiring any Pledged Collateral not owned on the Effective Date

(i) deliver to the Collateral Agent, properly endorsed, in blank or otherwise in suitable form for transfer and in form and substance reasonably satisfactory to the Collateral Agent, (A) all such Pledged Stock that is Pledged Certificated Stock, (B) each Pledged Debt Instrument (other than any Pledged Debt Instrument that is not evidenced by a physical copy) evidencing Indebtedness or other monetary obligations in an amount, individually or together with one or more other Pledged Debt Instruments, exceeding $5,000,000 (as reasonably determined by a Responsible Officer of Borrower in good faith), and (C) all certificates and instruments evidencing Pledged Investment Property with a fair market value, individually or together with one or more other such certificates or instruments, exceeding $5,000,000 (as reasonably determined by a Responsible Officer of Borrower in good faith);

(ii) subject all securities accounts and commodities accounts required to be subject to a Control Agreement pursuant to Section 5.5 of the Loan Agreement to a Control Agreement; and

(iii) cause the issuer of any such Pledged Stock that is Pledged Uncertificated Stock (other than the Existing Pledged Uncertificated Stock) to execute an uncertificated stock control agreement in the form attached hereto as Annex 4, pursuant to which, *inter alia*, such issuer agrees to comply with the Collateral Agent's instructions with respect to such Pledged Uncertificated Stock without further consent by such Grantor, and, for the avoidance of doubt, if any such Pledged Uncertificated Stock (including the Existing Pledged Uncertificated Stock) becomes certificated, promptly (but in any event within thirty (30) days thereof) deliver to the Collateral Agent, in suitable form for transfer and in form and substance reasonably satisfactory to the Collateral Agent, all such certificates, instruments or other similar documents (as defined in the Code).

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

(c) Cash Distributions with respect to Pledged Collateral and Pledged Investment Property. Except as provided in Article 6 and subject to any limitations set forth in the Loan Agreement, such Grantor shall be entitled to receive all cash distributions paid in respect of the Pledged Collateral and the Pledged Investment Property.

(d) Voting Rights. Except as provided in Article 6, such Grantor shall be entitled to exercise all voting, consent and corporate, partnership, limited liability company and similar rights with respect to the Pledged Collateral and Pledged Investment Property; provided, however, that no vote shall be cast, consent, waiver or ratification given or right exercised (or failed to be exercised) or other action taken (or failed to be taken) by such Grantor in any manner that would reasonably be expected to (i) violate or be inconsistent with any of the terms of this Agreement or any other Loan Document or (ii) have the effect of materially impairing such Collateral or the position of any Secured Party or their rights or interests in such Collateral.

Section 5.3 Intellectual Property. If such Grantor shall at any time after the date hereof acquire any Copyright, Trademark or Patent or any IP License that constitutes Collateral relating to the Product, such Grantor shall, promptly (and no later than thirty (30) days after delivery of financial statements pursuant to Section 5.2(a) of the Loan Agreement), execute and deliver to the Collateral Agent, in form and substance reasonably acceptable to the Collateral Agent and suitable for filing in the Applicable IP Office, the IP Security Agreement(s) in the form attached hereto as Annex 3, or in any other form, as required by the Applicable IP Office or other registry in the applicable jurisdiction, in each case, in respect of any such newly-acquired Copyright(s), Trademark(s) or Patent(s) or any such newly-acquired IP License(s) (as applicable) of such Grantor registered in the Applicable IP Office.

ARTICLE 6

REMEDIAL PROVISIONS

Section 6.1 Code and Other Remedies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) IP Licenses. To the extent permitted, and only for the purpose of enabling the Collateral Agent to exercise rights and remedies under this Section 6.1 or Section 8.1 of the Loan Agreement during the continuance of an Event of Default (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, license out, convey, transfer or grant options to purchase any Collateral)

at such time as the Collateral Agent on behalf of Lenders and other Secured Parties shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent, to the extent licensable and assignable: (i) an irrevocable, non-exclusive, assignable, royalty-free license or other right to use (and for its agents or representatives to use) in the Territory (exercisable without payment of royalty or other compensation to such Grantor), including the right to sublicense, use and practice, such Grantor's rights in any and all Intellectual Property constituting Collateral now owned or held or hereafter acquired or held by such Grantor and access to all media in which any of the licensed items may be recorded or stored and to all Software and programs used for the compilation or printout thereof; and (ii) an irrevocable license (without payment of rent or other compensation to such Grantor) to use, operate and occupy all real property owned, operated, leased, subleased or otherwise occupied by such Grantor.

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

Section 6.2 Accounts and Payments in Respect of General Intangibles.

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

(b) At any time during the continuance of an Event of Default, in each case to the extent not prohibited under Section 8.1 of the Loan Agreement:

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

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

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each account and each payment in respect of general intangibles included in the Collateral to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither the Collateral Agent nor any Lender or other Secured Party shall have any obligation or liability under any agreement giving rise to an account or a payment in respect of a general intangible included in the Collateral by reason of or arising out of any Loan Document or the receipt by the Collateral Agent or any Lender or other Secured Party of any payment relating thereto, nor shall the Collateral Agent nor any Lender or other Secured Party be obligated in any manner to perform any obligation of any Grantor under or pursuant to any agreement giving rise to an account or a payment in respect of a general intangible included in the Collateral, to make

any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

Section 6.3 Pledged Collateral.

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

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

(c) Authorization of Issuers. Each Grantor hereby expressly and irrevocably authorizes and instructs, without any further instructions from such Grantor, each issuer of any Pledged Collateral pledged hereunder by such Grantor to, and each Grantor that is an issuer of Pledged Collateral so pledged hereunder hereby agrees to: (i) comply with any instruction received by it from the Collateral Agent in writing that states that an Event of Default is continuing and is otherwise in accordance with the terms of this Agreement, and each Grantor agrees that such issuer shall be fully protected from liabilities to such Grantor in so complying; and (ii) during the continuance of such Event of Default, unless otherwise permitted hereby or by the Loan Agreement, pay any dividend or make any other payment with respect to the Pledged Collateral directly to the Collateral Agent for the benefit of Lenders and other Secured Parties or to any Lender on behalf of itself and other Secured Parties, as the Collateral Agent shall direct; provided, however, that the failure of the Collateral Agent to deliver such notice shall not limit, affect or diminish any right of the Collateral Agent or Lenders hereunder.

Section 6.4 Proceeds to be Turned over to and Held by Collateral Agent. Unless otherwise expressly provided in the Loan Agreement or this Agreement, during the continuance of an Event of Default and,

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

Section 6.5 Sale of Pledged Collateral.

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

(b) Each Grantor agrees to use commercially reasonable efforts to do or cause to be done all such other acts as may be reasonably necessary to make such sale or sales of any portion of the Pledged Collateral pursuant to Section 6.1, this Section 6.5 and Section 8.1 of the Loan Agreement valid and binding and in compliance with all applicable Requirements of Law. Each Grantor further agrees that a breach of any covenant contained herein will cause irreparable injury to the Collateral Agent, Lenders and other Secured Parties, that the Collateral Agent, Lenders and other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained herein shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defense against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing under the Loan Agreement or a defense of unconditional payment in full of the Secured Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted). Each Grantor waives any and all rights of contribution or subrogation upon the sale or disposition of all or any portion of the Pledged Collateral by the Collateral Agent on behalf of Lenders and other Secured Parties.

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

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

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

ARTICLE 7

ADDITIONAL RIGHTS OF COLLATERAL AGENT

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

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

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

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

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

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

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

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

(b) In accordance with, and without limiting the generality of, Section 2.4 of the Loan Agreement, each Grantor agrees to promptly pay or reimburse the Lender Expenses and any other reasonable and documented out-of-pocket expenses of the Collateral Agent and any Lender and other Secured Party incurred in connection with the taking of any actions pursuant to or as otherwise contemplated by this Section 7.1, together with interest thereon at the Default Rate from the date any such expenses were paid by the Collateral Agent or any Lender through the date such expenses are reimbursed by the relevant Grantor, promptly after receipt of a written demand therefor by the Collateral Agent or such Lender, setting forth in reasonable detail such Person's Lender Expenses.

(c) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue of this Section 7.1. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until the indefeasible payment in full of the Secured Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted), this Agreement is terminated and the security interests created hereby are released

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

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

Section 7.4 Duty; Obligations and Liabilities.

(a) Duty of Collateral Agent. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as it deals with similar property for its own account, but in no event in less than a commercially reasonable manner. The powers conferred on the Collateral Agent hereunder are solely to protect each Lender's and other Secured Parties' interest in the Collateral and shall not impose any duty upon the Collateral Agent to exercise any such powers. The Collateral Agent shall be accountable only for amounts that it receives as a result of the exercise of such powers, and neither it nor any of its Related Parties shall be responsible to any Grantor for any act or failure to act hereunder, except for its or their own gross negligence, bad faith or willful misconduct as finally determined by a court of competent jurisdiction. In addition, the Collateral Agent shall not be liable or responsible for any loss or damage to any Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehousemen, carrier, forwarding agency, consignee or other bailee if such Person has been selected by the Collateral Agent in good faith.

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

dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to any Collateral.

ARTICLE 8

MISCELLANEOUS

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

Section 8.2 Release of Collateral and Guarantee Obligations.

(a) When all Secured Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) have been absolutely, unconditionally and irrevocably paid in full, the Collateral shall be automatically released from the Lien created hereby and this Agreement and all obligations (other than those expressly stated to survive such termination) of each Lender and any other Secured Party and each Grantor and Guarantor hereunder shall immediately and automatically terminate, all without delivery of any instrument or performance of any act by any party (except as required hereunder), and all rights of the Collateral Agent, Lenders and any other Secured Parties to the Collateral shall automatically revert to the Grantors. Upon the sale, transfer or other disposition of any Collateral to any Person (other than a Credit Party) that is permitted under the Loan Documents or to which Required Lenders have otherwise consented (including the sale, transfer or other disposition of Pledged Stock of a Grantor to any Person (other than a Credit Party)), such Collateral shall be automatically released from the Lien created hereby. Notwithstanding anything to the contrary herein or any Liens granted to the Collateral Agent, in favor of and for the benefit of Lenders and other Secured Parties, under the Loan Documents, to the extent any Intellectual Property is, as of the Tranche A Closing Date, subject to a license or, after the Tranche A Closing Date, becomes subject to a Permitted License or other license of Intellectual Property permitted pursuant to the Loan Agreement, the use of such Intellectual Property shall be subject to the terms of such license, Permitted License or other license of Intellectual Property permitted under the Loan Agreement, as applicable, including the rights of the licensee under such Permitted License or other license to the continued use of such Intellectual Property licensed thereunder subject to the terms thereof, and in connection with any Permitted License and any other licensing of Intellectual Property not prohibited pursuant to the Loan Agreement, the Collateral Agent, on behalf of Lenders and Secured Parties, shall, upon the written request of the licensee thereunder, enter into customary non-disturbance and similar agreements, in each case in form and substance reasonably satisfactory to the Collateral Agent and the other party or parties thereto.

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

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

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

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

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

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

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

Section 8.6 Additional Grantors and Guarantors; Additional Pledged Collateral.

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

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

Section 8.7 Notices. All notices, requests and demands hereunder to or upon the Collateral Agent or any other party hereto shall be effected in the manner provided for in Section 9 of the Loan Agreement; provided, however, that any such notice, request or demand to or upon any Grantor or any other party hereto (other

than the Collateral Agent) hereunder shall be addressed to Borrower's notice address set forth in Section 9 of the Loan Agreement.

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

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

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

Section 8.11 Choice of Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY PRINCIPLES OF CONFLICTS OF LAW THAT COULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION, PROVIDED, HOWEVER, THAT IF THE LAWS OF ANY JURISDICTION OTHER THAN NEW YORK SHALL GOVERN IN REGARD TO THE VALIDITY, PERFECTION OR EFFECT OF PERFECTION OF ANY LIEN OR IN REGARD TO PROCEDURAL MATTERS AFFECTING ENFORCEMENT OF ANY LIENS IN COLLATERAL, SUCH LAWS OF SUCH OTHER JURISDICTIONS SHALL APPLY TO THAT EXTENT.

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

THE TERMS OF SECTION 10 OF THE LOAN AGREEMENT ARE INCORPORATED HEREIN BY REFERENCE, *MUTATIS MUTANDIS*, AS IF SET FORTH IN FULL HEREIN AND THE PARTIES HERETO AGREE TO SUCH TERMS AND TO BE BOUND BY SUCH TERMS.

[Signature Pages Follow]

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

TARSUS PHARMACEUTICALS, INC.,
as Borrower and a Grantor

By_____

Name:_____

Title:_____

ACCEPTED AND AGREED
as of the date first above written:

BIOPHARMA CREDIT PLC,
as Collateral Agent

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By_____
Name: Pedro Gonzalez de Cosio
Title: Managing Member

ANNEX 1
TO GUARANTY AND SECURITY AGREEMENT

FORM OF PLEDGE AMENDMENT

This Pledge Amendment, dated as of _____, 20__, is delivered pursuant to Section 8.6(b) of the Guaranty and Security Agreement, dated as of April __, 2024, by TARSUS PHARMACEUTICALS, INC., a Delaware corporation, as Borrower and the other Persons from time to time party thereto as Grantors in favor of BIOPHARMA CREDIT PLC, as Collateral Agent on behalf of Lenders and each of other Secured Parties (as such agreement may be amended, restated, supplemented or otherwise modified from time to time, the "Guaranty and Security Agreement"). Capitalized terms used herein without definition are used as defined in the Guaranty and Security Agreement.

The undersigned Grantor hereby agrees that this Pledge Amendment may be attached to the Guaranty and Security Agreement and that the Pledged Collateral listed on Annex 1-A to this Pledge Amendment shall be and become part of the Collateral referred to in the Guaranty and Security Agreement and shall secure all Secured Obligations of the undersigned.

[GRANTOR]

By: _____
Name:
Title:

PLEDGED STOCK

ISSUER	CLASS	CERTIFICATE NO(S).	PAR VALUE	NUMBER OF SHARES, UNITS OR INTERESTS

PLEDGED DEBT INSTRUMENTS

COMMERCIAL TORT CLAIMS

ACKNOWLEDGED AND AGREED
as of the date first above written:

BIOPHARMA CREDIT PLC,
as Collateral Agent

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By_____
Name: Pedro Gonzalez de Cosio
Title: Managing Member

ANNEX 2
TO
GUARANTY AND SECURITY AGREEMENT

FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT, dated as of _____ __, 20__, is delivered pursuant to Section 8.6(a) of the Guaranty and Security Agreement, dated as of April __, 2024, by and among TARSUS PHARMACEUTICALS, INC., a Delaware corporation ("Borrower"), and the other Persons from time to time party thereto as Grantors, in favor of BIOPHARMA CREDIT PLC (together with its successors and permitted assigns, the "Collateral Agent") on behalf of Lenders and each of other Secured Parties, (as such agreement may be amended, restated, supplemented or otherwise modified from time to time, the "Guaranty and Security Agreement"). Capitalized terms used herein without definition are used as defined in the Guaranty and Security Agreement.

By executing and delivering this Joinder Agreement, the undersigned Grantor, as provided in Section 8.6 of the Guaranty and Security Agreement, (a) hereby becomes a party to the Guaranty and Security Agreement as a "Grantor" thereunder with the same force and effect as if originally named as a "Grantor" therein and, without limiting the generality of the foregoing, hereby assumes all obligations and liabilities of a "Grantor" thereunder, and (b) as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations of the undersigned Grantor, hereby pledges and hypothecates to the Collateral Agent for the benefit of Lenders and other Secured Parties, and grants to the Collateral Agent for the benefit of Lenders and other Secured Parties, a lien on and security interest in, all of its right, title and interest in, to and under the Collateral of the undersigned. The undersigned Grantor hereby agrees to be bound as a "Grantor" for the purposes of the Guaranty and Security Agreement.

In connection with this Joinder Agreement, the undersigned Grantor has delivered to the Collateral Agent a completed Perfection Certificate duly executed by the undersigned. The information set forth in Annex 1-A is hereby added to the information set forth in Schedules 1 and 3 to the Security Disclosure Letter. By acknowledging and agreeing to this Joinder Agreement, the undersigned hereby agrees that this Joinder Agreement may be attached to the Guaranty and Security Agreement, the Perfection Certificate delivered herewith by the undersigned shall constitute a "Perfection Certificate" referred to in Section 4.6 of the Loan Agreement and that the Pledged Collateral listed on Annex 1-A to this Joinder Agreement, if any, shall be and become part of the Collateral referred to in the Guaranty and Security Agreement and shall secure all Secured Obligations of the undersigned.

The undersigned Grantor hereby represents and warrants that each of the representations and warranties contained in Article 4 of the Guaranty and Security Agreement applicable to it, if any, is true and correct on and as the date hereof as if made on and as of such date.

In witness whereof, the undersigned Grantor has caused this Joinder Agreement to be duly executed and delivered as of the date first above written.

[Additional Grantor]

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED
as of the date first above written:

BIOPHARMA CREDIT PLC,
as Collateral Agent

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By_____
Name: Pedro Gonzalez de Cosio
Title: Managing Member

ANNEX 3
TO
GUARANTY AND SECURITY AGREEMENT

FORM OF [COPYRIGHT] [PATENT] [TRADEMARK] SECURITY AGREEMENT

THIS [COPYRIGHT] [PATENT] [TRADEMARK] SECURITY AGREEMENT, dated as of _____, 20__, is made by _____ ("Grantor"), in favor of BIOPHARMA CREDIT PLC (together with its successors and permitted assigns, the "Collateral Agent") on behalf of Lenders and other Secured Parties (as defined in the Loan Agreement referred to below).

W I T N E S S E T H:

WHEREAS, pursuant to the Loan Agreement, dated as of April __, 2024 (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and among TARSUS PHARMACEUTICALS, INC., a Delaware corporation ("Borrower"), the other parties thereto from time to time, as additional Credit Parties, BIOPHARMA CREDIT PLC, as Collateral Agent, BPCR LIMITED PARTNERSHIP, (as a "Lender") and BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP, a Cayman Islands exempted limited partnership acting by its general partner, BioPharma Credit Investments V GP LLC (as a "Lender"), each Lender has agreed to make extensions of credit to Borrower upon the terms and subject to the conditions set forth therein;

WHEREAS, Grantor has agreed, pursuant to a Guaranty and Security Agreement dated as of April __, 2024 in favor of the Collateral Agent for the benefit of Lenders and other Secured Parties (as such agreement may be amended, amended and restated, supplemented or otherwise modified from time to time, the "Guaranty and Security Agreement"), to guarantee the Obligations (as defined in the Loan Agreement) of Borrower; and

WHEREAS, Grantor is party to the Guaranty and Security Agreement pursuant to which Grantor is required to execute and deliver this [Copyright] [Patent] [Trademark] Security Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree, intending to be legally bound, as follows:

Section 1. Defined Terms. Capitalized terms used herein without definition are used as defined in the Guaranty and Security Agreement.

Section 2. Grant of Security Interest in [Copyright] [Trademark] [Patent] Collateral. Grantor, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations, hereby mortgages, pledges and hypothecates to the Collateral Agent, for the benefit of Lenders and other Secured Parties, and grants to the Collateral Agent, for the benefit of Lenders and other Secured Parties, a Lien on and security interest in, all of its right, title and interest in, to and under the following Collateral of Grantor, in each case, solely to the extent constituting Collateral (and excluding any Excluded Property) (the "[Copyright] [Patent] [Trademark] Collateral"):

(a) [all of its Copyrights and all of its rights under IP Licenses and IP Ancillary Rights providing for the grant by or to Grantor of any right under any Copyright, including, without limitation, those referred to on Schedule 1 hereto;

(b) all renewals, reversions and extensions of the foregoing; and

(c) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

or

(a) [all of its Patents and all of its rights under IP Licenses and IP Ancillary Rights providing for the grant by or to Grantor of any right under any Patent, including, without limitation, those referred to on Schedule 1 hereto;

(b) all reissues, reexaminations, continuations, continuations-in-part, divisionals, substitutes, renewals and any patent term extension or adjustment (including any supplementary protection certificate) of the foregoing, and any patent issued with respect to any of the foregoing, and any confirmation patent or registration patent or patent of addition based on any such patent; and

(c) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

or

(a) [all of its Trademarks and all of its rights under IP Licenses and IP Ancillary Rights providing for the grant by or to Grantor of any right under any Trademark, including, without limitation, those referred to on Schedule 1 hereto, but excluding any "intent-to-use" application for registration of a United States Trademark for which a "Statement of Use" pursuant to Section 1(d) of the Lanham Act, 15 U.S.C. § 1051 (or any successor provision) or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act, 15 U.S.C. § 1051 (or any successor provision) has not been filed with and accepted by the Applicable IP Office (but only excluding such intent-to-use application until such statement of use or amendment to allege use (as applicable) is filed with and accepted by the Applicable IP Office);

(b) all renewals and extensions of the foregoing;

(c) all goodwill of the business connected with the use of, and symbolized by, each such Trademark; and

(d) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect to any of the foregoing, including, without limitation, all rights to sue and recover at law or in equity for any past, present and future infringement, misappropriation, dilution, violation or other impairment thereof.]

Section 3. Guaranty and Security Agreement. The security interest granted pursuant to this [Copyright] [Patent] [Trademark] Security Agreement is granted in conjunction with the security interest granted to the Collateral Agent for the benefit of Lenders and other Secured Parties, pursuant to the Guaranty and Security Agreement and Grantor hereby acknowledges and agrees that the obligations, rights and remedies of Grantor and of the Collateral Agent on behalf of Lenders and other Secured Parties with respect to the security interest in the [Copyright] [Patent] [Trademark] Collateral made and granted hereby are more fully set forth in the Guaranty and Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

Section 4. Grantor Remains Liable. Grantor hereby agrees that, anything herein to the contrary notwithstanding, Grantor shall assume full and complete responsibility for the prosecution, defense, enforcement or any other reasonably necessary actions in connection with their [Copyrights] [Patents] [Trademarks] and IP Licenses subject to a security interest hereunder.

Section 5. Counterparts. This [Copyright] [Patent] [Trademark] Security Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single

counterpart. Delivery of an executed signature page of this [Copyright] [Patent] [Trademark] Security Agreement by facsimile transmission or electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

Section 6. Governing Law. THIS [COPYRIGHT] [PATENT] [TRADEMARK] SECURITY AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY PRINCIPLES OF CONFLICTS OF LAW THAT COULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION, PROVIDED, HOWEVER, THAT IF THE LAWS OF ANY JURISDICTION OTHER THAN NEW YORK SHALL GOVERN IN REGARD TO THE VALIDITY, PERFECTION OR EFFECT OF PERFECTION OF ANY LIEN OR IN REGARD TO PROCEDURAL MATTERS AFFECTING ENFORCEMENT OF ANY LIENS IN [COPYRIGHT] [PATENT] [TRADEMARK] COLLATERAL, SUCH LAWS OF SUCH OTHER JURISDICTIONS SHALL APPLY TO THAT EXTENT.

THE TERMS OF SECTION 10 OF THE LOAN AGREEMENT ARE INCORPORATED HEREIN BY REFERENCE, *MUTATIS MUTANDIS*, AS IF SET FORTH IN FULL HEREIN AND THE PARTIES HERETO AGREE TO SUCH TERMS AND TO BE BOUND BY SUCH TERMS.

[Signature page follows]

IN WITNESS WHEREOF, Grantor has caused this [Copyright] [Patent] [Trademark] Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Very truly yours,
[GRANTOR]
as Grantor

By: _____
Name:
Title:

ACCEPTED AND AGREED
as of the date first above written:

BIOPHARMA CREDIT PLC,
as Collateral Agent

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By_____
Name: Pedro Gonzalez de Cosio
Title: Managing Member

SCHEDULE I
TO
[COPYRIGHT] [PATENT] [TRADEMARK] SECURITY AGREEMENT

[Copyright] [Patent] [Trademark] Registrations

1. REGISTERED [COPYRIGHTS] [PATENTS] [TRADEMARKS]

[Include Registration Number and Date]

2. [COPYRIGHT] [PATENT] [TRADEMARK] APPLICATIONS

[Include Application Number and Date]

3. [IP LICENSES

[Include complete legal description of agreement (name of agreement, parties and date)]]

ANNEX 4
TO
GUARANTY AND SECURITY AGREEMENT
FORM OF UNCERTIFICATED STOCK CONTROL AGREEMENT

This UNCERTIFICATED STOCK CONTROL AGREEMENT (this "**Agreement**"), dated as of _____ __, 20__, is made by and among [APPLICABLE GRANTOR], a [JURISDICTION OF ORGANIZATION] [ENTITY TYPE] (the "**Grantor**"), BIOPHARMA CREDIT PLC, a public limited company organized under the laws of England and Wales, as collateral agent on behalf of the Secured Parties (together with its successors and permitted assigns, the "**Collateral Agent**"), and [APPLICABLE INTEREST ISSUING COMPANY], a [JURISDICTION OF ORGANIZATION] [ENTITY TYPE] (the "**Issuer**"). All capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement (as defined below) or the Loan Agreement (as defined below), as applicable.

WHEREAS, TARSUS PHARMACEUTICALS, INC., a Delaware corporation ("**Borrower**"), the other Credit Parties from time to time party thereto, the Collateral Agent and the Lenders have entered into that certain Loan Agreement, dated as of April __, 2024 (as may be amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**");

WHEREAS, the Grantor is the registered holder of [DESCRIBE PLEDGED UNCERTIFICATED STOCK] issued by the Issuer (the "**Pledged Stock**");

WHEREAS, pursuant to the Guaranty and Security Agreement, dated as of April __, 2024, by and among the Grantor, the Collateral Agent and the other parties thereto (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Security Agreement**"), the Grantor has granted a continuing Lien on and security interest (the "**Security Interest**") in, all of its right, title and interest in, to and under the Pledged Stock (other than Excluded Equity Interests), whether now existing or hereafter arising or acquired; and

WHEREAS, it is a condition precedent to the making and maintaining of the Term Loans by Lenders under the Loan Agreement that the parties hereto execute and deliver this Agreement in order to perfect a first priority Security Interest in the Pledged Stock.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree, intending to be legally bound, as follows:

1. The Issuer confirms that:

(e) The Pledged Stock is Equity Interests that are not represented by certificates;

(f) The Issuer is the issuer of the Pledged Stock and the Grantor is registered on the books and records of the Issuer as the registered holder of the Pledged Stock; and

(g) The Security Interest in the Pledged Stock is registered on the books and records of the Issuer.

2. The Grantor hereby irrevocably agrees that, for so long as this Agreement remains in effect, the Collateral Agent, for the benefit of the Lenders and the other Secured Parties under the Loan Agreement shall have exclusive control of the Pledged Stock. In furtherance of such agreement, the Grantor hereby irrevocably authorizes and directs the Issuer, and the Issuer hereby agrees:

(h) Subject to the provisions of Section 3 hereof, to comply with any and all written instructions delivered to the Issuer which directs that the transfer of any or all of the Pledged Stock to the Collateral Agent be registered on the books and records of the Issuer in the name of the Collateral Agent as the holder thereof without further consent by the Grantor or any other Person; and

(i) Subject to the provisions of Section 3 hereof, not to comply with any instructions relating to any or all of the Pledged Stock originated by any Person other than the Collateral Agent or a court of competent jurisdiction. In the event of any conflict between any instruction originated by the Collateral Agent and any

instruction originated by any other Person, the Issuer shall comply only with the instruction originated by the Collateral Agent.

3. In addition to, and not in lieu of, the obligation of the Issuer to honor instructions as agreed in Section 2 hereof, the Issuer and the Collateral Agent hereby agree as follows:

(j) Subject to the rights of the Grantor described herein, the Issuer agrees that, from and after the date hereof, the Pledged Stock shall be under the exclusive dominion and control of the Collateral Agent;

(k) So long as the Issuer has not received a written notice from the Collateral Agent that it is exercising exclusive control over the Pledged Stock (a "**Notice of Exclusive Control**"), the Issuer may comply with instructions of the Grantor concerning the Pledged Stock, which Notice of Exclusive Control shall only be given by the Collateral Agent following the occurrence and during the continuance of an Event of Default. After the Issuer receives a Notice of Exclusive Control from the Collateral Agent and so long as any Event of Default is continuing, the Issuer will not accept any instructions concerning the Pledged Stock from any Person other than the Collateral Agent, unless otherwise ordered by a court of competent jurisdiction; and

(l) Until the Issuer receives a Notice of Exclusive Control, the Grantor shall be entitled to direct the Issuer with respect to voting the Pledged Stock.

4. This Agreement shall not subject the Issuer to any obligation or liability except as expressly set forth herein and under any Requirements of Law. In particular, the Issuer need not investigate whether the Collateral Agent is entitled under the Security Agreement, or otherwise to give an instruction or Notice of Exclusive Control.

5. The Issuer hereby represents, warrants and covenants with the Collateral Agent that:

(m) This Agreement has been duly authorized, executed and delivered by the Issuer and constitutes a legal, valid and binding obligation of the Issuer enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to equitable principles (regardless of whether enforcement is sought in equity or at law);

(n) The Issuer has not entered into, and until termination of this Agreement will not enter into, any agreement with any other Person relating to the Pledged Stock pursuant to which it has agreed, or will agree, to comply with instructions provided by such Person. The Issuer has not entered into any other agreement with the Grantor purporting to limit or condition the obligation of the Issuer to comply with instructions as agreed in Section 3 hereof;

(o) Except for the claims and interests of the Collateral Agent, on behalf of the Lenders and the other Secured Parties, and the Grantor in the Pledged Stock, the Issuer does not know of any claim to, or interest in, the Pledged Stock (except to the extent constituting Permitted Liens). If any Person asserts any Lien or adverse claim (including any writ, garnishment, judgment, attachment, execution or similar process) against the Pledged Stock (other than Permitted Liens), the Issuer will promptly notify the Collateral Agent and the Grantor thereof;

(p) There is no agreement (except this Agreement and the Security Agreement) between the Issuer and the Grantor or among the Issuer, the Grantor and any third Person with respect to the Pledged Stock [except for [IDENTIFY RELEVANT AGREEMENTS] (the "**Existing Agreements**")]. In the event of any conflict between this Agreement (or any portion hereof) and any other such agreement (including any Existing Agreement) with respect to the Pledged Stock, whether now existing or hereafter entered into, the terms of this Agreement shall prevail; and

(q) The granting by the Grantor of the Security Interest in the Pledged Stock to the Collateral Agent for the benefit of Lenders and the other Secured Parties does not violate the Operating Documents or any other agreement governing the Issuer or the Pledged Stock.

6. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

7. Each notice, request or other communication to a party hereto under this Agreement shall be in writing, will be sent to such party's address set forth under its name below or to such other address as such party may notify the other parties hereto and will be effective on receipt.

8. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all the parties hereto.

9. The rights and powers granted herein to the Collateral Agent (a) have been granted in order to perfect the Security Interest in the Pledged Stock, (b) are powers coupled with an interest and (c) will not be affected by any bankruptcy of the Grantor or any lapse in time. The obligations of the Issuer hereunder shall continue in effect until the Collateral Agent has notified the Issuer in writing that the Security Interest in the Pledged Stock has been terminated pursuant to the Security Agreement.

10. This Agreement shall be governed by and construed in accordance with the laws of the [INSERT ISSUER'S JURISDICTION OF ORGANIZATION], WITHOUT REGARD TO ANY PRINCIPLES OF CONFLICTS OF LAW THAT COULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION, PROVIDED, HOWEVER, THAT IF THE LAWS OF ANY JURISDICTION OTHER THAN [INSERT ISSUER'S JURISDICTION OF ORGANIZATION] SHALL GOVERN IN REGARD TO THE VALIDITY, PERFECTION OR EFFECT OF PERFECTION OF ANY LIEN OR IN REGARD TO PROCEDURAL MATTERS AFFECTING ENFORCEMENT OF ANY LIENS IN THE PLEDGED STOCK, SUCH LAWS OF SUCH OTHER JURISDICTIONS SHALL APPLY TO THAT EXTENT.

11. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

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

[Signature Page Follows]

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

[GRANTOR]
By:_____
Name:_____
Title:_____

Address for Notices:

[ISSUER]
By:_____
Name:_____
Title:_____

Address for Notices:

BIOPHARMA CREDIT PLC,
a public limited company

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By_____
Name: Pedro Gonzalez de Cosio
Title: Managing Member

Address for Notices:

BIOPHARMA CREDIT PLC
c/o Link Group, Company Matters Ltd.
6th Floor
65 Gresham Street
London EC2V 7NQ
United Kingdom
Attn: Company Secretary
Telephone: [***]
Facsimile: [***]
Email: [***]

with copies (which shall not constitute notice) to:

Pharmakon Advisors, LP
110 East 59th Street, #2800
New York, NY 10022
Attn: Pedro Gonzalez de Cosio
Phone: [***]
Fax: [***]
Email: [***]

and

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

EXHIBIT D

COMMITMENTS; NOTICE ADDRESSES

Lender	Commitments	Notice Address
BPCR Limited Partnership	Tranche A Commitment: $37,500,000 Tranche B Commitment: $12,500,000 Tranche C Commitment $25,000,000 Tranche D Commitment $25,000,000	BPCR LIMITED PARTNERSHIP c/o Link Group, Company Matters Ltd. 6th Floor 65 Gresham Street London EC2V 7NQ United Kingdom Attn: Company Secretary Tel: [***] Fax: [***] Email: [***] with copies (which shall not constitute notice) to: PHARMAKON ADVISORS, LP 110 East 59th Street, #2800 New York, NY 10022 Attn: Pedro Gonzalez de Cosio Phone: [***] Fax: [***] Email: [***] and AKIN GUMP STRAUSS HAUER & FELD LLP One Bryant Park New York, NY 10036-6745 Attn: Geoffrey E. Secol Phone: [***] Fax: [***] Email: [***]
BioPharma Credit Investments V (Master) LP	Tranche A Commitment: $37,500,000 Tranche B Commitment: $12,500,000 Tranche C Commitment $25,000,000 Tranche D Commitment $25,000,000	BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP c/o BioPharma Credit Investments V GP LLC c/o Walkers Corporate Limited 190 Elgin Avenue, George Town, Grand Cayman KY1-9008 Attn: Pedro Gonzalez de Cosio with copies (which shall not constitute notice) to: PHARMAKON ADVISORS, LP 110 East 59th Street, #2800 New York, NY 10022 Attn: Pedro Gonzalez de Cosio Phone: [***] Fax: [***] Email: [***] and

		AKIN GUMP STRAUSS HAUER & FELD LLP One Bryant Park New York, NY 10036-6745 Attn: Geoffrey E. Secol Phone: [***] Fax: [***] Email: [***]

EXHIBIT E

COMPLIANCE CERTIFICATE

TO: BIOPHARMA CREDIT PLC

FROM: TARSUS PHARMACEUTICALS, INC.

The undersigned authorized officer of TARSUS PHARMACEUTICALS, INC., a Delaware corporation ("**Borrower**") hereby certifies, solely in his/her capacity as a Responsible Officer of Borrower and not in his/her personal capacity, that in accordance with the terms and conditions of the Loan Agreement (the "**Loan Agreement**"; capitalized terms used, but not defined herein having the meanings given them in the Loan Agreement) dated as of April 18, 2024 by and among Borrower, the Guarantor Subsidiaries from time to time party thereto, BIOPHARMA CREDIT PLC, a public limited company incorporated under the laws of England and Wales (as "**Collateral Agent**") and the Lenders:

(i) The Credit Parties are in complete compliance for the period ending _____ with all required covenants except as noted below;

(ii) No Default or Event of Default has occurred and is continuing, except as noted below;

(iii) Each Credit Party and each of its Subsidiaries has timely filed all required U.S. federal and material state, local and foreign income Tax returns and other material Tax returns and reports (or extensions thereof) of each Credit Party and each of its Subsidiaries required to be filed by any of them and such returns and reports are correct in all material respects, and has timely paid all U.S. federal and material state, local and foreign Taxes imposed upon it or any of its properties or assets or in respect of any of its properties, assets, income, businesses or franchises, except as otherwise permitted pursuant to the terms of Section 4.10 or Section 5.3 of the Loan Agreement;

(iv) No Liens have been levied or claims made against any Credit Party or any of its Subsidiaries relating to unpaid employee payroll or benefits of which (a) such Credit Party has not previously provided written notification to the Collateral Agent or (b) which do not constitute Permitted Liens; and

Attached are the required documents, if any, supporting our certification(s). The undersigned Responsible Officer on behalf of Borrower further certifies that the attached financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries as of applicable the dates and for the applicable periods in accordance with GAAP consistently applied (taking into account the provisions of Section 1 of the Loan Agreement if and to the extent applicable) and are not subject to any qualification or statement as to "going concern".

Date: _____

[Signature page follows]

TARSUS PHARMACEUTICALS, INC.,
as Borrower

By_____

Name: _____

Title:_____

Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under "Complies" column.

	Reporting Covenant	Requirement	Complies		
1)	Annual Financial Statements	90 days after year end	Yes	No	N/A
2)	Quarterly Financial Statements	45 days after quarter end	Yes	No	N/A
3)	Other Information after an Event of Default	5 Business Days after request	Yes	No	N/A
4)	Legal Action Notice	Promptly	Yes	No	N/A
5)	Notice of Default, etc.	Promptly (within 5 Business Days) after knowledge	Yes	No	N/A

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

	Bank	Account Number	New Account?		Acct Control Agmt in place?	
1)			Yes	No	Yes	No
2)			Yes	No	Yes	No
3)			Yes	No	Yes	No
4)			Yes	No	Yes	No
5)			Yes	No	Yes	No
6)			Yes	No	Yes	No

Other Matters

Have there been any changes in management since the last Compliance Certificate?	Yes	No
Have there been any prohibited Transfers?	Yes	No

Exceptions

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

_____

_____

_____

_____

LENDER USE ONLY	
Compliance Status	Yes

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Bobak Azamian, M.D., Ph.D., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Tarsus Pharmaceuticals, Inc;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

Date: August 8, 2024

By: /s/ Bobak Azamian, M.D., Ph.D.
Bobak Azamian, M.D., Ph.D.
President, Chief Executive Officer and Board Chairman
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jeffrey Farrow, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Tarsus Pharmaceuticals, Inc;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

Date: August 8, 2024

By: /s/ Jeffrey Farrow
Jeffrey Farrow
Chief Financial Officer and Chief Strategy Officer
(*Principal Financial Officer and Principal Accounting Officer*)

Exhibit 32.1

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

In connection with the Quarterly Report of Tarsus Pharmaceuticals, Inc. (the "Company") on Form 10-Q for the period ended June 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Bobak Azamian, hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 8, 2024

By: /s/ Bobak Azamian, M.D., Ph.D.
Bobak Azamian, M.D., Ph.D.
President, Chief Executive Officer and Board Chairman
(Principal Executive Officer)

Exhibit 32.2

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

In connection with the Quarterly Report of Tarsus Pharmaceuticals, Inc. (the "Company") on Form 10-Q for the period ended June 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jeffrey Farrow, hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 8, 2024

By: /s/ Jeffrey Farrow
Jeffrey Farrow
Chief Financial Officer and Chief Strategy Officer
(Principal Financial Officer and Principal Accounting Officer)