

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

FORM 10-Q

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

For the quarterly period ended June 30, 2019

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 No. 001-00100

THERAPEUTICSMD, INC.

(Exact Name of Registrant as Specified in Its Charter)

Nevada
(State or Other Jurisdiction of Incorporation or Organization)

87-0233535
(I.R.S. Employer Identification No.)

6800 Broken Sound Parkway NW, Third Floor, Boca Raton, FL
(Address of Principal Executive Offices)

33487
(Zip Code)

561—961-1900

(Registrant's telephone number, including area code)

N/A

(Former Name, Former Address and Former Fiscal Year, if Changed Since Last Report)

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, par value \$0.001 per share	TXMD	The Nasdaq Stock Market LLC

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 (Check one):

Large accelerated filer
Non-accelerated filer

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

The number of shares outstanding of the registrant's common stock, par value \$0.001 per share, as of August 2, 2019 was 241,221,840 .

THERAPEUTICSMD, INC. AND SUBSIDIARIES
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PART I - FINANCIAL INFORMATION

Item. 1 Financial Statements

THERAPEUTICSMID, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

	<u>June 30, 2019</u> (Unaudited)	<u>December 31, 2018</u>
ASSETS		
Current Assets:		
Cash	\$ 182,846,301	\$ 161,613,077
Accounts receivable, net of allowance for doubtful accounts of \$764,102 and \$596,602 , respectively	18,383,012	11,063,821
Inventory	7,494,440	3,267,670
Other current assets	7,739,048	10,834,693
Total current assets	<u>216,462,801</u>	<u>186,779,261</u>
Fixed assets, net	<u>1,432,137</u>	<u>472,683</u>
Other Assets:		
License rights	20,000,000	20,000,000
Intangible assets, net	4,688,114	4,092,679
Other assets	3,635,227	324,855
Security deposit	334,866	314,446
Total other assets	<u>28,658,207</u>	<u>24,731,980</u>
Total assets	<u>\$ 246,553,145</u>	<u>\$ 211,983,924</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities:		
Accounts payable	\$ 19,499,238	\$ 22,743,841
Other current liabilities	22,376,617	18,334,948
Total current liabilities	<u>41,875,855</u>	<u>41,078,789</u>
Long-Term Liabilities:		
Long-term debt	194,095,220	73,381,014
Operating lease liability	2,488,101	—
Total liabilities	<u>238,459,176</u>	<u>114,459,803</u>
Commitments and Contingencies- See Note 15		
Stockholders' Equity:		
Preferred stock - par value \$0.001 ;10,000,000 shares authorized; no shares issued and outstanding		
Common stock - par value \$0.001 ;350,000,000 shares authorized: 241,221,840and240,462,439 issued and outstanding, respectively	241,222	240,463
Additional paid-in capital	621,871,919	616,559,938
Accumulated deficit	(614,019,172)	(519,276,280)
Total stockholders' equity	<u>8,093,969</u>	<u>97,524,121</u>
Total liabilities and stockholders' equity	<u>\$ 246,553,145</u>	<u>\$ 211,983,924</u>

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

THERAPEUTICSMD, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Revenues, net	\$ 6,078,865	\$ 3,763,010	\$ 10,025,516	\$ 7,536,402
Cost of goods sold	1,248,860	454,161	2,011,687	1,087,784
Gross profit	4,830,005	3,308,849	8,013,829	6,448,618
Operating expenses:				
Sales, general, and administrative	41,387,451	29,466,770	76,251,533	50,224,007
Research and development	4,964,368	6,798,380	11,282,250	13,837,677
Depreciation and amortization	115,059	65,603	221,997	125,224
Total operating expenses	46,466,878	36,330,753	87,755,780	64,186,908
Operating loss	(41,636,873)	(33,021,904)	(79,741,951)	(57,738,290)
Other (expense) income				
Loss on extinguishment of debt	(10,057,632)	—	(10,057,632)	—
Miscellaneous income	486,597	334,238	1,175,318	648,795
Interest expense	(4,028,609)	(531,382)	(6,118,627)	(531,382)
Total other (expense) income	(13,599,644)	(197,144)	(15,000,941)	117,413
Loss before income taxes	(55,236,517)	(33,219,048)	(94,742,892)	(57,620,877)
Provision for income taxes	—	—	—	—
Net loss	\$ (55,236,517)	\$ (33,219,048)	\$ (94,742,892)	\$ (57,620,877)
Loss per share, basic and diluted:				
Net loss per share, basic and diluted	\$ (0.23)	\$ (0.15)	\$ (0.39)	\$ (0.27)
Weighted average number of common shares outstanding, basic and diluted	241,221,840	216,640,186	241,114,532	216,583,067

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

THERAPEUTICSMD, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

	<u>Common Stock</u>		<u>Additional Paid in Capital</u>	<u>Accumulated Deficit</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>			
Balance, December 31, 2017	216,429,642	\$ 216,430	\$ 516,351,405	\$ (386,659,120)	\$ 129,908,715
Shares issued for exercise of options, net	154,632	154	43,902	—	44,056
Share-based compensation	—	—	1,751,358	—	1,751,358
Net loss	—	—	—	(24,401,829)	(24,401,829)
Balance, March 31, 2018	216,584,274	216,584	518,146,665	(411,060,949)	107,302,300
Shares issued for exercise of options, net	249,785	250	1,084,689	—	1,084,939
Share-based compensation	—	—	2,377,082	—	2,377,082
Net loss	—	—	—	(33,219,048)	(33,219,048)
Balance, June 30, 2018	216,834,059	\$ 216,834	\$ 521,608,436	\$ (444,279,997)	\$ 77,545,273
Balance, December 31, 2018	240,462,439	\$ 240,463	\$ 616,559,938	\$ (519,276,280)	\$ 97,524,121
Shares issued for exercise of options and warrants, net	759,401	759	99,348	—	100,107
Share-based compensation	—	—	2,575,369	—	2,575,369
Net loss	—	—	—	(39,506,375)	(39,506,375)
Balance, March 31, 2019	241,221,840	241,222	619,234,655	(558,782,655)	60,693,222
Share-based compensation	—	—	2,637,264	—	2,637,264
Net loss	—	—	—	(55,236,517)	(55,236,517)
Balance, June 30, 2019	241,221,840	\$ 241,222	\$ 621,871,919	\$ (614,019,172)	\$ 8,093,969

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

THERAPEUTICSMD, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Six Months Ended June 30,	
	2019	2018
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	\$ (94,742,892)	\$ (57,620,877)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of fixed assets	133,049	79,201
Amortization of intangible assets	88,948	46,023
Write off of patent and trademark cost	78,864	—
Non-cash operating lease expense	443,734	—
Provision for doubtful accounts	167,500	38,024
Loss on extinguishment of debt	10,057,632	—
Share-based compensation	5,224,212	4,128,440
Amortization of deferred financing fees	316,880	30,155
Changes in operating assets and liabilities:		
Accounts receivable	(7,486,691)	(1,335,209)
Inventory	(4,226,770)	(395,219)
Other current assets	1,710,697	2,539,394
Accounts payable	(3,244,603)	7,329,560
Accrued expenses and other liabilities	2,801,717	561,615
Net cash used in operating activities	<u>(88,677,723)</u>	<u>(44,598,893)</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Patent costs	(763,247)	(434,677)
Purchase of fixed assets	(1,092,504)	(45,720)
Payment of security deposit	(20,420)	(11,486)
Net cash used in investing activities	<u>(1,876,171)</u>	<u>(491,883)</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from exercise of options and warrants	100,107	1,128,996
Repayment of the Credit Agreement	(81,660,719)	—
Proceeds from the Financing Agreement	200,000,000	75,000,000
Payment of deferred financing fees	(6,652,270)	(3,786,918)
Net cash provided by financing activities	<u>111,787,118</u>	<u>72,342,078</u>
Increase in cash	21,233,224	27,251,302
Cash, beginning of period	161,613,077	127,135,628
Cash, end of period	<u>\$ 182,846,301</u>	<u>\$ 154,386,930</u>
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid for interest	<u>\$ 6,989,570</u>	<u>\$ —</u>
Cash paid for income taxes	<u>\$ —</u>	<u>\$ —</u>

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

THERAPEUTICSMD, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 – THE COMPANY

TherapeuticsMD, Inc., a Nevada corporation, or TherapeuticsMD or the Company, has three wholly owned subsidiaries, vitaMedMD, LLC, a Delaware limited liability company, or VitaMed; BocaGreenMD, Inc., a Nevada corporation, or BocaGreen; and VitaCare Prescription Services, Inc., a Florida corporation, or VitaCare. Unless the context otherwise requires, TherapeuticsMD, VitaMed, BocaGreen, and VitaCare collectively are sometimes referred to as “our company,” “we,” “our,” or “us.”

Nature of Business

We are a women’s healthcare company focused on creating and commercializing innovative products to support the lifespan of women and championing awareness of women’s healthcare issues, specifically, for pregnancy prevention, pregnancy, childbirth, nursing, pre-menopause, and menopause. At TherapeuticsMD, we combine entrepreneurial spirit, clinical expertise, and business leadership to develop and commercialize health solutions that enable new standards of care for women. Our solutions range from advanced hormone therapy pharmaceutical products to patient-controlled, long-acting contraceptive. We also manufacture and distribute branded and generic prescription prenatal vitamins under the vitaMedMD[®] and BocaGreenMD[®] brands.

With our SYMBODA[™] technology, we are developing and commercializing advanced hormone therapy pharmaceutical products to enable delivery of bio-identical hormones through a variety of dosage forms and administration routes. Our track record of commercialization allows us to efficiently leverage and grow our marketing and sales organization to commercialize our recently approved products.

During 2018, U.S. Food and Drug Administration, or FDA, approval of our drugs has transitioned our company from predominately focused on conducting research and development to one focused on commercializing our drugs. In July 2018, we launched our FDA-approved product, IMVEXXY[®] (estradiol vaginal inserts) for the treatment of moderate-to-severe dyspareunia (vaginal pain associated with sexual activity), a symptom of vulvar and vaginal atrophy, or VVA, due to menopause. In April 2019, we launched BIJUVA[®], our hormone therapy combination of bio-identical 17 β -estradiol and bio-identical progesterone in a single, oral softgel capsule, for the treatment of moderate-to-severe vasomotor symptoms, or VMS, due to menopause in women with a uterus. We are also focused on commercialization activities necessary for launch of ANNOVERA[™] (segesterone acetate/ethinyl estradiol vaginal system), the first and only patient-controlled, procedure-free, reversible prescription contraceptive that can prevent unintended pregnancy for up to a full year, which was approved by the FDA on August 10, 2018. On July 30, 2018, we entered into a license and supply agreement with Knight Therapeutics Inc., or Knight, pursuant to which we granted Knight an exclusive license to commercialize IMVEXXY and BIJUVA in Canada and Israel. In addition, on July 30, 2018, we entered into an exclusive license agreement, or the Council License Agreement, with the Population Council, Inc., or the Population Council, to commercialize ANNOVERA in the U.S. On June 6, 2019, we entered into an exclusive license and supply agreement with Theramex HQ UK Limited, or Theramex, a leading, global specialty pharmaceutical company dedicated to women’s health, to commercialize BIJUVA and IMVEXXY outside of the U.S., excluding Canada and Israel.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 2 – BASIS OF PRESENTATION AND RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

Interim Financial Statements

The accompanying unaudited interim consolidated financial statements of TherapeuticsMD, Inc., which include our wholly owned subsidiaries, should be read in conjunction with the audited consolidated financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2018, as filed with the Securities and Exchange Commission, or the SEC, from which we derived the accompanying consolidated balance sheet as of December 31, 2018. The accompanying unaudited interim consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America, or GAAP, for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, since they are interim statements, the accompanying unaudited interim consolidated financial statements do not include all of the information and notes required by GAAP for complete financial statements. The accompanying unaudited interim consolidated financial statements reflect all adjustments, consisting of normal recurring adjustments, that are, in the opinion of our management, necessary to a fair statement of the results for the interim periods presented. Interim results are not necessarily indicative of results for a full year or any other interim period in the future.

Recently Issued Accounting Pronouncements

In August 2018, the Financial Accounting Standards Board, or the FASB, issued Accounting Standards Update, or ASU, 2018-13 which eliminates certain disclosure requirements for fair value measurements for all entities, requires public entities to disclose certain new information and modifies some disclosure requirements. The FASB developed the amendments to ASC 820 as part of its broader disclosure framework project, which aims to improve the effectiveness of disclosures in the notes to financial statements by focusing on requirements that clearly communicate the most important information to users of the financial statements. The new guidance is effective for all entities for fiscal years beginning after December 15, 2019 and for interim periods within those fiscal years. An entity is permitted to early adopt either the entire standard or only the provisions that eliminate or modify requirements. We are currently evaluating the effect of this guidance on our disclosures.

In June 2018, the FASB issued ASU 2018 -07 to simplify the accounting for share-based payments to nonemployees by aligning it with the accounting for share-based payments to employees, with certain exceptions. The new guidance expands the scope of ASC 718 to include share-based payments granted to nonemployees in exchange for goods or services used or consumed in an entity's own operations and supersedes the guidance in ASC 505-50. The guidance is effective for public business entities in annual periods beginning after December 15, 2018, and interim periods within those annual periods. Early adoption is permitted, including in an interim period for which financial statements have not been issued, but not before an entity adopts ASC 606. We adopted this standard on January 1, 2019 and the adoption of this standard did not have a material effect on our consolidated financial statements.

In February 2016, the FASB issued ASU 2016 -02 , Leases. This guidance requires lessees to record most leases on their balance sheets while recognizing expenses on their income statements in a manner similar to current accounting. The guidance also eliminates current real estate-specific provisions for all entities. For lessors, the guidance modifies the classification criteria and the accounting for sales-type and direct financing leases. The standard is effective for public business entities for annual periods beginning after December 15, 2018, and interim periods within those years. Early adoption is permitted for all entities. In July 2018, the FASB amended the new leases standard and issued ASU 2018 -11 , Leases, (Topic 842): Targeted Improvements to give entities another option for transition and to provide lessors with a practical expedient. We adopted ASU 2016 -02 on January 1, 2019 utilizing the alternative transition method allowed for under ASU 2018 -11 and we recorded a \$3.8 million right of use asset and a \$4.1 million liability related to adoption of this standard. Comparative financial information was not adjusted and will continue to be reported under ASC 840. We also elected the transition relief package of practical expedients and as a result we did not assess (1) whether existing or expired contracts contain leases, (2) lease classification for any existing or expired leases, and (3) whether lease origination costs qualified as initial direct costs. We elected the short-term lease practical expedient by establishing an accounting policy to exclude leases with a term of 12 months or less. We elected not to separate lease components from non-lease components for our specified asset classes. Additionally, the adoption of the new standard resulted in increased disclosure requirements in our quarterly and annual filings.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

Other recent accounting pronouncements issued by the FASB (including its Emerging Issues Task Force), the American Institute of Certified Public Accountants and the SEC did not, and are not expected to, have a material effect on our results of operations or financial position.

NOTE 3 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

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Fair Value of Financial Instruments

Our financial instruments consist primarily of cash, accounts receivable, accounts payable, accrued expenses and long-term debt. The carrying amount of cash, accounts receivable, accounts payable and accrued expenses approximates their fair value because of the short-term maturity of such instruments, which are considered Level 1 assets under the fair value hierarchy. The carrying amount for long-term debt as of June 30, 2019 (as disclosed in Note 9), approximates fair value based on market activity for other debt instruments with similar characteristics and comparable risk (Level 2).

We categorize our assets and liabilities that are valued at fair value on a recurring basis into a three-level fair value hierarchy as defined by Accounting Standards Codification, or ASC, 820, *Fair Value Measurements*. The fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets and liabilities (Level 1) and lowest priority to unobservable inputs (Level 3). Assets and liabilities recorded in the consolidated balance sheet at fair value are categorized based on a hierarchy of inputs, as follows:

Level 1	unadjusted quoted prices in active markets for identical assets or liabilities;
Level 2	quoted prices for similar assets or liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument; and
Level 3	unobservable inputs for the asset or liability.

At June 30, 2019 and 2018, we had no assets or liabilities that were valued at fair value on a recurring basis.

The fair value of indefinite-lived assets or long-lived assets is measured on a non-recurring basis using significant unobservable inputs (Level 3) in connection with the Company's impairment test on an annual basis.

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Trade Accounts Receivable and Allowance for Doubtful Accounts

Trade accounts receivable are customer obligations due under normal trade terms. We review accounts receivable for uncollectible accounts and credit card chargebacks and provide an allowance for doubtful accounts, which is based upon a review of outstanding receivables, historical collection information, and existing economic conditions. We consider trade accounts receivable past due for more than 90 days to be delinquent. We write off delinquent receivables against our allowance for doubtful accounts based on individual credit evaluations, the results of collection efforts, and specific circumstances of customers. We record recoveries of accounts previously written off when received as an increase in the allowance for doubtful accounts. To the extent data we use to calculate these estimates does not accurately reflect bad debts, adjustments to these reserves may be required.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

Revenue Recognition

We adopted ASC 606 on January 1, 2018 using the modified retrospective method for all contracts not completed as of the date of adoption. ASC 606 states that a contract is considered “completed” if all (or substantially all) of the revenue was recognized in accordance with revenue guidance that was in effect before the date of initial application. Because all (or substantially all) of the revenue related to sales of our products has been recognized under ASC 605 prior to the date of initial application of the new standard, the contracts are considered completed under ASC 606. Based on our evaluation of ASC 606, we concluded that a cumulative adjustment was not necessary upon implementation of ASC 606 on January 1, 2018. In accordance with ASC 606, revenue is recognized when a customer obtains control of promised goods or services. The amount of revenue recognized reflects the consideration to which we expect to be entitled to receive in exchange for these goods or services. The provisions of ASC 606 include a five-step process by which we determine revenue recognition, depicting the transfer of goods or services to customers in amounts reflecting the payment to which we expect to be entitled in exchange for those goods or services. ASC 606 requires us to apply the following steps: (1) identify the contract with the customer; (2) identify the performance obligations in the contract; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations in the contract; and (5) recognize revenue when, or as, we satisfy the performance obligation.

Prescription Products

As of June 30, 2019, our products consisted primarily of prescription vitamins and our FDA-approved products: IMVEXXY, which we began selling during the third quarter of 2018, and BIJUVA, which we began selling in the second quarter of 2019. We sell our name brand and generic prescription products primarily through wholesale distributors and retail pharmacies. We have one performance obligation related to prescription products sold through wholesale distributors, which is to transfer promised goods to a customer, and two performance obligations related to products sold through retail pharmacies, which are to: (1) transfer promised goods and (2) provide customer service for an immaterial fee. We treat shipping as a fulfillment activity rather than as a separate obligation. We recognize prescription revenue only when we satisfy performance obligations by transferring a promised good or service to a customer. A good or service is considered to be transferred when the customer receives the goods or service or obtains control. Control refers to the customer’s ability to direct the use of, and obtain substantially all of the remaining benefits from, an asset. In consignment arrangements, control of the product is transferred at the point in time when the goods are removed from consignment stock and sold to the end customer. We typically satisfy our performance obligations and recognize revenue at a point in time, generally when products are shipped to the customer, depending on the terms underlying each arrangement. In circumstances where our products are on consignment, revenue is generally recognized when the prescription is filled.

Based on our contracts, we invoice customers once our performance obligations have been satisfied, at which point payment is unconditional. We disclose receivables from contracts with customers separately in the statement of financial position. Payment for goods or services sold by us is typically due between 30 and 60 days after an invoice is sent to the customer.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

The transaction price of a contract is the amount of consideration which we expect to be entitled to in exchange for transferring promised goods or services to a customer. Prescription products are sold at fixed wholesale acquisition cost, or WAC, determined based on our list price. However, the total transaction price is variable as it is calculated net of estimated product returns, chargebacks, rebates, coupons, discounts and wholesaler fees. These estimates are based on the amounts earned or to be claimed on the related sales and are classified as reductions of accounts receivable (if the amount is payable to the customer) or a current liability (if the amount is payable to a party other than a customer). In order to determine the transaction price, we estimate the amount of variable consideration at the outset of the contract either utilizing the expected value or most likely amount method, depending on the facts and circumstances relative to the contract or each variable consideration. The estimated amount of variable consideration is included in the transaction price only 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. In determining amounts of variable consideration to include in a contract's transaction price, we rely on our historical experience and other evidence that supports our qualitative assessment of whether revenue would be subject to a significant reversal. We consider all the facts and circumstances associated with both the risk of a revenue reversal arising from an uncertain future event and the magnitude of the reversal if that uncertain event were to occur. Actual amounts of consideration ultimately received may differ from our estimates. If actual results in the future vary from our original estimates, we will adjust these estimates, which would affect net product revenue and earnings in the period such changes in estimates become known.

We accept returns of unsalable prescription products sold through wholesale distributors within a return period of six months prior to and up to 12 months following product expiration. Our prescription products currently have a shelf life of 24 months from the date of manufacture. We do not allow product returns for prescription products that have been dispensed to a patient. We estimate the amount of our product sales that may be returned by our customers and record this estimate as a reduction of revenue in the period the related product revenue is recognized. Where historical rates of return exist, we use history as a basis to establish a returns reserve for products shipped to wholesalers. For our newly launched products, for which the right of return exists but for which we currently do not have history of product returns, we estimate returns based on available industry data, our own sales information and our visibility into the inventory remaining in the distribution channel. At the end of each reporting period, we may decide to constrain revenue for product returns based on information from various sources, including channel inventory levels and dating and sell-through data, the expiration dates of products currently being shipped, price changes of competitive products and any introductions of generic products. We recognize the amount of expected returns as a refund liability, representing the obligation to return the customer's consideration. Since our returns primarily consist of expired and short dated products that will not be resold, we do not record a return asset for the right to recover the goods returned by the customer at the time of the initial sale (when recognition of revenue is deferred due to the anticipated return). Return estimates are recorded in the accrued expenses and other current liabilities on the consolidated balance sheet.

We offer various rebate and discount programs in an effort to maintain a competitive position in the marketplace and to promote sales and customer loyalty. We estimate the allowance for consumer rebates and coupons that we have offered based on our experience and industry averages, which is reviewed, and adjusted if necessary, on a quarterly basis. Estimates relating to these rebates and coupons are deducted from gross product revenues at the time the revenues are recognized. We record distributor fees based on amounts stated in contracts. Rebate and coupon estimates and distributor fees are recorded in accrued expenses and other current liabilities on the consolidated balance sheet. We estimate chargebacks based on number of units sold during the period taking into account prices stated in contracts and our historical experience. Estimates related to distributors fees, rebates, coupons and returns are disclosed in Note 8. We provide invoice discounts to our customers for prompt payment. Estimates relating to invoice discounts and chargebacks are deducted from gross product revenues at the time the revenues are recognized.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

As part of the commercial launch for IMVEXXY during the third quarter of 2018 and for BIJUVA in the second quarter of 2019, we introduced a co-pay assistance program where eligible enrolled patients do not pay more than \$35 for prescription fills. This allows patients to access the product at a reasonable cost regardless of insurance coverage. We reimburse pharmacies for this discount through third-party vendors. We consider these payments as consideration paid to the customer and reflect such payments as a reduction of the transaction price as we do not receive a distinct good or service related to these payments. The variable consideration is estimated based on contract prices, the estimated percentage of patients that will utilize the copay assistance, the average assistance paid, the estimated levels of inventory in the distribution channel and the current level of prescriptions covered by patients' insurance. Payers may change coverage levels for IMVEXXY or BIJUVA positively or negatively, at any time up to the time that we have formally contracted coverage with the payer. As such, the net transaction price of IMVEXXY and BIJUVA is susceptible to such changes in coverage levels, which are outside the influence of the Company. As a result, we constrain revenue recognized for IMVEXXY and BIJUVA to an amount that will not result in a significant revenue reversal in future periods. Our ability to estimate the net transaction price for IMVEXXY and BIJUVA is constrained by our estimates of the amount to be paid for the co-pay assistance program for IMVEXXY and BIJUVA which is directly related to the level of prescriptions paid for by insurance. As such, we record an accrual to reduce gross sales for the estimated co-pay and other patient assistance based on currently available third-party data and our internal analyses. We re-evaluate any constraint each reporting period.

Disaggregation of revenue

The following table provides information about disaggregated revenue by product mix for the three and six months ended June 30, 2019 and 2018:

	For the Three Months Ended June 30,		For the Six Months Ended June 30	
	2019	2018	2019	2018
Prescription vitamins	\$ 2,822,872	\$ 3,763,010	\$ 4,758,844	\$ 7,536,402
IMVEXXY	3,121,711	—	5,132,390	—
BIJUVA	134,282	—	134,282	—
Net revenue	<u>\$ 6,078,865</u>	<u>\$ 3,763,010</u>	<u>\$ 10,025,516</u>	<u>\$ 7,536,402</u>

Share-Based Compensation

We measure the compensation costs of share-based compensation arrangements based on the grant-date fair value and recognize the costs in the financial statements over the period during which employees are required to provide services. Share-based compensation arrangements include options, restricted stock, restricted stock units, performance-based awards, share appreciation rights, and employee share purchase plans. We amortize such compensation amounts, if any, over the respective service periods of the award. We use the Black-Scholes-Merton option pricing model, or the Black-Scholes Model, an acceptable model in accordance with ASC 718, Compensation-Stock Compensation, to value options. Option valuation models require the input of assumptions, including the expected life of the stock-based awards, the estimated stock price volatility, the risk-free interest rate, and the expected dividend yield. The risk-free interest rate assumption is based upon observed interest rates on zero coupon U.S. Treasury bonds whose maturity period is appropriate for the term of the instrument. Estimated volatility is a measure of the amount by which our stock price is expected to fluctuate each year during the term of the award. Prior to January 1, 2017, the expected volatility of share options was estimated based on a historical volatility analysis of peer entities whose stock prices were publicly available that were similar to the Company with respect to industry, stage of life cycle, market capitalization, and financial leverage. On January 1, 2017, we began using our own stock price in our volatility calculation along with the other peer entities whose stock prices were publicly available that were similar to our company and in 2019 we started using only our own stock price in the volatility calculation. Our calculation of estimated volatility is based on historical stock prices over a period equal to the expected term of the awards. The average expected life is based on the contractual terms of the stock option using the simplified method. We utilize a dividend yield of zero based on the fact that we have never paid cash dividends and have no current intention to pay cash dividends. Calculating share-based compensation expense requires the input of highly subjective judgment and assumptions, estimates of expected life of the share-based award, stock price volatility and risk-free interest rates. The assumptions used in calculating the fair value of share-based awards represent our best estimates, but these estimates involve inherent uncertainties and the application of management judgment. As a result, if factors change and we use different assumptions, our share-based compensation expense could be materially different in the future. We recognize the compensation expense for share-based compensation granted based on the grant date fair value estimated in accordance with ASC 718. We generally recognize the compensation expense on a straight-line basis over the employee's requisite service period. Effective January 1, 2017, we account for forfeitures when they occur.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
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On January 1, 2019, we adopted ASU 2018-07 which simplified the accounting for share-based payments to nonemployees by aligning it with the accounting for share-based payments to employees, with certain exceptions. The new guidance expanded the scope of ASC 718 to include share-based payments granted to nonemployees in exchange for goods or services used or consumed in an entity's own operations and superseded the guidance in ASC 505-50. Prior to January 1, 2019, equity instruments issued to non-employees were recorded on a fair value basis, as required by ASC 505, Equity - Based Payments to Non-Employees.

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Research and Development Expenses

Research and development, or R&D, expenses include internal R&D activities, services of external contract research organizations, or CROs, costs of their clinical research sites, manufacturing, scale-up and validation costs, and other activities. Internal R&D activity expenses include laboratory supplies, salaries, benefits, and non-cash share-based compensation expenses. CRO activity expenses include preclinical laboratory experiments and clinical trial studies. Other activity expenses include regulatory consulting and legal fees and costs. The activities undertaken by our regulatory consultants that were classified as R&D expenses include assisting, consulting with, and advising our in-house staff with respect to various FDA submission processes, clinical trial processes, and scientific writing matters, including preparing protocols and FDA submissions. Legal activities that were classified as R&D expenses include professional research and advice regarding R&D, patents and regulatory matters. These consulting and legal expenses were direct costs associated with preparing, reviewing, and undertaking work for our clinical trials and investigative drugs. We charge internal R&D activities and other activity expenses to operations as incurred. We make payments to CROs based on agreed-upon terms, which may include payments in advance of a study starting date. We expense nonrefundable advance payments for goods and services that will be used in future R&D activities when the activity has been performed or when the goods have been received rather than when the payment is made. We review and accrue CRO expenses and clinical trial study expenses based on services performed and rely on estimates of those costs applicable to the completion stage of a study as provided by CROs. Estimated accrued CRO costs are subject to revisions as such studies progress to completion. We charge revisions expense in the period in which the facts that give rise to the revision become known.

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Segment Reporting

We are managed and operated as one business, which is focused on creating and commercializing products targeted exclusively for women. Our business operations are managed by a single management team that reports to the President of our company. We do not operate separate lines of business with respect to any of our products and we do not prepare discrete financial information with respect to separate products. All product sales are derived from sales in the United States. Accordingly, we view our business as one reportable operating segment.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 4 – INVENTORY

Inventory consists of the following:

	June 30, 2019	December 31, 2018
Finished product	\$ 4,382,969	\$ 2,908,958
Work in process	439,993	339,312
Raw material	2,671,478	19,400
TOTAL INVENTORY	\$ 7,494,440	\$ 3,267,670

NOTE 5 – OTHER CURRENT ASSETS

Other current assets consist of the following:

	June 30, 2019	December 31, 2018
Prepaid sales and marketing costs	\$ 2,568,100	\$ 5,148,789
Deferred financing fees (Note 9)	550,757	1,898,074
Prepaid insurance	686,891	790,465
Other prepaid costs	3,933,300	2,997,365
TOTAL OTHER CURRENT ASSETS	\$ 7,739,048	\$ 10,834,693

NOTE 6 – FIXED ASSETS, NET

Fixed assets, net consist of the following:

	June 30, 2019	December 31, 2018
Accounting system	\$ 301,096	\$ 301,096
Equipment	581,150	490,576
Furniture and fixtures	940,963	116,542
Computer hardware	220,820	80,211
Leasehold improvements	74,788	37,888
	<u>2,118,817</u>	<u>1,026,313</u>
Accumulated depreciation	(686,680)	(553,630)
TOTAL FIXED ASSETS, NET	\$ 1,432,137	\$ 472,683

Depreciation expense for the three months ended June 30, 2019 and 2018 was \$66,556 and \$40,777 , respectively, and for the six months ended June 30, 2019 and 2018 was \$133,049 and \$79,201 , respectively.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 7 – INTANGIBLE ASSETS

The following table sets forth the gross carrying amount, accumulated amortization and net carrying amount of our intangible assets as of June 30, 2019 and December 31, 2018:

	June 30, 2019			Weighted-Average Remaining Amortization Period (yrs.)
	Gross Carrying Amount	Accumulated Amortization	Net Amount	
Amortizable intangible assets:				
Approved hormone therapy drug candidate patents	2,962,563	(370,338)	2,592,225	13.5
Hormone therapy drug candidate patents (pending)	1,833,584	—	1,833,584	n/a
Non-amortizable intangible assets:				
Multiple trademarks	262,305	—	262,305	indefinite
TOTAL	\$ 5,058,452	\$ (370,338)	\$ 4,688,114	

	December 31, 2018			Weighted- Average Remaining Amortization Period (yrs.)
	Gross Carrying Amount	Accumulated Amortization	Net Amount	
Amortizable intangible assets:				
OPERA [®] software patent	\$ 31,951	\$ (10,484)	\$ 21,467	10.75
Development costs of corporate website	91,743	(91,743)	—	n/a
Approved hormone therapy drug candidate patents	2,234,129	(282,485)	1,951,644	14
Hormone therapy drug candidate patents (pending)	1,855,279	—	1,855,279	n/a
Non-amortizable intangible assets:				
Multiple trademarks	264,289	—	264,289	indefinite
TOTAL	\$ 4,477,391	\$ (384,712)	\$ 4,092,679	

We capitalize external costs, consisting primarily of legal costs, related to securing our patents and trademarks. Once a patent is granted, we amortize the approved hormone therapy drug candidate patents using the straight-line method over the estimated useful life of approximately 20 years, which is the life of intellectual property patents. If the patent is not granted, we write-off any capitalized patent costs at that time. Trademarks are perpetual and are not amortized. During the six months ended June 30, 2019, we wrote off \$78,864 in costs related to trademarks and patents, including the net carrying amount of the OPERA patent.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

As of June 30, 2019, we had 26 issued domestic, or U.S., patents and 27 issued foreign patents, including:

- 12 domestic patents and five foreign patents that relate to BIJUVA as well as three domestic patents that relate to non-approved doses of BIJUVA. These patents establish an important intellectual property foundation for BIJUVA and are owned by us. The domestic patents will expire in 2032. The foreign patents will expire no earlier than 2032. In addition, we have pending patent applications relating to BIJUVA in the U.S., Argentina, Australia, Brazil, Canada, China, Europe, Israel, Japan, Mexico, Russia, South Africa, and South Korea;
- Four foreign patents that relate to our progesterone-only candidate, which are owned by us. The foreign patents will expire no earlier than 2033. In addition, we have pending patent applications with respect to our progesterone-only candidate in the U.S., Argentina, Australia, Brazil, Canada, Europe, Israel, Japan, Mexico, Russia, South Africa, and South Korea;
- Five domestic patents (three utility and two design) and 13 foreign patents (three utility and ten design) that relate to IMVEXXY. These patents establish an important intellectual property foundation for IMVEXXY and are owned by us. The domestic patents will expire in 2032 or 2033. The foreign utility patents will expire no earlier than 2033. The foreign design patents provide protection expiring no earlier than 2025. In certain jurisdictions, the foreign design patents provide protection through at least 2037. In addition, we have pending patent applications related to IMVEXXY in the U.S., Argentina, Australia, Brazil, Canada, Europe, Israel, Japan, Mexico, New Zealand, Russia, South Africa, and South Korea;
- One domestic utility patent that relates to our topical-cream candidates, which is owned by us. The domestic patent will expire in 2035. We have pending patent applications with respect to our topical-cream candidates in the U.S., Argentina, Australia, Brazil, Canada, Europe, Israel, Japan, Mexico, Russia, South Africa, and South Korea;
- One domestic utility patent and five foreign patents that relate to our transdermal-patch candidates, which are owned by us. The domestic utility patent will expire in 2032. The foreign patents will expire no earlier than 2033. We have pending patent applications with respect to our transdermal-patch candidates in the U.S., Australia, Brazil, Canada, Europe, Mexico, Japan, and South Africa;
- One domestic utility patent that relates to a product candidate containing d-limonene, which is owned by us and will expire in 2036;
- One domestic utility patent that relates to our OPERA information-technology platform, which is owned by us and will expire in 2031; and
- Two domestic utility patents that relate to TX-009HR, a progesterone and estradiol product candidate, which are owned by us and will expire in 2037. We have pending patent applications with respect to TX-009HR in the U.S., Argentina, Australia, Brazil, Canada, Europe, Israel, Japan, Mexico, New Zealand, Russia, South Africa, and South Korea.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
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Amortization expense was \$48,503 and \$24,826 for the three months ended June 30, 2019 and 2018, respectively and \$88,948 and \$46,023 for the six months ended June 30, 2019 and 2018, respectively. Estimated amortization expense for the next five years for the patent costs currently being amortized is as follows:

Year Ending December 31,	Estimated Amortization
2019(6 months)	\$ 96,008
2020	\$ 196,017
2021	\$ 196,017
2022	\$ 196,017
2023	\$ 196,017

License Agreement with the Population Council

On July 30, 2018, we entered into the Council License Agreement to commercialize in the U.S. ANNOVERA. We currently estimate that ANNOVERA will be commercially available as early as the third quarter of 2019 with a planned full commercial launch by the first quarter of 2020.

Under the terms of the Council License Agreement, we paid the Population Council a milestone payment of \$20,000,000 within 30 days following approval by the FDA of the NDA for ANNOVERA and will be required to pay the Population Council \$20,000,000 within 30 days following the release of the first commercial batch of ANNOVERA. The Population Council is also eligible to receive milestone payments and royalties from commercial sales of ANNOVERA. We will assume responsibility for marketing expenses related to the commercialization of ANNOVERA. The milestone payment of \$20,000,000 upon the FDA's approval of ANNOVERA in the third quarter of 2018 was recorded as a finite-lived intangible asset in the consolidated balance sheet and will be amortized on a straight-line basis once it becomes available for use which is expected to be upon release of first commercial batch of ANNOVERA. In addition, we are required to pay the Population Council, on a quarterly basis, step-based royalty payments based on annual net sales of ANNOVERA in the U.S. by the Company and its affiliates and permitted licensees as follows: (i) if annual net sales are less than or equal to \$50,000,000 , a royalty of 5 % of net sales; (ii) for annual net sales greater than \$50,000,000 and less than or equal to \$150,000,000 , a royalty of 10 % of such net sales; and (iii) for net sales greater than \$150,000,000 , a royalty of 15 % of such net sales. The annual royalty rate will be reduced to 50 % of the initial rate during the six-month period beginning on the date of the first arms-length commercial sale of a generic equivalent of the one-year vaginal contraceptive system that is launched by a third party in the U.S., and thereafter will be reduced to 20 % of the initial rate. The Population Council has agreed to perform and pay the costs and expenses associated with four post-approval studies required by the FDA for ANNOVERA and we have agreed to perform and pay the costs and expenses associated with a post approval study required by the FDA to measure risk for venous thromboembolism, provided that if the costs and expenses associated with such post-approval study exceed \$20,000,000, half of such excess will be offset against royalties or other payments owed by us to the Population Council under the Council License Agreement. We and the Population Council have agreed to form a joint product committee responsible for overseeing activities under the Council License Agreement. We will be responsible for all aspects of promotion, product positioning, pricing, education programs, publications, sales messages and any additional desired clinical studies for the one-year vaginal contraceptive system, subject to oversight and decisions made by the joint product committee. The Council License Agreement includes exclusive rights for us to negotiate co-development of two other investigational vaginal contraceptive systems in development by the Population Council.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
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We assess our intangible assets for impairment if indicators are present or changes in circumstance suggest that impairment may exist. If impairment indicators are present or changes in circumstance suggest that impairment may exist, we perform a recoverability test by comparing the sum of the estimated undiscounted cash flows of each intangible asset to its carrying value on the consolidated balance sheet. If the undiscounted cash flows used in the recoverability test are less than the carrying value, we would determine the fair value of the intangible asset and recognize an impairment loss if the carrying value of the intangible asset exceeds its fair value. We also evaluate the remaining useful life of intangible assets subject to amortization on a periodic basis to determine whether events and circumstances would indicate impairment or warrant a revision to the remaining useful life. If the estimate of an intangible asset's remaining useful life is changed, we will amortize the remaining carrying value of the intangible asset prospectively over the revised remaining useful life.

License Agreement with Knight Therapeutics Inc.

On July 30, 2018, we entered into a license and supply agreement, or the Knight License Agreement, with Knight pursuant to which we granted Knight an exclusive license to commercialize IMVEXXY and BIJUVA in Canada and Israel. Pursuant to the terms of the Knight License Agreement, Knight will pay us a milestone fee upon first regulatory approval in Canada of each of IMVEXXY and BIJUVA, sales milestone fees based upon certain aggregate annual sales in Canada and Israel of each of IMVEXXY and BIJUVA and royalties based on aggregate annual sales of each of IMVEXXY and BIJUVA in Canada and Israel. Knight will be responsible for all regulatory and commercial activities in Canada and Israel related to IMVEXXY and BIJUVA. We may terminate the Knight License Agreement if Knight does not submit all regulatory applications, submissions and/or registrations required for regulatory approval to use and commercialize IMVEXXY and BIJUVA in Canada and Israel within certain specified time periods. We also may terminate the Knight License Agreement if Knight challenges our patents. Either party may terminate the Knight License Agreement for any material breach by the other party that is not cured within certain specified time periods or if the other party files for bankruptcy or other related matters. In connection with the Knight License Agreement, Knight entered into a subscription agreement with us, pursuant to which Knight purchased 3,921,568 shares of our Common Stock concurrent with the closing of the underwritten public offering of Common Stock at a price of \$5.10, for proceeds of \$20,000,000, on August 6, 2018.

License Agreement with Theramex

On June 6, 2019, we entered into an exclusive license and supply agreement, or the License Agreement, with Theramex, a leading, global specialty pharmaceutical company dedicated to women's health, to commercialize BIJUVA and IMVEXXY outside of the U.S., excluding Canada and Israel, or the Territory. Under the terms of the License Agreement, Theramex paid us EUR14 million in cash as an upfront fee on August 5, 2019. Within thirty days of signing License Agreement, we are required to provide Theramex the regulatory materials and clinical data that are necessary for Theramex to obtain marketing authorizations and other applicable regulatory approvals for commercializing BIJUVA and IMVEXXY. The revenue related to fees received by us will be recognized once our performance obligations have been satisfied. We are eligible to receive additional milestone payments comprised of (i) up to an aggregate of EUR 2 million in regulatory milestone payments based on regulatory approvals for BIJUVA and IMVEXXY in certain specified markets and (ii) up to an aggregate of EUR 27.5 million in sales milestone payments to be paid in escalating tranches based on Theramex first attaining certain aggregate annual net sales milestones of BIJUVA and IMVEXXY in the Territory ranging from EUR 25 million to EUR100 million. We are also entitled to receive quarterly royalty payments on net sales of BIJUVA and IMVEXXY in the Territory. Theramex will be responsible for all regulatory and commercial activities for BIJUVA and IMVEXXY in the Territory. Theramex may sublicense its rights to commercialize BIJUVA and IMVEXXY in the Territory, except for certain specified markets. We may terminate the License Agreement if Theramex does not submit all regulatory applications, submissions and/or registrations required for regulatory approval to use and commercialize BIJUVA and IMVEXXY within certain specified time periods. We also may terminate the License Agreement if Theramex challenges our patents. Either party may terminate the License Agreement for any material breach by the other party that is not cured within certain specified time periods or if the other party files for bankruptcy or other related matters.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 8 – OTHER CURRENT LIABILITIES

Other current liabilities consist of the following:

	June 30, 2019	December 31, 2018
Accrued payroll, bonuses and commission costs	\$ 5,115,082	\$ 6,854,002
Allowance for coupons and returns	6,340,450	5,294,120
Accrued sales and marketing costs	2,107,696	2,288,028
Accrued compensated absences	1,492,131	1,178,110
Allowance for wholesale distributor fees	2,077,444	792,891
Accrued legal and accounting expense	367,898	385,824
Accrued research and development	1,402,600	388,675
Operating lease liability	1,187,029	—
Accrued rent	—	365,155
Accrued rebates	2,251,047	412,570
Other accrued expenses	35,240	375,573
TOTAL OTHER CURRENT LIABILITIES	\$ 22,376,617	\$ 18,334,948

NOTE 9 – DEBT

On April 24, 2019, we entered into a Financing Agreement, or the Financing Agreement, with TPG Specialty Lending, Inc., as administrative agent, or the Administrative Agent, various lenders from time to time party thereto, and certain of the Company's subsidiaries party thereto from time to time as guarantors, which provides us with a \$300,000,000 first lien secured term loan credit facility, or the Facility. The Facility provides for availability to us in three tranches: (i) \$200,000,000 was drawn upon entering into the Financing Agreement; (ii) \$50,000,000 will be available to us upon the designation of our ANNOVERA product as a new category of birth control by the FDA on or prior to December 31, 2019 and satisfaction (or waiver) of other customary conditions precedent; and (iii) \$50,000,000 will be available to us upon our achieving \$11,000,000 in net revenues, as defined in the Financing Agreement, from our IMVEXXY, BIJUVA and ANNOVERA products for the fourth quarter of 2019 and satisfaction (or waiver) of other customary conditions precedent. Borrowings under the Facility accrue interest at either (i) 3-month LIBOR plus 7.75%, subject to a LIBOR floor of 2.70% or (ii) the prime rate plus 6.75%, subject to a prime rate floor of 5.20%, as selected by us. Interest on amounts borrowed under the Facility will be payable quarterly. The outstanding principal amount of the Facility is payable in four equal quarterly installments beginning on June 30, 2023, with the Facility maturing on March 31, 2024. We have the right to prepay borrowings under the Facility in whole or in part at any time, subject to a prepayment fee on the principal amount being prepaid of (i) 30.0% for the first two years following the initial funding date of the applicable borrowing, (ii) 5.0% for the third year following the initial funding date of the applicable borrowing, (iii) 3.0% for the fourth year following the initial funding date of the applicable borrowing and (iv) 1.0% for the fifth year following the initial funding date of the applicable borrowing but prior to March 31, 2024. In connection with the initial borrowing under the Facility, we paid, for the benefit of the lenders, a facility fee equal to 2.5% of the initial amount borrowed and will be required to pay such a facility fee in connection with any subsequent borrowings under the Facility. We are also required to pay the Administrative Agent and the lenders an annual administrative fee in addition to other fees and expenses. The Financing Agreement contains customary mandatory prepayments, restrictions and covenants applicable to us that are customary for financings of this type. Among other requirements, we are required to (i) maintain a minimum unrestricted cash balance of \$50,000,000, which will increase to \$60,000,000 if we draw either the second or third tranche of the Facility, and (ii) achieve certain minimum consolidated net revenue amounts attributable to commercial sales of our IMVEXXY, BIJUVA and ANNOVERA products beginning with the fiscal quarter ending December 31, 2020. The Financing Agreement also includes other representations, warranties, indemnities and events of default that are customary for financings of this type, including an event of default relating to a change of control of the Company. Upon or after an event of default, the Administrative Agent and the lenders may declare all or a portion of our obligations under the Financing Agreement to be immediately due and payable and exercise other rights and remedies provided for under the Financing Agreement. The obligations of our company and its subsidiaries under the Financing Agreement are secured, subject to customary permitted liens and other agreed upon exceptions, by a first priority perfected security interest in all existing and after-acquired assets of our company and its subsidiaries. The obligations under the Financing Agreement will be guaranteed by each of our future direct and indirect subsidiaries, subject to certain exceptions.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

On May 1, 2018, we entered into a Credit and Security Agreement, or the Credit Agreement, with MidCap Financial Trust, or MidCap, as agent, or Agent, and as lender, and the additional lenders party thereto from time to time (together with MidCap as a lender, the Lenders), as amended. The Credit Agreement provided a secured term loan facility in an aggregate principal amount of up to \$200,000,000, or the Term Loan. Under the terms of the Credit Agreement, the Term Loan was available to be made in three separate tranches, with each tranche to be made available to us, at our option, upon our achievement of certain milestones. Amounts borrowed under the Term Loan bore interest at a rate equal to the sum of (i) one-month LIBOR (subject to a LIBOR floor of 1.50%) plus (ii) 7.75% per annum.

On April 24, 2019, we terminated the Credit Agreement. A portion of the initial tranche of borrowing under the Financing Agreement in the amount of approximately \$81,661,000 was used to repay all amounts outstanding under the Credit Agreement, which included a prepayment fee of 4%, a repayment fee of 4% and other fees and expenses payable to the lenders under the Credit Agreement. As a result of the termination of the Credit Agreement, we recorded \$10,057,632 in loss on extinguishment of debt in the accompanying unaudited consolidated financial statements. Interest on amounts borrowed under the Term Loan was due and payable monthly in arrears. Interest expense for the six months ending June 30, 2019 related to the Credit Agreement was \$1,816,747. During the six months ended June 30, 2019, and prior to the repayment of the Credit Agreement, we amortized \$120,146 of deferred financing fees as interest expense in the accompanying unaudited consolidated financial statements.

As of June 30, 2019, we had \$200,000,000 in borrowings outstanding under the Financing Agreement, which are classified as long-term debt in the accompanying unaudited consolidated financial statements. We incurred \$6,652,270 in deferred financing fees related to the Financing Agreement. Deferred financing fees related to the entire Financing Agreement have been allocated pro rata between the funded and unfunded portions of each tranche. Allocated deferred financing fees related to Tranche 1 of \$6,101,513 have been reflected as a debt discount and are accreted to interest expense using the effective interest method. Deferred financing fees associated with unfunded tranches were deferred as assets until the Tranche 2 and Tranche 3 milestones have been met. As of June 30, 2019, deferred financing fees related to Tranche 2 and Tranche 3 were included in other current assets in the accompanying consolidated financial statements. During both the three and six months ended June 30, 2019, we amortized \$196,734 of deferred financing fees related to Tranche 1 as interest expense in the accompanying unaudited consolidated financial statements. Interest on amounts borrowed under the Financing Agreement is due and payable quarterly in arrears. Interest expense for both the three and six months ending June 30, 2019 was \$3,985,000. The overall effective interest rate under the Financing Agreement was approximately 11% as of June 30, 2019. As of June 30, 2019 and December 31, 2018, the carrying value of debt consisted of the following:

	June 30, 2019	December 31, 2018
Financing Agreement	\$ 200,000,000	\$ —
Credit Agreement	—	75,000,000
Debt discount and financing fees	(5,904,780)	(1,618,986)
TOTAL LONG-TERM DEBT	\$ 194,095,220	\$ 73,381,014

THERAPEUTICSMD, INC. AND SUBSIDIARIES
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NOTE 10– NET LOSS PER SHARE

We calculate earnings per share, or EPS, in accordance with ASC 260, Earnings Per Share, which requires the computation and disclosure of two EPS amounts: basic and diluted. We compute basic EPS based on the weighted-average number of shares of common stock, par value \$0.001 per share, or Common Stock, outstanding during the period. We compute diluted EPS based on the weighted-average number of shares of our Common Stock outstanding plus all potentially dilutive shares of our Common Stock outstanding during the period. Such potentially dilutive shares of our Common Stock consist of options, warrants and restricted stock awards and were excluded from the calculation of diluted earnings per share because their effect would have been antidilutive due to the net loss reported by us. The table below presents potentially dilutive securities that could affect our calculation of diluted net loss per share allocable to common stockholders for the periods presented.

	Three and Six months ended	
	June 30, 2019	June 30, 2018
Stock options	22,072,469	25,210,899
Warrants	1,832,571	3,007,571
Restricted stock awards	1,040,000	—
TOTAL	24,945,040	28,218,470

NOTE 11 – STOCKHOLDERS’ EQUITY

Preferred Stock

At June 30, 2019, we had 10,000,000 shares of preferred stock, par value \$0.001 per share, authorized for issuance, of which no shares of preferred stock were issued or outstanding.

Common Stock

At June 30, 2019, we had 350,000,000 shares of Common Stock authorized for issuance, of which 241,221,840 shares of Common Stock were issued and outstanding.

Issuances During the Three and Six Months Ended June 30, 2019

During the three months ended June 30, 2019, no options to purchase shares of Common Stock were exercised. During the six months ended June 30, 2019, certain individuals exercised stock options to purchase 276,383 shares of Common Stock for \$100,107 in cash. Also, during the same period, stock options to purchase 12,097 shares of Common Stock were exercised pursuant to the options’ cashless exercise provisions, wherein 11,834 shares of Common Stock were issued.

Issuances During the Three and Six Months Ended June 30, 2018

During the three months ended June 30, 2018, certain individuals exercised stock options to purchase 249,785 shares of Common Stock for \$1,084,939 in cash. During the six months ended June 30, 2018, certain individuals exercised stock options to purchase 394,576 shares of Common Stock for \$1,128,996 in cash. Also, during the six months ended June 30, 2018, stock options to purchase 10,000 shares of Common Stock were exercised pursuant to the options’ cashless exercise provisions, wherein 9,841 shares of Common Stock were issued.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

Warrants to Purchase Common Stock

As of June 30, 2019, we had warrants outstanding to purchase an aggregate of 1,832,571 shares of Common Stock with a weighted-average contractual remaining life of approximately 2.5 years, and exercise prices ranging from \$0.24 to \$8.20 per share, resulting in a weighted average exercise price of \$2.62 per share.

The valuation methodology used to determine the fair value of our warrants is the Black-Scholes Model. The Black-Scholes Model requires the use of a number of assumptions, including volatility of the stock price, the risk-free interest rate, dividend rate and the term of the warrant.

During the six months ended June 30, 2019, we granted warrants to purchase 75,000 shares of Common Stock to outside consultants at an exercise price of \$5.63. The fair value for these warrants was determined by using the Black-Scholes Model on the date of the grant using a term of 5 years; volatility of 60.8%; risk free rate of 2.52%; and dividend yield of 0%. The grant date fair value of the warrants was \$3.00 per share. The warrants are vesting ratably over a 12-month period and have an expiration date of February 12, 2024. During the six months ended June 30, 2018, we granted warrants to purchase 175,000 shares of Common Stock to outside consultants at an exercise price of \$5.16. The fair value for these warrants was determined by using the Black-Scholes Model on the date of the grant using a term of 5 years; volatility of 62.1%; risk free rate of 2.36%; and dividend yield of 0%. The grant date fair value of the warrants was \$2.79 per share. The warrants vest ratably over a 12-month period and have an expiration date of March 15, 2023.

During the three months ended June 30, 2019 and 2018, we recorded \$56,172 and \$164,840, respectively, and during the six months ended June 30, 2019 and 2018, we recorded \$141,888 and \$256,315, respectively, as share based compensation expense in the accompanying consolidated financial statements related to warrants. As of June 30, 2019, total unrecognized estimated compensation expense related to the unvested portion of these warrants was approximately \$139,000, which is expected to be recognized over a weighted-average period of 0.6 years.

During the three months ended June 30, 2019 and 2018, no warrants to purchase shares of Common Stock were exercised.

During the six months ended June 30, 2019, warrants to purchase 1,250,000 shares of Common Stock were exercised pursuant to the options' cashless exercise provisions, wherein 471,184 shares of Common Stock were issued. During the six months ended June 30, 2018, no warrants were exercised.

Options to Purchase Common Stock

In 2009, we adopted the 2009 Long Term Incentive Compensation Plan, or the 2009 Plan, to provide financial incentives to employees, directors, advisers, and consultants of our company who are able to contribute towards the creation of or who have created stockholder value by providing them stock options and other stock and cash incentives, or the Awards. The Awards available under the 2009 Plan consist of stock options, stock appreciation rights, restricted stock, restricted stock units, performance stock, performance units, and other stock or cash awards as described in the 2009 Plan. Generally, the options vest annually over four years or as determined by our board of directors, upon each option grant. Options may be exercised by paying the price for shares or on a cashless exercise basis after they have vested and prior to the specified expiration date provided and applicable exercise conditions are met, if any. The expiration date is generally ten years from the date the option is issued. As of June 30, 2019, there were non-qualified stock options to purchase 15,116,995 shares of Common Stock outstanding under the 2009 Plan. Effective upon our adoption of the TherapeuticsMD, Inc. 2019 Stock Incentive Plan, or the 2019 Plan, on June 20, 2019, no future awards may be made under the 2009 Plan.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

In 2012, we adopted the 2012 Stock Incentive Plan, or the 2012 Plan, a non-qualified plan that was amended in August 2013. The 2012 Plan was designed to serve as an incentive for retaining qualified and competent key employees, officers, directors, and certain consultants and advisors of our company. The Awards available under the 2012 Plan consist of stock options, stock appreciation rights, restricted stock, restricted stock units, performance stock, performance units, and other stock or cash awards as described in the 2012 Plan. Generally, the options vest annually over four years or as determined by our board of directors, upon each option grant. Options may be exercised by paying the price for shares or on a cashless exercise basis after they have vested and prior to the specified expiration date provided and applicable exercise conditions are met, if any. The expiration date is generally ten years from the date the option is issued. As of June 30, 2019, there were non-qualified stock options to purchase 6,317,974 shares of Common Stock outstanding and 1,040,000 restricted stock awards under the 2012 Plan. Effective upon our adoption of the 2019 Plan on June 20, 2019, no future awards may be made under the 2012 Plan.

On June 20, 2019, we adopted the 2019 Plan to serve as an incentive for retaining qualified and competent key employees, officers, directors, and certain consultants and advisors of our company. The Awards available under the 2019 Plan consist of stock options, stock appreciation rights, restricted stock, restricted stock units, performance stock, performance units, and other stock or cash awards as described in the 2019 Plan. Generally, the options vest annually over four years or as determined by our board of directors, upon each option grant. Options may be exercised by paying the price for shares or on a cashless exercise basis after they have vested and prior to the specified expiration date provided and applicable exercise conditions are met, if any. The expiration date is generally ten years from the date the option is issued. As of June 30, 2019, there were 16,812,383 shares of Common Stock authorized for issuance thereunder, consisting of (i) 14,362,500 new shares, (ii) 2,393,833 unallocated shares previously available for issuance under the 2012 Plan that were not then subject to outstanding "Awards" (as defined in the 2012 Plan), and (iii) 56,050 unallocated shares previously available for issuance under the 2009 Plan that were not then subject to outstanding "Awards" (as defined in the 2009 Plan). Any shares subject to outstanding options or other equity "Awards" under the 2019 Plan, the 2012 Plan and the 2009 Plan that are forfeited, expire or otherwise terminate without issuance of the underlying shares, or if any such Award is settled for cash or otherwise does not result in the issuance of all or a portion of the shares subject to such Award (other than shares tendered or withheld in connection with the exercise of an Award or the satisfaction of withholding tax liabilities), the shares to which those Awards were subject, shall, to the extent of such forfeiture, expiration, termination, cash settlement or non-issuance, again be available for delivery with respect to Awards under the 2019 Plan. As of June 30, 2019, there were non-qualified stock options to purchase 637,500 shares of Common Stock outstanding under the 2019 Plan.

The valuation methodology used to determine the fair value of stock options is the Black-Scholes Model. The Black-Scholes Model requires the use of a number of assumptions including volatility of the stock price, the risk-free interest rate, and the expected life of the stock options. The assumptions used in the Black-Scholes Model for options granted during the six months ended June 30, 2019 and 2018 are set forth in the table below.

	Six months ended	
	June 30,	
	2019	2018
Risk-free interest rate	2.19—2.54 %	2.38—2.63 %
Volatility	61.25—61.85 %	61.82—64.04 %
Term (in years)	5.5—6.25	5.1—6.25
Dividend yield	0.00%	0.00%

THERAPEUTICSMD, INC. AND SUBSIDIARIES
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A summary of activity under the 2009, 2012 and 2019 Plans and related information follows:

	Number of Shares Underlying Stock Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life in Years	Aggregate Intrinsic Value
Balance at December 31, 2018	20,872,824	\$ 4.93	5.94	\$ 12,239,876
Granted	1,544,500	\$ 4.40		
Exercised	(288,480)	\$ 0.35		\$ 1,315,238
Expired/Forfeited	(56,375)	\$ 5.77		
Balance at June 30, 2019	<u>22,072,469</u>	\$ 4.95	5.80	\$ 3,945,665
Vested and Exercisable at June 30, 2019	17,125,888	\$ 4.79	4.94	\$ 3,945,665
Unvested at June 30, 2019	4,946,581	\$ 5.48	8.79	\$ 0

At June 30, 2019, our outstanding stock options had exercise prices ranging from \$0.10 to \$8.92 per share. The weighted average grant date fair value per share of options granted was \$2.57 and \$3.15 during the six months ended June 30, 2019 and 2018, respectively. Share-based compensation expense for options recognized in our results of operations for the three months ended June 30, 2019 and 2018 (\$2,230,829 and \$2,212,241 , respectively) and for the six months ended June 30, 2019 and 2018 (\$4,374,069 and \$3,872,125 , respectively) is based on vested awards. At June 30, 2019, total unrecognized estimated compensation expense related to unvested options granted prior to that date was approximately \$11,606,000 which may be adjusted for future changes in forfeitures. This cost is expected to be recognized over a weighted-average period of 2.1 years. No tax benefit was realized due to a continued pattern of operating losses.

Restricted Stock

Restricted stock awards granted under our 2009, 2012 and 2019 Plans entitle the holder to receive, at the end of vesting period, a specified number of shares of our Common Stock. Share-based compensation expense is measured by the market value of our Common Stock on the day of the grant. The shares vest ratably over the period specified in the grant. There is no partial vesting and any unvested portion is forfeited.

On December 13, 2018, we granted 1,040,000 restricted stock units to certain executive employees which will vest at the end of the third year. The grant date fair value was \$4.06 per unit. During the three and six months ended June 30, 2019 we recorded \$350,263 and \$696,676 , respectively, in share-based compensation expense related to restricted stock units. At June 30, 2019, total unrecognized estimated compensation expense related to unvested restricted stock units was approximately \$3,453,000 , which may be adjusted for future changes in forfeitures. This cost is expected to be recognized over a weighted-average period of 2.5 years. At June 30, 2019, 1,040,000 restricted stock awards remained outstanding.

Cash-Settled Stock Appreciation Rights (SARs)

On July 1, 2018, we issued cash-settled SARs to certain consultants and employees. The SARs plan year began on July 1, 2018 and ended on or immediately following June 30, 2019. SARs were granted with a grant price equal to the market value of a share of our Common Stock on the date of grant. Cash-settled SARs provided for the cash payment of the excess of the fair market value of our Common Stock on June 30, 2019 over the grant price. Cash-settled SARs have no effect on dilutive shares or shares outstanding as any appreciation of our Common Stock over the grant price is paid in cash and not in Common Stock.

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Cash settled SARs were recorded in our consolidated balance sheets as a liability until the date of exercise. The fair value of each SAR award was estimated using the Black-Scholes valuation model. In accordance with ASC Topic 718, "Stock Compensation," the fair value of each SAR award was recalculated at the end of each reporting period and the liability and expense adjusted based on the new fair value and the percent vested. At June 30, 2019, the fair market value of our Common Stock was lower than the grant price of SARs and, as a result, the recorded liability was reversed and no cash payment was made.

NOTE 12 – INCOME TAXES

Deferred income tax assets and liabilities are determined based upon differences between the financial reporting and tax basis of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. We do not expect to pay any significant federal or state income tax for 2019 as a result of (i) the losses recorded during the six months ended June 30, 2019, (ii) additional losses expected for the remainder of 2019, and/or (iii) net operating loss carry forwards from prior years. Accounting standards require the consideration of a valuation allowance for deferred tax assets if it is "more likely than not" that some component or all of the benefits of deferred tax assets will not be realized. As of June 30, 2019, we maintain a full valuation allowance for all deferred tax assets. Based on these requirements, no provision or benefit for income taxes has been recorded. There were no recorded unrecognized tax benefits at the end of the reporting period.

NOTE 13 – RELATED PARTIES

In July 2015, J. Martin Carroll, a director of our company, was appointed to the board of directors of Catalent, Inc. From time to time, we have entered into agreements with Catalent, Inc. and its affiliates, or Catalent, in the normal course of business. Agreements with Catalent have been reviewed by independent directors of our company or a committee consisting of independent directors of our company since July 2015. During the three months ended June 30, 2019 and 2018, we were billed by Catalent approximately \$ 974,000 and \$ 1,266,000 , respectively, for manufacturing activities related to our clinical trials, scale-up, registration batches, stability and validation testing. During the six months ended June 30, 2019 and 2018, we were billed by Catalent approximately \$ 2,371,000 and \$ 2,040,000 , respectively, for manufacturing activities related to our clinical trials, scale-up, registration batches, stability and validation testing. As of June 30, 2019 and December 31, 2018, there were amounts due to Catalent of approximately \$ 243,000 and \$ 88,000 , respectively.

NOTE 14 – BUSINESS CONCENTRATIONS

We purchase our prescription products from several suppliers with approximately 14%,18%,31% and37% of our purchases were supplied by four vendors each, respectively, during the six months ended June 30, 2019 and approximately 100% of our purchases were supplied from one vendor for the six months ended June 30, 2018.

We sell our prescription prenatal vitamin products to wholesale distributors, specialty pharmacies, specialty distributors, and chain drug stores that generally sell products to retail pharmacies, hospitals, and other institutional customers. During the six months ended June 30, 2019, three customers each generated more than 10% of our total revenues. During the six months ended June 30, 2018, four customers each generated more than 10% of our total revenues. Revenue generated from the three customers combined accounted for approximately 60% of our recognized revenue for the six months ended June 30, 2019 and revenue generated from the four customers combined accounted for approximately71% of our recognized revenue for the six months ended June 30, 2018.

During the six months ended June 30, 2019, Pillpack, Inc. accounted for approximately \$3,615,000of our revenue, AmerisourceBergen accounted for approximately \$1,365,000of our revenue and Cardinal Health accounted for approximately \$1,048,000of our revenue. During the six months ended June 30, 2018, PI Services generated approximately \$981,000of our revenue, Pillpack, Inc. generated approximately \$2,088,000of our revenue, AmerisourceBergen generated approximately \$1,283,000of our revenue and Cardinal Health generated approximately \$971,000of our revenue.

THERAPEUTICSMD, INC. AND SUBSIDIARIES
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NOTE 15 – COMMITMENTS AND CONTINGENCIES

We adopted ASC 842 effective January 1, 2019. Substantially all our operating lease right-of-use assets and operating lease liabilities represent leases for office space used to conduct our business. Upon adoption, we have recognized a right-of-use asset and a lease liability for all leases that have commenced as of January 1, 2019. The right-of-use assets represent the right to use the leased asset for the lease term. The lease liabilities represent the present value of the lease payments under the lease. The right-of-use asset is initially measured at cost, which primarily comprises the initial amount of the lease liability, plus any initial direct costs incurred, less any lease incentives received. All right-of-use assets are reviewed for impairment. The lease liability is initially measured at the present value of the lease payments, discounted using our secured incremental borrowing rate for the same term as the underlying lease because the rates are not implicit in the leases. Some of our leases contain variable lease payments, including payments based on an index or rate. Variable lease payments based on an index or rate are initially measured using the index or rate in effect at lease commencement. Additional payments based on the change in an index or rate, or payments based on a change in our portion of the operating expenses are recorded as a period expense when incurred. Lease modifications result in remeasurement of the lease liability. Included in lease expense are any variable lease payments incurred in the period that were not included in the initial lease liability.

We lease administrative office space in Boca Raton, Florida pursuant to a non-cancelable operating lease that commenced on July 1, 2013 and originally provided for a 63-month term. On February 18, 2015, we entered into an agreement with the same lessors to lease additional administrative office space in the same location, pursuant to an addendum to such lease. In addition, on April 26, 2016, we entered into an agreement with the same lessors to lease additional administrative office space in the same location. This agreement was effective beginning May 1, 2016 and extended the original expiration of the lease term to October 31, 2021. On October 4, 2016, we entered into an agreement with the same lessors to lease additional administrative office space in the same location, pursuant to an addendum to such lease. This addendum is effective beginning November 1, 2016.

In October 2018, we entered into a lease for new corporate offices in Boca Raton, Florida. The lease includes 56,212 rentable square feet, or the full premises, of which lease on 7,561 square feet commenced in 2018 and the lease on the remaining 48,651 square feet will commence sometime in the third quarter of 2019, or the full premises commencement date. The lease will expire 11 years after full premises commencement date, unless terminated earlier in accordance with the terms of the lease. We have the option to extend the term of the lease for two additional consecutive periods of five years. The extension option is not included in the determination of the lease term as it is not reasonably certain to be exercised. The term of the lease includes escalating rent and free rent periods. We are also responsible for certain other operating costs under the lease, including electricity and utility expenses. In addition, we will be entitled to reimbursement from the landlord of up to \$1,800,000 for tenant improvements. In June 2019, we entered into an agreement with the same lessors to lease additional 6,536 square feet of administrative office space in the same location, pursuant to an addendum to such lease, which is expected to commence as soon as the fourth quarter of 2019.

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Supplemental lease information as of June 30, 2019	
Right-of-use asset (included in Other assets)	\$ 3,316,436
Short-term operating lease liability (included in Other current liabilities)	\$ 1,187,029
Long-term operating lease liability	\$ 2,488,101
Weighted average remaining term	5 Years
Weighted average discount rate	8.25%

Supplemental cash flow information for the six months ended June 30, 2019	
Cash paid for amounts included in the measurement of lease liabilities for operating lease	\$ 564,092
Right-of-use assets obtained in exchange for lease obligation	\$ 3,760,171

The following table reconciles the undiscounted cash flows for all operating leases at June 30, 2019 to the operating lease liabilities recorded on the balance sheet:

Years Ending December 31,	
2019 (6 months)	\$ 595,649
2020	1,292,914
2021	1,135,467
2022	172,651
2023	176,968
Thereafter	1,228,504
Total undiscounted lease payments	4,602,153
Less: imputed interest	(927,023)
Present value of lease payments	<u>\$ 3,675,130</u>

As of June 30, 2019, we estimated undiscounted fixed future minimum rental commitments of approximately \$13,300,000 and estimated undiscounted variable future minimum rental commitments of approximately \$6,400,000 over the term of the lease related to the operating lease for the new corporate office that we entered into in October 2018 and an additional suite that we entered into in 2019 that had not commenced yet, as disclosed above. During the three and six months ended June 30, 2019, operating lease expense related to our real estate leases was approximately \$295,000 and \$590,000, respectively, and variable lease expense was insignificant for the three and six months ended June 30, 2019. Rent expense totaled \$257,000 and \$515,000 during the three and six months ended June 30, 2018, respectively.

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

General

The following discussion and analysis provides information that we believe to be relevant to an assessment and understanding of our results of operations and financial condition for the periods described. This discussion should be read together with our consolidated financial statements and the notes to the financial statements, which are included in this Quarterly Report on Form 10-Q. This information should also be read in conjunction with the information contained in our Annual Report on Form 10-K for the year ended December 31, 2018 filed with the Securities and Exchange Commission, or the SEC, on February 27, 2019, or our Annual Report, including the audited financial statements and notes included therein. The reported results will not necessarily reflect future results of operations or financial condition.

In addition, this Quarterly Report on Form 10-Q contains forward-looking statements that involve substantial risks and uncertainties. Forward-looking statements may include, but are not limited to, statements relating to our objectives, plans and strategies as well as statements, other than historical facts, that address activities, events or developments that we intend, expect, project, believe or anticipate will or may occur in the future. These statements are often characterized by terminology such as "believes," "hopes," "may," "anticipates," "should," "intends," "plans," "will," "expects," "estimates," "projects," "positioned," "strategy" and similar expressions and are based on assumptions and assessments made in light of management's experience and perception of historical trends, current conditions, expected future developments and other factors believed to be appropriate. Forward-looking statements are made as of the date of this Quarterly Report on Form 10-Q and we undertake no duty to update or revise any such statements, whether as a result of new information, future events or otherwise, except as required by law or by the rules and regulations of the SEC. Forward-looking statements are not guarantees of future performance and are subject to risks and uncertainties, many of which are outside of our control. Important factors that could cause actual results, developments and business decisions to differ materially from forward-looking statements are described in the sections titled "Risk Factors" in our Annual Report, and include the following: our ability to maintain or increase sales of our approved products; our ability to develop and commercialize IMVEXXY[®], BIJUVA[®], ANNOVERA[™] and our hormone therapy drug candidates and obtain additional financing necessary therefor; our commercialization, marketing and manufacturing capabilities and strategy for our approved products; the size of markets and the potential market opportunity for which our products are approved and our ability to penetrate such markets; the rate and degree of market acceptance of our products; the willingness of healthcare providers to prescribe and patients to use our products; our ability to obtain additional financing when needed; our competitive position and the success of competing products that are or become available for the indications that we are pursuing; our intellectual property position; whether we will be able to comply with the covenants and conditions under our term loan agreement; the length, cost and uncertain results of our clinical trials, the potential of adverse side effects or other safety risks that could adversely affect the commercialization of our current or future approved products; our reliance on third parties to conduct our clinical trials, research and development and manufacturing; the ability of our licensees to commercialize and distribute IMVEXXY and BIJUVA; the

availability of reimbursement from government authorities and health insurance companies for our products; the impact of product liability lawsuits; and the influence of extensive and costly government regulation.

Throughout this Quarterly Report on Form 10-Q, the terms “we,” “us,” “our,” “TherapeuticsMD,” or “our company” refer to TherapeuticsMD, Inc., a Nevada corporation, and unless specified otherwise, include our wholly owned subsidiaries, vitaMedMD, LLC, a Delaware limited liability company, or VitaMed; BocaGreenMD, Inc., a Nevada corporation, or BocaGreen; and VitaCare Prescription Services, Inc., a Florida corporation, or VitaCare.

This Quarterly Report on Form 10-Q includes our trademarks, trade names and service marks, such as IMVEXXY®, BIJUVA® and ANNOVERA™ which are protected under applicable intellectual property laws and are the property of our company. This Quarterly Report on Form 10-Q also contains trademarks, trade names and service marks of other companies, which are the property of their respective owners. Solely for convenience, trademarks, trade names and service marks referred to in this quarterly report may appear without the ®, ™ or SM symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the right of the applicable licensor to these trademarks, trade names and service marks. We do not intend our use or display of other parties' trademarks, trade names or service marks to imply, and such use or display should not be construed to imply, a relationship with, or endorsement or sponsorship of us by, these other parties.

Overview

We are a women's healthcare company focused on creating and commercializing innovative products to support the lifespan of women and championing awareness of women's healthcare issues, specifically, for pregnancy prevention, pregnancy, childbirth, nursing, pre-menopause, and menopause. At TherapeuticsMD, we combine entrepreneurial spirit, clinical expertise, and business leadership to develop and commercialize health solutions that enable new standards of care for women. Our solutions range from advanced hormone therapy pharmaceutical products to patient-controlled, long-acting contraceptive. We also manufacture and distribute branded and generic prescription prenatal vitamins under the vitaMedMD® and BocaGreenMD® brands.

With our SYMBODA™ technology, we are developing and commercializing advanced hormone therapy pharmaceutical products to enable delivery of bio-identical hormones through a variety of dosage forms and administration routes. Our commercialization plan allows us to efficiently leverage and grow our marketing and sales organization to commercialize our recently approved products. During 2018, the U.S. Food and Drug Administration, or FDA, approval of our drugs has transitioned our company from predominately focused on conducting research and development to one focused on commercializing our drugs. In July 2018, we launched our FDA approved product, IMVEXXY (estradiol vaginal inserts) for the treatment of moderate-to-severe dyspareunia (vaginal pain associated with sexual activity), a symptom of vulvar and vaginal atrophy, or VVA, due to menopause. In April 2019, we launched our FDA-approved product BIJUVA, our hormone therapy combination of bio-identical 17β-estradiol and bio-identical progesterone in a single, oral softgel capsule, for the treatment of moderate-to-severe vasomotor symptoms, or VMS, due to menopause in women with a uterus, which was approved by the FDA on October 28, 2018. We are also focused on commercialization activities necessary for launch of ANNOVERA (segesterone acetate/ethinyl estradiol vaginal system), the first and only patient-controlled, procedure-free, reversible prescription contraceptive that can prevent unintended pregnancy for up to a full year, which was approved by the FDA on August 10, 2018. On July 30, 2018, we entered into an exclusive license agreement, or the Population Council License Agreement, with the Population Council, Inc., or the Population Council, to commercialize ANNOVERA in the U.S. In addition, on July 30, 2018, we entered into a license and supply agreement with Knight Therapeutics Inc., or Knight, pursuant to which we granted Knight an exclusive license to commercialize IMVEXXY and BIJUVA in Canada and Israel. On June 6, 2019, we entered into an exclusive license and supply agreement, or the License Agreement, with Theramex HQ UK Limited, or Theramex, to commercialize BIJUVA and IMVEXXY outside of the U.S., excluding Canada and Israel, or the Territory.

Our common stock, par value \$0.001 per share, or the Common Stock, is traded on the Nasdaq Global Select Market of The Nasdaq Stock Market LLC, or the Nasdaq, under the symbol "TXMD." We maintain websites at www.therapeuticsmd.com as well as various product websites. The information contained on our websites or that can be accessed through our websites does not constitute part of this Quarterly Report on Form 10-Q.

IMVEXXY

On May 30, 2018, we announced that the FDA had approved the 4 µg and 10 µg doses of IMVEXXY (estradiol vaginal inserts) for the treatment of moderate-to-severe dyspareunia (vaginal pain associated with sexual activity), a symptom of VVA, due to menopause. The 4-µg formulation of IMVEXXY represents the lowest FDA-approved dose of vaginal estradiol available.

On July 9, 2018, we launched IMVEXXY 10-µg with our early experience program to a targeted sample of healthcare providers, or HCPs, throughout the U.S. The national launch of the 10-µg dose of IMVEXXY began in August 2018, and the 4-µg dose of IMVEXXY launched on September 13, 2018. Since FDA approval of our NDA for IMVEXXY, we have been focused on executing our launch plan. The key objectives of our launch plan include: (i) providing broad commercial access at the retail level and with commercial payers, (ii) increasing awareness and appreciation of the clinical and patient features of IMVEXXY amongst HCPs, (iii) designing and deploying our customer facing model, and (iv) developing our internal capabilities (for example, in the areas of finance, human resources, medical affairs, information technology, data analytics, pharmacovigilance capacity and compliance) to support our commercial-stage company. We have made progress in each of these key strategic areas:

Commercial Access:

- Both the 4-µg and 10-µg doses of IMVEXXY are broadly available in major pharmacy chains in the U.S., as well as with our BIO-IGNITE™ partners, via our third-party logistics and our distribution partners.
- We have aggressively sought commercial payer coverage as many commercial payers employ “new-to-market blocks” for newly launched brands until the payers make a coverage decision based upon their internal review the product. As we seek to increase the number of lives covered by commercial payers, it is our objective to continue to seek unrestricted coverage that involves affordable access for patients.
- Through June 30, 2019, we achieved unrestricted coverage with seven of the top ten commercial payers of VVA products and we continue to sign new agreements with payers to cover IMVEXXY. In addition, as of June 30, 2019, two of the top six Medicare Part D payers of VVA products were adjudicating IMVEXXY.
- Beginning at launch, we instituted a patient education and affordability program that allows all eligible enrolled patients to receive IMVEXXY at a reasonable cost. When a product is not covered, the patient is responsible to pay the full price for the medication, which can significantly limit a patient’s ability to pay and subsequent utilization of the product. With our co-pay assistance program, eligible enrolled patients do not pay more than \$35 for a prescription of IMVEXXY.

Brand Awareness and Adoption:

- In addition to our focus on direct selling from our sales organization, we have executed a branded multichannel awareness campaign for HCPs leveraging digital, non-personal promotion and journal advertising and have already reached most of the active writing HCPs within the VVA category with IMVEXXY branded messages. The focus of our interactions with HCPs included: (i) introducing IMVEXXY and highlighting the unmet medical need that IMVEXXY can fulfill for many women, (ii) increasing awareness of the clinical data and patient features of IMVEXXY, and (iii) familiarizing HCPs with our patient support services for IMVEXXY. Based on our early sales effectiveness research, more than 90% of HCPs that responded to our surveys indicated that they have prescribed or intend to prescribe IMVEXXY. As of June 30, 2019, more than 13,000 HCPs had sent an IMVEXXY prescription to a pharmacy for at least one patient.

Patient Affordability and Adherence Programs:

- We believe the patient affordability and adherence programs that we created and piloted around our prescription prenatal vitamin business have the potential to improve patient compliance for IMVEXXY, compared to other products in the VVA category. We launched our patient affordability and adherence program for IMVEXXY to help patients manage out-of-pocket costs (eligible enrolled patients pay no more than \$35 per prescription) and improve education regarding VVA and IMVEXXY with the goal of increasing patient adherence and compliance for an improved treatment experience. As of June 30, 2019, 93% of our total IMVEXXY fills have utilized the patient savings programs. We plan to launch print and digital direct-to-consumer marketing for IMVEXXY in the second half of 2019. As of June 30, 2019, we had approximately 70,700 patients who have received at least one paid IMVEXXY prescription filled at a pharmacy.

Customer Model:

- As of June 30, 2019, we had a sales force targeting approximately 200 territories, covering approximately 35,000 HCPs, and deploying a hybrid sales model that combines an internal sales leadership team with a fully dedicated contract sales force to call on our customer universe. Additionally, we have an internal sales team that calls on HCP's that fall outside of our targeted territories. We have also deployed our Key Account Managers (KAMs) to engage with our BIO-IGNITE™ partners.

Infrastructure:

- We continue to develop our internal capabilities and sales force to support the launch of IMVEXXY. We have launched KAMs to support our BIO-IGNITE partners and continue to build our internal capabilities to support both organizations, including compliance professionals and programs and key data support systems that provide real-time data for the sales force and KAMs.

Regulatory:

- As part of the FDA's approval of IMVEXXY, we have committed to conduct a post-approval observational study to evaluate the risk of endometrial cancer in post-menopausal women with a uterus who use a low-dose vaginal estrogen unopposed by a progestogen. The FDA has also asked the sponsors of other vaginal estrogen products to also participate in the observational study. In connection with the observational study, we will be required to provide progress reports to the FDA on an annual basis. The development of this study is underway, and we do not believe that the costs will be material. In addition, the FDA asked for post-approval information with respect to certain characteristics related to the product's specifications, which we submitted to FDA.

BIJUVA

On October 28, 2018, the FDA approved BIJUVA (estradiol and progesterone) capsules, 1 mg/100 mg, the first and only FDA-approved bioidentical hormone therapy combination of estradiol and progesterone in a single, oral capsule for the treatment of moderate-to-severe vasomotor symptoms, or VMS (commonly known as hot flashes or flushes), due to menopause in women with a uterus. The estrogen and progesterone in BIJUVA have the same chemical and molecular structure as the hormones that are naturally produced in a woman's body.

We launched BIJUVA on April 17, 2019 with a similar model to IMVEXXY. The key objectives of our launch plan include: (i) broad commercial access at the retail level and with commercial payers, (ii) increasing awareness and appreciation of the clinical and patient features of BIJUVA amongst HCPs, (iii) expanding and leveraging our existing customer facing model, and (iv) leverage our internal capabilities (for example, in the areas of finance, human resources, information technology, data analytics and compliance) to support the launch of BIJUVA.

Our focus is first on key OB/GYN targets, particularly those that have already adopted IMVEXXY, to deliver the core clinical messages as well as provide information on our patient affordability and adherence programs. In support of BIJUVA, our field force was expanded to approximately 200 territories. In addition, we continue to expand our BIO-IGNITE program throughout 2019 with a fuller expansion towards the end of 2019 when the six-month payer block for BIJUVA is expected to lift.

We launched our patient affordability and adherence program for BIJUVA, similar to IMVEXXY, to help patients manage out-of-pocket costs (eligible enrolled patients pay no more than \$35 per prescription) and improve patient education with the goal of increasing patient adherence and compliance for an improved treatment experience. As of June 30, 2019, 87% of our total BIJUVA fills have utilized the patient savings programs. As of June 30, 2019, we have approximately 3,100 patients who have received at least one paid BIJUVA prescription filled at a pharmacy.

We believe that the successful launch of IMVEXXY allows us to leverage existing contracts with our third-party logistics partner and our distribution partners. We anticipate similar timing regarding payer coverage as we experienced with IMVEXXY as many commercial payers employ “new-to-market blocks” for newly launched brands until they have the opportunity to make a coverage decision based upon their internal review. However, our ability to leverage existing payer contracts by amending to include BIJUVA along with our recent experience with the payers may simplify the process. Through June 30, 2019, we achieved unrestricted coverage with two of the top ten commercial payers of VMS products and we continue to sign new agreements with payers to cover BIJUVA. In addition, as of June 30, 2019, one of the top six Medicare Part D payers of VMS products was adjudicating BIJUVA.

With the approval of BIJUVA, the FDA required a post-approval commitment to further develop and validate our in-vitro dissolution method to show how BIJUVA is released from the capsule in an in-vitro setting for quality control assessments. The development of this method and validation were completed and submitted to FDA as required in our approval.

ANNOVERA

On July 30, 2018, we entered into an exclusive license agreement with the Population Council to commercialize in the U.S. ANNOVERA (segesterone acetate/ethinyl estradiol vaginal system), the first and only patient-controlled, procedure-free, reversible prescription contraceptive that can prevent pregnancy for up to a full year, which was approved by the FDA on August 10, 2018.

ANNOVERA was classified by the FDA as a “new chemical entity,” or NCE, and thus has five years of regulatory exclusivity under the Drug Price Competition and Patent Term Restoration Act of 1984, otherwise known as the Hatch-Waxman Act. ANNOVERA is a one-year ring-shaped contraceptive vaginal system, or CVS. ANNOVERA, which is made with a silicone elastomer, contains segesterone acetate, a 19-nor progesterone derivative also known as Nestorone®, or NES, and ethinyl estradiol, or EE. EE is an approved active ingredient in many marketed hormonal products. Segesterone acetate, a new chemical entity, is a potent progestin that is not active orally but is active when administered via non-oral routes such as vaginal rings, implants, and transdermal systems. NES has been evaluated in 51 clinical studies across these delivery systems with more than 26,794 cycles of exposure.

ANNOVERA can be inserted and removed by the woman herself without the aid of a healthcare provider and, unlike oral contraceptives, or OCs, ANNOVERA does not require daily administration to obtain the contraceptive effect. After 21 days of use, the woman removes ANNOVERA for seven days, thereby providing a regular bleeding pattern (i.e., withdrawal/scheduled bleeding). The same CVS is then re-inserted for additional 21/7-days in/out, for up to a total of 13 cycles (one year). ANNOVERA releases daily vaginal doses of both active ingredients (NES and EE). The claimed release rate of 150 µg/day NES and 13/day µg EE is supported by the calculated average release rate from an ex vivo analysis of ANNOVERA used for 13 cycles and is also supported by data from 13 cycles of in vitro release.

We have commenced and plan to continue to conduct pre-launch activities for ANNOVERA during the second half of 2019, with a full-scale launch planned for the first quarter of 2020. We intend to leverage our existing infrastructure, including our sales force, to commercialize ANNOVERA, together with our recently approved IMVEXXY and BIJUVA products. ANNOVERA will also follow the same commercialization model as IMVEXXY and BIJUVA.

As part of the FDA's approval of IMVEXXY, we have committed to conduct a post-approval observational study to evaluate the risk of endometrial cancer in post-menopausal women with a uterus who use a low-dose vaginal estrogen unopposed by a progestogen. The FDA has also asked the sponsors of other vaginal estrogen products to also participate in the observational study. In connection with the observational study, we will be required to provide progress reports to the FDA on an annual basis. The development of this method is underway, and we do not believe that the costs will be material. In addition, the FDA asked for post-approval information with respect to certain characteristics related to the product's specifications, which we submitted to FDA.

As part of the approval of ANNOVERA, the FDA has required a post-approval observational study be performed to measure the risk of venous thromboembolism. A protocol submission for the study is due to the FDA in August 2019. We have agreed to perform and pay the costs and expenses associated with this post-approval study, provided that if the costs and expenses associated with such post-approval study exceed \$20 million, half of such excess will offset against royalties or other payments owed by us to the Population Council under the Population Council License Agreement. Given the observational nature of the study, we do not believe that the costs of the study will be material on an annual basis.

As of June 30, 2019, we had 27 issued foreign patents and 26 issued domestic or, U.S., patents, which included 15 domestic utility patents that relate to BIJUVA, five domestic utility patents that relate to IMVEXXY, which establish an important intellectual property foundation for IMVEXXY, one domestic utility patent that relates to a pipeline transdermal patch technology, one domestic utility patent that relates to our topical-cream candidates, one domestic utility patent that relates to a product candidate containing d-limonene, one domestic utility patent that relates to our OPERA® information technology platform that we wrote off in the second quarter of 2019 as we no longer use the system, and two domestic utility patents that relate to TX-009HR, our progesterone and estradiol drug candidate.

Research and Development Expenses

A portion of our operating expenses to date have been incurred in research and development activities. Research and development expenses relate primarily to the discovery and development of our drug candidates. Our business model is dependent upon our company continuing to conduct research and development. Our research and development expenses consist primarily of expenses incurred under agreements with contract research organizations, or CROs, and consultants that conduct our preclinical studies; employee-related expenses, which include salaries and benefits, and non-cash share-based compensation; the cost of developing our chemistry, manufacturing and controls capabilities, and costs associated with other research activities and regulatory approvals. Other research and development costs listed below consist of costs incurred with respect to drug candidates that have not received Investigational New Drug application approval from the FDA.

The following table indicates our research and development expense by project for the periods indicated:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2019	2018	2019	2018
	(000s)		(000s)	
TX 001-HR (BIJUVA)	\$ 905	\$ 2,062	\$ 2,415	\$ 5,415
TX 004-HR(IMVEXXY)	577	1,758	1,342	3,158
ANNOVERA	840	—	1,714	—
Other research and development	2,642	2,979	5,811	5,265
Total	\$ 4,964	\$ 6,799	\$ 11,282	\$ 13,838

Research and development expenditures will continue to be incurred as we develop our drug pipeline, continue stability testing and validation on our drugs, develop and validate secondary manufacturers, prepare regulatory submissions and work with regulatory authorities on existing submissions.

The costs of clinical trials may vary significantly over the life of a project owing to a variety of factors. We base our expenses related to clinical trials on estimates that are based on our experience and estimates from CROs and other third parties. Research and development expenditures for the drug candidates will continue after the trial completes for on-going stability and laboratory testing, regulatory submission and response work. For a discussion of the nature of efforts, steps and costs necessary to complete these projects, see “Item 1. Business — Research and Development” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations — Research and Development Expenses” contained in our Annual Report.

Results of Operations

Three months ended June 30, 2019 compared with three months ended June 30, 2018

	Three Months Ended		
	June 30,		
	2019	2018	Change
	(000s)		
Revenues, net	\$ 6,079	\$ 3,763	\$ 2,316
Cost of goods sold	1,249	454	795
Operating expenses	46,467	36,331	10,136
Operating loss	(41,637)	(33,022)	(8,615)
Other expense, net	(13,600)	(197)	(13,403)
Net loss	\$ (55,237)	\$ (33,219)	\$ (22,018)

Revenues and Cost of Goods Sold

Revenue is recorded net of sales discounts, chargebacks, wholesaler fees, customer rebates, coupons and estimated returns. Revenues for the three months ended June 30, 2019 increased approximately \$2,316,000, or 62%, to approximately \$6,079,000, compared with approximately \$3,763,000 for the three months ended June 30, 2018. Revenues increased primarily due to sales of approximately \$3,122,000 of IMVEXXY and approximately \$134,000 of BIJUVA in the current period, partially offset by a decrease in prenatal vitamin sales of approximately \$940,000. The revenue decrease related to our prenatal vitamins was primarily affected by lower number of units sold as compared to the prior year. We launched IMVEXXY in the third quarter of 2018 and BIJUVA in the second quarter of 2019. Since the launches, revenues related to our newly approved drugs have been greatly affected by the co-pay assistance programs that we introduced to launch IMVEXXY and BIJUVA, which allowed eligible enrolled patients to access the products at a reasonable cost of no more than \$35 per prescription regardless of insurance coverage. We expect our revenues related to IMVEXXY and BIJUVA to improve as commercial and Medicare payer coverage increases, and plans complete the process needed to adjudicate IMVEXXY and BIJUVA prescriptions at pharmacies.

Cost of goods sold increased approximately \$795,000, or 175%, to approximately \$1,249,000 for the three months ended June 30, 2019, compared with approximately \$454,000 for the three months ended June 30, 2018, primarily due to an increased number of units sold as well as a higher cost per unit following the launch of our drugs. Our gross margin was approximately 79% and 88% for the three-month periods ended June 30, 2019 and 2018, respectively, primarily due to the product mix related to our prenatal vitamins and our recently launched drugs.

Operating Expenses

Our principal operating costs include the following items as a percentage of total operating expenses.

	Three Months Ended June 30,	
	2019	2018
Sales and marketing costs, excluding human resource costs	45.1%	45.8%
Human resource related costs, including salaries, benefits and taxes	27.0%	21.9%
Product research and development costs	10.7%	18.7%
Professional fees and consulting costs	7.3%	5.4%
Other operating expenses	9.9%	8.2%

Operating expenses increased by approximately \$10,136,000, or 28%, to approximately \$46,467,000 for the three months ended June 30, 2019, from approximately \$36,331,000 for the three months ended June 30, 2018 as a result of the following items:

	Three Months Ended June 30,		
	2019	2018	Change
	(000s)		
Sales and marketing, excluding human resources costs	\$ 20,978	\$ 16,623	\$ 4,355
Human resource related costs, including salaries, benefits and taxes	12,546	7,968	4,578
Product research and development costs	4,964	6,799	(1,835)
Professional fees and consulting costs	3,391	1,966	1,425
Other operating expenses	4,588	2,975	1,613
Total operating expenses	<u>\$ 46,467</u>	<u>\$ 36,331</u>	<u>\$ 10,136</u>

Sales and marketing costs for the three months ended June 30, 2019 increased by approximately \$4,355,000, or 26%, to approximately \$20,978,000, compared with approximately \$16,623,000 for the three months ended June 30, 2018, primarily as a result of increased expenses associated with sales and marketing efforts to support launch and commercialization of IMVEXXY and BIJUVA, including costs related to outsourced sales personnel and their related expenses, physician education and product samples, advertising and travel expenses related to product commercialization. We expect sales and marketing expenses to continue to increase as we continue the launch of BIJUVA, prepare for the launch of ANNOVERA and continue to support our growing business and commercialization of our products.

Human resource costs, including salaries, benefits and taxes, for the three months ended June 30, 2019 increased by approximately \$4,578,000, or 57%, to approximately \$12,546,000, compared with approximately \$7,968,000 for the three months ended June 30, 2018, primarily as a result of an increase of approximately \$4,190,000 in personnel costs in sales, marketing and regulatory areas to support commercialization of our drugs and an increase of approximately \$388,000 in non-cash compensation expense included in this category related to employee stock based compensation during 2019 as compared to 2018.

Research and development costs for the three months ended June 30, 2019 decreased by approximately \$1,835,000, or 27%, to approximately \$4,964,000, compared with \$6,799,000 for the three months ended June 30, 2018. Research and development costs include costs related to manufacturing validation and clinical trials, as well as salaries, wages, non-cash compensation and benefits of personnel involved in research and development activities. Research and development costs decreased primarily as a result of certain employees and activities that were previously classified as research and development being transferred to operations as they began to support commercial and launch efforts after the FDA approvals of IMVEXXY and BIJUVA.

- Since the project's inception in February 2013, we have incurred approximately \$129,602,000 in research and development costs with respect to BIJUVA.
- Since the project's inception in April 2013, we have incurred approximately \$2,525,000 in research and development costs with respect to TX-002HR.
- Since the project's inception in August 2014, we have incurred approximately \$47,081,000 in research and development costs with respect to IMVEXXY.

For a discussion of the nature of efforts, steps and costs related to our research and development projects, see "Item 1. Business — Research and Development" and "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations — Research and Development Expenses" contained in our Annual Report.

Professional fees for the three months ended June 30, 2019 increased by approximately \$1,425,000, or 72%, to approximately \$3,391,000, compared with approximately \$1,966,000 for the three months ended June 30, 2018, primarily as a result of increased recruiting and consulting fees.

All other operating expense for the three months ended June 30, 2019 increased by approximately \$1,613,000, or 54%, to approximately \$4,588,000, compared with approximately \$2,975,000 for the three months ended June 30, 2018, as a result of increased information technology, travel, dues and subscriptions, allowance for bad debt expense, insurance and other office expenses primarily to support commercialization of our new drugs.

Operating Loss

As a result of the foregoing, our operating loss increased approximately \$8,615,000, or 26%, to approximately \$41,637,000 for the three months ended June 30, 2019, compared with approximately \$33,022,000 for the three months ended June 30, 2018, primarily as a result of increased personnel costs, sales and marketing expenses to support commercialization of IMVEXXY and BIJUVA, including costs related to outsourced sales personnel and their related expenses, professional fees and other operating expenses, partially offset by an increase in revenue and a decrease in research and development costs.

We anticipate that we will continue to have operating losses for the near future until we successfully commercialize IMVEXXY, BIJUVA and ANNOVERA, although there is no assurance that any commercialization of IMVEXXY, BIJUVA and ANNOVERA will be successful.

Other Expense

Other non-operating expense changed by approximately \$13,403,000 to an expense of approximately \$13,600,000 for the three months ended June 30, 2019 compared with an expense of approximately \$197,000 for the three months ended June 30, 2018, primarily as a result of loss on extinguishment of debt and increased interest expense related to our debt. For more information regarding the refinancing of our credit facility during the quarter, see “–Liquidity and Capital Resources” below.

Net Loss

Because of the net effects of the foregoing, net loss increased approximately \$22,018,000, or 66%, to approximately \$55,237,000 for the three months ended June 30, 2019, compared with approximately \$33,219,000 for the three months ended June 30, 2018. Net loss per share of Common Stock, basic and diluted, was (\$0.23) and (\$0.15) for the three months ended June 30, 2019 and 2018, respectively.

Six months ended June 30, 2019 compared with six months ended June 30, 2018

	Six Months Ended June 30,		Change
	2019	2018	
			(000s)
Revenues, net	\$ 10,026	\$ 7,536	\$ 2,490
Cost of goods sold	2,012	1,088	924
Operating expenses	87,756	64,186	23,570
Operating loss	(79,742)	(57,738)	(22,004)
Other (expense) income, net	(15,001)	117	(15,118)
Net loss	\$ (94,743)	\$ (57,621)	\$ (37,122)

Revenues and Cost of Goods Sold

Revenue is recorded net of sales discounts, chargebacks, wholesaler fees, customer rebates, coupons and estimated returns. Revenues for the six months ended June 30, 2019 increased approximately \$2,490,000, or 33%, to approximately \$10,026,000, compared with approximately \$7,536,000 for the six months ended June 30, 2018. Revenues increased primarily due to sales of approximately \$5,133,000 of IMVEXXY and approximately \$134,000 of BIJUVA in the current period, partially offset by a decrease in prenatal vitamin sales of approximately \$2,777,000. The revenue decrease related to our prenatal vitamins was primarily affected by lower number of units sold as compared to the prior year. We launched IMVEXXY in the third quarter of 2018 and BIJUVA in the second quarter of 2019. Since the launches, revenues related to our newly approved drugs have been greatly affected by the co-pay assistance programs that we introduced to launch IMVEXXY and BIJUVA, which allowed eligible patients to access the product at a reasonable cost of no more than \$35 per prescription regardless of insurance coverage. We expect our revenues related to IMVEXXY and BIJUVA to improve as commercial and Medicare payer coverage increase, and plans complete the process needed to adjudicate IMVEXXY and BIJUVA prescriptions at pharmacies.

Cost of goods sold increased approximately \$924,000, or 85%, to approximately \$2,012,000 for the six months ended June 30, 2019, compared with approximately \$1,088,000 for the six months ended June 30, 2018, primarily due to an increased number of units sold. Our gross margin was approximately 80% and 86% for the six-month periods ended June 30, 2019 and 2018, respectively, primarily due to the product mix related to our prenatal vitamins and our recently launched drugs.

Operating Expenses

Our principal operating costs include the following items as a percentage of total operating expenses.

	Six Months Ended June 30,	
	2019	2018
Sales and marketing costs, excluding human resource costs	43.3%	42.2%
Human resource related costs, including salaries, benefits and taxes	27.0%	22.4%
Product research and development costs	12.9%	21.6%
Professional fees and consulting costs	6.8%	5.9%
Other operating expenses	10.0%	7.9%

Operating expenses increased by approximately \$23,570,000, or 37%, to approximately \$87,756,000 for the six months ended June 30, 2019, from approximately \$64,186,000 for the six months ended June 30, 2018 as a result of the following items:

	Six Months Ended June 30,		
	2019	2018	Change
	(000s)		
Sales and marketing, excluding human resources costs	\$ 37,991	\$ 27,118	\$ 10,873
Human resource related costs, including salaries, benefits and taxes	23,655	14,385	9,270
Product research and development costs	11,282	13,838	(2,556)
Professional fees and consulting costs	5,925	3,761	2,164
Other operating expenses	8,903	5,084	3,819
Total operating expenses	\$ 87,756	\$ 64,186	\$ 23,570

Sales and marketing costs for the six months ended June 30, 2019 increased by approximately \$10,873,000, or 40%, to approximately \$37,991,000, compared with approximately \$27,118,000 for the six months ended June 30, 2018, primarily as a result of increased expenses associated with sales and marketing efforts to support launch and commercialization of IMVEXXY and BIJUVA, including costs related to outsourced sales personnel and their related expenses, physician education and product samples, advertising and travel expenses related to product commercialization. We expect sales and marketing expenses to continue to increase as we continue the launch of BIJUVA, prepare for the launch of ANNOVERA, and continue to support our growing business and commercialization of our products.

Human resource costs, including salaries, benefits and taxes, for the six months ended June 30, 2019 increased by approximately \$9,270,000, or 64%, to approximately \$23,655,000, compared with approximately \$14,385,000 for the six months ended June 30, 2018, as a result of an increase of approximately \$8,019,000 in personnel costs in sales, marketing and regulatory areas to support commercialization of our drugs and an increase of approximately \$1,251,000 in non-cash compensation expense included in this category related to employee stock based compensation during 2019 as compared to 2018.

Research and development costs for the six months ended June 30, 2019 decreased by approximately \$2,556,000, or 18%, to approximately \$11,282,000, compared with \$13,838,000 for the six months ended June 30, 2018. Research and development costs included costs related to on-going stability and laboratory testing and clinical trials, as well as salaries, wages, noncash compensation and benefits of personnel involved in research and development activities. Research and development costs decreased for the six months ended June 30, 2019 as compared to the prior period primarily as a result of the completion of the REPLENISH Trial for BIJUVA and FDA approval of IMVEXXY and BIJUVA, partially offset by scale-up and manufacturing activities for BIJUVA before FDA approval as well as increased pre-clinical work to support our product pipeline. Research and development costs also decreased as a result of certain employees and activities previously classified as research and development to be transferred to operations as they began to support commercial and launch efforts after FDA approvals of IMVEXXY and BIJUVA.

For a discussion of the nature of efforts, steps and costs related to our research and development projects, see “Item 1. Business — Research and Development” and “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations — Research and Development Expenses” contained in our Annual Report.

Professional fees for the six months ended June 30, 2019 increased by approximately \$2,164,000, or 58%, to approximately \$5,925,000, compared with approximately \$3,761,000 for the six months ended June 30, 2018, primarily as a result of increased recruiting and consulting fees.

All other operating expense for the six months ended June 30, 2019 increased by approximately \$3,819,000, or 75%, to approximately \$8,903,000, compared with approximately \$5,084,000 for the six months ended June 30, 2018, as a result of increased information technology, travel, allowance for bad debt expense, insurance and other office expenses primarily to support commercialization of our new drugs.

Operating Loss

As a result of the foregoing, our operating loss increased approximately \$22,004,000, or 38%, to approximately \$79,742,000 for the six months ended June 30, 2019, compared with approximately \$57,738,000 for the six months ended June 30, 2018, primarily as a result of increased personnel costs, sales and marketing expenses to support commercialization of IMVEXXY and BIJUVA, including costs related to outsourced sales personnel and their related expenses, professional fees and other operating expenses, as well a decrease in revenue, partially offset by a decrease in research and development costs.

We anticipate that we will continue to have operating losses for the near future until we successfully commercialize IMVEXXY, BIJUVA and ANNOVERA, although there is no assurance that any commercialization of IMVEXXY, BIJUVA and ANNOVERA will be successful.

Other (Expense) Income

Other non-operating (expense) income changed by approximately \$15,118,000 to an expense of approximately \$15,001,000 for the six months ended June 30, 2019 compared with an income of approximately \$117,000 for the six months ended June 30, 2018, primarily as a result of loss on extinguishment of debt and increased interest expense related to our debt. For more information regarding the refinancing of our credit facility during the quarter, see “— Liquidity and Capital Resources” below.

Net Loss

Because of the net effects of the foregoing, net loss increased approximately \$37,122,000, or 64%, to approximately \$94,743,000 for the six months ended June 30, 2019, compared with approximately \$57,621,000 for the six months ended June 30, 2018. Net loss per share of Common Stock, basic and diluted, was (\$0.39) and (\$0.27) for the six months ended June 30, 2019 and 2018, respectively.

Liquidity and Capital Resources

We have funded our operations primarily through public offerings of our Common Stock and private placements of equity and debt securities. For the three years ended December 31, 2018, we received approximately \$293,344,000 in net proceeds from the issuance of shares of our Common Stock. As of June 30, 2019, we had cash and cash equivalents totaling approximately \$182,846,000, however, changing circumstances may cause us to consume funds significantly faster than we currently anticipate, and we may need to spend more money than currently expected because of circumstances beyond our control.

Our net days sales outstanding, or net DSO, is calculated by dividing gross accounts receivable less the reserve for doubtful accounts, chargebacks and payment discounts divided by the average daily net revenues during the quarter. We also disclose gross DSO, which includes the calculation of gross accounts receivable divided by the average daily gross revenues to distributors during the quarter. For the three months ended June 30, 2019, our gross DSO was 65 days compared to 77 days for the three months ended December 31, 2018 and our net DSO was 275 days for the three months ended June 30, 2019 compared to 200 days for the three months ended December 31, 2018. Our net DSO was affected by extended terms and increased coupons and discounts given to our customers in connection with the launch of IMVEXXY and BIJUVA timing of cash receipts after June 30, 2019. Our gross DSO decreased due to consignment arrangements that we entered into in the second quarter of 2019. We anticipate that our DSO will fluctuate in the future based upon a variety of factors, including longer payment terms associated with the launch of IMVEXXY, BIJUVA and ANNOVERA and changes in the healthcare industry

On April 24, 2019, we entered into a Financing Agreement, or the Financing Agreement, with TPG Specialty Lending, Inc., as administrative agent, or the Administrative Agent, various lenders from time to time party thereto, and certain of the Company's subsidiaries party thereto from time to time as guarantors, which provided us with a \$300,000,000 first lien secured term loan credit facility, or the Facility. The Facility provides for availability to us in three tranches: (i) \$200,000,000 was drawn upon entering into the Financing Agreement; (ii) \$50,000,000 will be available to us upon the designation of ANNOVERA as a new category of birth control by the FDA on or prior to December 31, 2019 and satisfaction (or waiver) of other customary conditions precedent; and (iii) \$50,000,000 will be available to us upon our achieving \$11,000,000 in net revenues from our IMVEXXY, BIJUVA and ANNOVERA products for the fourth quarter of 2019 and satisfaction (or waiver) of other customary conditions precedent. A portion of the initial tranche of borrowing under the Facility in the amount of approximately \$81,661,000 was used to repay all amounts outstanding under our prior financing agreement with MidCap Financial Trust, or the MidCap Agreement. As a result of the termination of the MidCap Agreement, we recorded \$10,057,632 in loss on extinguishment of debt in our unaudited consolidated financial statements. We believe that our existing cash and availability under the Facility will allow us to fund our operating plan through at least the next 12 months from the date of this Quarterly Report. However, if the commercialization of IMVEXXY, BIJUVA or ANNOVERA is delayed, our existing cash and availability under the Facility, if we are able to access such funds, may be insufficient to satisfy our liquidity requirements until we are able to commercialize IMVEXXY, BIJUVA and ANNOVERA and we may not be able to access funds under the Facility. If our available cash is insufficient to satisfy our liquidity requirements, we may curtail our sales, marketing and other commercialization and pre-commercialization efforts and we may seek to sell additional equity or debt securities. Our ability to sell debt securities or obtain additional debt financing is restricted pursuant to the Financing Agreement. To the extent that we raise additional capital through the sale of equity or convertible debt securities, to the extent permitted under the Financing Agreement, the ownership interests of our existing shareholders will be diluted, and the terms of these new securities may include liquidation or other preferences that adversely affect the rights of our existing shareholders. If we raise additional funds through collaborations, strategic alliances, or licensing arrangements with third parties, certain of which are restricted under the Financing Agreement, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs, or proposed products, if permitted under the Financing Agreement. Additionally, we may have to grant licenses on terms that may not be favorable to us.

License Agreement with Theramex

On June 6, 2019, we entered into an exclusive license and supply agreement, or the License Agreement, with Theramex, a leading, global specialty pharmaceutical company dedicated to women's health, to commercialize BIJUVA and IMVEXXY outside of the U.S., excluding Canada and Israel, or the Territory. Under the terms of the License Agreement, Theramex paid us EUR 14 million in cash as an upfront fee on August 5, 2019. Within thirty days of signing the License Agreement, we are required to provide Theramex with the regulatory materials and clinical data that are necessary for Theramex to obtain marketing authorizations and other applicable regulatory approvals for commercializing BIJUVA and IMVEXXY. The revenue related to fees received by us will be recognized once our performance obligations have been satisfied. We are eligible to receive additional milestone payments comprised of (i) up to an aggregate of EUR 2 million in regulatory milestone payments based on regulatory approvals for BIJUVA and IMVEXXY in certain specified markets and (ii) up to an aggregate of EUR 27.5 million in sales milestone payments to be paid in escalating tranches based on Theramex first attaining certain aggregate annual net sales milestones of BIJUVA and IMVEXXY in the Territory ranging from EUR 25 million to EUR 100 million. We are also entitled to receive quarterly royalty payments on net sales of BIJUVA and IMVEXXY in the Territory. Theramex will be responsible for all regulatory and commercial activities for BIJUVA and IMVEXXY in the Territory. Theramex may sublicense its rights to commercialize BIJUVA and IMVEXXY in the Territory, except for certain specified markets. We may terminate the License Agreement if Theramex does not submit all regulatory applications, submissions and/or registrations required for regulatory approval to use and commercialize BIJUVA and IMVEXXY within certain specified time periods. We also may terminate the License Agreement if Theramex challenges our patents. Either party may terminate the License Agreement for any material breach by the other party that is not cured within certain specified time periods or if the other party files for bankruptcy or other related matters.

We need substantial amounts of cash to complete the launch and commercialization of our hormone therapy and contraceptive drugs. The following table sets forth the primary sources and uses of cash for each of the periods set forth below:

Summary of (Uses) and Sources of Cash

	Six Months Ended	
	June 30,	
	2019	2018
	(000s)	
Net cash used in operating activities	\$ (88,678)	\$ (44,599)
Net cash used in investing activities	\$ (1,876)	\$ (492)
Net cash provided by financing activities	\$ 111,787	\$ 72,342

Operating Activities

The principal use of cash in operating activities for the six months ended June 30, 2019 was to fund our current expenses primarily related to supporting commercialization activities for IMVEXXY, BIJUVA and ANNOVERA, sales, marketing, scale-up and manufacturing activities and clinical development, adjusted for non-cash items. The increase of approximately \$44,079,000 in cash used in operating activities for the six months ended June 30, 2019 compared with the comparable period in the prior year was due primarily to an increase in our net loss and changes in the components of working capital, partially offset by an increase in non-cash items.

Investing Activities

An increase in spending on patent and trademarks resulted in an increase in cash used in investing activities for the six months ended June 30, 2019 compared with the same period in 2018.

Financing Activities

Financing activities represent the principal source of our cash flow. Our financing activities for the six months ended June 30, 2019 provided net cash of approximately \$111,787,000 which consisted of the net funding from our Facility of approximately \$193,348,000 and exercise of options and warrants to purchase Common Stock of approximately \$100,000, partially offset by the repayment of our Credit Agreement of approximately \$81,661,000. Our financing activities for the six months ended June 30, 2018 provided net cash of approximately \$72,342,000, which consisted of the net funding from our Credit Agreement of approximately \$71,213,000 and the exercise of options to purchase Common Stock of approximately \$1,129,000.

New Accounting Pronouncements

In August 2018, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update, or ASU, 2018-13 which eliminates certain disclosure requirements for fair value measurements for all entities, requires public entities to disclose certain new information and modifies some disclosure requirements. The FASB developed the amendments to ASC 820 as part of its broader disclosure framework project, which aims to improve the effectiveness of disclosures in the notes to financial statements by focusing on requirements that clearly communicate the most important information to users of the financial statements. The new guidance is effective for all entities for fiscal years beginning after December 15, 2019 and for interim periods within those fiscal years. An entity is permitted to early adopt either the entire standard or only the provisions that eliminate or modify requirements. We are currently evaluating the effect of this guidance on our disclosures.

In June 2018, the FASB issued ASU 2018-07 to simplify the accounting for share-based payments to nonemployees by aligning it with the accounting for share-based payments to employees, with certain exceptions. The new guidance expands the scope of ASC 718 to include share-based payments granted to nonemployees in exchange for goods or services used or consumed in an entity's own operations and supersedes the guidance in ASC 505-50. The guidance is effective for public business entities in annual periods beginning after December 15, 2018, and interim periods within those annual periods. Early adoption is permitted, including in an interim period for which financial statements have not been issued, but not before an entity adopts ASC 606. We adopted this standard on January 1, 2019 and the adoption of this standard did not have a material effect on our consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, Leases. This guidance requires lessees to record most leases on their balance sheets while recognizing expenses on their income statements in a manner similar to current accounting. The guidance also eliminates current real estate-specific provisions for all entities. For lessors, the guidance modifies the classification criteria and the accounting for sales-type and direct financing leases. The standard is effective for public business entities for annual periods beginning after December 15, 2018, and interim periods within those years. Early adoption is permitted for all entities. In July 2018, the FASB amended the new leases standard and issued ASU 2018-11, Leases, (Topic 842): Targeted Improvements to give entities another option for transition and to provide lessors with a practical expedient. We adopted ASU 2016-02 on January 1, 2019 utilizing the alternative transition method allowed for under ASU 2018-11 and we recorded a \$3.8 million right of use asset and a \$4.1 million liability related to adoption of this standard. Comparative financial information was not adjusted and will continue to be reported under ASC 840. We also elected the transition relief package of practical expedients and as a result we did not assess (1) whether existing or expired contracts contain leases, (2) lease classification for any existing or expired leases, and (3) whether lease origination costs qualified as initial direct costs. We elected the short-term lease practical expedient by establishing an accounting policy to exclude leases with a term of 12 months or less. We elected not to separate lease components from non-lease components for our specified asset classes. Additionally, the adoption of the new standard resulted in increased disclosure requirements in our quarterly and annual filings.

Other recent accounting pronouncements issued by the FASB (including its Emerging Issues Task Force), the American Institute of Certified Public Accountants and the SEC did not, and are not expected to, have a material effect on our results of operations or financial position.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Our primary exposure to market risk is interest rate sensitivity, which is affected by changes in the general level of U.S. interest rates. To minimize this risk, we intend to maintain an investment portfolio that may include cash, cash equivalents and investment securities available-for-sale in a variety of securities which may include money market funds, government and non-government debt securities and commercial paper, all with various maturity dates. Due to the low risk profile of our investments, an immediate 100 basis point change in interest rates would not have a material effect on the fair market value of our portfolio.

As of April 24, 2019, we repaid all amounts outstanding under the MidCap Agreement and became subject to market risk in connection with borrowings under the Financing Agreement. Amounts borrowed under the Financing Agreement will accrue interest at either (i) 3-month LIBOR plus 7.75%, subject to a LIBOR floor of 2.70% or (ii) the prime rate plus 6.75%, subject to a prime rate floor of 5.20%. Considering the total outstanding principal balance under the Financing Agreement of approximately \$200,000,000 at June 30, 2019, a 1.0% change in interest rates would result in an impact to income before income taxes of approximately \$2,000,000 per year.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the reports filed or submitted under the Securities Exchange Act of 1934, as amended, or the Exchange Act, is recorded, processed, summarized and reported, within the time period specified in the SEC's rules and forms and is accumulated and communicated to our principal executive officer and principal financial officer, as appropriate, in order to allow timely decisions in connection with required disclosure.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q were effective in providing reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and (ii) accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls will prevent all error 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, misstatements, errors, and instances of fraud, if any, within our company have been or will be prevented or detected. Further, internal controls may become inadequate as a result of changes in conditions, or through the deterioration of the degree of compliance with policies or procedures.

Changes in Internal Controls

During the three months ended June 30, 2019, there were no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

We have been informed by the staff (“Staff”) of the Securities and Exchange Commission that the Staff is conducting a formal investigation concerning whether certain of our communications during 2017 regarding TX-004HR may have violated Regulation FD. We are cooperating with the Staff in connection with the investigation. Any determination that our actions violated Regulation FD could result in penalties or other remedies being imposed. While we believe that any such penalties and other remedies would be immaterial from a financial perspective, no assurance can be made about the ultimate outcome of the investigation, and there can be no assurance that any such penalties and remedies would not have a material adverse effect on our business.

From time to time, we are involved in litigation and proceedings in the ordinary course of our business. We are not currently involved in any legal proceeding that we believe would have a material effect on our business or financial condition.

Item 1A. Risk Factors

There have been no material changes to the risk factors previously disclosed in our Annual Report.

Item 6. Exhibits

Exhibit	Date	Description
10.1*+	April 24, 2019	Financing Agreement, by and among TherapeuticsMD, Inc., VitaMedMD, LLC, BocagreenMD, Inc., VitaCare Prescription Services, Inc., TPG Specialty Lending, Inc., Top IV Talents, LLC and Tao Talents, LLC.
10.2*+	April 24, 2019	Pledge and Security Agreement, by and among TherapeuticsMD, Inc., VitaMedMD, LLC, BocagreenMD, Inc., VitaCare Prescription Services, Inc. and TPG Specialty Lending, Inc.
10.3*+	June 6, 2019	License and Supply Agreement, by and between TherapeuticsMD, Inc. and Theramex HQ UK Limited.
10.4	June 20, 2019	TherapeuticsMD, Inc. 2019 Stock Incentive Plan (incorporated by reference to Annex A to the Company's Definitive Proxy Statement on Schedule 14A, filed with the SEC on April 30, 2019).
31.1*	August 9, 2019	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a)
31.2*	August 9, 2019	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a)
32.1**	August 9, 2019	Section 1350 Certification of Chief Executive Officer
32.2**	August 9, 2019	Section 1350 Certification of Chief Financial Officer
101.INS*	n/a	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
101.SCH*	n/a	XBRL Taxonomy Extension Schema Document
101.CAL*	n/a	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	n/a	XBRL Taxonomy Extension Definition Linkbase Instance Document
101.LAB*	n/a	XBRL Taxonomy Extension Label Linkbase Instance Document
101.PRE*	n/a	XBRL Taxonomy Extension Presentation Linkbase Instance Document
104*	n/a	Cover Page Interactive Data File (formatted as Inline XBRL and Contained in Exhibit 101).

* Filed herewith.

** Furnished herewith.

+ Portions of this exhibit have been redacted in compliance with Regulation S-K Item 601(b)(10). The omitted information is not material and would likely cause competitive harm to the Company if publicly disclosed.

SIGNATURES

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

DATE: August 9, 2019

THERAPEUTICSMD, INC.

By: */s/ Robert G. Finizio*

Robert G. Finizio
Chief Executive Officer
(Principal Executive Officer)

By: */s/ Daniel A. Cartwright*

Daniel A. Cartwright
Chief Financial Officer
(Principal Financial and Accounting Officer)

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [***] INDICATES THAT INFORMATION HAS BEEN REDACTED.

Execution Version

FINANCING AGREEMENT

dated as of April 24, 2019

among

**THERAPEUTICSMD, INC.
as the Borrower,**

**CERTAIN SUBSIDIARIES OF BORROWER
as Guarantors,**

VARIOUS LENDERS FROM TIME TO TIME PARTY HERETO,

AND

**TPG SPECIALTY LENDING, INC.,
as Administrative Agent**

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FINANCING AGREEMENT

This FINANCING AGREEMENT, dated as of April 24, 2019, is entered into by and among THERAPEUTICSMD, INC., a Nevada Corporation (“Company” or “Borrower”), and certain Subsidiaries of Borrower, as Guarantors, the Lenders from time to time party hereto and TPG SPECIALTY LENDING, INC., a Delaware corporation (“TSL”), as administrative agent for the Lenders (in such capacity, “Administrative Agent”).

WITNESSETH:

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, Lenders have agreed to extend to Company (a) an initial term loan in an aggregate principal amount not exceeding \$200,000,000 and (b) delayed draw term loans in an aggregate principal amount not exceeding \$100,000,000, in each case the proceeds of which will be used as described in Section 2.2;

WHEREAS, Company has agreed to secure all of its Obligations by granting to Administrative Agent, for the benefit of Secured Parties, a first priority Lien on all of its assets (except as otherwise set forth in the Collateral Documents), including a pledge of all of the Capital Stock of each of its Subsidiaries; and

WHEREAS, Guarantors have agreed to guarantee the obligations of Company hereunder and to secure their respective Obligations by granting to Administrative Agent, for the benefit of Secured Parties, a first priority Lien on all of their respective assets (except as otherwise set forth in the Collateral Documents), including a pledge of all of the Capital Stock of each of their respective Subsidiaries.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

“Adjusted LIBOR Rate” means, for any Interest Rate Determination Date with respect to an Interest Period for a LIBOR Rate Loan, the greater of (a) the rate per annum obtained by dividing (i) (A) the rate per annum equal to the Intercontinental Exchange Benchmark Administration Ltd. (or such other Person that takes over the administration of such rate) LIBOR Rate (“ICE LIBOR”), as published by a nationally recognized service such as the Dow Jones Market Service (Telerate), Reuters or Bloomberg (or such other commercially available source providing quotations of ICE LIBOR as may be reasonably designated by the Administrative Agent from time to time), or a comparable or successor rate used generally in the market for syndicated commercial loans that has been reasonably approved by the Administrative Agent in consultation with the Borrower (such rate, the “Alternate Benchmark Rate”), at approximately 11:00 a.m., London time on the Interest Rate Determination Date, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (B) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBOR Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) on the Interest Rate Determination Date, by (ii) an amount equal to (A) one, minus (B) the Applicable Reserve Requirement, and (b) 2.70% per annum. Any such determination of LIBOR shall be conclusive absent manifest error.

“Administrative Agent” has the meaning specified in the preamble hereto.

“Administrative Agent’s Account” means an account at a bank designated by Administrative Agent from time to time by written notice to Borrower in accordance with Section 10.1(a) as the account into which the Loan Parties shall make all payments to Administrative Agent under this Agreement and the other Loan Documents.

“Adverse Proceeding” means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Borrower or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims) or other regulatory body or any mediator or arbitrator, whether pending or, to the knowledge of Borrower or any of its Subsidiaries, threatened in writing against Borrower or any of its Subsidiaries or any property of Borrower or any of its Subsidiaries.

“Affected Lender” has the meaning specified in Section 2.19(b).

“Affected Loans” has the meaning specified in Section 2.19(b).

“Affiliate” means, as applied to any Person, any other Person directly or indirectly controlling (including any member of the senior management group of such Person), controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power (a) to vote 10% or more of the securities having ordinary voting power for the election of directors of such Person, or (b) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall Administrative Agent or any Lender or any of their Affiliates or Related Funds be considered an “Affiliate” of any Loan Party.

“Aggregate Amounts Due” has the meaning specified in Section 2.13.

“Aggregate Payments” has the meaning specified in Section 7.2.

“Agreement” means this Financing Agreement and any annexes, exhibits and schedules attached hereto as it may be amended, supplemented or otherwise modified from time to time in accordance with and subject to the terms and conditions of this Agreement.

“Alternate Benchmark Rate” has the meaning set forth in the definition of Adjusted LIBOR Rate.

“Annovera” means (a) the ANNOVERA (segesterone acetate/ethinyl estradiol vaginal system) product approved for commercialization in the U.S. as of the Closing Date and (b) any other vaginal system being developed or commercialized by the Company (or any Affiliate thereof that is controlled by the Company), or any of its licensees or sub-licensees (now or in the future) (in the case of such licensees or sub-licensees, solely with respect to development or commercialization pursuant to agreements with the Company or any of its Subsidiaries) that contains segesterone acetate and/or ethinyl estradiol (and in the case of clause (a) and clause (b) above, including any of their respective derivatives, polymorphs, isomers, prodrugs, metabolites, esters, salts and other forms, formulations, and methods of delivery thereof), commercialized by the Company (or any Affiliate thereof that is controlled by the Company), or any of its licensees or sub-licensees (now or in the future) (in the case of such licensees or sub-licensees, solely with respect to development or commercialization pursuant to agreements with the Company or any of its Subsidiaries) in any country of the world under any brand name for any indication.

“Annovera Agreement” means that certain License Agreement, dated July 30, 2018, between Company and The Population Council, Inc., as amended from time to time in accordance with the terms hereof.

“Annovera Patents” means the U.S. and foreign patents and pending patent applications owned or in-licensed by Company or any of its Subsidiaries, now or in the future, that relate to, or otherwise may be useful in connection with, the research, development, manufacture, use, or sale of Annovera.

“Anti-Corruption Laws” means all Requirements of Law concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended, and the anti-bribery and anti-corruption laws and regulations of those jurisdictions in which the Loan Parties do business.

“Anti-Terrorism Laws” means any Requirement of Law relating to terrorism or money laundering, including, without limitation, (a) the Money Laundering Control Act of 1986 (*i.e.*, 18 U.S.C. §§ 1956 and 1957), (b) the Currency and Foreign Transactions Reporting Act (31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959) (the “Bank Secrecy Act”), (c) the USA Patriot Act, (d) the laws, regulations and Executive Orders administered by the United States Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), (e) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and implementing regulations by the United States Department of the Treasury, (f) any law prohibiting or directed against terrorist activities or the financing of terrorist activities (*e.g.*, 18 U.S.C. §§ 2339A and 2339B), or (g) any similar laws enacted in the United States or any other jurisdictions in which the parties to this Agreement operate, as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war and any regulations promulgated pursuant thereto.

“Applicable Margin” means (a) with respect to a Term Loan that is a LIBOR Rate Loan, 7.75% and (b) with respect to a Term Loan that is a Base Rate Loan, 6.75%.

“Applicable Reserve Requirement” means, at any time, for any LIBOR Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including, without limitation, any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against “Eurocurrency liabilities” (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors of the Federal Reserve System or other applicable banking regulator having appropriate jurisdiction. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (a) any category of liabilities which includes deposits by reference to which the applicable Adjusted LIBOR Rate or any other interest rate of a Loan is to be determined, or (b) any category of extensions of credit or other assets which include LIBOR Rate Loans. A LIBOR Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on LIBOR Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

“Application Event” means the (a) occurrence of an Event of Default and (b) the election by Administrative Agent or the Required Lenders during the continuance of such Event of Default to require that payments and proceeds of Collateral be applied pursuant to Section 2.12(f).

“Asset Sale” means a sale, lease or sub lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer, license or sublicense (including a Permitted Product Transaction) or other disposition to (other than to a Loan Party), or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of any Loan Party’s businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Capital Stock of any Loan Party. For purposes of clarification, “Asset Sale” shall include (a) the sale or other disposition for value of any contracts, (b) any disposition of property through a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, (c) the early termination or modification of any contract resulting in the receipt by any Loan Party of a cash payment or other consideration in exchange for such event, (d) any sale of accounts (or any rights thereto (including, without limitation, any rights to any residual payment stream with respect thereto)) by any Loan Party or Subsidiary of Borrower and (e) any royalty monetization transaction with respect to licenses or sublicenses of the intellectual property owned or controlled by the Company or any of its Subsidiaries, including but not limited to sales of royalty streams, royalty bonds and other royalty financings, synthetic royalty and revenue interest transactions and hybrid monetization transactions.

Notwithstanding the foregoing, none of the following items will be deemed to be an Asset Sale:

- (i) an issuance of Capital Stock by a Subsidiary of the Company to the Company or to another Loan Party;
- (ii) use or transfer of Cash or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;
- (iii) the licensing or sublicensing of patents, trademarks, know-how or other intellectual property or general intangibles related thereto (in each case, other than a Permitted Product Transaction) in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Company or any of its Subsidiaries (*provided* that any exclusive license of patents that effectively constitutes a transfer of the related patent shall be deemed to be an Asset Sale); and
- (iv) the lease, assignment or sublease of any real or personal property (other than a Permitted Product Transaction) in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Company or any of its Subsidiaries.

“Assignment Agreement” means an Assignment and Assumption Agreement substantially in the form of Exhibit C.

“Assignment Letter” means that certain Assignment Side Letter, dated as of the date hereof, among Borrower, Administrative Agent and Lenders.

“Authorized Officer” means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president or one of its vice presidents (or the equivalent thereof), and such Person’s chief financial officer or treasurer or other substantially comparable title.

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

“Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1%, (c) the Adjusted LIBOR Rate (which rate shall be calculated based upon an Interest Period of three months and to be determined on a daily basis) plus 1%, and (d) 5.20% per annum. Any change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBOR Rate shall be effective on the effective day of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBOR Rate, respectively.

“Base Rate Loan” means a Loan bearing interest at a rate determined by reference to the Base Rate.

“Beneficiary” means Administrative Agent and each Lender.

“Bijuva” means (a) the BIJUVA (estradiol and progesterone) product approved for commercialization in the U.S. as of the Closing Date, and (b) any other product being developed or commercialized for the treatment of vasomotor symptoms by the Company (or any Affiliate thereof that is controlled by the Company), or any of its licensees or sub-licensees (now or in the future) (in the case of such licensees or sub-licensees, solely with respect to development or commercialization pursuant to agreements with the Company or any of its Subsidiaries) that contains estradiol and progesterone (and in the case of clause (a) and clause (b) above, including any of their respective derivatives, polymorphs, isomers, prodrugs, metabolites, esters, salts and other forms, formulations, and methods of delivery thereof), commercialized in any country of the world under any brand name.

“Bijuva Patents” means the U.S. and foreign patents and pending patent applications owned or in-licensed by Company or any of its Subsidiaries, now or in the future, that relate to, or otherwise may be useful in connection with, the research, development, manufacture, use, or sale of Bijuva..

“Blocked Person” means any Person:

- (a) that is publicly identified (i) on the most current list of “Specially Designated Nationals and Blocked Persons” published by OFAC or resides, is organized or chartered, or has a place of business in a country or territory subject to OFAC sanctions or embargo program or (ii) as prohibited from doing business with the United States under the International Emergency Economic Powers Act, the Trading With the Enemy Act, or any other Anti-Terrorism Law;
- (b) that is owned or controlled by, or that owns or controls, or that is acting for or on behalf of, any Person described in clause (a) above;
- (c) which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; and
- (d) that is affiliated or associated with a Person described in clauses (a), (b) or (c) above.

“Board of Directors” means, (a) with respect to any corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board, (b) with respect to a partnership, the board of directors of the general partner of the partnership, (c) with respect to a limited liability company, the managing member or members or any controlling committee or board of directors of such company or the sole member or the managing member thereof, and (d) with respect to any other Person, the board or committee of such Person serving a similar function.

“Borrower” has the meaning specified in the preamble hereto.

“Business Day” means (a) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in either such state are authorized or required by law or other governmental action to close, and (b) with respect to all notices, determinations, fundings and payments in connection with the Adjusted LIBOR Rate or any LIBOR Rate Loans, the term “Business Day” shall mean any day which is a Business Day described in clause (a) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

“Capital Lease” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person (a) as lessee that, in conformity with GAAP as in effect on December 31, 2018, is or should be accounted for as a capital lease on the balance sheet of that Person or (b) as lessee which is a transaction of a type commonly known as a “synthetic lease” (i.e., a transaction that is treated as an operating lease for accounting purposes but with respect to which payments of rent are intended to be treated as payments of principal and interest on a loan for federal income Tax purposes).

“Capital Stock” means any and all shares, equity interests, economic participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including, without limitation, partnership interests and membership interests, and any and all warrants, rights or options to purchase or other written arrangements or rights to acquire any of the foregoing.

“Cash” means money, currency or a credit balance in any demand or Deposit Account.

“Cash Equivalents” means, as at any date of determination, (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A 1 from S&P or at least P 1 from Moody’s; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A 1 from S&P or at least P 1 from Moody’s; (d) certificates of deposit or bankers’ acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (i) is at least “adequately capitalized” (as defined in the regulations of its primary Federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than \$100,000,000; and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than \$500,000,000, and (iii) has the highest rating obtainable from either S&P or Moody’s.

“Certificate Regarding Non-Bank Status” means a certificate substantially in the form of Exhibit D.

“Change of Control” means, at any time, any of the following occurrences:

(a) any Person or “group” (within the meaning of Rules 13d 3 and 13d 5 under the Exchange Act) (i) shall have acquired beneficial ownership of 50.1% or more on a fully diluted basis of the voting interest in the Capital Stock of Borrower or (ii) shall have obtained the power (whether or not exercised) to elect a majority of the members of the Board of Directors (or similar governing body) of Borrower;

(b) except pursuant to a transaction permitted by this Agreement, Borrower shall cease to beneficially own and control, directly or indirectly, 100% on a fully diluted basis of the economic and voting interest in the Capital Stock of each Loan Party;

(c) the majority of the seats (other than vacant seats) on the Board of Directors (or similar governing body) of Borrower cease to be occupied by Persons who either (i) were members of the Board of Directors of Borrower on the Closing Date, or (ii) were nominated for election by the Board of Directors of Borrower, a majority of whom were directors on the Closing Date or whose election or nomination for election was previously approved by a majority of such directors; or

(d) any “change of control” or similar event shall occur under, and as defined in or set forth in the documents evidencing or governing, (i) the Capital Stock of Borrower if, as a result of such change of control or similar event, Borrower is required to make a payment of \$5,000,000 or more or (ii) any Indebtedness in an individual principal amount of \$5,000,000 or more owed by Borrower or any of its Subsidiaries.

“Closing Date” means the date on which the Initial Term Loans are made, which is April 24, 2019.

“Closing Date Certificate” means a Closing Date Certificate substantially in the form of Exhibit E.

“Collateral” means, collectively, all of the real, personal and mixed property (including Capital Stock to the extent permitted under any Loan Document) and all interests therein and proceeds thereof now owned or hereafter acquired by any Person upon which a Lien is granted or purported to be granted by such Person pursuant to the Collateral Documents as security for the Obligations.

“Collateral Access Agreement” means a collateral access agreement in form and substance reasonably satisfactory to Administrative Agent.

“Collateral Documents” means the Pledge and Security Agreement, the Mortgages, the Collateral Access Agreements, if any, any Control Agreement, and all other instruments, documents and agreements delivered by any Loan Party pursuant to this Agreement or any of the other Loan Documents in order to grant to Administrative Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of that Loan Party as security for the Obligations, in each case, as such Collateral Documents may be amended or otherwise modified from time to time, in accordance with and subject to the terms and conditions hereof and thereof.

“Commitment” means the Term Loan Commitment.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Company” has the meaning specified in the preamble hereto.

“Compliance Certificate” means a Compliance Certificate substantially in the form of Exhibit B.

“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.

“Contractual Obligation” means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, license, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“Control Agreement” means a control agreement, in form and substance reasonably satisfactory to Administrative Agent, executed and delivered by Borrower or a Guarantor Subsidiary, Administrative Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

“Conversion/Continuation Date” means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

“Conversion/Continuation Notice” means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

“Controlled Investment Affiliate” means, as to any Person, any other Person that (a) directly or indirectly, is in control of, is controlled by, or is under common control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“Credit Date” means the date of a Credit Extension.

“Credit Extension” means the making of a Loan.

“Debtor Relief Law” means the Bankruptcy Code and any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief law of the United States or other applicable jurisdiction from time to time in effect.

“Declined Proceeds” means the amount of Net Proceeds received in connection with a Waivable Mandatory Prepayment for which a Lender has elected to waive its right to prepayment in accordance with Section 2.11(b).

“Default” means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

“Default Excess” means, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender’s Pro Rata Share of the aggregate outstanding principal amount of Term Loans of all Lenders (calculated as if all Defaulting Lenders (other than such Defaulting Lender) had funded all of their respective Defaulted Loans) over the aggregate outstanding principal amount of all Term Loans of such Defaulting Lender.

“Default Period” means, with respect to any Defaulting Lender, the period commencing on the date of the applicable Funding Default or violation of Section 9.5(c), as applicable, and ending on the earliest of the following dates: (a) the date on which all Commitments are cancelled or terminated and/or the Obligations are declared or become immediately due and payable, in each case, in accordance with and subject to the terms and conditions of this Agreement, (b) the date on which (i) the Default Excess with respect to such Defaulting Lender shall have been reduced to zero (whether by the funding by such Defaulting Lender of any Defaulted Loans of such Defaulting Lender or by the non pro rata application of any voluntary or mandatory prepayments of the Loans in accordance with and subject to the terms and conditions of Section 2.9 or Section 2.10 or by a combination thereof), and (ii) such Defaulting Lender shall have delivered to Company and Administrative Agent a written reaffirmation of its intention to honor its obligations hereunder with respect to its Commitments, (c) the date on which Company, Administrative Agent and Required Lenders waive all Funding Defaults of such Defaulting Lender in writing and (d) if such Defaulting Lender is a Defaulting Lender solely due to a violation of Section 9.5(c), the date on which Administrative Agent shall have waived all violations of Section 9.5(c) by such Defaulting Lender in writing.

“Defaulted Loan” has the meaning specified in Section 2.17.

“Defaulting Lender” has the meaning specified in Section 2.17.

“Default Rate” means any interest payable pursuant to Section 2.6.

“Delayed Draw A-1 Term Loan” means the Term Loan funded after the Closing Date pursuant to Section 2.1(a)(ii).

“Delayed Draw A-1 Term Loan Commitment” means the commitment of a Lender to make or otherwise fund the Delayed Draw Term Loan and “Delayed Draw A-1 Term Loan Commitments” means such commitments of all such Lenders in the aggregate. The amount of each Lender’s Delayed Draw A-1 Term Loan Commitment, if any, is set forth on Appendix A-3 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Delayed Draw A-1 Term Loan Commitments as of the Closing Date is \$50,000,000.

“Delayed Draw A-2 Term Loan” means the Term Loan funded after the Closing Date pursuant to Section 2.1(a)(iii).

“Delayed Draw A-2 Term Loan Commitment” means the commitment of a Lender to make or otherwise fund the Delayed Draw Term Loan and “Delayed Draw A-2 Term Loan Commitments” means such commitments of all such Lenders in the aggregate. The amount of each Lender’s Delayed Draw A-2 Term Loan Commitment, if any, is set forth on Appendix A-4 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Delayed Draw A-2 Term Loan Commitments as of the Closing Date is \$50,000,000.

“Delayed Draw Term Loan” means, collectively, the Delayed Draw A-1 Term Loan and the Delayed Draw A-2 Term Loan.

“Delayed Draw Term Loan Commitment” means, collectively, the Delayed Draw A-1 Term Loan Commitment and the Delayed Draw A-2 Term Loan Commitment.

“Delayed Draw Term Loan Commitment Period” means the time period commencing on the Closing Date through and including the Delayed Draw Term Loan Commitment Termination Date.

“Delayed Draw Commitment Termination Date” means the earliest to occur of (a) the date the Term Loan Commitments are permanently reduced to zero in accordance with and pursuant to Section 2.12(b) or 2.13, (b) the date of the termination of the Term Loan Commitments in accordance with and pursuant to Section 8.1, (c) solely in the case of the Delayed Draw A-1 Term Loan Commitment, January 23, 2020 (or such later date as may be consented to by the Required Lenders in their sole discretion) and (d) solely in the case of the Delayed Draw A-2 Term Loan Commitment, March 31, 2020 (or such later date as may be consented to by the Required Lenders in their sole discretion).

“Deposit Account” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“Disputes” has the meaning set forth in Section 4.23(d).

“Disqualified Capital Stock” means any Capital Stock that, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is convertible into or exchangeable for (i) Indebtedness or (ii) any other Capital Stock that would constitute Disqualified Capital Stock, in each case of clauses (a) through (d), prior to the date that is 91 days after the Term Loan Maturity Date.

“Disqualified Institution” means (a) any Person designated by Borrower as a “Disqualified Institution” by written notice delivered to Administrative Agent prior to the Closing Date and consented to by Administrative Agent and the named Affiliates of each such Person which are clearly identifiable as such on the basis of each such Affiliate’s name, (b) those Persons that are competitors of any Loan Party or any Subsidiary thereof, and its named Affiliates, in each case to the extent identified by Borrower to Administrative Agent in writing prior to the Closing Date and consented to by the Administrative Agent, and the named Affiliates of each such Person which are clearly identifiable as such on the basis of such Affiliate’s name or (c) any other Person as Borrower and Administrative Agent shall mutually agree after the Closing Date; provided, that (x) the Persons described in clause (b) above shall not include any Person that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business and (y) “Disqualified Institution” shall exclude any Person that Borrower has designated as no longer being a “Disqualified Institution” by written notice delivered to Administrative Agent from time to time.

“Dollars” and the sign “\$” mean the lawful money of the United States of America.

“Eligible Assignee” means (a) any Lender, any Affiliate of any Lender and any Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), (b) any commercial bank, insurance company, investment or mutual fund or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act) and which other entity extends credit or buys loans as one of its or its Affiliates’ businesses, and (c) any other Person (other than a natural Person); provided, (i) neither Borrower nor any Affiliate of Borrower shall, in any event, be an Eligible Assignee, (ii) no Person owning or controlling any trade debt or Indebtedness of any Loan Party (other than the Obligations) or any Capital Stock of any Loan Party (in each case, unless approved by Administrative Agent) shall, in any event, be an Eligible Assignee and (iii) no Disqualified Institution shall be an Eligible Assignee so long as no Event of Default has occurred and is continuing.

“Employee Benefit Plan” means any “employee benefit plan” as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates.

“Environmental Claim” means any complaint, summons, citation, investigation, notice, directive, notice of violation, order, claim, demand, action, litigation, judicial or administrative proceeding, judgment, letter or other communication from any Governmental Authority or any other Person, involving (a) any actual or alleged violation of any Environmental Law; (b) any Hazardous Material or any actual or alleged Hazardous Materials Activity; (c) injury to the environment, natural resource, any Person (including wrongful death) or property (real or personal) in connection with Hazardous Materials or actual or alleged violations of Environmental Laws; or (d) actual or alleged Releases or threatened Releases of Hazardous Materials either (i) on, at or migrating from any assets, properties or businesses currently or formerly owned or operated by any Loan Party or any of its Subsidiaries or any predecessor in interest, (ii) from adjoining properties or businesses, or (iii) onto any facilities which received Hazardous Materials generated by any Loan Party or any of its Subsidiaries or any predecessor in interest.

“Environmental Laws” means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, decrees, permits, licenses or binding determinations of any Governmental Authorizations, or any other requirements of Governmental Authorities relating to (a) the manufacture, generation, use, storage, transportation, treatment, disposal or Release of Hazardous Materials; or (b) occupational safety and health, industrial hygiene, land use or the protection of the environment, human, plant or animal health or welfare.

“Environmental Liabilities and Costs” means all liabilities, monetary obligations, losses (including monies paid in settlement), damages, punitive damages, natural resources damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred in connection with any Remedial Action, any Environmental Claim, or any other claim or demand by any Governmental Authority or any Person that relates to any actual or alleged violation of Environmental Laws, actual or alleged exposure or threatened exposure to Hazardous Materials, or any actual or alleged Release or threatened Release of Hazardous Materials.

“Environmental Lien” means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

“Equity Issuance” means, without duplication, either (a) the sale or issuance by Borrower of any shares of its Capital Stock or (b) the receipt by Borrower of any cash capital contributions in respect of Capital Stock of the Borrower.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

“ERISA Affiliate” means, as applied to any Person, (a) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (b) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (c) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (a) above or any trade or business described in clause (b) above is a member.

“ERISA Event” means (a) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for thirty day notice to the PBGC has been waived by regulation); (b) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 412(m) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d) [reserved]; (e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of liability on Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the withdrawal of Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (h) [reserved]; (i) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (j) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (k) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan.

“Event of Default” means each of the conditions or events set forth in Section 8.1.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

“Excluded Account” means (i) Deposit Accounts and Securities Accounts the balance of which consists exclusively of (a) withheld income Taxes and federal, state or local employment Taxes in such amounts as are required to be paid to the Internal Revenue Service or state or local government agencies within the following two months with respect to employees of the Company or any of its Subsidiaries, and (b) any payroll accounts, health care reimbursement accounts and employee benefits accounts, including any accounts containing amounts required to be paid over to an employee benefit plan pursuant to DOL Reg. Sec. 2510.3-102 on behalf of or for the benefit of employees of the Company or any of its Subsidiaries, (ii) all segregated Deposit Accounts constituting (and the balance of which consists solely of funds set aside in connection with) tax accounts, fiduciary accounts and trust accounts and (iii) any Deposit Accounts and Securities Accounts, amounts on deposit in which do not exceed \$100,000 individually or \$500,000 in the aggregate at any one time or (iv) any Deposit Accounts that contain accounts receivable arising from any Governmental Payor where Administrative Agent may not under applicable Law obtain a security interest in or lien on such Deposit Account receiving the proceeds of such accounts receivable; provided, that amounts in such Deposit Account referred to in this subclause (iv) are automatically transferred on each Business Day into a Deposit Account that is not an Excluded Account.

“Excluded Taxes” has the meaning specified in Section 2.15(b).

“Existing Indebtedness” means Indebtedness and other obligations outstanding under that certain Credit and Security Agreement, dated as of May 1, 2018, between the Loan Parties, MidCap Financial Trust, as agent, and the lenders from time to time party thereto, as amended prior to the Closing Date.

“Extraordinary Receipts” means any cash received by Borrower or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.10(a) or (b) hereof), including, without limitation, (a) foreign, United States, state or local Tax refunds, (b) pension plan reversions, (c) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action (including, without limitation, infringement proceeds, breach of contract claims, damages (including treble damages), settlement amounts and other payments) received by Company from any of its existing or future licensees under any license or settlement agreement or recovered by Company, in each case, pursuant to any enforcement of any of the Product Patents or any license agreement relating thereto against third parties), and (d) condemnation awards (and payments in lieu thereof), (e) indemnity payments not received in the ordinary course of business, and (f) any purchase price adjustment received in connection with any purchase agreement entered into in connection with the acquisition by a Loan Party of (i) any Capital Stock of another Person or (ii) all or substantially all of the assets of another Person.

“Facility Fee” has the meaning set forth in the Fee Letter.

“Fair Share” has the meaning specified in Section 7.2.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

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

“FDA” means the U.S. Food and Drug Administration or any successor thereto.

“FDA Laws” means all applicable statutes, rules, regulations, standards, guidelines, policies and orders and Requirements of Law administered, implemented, enforced or issued by FDA or any comparable Governmental Authority.

“Federal Funds Effective Rate” means for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day.

“Federal Healthcare Program Laws” means collectively, federal Medicare or federal or state Medicaid statutes, Sections 1128, 1128A, 1128B, 1128C or 1877 of the SSA (42 U.S.C. §§ 1320a-7, 1320a-7a, 1320a-7b, 1320a-7c and 1395nn), the federal TRICARE statute (10 U.S.C. § 1071 et seq.), the civil False Claims Act of 1863 (31 U.S.C. § 3729 et seq.), criminal false claims statutes (e.g., 18 U.S.C. §§ 287 and 1001), the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801 et seq.), HIPAA, or related regulations or other Requirements of Law that directly or indirectly govern the health care industry, programs of Governmental Authorities related to healthcare, health care professionals or other health care participants, or relationships among health care providers, suppliers, distributors, manufacturers and patients, and the pricing, sale and reimbursement of health care items or services.

“Fee Letter” means the letter agreement, dated as of the Closing Date, between Company and Administrative Agent, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with and subject to the terms and conditions hereof and thereof.

“Financial Officer Certification” means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of Borrower that such financial statements fairly present, in all material respects, the financial condition of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

“Fiscal Quarter” means a fiscal quarter of any Fiscal Year.

“Fiscal Year” means the fiscal year of Borrower and its Subsidiaries ending on December 31 of each calendar year.

“Flood Hazard Property” means any real property subject to a mortgage in favor of Administrative Agent, for the benefit of the Secured Parties, and located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

“Flow of Funds Agreement” means that certain Flow of Funds Agreement, dated as of the Closing Date, executed by each Loan Party, the Administrative Agent, each Lender and any other person party thereto, in form and substance reasonably satisfactory to the Administrative Agent, in connection with the disbursement of Loan proceeds in accordance with Section 2.2.

“Foreign Official” means any officer or employee of a non-U.S. government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

“Funding Default” has the meaning specified in Section 2.17.

“Funding Notice” means a notice substantially in the form of Exhibit A-1.

“GAAP” means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

“Governmental Authority” means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

“Governmental Authorization” means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

“Governmental Payor” means Medicare, Medicaid, TRICARE, CHAMPVA, any state health plan adopted pursuant to Title XIX of the Social Security Act, any other state or federal health care program and any other Governmental Authority which maintains a payment or reimbursement program, and in which any Loan Party or Subsidiary thereof directly participates.

“Grantor” has the meaning specified in the Pledge and Security Agreement.

“Guaranteed Obligations” has the meaning specified in Section 7.1.

“Guarantor” means, subject to Section 5.10, each Subsidiary of Borrower and each other Person which guarantees, pursuant to Article VII or otherwise, all or any part of the Obligations.

“Guarantor Subsidiary” means each Guarantor.

“Guaranty” means (a) the guaranty of each Guarantor set forth in Article VII and (b) each other guaranty, in form and substance reasonably satisfactory to Administrative Agent, made by any other Guarantor for the benefit of the Secured Parties guaranteeing all or part of the Obligations.

“Hazardous Materials” means, regardless of amount or quantity, (a) any element, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, special waste, or solid waste under Environmental Laws or that is likely to cause immediately, or at some future time, harm to or have an adverse effect on, the environment or risk to human health or safety, including, without limitation, any pollutant, contaminant, waste, hazardous waste, toxic substance or dangerous good which is defined or identified in any Environmental Law and which is present in the environment in such quantity or state that it contravenes any Environmental Law; (b) petroleum and its refined products; (c) polychlorinated biphenyls; (d) any substance exhibiting a hazardous waste characteristic, including, without limitation, corrosivity, ignitability, toxicity or reactivity as well as any radioactive or explosive materials; (e) any raw materials, building components (including, without limitation, asbestos-containing materials) and manufactured products containing hazardous substances listed or classified as such under Environmental Laws; and (f) any substance or materials that are otherwise regulated under Environmental Law.

“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.

“Highest Lawful Rate” means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009), and other state or local laws regulating the privacy and/or security of patient-identifying health care information, including with respect to notification of breach of privacy or security of such information,

“Historical Financial Statements” means as of the Closing Date, (a) the audited consolidated financial statements of Borrower and its Subsidiaries, for the Fiscal Year ended December 31, 2018 consisting of consolidated balance sheets and the related consolidated statements of income, stockholders’ equity and cash flows for such Fiscal Year, and (b) the internally prepared, unaudited consolidated financial statements of Borrower and its Subsidiaries for each fiscal month ended January 31, 2019, February 28, 2019 and March 31, 2019, consisting of a consolidated balance sheet and the related consolidated statements of income and cash flows for such fiscal month, in the case of clauses (a) and (b), certified by the chief financial officer of Borrower that they fairly present, in all material respects, the financial condition of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject, if applicable, to changes resulting from audit and normal year-end adjustments.

“Imvexxy” means (a) the IMVEXXY (estradiol vaginal inserts) product approved for commercialization in the U.S. as of the Closing Date, and (b) any other vaginal product being developed or commercialized for the treatment of vaginal atrophy by the Company (or any Affiliate thereof that is controlled by the Company), or any of its licensees or sub-licensees (now or in the future) (in the case of such licensees or sub-licensees, solely with respect to development or commercialization pursuant to agreements with the Company or any of its Subsidiaries) that contains estradiol as the sole active ingredient (and in the case of clause (a) and clause (b) above, including any of their respective derivatives, polymorphs, isomers, prodrugs, metabolites, esters, salts and other forms, formulations, and methods of delivery thereof), commercialized in any country of the world under any brand name.

“Imvexxy Patents” means the U.S. and foreign patents and pending patent applications owned or in-licensed by Company or any of its Subsidiaries, now or in the future, that relate to, or otherwise may be useful in connection with, the research, development, manufacture, use, or sale of Imvexxy..

“Increased Cost Lenders” has the meaning specified in Section 2.18.

“Indebtedness” means, as applied to any Person, without duplication, (a) all indebtedness for borrowed money; (b) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP as in effect on December 31, 2018; (c) all obligations of such Person evidenced by notes, bonds or similar instruments or upon which interest payments are customarily paid and all obligations in respect of notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (d) any obligation owed for all or any part of the deferred purchase price of property or services, including any earn-outs or other deferred payment obligations in connection with an acquisition (excluding (i) trade payables incurred in the ordinary course of business and repayable in accordance with customary trade terms and (ii) accruals for payroll and other liabilities accrued in the ordinary course of business), in each case, if such obligation or earn-outs are classified as a liability on the balance sheet of such Person in accordance with GAAP; (e) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person; (f) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is non-recourse to the credit of that Person; (g) the face amount of any letter of credit or letter of guaranty issued, bankers’ acceptances facilities, surety bonds and similar credit transactions issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (h) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (i) any guarantee of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged; (j) any liability of such Person for an obligation of another through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, or capital contributions or otherwise) or (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (i) or (ii) of this clause (j), the primary purpose or intent thereof is as described in clause (i) above; and (k) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including, without limitation, any Interest Rate Agreement, whether entered into for hedging or speculative purposes and (l) Disqualified Capital Stock. The Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or joint venturer, unless such Indebtedness is expressly non-recourse to such Person.

“Indemnified Liabilities” means, collectively, any and all liabilities (including Environmental Liabilities and Costs), obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable and documented out-of-pocket fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted in writing against any such Indemnitee, in any manner relating to or arising out of (a) this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby (including the Lenders’ 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 the Guaranty)); (b) the statements contained in the proposal letter delivered by any Lender to Company prior to the Closing Date with respect to the transactions contemplated by this Agreement; or (c) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of Borrower or any of its Subsidiaries.

“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 Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitee” has the meaning specified in Section 10.3.

“Indemnitee Agent Party” has the meaning specified in Section 9.6.

“Initial Term Loan” means the Term Loan funded on the Closing Date pursuant to Section 2.1(a)(i).

“Initial Term Loan Commitment” means the commitment of a Lender to make or otherwise fund the Initial Term Loan and “Initial Term Loan Commitments” means such commitments of all such Lenders in the aggregate. The amount of each Lender’s Initial Term Loan Commitment, if any, is set forth on Appendix A-1 or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Initial Term Loan Commitments as of the Closing Date is \$200,000,000.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of any Debtor Relief Law.

“Intercompany Subordination Agreement” means that certain Intercompany Subordination Agreement, dated as of the date hereof, made by the Loan Parties and their Subsidiaries in favor of Administrative Agent for the benefit of the Secured Parties in form and substance satisfactory to Administrative Agent.

“Interest Payment Date” means (a) with respect to any Base Rate Loan, the last Business Day of each Fiscal Quarter, commencing on the first such date to occur after the Closing Date; (b) with respect to any LIBOR Rate Loan, (i) the last Business Day of each Fiscal Quarter, commencing on the first such date to occur after the Closing Date and (ii) the last day of each Interest Period applicable to such Loan; and (c) with respect to each Loan, the final maturity date of the Loans (whether by scheduled maturity, acceleration or otherwise).

“Interest Period” means, in connection with a LIBOR Rate Loan, an interest period of three months (a) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (b) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (i) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clauses (b)(iii) and (b)(iv) of this definition, end on the last Business Day of a calendar month; and (iii) no Interest Period with respect to any portion of any Term Loan shall extend beyond Term Loan Maturity Date.

“Interest Rate Agreement” means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is (a) for the purpose of hedging the interest rate exposure associated with Borrower’s and its Subsidiaries’ operations, (b) approved by Administrative Agent, and (c) not for speculative purposes.

“Interest Rate Determination Date” means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

“Investment” means (a) any direct or indirect purchase or other acquisition by Borrower or any of its Subsidiaries of, or of a beneficial interest in, any of the securities or Capital Stock or all or substantially all of the assets of any other Person (or of any division or business line of such other Person); (b) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Borrower from any Person, of any Capital Stock of such Person; (c) any direct or indirect loan, advance or capital contributions by Borrower or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business; and (d) any direct or indirect Guarantee of any obligations of any other Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write ups, write downs or write offs with respect to such Investment.

“Joint Venture” means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

“Lender” means each lender listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto in accordance with and subject to the terms and conditions hereof pursuant to an Assignment Agreement other than any Person that ceases to be a party hereto pursuant to any Assignment Agreement.

“Liabilities” means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses, in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“LIBOR Rate Loan” means a Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate.

“Lien” means (a) any lien, mortgage, pledge, assignment, hypothec, deed of trust, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (b) in the case of securities or Capital Stock, any purchase option, call or similar right of a third party with respect to such securities or Capital Stock.

“Loan” means any Term Loan.

“Loan Account” means an account maintained hereunder by Administrative Agent on its books of account at the Payment Office, and with respect to Company, in which it will be charged with the Term Loan made to, and all other Obligations incurred by the Loan Parties.

“Loan Document” means any of this Agreement, the Notes, if any, the Collateral Documents, the Fee Letter, the Flow of Funds Agreement, any Guaranty, the Intercompany Subordination Agreement, and all other material documents, instruments or agreements executed and delivered by a Loan Party for the benefit of Administrative Agent or any Lender in connection herewith.

“Loan Party” means Company or any Guarantor.

“Loan Party Partner” has the meaning set forth in Section 4.33(a).

“Margin Stock” has the meaning specified in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

“Material Adverse Effect” means a material adverse effect on (a) the business operations, properties, assets, condition (financial or otherwise) or liabilities of Borrower and its Subsidiaries taken as a whole; (b) the ability of any Loan Party to fully and timely perform its obligations under any Loan Document to which it is a party; (c) the legality, validity, binding effect, or enforceability against a Loan Party of a Loan Document to which it is a party; (d) the Collateral or the validity, perfection or priority of Administrative Agent’s Liens on the Collateral except as expressly permitted in the Collateral Documents; (e) the rights, remedies and benefits available to, or conferred upon, Administrative Agent and any Lender or any other Secured Party under any Loan Document; (f) any Product; and (g) the Product Patents for a particular Product (taken as a whole); or (h) any Registration by the FDA.

“Material Contract” means any contract or other written arrangement to which Borrower or any of its Subsidiaries is a party (other than the Loan Documents), now or in the future, for which breach, non-performance, cancellation or failure to renew would reasonably be expected to have a Material Adverse Effect, which, as of the Closing Date, are those contracts and arrangements listed on Schedule 4.15.

“Material Regulatory Liabilities” means (a)(i) any Liabilities arising from the violation of FDA Laws, Public Health Laws, Federal Health Care Program Laws, and other applicable comparable Requirements of Law, or the terms, conditions of or requirements applicable to any Registrations (including costs of actions required under applicable Requirements of Law, including FDA Laws and Federal Health Care Program Laws, or necessary to remedy any violation of any terms or conditions applicable to any Registrations), including, but not limited to, withdrawal of approval, recall, revocation, suspension, import detention and seizure of any Product, and (ii) any loss of recurring annual revenues as a result of any loss, suspension or limitation of any Registrations, which, in the case of the foregoing clauses (i) and (ii), exceed \$1,000,000, individually or in the aggregate, or (b) any Material Adverse Effect.

“Moody’s” means Moody’s Investor Services, Inc.

“Mortgage” means a mortgage, deed of trust or deed to secure debt, in form and substance satisfactory to Administrative Agent, made by a Loan Party in favor of Administrative Agent for the benefit of the Secured Parties, securing the Obligations and delivered to Administrative Agent.

“Multiemployer Plan” means any Employee Benefit Plan which is a “multiemployer plan” as defined in Section 3(37) of ERISA.

“Net Proceeds” means (a) with respect to any Asset Sale, an amount equal to: (i) all Cash payments received by Borrower or any of its Subsidiaries from such Asset Sale, minus (ii) any bona fide costs or expenses incurred in connection with such Asset Sale that are properly attributable to such Asset Sale to the extent paid or payable to non-Affiliates, including (A) income or gains Taxes payable by the seller as a result of any gain recognized in connection with such Asset Sale during the Tax period the sale occurs, (B) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, (C) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller’s indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by Borrower or any of its Subsidiaries in connection with such Asset Sale, and (D) any reasonable and documented out-of-pocket fees or expenses incurred in connection therewith; provided that upon release of any such reserve, the amount released shall be considered Net Proceeds; and (b) with respect to any insurance, condemnation, taking or other casualty proceeds, an amount equal to: (i) any Cash payments or proceeds received by Borrower or any of its Subsidiaries (A) under any casualty or business interruption insurance policies in respect of any covered loss thereunder, or (B) as a result of the condemnation or taking of any assets of Borrower or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (A) any actual costs or expenses incurred by Borrower or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Borrower or such Subsidiary in respect thereof, and (B) any bona fide costs or expenses incurred in connection with any sale of such assets as referred to in clause (b)(i)(B) of this definition to the extent paid or payable to non-Affiliates, including income Taxes payable as a result of any gain recognized in connection therewith and properly attributable thereto.

“Non-US Lender” has the meaning specified in Section 2.15(e)(i).

“Note” means a promissory note evidencing the Initial Term Loan or a Delayed Draw Term Loan, as applicable.

“Notice” means a Funding Notice or a Conversion/Continuation Notice.

“Obligations” means all obligations of every nature of each Loan Party and its Subsidiaries from time to time owed to the Administrative Agent (including former Administrative Agents), the Lenders or any of them, under any Loan Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Loan Party, would have accrued on any Obligation, whether or not a claim is allowed against such Loan Party for such interest in the related bankruptcy proceeding), the Prepayment Premium (if any), fees, expenses, indemnification or otherwise and whether primary, secondary, direct, indirect, contingent, fixed or otherwise (including obligations of performance).

“OFAC” has the meaning specified in the definition of “Anti-Terrorism Laws”.

“OFAC Sanctions Programs” means (a) the Requirements of Law and Executive Orders administered by OFAC, including but not limited to, Executive Order No. 13224, and (b) the list of Specially Designated Nationals and Blocked Persons administered by OFAC, in each case, as renewed, extended, amended, or replaced.

“Organizational Documents” means (a) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended, (b) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, and (d) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such governmental official.

“Other Connection Taxes” has the meaning specified therefor in Section 2.15(b).

“Other Taxes” has the meaning specified in Section 2.15(c).

“Participant Register” has the meaning specified in Section 10.6(h)(ii).

“PATRIOT Act” has the meaning specified in Section 4.29.

“Payment Office” means Administrative Agent’s office located at 888 7th Avenue, 35th Floor New York, New York 10106, or such other office or offices of Administrative Agent as may be designated in writing from time to time by Administrative Agent to Collateral Agent and Company.

“PBGC” means the Pension Benefit Guaranty Corporation or any successor thereto.

“Pension Plan” means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

“Perfection Certificate” means a certificate in form reasonably satisfactory to Administrative Agent that provides information with respect to the assets of each Loan Party.

“Permitted Acquisition” means any acquisition by Company or any of its wholly owned Guarantor Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Capital Stock of, or a business line or unit or a division of, any Person; provided,

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

(b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(c) in the case of the acquisition of Capital Stock, all of the Capital Stock (except for any such securities in the nature of directors' qualifying shares required pursuant to applicable law) acquired or otherwise issued by such Person or any newly formed Guarantor Subsidiary of Company in connection with such acquisition shall be owned 100% by Company or a Guarantor Subsidiary thereof, and Company shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of Company, each of the actions set forth in Section 5.10 and/or Section 5.11, as applicable;

(d) Borrower and its Subsidiaries shall be in compliance with the covenants set forth in Section 6.8 on a pro forma basis after giving effect to such acquisition as of the last day of the Fiscal Quarter most recently ended;

(e) Company shall have delivered to Administrative Agent at least 10 days (or such shorter period as agreed to by Administrative Agent in writing) prior to such proposed acquisition, such information and documents that Administrative Agent may reasonably request, including, without limitation, financial information with respect to such acquired assets and drafts of the respective acquisition agreements related thereto;

(f) the acquisition shall have been approved by the Board of Directors or other governing body or controlling Person of the Person acquired or the Person from whom such assets or division is acquired; and

(g) the total consideration (excluding any portion thereof paid with proceeds of an Equity Issuance) paid in connection with all such acquisitions consummated since the Closing Date shall not exceed \$50,000,000.

"Permitted Indebtedness" means:

(a) the Obligations;

(b) Permitted Intercompany Investments;

(c) Indebtedness incurred by Borrower or any of its Subsidiaries arising from agreements providing for indemnification or from guaranties or letters of credit, surety bonds or performance bonds securing the performance of Company or any such Subsidiary pursuant to such agreements, in connection with Permitted Acquisitions or Asset Sales permitted hereunder;

(d) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business and Indebtedness constituting guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Borrower and its Subsidiaries;

(e) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(f) Indebtedness described in Schedule 6.1, and any Permitted Refinancing Indebtedness in respect of such Indebtedness;

(g) Indebtedness in an aggregate amount not to exceed at any time \$1,000,000 with respect to (i) Capital Leases and (ii) purchase money Indebtedness (including any Indebtedness acquired in connection with a Permitted Acquisition); provided that any such Indebtedness shall be secured only by the asset subject to such Capital Lease or by the asset acquired in connection with the incurrence of such Indebtedness;

(h) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to the Loan Parties, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the period in which such Indebtedness is incurred and such Indebtedness is outstanding only during such period;

(i) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price, non-compete, or similar obligation of any Loan Party incurred in connection with the consummation of one or more Permitted Acquisitions;

(j) Indebtedness of a Person whose assets or Capital Stock are acquired by the Borrower or any of its Subsidiaries in a Permitted Acquisition in an aggregate amount not to exceed \$1,000,000 at any one time outstanding; provided, that such Indebtedness (i) is either purchase money Indebtedness or a Capital Lease with respect to equipment or mortgage financing with respect to a facility, (ii) was in existence prior to the date of such Permitted Acquisition, and (iii) was not incurred in connection with, or in contemplation of, such Permitted Acquisition;

(k) unsecured Indebtedness owing to the seller party to a Permitted Acquisition that is incurred by the applicable Loan Party in connection with the consummation of one or more Permitted Acquisitions so long as (i) the aggregate principal amount for all such Indebtedness does not exceed \$10,000,000 at any one time outstanding, and (ii) such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to the Administrative Agent, and (iii) such Indebtedness is otherwise on terms and conditions (including all economic terms and the absence of covenants) reasonably acceptable to the Administrative Agent;

(l) other Indebtedness of Borrower and its Subsidiaries, which is unsecured and subordinated to the Obligations in a manner satisfactory to Administrative Agent in an aggregate amount not to exceed at any time \$5,000,000; and

(m) Indebtedness incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations.

"Permitted Intercompany Investments" means Investments by (a) a Loan Party to or in another Loan Party, (b) a Subsidiary that is not a Loan Party to or in another Subsidiary that is not a Loan Party, and (c) a Subsidiary that is not a Loan Party to or in a Loan Party, so long as, in the case of a loan or an advance, the parties thereto are party to an Intercompany Subordination Agreement.

"Permitted Investments" means:

- (a) Investments in Cash and Cash Equivalents;
- (b) equity Investments owned as of the Closing Date in any Subsidiary;
- (c) Permitted Intercompany Investments;

(d) loans and advances to employees of Borrower and its Subsidiaries (i) made in the ordinary course of business, and (ii) any refinancings of such loans after the Closing Date, in each case, in an aggregate amount not to exceed \$1,000,000;

(e) Permitted Acquisitions;

(f) Investments described in Schedule 6.7 as of the Closing Date;

(g) any Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business or received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Company or any of its Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes;

(h) loans and advances by Borrower or any of its Subsidiaries in lieu of, and not in excess of the amount of (after giving effect to any other such loans or advances or Restricted Junior Payments in respect thereof), Restricted Junior Payments to the extent permitted to be made to Borrower or any of its Subsidiaries in accordance with Section 6.5(a), (b) or (c); and

(i) so long as no Event of Default has occurred and is continuing or would result therefrom, other Investments (other than any Investment constituting a disposition or contribution of the Products or the Product Patents) in an aggregate amount not to exceed \$10,000,000 at any time outstanding.

“Permitted Liens” means:

(a) Liens in favor of Administrative Agent for the benefit of Secured Parties granted pursuant to any Loan Document;

(b) Liens for Taxes if obligations with respect to such Taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and reserves required by GAAP have been made, so long as the aggregate amount of such Taxes does not exceed \$1,000,000;

(c) statutory Liens of landlords, banks (and rights of set off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 401 (a)(29) or 412(n) of the Internal Revenue Code or by ERISA), in each case incurred in the ordinary course of business for amounts not yet overdue;

(d) Liens incurred in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations, so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights of way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Borrower or any of its Subsidiaries;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

- (g) Liens solely on any cash earnest money deposits made by Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;
- (h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases entered into in the ordinary course of business;
- (i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;
- (k) Liens described in Schedule 6.2; provided that any such Lien shall only secure the Indebtedness that it secures on the Closing Date and any Permitted Refinancing Indebtedness in respect thereof;
- (l) Liens securing Capital Leases or purchase money Indebtedness permitted pursuant to clause (g) of the definition of Permitted Indebtedness; provided, any such Lien shall encumber only the asset subject to such Capital Lease or the asset acquired with the proceeds of such Indebtedness;
- (m) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness;
- (n) Liens assumed by Borrower and its Subsidiaries in connection with a Permitted Acquisition that secure Indebtedness permitted by clause (j) of the definition of Permitted Indebtedness;
- (o) other Liens incurred in the ordinary course of business of the Company or any Subsidiary of the Company with respect to obligations that do not exceed \$1,000,000 at any one time outstanding;
- (p) Liens securing any judgments, writs or warrants of attachment or similar process not constituting an Event of Default under Section 8.1(h); and
- (q) Liens that are contractual rights of setoff relating to purchase orders entered into with customers, vendors or suppliers of such Person in the ordinary course of business.

“Permitted Product Transaction” means a transaction that includes the granting of a license or sublicense of any rights under any Product Patents or Registrations pursuant to a Product Agreement.

“Permitted Refinancing Indebtedness” means any Indebtedness of the Company or any of its Subsidiaries issued in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge other Indebtedness of the Company or any of its Subsidiaries; *provided* that:

- (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith);
- (b) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;

(c) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the Obligations, such Permitted Refinancing Indebtedness is subordinated in right of payment to, the Obligations on terms at least as favorable to the Administrative Agent and the Lenders as those contained in the documentation governing the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged; and

(d) such Indebtedness is incurred either by the Company or by the Subsidiary who is the obligor on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged.

“Person” means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

“Pledge and Security Agreement” means the Pledge and Security Agreement executed by Grantors in favor of Administrative Agent for the benefit of the Secured Parties, as it may be amended, supplemented or otherwise modified from time to time in accordance with and subject to the terms and conditions hereof and thereof.

“Prepayment Premium” has the meaning specified in the Fee letter.

“Prime Rate” means the rate of interest quoted in *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation’s thirty (30) largest banks), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Any Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

“Principal Office” means, for Administrative Agent, such Person’s “Principal Office” as set forth on Appendix B, or such other office as such Person may from time to time designate in writing in accordance with Section 10.1 to Company and each Lender.

“Products” means Anovera, Bijuva and Imvexxy.

“Product Agreement” means any agreement entered into between Company or any of its Subsidiaries with another Person that includes the granting of a license or sublicense of any rights under any Product Patents or Registrations that allows such Person to develop or commercialize a Product outside the United States.

“Product Patents” means the Anovera Patents, Bijuva Patents and Imvexxy Patents.

“Product Revenue” means, for any period, (a) the consolidated gross revenues of Borrower and its Subsidiaries generated solely through the commercial sale of Products by Borrower and its Subsidiaries during such period, less, without duplication, (b)(i) trade, quantity and cash discounts allowed by Borrower, (ii) discounts, refunds, rebates, charge backs, retroactive price adjustments and any other allowances which effectively reduce net selling price, (iii) product returns and allowances, (iv) allowances for shipping or other distribution expenses, (iv) set-offs and counterclaims, and (v) any other similar and customary deductions used by Borrower in determining net revenues, all, in respect of (a) and (b), as determined in accordance with GAAP and calculated on a basis consistent with the Historical Financial Statements delivered to Administrative Agent prior to the Closing Date.

“Pro Rata Share” means, with respect to:

(a) (i) a Lender’s obligation to make the Initial Term Loan and such Lender’s right to receive payment of the Facility Fee in respect thereof, the percentage obtained by dividing (A) such Lender’s Initial Term Loan Commitment by (B) the Total Initial Term Loan Commitment; (ii) a Lender’s obligation to make a Delayed Draw A-1 Term Loan and such Lender’s right to receive payment of the Facility Fee in respect thereof, the percentage obtained by dividing (A) such Lender’s Delayed Draw A-1 Term Loan Commitment by (B) the aggregate amount of the Lenders’ Delayed Draw A-1 Term Loan Commitments; and (iii) a Lender’s obligation to make a Delayed Draw A-2 Term Loan and such Lender’s right to receive payment of the Facility Fee in respect thereof, the percentage obtained by dividing (A) such Lender’s Delayed Draw A-1 Term Loan Commitment by (B) the aggregate amount of the Lenders’ Delayed Draw A-2 Term Loan Commitments;

(b) a Lender’s right to receive payments of interest, fees (other than the Facility Fee) and principal with respect to a Term Loan, the percentage obtained by dividing (i) the aggregate unpaid principal amount of such Lender’s portion of the Term Loan, by (ii) the aggregate unpaid principal amount of the Term Loan; and

(c) all other matters the percentage obtained by dividing (i) the sum of such Lender’s Delayed Draw Term Loan Commitment and the unpaid principal amount of such Lender’s portion of the Term Loan, by (ii) the sum of the Total Delayed Draw Term Loan Commitment and the aggregate unpaid principal amount of the Term Loan.

“Protective Advances” has the meaning specified in Section 9.11.

“Public Health Laws” means all Requirements of Law relating to the procurement, development, clinical and non-clinical evaluation, product approval or licensure, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, sale, labeling, promotion, or post market requirements of any drug, biologic or other product (including, without limitation, any ingredient or component of the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. et seq.) and the Public Health Service Act (42 U.S.C. et seq.), including without limitation the regulations promulgated by the FDA at Title 21 of the Code of Federal Regulations and guidance, compliance policies and other guidelines issued by the FDA.

“Qualified Cash” means, as of any date of determination, the amount of unrestricted Cash and Cash Equivalents (other than restrictions created by the Collateral Documents) of the Loan Parties that is in Deposit Accounts or in Securities Accounts, or any combination thereof, which such Deposit Account or Securities Account is subject to a Control Agreement and is maintained by a branch office of the bank or securities intermediary located within the United States.

“Recipient” means Administrative Agent or any Lender.

“Register” has the meaning specified in Section 2.3(b).

“Registrations” shall mean authorizations, approvals, licenses, permits, certificates, or exemptions of or issued by any Governmental Authority (including pre-market approval applications, pre-market notifications, investigational new drug applications, product recertifications, manufacturing approvals and authorizations, pricing and reimbursement approvals, labeling approvals or their foreign equivalent), and all applications for any of the foregoing, that are required for the research, development, manufacture, commercialization, distribution, marketing, storage, transportation, pricing, Government Authority reimbursement, use and sale of Products.

“Regulation D” means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“Regulatory Action” means an administrative or regulatory enforcement action, proceeding or investigation, warning letter, untitled letter, Form 483 inspectional observations or other notice of violation letter, recall, seizure, Section 305 notice or other similar written communication, or consent decree, issued by the FDA.

“Reinvestment Amounts” has the meaning specified term in Section 2.10(a)(ii).

“Related Fund” means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“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.

“Remedial Action” means all actions taken to (a) correct or address any actual or threatened non-compliance with Environmental Law, (b) clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment; (c) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (d) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (e) perform any other actions authorized or required by Environmental Law or Governmental Authority.

“Replacement Lender” has the meaning specified in Section 2.18.

“Required Lenders” means Lenders whose Pro Rata Share (calculated in accordance with clause (c) of the definition thereof) aggregate at least 50.1%.

“Required Prepayment Date” has the meaning specified in Section 2.11(a).

“Requirements of Law” means, with respect to any Person, collectively, the common law and all federal, state, provincial, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case having appropriate jurisdiction over and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Restricted Junior Payment” means (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of Borrower now or hereafter outstanding, except a dividend payable solely in shares of Capital Stock to the holders of that class, together with any payment or distribution pursuant to a “plan of division” under the Delaware Limited Liability Act or any comparable transaction under any similar law; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of Borrower or any of its Subsidiaries that is not a Loan Party now or hereafter outstanding; (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of Borrower or any of its Subsidiaries that is not a Loan Party now or hereafter outstanding and (d) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment with respect to, any subordinated Indebtedness.

“S&P” means Standard & Poor’s Ratings Group, a division of The McGraw Hill Corporation.

“Secured Parties” has the meaning assigned to that term in the Pledge and Security Agreement.

“Securities Account” means a securities account (as defined in the UCC).

“Securities Act” means the Securities Act of 1933, as amended from time to time, and any successor statute.

“Solvent” means, with respect to any Loan Party, that as of the date of determination, both (a)(i) the sum of such Loan Party’s debt (including contingent liabilities) does not exceed the present fair saleable value of such Loan Party’s present assets; (ii) such Loan Party’s capital is not unreasonably small in relation to its business as contemplated on the Closing Date or with respect to any transaction contemplated or undertaken after the Closing Date; and (iii) such Person has not incurred and does not intend to incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (b) such Person is “solvent” within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“Specified Deposit Accounts” means each Deposit Account (other than any Excluded Account) of the Loan Parties held at Bank of America, N.A.

“Specified Product Component” means that portion of each of Anovera, Bijuva and Imvexxy described in clause (a) of each definition thereof.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding.

“Tax” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding), imposed by any Governmental Authority, including all interest, penalties, additions to tax or other liabilities with respect thereto.

“Term Loan” means, collectively, the Initial Term Loan and each Delayed Draw Term Loan.

“Term Loan Commitment” means, collectively, the Initial Term Loan Commitment and the Delayed Draw Term Loan Commitments.

“Term Loan Maturity Date” means the earlier of (a) March 31, 2024 and (b) the date that the Term Loan shall become due and payable in full hereunder, whether by acceleration or otherwise.

“Terminated Lender” has the meaning specified in Section 2.18.

“Total Delayed Draw Term Loan Commitment” means the sum of the amounts of the Lenders’ Delayed Draw Term Loan Commitments.

“Total Initial Term Loan Commitment” means the sum of the amounts of the Lenders’ Initial Term Loan Commitments.

“Transaction Costs” means the reasonable and documented fees, costs and expenses payable by Borrower or any of its Subsidiaries on or before the Closing Date in connection with the transactions contemplated by the Loan Documents.

“Type of Loan” means with respect to any Term Loan, a Base Rate Loan or a LIBOR Rate Loan.

“UCC” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

“U.S.” or “United States” means the United States of America.

“Waivable Mandatory Prepayment” has the meaning specified in Section 2.11(b).

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(a) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(b) the then outstanding principal amount of such Indebtedness.

Section 1.2 Accounting and Other Terms.

(a) Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Borrower to Lenders pursuant to Sections 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with any reconciliation statements provided for in Section 5.1(f), if applicable). Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements. Notwithstanding the foregoing, or anything else to the contrary in this Agreement or in any other Loan Document to the contrary for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof.

(b) All terms used in this Agreement which are defined in Article 8 or Article 9 of the UCC as in effect from time to time in the State of New York and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the UCC as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute.

(c) For purposes of determining compliance with any incurrence or expenditure tests set forth in this Agreement, any amounts so incurred or expended (to the extent incurred or expended in a currency other than Dollars (\$)) shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other recognized and publicly available service for displaying exchange rates as may be reasonably selected by Administrative Agent or, in the event no such service is available, on such other basis as is reasonably satisfactory to Administrative Agent) as in effect on the date of such incurrence or expenditure under any provision of any such Section that has an aggregate Dollar limitation provided for therein (and to the extent the respective incurrence or expenditure test regulates the aggregate amount outstanding at any time and it is expressed in terms of Dollars, all outstanding amounts originally incurred or spent in currencies other than Dollars shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other recognized and publicly available service for displaying exchange rates as may be reasonably selected by Administrative Agent or, in the event no such service is available, on such other basis as is reasonably satisfactory to Administrative Agent) as in effect on the date of any new incurrence or expenditures made under any provision of any such Section that regulates the Dollar amount outstanding at any time).

Section 1.3 Interpretation, etc. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations or Guaranteed Obligations shall mean the payment or repayment in full in immediately available funds of (i) the principal amount of, and interest accrued and unpaid with respect to, all outstanding Loans, together with the payment of any premium applicable to the repayment of the Loans, including any Prepayment Premium, (ii) all costs, expenses, or indemnities payable pursuant to Section 10.2 or Section 10.3 of this Agreement that have accrued and are unpaid regardless of whether demand has been made therefor and (iii) all fees, charges, expense reimbursement and other Obligations that have accrued hereunder or under any other Loan Document and are unpaid and are payable hereunder and (b) the receipt by Administrative Agent of cash collateral from any Loan Party in order to secure any other contingent Obligations for which a claim or demand for payment has been made on or prior to such time or in respect of matters or circumstances known to an Agent or a Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys’ fees and legal expenses), such cash collateral to be in such amount as Agents reasonably determine is appropriate to secure such contingent Obligations. Notwithstanding anything in the Agreement to the contrary, (A) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (B) all requests, rules, guidelines or directives concerning capital adequacy 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 shall, in each case, be deemed to be enacted, adopted, issued, phased in or effective after the date of this Agreement regardless of the date enacted, adopted, issued, phased in or effective. Unless the context requires otherwise (a) any definition of or reference to any Loan Document, agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in any Loan Document) and (b) any reference to any law or regulation shall (i) include all statutory and regulatory provisions consolidating, amending, replacing or interpreting or supplementing such law or regulation, and (ii) unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time. This Section 1.3 shall apply, *mutatis mutandis*, to all Loan Documents.

Section 1.4 Time References. Unless otherwise indicated herein, all references to time of day refer to Central Standard Time or Central daylight saving time, as in effect in Dallas, Texas on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding”; provided, however, that with respect to a computation of fees or interest payable to Administrative Agent or any Lender, such period shall in any event consist of at least one full day.

ARTICLE II

LOANS

Section 2.1 Term Loans.

(a) Loan Commitment. Subject to the terms and conditions hereof:

(i) each Lender severally agrees to make, on the Closing Date, an Initial Term Loan to Company in an amount equal to such Lender’s Initial Term Loan Commitment;

(ii) each Lender severally agrees to make, after the Closing Date and at any time prior to the Delayed Draw Term Loan Commitment Termination Date, a Delayed Draw A-1 Term Loan to Company in an aggregate amount equal to such Lender’s Delayed Draw A-1 Term Loan Commitment; and

(iii) each Lender severally agrees to make, after the Closing Date and at any time prior to the Delayed Draw Term Loan Commitment Termination Date, a Delayed Draw A-2 Term Loan to Company in an aggregate amount equal to such Lender’s Delayed Draw A-2 Term Loan Commitment.

Company may make only one borrowing under the Initial Term Loan Commitment which shall be on the Closing Date. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Section 2.9, all amounts owed hereunder with respect to the Term Loan shall be paid in full no later than the Term Loan Maturity Date. Each Lender’s Initial Term Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender’s Initial Term Loan Commitment on such date in an amount equal to such Lender’s Pro Rata Share (calculated in accordance with clause (a)(i) of the definition thereof) of such funded Initial Term Loan. Each Lender’s Delayed Draw A-1 Term Loan Commitment shall be permanently reduced immediately and without further action upon the funding of each Delayed Draw A-1 Term Loan after the Closing Date in an amount equal to such Lender’s Pro Rata Share (calculated in accordance with clause (a)(ii) of the definition thereof) of such funded Delayed Draw A-1 Term Loan. Each Lender’s Delayed Draw A-1 Term Loan Commitment shall terminate immediately and without further action on the earlier to occur of (i) the Term Loan Maturity Date and (ii) the applicable Delayed Draw Term Loan Commitment Termination Date after giving effect to the funding of such Lender’s Delayed Draw A-1 Term Loan Commitment, if any, on such date. Each Lender’s Delayed Draw A-2 Term Loan Commitment shall be permanently reduced immediately and without further action upon the funding of each Delayed Draw A-2 Term Loan after the Closing Date in an amount equal to such Lender’s Pro Rata Share (calculated in accordance with clause (a)(iii) of the definition thereof) of such funded Delayed Draw A-2 Term Loan. Each Lender’s Delayed Draw A-2 Term Loan Commitment shall terminate immediately and without further action on the earlier to occur of (i) the Term Loan Maturity Date and (ii) the applicable Delayed Draw Term Loan Commitment Termination Date after giving effect to the funding of such Lender’s Delayed Draw A-2 Term Loan Commitment, if any, on such date.

(b) Borrowing Mechanics for Term Loans.

(i) Company shall deliver to Administrative Agent a fully executed Funding Notice no later than three Business Days prior to the Closing Date (or such shorter period permitted by Administrative Agent), with respect to Term Loans made on the Closing Date. Following the Closing Date (and subject to the conditions set forth in Section 3.2), whenever Company desires that Lenders make a Delayed Draw Term Loan, Company shall deliver to Administrative Agent a fully executed and delivered Funding Notice at least 15 Business Days in advance of the proposed Credit Date (or such shorter period consented to by Administrative Agent). Except as otherwise provided herein, a Funding Notice for a Term Loan that is a LIBOR Rate Loan shall be irrevocable on and after the related Interest Rate Determination Date, and Company shall be bound to make a borrowing in accordance therewith. Promptly upon receipt by Administrative Agent of any such Funding Notice, Administrative Agent shall notify each Lender of the proposed borrowing. Administrative Agent and Lenders (A) may act without liability upon the basis of written or facsimile notice believed by Administrative Agent in good faith to be from Company (or from any Authorized Officer thereof designated in writing purportedly from Company to Administrative Agent), (B) shall be entitled to rely conclusively on any Authorized Officer's authority to request a Term Loan on behalf of Company until Administrative Agent receives written notice to the contrary, and (C) shall have no duty to verify the authenticity of the signature appearing on any written Funding Notice.

(ii) Each Lender shall make its Initial Term Loan available to Administrative Agent not later than 12:00 p.m. on the applicable Credit Date, by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the Term Loans available to Company on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from Lenders to be credited to the account of Company at Administrative Agent's Principal Office or to such other account as may be designated in writing to Administrative Agent by Company.

(c) During the Delayed Draw Term Loan Commitment Period, drawings under the (i) Delayed Draw A-1 Term Loan Commitment shall be (A) made on not more than 1 date and (B) made in an aggregate amount not exceeding \$50,000,000 and (ii) Delayed Draw A-2 Term Loan Commitment shall be (A) made on not more than 1 date and (B) made in an aggregate amount not exceeding \$50,000,000, and in each case for clauses (i) and (ii) shall be subject to the satisfaction of the conditions set forth in Section 3.2.

(d) Pro Rata Shares; Availability of Funds.

(i) Pro Rata Shares. All Loans shall be made by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder nor shall any Term Loan Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(ii) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Credit Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Company a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Company and Company shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the rate payable hereunder for Base Rate Loans for such Class of Loans. Nothing in this Section 2.1(d)(ii) shall be deemed to relieve any Lender from its obligation to fulfill its Term Loan Commitments hereunder or to prejudice any rights that Company may have against any Lender as a result of any default by such Lender hereunder.

Section 2.2 Use of Proceeds. The proceeds of the Term Loans made on and after the Closing Date shall be applied by Company for working capital, capital expenditures and general corporate purposes of Borrower and its Subsidiaries. No portion of the proceeds of the Term Loan shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

Section 2.3 Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Company to such Lender, including the amounts of the Term Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Company, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect Company's Obligations in respect of any Term Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and the principal amount of the Term Loans (and stated interest therein) of each Lender from time to time (the "Register"). The Register shall be available for inspection by Company at any reasonable time and from time to time upon reasonable prior notice, and Administrative Agent shall notify Company in writing following any updates to the Register made from time to time. Administrative Agent shall record in the Register the Term Loans, and each repayment or prepayment in respect of the principal amount of the Term Loans, and any such recordation shall be conclusive (absent manifest error) and binding on Company and each Lender, and Company, Administrative Agent and Lenders shall treat each Person whose name is recorded in the Register pursuant to and in accordance with the terms and conditions hereof as a Lender hereunder for any purposes of this Agreement; provided, failure to make any such recordation, or any error in such recordation, or any failure to provide notice of any updates to the Register, shall not affect Company's Obligations in respect of any Term Loan. Company hereby designates the entity serving as Administrative Agent to serve as Company's non-fiduciary agent solely for purposes of maintaining the Register as provided in this Section 2.3, and Company hereby agrees that, to the extent such entity serves in such capacity, the entity serving as Administrative Agent and its officers, directors, employees, agents and affiliates shall constitute "Indemnitees."

(c) Notes. If so requested by any Lender by written notice to Company (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date, or at any time thereafter, Company shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Company's receipt of such notice) a Note or Notes.

Section 2.4 Interest.

(a) Except as otherwise set forth herein, each Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

- (i) if a Base Rate Loan, at the Base Rate plus the Applicable Margin; or
- (ii) if a LIBOR Rate Loan, at the Adjusted LIBOR Rate plus the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Loan, and the Interest Period with respect to any LIBOR Rate Loan, shall be selected by Company and notified to Administrative Agent and Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan shall be a Base Rate Loan.

(c) In connection with LIBOR Rate Loans there shall be no more than five Interest Periods outstanding at any time. In the event Company fails to specify between a Base Rate Loan or a LIBOR Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (if outstanding as a LIBOR Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event Company fails to specify an Interest Period for any LIBOR Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, Company shall be deemed to have selected an Interest Period of three months. At any time that a Default or an Event of Default has occurred and is continuing, Company no longer shall have the option to request that any portion of the Loans be a LIBOR Rate Loan and such LIBOR Rate Loans shall automatically convert to Base Rate Loans on the last day of the then current Interest Period. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the LIBOR Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing) to Company and each Lender.

(d) Interest payable hereunder shall be computed on the basis of a 360 day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a LIBOR Rate Loan, the date of conversion of such LIBOR Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a LIBOR Rate Loan, the date of conversion of such Base Rate Loan to such LIBOR Rate Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Term Loan shall be payable in cash and in arrears (i) on each Interest Payment Date; (ii) upon any prepayment of that Term Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) at maturity, including final maturity.

Section 2.5 Conversion/Continuation.

(a) Subject to Section 2.17 and so long as no Default or Event of Default shall have occurred and then be continuing, Company shall have the option:

(i) to convert at any time all or any part of any Term Loan equal to \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, a LIBOR Rate Loan may only be converted on the expiration of the Interest Period applicable to such LIBOR Rate Loan unless Company shall pay all amounts due under Section 2.17 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any LIBOR Rate Loan, to continue all or any portion of such Loan equal to \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount as a LIBOR Rate Loan.

(b) Company shall deliver a Conversion/Continuation Notice to Administrative Agent no later than 10:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a LIBOR Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any LIBOR Rate Loans shall be irrevocable on and after the related Interest Rate Determination Date, and Company shall be bound to effect a conversion or continuation in accordance therewith.

Section 2.6 Default Interest. Upon Company's receipt of written notice thereof from Administrative Agent following the occurrence and during the continuance of an Event of Default, the principal amount of all Term Loans outstanding and, to the extent permitted by applicable law, any accrued and unpaid interest payments on the Term Loans or any fees or other amounts owed hereunder (including any Prepayment Premium, if applicable), shall from and after the first date of the occurrence of such Event of Default bear interest (including post petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable on demand at a rate that is 2.0% per annum in excess of the interest rate otherwise payable hereunder with respect to the Term Loans. All interest payable at the Default Rate shall be payable in cash on demand. Payment or acceptance of the Default Rate of interest provided for in this Section 2.6 is not a permitted alternative to timely payment and shall not constitute a waiver of any Default or Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

Section 2.7 Fees.

(a) Company agrees to pay to Administrative Agent all fees payable by it in the Fee Letter in the amounts and at the times specified therein.

(b) All fees referred to in Section 2.7(a) shall be calculated on the basis of a 360 day year and the actual number of days elapsed.

Section 2.8 Repayment of Term Loans. Commencing on June 30, 2023 and on the last day of each Fiscal Quarter ending thereafter, the Borrower shall repay the principal amount of the Term Loan in an amount equal to 25.0% of the aggregate principal balance of the Term Loan on June 30, 2023, which payments shall be applied as follows: (a) first, the principal of the Initial Term Loan until paid in full, (b) second, the principal of the Delayed Draw A-1 Term Loan until paid in full and (c) third, the principal of the Delayed Draw A-2 Term Loan until paid in full. Notwithstanding the foregoing, the Term Loan, together with all other amounts owed hereunder with respect thereto, shall be paid in full no later than the Term Loan Maturity Date.

Section 2.9 Voluntary Prepayments and Commitment Reductions.

(a) Voluntary Prepayments.

(i) Subject to the terms of the Fee Letter, Company may prepay at any time the Term Loan on any Business Day in whole or in part (together with any amounts due pursuant to Section 2.19(c)), in an aggregate minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount.

(ii) All such prepayments shall be made (A) upon not less than one Business Day's prior written notice in the case of Base Rate Loans and (B) upon not less than three Business Days' prior written notice in the case of LIBOR Rate Loans, in each case given to Administrative Agent by 3:00 p.m. on the date required (and Administrative Agent will promptly transmit such notice to each Lender). Upon the giving of any such notice, the principal amount of the Term Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied to the Term Loans as directed by the Borrower.

(b) Voluntary Commitment Reductions.

(i) Company may, upon not less than three Business Days' prior written to Administrative Agent (which original written notice Administrative Agent will promptly transmit to each applicable Lender), at any time and from time to time terminate in whole or permanently reduce in part any unused portion of the Delayed Draw Term Loan Commitments; provided, any such partial reduction of the Delayed Draw Term Loan Commitments shall be in an aggregate minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount.

(ii) Company's notice to Administrative Agent shall designate (A) the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction and (B) whether such termination or reduction is for the Delayed Draw A-1 Term Loan Commitment and/or the Delayed Draw A-2 Term Loan Commitment, and such termination or reduction of the Delayed Draw Term Loan Commitments shall be effective on the date specified in Company's notice and shall reduce the Delayed Draw Term Loan of each Lender proportionately to its Pro Rata Share thereof.

Section 2.10 Mandatory Prepayments.

(a) Asset Sales.

(i) No later than the fifth Business Day following the date of receipt by any Loan Party of any Net Proceeds from one or more Asset Sales constituting a Permitted Product Transaction in excess of \$40,000,000 in the aggregate for all such Permitted Product Transactions, Company shall prepay the Term Loan as set forth in Section 2.11(a) in an aggregate amount equal to such Net Proceeds in excess of \$40,000,000.

(ii) No later than the fifth Business Day following the date of receipt by any Loan Party of any Net Proceeds from Asset Sales in excess of \$5,000,000 in the aggregate in any Fiscal Year that do not constitute a Permitted Product Transaction, Company shall prepay the Term Loans set forth in Section 2.11(a) in an aggregate amount equal to such Net Proceeds in excess of \$5,000,000 in such Fiscal Year; provided, so long as (i) no Default or Event of Default shall have occurred and be continuing, (ii) Company has delivered Administrative Agent prior written notice of Company's intention to apply such monies (the "Reinvestment Amounts") to reinvest in or to the costs of purchase of other assets used or useful in the business of the Loan Parties including capital expenditures, (iii) the monies are held in a Deposit Account subject to a Control Agreement, and (iv) the Loan Parties complete such reinvestment or purchase within 365 days after the initial receipt of such monies, the Loan Parties shall have the option to apply such monies to the reinvestment in or the costs of purchase of other assets used or useful in the business of the Loan Parties (including capital expenditures) unless and to the extent that such applicable period shall have expired without such reinvestment or purchase being made or completed, in which case, any such amounts not so used to reinvest or purchase shall be paid to Administrative Agent and applied in accordance with Section 2.11(a).

(iii) Nothing contained in this Section 2.10(a) shall permit Borrower or any of its Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 6.9.

(b) Insurance/Condemnation Proceeds. No later than the fifth Business Day following the date of receipt by any Loan Party, or Administrative Agent as loss payee, of any Net Proceeds from insurance or any condemnation, taking or other casualty in excess of \$5,000,000 in the aggregate in any Fiscal Year, Company shall prepay the Term Loan in an aggregate amount equal to such Net Proceeds in excess of \$5,000,000 in the aggregate in any Fiscal Year; provided, (i) so long as no Default or Event of Default shall have occurred and be continuing, (ii) Company has delivered Administrative Agent prior written notice of Company's intention to apply the Reinvestment Amounts to reinvest in or the costs of purchase of other assets used or useful in the business of the Loan Parties (including capital expenditures), (iii) the monies are held in a Deposit Account subject to a Control Agreement, and (iv) the Loan Parties complete such reinvestment or purchase within 365 days after the initial receipt of such monies, the Loan Parties shall have the option to apply such monies to the reinvestment in or costs of purchase of other assets used or useful in the business of the Loan Parties (including capital expenditures) unless and to the extent that such applicable period shall have expired without such reinvestment or purchase being made or completed, in which case, any such amounts not so used to reinvest or purchase shall be paid to Administrative Agent and applied in accordance with Section 2.11(a).

(c) Issuance of Debt. On the date of receipt by Borrower or any of its Subsidiaries of any Cash proceeds from the incurrence of any Indebtedness of Borrower or any of its Subsidiaries (in each case, other than with respect to any Indebtedness permitted to be incurred pursuant to Section 6.1), Company shall prepay the Term Loans as set forth in Section 2.11(a) in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, in each case, paid to non-Affiliates, including reasonable legal fees and expenses.

(d) Extraordinary Receipts. On the date of receipt by Borrower or any of its Subsidiaries of any Extraordinary Receipts in excess of \$5,000,000 in the aggregate in any Fiscal Year, Company shall prepay the Term Loan as set forth in Section 2.11(a) in the amount of such Extraordinary Receipts in excess of \$5,000,000.

(e) Prepayment Certificate. Concurrently with any prepayment of the Term Loan pursuant to Section 2.10(a) through Section 2.10(d), Company shall deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds and compensation owing to Lenders pursuant to the Fee Letter, if any, as the case may be. In the event that Company shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Company shall promptly make an additional prepayment of the Loans, and Company shall concurrently therewith deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

Section 2.11 Application of Prepayments.

(a) Application of Prepayments of Term Loans. Except in connection with any Waivable Mandatory Prepayment provided for in Section 2.11(b), so long as no Application Event has occurred and is continuing, any mandatory prepayment of any Loan pursuant to Section 2.10, in each case, shall be applied as follows:

first, to prepay accrued and unpaid interest on the Term Loan;

second, to pay any Prepayment Premium payable thereon; and

third, to prepay (A) first, the principal of the Initial Term Loan to the installments thereof on a pro rata basis until paid in full, (B) second, the principal of the Delayed Draw A-1 Term Loan to the installments thereof on a pro rata basis until paid in full and (C) third, the principal of the Delayed Draw A-2 Term Loan to the installments thereof on a pro rata basis until paid in full.

(b) Waivable Mandatory Prepayment. Anything contained herein to the contrary notwithstanding, in the event Company is required to make any mandatory prepayment (a "Waivable Mandatory Prepayment") of the Term Loans pursuant to Section 2.8 and Section 2.10, not less than three Business Days prior to the date (the "Required Prepayment Date") on which Company is required to make such Waivable Mandatory Prepayment, Company shall notify Administrative Agent of the amount of such prepayment, and Administrative Agent will promptly thereafter notify each Lender holding an outstanding Term Loan of the amount of such Lender's Pro Rata Share of such Waivable Mandatory Prepayment and such Lender's option to refuse such amount. Each such Lender may exercise such option by giving written notice to Company and Administrative Agent of its election to do so on or before the first Business Day prior to the Required Prepayment Date (it being understood that any Lender which does not notify Company and Administrative Agent of its election to exercise such option on or before the first Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, Company shall pay to Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount shall be applied (i) in an amount equal to that pro rata portion of the Waivable Mandatory Prepayment payable to those Lenders that have elected not to exercise such option, to prepay the Term Loans of such Lenders (which prepayment shall be applied in accordance with Section 2.11(a)), and (ii) to the extent of any excess, to Company for working capital and general corporate purposes.

(c) At any time an Application Event has occurred and is continuing, all payments shall be applied pursuant to Section 2.12(f). Nothing contained herein shall modify the provisions of Section 2.12(b) regarding the requirement that all prepayments be accompanied by accrued interest on the principal amount being prepaid to the date of such prepayment and any applicable Prepayment Premium, or any requirement otherwise contained herein to pay all other amounts as the same become due and payable in accordance with and subject to the terms and conditions herein.

Section 2.12 General Provisions Regarding Payments.

(a) All payments by Company of principal, interest, fees and other Obligations shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent, for the account of Lenders, not later than 3:00 p.m. to Administrative Agent's Account; funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Company on the next Business Day unless otherwise consented to by Administrative Agent.

(b) All payments in respect of the principal amount of any Term Loan shall be accompanied by payment of accrued and unpaid interest on the principal amount being repaid or prepaid, any applicable Prepayment Premium and all other amounts due and payable hereunder with respect to the principal amount being repaid or prepaid.

(c) Administrative Agent shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due with respect thereto, including, without limitation, all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Subject to the provisos set forth in the definition of "Interest Period", whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the commitment fees hereunder.

(e) Administrative Agent shall deem any payment by or on behalf of Company hereunder that is not made in same day funds prior to 3:00 p.m. to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to Company and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with and subject to the terms and conditions of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the Default Rate determined pursuant to Section 2.6 from the date such amount was due and payable until the date such amount is paid in full.

(f) At any time an Application Event has occurred and is continuing, or the maturity of the Obligations shall have been accelerated pursuant to Section 8.1, all payments or proceeds received by Administrative Agent hereunder or under any Collateral Document in respect of any of the Obligations, including, but not limited to all proceeds received by Administrative Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral, shall be applied in full or in part as follows:

first, ratably to pay the Obligations in respect of any fees (other than any Prepayment Premium), expense reimbursements, indemnities and other amounts then due and payable to the Administrative Agent until paid in full;

second, ratably to pay interest then due and payable in respect of Protective Advances until paid in full;

third, ratably to pay principal of Protective Advances then due and payable until paid in full;

fourth, ratably to pay the Obligations in respect of any fees (other than any Prepayment Premium) and indemnities then due and payable to the Lenders with a Term Loan Commitment until paid in full;

fifth, ratably to pay interest then due and payable in respect of the Term Loan until paid in full;

sixth, ratably to pay (A) first, the principal of the Initial Term Loan until paid in full, (B) second, the principal of the Delayed Draw A-1 Term Loan until paid in full and (C) third, the principal of the Delayed Draw A-2 Term Loan until paid in full;

seventh, ratably to pay the Obligations in respect of any Prepayment Premium then due and payable to the Lenders with a Term Loan Commitment until paid in full;

eighth, to the ratable payment of all other Obligations then due and payable until paid in full; and

ninth, to Company or as otherwise directed by applicable law.

(g) For purposes of Section 2.12(f) (other than clause eighth, of Section 2.12(f)), "paid in full" means payment in cash of all amounts due and payable under the Loan Documents in accordance with and subject to the terms and conditions thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(h) In the event of a direct conflict between the priority provisions of Section 2.12(f) and other provisions contained in any other Loan Document, it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of Section 2.12(f) shall control and govern.

(i) Borrower hereby authorizes Administrative Agent to charge Company's accounts with Administrative Agent or any of its Affiliates in order to cause timely payment to be made to Administrative Agent of all principal, interest, fees and expenses due hereunder (subject to sufficient funds being available in its accounts for that purpose). The Lenders and Company also hereby authorize Administrative Agent to, and Administrative Agent may, from time to time upon prior notice to Company, charge the Loan Account with any amount due and payable by Company under any Loan Document. Each of the Lenders and Company agrees that Administrative Agent shall have the right to make such charges whether or not any Default or Event of Default shall have occurred and be continuing or whether any of the conditions precedent in Section 3.2 have been satisfied. Any amount charged to the Loan Account shall be deemed a Loan hereunder made by the Lenders to Company, funded by Administrative Agent on behalf of the Lenders and subject to Section 2.2. The Lenders and Company confirm that any charges which Administrative Agent may so make to the Loan Account as herein provided will be made as an accommodation to Company and solely at Administrative Agent's discretion, provided that Administrative Agent shall from time to time upon the request of Collateral Agent, charge the Loan Account of Company with any amount due and payable under any Loan Document.

(j) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any LIBOR Rate Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

Section 2.13 Ratable Sharing. Lenders hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Term Loans made and applied in accordance with the terms hereof), through the exercise of any right of set off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Loan Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Lender hereunder or under the other Loan Documents (collectively, the "Aggregate Amounts Due" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender having Term Loans, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders having Term Loans in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Company expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set off or counterclaim with respect to any and all monies owing by Company to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

Section 2.14 Increased Costs; Capital Adequacy.

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.15 (which shall be controlling with respect to the matters covered thereby), in the event that any Lender shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order) by any Governmental Authority having appropriate jurisdiction, or any determination of a court or Governmental Authority having appropriate jurisdiction, in each case that becomes effective after the date hereof, or compliance by such Lender with any guideline, request or directive issued or made after the date hereof by any central bank or other governmental or quasi-Governmental Authority (whether or not having the force of law): (i) subjects such Recipient (or its applicable lending office) to any additional Tax (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii)-(iv) of the definition of Excluded Taxes and (C) Connection Income Taxes) with respect to this Agreement or any of the other Loan Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to LIBOR Rate Loans that are reflected in the definition of Adjusted LIBOR Rate); or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or its obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender or such other Recipient of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender or such other Recipient (or its applicable lending office) with respect thereto; then, in any such case, Company shall promptly pay to such Lender or such other Recipient, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender or such other Recipient for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender or such other Recipient shall deliver to Company (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender or such other Recipient under this Section 2.14(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy Adjustment. In the event that any Lender shall have determined that the adoption, effectiveness, phase in or applicability after the Closing Date of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, in each case, having appropriate jurisdiction or compliance by any Lender (or its applicable lending office) with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of, or with reference to, such Lender's Term Loans or other obligations hereunder with respect to the Term Loan to a level below that which such Lender or such controlling corporation could have achieved but for such adoption, effectiveness, phase in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling corporation with regard to capital adequacy), then from time to time, within five Business Days after receipt by Company from such Lender of the statement referred to in the next sentence, Company shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling corporation on an after Tax basis for such reduction. Such Lender shall deliver to Company (with a copy to Administrative Agent) in accordance with Section 10.1 a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.14(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

Section 2.15 Taxes; Withholding, etc.

(a) For purpose of this Section, the term "applicable law" includes FATCA.

(b) Withholding of Taxes. All sums payable by or on account of any Obligation of any Loan Party hereunder and under the other Loan Documents shall (except to the extent required by applicable law) be paid free and clear of, and without any deduction or withholding on account of, any Tax, other than, to the extent required by applicable law, any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (i) Taxes imposed on or measured by the Recipient's net income (however denominated), franchise Taxes, and branch profits Taxes, imposed on the Recipient, in each case, (A) by the jurisdiction (or any political subdivision thereof) under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (B) as the result of any other present or former connection between such Recipient and the jurisdiction imposing such Tax, other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document ("Other Connection Taxes"), (ii) in the case of a Lender, United States federal income withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which such Lender becomes a party hereto (other than pursuant to an assignment request by the Company under Section 2.18) or such Lender changes its lending office, except that this clause (ii) shall not apply to the extent that, pursuant to this Section 2.15 amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to such recipient Lender's failure to comply with Section 2.15(e) and (iv) withholding Taxes imposed under FATCA (all such Taxes described in clauses (i)-(iv) above, collectively or individually, "Excluded Taxes"). If any Loan Party or any other Person is required by law to make any deduction or withholding on account of any Indemnified Tax from any sum paid or payable by or on account of any obligation of any Loan Party to Administrative Agent or any Lender under any of the Loan Documents: (1) Company shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Company becomes aware of it; (2) Company shall pay any such Tax in accordance with applicable law, such payment to be made (if the liability to pay is imposed on any Loan Party) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender; (3) the sum payable by such Loan Party shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (including such deductions or withholdings applicable to additional sums payable under this Section), Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (4) within thirty days after paying any sum from which it is required by law to make any deduction or withholding, Company shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.

(c) Other Taxes. The Loan Parties shall pay to the relevant Governmental Authorities any present or future stamp, court, intangible, recording, filing or similar Taxes or documentary Taxes or any other excise or property Taxes that arise from any payment made hereunder or from the execution, delivery or registration, performance or enforcement of, or from the receipt or perfection of a security interest under or otherwise with respect to, this Agreement or any other Loan Document ("Other Taxes"), provided that the definition of "Other Taxes" shall exclude Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.18). Within thirty days after paying any such Other Taxes, each Loan Party shall deliver to Administrative Agent and any Lender evidence satisfactory to Administrative Agent and Lenders that such Other Taxes have been paid to the relevant Governmental Authority.

(d) Tax Indemnification. The Loan Parties hereby jointly and severally indemnify and agree to hold Administrative Agent and Lender harmless from and against all Indemnified Taxes (including, without limitation, Indemnified Taxes imposed or asserted on or attributable to any amounts payable under this Section 2.15) paid by Administrative Agent or Lender or required to be withheld or deducted from a payment to Administrative Agent or such Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally asserted. Such indemnification shall be paid within ten days from the date on which Administrative Agent or Lender makes written demand therefor specifying in reasonable detail the nature and amount of such Indemnified Taxes and such written demand shall be conclusive absent manifest error.

(e) Evidence of Exemption From or Reduction of U.S. Withholding Tax.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments under any Loan Document shall deliver to Company and Administrative Agent, at the time or times reasonably requested by Company or Administrative Agent, properly completed and executed documentation reasonably requested by Company or Administrative Agent as will permit such payments to be made without, or at a reduced rate, of withholding. In addition, any Lender, if reasonably requested by Company or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Company or Administrative Agent to enable them to determine whether such Lender is subject to backup withholding or information reporting requirements.

(ii) Each Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document that is not a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for United States federal income tax purposes (a “Non-US Lender”) shall deliver to Administrative Agent and Company, on or about the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or about the date such Person becomes a Lender hereunder, and at such other times as may be necessary in the determination of Administrative Agent or Company (in its reasonable exercise of its discretion), (i) two original copies of Internal Revenue Service Form W-8IMY (with appropriate attachments), W-8BEN, W-8BEN-E or W-8ECI (or any successor forms), as applicable, properly completed and duly executed by such Lender to establish that such Lender is not subject to, or eligible for a reduction of, deduction or withholding of United States federal income Tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Loan Documents, and (ii) if such Lender is claiming exemption from United States federal income Tax under Section 871(h) or 881(c) of the Internal Revenue Code, a Certificate Regarding Non-Bank Status (to the effect that such Non-US Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Internal Revenue Code), properly completed and duly executed by such Lender. Each Lender required to deliver any forms or certificates with respect to United States federal income Tax withholding matters pursuant to this Section 2.15(e) hereby agrees, from time to time after the initial delivery by such Lender of such forms or certificates, whenever a lapse in time or change in circumstances renders such forms or certificates obsolete or inaccurate in any material respect, that such Lender shall deliver to Administrative Agent and Company, two new original copies of Internal Revenue Service Form W-8IMY (with appropriate attachments thereto), W-8BEN, W-8BEN-E or W-8ECI, as applicable, and, if applicable, a Certificate Regarding Non-Bank Status (or any successor forms), and other supplementary documentation reasonably requested by Borrower or Administrative Agent, as the case may be, properly completed and duly executed by such Lender, or notify Administrative Agent and Company of its legal inability to deliver any such forms or certificates. Notwithstanding the above, a Non-US Lender shall not be required to deliver any form pursuant to Section 2.15(e)(ii) that such Non-US Lender is not legally able to deliver.

(iii) If a payment made to a Lender under any Loan Document would be subject to United States 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 Internal Revenue Code, as applicable), such Lender shall deliver to Company and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Company or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by Company or Administrative Agent as may be necessary for Company and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 2.15(e)(iii), FATCA shall include any amendments made to FATCA after the date of this Agreement. Notwithstanding the above, a Lender shall not be required to deliver any form or other form of documentation pursuant to this Section 2.15(e)(iii) that such Non-US Lender is not legally able to deliver.

(iv) Each Lender that is a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for United States federal income Tax purposes shall deliver to Administrative Agent and Company, on or about the Closing Date (in the case of each such Lender listed on the signature pages hereof on the Closing Date) or on or about the date such Person becomes a Lender hereunder, and at such other times as may be necessary in the determination of Administrative Agent or Company (in its reasonable exercise of its discretion), two original copies of Internal Revenue Service Form W-9 (or any successor forms) properly completed and duly executed by such Lender to establish that such Lender is not subject to United States backup withholding Taxes with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Loan Documents.

(f) Treatment of Certain Refunds. If a recipient determines in its discretion exercised in good faith that it has received a refund of any Taxes (including any Tax credit in lieu of a refund) that were indemnified by any Loan Party or with respect to which a Loan Party paid additional amounts pursuant to this Section, it shall pay the amount equal to such refund to the applicable Loan Party (but only to the extent of indemnity payments or additional amounts actually paid by such Loan Party with respect to the Taxes giving rise to the refund), net of all out-of-pocket expenses (including Taxes) incurred by such recipient and without interest (other than interest paid by the relevant Governmental Authority with respect to such refund). Loan Parties shall, upon request by the recipient, repay to the recipient such amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) if the recipient is required to repay such refund to the Governmental Authority. Notwithstanding anything herein to the contrary, no recipient shall be required to pay any amount to a Loan Party if such payment would place it in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. In no event shall Administrative Agent or any Lender be required to make its Tax returns (or any other information relating to its Taxes that it deems confidential) available to any Loan Party.

(g) Survival. Each party's obligations under this Section 2.15 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by or replacement of a Lender, the termination of the Loan or Commitment, and the repayment, satisfaction, discharge or full payment of any obligations under any Loan Document.

Section 2.16 Obligation to Mitigate. Each Lender agrees that after the officer of such Lender responsible for administering its Term Loans becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Section 2.13, 2.14, 2.15 or 2.19, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, and to the extent it would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Section 2.13, 2.14, 2.15 or 2.19 would be materially reduced and if, as determined by such Lender in its sole discretion exercised in good faith, the making, issuing, funding or maintaining of such Term Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Term Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.16 unless Company agrees to pay all reasonable incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Company pursuant to this Section 2.16 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Company (with a copy to Administrative Agent) shall be conclusive absent manifest error.

Section 2.17 Defaulting Lenders. Anything contained herein to the contrary notwithstanding, in the event that any Lender violates any provision of Section 9.5(c), or, other than at the direction or request of any regulatory agency or authority having appropriate jurisdiction, defaults (in each case, a “Defaulting Lender”) in its obligation to fund (a “Funding Default”) a Term Loan (in each case, a “Defaulted Loan”), then (a) during any Default Period with respect to such Defaulting Lender, such Defaulting Lender shall be deemed not to be a “Lender” for purposes of voting on any matters (including the granting of any consents or waivers) with respect to any of the Loan Documents; and (b) to the extent permitted by applicable law, until such time as the Default Excess, if any, with respect to such Defaulting Lender shall have been reduced to zero, (i) any voluntary prepayment of the Term Loans shall, if Administrative Agent so directs at the time of making such voluntary prepayment, be applied to Term Loans of other Lenders as if such Defaulting Lender had no Term Loans outstanding and the outstanding Term Loans of such Defaulting Lender were zero, and (ii) any mandatory prepayment of the Term Loans shall, if Administrative Agent so directs at the time of making such mandatory prepayment, be applied to the Term Loans of other Lenders (but not to the Term Loans of such Defaulting Lender) as if such Defaulting Lender had funded all Defaulted Loans of such Defaulting Lender, it being understood and agreed that Company shall be entitled to retain any portion of any mandatory prepayment of the Term Loans that is not paid to such Defaulting Lender solely as a result of the operation of the provisions of this clause (b). No Term Loan Commitment of any Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in this Section 2.17, performance by Company of its obligations hereunder and the other Loan Documents shall not be excused or otherwise modified as a result of any Funding Default or the operation of this Section 2.17. The rights and remedies against a Defaulting Lender under this Section 2.17 are in addition to other rights and remedies which Company may have against such Defaulting Lender with respect to any Funding Default and which Administrative Agent or any Lender may have against such Defaulting Lender with respect to any Funding Default or violation of Section 9.5(c).

Section 2.18 Removal or Replacement of a Lender. Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an “Increased Cost Lender”) shall give notice to Company that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.14, 2.15 or 2.16, (ii) the circumstances which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments shall remain in effect, and (iii) such Lender shall fail to withdraw such notice within five Business Days after Company's request for such withdrawal; or (b) (i) any Lender shall become a Defaulting Lender, (ii) the Default Period for such Defaulting Lender shall remain in effect, and (iii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five Business Days after Company's request that it cure such default; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.5(b), the consent of Administrative Agent and Required Lenders shall have been obtained but the consent of one or more of such other Lenders (each a “Non-Consenting Lender”) whose consent is required shall not have been obtained; then, with respect to each such Increased Cost Lender, Defaulting Lender or Non-Consenting Lender (the “Terminated Lender”), Administrative Agent may (which, in the case of an Increased-Cost Lender, only after receiving written request from Company to remove such Increased-Cost Lender), by giving written notice to Company and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Term Loans in full to one or more Eligible Assignees (each a “Replacement Lender”) in accordance with the provisions of Section 10.6 and Terminated Lender shall pay any fees payable thereunder in connection with such assignment; provided, (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender and (B) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.7 (except for any Prepayment Premium (as defined in the Fee Letter)); (2) on the date of such assignment, Company shall pay any amounts payable to such Terminated Lender pursuant to Section 2.14 or 2.15 (except for any Prepayment Premium (as defined in the Fee Letter)); and (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender. Upon the prepayment of all amounts owing to any Terminated Lender, such Terminated Lender shall no longer constitute a “Lender” for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender.

(a) Inability to Determine Applicable Interest Rate. In the event that Administrative Agent shall have made good faith efforts to implement an Alternate Benchmark Rate and Administrative Agent shall have reasonably determined (which determination shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any LIBOR Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such LIBOR Rate Loans on the basis provided for in the definition of Adjusted LIBOR Rate, Administrative Agent shall on such date give notice (by facsimile or by telephone confirmed in writing) in accordance with Section 10.1 of this Agreement to Company and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, LIBOR Rate Loans until such time as Administrative Agent notifies Company and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Funding Notice or Conversion/Continuation Notice given by Company with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by Company.

(b) Illegality or Impracticability of LIBOR Rate Loans. In the event that on any date any Lender shall have reasonably determined (which determination shall be final and conclusive and binding upon all parties hereto but shall be made only after consultation with Company and Administrative Agent) that the making, maintaining or continuation of its LIBOR Rate Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "Affected Lender" and it shall on that day give notice (by facsimile or by telephone confirmed in writing) in accordance with Section 10.1 of this Agreement to Company and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). Thereafter (A) the obligation of the Affected Lender to make Loans as, or to convert Loans to, LIBOR Rate Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (B) to the extent such determination by the Affected Lender relates to a LIBOR Rate Loan then being requested by Company pursuant to a Funding Notice or a Conversion/Continuation Notice, the Affected Lender shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (C) the Affected Lender's obligation to maintain its outstanding LIBOR Rate Loans (the "Affected Loans") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (D) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a LIBOR Rate Loan then being requested by Company pursuant to a Funding Notice or a Conversion/Continuation Notice, Company shall have the option, subject to the provisions of Section 2.19(c), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving written notice to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this Section 2.19(b) shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, LIBOR Rate Loans in accordance with the terms hereof.

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Company shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid or calculated to be due and payable by such Lender to lenders of funds borrowed by it to make or carry its LIBOR Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender) a borrowing of any LIBOR Rate Loan does not occur on a date specified therefor in a Funding Notice, or a conversion to or continuation of any LIBOR Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice; (ii) if any prepayment or other principal payment of, or any conversion of, any of its LIBOR Rate Loans occurs on any day other than the last day of an Interest Period applicable to that Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or (iii) if any prepayment of any of its LIBOR Rate Loans is not made on any date specified in a notice of prepayment given by Company.

(d) Booking of LIBOR Rate Loans. Any Lender may make, carry or transfer LIBOR Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of LIBOR Rate Loans. Calculation of all amounts payable to a Lender under this Section 2.19 and under Section 2.14 shall be made as though such Lender had actually funded each of its relevant LIBOR Rate Loans through the purchase of a LIBOR deposit bearing interest at the rate obtained pursuant to clause (a)(i) of the definition of Adjusted LIBOR Rate in an amount equal to the amount of such LIBOR Rate Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such LIBOR deposit from an offshore office of such Lender to a domestic office of such Lender in the United States of America; provided, however, each Lender may fund each of its LIBOR Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.19 and under Section 2.14.

(f) Provisions with Respect to LIBOR. If prior to the commencement of any Interest Period for any LIBOR Rate Loan,

(i) the Administrative Agent shall have reasonably determined that adequate and reasonable means do not exist for ascertaining LIBOR for such Interest Period, including, without limitation, because the Administrative Agent reasonably determines that either inadequate or insufficient quotations of the London interbank offered rate exist or the use of "LIBOR" has been discontinued (any determination of Administrative Agent to be conclusive and binding absent manifest error), or

(ii) the Administrative Agent shall have received notice from the Required Lenders that LIBOR does not adequately and fairly reflect the cost to such Lenders of making, funding or maintaining their LIBOR Rate Loans for such Interest Period,

then the Administrative Agent shall give written notice to Borrower and to the Lenders as soon as practicable thereafter. Until the Administrative Agent shall notify Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (A) the obligations of the Lenders to make LIBOR Rate Loans, or to continue or convert outstanding Loans as or into LIBOR Rate Loans, shall be suspended and (B) all such affected Loans shall be converted into Base Rate Loans on the last day of the then current Interest Period applicable thereto.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.1 Closing Date. The obligation of each Lender to make a Credit Extension on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date:

(a) Loan Documents. Administrative Agent shall have received copies of each Loan Document originally executed and delivered by each applicable Loan Party for each Lender party to this Agreement on the Closing Date.

(b) Organizational Documents; Incumbency. Administrative Agent shall have received a Secretary's Certificate for each Loan Party attaching (i) copies of each Organizational Document of such Loan Party and, to the extent applicable, certified as of a recent date by the appropriate governmental official, each dated the Closing Date or a recent date prior thereto; (ii) signature and incumbency certificates of the officers of such Person executing the Loan Documents to which it is a party; (iii) resolutions of the Board of Directors or similar governing body of such Loan Party approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary (or other duly authorized officer) as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority (A) of such Loan Party's jurisdiction of incorporation, organization or formation and (B) in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business (solely in the case of this subclause (B), except in jurisdictions where the failure to be so qualified or in good standing has not had, and would not be reasonably expected to have, a Material Adverse Effect), each dated a recent date prior to the Closing Date; and (v) such other documents as Administrative Agent may reasonably request.

(c) Organizational and Capital Structure. The organizational structure and capital structure of Borrower and its Subsidiaries shall be as set forth on Schedule 4.2.

(d) Sources and Uses. On or prior to the Closing Date, Company shall have delivered to Administrative Agent Company's reasonable best estimate of all sources and uses of Cash and other proceeds of Term Loans on the Closing Date.

(e) Governmental Authorizations and Consents. Each Loan Party shall have obtained all Governmental Authorizations and all consents of other Persons, 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 Administrative Agent.

(f) Personal Property Collateral. In order to create in favor of Administrative Agent, for the benefit of Secured Parties, a valid, perfected first priority security interest (subject to any exceptions permitted in the Collateral Documents) in the personal property Collateral, Administrative Agent shall have received:

(i) evidence reasonably satisfactory to Administrative Agent of the compliance by each Loan Party of their obligations under the Pledge and Security Agreement and the other Collateral Documents (including, without limitation, their obligations to authorize or execute, as the case may be as required under the applicable Collateral Documents, and deliver UCC financing statements, originals of securities (including stock certificates, if any, representing pledged Capital Stock along with appropriate endorsements), instruments and chattel paper, and any agreements governing deposit and/or securities accounts as provided therein and a duly executed authorization to pre-file UCC-1 financing statements which is effective as of the Closing Date), together with appropriate financing statements on Form UCC-1 in form for filing in such office or offices as may be necessary or, in the reasonable discretion of Administrative Agent, desirable to perfect the security interests purported to be created by each Pledge and Security Agreement and (B) evidence reasonably satisfactory to Administrative Agent of filing of such UCC-1 financing statements; provided, that such evidence of filing will not require the receipt on the Closing Date of certified copies of the filed UCC-1 financing statements;

(ii) a completed Perfection Certificate dated the Closing Date and executed by an Authorized Officer of each Loan Party, together with all attachments contemplated thereby, including the results of a recent search, by a Person satisfactory to Administrative Agent, of all effective UCC financing statements (or equivalent filings) made with respect to any assets or property of any Loan Party in the jurisdictions specified in the Perfection Certificate, together with copies of all such filings disclosed by such search; and

(iii) evidence that each Loan Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including, without limitation, evidence that Bank of America, N.A. has agreed to the forms of, and is prepared to sign on or promptly after the Closing Date, one or more Control Agreements in respect of the Specified Deposit Accounts) and made or caused to be made any other filing and recording reasonably required by Administrative Agent, in each case, to the extent required by, and subject to the terms and conditions of, the Pledge and Security Agreement or any other Collateral Document in effect on the Closing Date.

(g) Financial Statements. Lenders shall have received from Borrower (i) the Historical Financial Statements (it being agreed that the financial statement for the month ended March 31, 2019 shall, if not available prior to the Closing Date, be delivered to Administrative Agent promptly upon it becoming available after the Closing Date) and (ii) pro forma consolidated balance sheets of Borrower and its Subsidiaries as at the Closing Date, and reflecting the transactions contemplated by the Loan Documents to occur on or prior to the Closing Date, which pro forma financial statements shall be in form and substance reasonably satisfactory to Administrative Agent.

(h) Evidence of Insurance. Administrative Agent shall have received a certificate from Company's insurance broker or other evidence reasonably satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect.

(i) Opinions of Counsel to Loan Parties. The Administrative Agent and its counsel shall have received copies of originally executed written opinions of DLA Piper LLP (US), counsel for Loan Parties, and such other applicable counsel for Loan Parties, dated as of the Closing Date and otherwise in form and substance reasonably satisfactory to Administrative Agent (and each Loan Party hereby instructs each such counsel to deliver such opinions to Administrative Agent and Lenders).

(j) Fees. Substantially contemporaneously with the initial funding of the Term Loan on the Closing Date, Company shall have paid to Administrative Agent, the fees and expenses then due and payable pursuant to Section 2.7 and Section 10.2.

(k) Solvency Certificate. On the Closing Date, Administrative Agent shall have received a Solvency Certificate of the chief financial officer (or other substantially similar title) of Borrower substantially in the form of Exhibit F, dated as of the Closing Date and addressed to Administrative Agent and Lenders.

(l) Closing Date Certificate. Company shall have delivered to Administrative Agent an originally executed copy of the Closing Date Certificate, together with copies of all attachments thereto.

(m) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments (including any Regulatory Action), pending or threatened in any court or before any arbitrator or Governmental Authority that singly or in the aggregate, would have a Material Adverse Effect or would result in any Material Regulatory Liability.

(n) Minimum Qualified Cash. Administrative Agent shall have received evidence reasonably satisfactory to it that the Company shall have unrestricted Cash and Cash Equivalents (other than restrictions created by the Collateral Documents) of at least \$50,000,000 immediately after giving effect to any Credit Extensions to be made on the Closing Date, including the payment of all Transaction Costs required to be paid in Cash on the Closing Date.

(o) No Material Adverse Effect. Since December 31, 2018, no event, circumstance or change shall have occurred that has caused or has resulted in, either in any case or in the aggregate, a Material Adverse Effect.

(p) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found reasonably acceptable by Administrative Agent and its counsel and communicated in writing to the Loan Parties and their counsel as such shall be reasonably satisfactory in form and substance to Administrative Agent and such counsel.

(q) Bank Regulations. Administrative Agent shall have received all documentation and other information reasonably requested that is required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the Patriot Act, and all such documentation and other information shall be in form and substance reasonably satisfactory to the Administrative Agent.

(r) Funding Notice. Administrative Agent shall have received a fully executed and delivered Funding Notice.

(s) Representations and Warranties. The representations and warranties contained herein and in each other Loan Document or certificate delivered to Administrative Agent or any Lender pursuant hereto or thereto on or prior to the date hereof shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as the date hereof to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date.

(t) No Default or Event of Default. No event shall have occurred and be continuing or would result from the consummation of the transactions contemplated herein that would constitute an Event of Default or a Default.

(u) No Contravention. The making of the Term Loan shall not contravene any law, rule or regulation of any Governmental Authority having appropriate jurisdiction over the Administrative Agent or any Lender that is applicable to Administrative Agent or any Lender.

(v) Existing Indebtedness. Substantially contemporaneously with the initial funding of the Term Loan on the Closing Date, Borrower and its Subsidiaries shall have (i) repaid in full all Existing Indebtedness, (ii) terminated any commitments to lend or make other extensions of credit thereunder, and (iii) delivered to Administrative Agent all documents or instruments necessary to release all Liens securing Existing Indebtedness or other obligations of Borrower and its Subsidiaries thereunder being repaid on the Closing Date.

(w) Registrations. All Registrations from the FDA in respect of the Products shall be valid and subsisting and in full force and effect.

Each Lender, by delivering its signature page to this Agreement and funding the Term Loan on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document, instrument or agreement required to be approved by Administrative Agent, Required Lenders and/or Lenders, as applicable, on the Closing Date.

Section 3.2 Conditions to Each Credit Extension.

(a) Conditions Precedent. The obligation of each Lender to make any Loan on any date following the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions precedent:

(i) Administrative Agent shall have received a fully executed and delivered Funding Notice;

(ii) as of such Credit Date, the representations and warranties contained herein and in each other Loan Document or certificate delivered to any Agent or any Lender pursuant hereto or thereto on or prior to the Credit Date shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to “materiality” or “Material Adverse Effect” in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) on and as of such earlier date;

(iii) as of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default;

(iv) Administrative Agent shall have received evidence reasonably satisfactory to it that the Company shall have unrestricted Cash and Cash Equivalents (other than restrictions created by the Collateral Documents) of at least \$60,000,000 immediately after giving effect to any Credit Extensions to be made on such Credit Date;

(v) solely in respect of any Delayed Draw A-1 Term Loan, Company shall have delivered, on or prior to December 31, 2019, evidence demonstrating [***]; and

(vi) solely in respect of any Delayed Draw A-2 Term Loan, the Chief Financial Officer of Company shall have delivered a certificate (together with such other evidence as is reasonably requested by Administrative Agent) representing and warranting, and otherwise demonstrating to the reasonable satisfaction of Administrative Agent, that the Product Revenue for the Fiscal Quarter ending December 31, 2019 is greater than \$11,000,000.

(b) Notices. Any Notice shall be executed by an Authorized Officer of Company in a writing delivered to Administrative Agent.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

In order to induce Agents and Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, each Loan Party represents and warrants to each Agent and Lender, on the Closing Date and on each Credit Date, that the following statements are true and correct:

Section 4.1 Organization; Requisite Power and Authority; Qualification. Each of Borrower and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 4.1, (b) has all requisite corporate power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby and, in the case of Company, to make the borrowings hereunder, and (c) is qualified to do business and in good standing in every jurisdiction wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and would not be reasonably expected to have, a Material Adverse Effect.

Section 4.2 Capital Stock and Ownership. The Capital Stock of each of Borrower and its Subsidiaries has been duly authorized and validly issued and, if applicable, is fully paid and non-assessable. Except as set forth on Schedule 4.2, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which Borrower or any of its Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of Borrower or any of its Subsidiaries outstanding which upon conversion or exchange would require, the issuance by Borrower or any of its Subsidiaries of any additional membership interests or other Capital Stock of Borrower or any of its Subsidiaries or other securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of Borrower or any of its Subsidiaries. Schedule 4.2 correctly sets forth the ownership interest of Borrower and each of its Subsidiaries in their respective Subsidiaries.

Section 4.3 Due Authorization. The execution, delivery and performance of the Loan Documents have been duly authorized by all necessary corporate or limited liability, as applicable, action on the part of each Loan Party that is a party thereto.

Section 4.4 No Conflict. The execution, delivery and performance by Loan Parties of the Loan Documents to which they are parties and the consummation of the transactions contemplated by the Loan Documents do not and will not (a) violate any provision of any law or any governmental rule or regulation of any Governmental Authority that is applicable to Borrower or any of its Subsidiaries, any of the Organizational Documents of Borrower or any of its Subsidiaries, or any order, judgment or decree of any court or other agency of government of any Governmental Authority that is binding on Borrower or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material Contractual Obligation of Borrower or any of its Subsidiaries; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of Borrower or any of its Subsidiaries (other than any Liens created under any of the Loan Documents in favor of Administrative Agent, on behalf of Secured Parties); (d) result in any default, non-compliance, suspension revocation, impairment, forfeiture or non-renewal of any material permit, license, authorization or approval of any Governmental Authority having appropriate jurisdiction that is applicable to its operations or any of its properties; or (e) require any approval or consents of stockholders, members or partners of Borrower or any of its Subsidiaries, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders.

Section 4.5 Governmental Consents. The execution, delivery and performance by Loan Parties of the Loan Documents to which they are parties and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Administrative Agent for filing and/or recordation, as of the Closing Date.

Section 4.6 Binding Obligation. Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party 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.

Section 4.7 Historical Financial Statements. The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year end adjustments. As of the Closing Date, neither Borrower nor any of its Subsidiaries has any contingent liability or liability for taxes, long term lease or unusual forward or long term commitment that is not reflected in the Historical Financial Statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Borrower and any of its Subsidiaries taken as a whole.

Section 4.8 [Reserved].

Section 4.9 No Material Adverse Effect. Since December 31, 2018, no event, circumstance or change has occurred or has resulted in, either in any case or in the aggregate, a Material Adverse Effect.

Section 4.10 Adverse Proceedings, etc. As of the Closing Date, there are no Adverse Proceedings that (a) relate to any Loan Document or the transactions contemplated hereby or thereby or (b) individually or in the aggregate, could materially impair the Administrative Agent's security interest in the Collateral, the Borrower's and its Subsidiaries' respective rights, powers or remedies with respect to applicable Products or would otherwise reasonably be expected to have a Material Adverse Effect. Neither Borrower nor any of its Subsidiaries is in violation of or in default with respect to any final judgments, writs, injunctions, decrees, rules, laws or regulations of any Governmental Authority having appropriate jurisdiction except to the extent such violation or default could not reasonably be expected to result in a Material Adverse Effect.

Section 4.11 Payment of Taxes. Except as otherwise permitted under Section 5.3, all U.S. federal and material state and local income tax returns and other material reports of Borrower and its Subsidiaries required to be filed by any of them have been timely filed, all such tax returns are true, complete and correct in all material respects, and all U.S. federal and material state and local Taxes shown as due and payable on such tax returns and all assessments, fees and other governmental charges upon Borrower and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable. Borrower knows of no proposed Tax assessment against Borrower or any of its Subsidiaries which is not being actively contested by Borrower or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

Section 4.12 Properties, Title. Each of Borrower and its Subsidiaries has (a) good, sufficient, marketable and legal title to (in the case of fee interests in real property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and valid title to (in the case of all other personal property), all of their respective properties and assets reflected in their respective Historical Financial Statements referred to in Section 4.7 and in the most recent financial statements delivered pursuant to Section 5.1, in each case except for (i) assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.9 or (ii) defects in title or interests which would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All such properties and assets are in working order and condition, ordinary wear and tear excepted, and except as permitted by this Agreement or any of the Collateral Documents, all such non-leasehold properties and assets are free and clear of Liens. As of the Closing Date, Schedule 4.12 contains a true, accurate and complete list of all real property owned or leased by Borrower and its Subsidiaries or where Collateral or books and records are located.

Section 4.13 Environmental Matters. In each case of the following sub-clauses (a)-(d), except as any such failure or exception to the applicable representation and warranty would not reasonably be expected to result in a Material Adverse Effect:

(a) No Environmental Claim has been asserted against any Loan Party or any predecessor in interest nor has any Loan Party received notice of any threatened or pending Environmental Claim against Loan Party or any predecessor in interest.

(b) There has been no Release of Hazardous Materials and there are no Hazardous Materials present in violation of Environmental Law at any of the properties currently owned or operated by any Loan Party.

(c) The operation of the business of, and each of the properties owned or operated by, each Loan Party are in compliance with all Environmental Laws.

(d) Each Loan Party holds and is in compliance Governmental Authorizations required under any Environmental Laws in connection with the operations carried on by it and the properties owned or operated by it.

Section 4.14 No Defaults. Neither Borrower nor any of its Subsidiaries (a) is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and (b) no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except , in each case of the foregoing subclauses (a)-(b), where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

Section 4.15 Material Contracts.

(a) Schedule 4.15 contains a true, correct and complete list of all the Material Contracts in effect on the Closing Date, which Material Contracts, together with any updates provided pursuant to Section 5.1(l), are in full force and effect and no defaults giving any party thereto the right to terminate such Material Contract currently exist thereunder (other than as described in Schedule 4.15 or in such updates).

(b) Except as described in Schedule 4.15, each Material Contract is a legal, valid and binding obligation of Borrower, its Subsidiaries and, to the knowledge of Borrower, each other party thereto, is enforceable in accordance with its terms and is in full force and effect, subject bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles. Neither the Borrower nor its Subsidiaries, nor to the knowledge of the Authorized Officers of Borrower or its Subsidiaries, any other party to any Material Contract, is or was in material breach or default, under the terms of any Material Contract, and no condition existed or exists which, with the giving of notice or the lapse of time or both, could constitute a material breach or default by Borrower or any of its Subsidiaries thereunder.

Section 4.16 Governmental Regulation. Neither Borrower nor any of its Subsidiaries is subject to regulation under the Public Utility Holding Company Act of 2005, the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Neither Borrower nor any of its Subsidiaries is required to register as a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

Section 4.17 Margin Stock. Neither Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Term Loans made to such Loan Party will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

Section 4.18 Employee Benefit Plans. No ERISA Event has occurred or is reasonably expected to occur that would reasonably be expected to result in a Material Adverse Effect.

Section 4.19 Certain Fees. No broker's or finder's fee or commission will be payable with respect hereto or any of the transactions contemplated hereby.

Section 4.20 Solvency. The Loan Parties, on a consolidated basis, are and, upon the incurrence of the Credit Extension by the applicable Loan Party on the Closing Date and on each date on which this representation and warranty is made, will be, Solvent.

Section 4.21 [Reserved].

Section 4.22 Compliance with Statutes, etc. Each of Borrower and its Subsidiaries is in compliance with (i) its Organizational Documents and (ii) all applicable laws, statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities having appropriate jurisdiction, in respect of the conduct of its business and the ownership of its property, except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 4.23 Intellectual Property.

(a) Each of Borrower and its Subsidiaries own, or hold licenses in, all trademarks, trade secrets, trade names, copyrights, patents, and licenses that are necessary to the conduct of its business as currently conducted.

(b) Schedule 4.23(b) sets forth a true, correct and complete listing in all material respects of all U.S. and foreign Product Patents as of the Closing Date, and identifies the owner of each such Product Patent and the Product to which such Product Patent relates. As of the Closing Date and except as identified in Schedule 4.23(b), (i) the owner listed on Schedule 4.23(b) for each Product Patent is the exclusive owner of such patent/application and no Third Party has any right, title, interest or ownership claim in such Product Patent, (ii) to the best of Borrower's and its Subsidiaries' knowledge, the Product Patents are valid, subsisting, and enforceable; (iii) except for those patent applications that that are abandoned or lapse, in the case of provisional patent applications, in the due course of patent prosecution and in accordance with the reasonable business judgment of the Company and its subsidiaries in executing a comprehensive patent strategy designed to maximize and maintain exclusivity of the Products, none of the Product Patents have lapsed or been abandoned, cancelled or expired; (iv) Company has taken commercially reasonable steps to maintain such Product Patents, including by timely filing fees and responses; (v) each individual associated with the filing and prosecution of the Product Patents, including the named inventors, has complied in all material respects with all applicable duties of candor and good faith in dealing with any patent office, including the USPTO, in those jurisdictions where such duties exist.

(c) As of the Closing Date, Schedule 4.23(c) sets forth a true, correct and complete listing, under separate headings, of all material written Contractual Obligations (i) under which Company or its Subsidiaries uses or licenses any Product Patents that any other Person owns, or owes any royalties or other payments to any Person for the use of any Product Patents, (ii) under which Company or its Subsidiaries have granted any Person any right or interest in any Product Patents, and (iii) that otherwise limit the Company or its Subsidiaries' use of or rights in the Product Patents (including co-existence agreements and covenants not to sue). Company may update this list to add additional licenses, so long as such amendment occurs by written notice to Administrative Agent, and subject to Company's obligations and restrictions under this Agreement.

(d) There is no opposition, interference, reexamination, derivation or other post-grant proceeding, injunction, claim, suit, action, subpoena, hearing, inquiry, investigation (by the International Trade Commission or otherwise), complaint, arbitration, mediation, demand, decree or other dispute, disagreement, proceeding or claim (collectively, "Disputes") that is pending or currently threatened in writing, that challenges the scope, validity, enforceability, ownership, or inventorship of the Product Patents. Company and its Subsidiaries have not received any written notice that there is any, and to the knowledge of the Authorized Officers of the Borrower and its Subsidiaries there is no, Person who is or claims to be an inventor under any of the Product Patents who is not a named inventor thereof.

(e) To the best of Borrower's knowledge, there is no past, pending or threatened, and no event has occurred or circumstance exists that (with or without notice or lapse of time, or both) could reasonably be expected to give rise to or serve as a basis for any, action, suit, or proceeding, or any investigation or written claim by any Person that claims or alleges that the manufacture, use, marketing, sale, offer for sale, importation or distribution of any Product, once marketed, does or could infringe on any patent or other intellectual property rights of any other Person or constitute misappropriation of any other Person's trade secrets or other intellectual property rights anywhere in the world.

Section 4.24 Insurance. Each of Borrower and its Subsidiaries (a) maintains insurance to such extent and against such risks, as is customary with companies in the same or similar businesses, (b) is covered by workmen's compensation insurance in the amount required by applicable law, (c) maintains commercial general liability insurance, which shall include product liability insurance, in the amount customary with companies in the same or similar business against claims for personal injury or death on properties owned, occupied or controlled by it, and (d) maintains such other insurance as may be required by any Governmental Authority. Schedule 4.24 sets forth a list of all insurance maintained by each Loan Party on the Closing Date.

Section 4.25 Common Enterprise. Each Loan Party expects to derive benefit (and its Board of Directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from the credit extended by the Lenders to the Borrower hereunder, both in their separate capacities and as members of a group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, will be of direct and indirect benefit to such Loan Party, and is in its best interest.

Section 4.26 Permits, Etc. Each Loan Party has, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations required by any Governmental Authority having appropriate jurisdiction for such Person to own, lease, manage or operate, or to acquire, each business currently owned, leased, managed or operated, or to be acquired, by such Person, except for any such permits, licenses, authorizations, approvals, entitlements and accreditations which, if not obtained, could not reasonably be expected to have a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, and there is no claim that any thereof is not in full force and effect, except, in each case, to the extent any such condition, event or claim could not be reasonably be expected to have a Material Adverse Effect.

Section 4.27 Bank Accounts and Securities Accounts. Schedule 4.27 sets forth a complete and accurate list in all material aspects as of the Closing Date of all deposit, checking and other bank accounts, all securities and other accounts maintained with any broker dealer and all other similar accounts maintained by each Loan Party, together with a description thereof in reasonable detail (i.e., the bank or broker dealer at which such deposit or other account is maintained and the account number and the purpose thereof).

Section 4.28 Security Interests. The Collateral Documents create in favor of Administrative Agent, for the benefit of Secured Parties, a legal, valid and enforceable security interest in the Collateral secured thereby. Upon the filing of the UCC-1 financing statements described in Section 3.1(f), the possession by the Administrative Agent of any certificated Capital Stock or instrument owned by such Loan Party, the recording of the Collateral Assignments for Security referred to in each Pledge and Security Agreement in the United States Patent and Trademark Office and the United States Copyright Office and the taking of all other actions required by the Pledge and Security Agreement, as applicable, such security interests in and Liens on the Collateral granted thereby shall be perfected, first priority (subject to any Permitted Liens) security interests, and no further recordings or filings are or will be required in connection with the creation, perfection or enforcement of such security interests and Liens, other than (a) the filing of continuation statements in accordance with applicable law, (b) the recording of the Collateral Assignments for Security pursuant to each Pledge and Security Agreement in the United States Patent and Trademark Office and the United States Copyright Office, as applicable, with respect to after-acquired U.S. patent and trademark applications and registrations and U.S. copyrights, and (c) the recordation of appropriate evidence of the security interest in the appropriate foreign registry with respect to all foreign intellectual property and all other recordings and filings required in any jurisdiction other than the U.S. in order to create, register or perfect any such security interests, in each case, so long as Administrative Agent has not required any Loan Party to create, register or perfect such security interests in accordance with Section 5.11.

Section 4.29 PATRIOT ACT and FCPA. To the extent applicable, each Loan Party is in compliance with (a) the laws, regulations and Executive Orders administered by OFAC, and (b) the Bank Secrecy Act, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) of 2001 (the "PATRIOT Act"). Neither the Loan Parties nor any of their officers, directors, employees, agents or shareholders acting on the Loan Parties' behalf shall use the proceeds of the Loans to make any payments, directly or indirectly (including through any third party intermediary), to any Foreign Official in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"). None of the Loan Parties nor any Affiliates of any Loan Parties that are controlled by the Loan Parties, is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the Anti-Terrorism Laws. None of the Loan Parties, nor any Affiliates of any Loan Parties that are controlled by the Loan Parties, or their respective agents acting or benefiting in any capacity in connection with the Loans or other transactions hereunder, is a Blocked Person. None of the Loan Parties, nor any of their agents acting in any capacity in connection with the Loans or other transactions hereunder (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to any OFAC Sanctions Programs.

Section 4.30 Managerial Assistance and Related Persons. Each Loan Party represents and warrants that (a) TSL has offered to make available to each of them "significant managerial assistance" (as defined in Section 2(a)(47) of the Investment Company Act of 1940) and, to the extent any Loan Party accepts such offer from TSL, the scope, terms and conditions of such significant managerial assistance are set forth in a separate agreement between such Loan Party and TSL and (b) it is not a "person" related to TSL as described in Section 57(b) or 57(e) of the Investment Company Act of 1940.

Section 4.31 Disclosure. No representation or warranty of any Loan Party contained in any Loan Document or in any other documents, certificates or written statements made or furnished to Lenders by or on behalf of Borrower or any of its Subsidiaries for use in connection with the transactions contemplated hereby when taken as a whole 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 not misleading in light of the circumstances in which the same were made. Notwithstanding anything to the contrary in the foregoing, it is hereby understood and agreed by each party to this Agreement that any projections, budgets, estimates, pro forma financial information, any other forward-looking statements or information of a general economic or industry nature contained in such materials are based upon good faith estimates and assumptions believed by Company to be reasonable at the time made, it being recognized by Lenders that such projections, budgets, estimates, pro forma financial information and forward looking statements are not to be viewed as facts and that actual results during the period or periods covered by any such projections, budgets, estimates, pro forma financial information and forward looking statements may differ from the projected results and such differences may be material. There are no facts known (or which should upon the reasonable exercise of diligence be known) to any Authorized Officer of the Company (other than matters of a general economic nature) that, individually or in the aggregate, are material and pertinent in the transactions contemplated hereby or the Products that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

Section 4.32 Use of Proceeds. The proceeds of the Term Loan shall be applied by Company for working capital, capital expenditures, and general corporate purposes of Borrower and its Subsidiaries. No portion of the proceeds of any Credit Extension shall be used in any manner that causes or might cause such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation thereof or to violate the Exchange Act.

Section 4.33 Regulatory Compliance.

(a) Each of Borrower and its Subsidiaries have all Registrations from the FDA, comparable foreign counterparts or any other Governmental Authority required to conduct their respective businesses as currently conducted, except where the failure to have all such Registrations would not reasonably be expected to, individually or in the aggregate, result in Material Regulatory Liabilities. Each of such Registrations is valid and subsisting in full force and effect. To the knowledge of Borrower and its Subsidiaries, neither the FDA nor any comparable Governmental Authority is considering limiting, suspending, or revoking such Registrations or changing the marketing classification or labeling of any Products under such Registrations. To the knowledge of the Borrower and its Subsidiaries, there is no false or materially misleading information or significant omission in any Product application or other notification, submission or report to the FDA or any comparable Governmental Authority that was not corrected by subsequent submission, and all such applications, notifications, submissions and reports provided by Borrower and its Subsidiaries were true, complete, and correct in all material respects as of the date of submission to FDA or any comparable Governmental Authority. Borrower and its Subsidiaries have not failed to fulfill and perform their material obligations which are due under each such Registration, and, no event has occurred or condition or state of facts exists which would constitute a breach or default under any such Registration, in each case that would reasonably be expected to cause the revocation, termination or suspension or material limitation of any such Registration. To the knowledge of the Borrower and its Subsidiaries, any third party that develops, researches, manufactures, commercializes, distributes, sells or markets Products pursuant to an agreement with Borrower or its Subsidiaries (a "Loan Party Partner") is in compliance with all Registrations from the FDA and any comparable Governmental Authority insofar as they pertain to Products, and each such Loan Party Partner is in compliance with applicable Public Health Laws, except where the failure to so be in compliance would not reasonably be expected to, individually or in the aggregate, result in Material Regulatory Liabilities

(b) Each of Borrower and its Subsidiaries is in compliance, and has been in compliance, with all Public Health Laws, except to the extent that any such non-compliance, individually or in the aggregate, could not reasonably be expected to result in Material Regulatory Liabilities.

(c) To the extent applicable, all products designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold, marketed or delivered by or on behalf of Borrower or any of its Subsidiaries, that are subject to the jurisdiction of the FDA have been and are being designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold, marketed or delivered in compliance in all material respects with the Public Health Laws. To the knowledge of Borrower and its Subsidiaries, there are no defects in the design or technology embodied in any Products that are reasonably expected to prevent the safe and effective performance of any such Product for its intended use (other than such limitations specified in the applicable package insert), except for such defects that would not reasonably be expected to, individually or in the aggregate, result in Material Regulatory Liabilities or other Liabilities. None of the Products has been the subject of any products liability or warranty action against Borrower or its Subsidiaries.

(d) Neither Borrower nor any of its Subsidiaries is currently subject to any material obligation arising pursuant to a Regulatory Action and, to the knowledge of Borrower and its Subsidiaries, no such material obligation or Regulatory Action has been threatened by a Governmental Authority in writing. In addition, and without limitation on the foregoing, except as set forth on Schedule 4.33(d) neither Borrower nor any of its Subsidiaries has received any written notice or communication from the FDA, comparable foreign counterparts or any other Governmental Authority alleging material non-compliance with any Public Health Law or comparable foreign laws.

(e) Except as set forth on Schedule 4.33(e), (i) neither Borrower nor any of its Subsidiaries has received any written notice or communication from the FDA or any other Governmental Authority alleging material noncompliance with any Public Health Law, including without limitation any Form FDA 483, notice of inspectional observation, notice of adverse finding, notice of violation, warning letters, untitled letters or other notices from the FDA and (ii) to the knowledge of Borrower and its Subsidiaries, no Loan Party Partner has received any written notice or communication from the FDA or any other Governmental Authority alleging material noncompliance with any Public Health Law, including without limitation any Form FDA 483, notice of inspectional observation, notice of adverse finding, notice of violation, warning letters, untitled letters or other notices from the FDA relating to such Loan Party Partner's work for Borrower or such Subsidiary. No Product has been seized, withdrawn, recalled, detained, or subject to a suspension (other than in the ordinary course of business) of research, manufacturing, distribution or commercialization activity. Neither Borrower nor any of its Subsidiaries is aware of any facts or circumstances that are reasonably likely to result in any recall of any Product.

Section 4.34 Government Contracts. Except as set forth on Schedule 4.34 as of the Closing Date hereof, neither Borrower nor any of its Subsidiaries is a party to any contract or agreement with any Governmental Authority and none of Borrower's or such Subsidiary's accounts receivables or other rights to receive payment are subject to the Federal Assignment of Claims Act (31 U.S.C. Section 3727) or any similar state, county or municipal law.

Section 4.35 Health Care Regulatory Laws.

(a) None of Borrower and its Subsidiaries, nor, to their knowledge, any officer, director, managing employee or agent (as those terms are defined in 42 C.F.R. § 1001.1001) thereof, is a party to, or bound by, any written order, individual integrity agreement, corporate integrity agreement or other formal written agreement with any Governmental Authority concerning their compliance with Federal Health Care Program Laws.

(b) None of Borrower and its Subsidiaries, nor any officer, director, managing employee or agent (as those terms are defined in 42 C.F.R. § 1001.1001) thereof, nor to the knowledge of Borrower and its Subsidiaries, any Loan Party Partner: (i) has been charged with or convicted of any criminal offense relating to the delivery of an item or service under any Federal Health Care Program; (ii) has had a civil monetary penalty assessed against it, him or her under Section 1128A of the SSA; (iii) has been listed on the U.S. General Services Administration published list of parties excluded from federal procurement programs and non-procurement programs; or (iv) to the knowledge of Borrower and its Subsidiaries, is the target or subject of any current or potential investigation relating to any of the foregoing or any Federal Health Care Program-related offense. None of Borrower and its Subsidiaries, nor any officer, director, managing employee or agent (as those terms are defined in 42 C.F.R. § 1001.1001) thereof, nor any Loan Party Partner, has been debarred, excluded, disqualified or suspended from participation in any Federal Health Care Program or under any FDA Laws (including 21 U.S.C. § 335a).

(c) None of Borrower and its Subsidiaries, nor any officer, director, managing employee or agent (as those terms are defined in 42 C.F.R. § 1001.1001) thereof, nor to the knowledge of Borrower and its Subsidiaries, any Loan Party Partner, has engaged in any activity that is in material violation of any Federal Health Care Program Laws, including the following:

(i) knowingly and willfully making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment;

(ii) knowingly and willfully making or causing to be made a false statement or representation of a material fact for use in determining rights to any benefit or payment;

(iii) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or kind (1) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under any Federal Health Care Program; or (2) in return for purchasing, leasing, or ordering, or arranging, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under any Federal Health Care Program in violation of 42 U.S.C. Section 1320a-7b(b); or

(iv) knowingly and willfully offering or paying any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind, to any person to induce such person (1) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal Health Care Program; or (2) to purchase, lease, order or arrange for or recommend purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part under a Federal Health Care Program in violation of 42 U.S.C. Section 1320a-7b(b).

(d) To the knowledge of Borrower and its Subsidiaries, no person has filed or has threatened to file against Borrower or any of its Subsidiaries, an action relating to any FDA Law, Public Health Law or Federal Health Care Program Law under any whistleblower statute, including without limitation, under the False Claims Act of 1863 (31 U.S.C. § 3729 et seq.).

(e) Each of Borrower and its Subsidiaries is in compliance in all material respects with HIPAA, and the provisions of all business associate agreements (as such term is defined by HIPAA) to which it is a party, and has implemented reasonably adequate policies, procedures and training designed to assure continued compliance and to detect non-compliance, except where the failure to implement such policies, procedures, and training would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

ARTICLE V

AFFIRMATIVE COVENANTS

Each Loan Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations (other than any such contingent obligations or liabilities hereunder that by the express terms thereof survive such payment in full of all Obligations), each Loan Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Article V.

Section 5.1 Financial Statements and Other Reports. Unless otherwise provided below, Borrower will deliver to Administrative Agent (for delivery to the Lenders):

(a) Cash Reports. Promptly, but in any event within 5 Business Days, after the end of each fiscal month of the Company, a report (which report may consist of bank statements) of the current Cash and Cash Equivalent balances (including the balances in each Deposit Account of each Loan Party) of the Company and its Subsidiaries, which report shall identify (i) unrestricted (other than restrictions created by the Collateral Documents) and restricted Cash and Cash Equivalents and (ii) those accounts that constitute Qualified Cash; provided, that at any time the current Cash and Cash Equivalent balances of the Company and its Subsidiaries is less than \$75,000,000, Administrative Agent may request at any time, and the Company shall promptly provide, a report of at least 95% of the current Cash and Cash Equivalent balances of the Company and its Subsidiaries, which report shall identify unrestricted (other than restrictions created by the Collateral Documents) and restricted Cash and Cash Equivalents (or, if greater, all Cash and Cash Equivalent balances required to satisfy the covenant set forth in Section 6.8).

(b) Quarterly Financial Statements. As soon as available, and in any event (i) within 45 days after the end of the first three Fiscal Quarters of each Fiscal Year and (ii) within 60 days after the end of the fourth Fiscal Quarter of each Fiscal Year, the consolidated balance sheets of Borrower and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income, statements of income and cash flows of Borrower and its Subsidiaries for such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification with respect thereto;

(c) Annual Financial Statements. As soon as available, and in any event within 120 days after the end of each Fiscal Year, (i) the consolidated balance sheets of Borrower and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Borrower and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Financial Officer Certification with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of Grant Thornton LLP or other independent certified public accountants of recognized national standing selected by Borrower, and reasonably satisfactory to Administrative Agent (which report shall be unqualified as to going concern and scope of audit (other than with respect to or resulting from an upcoming maturity of Indebtedness), and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP);

(d) Compliance Certificate. Together with each delivery of financial statements of Borrower and its Subsidiaries pursuant to Section 5.1(b) or Section 5.1(c), a duly executed and completed Compliance Certificate;

Notwithstanding the foregoing, the obligations in paragraphs (b), (c) and (d) of this Section 5.1 may be satisfied with respect to financial information of Borrower and its Subsidiaries by furnishing Borrower's Form 10-K or 10-Q, as applicable, filed with the SEC; provided that, to the extent such information is in lieu of information required to be provided under Section 5.1(c), such materials are accompanied by an opinion of Grant Thornton LLP or other independent certified public accountants of recognized national standing selected by Borrower, and reasonably satisfactory to Administrative Agent, which opinion shall meet the standards set forth in Section 5.1(c).

(e) Product Information. As soon as available, and in any event within 45 days after the end of each Fiscal Quarter of each Fiscal Year (including the fourth Fiscal Quarter of any Fiscal Year), a description of (i) the aggregate number of Product units sold by the Loan Parties and the gross and net revenues with respect thereto presented on a monthly basis and (ii) the number of Product units sold by VitaCare Prescription Services, Inc. and the gross and net revenues with respect thereto presented on a monthly basis.

(f) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Financial Statements, the information contained in the consolidated financial statements of Borrower and its Subsidiaries delivered pursuant to Section 5.1(b) or Section 5.1(c) (to the extent such information is applicable to the calculation of Product Revenue for purposes of determining the Borrower's compliance with Section 6.8(b)) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance satisfactory to Administrative Agent;

(g) Notice of Default. Promptly (but in any event within five (5) Business Days) upon any Authorized Officer of Borrower obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that written notice has been given to Borrower with respect thereto; (ii) that any Person has given any written notice to Borrower or any of its Subsidiaries or taken any other action which is reasonably likely to cause an Event of Default to occur pursuant to Section 8.1(b) of this Agreement; or (iii) of the occurrence of any event or change that has caused or resulted in any case or in the aggregate, a Material Adverse Effect or Material Regulatory Liabilities, a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Company has taken, is taking and proposes to take with respect thereto;

(h) Notice of Litigation. Promptly (but in any event within five (5) Business Days) upon any Authorized Officer of Company obtaining knowledge of (i) the institution of, or non-frivolous written threat of, any Adverse Proceeding or (ii) any material development in any Adverse Proceeding that, in the case of either clause (i) or (ii), which relates to the Products, the Collateral or the Material Contracts or which could reasonably be expected to result in Material Regulatory Liabilities, or which seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to Company to enable Lenders and their counsel to evaluate such matters;

(i) ERISA. Promptly (but in any event within five (5) Business Days) upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event that would reasonably be expected to result in a material Liability to a Loan Party, a written notice specifying the nature thereof, what action a Loan Party or any ERISA Affiliate has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto;

(j) Insurance Report. As soon as practicable and in any event within 30 days after the end of each Fiscal Year, a report in form and substance reasonably satisfactory to Administrative Agent outlining all material changes in insurance coverage maintained as of the date of such report by Borrower and its Subsidiaries compared to the last day of the prior Fiscal Year, and any material changes to the insurance coverage planned to be maintained by Borrower and its Subsidiaries in the immediately succeeding Fiscal Year;

(k) Regulatory and Product Notices. Each Loan Party shall promptly (but in any event within five (5) Business Days) after the receipt or occurrence thereof notify Administrative Agent of:

(i) any written notice received by Borrower or its Subsidiaries alleging potential or actual material violations of any Public Health Law by Borrower or its Subsidiaries,

(ii) any written notice that the FDA (or international equivalent) is limiting, suspending or revoking any Registration,

(iii) any written notice that Borrower or its Subsidiaries has become subject to any Regulatory Action (other than any inspection or investigation in the ordinary course of business),

(iv) the exclusion or debarment from any governmental health care program or debarment or disqualification by FDA of Borrower or its Subsidiaries or its or their Authorized Officers,

(v) any written notice addressed to Borrower or any Subsidiary that a Borrower or any Subsidiary, or any of their licensees or sublicensees (including licensees or sublicensees under the Product Agreements), is being investigated or is the subject of any allegation of potential or actual violations of any Federal Health Care Program Laws, in each case, which could reasonably be expected to result in a Material Adverse Effect,

(vi) any written notice that any Product of Borrower or its Subsidiaries has been seized, withdrawn, recalled, detained, or subject to a suspension of manufacturing, or the commencement of any proceedings in the United States by a Governmental Authority having appropriate jurisdiction seeking the withdrawal, recall, suspension, import detention, or seizure of any Product or Products are pending or threatened in writing against Borrower or its Subsidiaries, or

(vii) changing the market classification or labeling of the Products of Borrower and its Subsidiaries under any such Registration in a manner materially adverse to Borrower and its Subsidiaries,

except, in each case of (i) through (vii) above, where such action would not reasonably be expected to have, either individually or in the aggregate, Material Regulatory Liabilities;

(l) Notice Regarding Material Contracts. Promptly (but in any event within five (5) Business Days) (i) after a Loan Party or a Subsidiary of a Loan Party receives a written notice of default or event of default under any Material Contract giving any party thereto the right to terminate such Material Contract, (ii) after Loan Party or a Subsidiary of a Loan Party receives or otherwise becomes aware of any (A) any dispute, purchase price adjustment, indemnity claim, exercise of rights of set-off or deduction (in each case, not in the ordinary course of business) or (B) litigation (including litigation threatened in writing), in each case for clauses (A) and (B) under or with respect any Material Contract, and (iii) after a new Material Contract is entered into, in each case of clauses (i) through (iii), furnish a written statement describing such event, with copies of such notices or new contracts together with all reasonably pertinent detail and information relating thereto, delivered to Administrative Agent, and an explanation of any actions being taken with respect thereto;

(m) Information Regarding Collateral. Company will furnish to Administrative Agent prior written notice of any change (a) in any Loan Party's legal name or (b) in any Loan Party's corporate identity or corporate structure. Company agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC that are required in order for Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral in which a security interest may be perfected by the filing of a UCC-1 in the state of organization or formation of the Company or such applicable Guarantor and for such Collateral at all times following such change to have a valid, legal and perfected security interest as contemplated in the Collateral Documents. Company also agrees promptly to notify Administrative Agent if any material portion of the Collateral is damaged or destroyed;

(n) Annual Collateral Verification. Each year, at the time of delivery of annual financial statements with respect to the preceding Fiscal Year pursuant to Section 5.1(c), Company shall deliver to Administrative Agent an Officer's Certificate either confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this Section 5.1(n) and/or identifying such changes;

(o) Products.

(i) Promptly, but in any event within five (5) Business Days after the receipt by the Company or any of its Subsidiaries or any Authorized Officer thereof obtaining knowledge of the occurrence thereof, notice of:

(A) granting any sublicenses under any Product Agreement;

(B) entering into any new Product Agreement (to the extent permitted under this Agreement); and

(C) any material communications with the FDA that could reasonably be expected to result in a Material Adverse Effect; and

(ii) Quarterly, in connection with the delivery of the Compliance Certificate required by Section 5.1(d), copies of royalty reports received for such quarter pursuant to any Product Agreement;

(p) Regulatory Documentation. Company shall be responsible for, and shall maintain, with respect to each Product, all submissions to Governmental Authorities relating to the Products, including clinical studies, tests and biostudies, including all Product non-disclosure agreements, and the drug master files, as well as all correspondence with Governmental Authorities with respect thereto (including Registrations and licenses and regulatory drug lists, and any amendments or supplements thereto). Concurrent with the delivery of a Compliance Certificate following the end of each Fiscal Quarter in accordance with Section 5.1(d) and promptly following Administrative Agent's reasonable request from time to time, Company shall promptly provide to Administrative Agent copies of any and all regulatory filings submitted to any such Governmental Authorities and material correspondence sent to or received from Governmental Authorities, in each case, with respect to the Products;

(q) Maintenance of Product Patents. Company shall take all commercially reasonable steps to maintain the Product Patents, including by timely filing fees and responses with the United States Patent and Trademark Office or any applicable foreign counterpart. Company shall provide prompt written notice to Administrative Agent of any material occurrences with respect to any Product Patents, and, upon Administrative Agent's request from time to time, shall promptly provide Administrative Agent with complete and correct copies of any material correspondence sent by Company to or received from the United States Patent and Trademark Office or any applicable foreign counterpart with respect to any Product Patent;

(r) Other Information. (A) Promptly upon their becoming available and in any event within five (5) Business Days of Borrower's receipt thereof, copies of (i) all reports and all registration statements and prospectuses, if any, filed by Borrower or any of its Subsidiaries with the Securities and Exchange Commission or any similar governmental or private regulatory authority and which is not otherwise publicly available, and (ii) all amendments, waivers, consents, notices of default and reservations of rights with respect to and received by Borrower or its Subsidiaries from any holder of its Indebtedness having a principal amount greater than \$5,000,000, (B) subject to any applicable confidentiality restrictions or restrictions under applicable law, promptly after submission to any Governmental Authority, all documents and information furnished to such Governmental Authority in connection with any investigation of any Loan Party (other than a routine inquiry), and (C) such other information and data with respect to Borrower or any of its Subsidiaries as from time to time may be reasonably requested by Administrative Agent in writing in accordance with Section 10.1 of this Agreement.

Section 5.2 Existence. Except as otherwise permitted under Section 6.9, each Loan Party will, and will cause each of Borrower's Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and Governmental Authorizations, qualifications, franchises, licenses and permits material to its business and to conduct its business in each jurisdiction in which its business is conducted, except, in each case, which such failure to do so would not, either individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect; provided, no Loan Party or any of Borrower's Subsidiaries shall be required to preserve any such existence, right or Governmental Authorizations, qualifications, franchise, licenses and permits if such Person's Board of Directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Lenders.

Section 5.3 Payment of Taxes and Claims. Each Loan Party will, and will cause each of Borrower's Subsidiaries to, (a) file all Tax returns required to be filed by Borrower or any of its Subsidiaries and (b) pay (i) all Taxes exceeding \$500,000 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 accrues thereon and (ii) all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay imposition of any penalty, fine or Lien resulting from the non-payment thereof. No Loan Party will, nor will it permit any of Borrower's Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Borrower or its Subsidiaries).

Section 5.4 Maintenance of Properties. Each Loan Party will, and will cause each of Borrower's Subsidiaries to (a) maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all properties used or useful in the business of Borrower and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof, except, in each case, to the extent any such failure to maintain would not reasonably be expected to have a Material Adverse Effect, and (b) comply at all times with the provisions of all material leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, except, in each case, to the extent any such failure to comply could not reasonably be expected to have a Material Adverse Effect.

Section 5.5 Insurance.

(a) The Loan Parties will maintain or cause to be maintained, with financially sound and reputable insurers, (i) business interruption insurance reasonably satisfactory to Administrative Agent, and (ii) casualty insurance, such commercial general liability insurance, third party property damage insurance or such other insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Loan Parties as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Each such commercial general policy of insurance shall (1) name Administrative Agent, on behalf of Lenders as an additional insured thereunder as its interests may appear, and (2) in the case of each property insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Administrative Agent, that names Administrative Agent, on behalf of Secured Parties as the loss payee thereunder. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, Administrative Agent may, upon prior written notice to Company, arrange for such insurance, but at Company's expense and without any responsibility on Administrative Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, Administrative Agent shall have the sole right, in the name of the Lenders, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(b) Each of the insurance policies required to be maintained under this Section 5.5 shall provide for at least thirty (30) days' prior written notice to Administrative Agent of the cancellation or substantial modification thereof. Receipt of such notice shall entitle Administrative Agent (but Administrative Agent shall not be obligated), upon prior written notice to the Loan Parties, to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to this Section 5.5 or otherwise to obtain similar insurance in place of such policies, in each case at the expense of the Loan Parties and to the extent the Loan Parties have not so renewed such policies or obtained similar insurance in place therefor.

Section 5.6 Books and Records; Inspections. Each Loan Party will, and will cause each of Borrower's Subsidiaries to, (a) maintain at all times at the chief executive office of Borrower copies of all material books and records of Borrower and its Subsidiaries, (b) keep adequate books of record and account in which full, true and correct entries in all material respects are made of all dealings and transactions in relation to its business and activities and (c) permit any representatives designated by Administrative Agent or any Lender (including employees of Administrative Agent, any Lender or any consultants, auditors, accountants, lawyers and appraisers retained by Administrative Agent) to visit any of the properties of any Loan Party and any of Borrower's Subsidiaries to inspect, copy and take extracts from its and their financial and accounting records, all upon reasonable notice and at such reasonable times during normal business hours (so long as no Default or Event of Default has occurred and is continuing) and as often as may reasonably be requested; provided that, excluding any such visits and inspections during the occurrence and continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 5.6 and the Administrative Agent shall not, absent the occurrence and continuance of an Event of Default, exercise such rights more often than one time during any calendar year. The Loan Parties agree to pay the reasonable and documented out-of-pocket costs and expenses incurred by the examiner in connection therewith. Notwithstanding anything to the contrary in this Section 5.6, none of the Loan Parties or any of their Subsidiaries will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) in respect of which disclosure to the Agents or any Lender (or their respective representatives) is prohibited by applicable law or Contractual Obligations that (A) are owed to any Person that is not an Affiliate of Borrower or its Subsidiaries that is controlled by Borrower or its Subsidiaries pursuant to a binding agreement to which Borrower or its Subsidiaries are a party and (B) that have not been waived by such Person following the use by Borrower or its Subsidiaries of commercially reasonable efforts to obtain such waiver or (ii) that is subject to attorney client or similar privilege or constitutes attorney work product.

Section 5.7 Lenders Meetings and Conference Calls.

(a) Borrower will, upon the request of Administrative Agent or Required Lenders, participate in a meeting of Administrative Agent and Lenders once during each Fiscal Year to be held at Company's corporate offices (or at such other location as may be agreed to by Company and Administrative Agent) at such time as may be agreed to by Borrower and Administrative Agent.

(b) Within 10 Business Days after delivery of financial statements and other information required to be delivered pursuant to Section 5.1(b), Borrower shall, upon request by the Administrative Agent, cause its chief financial officer or other Authorized Officers to participate in a conference call with Administrative Agent and all Lenders who choose to participate in such conference call, during which conference call the chief financial officer or such Authorized Officer shall review the financial condition of Borrower and its Subsidiaries and such other matters as Administrative Agent or any Lender may reasonably request in a reasonable time period in advance of such conference call.

Section 5.8 Compliance with Laws.

(a) Each Loan Party will comply, and shall cause each of Borrower's Subsidiaries, to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), in each case, non-compliance with which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Without limiting the generality of the foregoing, each Loan Party shall, and shall cause each of Borrower's Subsidiaries to, comply with all FDA Laws and Public Health Laws, and with all applicable Federal Health Care Program Laws, in each case, except where the failure to comply would not reasonably be expected to result, either individually or in the aggregate, in Material Regulatory Liabilities. All Products developed, manufactured, tested, investigated, distributed or marketed by or on behalf of the Loan Parties and Borrower's Subsidiaries that are subject to the jurisdiction of the FDA or any comparable Governmental Authority have been and shall be developed, tested, manufactured, investigated, distributed and marketed in compliance with the FDA Laws and any other Requirement of Law, including, without limitation, pre-market notification, good manufacturing practices, labeling, advertising, record-keeping, and adverse event reporting, in each case, except where the failure to comply would not reasonably be expected to result, either individually or in the aggregate, in Material Regulatory Liabilities.

Section 5.9 Environmental.

(a) Each Loan Party shall (i) keep its owned real property free of any Environmental Liens; (ii) maintain and comply in all material respects with all Governmental Authorizations required under applicable Environmental Laws, except as any such failure which could not reasonably be expected to result in a Material Adverse Effect; and (iii) take all steps to prevent any Release of Hazardous Materials from any property owned or operated by any Loan Party, except as any such failure would not reasonably be expected to result in a Material Adverse Effect.

(b) The Loan Parties shall promptly (but in any event within ten (10) Business Days) (i) notify Administrative Agent in writing (A) of any material Environmental Claims asserted against or material Environmental Liabilities and Costs of any Loan Party, and (B) any notice of Environmental Lien filed against any owned real property, and (ii) provide such other documents and information as reasonably requested by Administrative Agent in relation to any matter pursuant to this Section 5.9(b).

Section 5.10 Subsidiaries. In the event that any Person becomes a Subsidiary of Company, Company (including pursuant to a Permitted Acquisition) shall (a) within 10 Business Days of such Person becoming a Subsidiary (or such later time as is consented to by Administrative Agent) cause such Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Administrative Agent a Counterpart Agreement, and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates as are similar to those described in Sections 3.1(b), 3.1(f) and 3.1(i). With respect to each such Subsidiary, Company shall send to Administrative Agent written notice within 10 Business Days of such Person becoming a Subsidiary (or such later time as is consented to by Administrative Agent) setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of Company, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with respect to all Subsidiaries of Company; provided, such written notice shall be deemed to supplement Schedules 4.1 and 4.2 for all purposes hereof.

Section 5.11 Further Assurances. At any time or from time to time upon the written request of Administrative Agent, each Loan Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things within its control as Administrative Agent may reasonably request in order to effect fully the purposes of the Loan Documents, including providing Lenders with any information reasonably requested pursuant to Section 10.21. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as Administrative Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of Borrower's Subsidiaries and all of the outstanding Capital Stock of Borrower's Subsidiaries, to the extent permitted under any Loan Document. Notwithstanding anything to the contrary in the foregoing or anywhere else in this Agreement or in any other Loan Document, unless requested by the Administrative Agent in its reasonable discretion, none of the Loan Parties or any of their Subsidiaries shall be required, nor shall the Administrative Agent or any Lender be authorized, to take any action with respect to any assets or property of any Loan Party located outside of the United States.

Section 5.12 Control Agreements. Each of Borrower and each Guarantor Subsidiary shall hold all of its cash and Cash Equivalents in a Deposit Account or Securities Account (other than any Excluded Accounts) subject to a Control Agreement. All such Control Agreements shall provide for "springing" cash dominion with respect to each such account that is not an Excluded Account, including each disbursement account. With respect to each Control Agreement providing for "springing" cash dominion, Administrative Agent will not deliver to the relevant depository institution a notice or other instruction which provides for exclusive control over such account by Administrative Agent until an Event of Default has occurred and is continuing.

Section 5.13 Post-Closing Matters. Company shall, and shall cause each of the Loan Parties to, satisfy the requirements set forth on Schedule 5.13 on or before the date specified for such requirement or such later date as is consented to by Administrative Agent.

ARTICLE VI

NEGATIVE COVENANTS

Each Loan Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations (other than any such contingent obligations or liabilities hereunder that by the express terms thereof survive such payment in full of all Obligations), such Loan Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Article VI.

Section 6.1 Indebtedness. No Loan Party shall, nor shall it permit any of Borrower's Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, in each case, except Permitted Indebtedness.

Section 6.2 Liens. No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Borrower or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC of any State or under any similar recording or notice statute, in each case, except Permitted Liens.

Section 6.3 Material Contracts. None of Borrower or any of its Subsidiaries shall agree to any set-off, counterclaim or other deduction under or with respect to any Material Contract, other than any such set-off, counterclaim or other deduction that is in the ordinary course of business and is explicitly required or permitted by the terms of such Material Contract as in effect on the date hereof or as amended from time to time in accordance with the terms hereof. Borrower and its Subsidiaries shall not materially breach any Material Contract or otherwise default under any Material Contract in such a manner as could reasonably be expected to give rise to a termination right of any other party to such Material Contract.

Section 6.4 No Further Negative Pledges. Except with respect to (a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to an Asset Sale permitted under Section 6.9 and (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be) no Loan Party nor any of Borrower's Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, in each case, except Permitted Liens.

Section 6.5 Restricted Junior Payments. No Loan Party shall, nor shall it permit any of its Subsidiaries through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment, in each case, except for:

(a) cashless repurchases of Capital Stock in the ordinary course of business in Borrower or any Subsidiary thereof deemed to occur upon exercise of stock options or warrants if such Capital Stock represents a portion of the exercise price of such options or warrants;

(b) any Loan Party may make Restricted Junior Payments in the form of its payment in cash to the relevant Governmental Authority of any Taxes payable as a result of the vesting of Capital Stock in connection with equity-based compensation plans; provided, the aggregate amount of all such Restricted Junior Payments shall not exceed \$10,000,000 during the term of this Agreement; or

(c) Borrower may make payments of cash in lieu of fractional shares in connection with stock dividends, splits or combinations or conversions or exercises of convertible securities.

Section 6.6 Restrictions on Subsidiary Distributions. Except as provided herein, no Loan Party shall, nor shall it permit any of Borrower's Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind, in each case, except for Permitted Liens, on the ability of any Subsidiary of Company to (a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Company or any other Subsidiary of Company, (b) repay or prepay any Indebtedness owed by such Subsidiary to Company or any other Subsidiary of Company, (c) make loans or advances to Company or any other Subsidiary of Company, or (d) transfer any of its property or assets to Company or any other Subsidiary of Company other than restrictions (i) in agreements evidencing purchase money Indebtedness permitted by clause (g) of the definition of Permitted Indebtedness that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, and (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock not otherwise prohibited under this Agreement. No Loan Party shall, nor shall it permit its Subsidiaries to, enter into any Contractual Obligations which would prohibit a Subsidiary of Borrower from being a Loan Party.

Section 6.7 Investments. Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including without limitation any Joint Venture, except Permitted Investments. Notwithstanding the foregoing, in no event shall any Loan Party make any Investment which results in or facilitates in any manner any Restricted Junior Payment not otherwise permitted under the terms of Section 6.5.

Section 6.8 Financial Covenants.

(a) Minimum Qualified Cash. At all times, Borrower shall not permit Qualified Cash to be less than (a) \$50,000,000 during the period commencing on the Closing Date to (but not including) the Credit Date in respect of the first Delayed Draw Term Loan made hereunder and (b) \$60,000,000 thereafter.

(b) Minimum Revenue. Borrower shall not permit Product Revenue for any Fiscal Quarter set forth below to be less than the amount set forth opposite such Fiscal Quarter:

<u>Fiscal Quarter Ending</u>	<u>Product Revenue</u>
December 31, 2020	[\$***]
March 31, 2021	[\$***]
June 30, 2021	[\$***]
September 30, 2021	[\$***]
December 31, 2021	[\$***]

Fiscal Quarter Ending	Product Revenue
March 31, 2022	\$[***]
June 30, 2022 and each Fiscal Quarter thereafter	\$[***]

Section 6.9 Fundamental Changes; Disposition of Assets; Acquisitions. No Loan Party shall, nor shall it permit any of Borrower's Subsidiaries to, enter into any transaction of merger or consolidation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), including by means of a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, or convey, sell, lease or sub lease (as lessor or sublessor), exchange, transfer or otherwise dispose of, or otherwise enter into or consummate any Asset Sale, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever (including, without limitation, any Product (including, without limitation, any intellectual property rights related thereto) and any Product Agreement (including, without limitation, any of Company's rights thereunder)), whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and Capital Expenditures in the ordinary course of business) the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) any Subsidiary of Borrower may be merged with or into Company or any Guarantor Subsidiary, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Company or any Guarantor Subsidiary; provided, in the case of such a merger, Company or such Guarantor Subsidiary, as applicable shall be the continuing or surviving Person. Notwithstanding anything herein to the contrary, neither Borrower nor any of its Subsidiaries shall divide or enter into any plan of division pursuant to Section 18-217 of the Delaware Limited Liability Company Act (or any similar statute or provision under applicable law);

(b) Asset Sales (other than (i) subject to Section 6.9(d), those constituting Permitted Product Transactions and (ii) any other Asset Sale in respect of the Products or the Product Patents) in any Fiscal Year, the proceeds of which are less than \$10,000,000 with respect to any single Asset Sale or series of related Asset Sales made within the same Fiscal Year; provided (A) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by officers of Company or the Board of Directors of Company (or similar governing body)), (B) no less than 85% thereof shall be paid in Cash, and (C) if and to the extent required by Section 2.10(a)(ii), the Net Proceeds thereof shall be applied as required by Section 2.10(a)(ii);

(c) Permitted Acquisitions and other Permitted Investments;

(d) Asset Sales constituting Permitted Product Transactions; provided that (i) no Event of Default shall have occurred and be continuing or would result therefrom (it being understood that this clause (i) shall not prohibit the continued performance by any Loan Party in the ordinary course of business under contracts entered into prior to the occurrence of any such Event of Default) and (ii) the Net Proceeds thereof shall be applied as and to the extent required by Section 2.10(a)(i).

(e) Borrower or any Subsidiary thereof may sell inventory and immaterial assets in the ordinary course of business;

(f) Dispositions of obsolete or worn out, retired or surplus property, whether now owned or hereafter acquired, in the ordinary course of business;

(g) Borrower or any Subsidiary thereof may surrender or waive contractual rights and settle or waive contractual or litigation claims in the ordinary course of business; and

(h) the sale or discount with recourse of accounts receivable arising in the ordinary course of business in connection with the compromise or collection thereof.

Section 6.10 Disposal of Subsidiary Interests. Except for any sale of all of its interests in the Capital Stock of any of its Subsidiaries in compliance with the provisions of Section 6.9, no Loan Party shall, nor shall it permit any of Borrower's Subsidiaries to, (a) directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to qualify directors if required by applicable law; or (b) permit any of its Subsidiaries directly or indirectly to sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to another Loan Party (subject to the restrictions on such disposition otherwise imposed hereunder), or to qualify directors if required by applicable law.

Section 6.11 Sales and Lease Backs. No Loan Party shall, nor shall it permit any of Borrower's Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Loan Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than Borrower or any of its Subsidiaries) or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Loan Party to any Person (other than Borrower or any of its Subsidiaries) in connection with such lease.

Section 6.12 Transactions with Shareholders and Affiliates. No Loan Party shall, nor shall it permit any of Borrower's Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of Borrower or of any such holder; provided, that the Loan Parties and Borrower's Subsidiaries may enter into or permit to exist any such transaction if both Administrative Agent has consented thereto in writing prior to the consummation thereof and the terms of such transaction are not less favorable to Borrower or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; further, provided, further, that the foregoing restrictions shall not apply to any of the following:

(a) any transaction among the Loan Parties expressly permitted hereunder;

(b) reasonable and customary fees paid to members of the Board of Directors (or similar governing body) of Borrower and its Subsidiaries;

(c) compensation arrangements for officers and other employees of Borrower and its Subsidiaries entered into in the ordinary course of business;

(d) any transaction between a Loan Party and any direct or indirect holder of not more than 20% of any class of Capital Stock of Borrower so long as (i) such transaction is between a Loan Party and a federally regulated financial institution which occurs on an arm's length basis in the ordinary course such Loan Party's business consistent with past practice, (ii) such transaction involves the ordinary course financial services provided by such financial institution to such Loan Party, excluding any loan or other form of Indebtedness which is not Permitted Indebtedness, and (iii) such transaction is not otherwise prohibited under the terms of this Agreement; and

(e) transactions described in Schedule 6.12.

Section 6.13 Conduct of Business. From and after the Closing Date, no Loan Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than the businesses engaged in by such Loan Party on the Closing Date (or any other business reasonably related thereto).

Section 6.14 Changes to Certain Agreements and Organizational Documents. No Loan Party shall (i) amend or permit any amendments to any Loan Party's Organizational Documents, including, without limitation, any amendment, modification or change to any of Loan Party's Organizational Documents to effect a division or plan of division pursuant to Section 18-217 of the Delaware Limited Liability Company Act (or any similar statute or provision under applicable law); or (ii) amend or permit any amendments by any Loan Parties to, or terminate or waive any provision of, any Material Contract if such amendment, termination, or waiver would be materially adverse to Administrative Agent or the Lenders (it being understood that any amendment to a Material Contract to permit set-off or other deduction of amounts payable thereunder (other than any set-off or other deduction in the ordinary course of business that does not increase the obligations of a Loan Party) shall be deemed to be materially adverse to the Administrative Agent and the Lenders).

Section 6.15 Accounting Methods. The Loan Parties will not and will not permit any of their Subsidiaries to modify or change its fiscal year or its method of accounting (other than as may be required to conform to GAAP).

Section 6.16 Deposit Accounts. No Loan Party shall establish or maintain a Deposit Account (other than an Excluded Account) or a Securities Account that is not subject to a Control Agreement.

Section 6.17 Prepayments of Certain Indebtedness. No Loan Party shall, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity, other than (a) the Obligations and (b) Indebtedness secured by a Permitted Lien if the asset securing such Indebtedness has been sold or otherwise disposed of in accordance with Section 6.9.

Section 6.18 Anti-Terrorism Laws. None of the Loan Parties (nor any of their Affiliates that are controlled by the Loan Parties) or agents shall:

(a) conduct any business or engage in any transaction or dealing with any Blocked Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person,

(b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the OFAC Sanctions Programs or

(c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the OFAC Sanctions Programs, the USA PATRIOT Act or any other Anti-Terrorism Law.

The Company shall deliver to the Lenders any certification or other evidence requested from time to time by any Lender in its sole discretion, confirming the Company's compliance with this Section 6.18.

Section 6.19 Anti-Corruption Laws. No Loan Party shall use, or permit any of its Subsidiaries to use, directly or indirectly, any of the proceeds of any Loan for the purpose of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Law.

Section 6.20 Real Property. None of the Borrower or any of its Subsidiaries shall own any real property.

ARTICLE VII

GUARANTY

Section 7.1 Guaranty of the Obligations. Subject to the provisions of Section 7.2, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty for the ratable benefit of the Beneficiaries the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the “Guaranteed Obligations”).

Section 7.2 Contribution by Guarantors. All Guarantors desire to allocate among themselves, in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Guarantor shall be entitled to a contribution from each of the other Guarantors in an amount sufficient to cause each Guarantor’s Aggregate Payments to equal its Fair Share as of such date. “Fair Share” means, with respect to any Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Guarantors under this Guaranty in respect of the obligations Guaranteed. “Fair Share Contribution Amount” means, with respect to any Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Guarantor under this Guaranty that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the “Fair Share Contribution Amount” with respect to any Guarantor for purposes of this Section 7.2, any assets or liabilities of such Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Guarantor. “Aggregate Payments” means, with respect to any Guarantor as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 7.2), minus (B) the aggregate amount of all payments received on or before such date by such Guarantor from the other Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Guarantor. The allocation among Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

Section 7.3 Payment by Guarantors. Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Company to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for Company’s becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Company for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

Section 7.4 Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between Company and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Company and the obligations of any other guarantor (including any other Guarantor) of the obligations of Company, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Company or any of such other guarantors and whether or not Company is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or non-judicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against Company or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Loan Documents; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Loan Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Loan Documents or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Loan Document or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Loan Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Borrower or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set offs or counterclaims which Company may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

Section 7.5 Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Company, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Company, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of Company or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Company or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Company or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Company and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

Section 7.6 Guarantors' Rights of Subrogation, Contribution, etc. Until the Guaranteed Obligations shall have been indefeasibly paid in full and the Delayed Draw Term Loan Commitments have been terminated, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Company or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including without limitation (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against Company with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Company, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been indefeasibly paid in full and the Delayed Draw Term Loan Commitments have been terminated, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including, without limitation, any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Company or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Company, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and indefeasibly paid in full, such amount shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

Section 7.7 Subordination of Other Obligations. Any Indebtedness of Company or any Guarantor now or hereafter held by any Guarantor is hereby subordinated in right of payment to the Guaranteed Obligations, and any such indebtedness collected or received by such Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of such Guarantor under any other provision hereof.

Section 7.8 Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been indefeasibly paid in full and the Delayed Draw Term Loan Commitments have been terminated. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

Section 7.9 Authority of Guarantors or Company. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Company or the officers, directors or agents acting or purporting to act on behalf of any of them.

Section 7.10 Financial Condition of Company. Any Credit Extension may be made to Company or continued from time to time without notice to or authorization from any Guarantor regardless of the financial or other condition of Company at the time of any such grant or continuation is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of Company. Each Guarantor has adequate means to obtain information from Company on a continuing basis concerning the financial condition of Company and its ability to perform its obligations under the Loan Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Company and of all circumstances bearing upon the risk of non-payment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Company now known or hereafter known by any Beneficiary.

Section 7.11 Bankruptcy, etc.

(a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Required Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Company or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Company or any other Guarantor or by any defense which Company or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve Company of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by Company, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

Section 7.12 Discharge of Guaranty Upon Sale of Guarantor. If all of the Capital Stock of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such sale or disposition.

ARTICLE VIII

EVENTS OF DEFAULT

Section 8.1 Events of Default. If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by Company to pay (i) the principal of and premium, if any, on any Term Loan whether at stated maturity, by acceleration or otherwise; (ii) when due any installment of principal of any Term Loan, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (iii) within three (3) Business Days when due any interest on any Term Loan or any fee or any other amount due hereunder; or

(b) Default in Other Agreements. (i) Failure of any Loan Party or any of Borrower's Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) in an individual principal amount of \$5,000,000 or more or with an aggregate principal amount of \$5,000,000 or more, in each case beyond the grace or cure period, if any, provided therefor; or (ii) breach or default by any Loan Party with respect to any other material term of (A) one or more items of Indebtedness in the individual or aggregate principal amounts referred to in clause (i) above, or (B) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness referred to in clause (i) above, in each case beyond the grace or cure period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) or to require the prepayment, redemption, repurchase or defeasance of, or to cause Borrower or any of Borrower's Subsidiaries to make any offer to prepay, redeem, repurchase or defease such Indebtedness, prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Covenants. Failure of any Loan Party to perform or comply with any term or condition contained in (i) Section 2.2, Section 5.1(a)-(m), Section 5.1(o)-(r), Section 5.2, Section 5.3, Section 5.5, Section 5.8, Section 5.9, Section 5.12, Section 5.13 or Article VI or (ii) Section 5.4, Section 5.6, Section 5.7, Section 5.10 or Section 5.11, and, solely in the case of this clause (ii), such failure shall continue unremedied for 10 Business Days following notice of such failure; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Loan Party in any Loan Document or in any statement or certificate at any time given by any Loan Party or any of Borrower's Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect (except that such materiality qualifier shall not be applicable to any representations or warranties that already are qualified or modified as to "materiality" or "Material Adverse Effect" in the text thereof, which representations and warranties shall be true and correct in all respects subject to such qualification) as of the date made or deemed made; or

(e) Other Defaults Under Loan Documents. Any Loan Party shall default in the performance of or compliance with any term contained herein or any of the other Loan Documents, other than any such term referred to in any other Section of this Section 8.1, and such default shall not have been remedied or waived within thirty days after the earlier of (i) an Authorized Officer of such Loan Party becoming aware of such default, or (ii) receipt by Company of written notice from Administrative Agent of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Borrower or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Borrower or any of its Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Borrower or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Borrowers or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Borrower or any of its Subsidiaries, and any such event described in the foregoing clause (i) or (ii) shall continue for sixty days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc. (i) Borrower or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Borrower or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) Borrower or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Board of Directors (or similar governing body) of Borrower or any of its Subsidiaries shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein; or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of \$5,000,000 or (ii) in the aggregate at any time an amount in excess of \$5,000,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has not denied coverage) shall be entered or filed against Borrower or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(i) Dissolution. Any order, judgment or decree by a Governmental Authority having appropriate jurisdiction shall be entered against any Loan Party or any of its Subsidiaries decreeing the dissolution or split up of such Loan Party or any of its Subsidiaries and such order shall remain undischarged or unstayed for a period in excess of forty-five days; or

(j) Change of Control. A Change of Control shall occur; or

(k) Guaranties, Collateral Documents and other Loan Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Administrative Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document, in each case for any reason other than the failure of Administrative Agent or any Secured Party to take any action within its control, or (iii) any Loan Party shall contest the validity or enforceability of any Loan Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Loan Document to which it is a party; or

(l) Proceedings. The indictment of any Loan Party or any of its Subsidiaries under any criminal statute, or commencement of criminal or civil proceedings against any Loan Party or any of its Subsidiaries pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture to any Governmental Authority of any material portion of the property of such Person; or

(m) ERISA. The imposition of a Lien pursuant to the Internal Revenue Code or ERISA on any Loan Party with respect to any Pension Plan or Multiemployer Plan; or

(n) Material Contracts. The termination of any Material Contract by Company or any other party thereto unless such Material Contract is contemporaneously replaced by or substituted with a substantially similar contract (i) with another Person who is not a Loan Party and (ii) containing terms and conditions that (A) taken as a whole are substantially similar to or better than the terms and conditions of the terminated Material Contract or any other similar Material Contract then in existence or (B) are reasonably acceptable to Administrative Agent; or

(o) Cessation of Development or Commercialization. At any time prior to February 15, 2021, Borrower ceases using commercially reasonable efforts to develop or commercialize any Specified Product Component.

Section 8.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, Administrative Agent shall at the request of the Required Lenders:

(a) declare all or any portion of the unpaid principal amount of all outstanding Term Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable; without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by each Loan Party; and/or

(b) exercise on behalf of themselves and the Lenders all rights and remedies available to them and the Lenders under the Loan Documents or applicable law;

provided, that upon the occurrence of any event specified in Section 8.1(f) or (g) above, the unpaid principal amount of all outstanding Term Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of Administrative Agent or any Lender.

Section 8.3 Rights Not Exclusive. The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

ARTICLE IX

ADMINISTRATIVE AGENT

Section 9.1 Appointment of Administrative Agent.

(a) TSL is hereby appointed Administrative Agent hereunder and under the other Loan Documents and each Lender hereby authorizes TSL, in such capacity, to act as its agent in accordance with the terms hereof and the other Loan Documents to perform, exercise and enforce any and all other rights and remedies of the Lenders with respect to the Loan Parties, the Obligations or otherwise related to any of same to the extent reasonably incidental to the exercise by Administrative Agent of the rights and remedies specifically authorized to be exercised by Administrative Agent by the terms of this Agreement or any other Loan Parties.

(b) Administrative Agent hereby agrees to act upon the express conditions contained herein and the other Loan Documents, as applicable. The provisions of this Article IX are solely for the benefit of Administrative Agent and Lenders and no Loan Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, Administrative Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Borrower or any of its Subsidiaries.

Section 9.2 Powers and Duties. Each Lender irrevocably authorizes Administrative Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to Administrative Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Administrative Agent shall have only those duties and responsibilities that are expressly specified herein and the other Loan Documents. Administrative Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees Administrative Agent shall not have, by reason hereof or any of the other Loan Documents, a fiduciary relationship in respect of any Lender; and nothing herein or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon Administrative Agent any obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein.

Section 9.3 General Immunity.

(a) No Responsibility for Certain Matters. Administrative Agent shall not be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by Administrative Agent to Lenders or by or on behalf of any Loan Party to Administrative Agent or any Lender in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations, nor shall Administrative Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Term Loans or the component amounts thereof. In addition, Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of loans, or disclosure of confidential information, to, or the restrictions on any exercise of rights or remedies of, any Disqualified Institution.

(b) Exculpatory Provisions. Neither Administrative Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by Administrative Agent under or in connection with any of the Loan Documents except to the extent caused by Administrative Agent's gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order. Administrative Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until Administrative Agent shall have received instructions in respect thereof from Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Required Lenders (or such other Lenders, as the case may be), Administrative Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Borrower and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against Administrative Agent as a result of Administrative Agent acting or (where so instructed) refraining from acting hereunder or any of the other Loan Documents in accordance with the instructions of Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.5).

(c) Notice of Default. Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to Events of Default in the payment of principal, interest and fees required to be paid to Administrative Agent for the account of the Lenders, unless Administrative Agent shall have received written notice from a Lender or the Loan Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." Administrative Agent will notify the Lenders of its receipt of any such notice. Administrative Agent shall take such action with respect to any such Default or Event of Default as may be directed by the Required Lenders in accordance with Article VIII; provided, however, that unless and until Administrative Agent has received any such direction, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Lenders.

Section 9.4 Administrative Agent Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, Administrative Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Term Loans, Administrative Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include Administrative Agent in its individual capacity. Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Borrower or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Company for services in connection herewith and otherwise without having to account for the same to Lenders.

Section 9.5 Lenders' Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Borrower and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Borrower and its Subsidiaries. Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Term Loans or at any time or times thereafter, and Administrative Agent shall not have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement and funding its Term Loan on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by Administrative Agent, Required Lenders or Lenders, as applicable on the Closing Date.

(c) Each Lender (i) represents and warrants that as of the Closing Date neither such Lender nor its Affiliates or Related Funds owns or controls, or owns or controls any Person owning or controlling, any trade debt or Indebtedness of any Loan Party other than the Obligations or any Capital Stock of any Loan Party and (ii) covenants and agrees that from and after the Closing Date neither such Lender nor its Affiliates and Related Funds shall purchase any trade debt or Indebtedness of any Loan Party other than the Obligations or Capital Stock described in clause (i) above without the prior written consent of Administrative Agent.

Section 9.6 Right to Indemnity. EACH LENDER, IN PROPORTION TO ITS PRO RATA SHARE, SEVERALLY AGREES TO INDEMNIFY ADMINISTRATIVE AGENT, ITS AFFILIATES AND ITS RESPECTIVE OFFICERS, PARTNERS, DIRECTORS, TRUSTEES, MEMBERS, INVESTORS, ADVISORS, PARTNERS, EMPLOYEES AND AGENTS OF ADMINISTRATIVE AGENT (EACH, AN "INDEMNITEE AGENT PARTY"), TO THE EXTENT THAT SUCH INDEMNITEE AGENT PARTY SHALL NOT HAVE BEEN REIMBURSED BY ANY LOAN PARTY, FOR AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES (INCLUDING COUNSEL FEES AND DISBURSEMENTS) OR DISBURSEMENTS OF ANY KIND OR NATURE WHATSOEVER WHICH MAY BE IMPOSED ON, INCURRED BY OR ASSERTED AGAINST SUCH INDEMNITEE AGENT PARTY IN EXERCISING ITS POWERS, RIGHTS AND REMEDIES OR PERFORMING ITS DUTIES HEREUNDER OR UNDER THE OTHER LOAN DOCUMENTS OR OTHERWISE IN ITS CAPACITY AS SUCH INDEMNITEE AGENT PARTY IN ANY WAY RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY; PROVIDED,** NO LENDER SHALL BE LIABLE FOR ANY PORTION OF SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES OR DISBURSEMENTS RESULTING FROM SUCH INDEMNITEE AGENT PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A FINAL, NON-APPEALABLE ORDER. IF ANY INDEMNITY FURNISHED TO ANY INDEMNITEE AGENT PARTY FOR ANY PURPOSE SHALL, IN THE OPINION OF SUCH INDEMNITEE AGENT PARTY, BE INSUFFICIENT OR BECOME IMPAIRED, SUCH INDEMNITEE AGENT PARTY MAY CALL FOR ADDITIONAL INDEMNITY AND CEASE, OR NOT COMMENCE, TO DO THE ACTS INDEMNIFIED AGAINST UNTIL SUCH ADDITIONAL INDEMNITY IS FURNISHED; **PROVIDED,** IN NO EVENT SHALL THIS SENTENCE REQUIRE ANY LENDER TO INDEMNIFY ANY INDEMNITEE AGENT PARTY AGAINST ANY LIABILITY, OBLIGATION, LOSS, DAMAGE, PENALTY, ACTION, JUDGMENT, SUIT, COST, EXPENSE OR DISBURSEMENT IN EXCESS OF SUCH LENDER'S PRO RATA SHARE THEREOF; AND **PROVIDED FURTHER,** THIS SENTENCE SHALL NOT BE DEEMED TO REQUIRE ANY LENDER TO INDEMNIFY ANY INDEMNITEE AGENT PARTY AGAINST ANY LIABILITY, OBLIGATION, LOSS, DAMAGE, PENALTY, ACTION, JUDGMENT, SUIT, COST, EXPENSE OR DISBURSEMENT DESCRIBED IN THE PROVISO IN THE IMMEDIATELY PRECEDING SENTENCE.

Section 9.7 Successor Administrative Agent.

(a) Administrative Agent may resign at any time by giving thirty days' (or such shorter period as shall be agreed by the Required Lenders) prior written notice thereof to Lenders and Company. Upon any such notice of resignation, Required Lenders shall have the right, upon five Business Days' notice to Company, to appoint a successor Administrative Agent. 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 Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders appoint a successor Administrative Agent from among the Lenders. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, securities or Capital Stock and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Loan Documents, and (ii) execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article IX shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder.

(b) Notwithstanding anything herein to the contrary, Administrative Agent may assign its rights and duties as Administrative Agent, as applicable, hereunder to an Affiliate of TSL without the prior written consent of, or prior written notice to, Company or the Lenders; provided that Company and the Lenders may deem and treat such assigning Administrative Agent as Administrative Agent for all purposes hereof, unless and until such assigning Administrative Agent provides written notice to Company and the Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Administrative Agent hereunder and under the other Loan Documents.

(c) Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Loan Document by or through any one or more sub-agents appointed by Administrative Agent. Administrative 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 Affiliates. The exculpatory, indemnification and other provisions of Section 9.3, Section 9.6 and of this Section 9.7 shall apply to any of the Affiliates of Administrative Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. All of the rights, benefits and privileges (including the exculpatory and indemnification provisions) of Section 9.3, Section 9.6 and of this Section 9.7 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by Administrative Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory and rights to indemnification) and shall have all of the rights, benefits and privileges of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Loan Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to Administrative Agent and not to any Loan Party, Lender or any other Person and no Loan Party, Lender or any other Person shall have the rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

Section 9.8 Collateral Documents and Guaranty.

(a) Administrative Agent under Collateral Documents and Guaranty. Each Lender hereby further authorizes Administrative Agent on behalf of and for the benefit of Lenders, to be the agent for and representative of Lenders with respect to the Guaranty, the Collateral and the Collateral Documents. Subject to Section 10.5, without further written consent or authorization from Lenders, Administrative Agent may execute any documents or instruments necessary to (i) release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted hereby or to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented, or (ii) release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Loan Documents to the contrary notwithstanding, Company, Administrative Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of Lenders in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Administrative Agent, and (ii) in the event of a foreclosure by Administrative Agent on any of the Collateral pursuant to a public or private sale or any sale of the Collateral in a case under the Bankruptcy Code, Administrative Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Administrative Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) 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 public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Administrative Agent at such sale.

Section 9.9 Agency for Perfection. Administrative Agent and each Lender hereby appoints each other Lender as agent and bailee for the purpose of perfection the security interests in and liens upon the Collateral in assets which, in accordance with Article 9 of the UCC, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and Administrative Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Lenders as secured party. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Administrative Agent thereof, and, promptly upon Administrative Agent's request therefore shall deliver such Collateral to Administrative Agent or in accordance with Administrative Agent's instructions. In addition, Administrative Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under applicable state law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Loan Documents. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 9.10 Reports and Other Information; Confidentiality; Disclaimers. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Administrative Agent furnish such Lender or Administrative Agent, promptly after it becomes available, a copy of each field audit or examination report with respect to Borrower or its Subsidiaries (each a "Report" and collectively, "Reports") prepared by or at the request of Administrative Agent, and Administrative Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Administrative Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Administrative Agent or other party performing any audit or examination will inspect only specific information regarding Borrower and its Subsidiaries and will rely significantly upon Borrower' and its Subsidiaries' books and records, as well as on representations of such Person's personnel,

(d) agrees to keep all Reports and other material, non-public information regarding Borrower and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 10.17, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Administrative Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Company, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Company, and (ii) to pay and protect, and indemnify, defend and hold Administrative Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Administrative Agent and any such other Lender or Agent preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender or Agent.

In addition to the foregoing: (x) any Lender may from time to time request of Administrative Agent in writing that Administrative Agent provide to such Lender a copy of any report or document provided by Borrower or its Subsidiaries to Administrative Agent that has not been contemporaneously provided by Borrower or such Subsidiary to such Lender, and, upon receipt of such request, Administrative Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Administrative Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Borrower or its Subsidiaries, any Lender may, from time to time, reasonably request Administrative Agent to exercise such right as specified in such Lender's notice to Administrative Agent, whereupon Administrative Agent promptly shall request of Company the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Company or such Subsidiary, Administrative Agent promptly shall provide a copy of same to such Lender, and (z) any time that Administrative Agent renders to Company a statement regarding the Loan Account, Administrative Agent shall send a copy of such statement to each Lender.

Section 9.11 Protective Advances. Subject to the limitations set forth below, Administrative Agent is authorized by Company and the Lenders, from time to time in Administrative Agent's sole discretion (but Administrative Agent shall have absolutely no obligation to), to make disbursements or advances to Company, which Administrative Agent, in its sole discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by Company pursuant to the terms of this Agreement and the other Loan Documents, including, without limitation, payments of principal, interest, fees and reimbursable expenses (any of such Loans are in this clause (c) referred to as "Protective Advances"); provided, that Administrative Agent shall not make any Protective Advance (other than with respect to the payment of payroll, insurance premiums and rent or leased properties) unless an Event of Default has occurred and is continuing or Borrower has consented to the making of such Protective Advance. Protective Advances may be made even if the conditions precedent set forth in Article III have not been satisfied. The interest rate on all Protective Advances shall be at the Base Rate plus the Applicable Margin for Term Loans. Each Protective Advance shall be secured by the Liens in favor of Collateral Agent in and to the Collateral and shall constitute Obligations hereunder. The Protective Advances shall constitute Obligations hereunder which may be charged to the Loan Account in accordance with Section 2.12(i). Company shall pay the unpaid principal amount and all unpaid and accrued interest of each Protective Advance on the earlier of the Term Loan Maturity Date and the date on which demand for payment is made by the Administrative Agent. Administrative Agent shall notify each Lender and Company in writing in advance of each such Protective Advance, which notice shall (y) include a description of the purpose of such Protective Advance and (z) indicate the date on or after which such Protective Advance may be made. Without limitation to its obligations pursuant to Section 9.6, each Lender agrees that it shall make available to Administrative Agent, upon such Agent's demand, in Dollars in immediately available funds, the amount equal to such Lender's Pro Rata Share of each such Protective Advance. If such funds are not made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such funds on demand from such Lender, together with interest thereon for each day from the date such payment was due until the date such amount is paid to Administrative Agent, at the Federal Funds Rate for three Business Days and thereafter at the Base Rate.

ARTICLE X

MISCELLANEOUS

Section 10.1 Notices.

(a) Notices Generally. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Loan Party, Administrative Agent, shall be sent to such Person's address as set forth on Appendix B or in the other relevant Loan Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Each notice hereunder shall be in writing and may be personally served or sent by United States certified mail, return receipt, or courier service and shall be deemed to have been given when delivered in person or by certified mail or courier service and signed for against receipt thereof; provided, no notice to Administrative Agent shall be effective until received by Administrative Agent.

(b) Electronic Communications.

(i) Administrative Agent and Company may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it and agreed to in writing within a reasonable time prior to such delivery of such notice and other communications; provided that approval of such procedures may be limited to particular notices or communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication.

(ii) Subject to the foregoing clause (i), (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (B) notices or communications to Lenders posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (A), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (A) and (B) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

Section 10.2 Expenses. Subject to Section 5.6, whether or not the transactions contemplated hereby shall be consummated, Company agrees to pay promptly (a) all of Administrative Agent's actual and reasonable out-of-pocket costs and expenses of preparation of the Loan Documents and any consents, amendments, waivers or other modifications thereto; (b) all the reasonable and documented out-of-pocket fees, expenses and disbursements of counsel to Administrative Agent in connection with the negotiation, preparation, execution and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Company; (c) all the actual documented costs and reasonable expenses of creating and perfecting Liens in favor of Administrative Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and reasonable fees, expenses and disbursements of counsel to Administrative Agent and of counsel providing any opinions that Administrative Agent or Required Lenders may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (d) all of Administrative Agent's actual documented costs and reasonable and documented out-of-pocket fees, expenses for, and disbursements of any of Administrative Agent's auditors, accountants, or consultants, and all reasonable and documented out-of-pocket attorneys' fees (including expenses and disbursements of outside counsel) incurred by Administrative Agent; (e) all the actual documented costs and reasonable and documented expenses (including the reasonable and documented out-of-pocket fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Administrative Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (f) all the actual documented costs and reasonable and documented out-of-pocket expenses of Administrative Agent and Lenders in connection with the attendance at any meetings in connection with this Agreement and the other Loan Documents (including the meetings referred to in Section 5.7); (g) all other actual and reasonable and documented out-of-pocket costs and expenses incurred by Administrative Agent in connection with the syndication of the Loans and Commitments and the negotiation, preparation and execution of the Loan Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (h) after the occurrence and continuance of a Default or an Event of Default, all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by Administrative Agent and Lenders in enforcing any Obligations of or in collecting any payments due from any Loan Party hereunder or under the other Loan Documents by reason of such Default or Event of Default (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work out" or pursuant to any insolvency or bankruptcy cases or proceedings.

Section 10.3 Indemnity.

(a) IN ADDITION TO THE PAYMENT OF EXPENSES PURSUANT TO SECTION 10.2, WHETHER OR NOT THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE CONSUMMATED, EACH LOAN PARTY AGREES TO DEFEND (SUBJECT TO INDEMNITEES' SELECTION OF COUNSEL), INDEMNIFY, PAY AND HOLD HARMLESS, ADMINISTRATIVE AGENT AND LENDER, THEIR AFFILIATES AND THEIR RESPECTIVE OFFICERS, PARTNERS, DIRECTORS, TRUSTEES, MEMBERS, INVESTORS, ADVISORS, PARTNERS, EMPLOYEES AND AGENTS OF ADMINISTRATIVE AGENT AND EACH LENDER (EACH, AN "INDEMNITEE"), FROM AND AGAINST ANY AND ALL INDEMNIFIED LIABILITIES, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE**; PROVIDED, NO LOAN PARTY SHALL HAVE ANY OBLIGATION TO ANY INDEMNITEE HEREUNDER WITH RESPECT TO (I) ANY INDEMNIFIED LIABILITIES TO THE EXTENT SUCH INDEMNIFIED LIABILITIES ARISE FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A FINAL ORDER SUBJECT TO NO FURTHER APPEAL, OF THAT INDEMNITEE OR ANY OF ITS AFFILIATES OR (II) ANY SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ARISING OUT OF ITS ACTIVITIES IN CONNECTION HERewith OR THEREWITH (WHETHER BEFORE OR AFTER THE CLOSING DATE). TO THE EXTENT THAT THE UNDERTAKINGS TO DEFEND, INDEMNIFY, PAY AND HOLD HARMLESS SET FORTH IN THIS SECTION 10.3 MAY BE UNENFORCEABLE IN WHOLE OR IN PART BECAUSE THEY ARE VIOLATIVE OF ANY LAW OR PUBLIC POLICY, THE APPLICABLE LOAN PARTY SHALL CONTRIBUTE THE MAXIMUM PORTION THAT IT IS PERMITTED TO PAY AND SATISFY UNDER APPLICABLE LAW TO THE PAYMENT AND SATISFACTION OF ALL INDEMNIFIED LIABILITIES INCURRED BY INDEMNITEES OR ANY OF THEM.

(b) To the extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against Lenders, Administrative Agent and their respective Affiliates, directors, employees, attorneys or agents, 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, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and Company 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.

Section 10.4 Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender, and their respective Affiliates is hereby authorized by each Loan Party at any time or from time to time subject to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Loan Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, 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 (in whatever currency)) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Loan Party (in whatever currency) against and on account of the obligations and liabilities of any Loan Party to such Lender hereunder, the participations 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) such Lender shall have made any demand hereunder, (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 Article II and although such obligations and liabilities, or any of them, may be contingent or unmatured or (c) such obligation or liability is owed to a branch or office of such Lender different from the branch or office holding such deposit or obligation or such Indebtedness.

Section 10.5 Amendments and Waivers.

(a) Required Lenders' Consent. Subject to Section 10.5(b) and 10.5(b)(i), no amendment, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Loan Party therefrom, shall in any event be effective without the written concurrence of the Borrower, Administrative Agent and the Required Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender (other than a Defaulting Lender) that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

- (i) extend the scheduled final maturity of any Loan or Note;
- (ii) waive, reduce or postpone any scheduled repayment (but not prepayment);
- (iii) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.6) or any fee payable hereunder;
- (iv) extend the time for payment of any such interest or fees;
- (v) reduce the principal amount of any Loan;
- (vi) amend, modify, terminate or waive any provision of this Section 10.5(b) or Section 10.5(b)(i);
- (vii) amend the definition of "Required Lenders" or "Pro Rata Share";
- (viii) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Loan Documents;
- (ix) subordinate any of the Obligations or any Lien created by this Agreement or any other Loan Document; or
- (x) consent to the assignment or transfer by any Loan Party of any of its rights and obligations under any Loan Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Loan Party therefrom, shall amend, modify, terminate or waive any provision of Article IX as the same applies to Administrative agent, or any other provision hereof as the same applies to the rights or obligations of Administrative Agent, in each case without the consent of Administrative Agent.

(d) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Loan Party, on such Loan Party.

Section 10.6 Successors and Assigns; Participations.

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of the parties hereto and the successors and permitted assigns of Lenders. No Loan Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Loan Party without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, Indemnitee Agent Parties under Section 9.6, Indemnitees under Section 10.3, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Administrative Agent and Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Company, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until an Assignment Agreement effecting the assignment or transfer thereof shall have been delivered to and accepted by Administrative Agent and recorded in the Register as provided in Section 10.6(e). Prior to such recordation, all amounts owed with respect to the applicable Commitment or Loan shall be owed to the Lender listed in the Register as the owner thereof, and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including, without limitation, all or a portion of its Commitment or Loans owing to it or other Obligations (provided, however, that each such assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any Loan and any related Commitments):

(i) to any Person meeting the criteria of clause (a) of the definition of the term of "Eligible Assignee" upon the giving of notice to Company and Administrative Agent in accordance with Section 10.1 of this Agreement; and

(ii) to any Person otherwise constituting an Eligible Assignee with the consent of Administrative Agent and subject to the terms of the Assignment Letter; provided, each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than \$1,000,000 (or such lesser amount as may be agreed to by Company and Administrative Agent).

(d) Mechanics. The assigning Lender and the permitted assignee thereof shall execute and deliver to Administrative Agent (i) an Assignment Agreement, together with such forms or certificates with respect to United States federal income Tax withholding matters pursuant to Section 2.15(e) as if such assignee were a Lender, and (ii) a joinder to the Assignment Letter.

(e) Notice of Assignment. Upon its receipt and acceptance of a duly executed and completed Assignment Agreement, any forms or certificates required by this Agreement in connection therewith, Administrative Agent shall record the information contained in such Assignment Agreement in the Register, shall give written notice thereof to Company promptly (and in any event, within 30 days upon Administrative Agent's receipt and acceptance thereof; provided, such assignment shall be effective upon receipt and acceptance by Administrative Agent notwithstanding whether Administrative Agent delivers notice thereof to Company) and shall maintain a copy of such Assignment Agreement.

(f) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon executing and delivering an Assignment Agreement, as the case may be, represents and warrants as of the Closing Date or as of the applicable Effective Date (as defined in the applicable Assignment Agreement) that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course of its business and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws; (iv) such Lender does not own or control, or own or control any Person owning or controlling, any trade debt or Indebtedness of any Loan Party other than the Obligations or any Capital Stock of any Loan Party; and (v) the representations and warranties set forth in Section 9.5 of this Agreement are true and correct with respect to such Lender as of the Closing Date or such applicable Effective Date.

(g) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the later (i) of the "Effective Date" specified in the applicable Assignment Agreement or (ii) the date such assignment is recorded in the Register: (A) the permitted assignee thereunder shall have the rights and obligations of a "Lender" hereunder to the extent such rights and obligations hereunder have been properly assigned to it pursuant to such Assignment Agreement and shall thereafter be a party hereto and a "Lender" for all purposes hereof; (B) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned thereby pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto; provided, anything contained in any of the Loan Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (C) the Commitments shall be modified to reflect the Commitment of such assignee and any Commitment of such assigning Lender, if any; and (D) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Company shall issue and deliver new Notes, if so requested in writing by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(h) Participations.

(i) Each Lender shall have the right at any time, without the consent of, or notice to the Borrower, to sell one or more participations to any Person (other than Borrower, any of its Subsidiaries or any of its Affiliates) in all or any part of its Commitments, Loans or in any other Obligation. The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of any Term Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Loan Party of any of its rights and obligations under this Agreement, or (iii) release all or substantially all of the Collateral under the Collateral Documents or all or substantially all of the Guarantors from the Guaranty (in each case, except as expressly provided in the Loan Documents) supporting the Loans hereunder in which such participant is participating. Company agrees that each participant shall be entitled to the benefits of Sections 2.14, 2.15 and 2.19(c) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.6(c); provided, a participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of Section 2.15 unless, at the time such participant is claiming such benefits, Company is notified of the participation sold to such participant and such participant agrees, for the benefit of Company, to comply with Section 2.15 as though it were a Lender. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.4 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(ii) In the event that any Lender sells participations in its Commitments, Loans or in any other Obligation hereunder in accordance with and subject to the terms and conditions of the foregoing subclause (i), such Lender shall, acting solely for this purpose as a non-fiduciary agent of Company, maintain a register on which it enters the name of all participants in the Commitments, Loans or Obligations held by it and the principal amount (and stated interest thereon) of the portion of such Commitments, Loans or Obligations which are the subject of the participation (the "Participant Register"). A Commitment, Loan or Obligation hereunder may be participate in whole or in part only by registration of such participation on the Participant Register (and each Note shall expressly so provide). The Participant Register shall be available for inspection by Company at any reasonable time and from time to time upon reasonable prior notice.

(i) Certain Other Assignments. In addition to any other assignment permitted pursuant to this Section 10.6, any Lender or Agent may assign, pledge and/or grant a security interest in, all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender or Agent or any of its Affiliates to any Person providing any loan, letter of credit or other extension of credit or financial arrangement to or for the account of such Lender or Agent or any of its Affiliates and any agent, trustee or representative of such Person (without the consent of, or notice to, or any other action by, any other party hereto), including, without limitation, any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any operating circular issued by such Federal Reserve Bank; provided, no Lender or Agent, as between Company and such Lender or Agent, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge; provided further, in no event shall such Person, agent, trustee or representative of such Person or the applicable Federal Reserve Bank be considered to be a "Lender" or "Agent" or be entitled to require the assigning Lender or Agent to take or omit to take any action hereunder.

Section 10.7 Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 10.8 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Loan Party set forth in Sections 2.14, 2.15, 2.19(c), 10.2, 10.3, 10.4, and 10.10 and the agreements of Lenders set forth in Section 2.13, 9.3(b), and 9.6 shall survive the payment of the Term Loans and the termination hereof.

Section 10.9 No Waiver; Remedies Cumulative. No failure or delay on the part of Administrative Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to Administrative Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Loan Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

Section 10.10 Marshalling; Payments Set Aside. Neither Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Loan Party makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or Administrative Agent or Lenders enforce any security interests or exercise their 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 and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

Section 10.11 Severability. In case any provision in or obligation hereunder or any Note or 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.

Section 10.12 Obligations Several; Independent Nature of Lenders' Rights. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and, subject to Section 9.8, each Lender shall be entitled to protect and enforce its rights arising under this Agreement and the other Loan Documents and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 10.13 Headings. 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.

Section 10.14 APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

Section 10.15 CONSENT TO JURISDICTION.

(a) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY LOAN PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER LOAN DOCUMENT, OR ANY OF THE OBLIGATIONS, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY HERETO IRREVOCABLY (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NON-EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1 IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (IV) AGREES THAT ADMINISTRATIVE AGENT AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IF REQUIRED BY LAW.

(b) EACH PARTY HEREBY AGREES THAT PROCESS MAY BE SERVED ON IT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES PERTAINING TO IT AS SPECIFIED IN SECTION 10.1. ANY AND ALL SERVICE OF PROCESS AND ANY OTHER NOTICE IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE EFFECTIVE AGAINST ANY SUCH PARTY IF GIVEN BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY ANY OTHER MEANS OR MAIL WHICH REQUIRES A SIGNED RECEIPT, POSTAGE PREPAID, MAILED AS PROVIDED ABOVE.

Section 10.16 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 10.17 Confidentiality. Administrative Agent and Lender shall hold all non-public information (whether delivered prior to or after the Closing Date) regarding Company and its Subsidiaries and their businesses identified as such by Company (or in the case of information which has not been identified by Company as confidential, is similar to other information which has been identified as confidential and which is readily identifiable as confidential) and obtained by such Lender from Company or its Subsidiaries pursuant to the requirements hereof in accordance with such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by Company that, in any event, Administrative Agent or Lender may make (i) disclosures of such information to Affiliates of Administrative Agent or Lender and to their agents, advisors, directors and shareholders (and to other persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17), (ii) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by any such Lender of any Loans or any participations therein, (iii) disclosure to any rating agency when required by it, (iv) disclosure to any Lender's financing sources, provided that prior to any disclosure, such financing source is informed of the confidential nature of the information, (v) disclosures of such information to any actual or potential investors and partners of Administrative Agent any Lender or their Affiliates, provided that prior to any disclosure, such investor or partner is informed of the confidential nature of the information, (vi) disclosures in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder and (vii) disclosure required or requested in connection with any public filings, whether pursuant to any securities laws or regulations or rules promulgated therefor (including the Investment Company Act of 1940 or otherwise) or representative thereof or by the National Association of Insurance Commissioners (and any successor thereto) or pursuant to legal or judicial process; provided, unless specifically prohibited by applicable law or court order, Administrative Agent and Lender shall make reasonable efforts to notify Company of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information and shall cooperate with any efforts of Company to seek confidential treatment of such information. Notwithstanding anything to the contrary set forth herein, each party (and each of their respective employees, representatives or other agents) may disclose to any and all persons, without limitations of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions and other tax analyses) that are provided to any such party relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties hereto, their respective Affiliates, and their and their respective Affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax treatment" and "tax structure" mean any facts relevant to the federal income tax treatment of the transactions contemplated by this Agreement but does not include information relating to the identity of any of the parties hereto or any of their respective Affiliates or the parties to a transaction. Notwithstanding the foregoing, on or after the Closing Date, Administrative Agent and any Lender may, at its own expense, issue news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of one or more of the Loan Parties) (collectively, "Trade Announcements"). No Loan Party shall permit any of its Affiliates to, issue any Trade Announcement, press release or other public disclosure using the name, logo or otherwise referring to Administrative Agent, any Lender or any of its Affiliates without the consent of Administrative Agent or such Lender, except to the extent required to do so under applicable Requirements of Law and then, if practicable, only after consulting with Administrative Agent or such Lender. The obligations of confidentiality set forth in this Section 10.17 shall survive until the date that is [***] years following the termination of this Agreement; provided, that notwithstanding the foregoing, such obligations of confidentiality shall survive until the date that is [***] years following the Closing Date in respect of (a) [***] and (b) [***]. Any information that remains subject to the confidentiality obligations of this Section 10.17 that is held by Administrative Agent or any Lender as of the date of the expiration of the applicable periods set forth in the preceding sentence shall thereafter be promptly destroyed by Administrative Agent or such Lender; provided, that any such information that is required to be held by Administrative Agent or such Lender following the expiration of the applicable period set forth in the preceding sentence shall continue to be subject to the confidentiality obligations set forth in this Section 10.17.

Section 10.18 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Company shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Company to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to Company. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

Section 10.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by telecopier or electronic mail shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier or electronic mail also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

Section 10.20 Effectiveness. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Company and Administrative Agent of written notification of such execution and authorization of delivery thereof.

Section 10.21 PATRIOT Act Notice. Each Lender and Agent (for itself and not on behalf of any Lender) hereby notifies the Loan Parties that pursuant to the requirements of the PATRIOT Act, it may be required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of the Loan Parties and other information that will allow such Lender or Agent, as applicable, to identify the Loan Parties in accordance with the PATRIOT Act.

[Remainder of page intentionally left blank]

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

THERAPEUTICSMD, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer and Treasurer

VITAMEDMD, LLC

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer and Treasurer

BOCAGREENMD, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer and Treasurer

VITACARE PRESCRIPTION SERVICES, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer and Assistant Treasurer

TPG SPECIALTY LENDING, INC.,
as Administrative Agent and Lender

By: /s/ Joshua Easterly
Name: Joshua Easterly
Title: CEO

TOP IV TALENTS, LLC,
as Lender

By: /s/ Joshua Peck
Name: Joshua Peck
Title: Vice President

TAO TALENTS, LLC,
as Lender

By: /s/ Joshua Peck
Name: Joshua Peck
Title: Vice President

**APPENDIX A-1
TO FINANCING AGREEMENT**

Initial Term Loan Commitment

<u>Lender</u>	<u>Initial Term Loan Commitment</u>	<u>Pro Rata Share</u>
TPG Specialty Lending, Inc.	\$[***]	[***]%
TOP IV Talents, LLC	\$[***]	[***]%
TAO Talents, LLC	\$[***]	[***]%
Total	\$200,000,000.00	100%

**APPENDIX A-2
TO FINANCING AGREEMENT**

Delayed Draw A-1 Term Loan Commitments

<u>Lender</u>	<u>Delayed Draw A-1 Term Loan Commitment</u>	<u>Pro Rata Share</u>
TPG Specialty Lending, Inc.	\$[***]	[***]%
TOP IV Talents, LLC	\$[***]	[***]%
TAO Talents, LLC	\$[***]	[***]%
Total	\$50,000,000.00	100%

**APPENDIX A-3
TO FINANCING AGREEMENT**

Delayed Draw A-2 Term Loan Commitments

<u>Lender</u>	<u>Delayed Draw A-2 Term Loan Commitment</u>	<u>Pro Rata Share</u>
TPG Specialty Lending, Inc.	\$[***]	[***]%
TOP IV Talents, LLC	\$[***]	[***]%
TAO Talents, LLC	\$[***]	[***]%
Total	\$50,000,000.00	100%

**APPENDIX B
TO FINANCING AGREEMENT**

Notice Addresses

THERAPEUTICSMD, INC.

6800 Broken Sound Parkway NW
Third Floor
Boca Raton, FL 33487
Attention: Daniel Cartwright, Chief Financial Officer
Email: [***]

VITAMEDMD, LLC

BOCAGREENMD, INC.

VITACARE PRESCRIPTION SERVICES, INC.

6800 Broken Sound Parkway NW
Third Floor
Boca Raton, FL 33487
Attention: Daniel Cartwright, Chief Financial Officer
Email: [***]

in each case, with a copy to:

DLA Piper LLP
200 South Biscayne Boulevard
Suite 2500
Miami, FL 33131
Attention: Joshua M. Samek
Email: [***]

APPENDIX B

TPG SPECIALTY LENDING, INC., as
Administrative Agent and a Lender

Administrative Agent's Principal Office:
888 7th Avenue, 35th Floor
New York, NY 10106
Attention: Parker Hooper
Facsimile: [***]
Email: [***]

with a copy to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Attention: Frederic L. Ragucci
Email: [***]

TOP IV TALENTS, LLC and
TAO TALENTS, LLC
as Lenders

[***]
[***]
Attention: TSSPOps
Facsimile: [***]

with a copy to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Attention: Frederic L. Ragucci
Email: [***]

Schedule 5.13
Post-Closing Matters

1. [***]
2. [***]
3. [***]
4. [***]

5. Not later than the date that is 5 Business Days after the Closing Date, the Loan Parties shall have (a) delivered to Administrative Agent evidence that VitaMedMD LLC has irrevocably opted into Article 8 of the UCC and caused the membership interests therein to be deemed to be securities for purposes of Article 8 of the UCC, (b) caused such membership interests to be certificated and (c) delivered such certificated securities (along with appropriate instruments of transfer) to Administrative Agent.

APPENDIX B

Schedule 4.1

ORGANIZATION

<u>Borrower or Guarantor</u>	<u>State of Organization</u>
TherapeuticsMD, Inc.	Nevada
VitaMedMD LLC	Delaware
BocaGreenMD, Inc.	Nevada
VitaCare Prescription Services, Inc.	Florida

Schedule 4.2

CAPITAL STOCK AND OWNERSHIP

1. Existing Options, Warrants, Calls, Rights, Commitments or Other Agreements Issued by Borrower:¹
- a. 2009 Long Term Incentive Compensation Plan, as amended
 - i. Shares Outstanding: 15,128,745
 - ii. Shares Available: 44,300
 - b. Amended and Restated 2012 Stock Incentive Plan
 - i. Shares Outstanding: 7,358,974
 - ii. Shares Available: 2,392,833
 - c. Warrants: 1,832,571

2. Organizational and Capital Structure:

<u>Borrower or Guarantor</u>	<u>Capitalization</u>
TherapeuticsMD, Inc.	Publicly Held
VitaMedMD LLC	100% – TherapeuticsMD, Inc.
BocaGreenMD, Inc.	100% – TherapeuticsMD, Inc.
VitaCare Prescription Services, Inc.	100% – TherapeuticsMD, Inc.

¹ As of March 31, 2019.

Schedule 4.12

PROPERTIES; TITLE

<u>Borrower or Guarantor</u>	<u>Location</u>	<u>Leasehold or Fee</u>
TherapeuticsMD, Inc.	6800 Broken Sound Parkway NW, Suite 100 Boca Raton, FL 33487	Leasehold
TherapeuticsMD, Inc.	6800 Broken Sound Parkway NW, Suite 125 Boca Raton, FL 33487	Leasehold
TherapeuticsMD, Inc.	6800 Broken Sound Parkway NW, Suite 150 Boca Raton, FL 33487	Leasehold
TherapeuticsMD, Inc. (Lessor); VitaMedMD LLC (books and records); BocaGreenMD, Inc. (books and records)	6800 Broken Sound Parkway NW, Suite 300 Boca Raton, FL 33487	Leasehold
TherapeuticsMD, Inc. (Lessor); VitaCare Prescription Services, Inc. (books and records)	951 Yamato Road Boca Raton, FL 33487	Leasehold

Schedule 4.15

MATERIAL CONTRACTS

1. [***]
2. [***]
3. [***]
4. [***]

INTELLECTUAL PROPERTY²³

(b)

PRODUCT PATENTS**Issued Patents:**

	Patent Number	Title	Filing Date (mm/dd/yy)	Issue Date (mm/dd/yy)	Country
1.	8,577,716	System and Method of Ongoing Evaluation Reporting and Analysis	09/17/09	11/05/13	US
2.	8,633,178	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	01/21/14	US
3.	8,846,648	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	09/30/14	US
4.	8,846,649	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	09/30/14	US
5.	8,933,059	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	01/13/15	US
6.	8,987,237	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	03/24/15	US
7.	8,987,238	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	03/24/15	US
8.	8,993,548	Natural Combination Hormone Replacement Formulations and Therapies	09/03/14	03/31/15	US
9.	8,993,549	Natural Combination Hormone Replacement Formulations and Therapies	09/03/14	03/31/15	US
10.	9,006,222	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	04/14/15	US
11.	9,012,434	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	04/21/15	US
12.	9,114,145	Natural Combination Hormone Replacement Formulations and Therapies	09/03/14	08/25/15	US
13.	9,114,146	Natural Combination Hormone Replacement Formulations and Therapies	09/03/14	08/25/15	US

² Borrower is the holder of all intellectual property unless otherwise indicated.

³ Key: pink - Imvexxy, purple - Bijuva, blue – Annovera.

	Patent Number	Title	Filing Date (mm/dd/yy)	Issue Date (mm/dd/yy)	Country
14.	9,180,091	Soluble Estradiol Capsule for Vaginal Insertion	12/20/13	10/10/15	US
15.	9,248,136	Transdermal Hormone Replacement Therapies	12/12/13	02/02/16	US
16.	9,289,382	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	02/17/15	03/22/16	US
17.	9,296,780*	Process for Alkynylating 16-Substituted-17-Keto Steroids	12/19/12	03/29/16	US
18.	9,301,920	Natural Combination Hormone Replacement Formulations and Therapies	03/15/13	04/05/16	US
19.	D801,518	Pharmaceutical Capsule	06/22/15	10/31/17	US
20.	9,931,349	Steroid Hormone Pharmaceutical Composition	03/30/17	04/03/18	US
21.	10,052,386	Progesterone Formulations	12/11/13	08/21/18	US
22.	10,098,894	Transdermal Cream	07/29/15	10/16/18	US
23.	10,206,932	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	02/19/19	US
24.	10,258,630	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	02/09/18	04/17/19	US
25.	89459	Pharmaceutical Capsule	12/22/15	02/17/16	AR
26.	366507	Pharmaceutical Capsule	12/21/15	01/12/16	AU
27.	2012340589	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	08/25/16	AU
28.	2013211876	Transdermal Hormone Replacement Therapies	01/25/13	05/25/17	AU
29.	2013277236	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	08/03/17	AU
30.	2013277234	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	08/10/17	AU
31.	MX 358440 B	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	08/03/18	MX
32.	166,044	Pharmaceutical Capsule	12/17/15	08/16/16	CA
33.	002916247-0001	Pharmaceutical Capsule	12/18/15	08/10/16	EP

* Licensed patent or patent application.

	Patent Number	Title	Filing Date (mm/dd/yy)	Issue Date (mm/dd/yy)	Country
34.	302015005859-5	Pharmaceutical Capsule	12/21/15	01/30/18	BR
35.	6285866	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	02/09/18	JP
36.	6298460	Progesterone Formulations	06/18/13	03/02/18	JP
37.	MX 50237 B	Pharmaceutical Capsule	12/18/15	07/19/17	MX
38.	30-2015-0065043	Pharmaceutical Capsule	12/18/15	03/06/17	KR
39.	101179	Pharmaceutical Capsule	12/21/15	01/10/17	RU
40.	A2015/01935	Pharmaceutical Capsule	12/21/15	05/16/17	ZA
41.	2015/00211	Natural Combination Hormone Replacement Therapies	06/18/13	07/27/16	ZA
42.	2015/00212	Progesterone Formulations	06/18/13	04/26/17	ZA
43.	6334519	Natural Combination Hormone Replacement Therapies	06/18/13	05/11/18	JP
44.	6342334	Transdermal Hormone Replacement Therapies	01/25/13	05/25/18	JP
45.	6342389	Transdermal Hormone Replacement Therapies	06/18/13	05/25/18	JP
46.	6397402	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	09/07/18	JP
47.	2013277235	Transdermal Hormone Replacement Therapies	06/18/13	08/02/18	AU
48.	2013277233	Progesterone Formulations	06/18/13	09/13/18	AU
49.	1624393	Pharmaceutical Capsule	12/21/15	01/18/19	JP
50.	2861234B	Progesterone Formulations	06/18/13	03/27/19	EP
51.	2806742B	Transdermal Hormone Replacement Therapies	01/25/13	03/27/19	EP

Pending Patent Applications:

	Application Number	Title	Application Date (mm/dd/yy)	Country
1.	16/104,101	Natural Combination Hormone Replacement Formulations and Therapies	08/16/18	US

	Application Number	Title	Application Date (mm/dd/yy)	Country
2.	BR1120140124442	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	BR
3.	2,856,520	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	CA
4.	12850845.4	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	EP
5.	2017-173842	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	JP
6.	MX/a/2014/006256	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	MX
7.	15/090,493	Natural Combination Hormone Replacement Formulations and Therapies	04/04/16	US
8.	20140101244	Natural Combination Hormone Replacement Formulations and Therapies	03/17/14	AR
9.	2017206262	Natural Combination Hormone Replacement Formulations and Therapies	07/20/17	AU
10.	BR1120140319103	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	BR
11.	2,876,977	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	CA
12.	13806855.6	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	EP
13.	236358	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	IL
14.	2017-176379	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	JP
15.	10-2015-7001189	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	KR
16.	MX/a/2014/015898	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	MX
17.	2015100533	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	RU
18.	15/999,040	Natural Combination Hormone Replacement Formulations and Therapies	08/16/18	US
19.	14/512,046	Natural Combination Hormone Replacement Formulations and Therapies	10/10/14	US

	Application Number	Title	Application Date (mm/dd/yy)	Country
20.	20150101608	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	AR
21.	2015264003	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	AU
22.	BR112016 027359 1	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	BR
23.	2,947,767	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	CA
24.	15727528.0	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	EP
25.	248985	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	IL
26.	2016-565647	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	JP
27.	10-2016-7032773	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	KR
28.	MX/a/2016/014281	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	MX
29.	2016143081	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	RU
30.	2016/07541	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	ZA
31.	15/832,757	Natural Combination Hormone Replacement Formulations and Therapies	12/05/17	US
32.	PCT/US2017/064788	Natural Combination Hormone Replacement Formulations and Therapies	12/05/17	PCT
33.	15/832,750	Natural Combination Hormone Replacement Formulations and Therapies	12/05/17	US
34.	16/244,020	Natural Combination Hormone Replacement Formulations and Therapies	01/09/19	US
35.	16/355,532	Natural Combination Hormone Replacement Formulations and Therapies	03/15/19	US
36.	62/822,609	Natural Combination Hormone Replacement Formulations and Therapies	03/22/19	US
37.	14/649,818	Soluble Estradiol Capsule for Vaginal Insertion	12/17/15	US
38.	2017208300	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	AU

	Application Number	Title	Application Date (mm/dd/yy)	Country
39.	BR1120140319146	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	BR
40.	2,876,968	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	CA
41.	13807188.1	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	EP
42.	236359	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	IL
43.	10-2015-7001193	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	KR
44.	MX/A/2018/009466	Soluble Estradiol Capsule for Vaginal Insertion	08/02/18	MX
45.	2015100531	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	RU
46.	2014/09278	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	ZA
47.	2018-162966	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	JP
48.	14/521,230	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	US
49.	20140103975	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	AR
50.	2014349132	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	AU
51.	BR1120160090080	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	BR
52.	2,926,342	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	CA
53.	14862905.8	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	EP
54.	245139	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	IL
55.	2016-516086	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	JP
56.	10-2016-7010901	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	KR
57.	MX/A/2016/005092	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	MX
58.	2016118396	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	RU
59.	2016/01933	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	ZA

	Application Number	Title	Application Date (mm/dd/yy)	Country
60.	14/521,002	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	US
61.	15/372,385	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	US
62.	PCT/US2016/065466	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	PCT
63.	20160103768	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	AR
64.	2016366200	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	AU
65.	BR1120180114839	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	BR
66.	3,007,636	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	CA
67.	16873806.0	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	EP
68.	19122548.1	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	04/17/19	HK
69.	259884	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	IL
70.	2018-529574	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	JP
71.	10-2018-7019331	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	KR
72.	MX/A/2018/006882	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	MX
73.	743229	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	NZ
74.	2018121094	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	RU
75.	2018/03804	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	ZA
76.	62/680,715	Vaginal Inserted Estradiol Pharmaceutical Formulations and Methods	06/06/18	US

	Application Number	Title	Application Date (mm/dd/yy)	Country
77.	15/893,542**	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	02/09/18	US
78.	15/893,550**	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	02/09/18	US
79.	15/975,733	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	05/09/18	US
80.	15/975,723	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	05/09/18	US
81.	15/781,840	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	06/06/18	US
82.	16/004,338	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	06/08/18	US
83.	PCT/US2018/36790	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	06/08/18	PCT
84.	16/006,721	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	06/12/18	US
85.	16/037,452	Progesterone Formulations	07/17/18	US
86.	2018222947	Progesterone Formulations	06/18/13	AU
87.	BR1120140318379	Progesterone Formulations	06/18/13	BR
88.	2,876,964	Progesterone Formulations	06/18/13	CA
89.	MX/a/2014/015900	Progesterone Formulations	06/18/13	MX
90.	MX/a/2018/009467	Progesterone Formulations	08/02/18	MX
91.	15/454,898	Progesterone Formulations Having a Desirable PK Profile	03/09/17	US
92.	20150100920	Progesterone Compositions	03/27/15	AR
93.	2015237243	Progesterone Formulations	03/27/15	AU
94.	BR1120160225708	Progesterone Formulations	03/27/15	BR
95.	2,942,568	Progesterone Formulations	03/27/15	CA
96.	15768772.4	Progesterone Formulations	03/27/15	EP
97.	247828	Progesterone Formulations	03/27/15	IL

** Application contains allowable subject matter and a patent will issue in due course.

	Application Number	Title	Application Date (mm/dd/yy)	Country
98.	2016-557059	Progesterone Formulations	03/24/15	JP
99.	10-2016-7029519	Progesterone Formulations	03/27/15	KR
100.	MX/A/2016/011706	Progesterone Formulations	03/27/15	MX
101.	2016136666	Progesterone Formulations	03/27/15	RU
102.	2016/06309	Progesterone Formulations	03/27/15	ZA
103.	16/273,955	Progesterone Formulations Having a Desirable PK Profile	02/12/19	US
104.	16/125,201	Transdermal Cream	09/07/18	US
105.	P20150102431	Transdermal Cream	07/29/15	AR
106.	2015296609	Transdermal Cream	07/29/15	AU
107.	BR112016 029338 0	Transdermal Cream	07/29/15	BR
108.	2,951,284	Transdermal Cream	07/29/15	CA
109.	15827543.8	Transdermal Cream	07/29/15	EP
110.	248984	Transdermal Cream	07/29/15	IL
111.	2016-571728	Transdermal Cream	07/29/15	JP
112.	10-2017-7002451	Transdermal Cream	07/29/15	KR
113.	MX/a/2016/013693	Transdermal Cream	07/29/15	MX
114.	2016141135	Transdermal Cream	07/29/15	RU
115.	2016/07317	Transdermal Cream	07/29/15	ZA
116.	15/420,019	Transdermal Cream	01/30/17	US
117.	[***]	[***]	[***]	[***]
118.	[***]	[***]	[***]	[***]
119.	[***]	[***]	[***]	[***]
120.	15/217,301	Formulations for Solubilizing Hormones	07/22/16	US
121.	BR112014 018439 9	Transdermal Hormone Replacement Therapies	01/25/13	BR
122.	2,861,346	Transdermal Hormone Replacement Therapies	01/25/13	CA
123.	MX/A/2014/009093	Transdermal Hormone Replacement Therapies	01/25/13	MX

	Application Number	Title	Application Date (mm/dd/yy)	Country
124.	13/843,362	Transdermal Hormone Replacement Therapies	03/15/13	US
125.	1120140318247	Transdermal Hormone Replacement Therapies	06/18/13	BR
126.	2,876,947	Transdermal Hormone Replacement Therapies	06/18/13	CA
127.	13807463.8	Transdermal Hormone Replacement Therapies	06/18/13	EP
128.	MX/A/2014/015897	Transdermal Hormone Replacement Therapies	06/18/13	MX
129.	2015/00210	Transdermal Hormone Replacement Therapies	06/18/13	ZA
130.	15/475,052	Steroid Hormone Pharmaceutical Composition	03/30/17	US
131.	PCT/US2017/025211	Steroid Hormone Pharmaceutical Composition	03/30/17	PCT
132.	20170100832	Steroid Hormone Pharmaceutical Composition	04/03/17	AR
133.	2017239679	Steroid Hormone Pharmaceutical Composition	03/30/17	AU
134.	BR1120180698776	Steroid Hormone Pharmaceutical Composition	03/30/17	BR
135.	3,019,375	Steroid Hormone Pharmaceutical Composition	03/30/17	CA
136.	17776724.1	Steroid Hormone Pharmaceutical Composition	03/30/17	EP
137.	261924	Steroid Hormone Pharmaceutical Composition	03/30/17	IL
138.	2018-550593	Steroid Hormone Pharmaceutical Composition	03/30/17	JP
139.	10-2018-7031666	Steroid Hormone Pharmaceutical Composition	03/30/17	KR
140.	MX/A/2018/011706	Steroid Hormone Pharmaceutical Composition	03/30/17	MX
141.	746686	Steroid Hormone Pharmaceutical Composition	03/30/17	NZ
142.	2018133921	Steroid Hormone Pharmaceutical Composition	03/30/17	RU
143.	2018/06413	Steroid Hormone Pharmaceutical Composition	03/30/17	ZA
144.	15/475,068	Steroid Hormone Pharmaceutical Composition in Medium Chain Oils	03/30/17	US
145.	20170100831	Steroid Hormone Compositions in Medium Chain Oils	04/03/17	AR
146.	PCT/US2017/025220	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	PCT
147.	15/473,742	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	US

	Application Number	Title	Application Date (mm/dd/yy)	Country
148.	16/359,839	Steroid Hormone Compositions in Medium Chain Oils	03/20/19	US
149.	PCT/US2017/024955	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	PCT
150.	15/901,467	Steroid Hormone Compositions in Medium Chain Oils	02/21/18	US
151.	20170100830	Steroid Hormone Compositions in Medium Chain Oils	04/03/17	AR
152.	2017239645	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	AU
153.	BR1120180701998	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	BR
154.	3,020,153	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	CA
155.	17776645.8	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	EP
156.	261930	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	IL
157.	2018-550564	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	JP
158.	10-2018-7031878	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	KR
159.	MX/A/2018/011705	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	MX
160.	746682	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	NZ
161.	2018133932	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	RU
162.	2018/06414	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	ZA
163.	PCT/US2017/024994	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	PCT
164.	20170100829	Steroid Hormone Compositions in Medium Chain Oils	04/03/17	AR
165.	[***]	[***]	[***]	[***]
166.	[***]	[***]	[***]	[***]

	Application Number	Title	Application Date (mm/dd/yy)	Country
167.	[***]	[***]	[***]	[***]
168.	[***]	[***]	[***]	[***]
169.	[***]*	[***]	[***]	[***]

(c)(i)

Borrower has licensed certain Product Patents and is obligated to pay royalties and other payments pursuant to that certain License Agreement, dated July 30, 2018, between Borrower and The Population Council, Inc.

(c)(ii)

Borrower has licensed certain Product Patents pursuant to that certain License and Supply Agreement, dated July 30, 2018, as amended, between Borrower and Knight Pharmaceuticals, Inc.

(c)(iii)

Other than the contracts in (c)(i) and (c)(ii) listed above, none.

Schedule 4.24

INSURANCE

1. The Company is covered by general liability and certain other insurance in the amounts and coverage limits as set forth in the certificate attached hereto as Annex A.
2. The Company is covered by workmen's compensation insurance in the amounts and coverage limits as set forth in the certificate attached hereto as Annex B.

Schedule 4.24

Annex A

[***]

Schedule 4.24

Annex B

[***]

Schedule 4.27

BANK ACCOUNTS AND SECURITIES ACCOUNTS

<u>Company</u>	<u>Bank or Broker</u>	<u>Address</u>	<u>Account No.</u>	<u>Account Type</u>
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***
***	***	***	***	***

REGULATORY COMPLIANCE

None.

Schedule 4.34

GOVERNMENT CONTRACTS

None.

Schedule 6.1

PERMITTED INDEBTEDNESS

None.

Schedule 6.2

PERMITTED LIENS

None.

Schedule 6.7

PERMITTED INVESTMENTS

None.

Schedule 6.12

TRANSACTIONS WITH SHAREHOLDERS AND AFFILIATES

None.

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [***] INDICATES THAT INFORMATION HAS BEEN REDACTED.

Execution Version

PLEDGE AND SECURITY AGREEMENT

dated as of April 24, 2019

among

EACH OF THE GRANTORS PARTY HERETO

and

TPG SPECIALTY LENDING, INC.,

as Administrative Agent

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EXHIBIT A — PLEDGE SUPPLEMENT
EXHIBIT B — TRADEMARK SECURITY AGREEMENT
EXHIBIT C — COPYRIGHT SECURITY AGREEMENT
EXHIBIT D — PATENT SECURITY AGREEMENT

This PLEDGE AND SECURITY AGREEMENT, dated as of April 24, 2019 (as amended, restated, supplemented or otherwise modified from time to time in accordance with and subject to the terms and conditions hereof, this “**Agreement**”), among **EACH OF THE UNDERSIGNED**, whether as an original signatory hereto or as an Additional Grantor (as herein defined) (each, a “**Grantor**”), and TPG Specialty Lending, Inc., as administrative agent for the Secured Parties (as herein defined) (in such capacity as administrative agent, the “**Administrative Agent**”).

RECITALS:

WHEREAS, reference is made to that certain Financing Agreement, dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Financing Agreement**”), by and among THERAPEUTICSMD, INC., a Nevada corporation, as borrower (“**Company**” or “**Borrower**”), and certain Subsidiaries of the Borrower, as Guarantors, the Lenders from time to time party thereto and the Administrative Agent;

WHEREAS, in consideration of the extensions of credit and other accommodations of Lenders as set forth in the Financing Agreement, each Grantor has agreed to secure such Grantor’s obligations under the Loan Documents as set forth herein;

WHEREAS, each Grantor (other than Borrower) is a direct or indirect domestic Subsidiary of Borrower;

WHEREAS, each Grantor will directly or indirectly obtain benefits from the Financing Agreement and, accordingly, desires to execute this Agreement in order to induce the Lenders to extend credit pursuant to the Financing Agreement and other Loan Documents; and

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, each Grantor and the Administrative Agent agree as follows:

SECTION 1. DEFINITIONS; GRANT OF SECURITY.

1.1 General Definitions. In this Agreement, the following terms shall have the following meanings:

“**Account Debtor**” shall mean each Person (or any successor or assign of such Person) who is obligated with respect to a Receivable or any Supporting Obligation related thereto.

“**Accounts**” shall mean all “accounts” as defined in Article 9 of the UCC.

“**Additional Grantors**” shall have the meaning assigned in Section 5.3.

“**Agreement**” shall have the meaning set forth in the preamble.

“**Assigned Agreements**” shall mean all agreements and contracts to which such Grantor is a party as of the date hereof, or to which such Grantor becomes a party after the date hereof, including, without limitation, each Material Contract, as each such agreement may be amended, supplemented or otherwise modified from time to time.

“**Borrower**” has the meaning set forth in the recitals.

“**Cash Proceeds**” shall have the meaning assigned in Section 7.7.

“**Chattel Paper**” shall mean all “chattel paper” as defined in Article 9 of the UCC, including, without limitation, “electronic chattel paper” or “tangible chattel paper”, as each term is defined in Article 9 of the UCC.

“**Collateral**” shall have the meaning assigned in Section 2.1.

“**Collateral Records**” shall mean books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

“**Collateral Support**” shall mean all personal property assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

“**Commercial Tort Claims**” shall mean all “commercial tort claims” as defined in Article 9 of the UCC, including, without limitation, all commercial tort claims listed on Schedule 4.8 (as such schedule may be amended or supplemented from time to time).

“**Commodities Accounts**” (i) shall mean all “commodity accounts” as defined in Article 9 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4 under the heading “Commodities Accounts” (as such schedule may be amended or supplemented from time to time).

“**Copyright Licenses**” shall mean any and all agreements providing for the granting of any right in or to Copyrights (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(B) (as such schedule may be amended or supplemented from time to time).

“**Copyrights**” shall mean all United States, and foreign copyrights (including Community designs), including but not limited to copyrights in software and databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications referred to in Schedule 4.7(A) (as such schedule may be amended or supplemented from time to time), (ii) all extensions and renewals thereof, (iii) all rights corresponding thereto throughout the world, (iv) all rights to sue for past, present and future infringements thereof, and (v) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages and proceeds of suit.

“**Documents**” shall mean all “documents” as defined in Article 9 of the UCC.

“**Equipment**” shall mean: (i) all “equipment” as defined in Article 9 of the UCC, (ii) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances, fixtures and tools (in each case, regardless of whether characterized as equipment under the UCC) and (iii) all accessions or additions thereto, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing, including any fixtures.

“**Financing Agreement**” shall have the meaning set forth in the recitals.

“**General Intangibles**” (i) shall mean all “general intangibles” as defined in Article 9 of the UCC, including “payment intangibles” also as defined in Article 9 of the UCC and (ii) shall include, without limitation, all interest rate or currency protection or hedging arrangements, all tax refunds, licenses, permits, concessions and authorizations, all Assigned Agreements and all Intellectual Property (in each case, regardless of whether characterized as general intangibles under the UCC).

“**Goods**” (i) shall mean all “goods” as defined in Article 9 of the UCC and (ii) shall include, without limitation, all Inventory and Equipment (in each case, regardless of whether characterized as goods under the UCC).

“**Grantors**” shall have the meaning set forth in the preamble.

“**Indemnitee**” shall mean the Administrative Agent, and its Affiliates’ officers, partners, directors, trustees, employees, agents.

“**Instruments**” shall mean all “instruments” as defined in Article 9 of the UCC.

“**Insurance**” shall mean all insurance policies covering any or all of the Collateral (regardless of whether the Administrative Agent is the loss payee thereof).

“**Intellectual Property**” shall mean, collectively, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets, and the Trade Secret Licenses.

“**Inventory**” shall mean (i) all “inventory” as defined in Article 9 of the UCC and (ii) all goods held for sale or lease or to be furnished under contracts of service or so leased or furnished, all raw materials, work in process, finished goods, and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of such inventory or otherwise used or consumed in any Grantor’s business; all goods in which any Grantor has an interest in mass or a joint or other interest or right of any kind; and all goods which are returned to or repossessed by any Grantor, all computer programs embedded in any goods and all accessions thereto and products thereof (in each case, regardless of whether characterized as inventory under the UCC).

“**Investment Accounts**” shall mean the Administrative Agent’s Account, Securities Accounts, Commodities Accounts and Deposit Accounts.

“**Investment Related Property**” shall mean: (i) all “investment property” (as such term is defined in Article 9 of the UCC) and (ii) all of the following (regardless of whether classified as investment property under the UCC): all Pledged Equity Interests, Pledged Debt, the Investment Accounts and certificates of deposit.

“**Letter of Credit Right**” shall mean “letter-of-credit right” as defined in Article 9 of the UCC.

“**Money**” shall mean “money” as defined in the UCC.

“Non-Assignable Contract” shall mean any agreement, contract or license to which any Grantor is a party that by its terms purports to restrict or prevent the assignment or granting of a security interest therein (either by its terms or by any federal or state statutory prohibition or otherwise irrespective of whether such prohibition or restriction is enforceable under Section 9-406 through 409 of the UCC).

“Patent Licenses” shall mean all agreements providing for the granting of any right in or to Patents (whether such Grantor is licensee or licensor thereunder).

“Patents” shall mean all United States and foreign patents and certificates of invention and applications for any of the foregoing, including, but not limited to: (i) each patent and patent application referred to in Schedule 4.7(C) hereto (as such schedule may be amended or supplemented from time to time) and including but not limited to the Anovera Patents, Bijuva Patents and Imvexxy Patents, (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof, (iii) all rights corresponding thereto throughout the world, (iv) all inventions and improvements described therein, (v) all rights to sue for past, present and future infringements thereof, (vi) all licenses, claims, damages, and proceeds of suit arising therefrom, and (vii) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

“Pledge Supplement” shall mean any supplement to this agreement in substantially the form of Exhibit A.

“Pledged Debt” shall mean all Indebtedness owed to such Grantor, including, without limitation, all Indebtedness described on Schedule 4.4(A) under the heading “Pledged Debt” (as such schedule may be amended or supplemented from time to time), issued by the obligors named therein, the instruments evidencing such Indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness.

“Pledged Equity Interests” shall mean all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests.

“Pledged LLC Interests” shall mean all interests in any limited liability company including, without limitation, all limited liability company interests listed on Schedule 4.4(A) under the heading “Pledged LLC Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such limited liability company interests and any interest of such Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests.

“Pledged Partnership Interests” shall mean all interests in any general partnership, limited partnership, limited liability partnership or other partnership including, without limitation, all partnership interests listed on Schedule 4.4(A) under the heading “Pledged Partnership Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such partnership interests and any interest of such Grantor on the books and records of such partnership or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests.

“Pledged Stock” shall mean all shares of capital stock owned by such Grantor, including, without limitation, all shares of capital stock described on Schedule 4.4(A) under the heading “Pledged Stock” (as such schedule may be amended or supplemented from time to time), and the certificates, if any, representing such shares and any interest of such Grantor in the entries on the books of the issuer of such shares or on the books of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

“Pledged Trust Interests” shall mean all interests in a Delaware business trust or other trust including, without limitation, all trust interests listed on Schedule 4.4(A) under the heading “Pledged Trust Interests” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such trust interests and any interest of such Grantor on the books and records of such trust or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such trust interests.

“Proceeds” shall mean: (i) all “proceeds” as defined in Article 9 of the UCC, (ii) payments or distributions made with respect to any Investment Related Property and (iii) whatever is receivable or received when Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

“Receivables” shall mean all rights to payment, whether or not earned by performance, with respect to (i) goods or other property sold, leased, licensed, assigned or otherwise disposed of and (ii) services rendered or to be rendered, in each case, including, without limitation, all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of Grantor’s rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

“Receivables Records” shall mean (i) all copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of Grantor or any computer bureau or agent from time to time acting for Grantor or otherwise, (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers, (iv) all credit information, reports and memoranda relating thereto and (v) all other written or otherwise documented forms of information related in any way to the foregoing or any Receivable.

“Record” shall have the meaning specified in Article 9 of the UCC.

“Secured Obligations” shall have the meaning assigned in Section 3.1.

“**Secured Parties**” shall mean the Administrative Agent and the Lenders and shall include, without limitation, any former Administrative Agent or Lender to the extent that any Obligations owing to such Person were incurred while such Person was an Administrative Agent or Lender and such Obligations have not been paid or satisfied in full.

“**Securities Accounts**” (i) shall mean all “securities accounts” as defined in Article 8 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4(A) under the heading “Securities Accounts” (as such schedule may be amended or supplemented from time to time).

“**Supporting Obligation**” shall mean all “supporting obligations” as defined in Article 9 of the UCC.

“**Trademark Licenses**” shall mean any and all agreements providing for the granting of any right in or to Trademarks (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(F) (as such schedule may be amended or supplemented from time to time).

“**Trademarks**” shall mean all United States, and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, all registrations and applications for any of the foregoing including, but not limited to: (i) the registrations and applications referred to in Schedule 4.7(E) (as such schedule may be amended or supplemented from time to time), (ii) all extensions or renewals of any of the foregoing, (iii) all of the goodwill of the business connected with the use of and symbolized by the foregoing, (iv) the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill, and (v) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

“**Trade Secret Licenses**” shall mean any and all agreements providing for the granting of any right in or to Trade Secrets (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(G) (as such schedule may be amended or supplemented from time to time).

“**Trade Secrets**” shall mean all trade secrets and all other confidential or proprietary information and know-how protectable by applicable law, whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret, including but not limited to: (i) the right to sue for past, present and future misappropriation or other violation of any Trade Secret, and (ii) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

“**UCC**” shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

“**United States**” shall mean the United States of America.

1.2 Definitions; Interpretation. All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Financing Agreement or, if not defined therein, in the UCC. References to “Sections,” “Exhibits” and “Schedules” shall be to Sections, Exhibits and Schedules, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. If any conflict or inconsistency exists between this Agreement and the Financing Agreement, the Financing Agreement shall govern. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

SECTION 2. GRANT OF SECURITY.

2.1 Grant of Security. Subject to Section 2.2, each Grantor hereby grants to the Administrative Agent a security interest in and continuing Lien on all of such Grantor’s right, title and interest in, to and under all personal property of such Grantor including, but not limited to the following, in each case whether now owned or existing or hereafter acquired or arising and wherever located (all of which being hereinafter collectively referred to as the “**Collateral**” and excluding, for the avoidance of doubt, any Excluded Assets (as defined below)):

- (a) Accounts;
- (b) Chattel Paper;
- (c) Documents;
- (d) General Intangibles;
- (e) Goods;
- (f) Instruments;
- (g) Insurance;
- (h) Intellectual Property;
- (i) Investment Related Property;
- (j) Letter of Credit Rights;
- (k) Money (including, for the avoidance of doubt, Money in the Administrative Agent’s Account);
- (l) Receivables and Receivable Records;

(m) Commercial Tort Claims described on Schedule 4.8 and as supplemented by any written notification given by a Grantor to Administrative Agent pursuant to Section 4.8;

(n) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing;

(o) to the extent not covered by the preceding clauses of this Section 2.1, all other tangible and intangible personal property of such Grantor (whether or not subject to the UCC), including, without limitation, all bank and other accounts and all cash and all investments therein, all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of such Grantor described in the preceding clauses of this Section 2.1 hereof (including, without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by such Grantor in respect of any of the items listed above), and all books, correspondence, files and other Records, including, without limitation, all tapes, disks, cards, software, data and computer programs in the possession or under the control of such Grantor or any other Person from time to time acting for such Grantor that at any time evidence or contain information relating to any of the property described in the preceding clauses of this Section 2 hereof or are otherwise necessary or helpful in the collection or realization thereof; and

(p) to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

2.2 Certain Limited Exclusions. Notwithstanding anything herein or in any other Loan Document to the contrary, in no event shall the Collateral include or the security interest granted under Section 2.1 hereof attach to or shall any perfection requirements be required with respect to (a) any of such Grantor's right, title or interest in any license, contract, lease or agreement to which such Grantor is a party or any of its right, title or interest thereunder to the extent, but only to the extent, that such a grant would, under the express terms of such license, contract, lease or agreement result in a breach of the terms of, constitute a default under or create a right of termination in favor of any party thereto (other than any Grantor) such license, contract, lease or agreement (other than to the extent that any such term (A) has been waived or (B) would be rendered ineffective pursuant to Sections 9-406, 9-408, 9-409 of the UCC or other applicable provisions of the UCC of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); provided, that (x) immediately upon the ineffectiveness, lapse, termination or waiver of any such provision, the Collateral shall include, and such Grantor shall be deemed to have granted a security interest in, all such right, title and interest as if such provision had never been in effect and (y) the foregoing exclusion shall in no way be construed so as to limit, impair or otherwise affect the Administrative Agent's unconditional continuing security interest in and liens upon any rights or interests of a Grantor in or to (1) monies due or to become due under or in connection with any such license, contract, lease or agreement, or (2) any proceeds from the sale, license, lease, or other dispositions of any such license, contract, lease or agreement); (b) any intent-to-use United States trademark applications for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051(c) or 15 U.S.C. §1051(d), respectively, or if filed, has not been deemed in conformance with 15 U.S.C. §1051(a) or examined and accepted, respectively, by the United States Patent and Trademark Office, provided that upon such filing and acceptance, such intent-to-use applications shall be included in the definition of Collateral; (c) any Excluded Account; (d) those assets as to which the Administrative Agent reasonably determines that the costs of obtaining such security interests in such assets or perfection thereof are excessive in relation to the benefit to the Administrative Agent and the Lenders of the security to be afforded thereby; (e) motor vehicles, airplanes and other assets subject to certificates of title to the extent (i) a lien therein cannot be perfected by the filing of UCC financing statements and (ii) the aggregate fair market value of all such assets is less than \$250,000; (f) letter of credit rights less than \$250,000 in the aggregate, to the extent a lien therein cannot be perfected by the filing of UCC financing statements, and Commercial Tort Claims less than \$250,000 in the aggregate; (g) any governmental licenses or state or local franchises, charters and authorizations to the extent a security interest is prohibited or restricted thereby after giving effect to the applicable anti-assignment provisions of applicable law (including the UCC), other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under applicable law notwithstanding such prohibition, and (h) assets which a pledge thereof or a security interest therein is prohibited by applicable law (including the UCC), other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under applicable law notwithstanding such prohibition (the property referred to in this Section 2.2 being collectively referred to as "**Excluded Assets**").

SECTION 3. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE.

3.1 Security for Obligations. This Agreement secures, and the Collateral is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. §362(a) (and any successor provision thereof)), of all Obligations with respect to every Grantor, in each case, in accordance with and subject to the terms and conditions of the Financing Agreement (the “**Secured Obligations**”).

3.2 Continuing Liability Under Collateral. Notwithstanding anything herein to the contrary, (i) each Grantor shall remain liable for all obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Administrative Agent or any Secured Party, (ii) each Grantor shall remain liable under each of the agreements included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Administrative Agent nor any Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Administrative Agent nor any Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including, without limitation, any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, and (iii) the exercise by the Administrative Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

SECTION 4. REPRESENTATIONS AND WARRANTIES AND COVENANTS.

4.1 Generally.

(a) Representations and Warranties. Each Grantor hereby represents and warrants that:

(i) it owns the Collateral purported to be owned by it or otherwise has the rights it purports to have in each item of Collateral and, as to all Collateral whether now existing or hereafter acquired, will continue to own or have such rights in each item of the Collateral, in each case free and clear of any and all Liens, rights or claims of all other Persons, in each case other than Permitted Liens;

(ii) it has indicated on Schedule 4.1(A), (as such schedule may be amended or supplemented from time to time): (w) the type of organization of such Grantor, (x) the jurisdiction of organization of such Grantor, (y) its organizational identification number and (z) the jurisdiction where the chief executive office or its sole place of business is located;

(iii) as of the date hereof, the full legal name of such Grantor is as set forth on Schedule 4.1(A) and it has not done in the last five (5) years, and does not do, business under any other name (including any trade-name or fictitious business name) except for those names set forth on Schedule 4.1(B);

(iv) as of the date hereof, except as provided on Schedule 4.1(C), it has not changed its name, jurisdiction of organization, chief executive office or sole place of business or its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise) within the past five (5) years;

(v) it has not within the last five (5) years become bound (whether as a result of merger or otherwise) as debtor under a security agreement entered into by another Person, which has not heretofore been terminated or which does not relate to Permitted Indebtedness;

(vi) [reserved];

(vii) (u) upon the filing of all UCC financing statements naming each Grantor as “debtor” and the Administrative Agent as “secured party” and describing the Collateral in the filing offices set forth opposite such Grantor’s name on Schedule 4.1(E) hereof (as such schedule may be amended or supplemented from time to time) and other filings delivered by each Grantor, (v) upon delivery of all Instruments, Chattel Paper and certificated Pledged Equity Interests and Pledged Debt, (w) upon sufficient identification of Commercial Tort Claims, (x) upon execution of a control agreement establishing the Administrative Agent’s “control” (within the meaning of Section 8-106, 9-106 or 9-104 of the UCC, as applicable) with respect to any Investment Account, (y) upon consent of the issuer with respect to Letter of Credit Rights, and (z) to the extent not subject to Article 9 of the UCC, upon recordation of the security interests granted hereunder in Patents, Trademarks and Copyrights in the applicable intellectual property registries, including but not limited to the United States Patent and Trademark Office and the United States Copyright Office, the security interests in the Collateral granted to the Administrative Agent hereunder constitute valid and perfected first priority (subject in priority only to the Permitted Liens that, pursuant to the definition of the term “Permitted Liens”, are (i) prior to the Liens in favor of the Administrative Agent by operation of law or (ii) not prohibited from being prior to the Liens in favor of the Administrative Agent) Liens (subject to Permitted Liens) on all of the Collateral;

(viii) substantially contemporaneously with the initial funding of the Term Loan on the Closing Date, all actions and consents, including all filings, notices, registrations and recordings necessary or, in the reasonable discretion of the Administrative Agent, desirable for the exercise by the Administrative Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect of the Collateral have been made or obtained;

(ix) other than the financing statements filed in favor of the Administrative Agent, no effective UCC financing statement, fixture filing or other instrument similar in effect in the United States under any applicable law covering all or any part of the Collateral is on file in any filing or recording office in the United States except for financing statements filed in connection with Permitted Liens;

(x) no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for either (i) the pledge or grant by any Grantor of the Liens purported to be created in favor of the Administrative Agent hereunder or (ii) the exercise by Administrative Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (A) for the filings contemplated by clause (vii) above and (B) as may be required, in connection with the disposition of any Investment Related Property, by laws generally affecting the offering and sale of Capital Stock;

(xi) all information supplied by any Grantor with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects (it being understood and agreed by each party to this Agreement that any projections, budgets, estimates, pro forma financial information, any other forward-looking statements or information of a general economic or industry nature contained in such materials are based upon good faith estimates and assumptions believed by such Grantor to be reasonable at the time made, it being recognized by Administrative Agent and Lenders that such projections, budgets, estimates, pro forma financial information and forward looking statements are not to be viewed as facts and that actual results during the period or periods covered by any such projections, budgets, estimates, pro forma financial information and forward looking statements may differ from the projected results, and such differences may be material);

(xii) none of the Collateral constitutes, or is the Proceeds of, "farm products" (as defined in the UCC);

(xiii) it does not own any "as extracted collateral" (as defined in the UCC) or any timber to be cut;

(xiv) such Grantor has not become bound as a debtor, either by contract or by operation of law, by a security agreement previously entered into by another Person (other than a security agreement related to any Permitted Indebtedness); and

(xv) as of the date hereof, such Grantor has been duly organized as an entity of the type as set forth opposite such Grantor's name on Schedule 4.1(A) solely under the laws of the jurisdiction as set forth opposite such Grantor's name on Schedule 4.1(A) and remains duly existing as such.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) except for the security interest created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, except Permitted Liens, and such Grantor shall defend the Collateral against all Persons at any time claiming any interest therein;

(ii) it shall not produce, use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or in violation in any material respect of any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral;

(iii) it shall not change such Grantor's legal name, legal identity, corporate structure (e.g., by merger, consolidation, change in corporate form or otherwise) sole place of business, chief executive office, type of organization or jurisdiction of organization unless it shall have (a) notified the Administrative Agent thereof in writing at least five (5) Business Days prior to (or such shorter period acceptable to Administrative Agent in its sole discretion) any such change or establishment, identifying such new proposed name, identity, corporate structure, sole place of business, chief executive office or jurisdiction of organization and providing such other information in connection therewith as the Administrative Agent may reasonably request and (b) taken all actions necessary to maintain the continuous validity, perfection and the same or better priority of the Administrative Agent's security interest in the Collateral intended to be granted and agreed to hereby;

(iv) [reserved];

(v) Subject to Section 5.3 of the Financing Agreement, it shall pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Collateral;

(vi) it shall not take or (to the extent in its control) permit any action which could materially impair the Administrative Agent's rights in the Collateral; and

(vii) it shall not sell, transfer or assign (by operation of law or otherwise) any Collateral except as otherwise in accordance with the Financing Agreement.

4.2 [Reserved].

4.3 Receivables.

(a) Representations and Warranties. Each Grantor represents and warrants that:

(i) each Receivable (a) is and will be the legal, valid and binding obligation of the Account Debtor in respect thereof, representing an unsatisfied obligation of such Account Debtor and (b) is and will be enforceable in accordance with its terms and will be in compliance in all material respects with all applicable laws, whether federal, state, local or foreign (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);

(ii) none of the Account Debtors in respect of any Receivable that constitutes Collateral is the government of the United States, any agency or instrumentality thereof, any state or municipality or any foreign sovereign; and no Receivable requires the consent of the Account Debtor in respect thereof in connection with the pledge hereunder, except any consent which has been obtained; and

(iii) no Receivable is evidenced by, or constitutes, an Instrument or Chattel Paper which has not been delivered to, or otherwise subjected to the control of, the Administrative Agent to the extent required by, and in accordance with Section 4.3(c).

(b) Covenants and Agreements: Each Grantor hereby covenants and agrees that:

(i) it shall keep and maintain at its own cost and expense reasonably satisfactory and complete records of the Receivables in all material respects, including, but not limited to, copies of all documentation with respect to all Receivables and records of all material dealings therewith;

(ii) it shall mark conspicuously, in form and manner reasonably satisfactory to the Administrative Agent, all Chattel Paper and Instruments with an appropriate reference to the fact that the Administrative Agent has a security interest therein;

(iii) it shall perform in all material respects all of its obligations with respect to the Receivables;

(iv) except as otherwise provided in this subsection, each Grantor shall use commercially reasonable efforts to continue to collect all amounts due or to become due to such Grantor under the Receivables and any Supporting Obligation and diligently exercise each material right it may have under any Receivable any Supporting Obligation or Collateral Support, in each case, at its own expense, and in connection with such collections and exercise, if an Event of Default has occurred and is continuing, such Grantor shall use commercially reasonable efforts to take such action as such Grantor or the Administrative Agent may deem necessary. Notwithstanding the foregoing, the Administrative Agent shall have the right at any time following the occurrence and during the continuation of an Event of Default to notify, or require any Grantor to notify, any Account Debtor of the Administrative Agent's security interest in the Receivables and any Supporting Obligation and, in addition, at any time following the occurrence and during the continuation of an Event of Default, the Administrative Agent may: (1) direct the Account Debtors under any Receivables to make payment of all amounts due or to become due to such Grantor thereunder directly to the Administrative Agent; (2) notify, or require any Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Administrative Agent; and (3) enforce, at the expense of such Grantor, collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. If the Administrative Agent notifies any Grantor that it has elected to collect the Receivables in accordance with and subject to the preceding sentence, any payments of Receivables received by such Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Administrative Agent if required, in the Administrative Agent's Account, and until so turned over, all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Administrative Agent hereunder and shall be segregated from other funds of such Grantor and such Grantor shall not adjust, settle or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon; and

(v) it shall use its commercially reasonable efforts to keep in full force and effect any Supporting Obligation or Collateral Support relating to any Receivable.

(c) **Delivery and Control of Receivables.** With respect to any Receivable that evidences an amount greater than \$250,000 and that is evidenced by, or constitutes, Chattel Paper or Instruments, each Grantor shall cause each originally executed copy thereof to be delivered to the Administrative Agent (or its agent or designee) appropriately indorsed to the Administrative Agent or indorsed in blank: (i) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof and (ii) with respect to any such Receivables hereafter arising, within thirty (30) days of such Grantor acquiring rights therein. With respect to any Receivable that evidences an amount greater than \$250,000 and that would constitute “electronic chattel paper” under Article 9 of the UCC, each Grantor shall take all steps necessary to give the Administrative Agent control over such Receivables (within the meaning of Section 9-105 of the UCC): (i) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof and (ii) with respect to any such Receivables hereafter arising, within thirty (30) days of such Grantor acquiring rights therein. Any Receivable not otherwise required to be delivered or subjected to the control of the Administrative Agent in accordance with this subsection (c) shall be delivered or subjected to such control upon written request of the Administrative Agent at any time following the occurrence and during the continuance of an Event of Default.

4.4 Investment Related Property.

4.4.1 Investment Related Property Generally

(a) **Covenants and Agreements.** Each Grantor hereby covenants and agrees that:

(i) in the event it acquires rights in any Investment Related Property after the date hereof, it shall deliver to the Administrative Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, reflecting such new Investment Related Property and all other Investment Related Property; notwithstanding the foregoing, it is understood and agreed that the security interest of the Administrative Agent shall attach to all Investment Related Property immediately upon any Grantor’s acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a supplement to Schedule 4.4 as required hereby;

(ii) in the event such Grantor receives any dividends, economic interest or distributions on any Investment Related Property, or any securities or other property upon the merger, consolidation, liquidation or dissolution of any issuer of any Investment Related Property, then (a) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (b) such Grantor shall promptly take all steps, if any, necessary to ensure the validity, perfection, priority and, if applicable, control of the Administrative Agent over such Investment Related Property to the extent required by this Agreement (including, without limitation, delivery thereof to the Administrative Agent) and pending any such action such Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the Administrative Agent and shall segregate such dividends, distributions, Capital Stock or other property from all other property of such Grantor; and

(iii) each Grantor consents to the grant by each other Grantor of a Security Interest in all Investment Related Property to the Administrative Agent.

(b) Delivery and Control.

(i) Each Grantor agrees that with respect to any Investment Related Property in which it currently has rights it shall comply with the provisions of this Section 4.4.1(b) on or before the Closing Date and with respect to any Investment Related Property hereafter acquired by such Grantor it shall comply with the provisions of this Section 4.4.1(b) immediately upon acquiring rights therein, in each case in form and substance reasonably satisfactory to the Administrative Agent. With respect to any Investment Related Property evidencing an amount greater than \$250,000 that is represented by a certificate or that is an “instrument” (other than any Investment Related Property credited to a Securities Account) it shall cause such certificate or instrument to be delivered to the Administrative Agent, indorsed in blank by an “effective indorsement” (as defined in Section 8-107 of the UCC), regardless of whether such certificate constitutes a “certificated security” for purposes of the UCC. With respect to any Investment Related Property that is an “uncertificated security” for purposes of the UCC (other than any “uncertificated securities” credited to a Securities Account or any “uncertificated securities” which are General Intangibles), it shall cause the issuer of such uncertificated security to either (i) register the Administrative Agent as the registered owner thereof on the books and records of the issuer or (ii) execute an agreement in form and substance reasonably satisfactory to the Administrative Agent, pursuant to which such issuer agrees to comply with the Administrative Agent’s instructions with respect to such uncertificated security without further consent by such Grantor.

In addition to the foregoing, if any issuer of any Investment Related Property is located in a jurisdiction outside of the United States, upon the request of the Administrative Agent, each Grantor shall take such additional actions, including, without limitation, causing the issuer to register the pledge on its books and records or making such filings or recordings, in each case as may be necessary or advisable, under the laws of such issuer’s jurisdiction to insure the validity, perfection and priority of the security interest of the Administrative Agent, subject to Permitted Liens. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent shall have the right, without notice to any Grantor, to transfer all or any portion of the Investment Related Property to its name or the name of its nominee or agent. In addition, the Administrative Agent shall have the right at any time following the occurrence and during the continuance of an Event of Default, without notice to any Grantor, to exchange any certificates or instruments representing any Investment Related Property for certificates or instruments of smaller or larger denominations.

(c) Voting and Distributions.

- (i) So long as no Event of Default shall have occurred and be continuing:
- (1) except as otherwise provided under the covenants and agreements relating to investment related property in this Agreement or elsewhere herein or in the Financing Agreement, each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof for any purpose not inconsistent with the terms of this Agreement or the Financing Agreement; provided, no Grantor shall exercise or refrain from exercising any such right if the Administrative Agent shall have notified such Grantor that, in the Administrative Agent's reasonable discretion, such action would have a Material Adverse Effect on the value of the Investment Related Property or any part thereof; it being understood, however, that neither the voting by such Grantor of any Pledged Stock for, or such Grantor's consent to, the election of directors (or similar governing body) at a regularly scheduled annual or other meeting of stockholders or with respect to incidental matters at any such meeting, nor such Grantor's consent to or approval of any action otherwise permitted under this Agreement and the Financing Agreement, shall be deemed inconsistent with the terms of this Agreement or the Financing Agreement within the meaning of this Section 4.4.1(c)(i)(1).
- (ii) Upon the occurrence and during the continuation of an Event of Default:
- (1) 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 Administrative Agent who shall thereupon have the sole right to exercise such voting and other consensual rights; and
- (2) in order to permit the Administrative Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (A) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Administrative Agent all proxies, dividend payment orders and other instruments as the Administrative Agent may from time to time reasonably request and (B) each Grantor acknowledges that the Administrative Agent may utilize the power of attorney set forth in Section 6.1.

4.4.2 Pledged Equity Interests

- (a) Representations and Warranties. Each Grantor hereby represents and warrants, that:
- (i) as of the date hereof, Schedule 4.4(A) sets forth under the headings "Pledged Stock," "Pledged LLC Interests," "Pledged Partnership Interests" and "Pledged Trust Interests," respectively, all of the Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests owned by any Grantor and such Pledged Equity Interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated on such Schedule;

(ii) as of the date hereof, except as set forth on Schedule 4.4(B), it has not acquired any equity interests of another entity or substantially all the assets of another entity within the past five (5) years;

(iii) it is the record and beneficial owner of the Pledged Equity Interests free of all Liens, rights or claims of other Persons other than Permitted Liens and, as of the date hereof, except as set forth on Schedule 4.2 to the Financing Agreement, there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests;

(iv) without limiting the generality of Section 4.1(a)(v), no consent of any Person including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary is necessary in connection with the creation, perfection or first priority status of the security interest of the Administrative Agent in any Pledged Equity Interests (subject to any Permitted Liens) or the exercise by the Administrative Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect thereof;

(v) none of the Pledged LLC Interests nor Pledged Partnership Interests are or represent interests in issuers that: (a) are registered as investment companies or (b) are dealt in or traded on securities exchanges or markets; and

(vi) none of the Pledged LLC Interests and Pledged Partnership Interests are or represent interests in issuers that have opted to be treated as securities under the uniform commercial code of any jurisdiction.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) without the prior written consent of the Administrative Agent, it shall not vote to enable or take any other action to: (a) amend or terminate any partnership agreement, limited liability company agreement, certificate of incorporation, by-laws or other organizational documents in any way that materially adversely affects the validity, perfection or priority of the Administrative Agent's security interest in such applicable Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests, (b) permit any issuer of any Pledged Equity Interest to issue any additional stock, partnership interests, limited liability company interests or other equity interests of any nature or to issue securities convertible into or granting the right of purchase or exchange for any stock or other equity interest of any nature of such issuer, (c) other than as permitted under the Financing Agreement, permit any issuer of any Pledged Equity Interest to dispose of all or a material portion of their assets, (d) waive any default under or breach of any material terms of organizational document relating to the issuer of any Pledged Equity Interest or the material terms of any Pledged Debt, or (e) cause any issuer of any Pledged Partnership Interests or Pledged LLC Interests which are not securities (for purposes of the UCC) on the date hereof to elect or otherwise take any action to cause such Pledged Partnership Interests or Pledged LLC Interests to be treated as securities for purposes of the UCC; provided, however, notwithstanding the foregoing, if any issuer of any Pledged Partnership Interests or Pledged LLC Interests takes any such action in violation of the foregoing in this clause (b)(i)(e), such Grantor shall promptly notify the Administrative Agent in writing of any such election or action and, in such event, shall take all steps necessary to establish the Administrative Agent's "control" thereof;

(ii) it shall comply in all material respects with all of its obligations under any partnership agreement or limited liability company agreement relating to Pledged Partnership Interests or Pledged LLC Interests and shall use commercially reasonable efforts to enforce all of its rights with respect to any Investment Related Property;

(iii) except as permitted by the Financing Agreement, without the prior written consent of the Administrative Agent, it shall not permit any issuer of any Pledged Equity Interest to merge or consolidate unless (i) such issuer creates a security interest that is perfected by a filed financing statement (that is not effective solely under section 9-508 of the UCC) in collateral in which such new debtor has or acquires rights, and (ii) all the outstanding capital stock or other equity interests of the surviving or resulting corporation, limited liability company, partnership or other entity is, upon such merger or consolidation, pledged hereunder in accordance with the terms hereof and no cash, securities or other property is distributed in respect of the outstanding equity interests of any other constituent Grantor; and

(iv) each Grantor consents to the grant by each other Grantor of a security interest in all Investment Related Property to the Administrative Agent and, without limiting the foregoing, consents to the transfer at any time following the occurrence and continuance of an Event of Default of any Pledged Partnership Interest and any Pledged LLC Interest to the Administrative Agent or its nominee and to the substitution of the Administrative Agent or its nominee as a partner in any partnership or as a member in any limited liability company with all the rights and powers related thereto.

4.4.3 Pledged Debt

(a) Representations and Warranties. Each Grantor hereby represents and warrants that:

(i) as of the date hereof, Schedule 4.4 sets forth under the heading “Pledged Debt” all of the Pledged Debt owned by any Grantor and all of such Pledged Debt has been duly authorized or issued, and delivered and is the legal, valid and binding obligation of the issuers thereof (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) and is not in default in any material respect.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) it shall notify the Administrative Agent of any default under any Pledged Debt that has caused, either in any individual case or in the aggregate, a Material Adverse Effect.

4.4.4 Investment Accounts

(a) Representations and Warranties. Each Grantor hereby represents and warrants that:

(i) as of the date hereof, Schedule 4.4 hereto sets forth under the headings “Securities Accounts” and “Commodities Accounts,” respectively, all of the Securities Accounts and Commodities Accounts in which each Grantor has an interest. Each Grantor is the sole entitlement holder of each such Securities Account and Commodity Account, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Administrative Agent pursuant hereto) having “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or Commodity Account or securities or other property credited thereto, in each case, except for any applicable depository bank or institution holding such Securities Account or Commodity Account on behalf of such Grantor;

(ii) as of the date hereof, Schedule 4.4 hereto sets forth under the headings “Deposit Accounts” all of the Deposit Accounts owned by each Grantor. Each Grantor is the sole account holder of each such Deposit Account and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Administrative Agent pursuant hereto) having either sole dominion and control (within the meaning of common law) or “control” (within the meanings of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein, in each case, except for any applicable depository bank or institution holding such Deposit Account on behalf of such Grantor; and

(iii) Each Grantor has taken all actions necessary, including those specified in Section 4.4.4(b), to: (a) establish Administrative Agent’s “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Related Property constituting Certificated Securities, Securities Accounts, Securities Entitlements or Commodities Accounts (each as defined in the UCC); (b) establish the Administrative Agent’s “control” (within the meaning of Section 9-104 of the UCC) over all Deposit Accounts (other than Excluded Accounts); and (c) deliver all Instruments evidencing obligations in an amount greater than \$250,000 to the Administrative Agent.

(b) Covenant and Agreement. Each Grantor hereby covenants and agrees with the Administrative Agent and each other Secured Party that it shall not close or terminate any Investment Account without the prior consent of the Administrative Agent and unless a successor or replacement account has been established with the consent of the Administrative Agent with respect to which successor or replacement account a control agreement has been entered into by the appropriate Grantor, Administrative Agent and securities intermediary or depository institution at which such successor or replacement account is to be maintained in accordance with the provisions of Section 4.4.4(c).

(c) Delivery and Control

(i) With respect to any Investment Related Property consisting of Securities Accounts or Securities Entitlements, it shall cause the securities intermediary maintaining such Securities Account or Securities Entitlement to enter into an agreement, in form and substance reasonably satisfactory to the Administrative Agent, pursuant to which, subject to the terms and conditions thereof, it shall agree to comply with the Administrative Agent’s “entitlement orders” without further consent by such Grantor. With respect to any Investment Related Property that is a “Deposit Account” (other than any Excluded Account) it shall cause the depository institution maintaining such account to enter into an agreement, in form and substance reasonably satisfactory to the Administrative Agent, pursuant to which, and subject to the terms and conditions thereof, the Administrative Agent shall have control over such Deposit Account (within the meaning of the common law) and “control” (within the meaning of Section 9-104 of the UCC) over such Deposit Account. At all times prior to the occurrence and continuance of an Event of Default, the Grantors shall have full access to the cash on deposit in such Deposit Accounts, and the Administrative Agent agrees not to deliver a control notice or take any other action to control such Deposit Accounts unless and until an Event of Default has occurred and is continuing. Upon the occurrence of an Event of Default, with respect to any Deposit Account (other than an Excluded Account) subject to a Control Agreement, the Administrative Agent may give instructions and directions to such bank or depository institution to wire all amounts on deposit in such Deposit Account each Business Day to the Administrative Agent’s Account. Each Grantor shall have entered into such control agreement or agreements with respect to: (i) any Securities Accounts, Securities Entitlements or Deposit Accounts (other than any Excluded Accounts) that exist on the Closing Date, as of or prior to the Closing Date (except as otherwise agreed to by the Administrative Agent in writing) and (ii) any Securities Accounts or Securities Entitlements evidencing an amount greater than \$250,000 or Deposit Accounts (other than any Excluded Accounts) that are created or acquired after the Closing Date, as of or prior to the deposit or transfer of any such Securities Entitlements or funds, whether constituting moneys or investments, into such Securities Accounts or such Deposit Accounts.

4.5 Material Contracts.

(a) Representations and Warranties. Each Grantor hereby represents and warrants that:

(i) Schedule 4.5 (as such schedule may be amended or supplemented from time to time) sets forth all of the Material Contracts to which such Grantor has rights; and

(ii) the Material Contracts, true and complete copies (including any amendments or supplements thereof) of which have been furnished to the Administrative Agent, to such Grantor's knowledge, have been duly authorized, executed and delivered by all parties thereto, are in full force and effect and are binding upon and enforceable against all parties thereto in accordance with their 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). There exists no default under any Material Contract by any party thereto giving any party thereto the right to terminate such Material Contract and neither such Grantor, nor to its knowledge, any other Person party thereto is likely to become in default thereunder and no Person party thereto has any defenses, counterclaims or right of set-off with respect to any Material Contract (except as provided under such Material Contract).

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) in addition to any rights under the Section of this Agreement relating to Receivables, after the occurrence and during the continuance of an Event of Default, the Administrative Agent may at any time notify, or require any Grantor to so notify, the counterparty on any Material Contract of the security interest of the Administrative Agent therein. In addition, after the occurrence and during the continuance of an Event of Default, the Administrative Agent may upon written notice to the applicable Grantor, notify, or require any Grantor to notify, the counterparty to make all payments under the Material Contracts required to be paid to such Grantor directly to the Administrative Agent;

(ii) it shall perform in all material respects all of its obligations with respect to the Material Contracts;

(iii) it shall promptly and diligently use commercially reasonable efforts to exercise each material right (except the right of termination) it may have under any Material Contract, any Supporting Obligation or Collateral Support, in each case, at its own expense, and in connection with such collections and exercise after the occurrence and during the continuance of an Event of Default, such Grantor shall take such action as such Grantor or the Administrative Agent may deem necessary or, in the Administrative Agent's reasonable discretion, advisable;

(iv) it shall use commercially reasonable efforts to keep in full force and effect any Supporting Obligation or Collateral Support relating to any Material Contract.

4.6 Letter of Credit Rights.

(a) Representations and Warranties. Each Grantor hereby represents and warrants that all material letters of credit to which such Grantor has rights is listed on Schedule 4.6 (as such schedule may be amended or supplemented from time to time) hereto.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any material letter of credit hereafter arising it shall obtain the consent of the issuer thereof to the assignment of the proceeds of the letter of credit to the Administrative Agent and shall deliver to the Administrative Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto.

4.7 Intellectual Property.

(a) Representations and Warranties. As of the date hereof, except as disclosed in Schedule 4.7(H), each Grantor hereby represents and warrants that:

(i) Schedule 4.7 sets forth a true and complete list of (1) all United States, state and foreign registrations of and applications for Patents, Trademarks, and Copyrights owned by each Grantor, including but not limited to the Annovera Patents, the Bijuva Patents and the Imvexxy Patents and (2) all Patent Licenses, Trademark Licenses, Trade Secret Licenses and Copyright Licenses to which a Grantor is a party and which are material to the business of such Grantor;

(ii) it is the sole and exclusive owner of the entire right, title, and interest in and to all Intellectual Property listed on Schedule 4.7, and owns or has the valid right to use all other Intellectual Property material to or necessary to conduct its business, free and clear of all Liens, claims, encumbrances and licenses, in each case except for Permitted Liens and the licenses set forth on Schedule 4.7(B), (D), (E) and (G);

(iii) all Intellectual Property is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and each Grantor has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to maintain each and every material registration and application of Copyrights, Patents and Trademarks in full force and effect;

(iv) to the best of such Grantor's knowledge, all Intellectual Property is valid and enforceable; no holding, decision, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity of, such Grantor's right to register, or such Grantor's rights to own or use, any Intellectual Property and no such action or proceeding is pending or, to the best of such Grantor's knowledge, threatened;

(v) all registrations and applications for Copyrights, Patents and Trademarks are standing in the name of each Grantor, and none of the Trademarks, Patents, Copyrights or Trade Secrets has been licensed by any Grantor to any Affiliate or third party, except as disclosed in Schedule 4.7(B), (D), (E), or (G);

(vi) each Grantor has been using commercially reasonable statutory notice of registration in connection with its use of registered Trademarks, commercially reasonable marking practices in connection with the use of Patents, and commercially reasonable notice of copyright in connection with the publication of Copyrights material to the business of such Grantor;

(vii) each Grantor uses commercially reasonable standards of quality in the manufacture, distribution, and sale of all products sold and in the provision of all services rendered under or in connection with all Trademark Collateral and has taken all action necessary to insure that all licensees of the Trademark Collateral owned by such Grantor use such commercially reasonable standards of quality;

(viii) to the best of such Grantor's knowledge, the conduct of such Grantor's business does not infringe upon or otherwise violate any trademark, patent, copyright, trade secret or other intellectual property right owned or controlled by a third party; no claim has been made that the use of any Intellectual Property owned or used by Grantor (or any of its respective licensees) violates the asserted rights of any third party;

(ix) to the best of each Grantor's knowledge, no third party is infringing upon or otherwise violating any rights in any Intellectual Property owned or used by such Grantor, or any of its respective licensees;

(x) each Grantor has taken reasonable steps to maintain the confidentiality of and otherwise protect and enforce its rights in all trade secrets owned by such Grantor that are necessary in the business of such Grantor;

(xi) no settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by Grantor or to which Grantor is bound that adversely affect Grantor's rights to own or use any Intellectual Property set forth in Schedule 4.7;

(xii) each Grantor has not made a previous assignment, sale, transfer or agreement constituting a present or future assignment, sale, transfer or agreement of any Intellectual Property set forth in Schedule 4.7 that has not been terminated or released. There is no effective financing statement on file or recorded in any public office in the United States, granting a security interest in or otherwise encumbering any part of the Intellectual Property, other than in favor of the Administrative Agent.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees as follows:

(i) it shall not do any act or omit to do any act whereby any of the Intellectual Property which is material to the business of Grantor may lapse, or become abandoned, dedicated to the public, or unenforceable, or which would adversely affect the validity, grant, or enforceability of the security interest granted therein;

(ii) it shall not, with respect to any Trademarks which are material to the business of any Grantor, cease the use of any of such Trademarks or fail to maintain the level of the quality of products sold and services rendered under any of such Trademark at a level at least substantially consistent with the quality of such products and services as of the date hereof, and each Grantor shall take all steps necessary to insure that licensees of such Trademarks use such consistent standards of quality;

(iii) it shall, within thirty (30) days of the creation or acquisition of any Copyrightable work which is material to the business of Grantor, apply to register the Copyright in the United States Copyright Office;

(iv) it shall promptly notify the Administrative Agent if it knows or has reason to know that all or part of any Annovera Patent, Bijuva Patent, Imvexxy Patent, or any item of the Intellectual Property that is material to the business of any Grantor may become (a) abandoned or dedicated to the public or placed in the public domain, except at the end of the natural term of any of the aforementioned patents, (b) invalid or unenforceable, or (c) subject to any adverse determination or development (including the institution of proceedings) in any action or proceeding in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court;

(v) it shall take all reasonable steps in the United States Patent and Trademark Office, the United States Copyright Office, any state registry or any foreign counterpart of the foregoing, to pursue any application and maintain any registration of each Trademark, Patent, and Copyright that is owned by any Grantor and material to its business which is now or shall become included in the Intellectual Property including, but not limited to, those items on Schedule 4.7(A), (C) and (E);

(vi) in the event that any material Intellectual Property owned by or exclusively licensed to any Grantor is infringed, misappropriated, or diluted by a third party, such Grantor shall promptly take all reasonable actions to stop such infringement, misappropriation, or dilution and protect its rights in such Intellectual Property including, but not limited to, the initiation of a suit for injunctive relief and to recover damages;

(vii) it shall promptly (but in no event more than forty-five (45) days after any Grantor obtains knowledge thereof) report to the Administrative Agent (i) the filing of any application to register any material Intellectual Property with the United States Patent and Trademark Office or the United States Copyright Office (whether such application is filed by such Grantor or through any agent, employee, licensee, or designee thereof) and (ii) the registration of any such material Intellectual Property by any such office, in each case by executing and delivering to the Administrative Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto;

(viii) it shall, promptly upon the reasonable request of the Administrative Agent, execute and deliver to the Administrative Agent any document required to acknowledge, confirm, register, record, or perfect, in each case, to the extent required by this Agreement, the Administrative Agent's interest in any part of the Intellectual Property, whether now owned or hereafter acquired;

(ix) except with the prior consent of the Administrative Agent or as permitted under the Financing Agreement, each Grantor shall not execute, and there will not be on file in any public office in the United States, any financing statement or other document or instruments, except financing statements or other documents or instruments filed or to be filed in favor of the Administrative Agent and each Grantor shall not sell, assign, transfer, license, grant any option, or create or suffer to exist any Lien upon or with respect to the Intellectual Property, except for Permitted Liens and the Lien created by and under this Agreement and the other Loan Documents;

(x) it shall hereafter use commercially reasonable efforts so as not to permit the inclusion in any contract to which it hereafter becomes a party of any provision that could or might in any way materially impair or prevent the creation of a security interest in, or the assignment of, such Grantor's rights and interests in any property included within the definitions of any Intellectual Property acquired under such contracts;

(xi) it shall take reasonable steps to maintain the confidentiality of, and otherwise protect and enforce its rights in, the Intellectual Property that is necessary in the conduct of such Grantor's business, including, as applicable (A) protecting the secrecy and confidentiality of its confidential information and Trade Secrets by having and enforcing a policy requiring all current employees, consultants, licensees, vendors and contractors with access to such information to execute appropriate confidentiality agreements and (B) taking actions reasonably necessary to ensure that no Trade Secret falls into the public domain;

(xii) it shall use proper statutory notice in connection with its use of any of the Intellectual Property; and

(xiii) it shall continue to collect, at its own expense, all amounts due or to become due to such Grantor in respect of the Intellectual Property or any portion thereof. In connection with such collections, each Grantor may take (and, at the Administrative Agent's reasonable direction, shall take) such action as such Grantor or the Administrative Agent may deem reasonably necessary to enforce collection of such amounts. Notwithstanding the foregoing, the Administrative Agent shall have the right at any time following the occurrence and during the continuance of an Event of Default, to notify, or require any Grantor to notify, any obligors with respect to any such amounts of the existence of the security interest created hereby.

4.8 Commercial Tort Claims

(a) Representations and Warranties. As of the date hereof, each Grantor hereby represents and warrants that Schedule 4.8 sets forth all Commercial Tort Claims of each Grantor in a stated amount greater than \$250,000; and

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any Commercial Tort Claim in a stated amount greater than \$250,000 hereafter arising it shall deliver to the Administrative Agent a completed Pledge Supplement, substantially in the form of Exhibit A attached hereto, together with all Supplements to Schedules thereto, identifying such new Commercial Tort Claims.

SECTION 5. ACCESS; RIGHT OF INSPECTION AND FURTHER ASSURANCES; ADDITIONAL GRANTORS.

5.1 [Reserved].

5.2 Further Assurances.

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, that it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary, or that the Administrative Agent may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted hereby or to enable the Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall:

(i) file such financing or continuation statements, or amendments thereto, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or desirable, or as the Administrative Agent may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby;

(ii) subject to Section 5.2(c), take all actions necessary to ensure the recordation of appropriate evidence of the Liens and security interest granted hereunder in the Intellectual Property with any intellectual property registry in which said Intellectual Property is registered or in which an application for registration is pending including, without limitation, the United States Patent and Trademark Office, the United States Copyright Office, the various Secretaries of State, and the foreign counterparts on any of the foregoing; and

(iii) at the Administrative Agent's reasonable written request, appear in and defend any action or proceeding that may affect such Grantor's title to or the Administrative Agent's security interest in all or any part of the Collateral.

(b) Subject to Section 5.2(c), Each Grantor hereby authorizes the Administrative Agent to file a Record or Records, including, without limitation, financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as are necessary or, in the Administrative Agent's reasonable discretion, advisable to perfect the security interest granted to the Administrative Agent herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Administrative Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Administrative Agent herein, including, without limitation, describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired." Each Grantor shall furnish to the Administrative Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Administrative Agent may reasonably request in writing, all in reasonable detail.

(c) Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, unless requested by the Administrative Agent in its reasonable discretion, none of the Grantors or any of their Subsidiaries shall be required, nor shall the Administrative Agent or any Lender be authorized, to take any action with respect to any assets or property of any Grantor located outside of the United States.

5.3 Additional Grantors. From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Grantors (each, an “**Additional Grantor**”), by executing a Counterpart Agreement. Upon delivery of any such counterpart agreement to the Administrative Agent, notice of which is hereby waived by Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of Administrative Agent not to cause any Subsidiary of Borrower to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder. For the avoidance of doubt, unless requested by the Administrative Agent in its sole discretion, no Foreign Subsidiary of Borrower shall be a Grantor or otherwise be required to pledge its assets.

SECTION 6. ADMINISTRATIVE AGENT APPOINTED ATTORNEY-IN-FACT.

6.1 Power of Attorney. Each Grantor hereby irrevocably appoints the Administrative Agent (such appointment being coupled with an interest) as such Grantor’s attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Administrative Agent or otherwise, from time to time in the Administrative Agent’s discretion to take any action and to execute any instrument that the Administrative Agent may deem reasonably necessary to accomplish the purposes of this Agreement, including, without limitation, the following:

(a) upon the occurrence and during the continuance of any Event of Default, to obtain and adjust insurance required to be maintained by such Grantor or paid to the Administrative Agent pursuant to the Financing Agreement;

(b) upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (b) above;

(d) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings that the Administrative Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Administrative Agent with respect to any of the Collateral;

(e) to prepare and file any UCC financing statements against such Grantor as debtor;

(f) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in the Intellectual Property in the name of such Grantor as debtor;

(g) to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including, without limitation, access to pay or discharge taxes or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Administrative Agent in its reasonable discretion, any such payments made by the Administrative Agent to become obligations of such Grantor to the Administrative Agent, due and payable immediately without demand; and

(h) upon the occurrence and during the continuance of any Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and to do, at the Administrative Agent's option and such Grantor's expense, at any time or from time to time, all acts and things that the Administrative Agent deems reasonably necessary to protect, preserve or realize upon the Collateral and the Administrative Agent's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

6.2 No Duty on the Part of Administrative Agent or Secured Parties. The powers conferred on the Administrative Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Administrative Agent or any Secured Party to exercise any such powers. The Administrative Agent and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own (or any of their respective Affiliate's) gross negligence or willful misconduct.

SECTION 7. REMEDIES.

7.1 Generally. If any Event of Default shall have occurred and be continuing the Administrative Agent shall have the following rights and remedies:

(a) The Administrative Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of the Administrative Agent on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:

(i) require any Grantor to, and each Grantor hereby agrees that it shall at its expense and promptly upon request of the Administrative Agent forthwith, assemble all or part of the Collateral as directed by the Administrative Agent and make it available to the Administrative Agent at a place to be designated by the Administrative Agent that is reasonably convenient to both parties;

- (ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;
- (iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Administrative Agent deems appropriate; and
- (iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Administrative Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Administrative Agent may deem commercially reasonable.

(b) The Administrative Agent or any Secured Party may be the purchaser of any or all of the Collateral at any public or private (to the extent to the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) sale in accordance with the UCC and the Administrative Agent, as Administrative Agent for and representative of the 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 UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Administrative Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Administrative Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that it would not be commercially unreasonable for the Administrative Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Administrative Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Administrative Agent accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, Grantors shall be liable for the deficiency and the fees of any attorneys employed by the Administrative Agent to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Administrative Agent, that the Administrative Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities. Nothing in this Section shall in any way alter the rights of the Administrative Agent hereunder.

(c) The Administrative Agent may sell the Collateral without giving any warranties as to the Collateral. The Administrative Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(d) The Administrative Agent shall have no obligation to marshal any of the Collateral.

(e) The Administrative Agent may: (1) direct the Account Debtors under any Receivables to make payment of all amounts due or to become due to such Grantor thereunder directly to the Administrative Agent; (2) notify, or require any Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Administrative Agent; and (3) enforce, at the expense of such Grantor, collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. If the Administrative Agent notifies any Grantor that it has elected to collect the Receivables in accordance with the preceding sentence, any payments of Receivables received by such Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Administrative Agent if required, in the Administrative Agent's Account maintained under the sole dominion and control of the Administrative Agent, and until so turned over, all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Administrative Agent hereunder and shall be segregated from other funds of such Grantor and such Grantor shall not adjust, settle or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon

(f) The Administrative Agent may exercise control over any Investment Accounts, whether or not such Investment Accounts are created before or after the Closing Date. The Administrative Agent shall have the right, without notice to any Grantor, to transfer all or any portion of the Investment Related Property to its name or the name of its nominee or agent. In addition, the Administrative Agent shall have the right at any time, without notice to any Grantor, to exchange any certificates or instruments representing any Investment Related Property for certificates or instruments of smaller or larger denominations.

(g) With respect to any Deposit Account (other than an Excluded Account), the Administrative Agent may give instructions and directions to such bank or depository institution to wire all amounts on deposit in such Deposit Account each Business Day to the Administrative Agent's Account. All amounts received or deposited into the Administrative Agent's Account after the occurrence of an Event of Default shall be applied to the payment of the outstanding Obligations in accordance with the Financing Agreement.

7.2 Application of Proceeds. Except as expressly provided elsewhere in this Agreement, all proceeds received by the Administrative Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral shall be applied in full or in part by the Administrative Agent against the Secured Obligations as set forth in Section 2.11(a) of the Financing Agreement.

7.3 Sales on Credit. If Administrative Agent sells any of the Collateral upon credit, Grantor will be credited only with payments actually made by purchaser and received by Administrative Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Administrative Agent may resell the Collateral and Grantor shall be credited with proceeds of the sale.

7.4 Deposit Accounts.

If any Event of Default shall have occurred and be continuing, the Administrative Agent may apply the balance from any Deposit Account or instruct the bank at which any Deposit Account is maintained to pay the balance of any Deposit Account to or for the benefit of the Administrative Agent.

7.5 Investment Related Property.

Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the Administrative Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, each Grantor agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Administrative Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the Administrative Agent determines to exercise its right to sell any or all of the Investment Related Property, upon written request, each Grantor shall and shall cause each issuer of any Pledged Stock to be sold hereunder, each partnership and each limited liability company from time to time to furnish to the Administrative Agent all such information as the Administrative Agent may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by the Administrative Agent in exempt transactions under the Securities Act and the rules and regulations of the Capital Stock and Exchange Commission thereunder, as the same are from time to time in effect.

7.6 Intellectual Property.

(a) Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuation of an Event of Default:

(i) the Administrative Agent shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, the Administrative Agent or otherwise, in the Administrative Agent's sole discretion, to enforce any Intellectual Property, in which event such Grantor shall, at the request of the Administrative Agent, do any and all lawful acts and execute any and all documents required by the Administrative Agent in aid of such enforcement and such Grantor shall promptly, upon demand, reimburse and indemnify the Administrative Agent as provided in Section 10 hereof in connection with the exercise of its rights under this Section, and, to the extent that the Administrative Agent shall elect not to bring suit to enforce any Intellectual Property as provided in this Section, each Grantor agrees to use all reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement or other violation of any of such Grantor's rights in the Intellectual Property by others and for that purpose agrees to diligently maintain any action, suit or proceeding against any Person so infringing as shall be necessary to prevent such infringement or violation;

(ii) upon written demand from the Administrative Agent, each Grantor shall grant, assign, convey or otherwise transfer to the Administrative Agent or such Administrative Agent's designee all of such Grantor's right, title and interest in and to the Intellectual Property and shall execute and deliver to the Administrative Agent such documents as are necessary or appropriate to carry out the intent and purposes of this Agreement;

(iii) each Grantor agrees that such an assignment and/or recording shall be applied to reduce the Secured Obligations outstanding only to the extent that the Administrative Agent (or any Secured Party) receives cash proceeds in respect of the sale of, or other realization upon, the Intellectual Property;

(iv) within five (5) Business Days after written notice from the Administrative Agent, each Grantor shall make reasonable efforts to make available to the Administrative Agent, to the extent within such Grantor's power and authority, such personnel in such Grantor's employ on the date of such Event of Default as the Administrative Agent may reasonably designate, by name, title or job responsibility, to permit such Grantor to continue, directly or indirectly, to produce, advertise and sell the products and services sold or delivered by such Grantor under or in connection with the Trademarks, Trademark Licenses, such persons to be available to perform their prior functions on the Administrative Agent's behalf and to be compensated by the Administrative Agent at such Grantor's expense on a per diem, pro-rata basis consistent with the salary and benefit structure applicable to each as of the date of such Event of Default; and

(v) the Administrative Agent shall have the right to notify, or require each Grantor to notify, any obligors with respect to amounts due or to become due to such Grantor in respect of the Intellectual Property, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to the Administrative Agent, and, upon such notification and at the expense of such Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done;

(1) all amounts and proceeds (including checks and other instruments) received by Grantor in respect of amounts due to such Grantor in respect of the Collateral or any portion thereof shall be received in trust for the benefit of the Administrative Agent hereunder, shall be segregated from other funds of such Grantor and shall be forthwith paid over or delivered to the Administrative Agent in the same form as so received (with any necessary endorsement) to be held as cash Collateral and applied as provided by Section 7.7 hereof; and

(2) Grantor shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon.

(b) If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing, (ii) no other Event of Default shall have occurred and be continuing, (iii) an assignment or other transfer to the Administrative Agent of any rights, title and interests in and to the Intellectual Property shall have been previously made and shall have become absolute and effective, and (iv) the Secured Obligations shall not have become immediately due and payable, upon the written request of any Grantor, the Administrative Agent shall promptly execute and deliver to such Grantor, at such Grantor's sole cost and expense, such assignments or other transfer as may be necessary to reassign to such Grantor any such rights, title and interests as may have been assigned to the Administrative Agent as aforesaid, subject to any disposition thereof that may have been made by the Administrative Agent; provided that after giving effect to such reassignment, the Administrative Agent's security interest granted pursuant hereto, as well as all other rights and remedies of the Administrative Agent granted hereunder, shall continue to be in full force and effect; and provided further, the rights, title and interests so reassigned shall be free and clear of any other Liens granted by or on behalf of the Administrative Agent and the Secured Parties.

(c) Solely for the purpose of enabling the Administrative Agent to exercise rights and remedies under this Section 7 and at such time as the Administrative Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Administrative Agent, to the extent it has the right to do so, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located.

7.7 Cash Proceeds. In addition to the rights of the Administrative Agent specified in Section 4.3 with respect to payments of Receivables, upon the occurrence and during the continuance of any Event of Default, all proceeds of any Collateral received by any Grantor consisting of cash, checks and other non-cash items ("**Cash Proceeds**") shall be held by such Grantor in trust for the Administrative Agent, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor (and, in any event, within two (2) Business Days of receipt thereof), be turned over to the Administrative Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Administrative Agent, if required) and deposited into the Administrative Agent's Account; and any such Cash Proceeds received by the Administrative Agent (whether from a Grantor or otherwise) shall be applied by the Administrative Agent against the Secured Obligations in accordance with Section 2.11(a) of the Financing Agreement. Subject to Section 4.3, any Cash Proceeds received by the Administrative Agent (whether from a Grantor or otherwise): (i) at any time that no Event of Default shall have occurred and be continuing, shall be returned to the Grantor and (ii) if an Event of Default shall have occurred and be continuing, may, in the sole discretion of the Administrative Agent, (A) be held by the Administrative Agent for the ratable benefit of the Secured Parties, as collateral security for the Secured Obligations (whether matured or unmatured) and/or (B) then or at any time thereafter may be applied by the Administrative Agent against the Secured Obligations then due and owing.

SECTION 8. [RESERVED].

SECTION 9. CONTINUING SECURITY INTEREST; TRANSFER OF TERM LOANS.

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the payment in full of all Secured Obligations (other than any such contingent obligations or liabilities hereunder or under the Financing Agreement that by the express terms thereof survive such payment in full of all Secured Obligations) and be binding upon each Grantor, its successors and assigns, and inure, together with the rights and remedies of the Administrative Agent hereunder, to the benefit of the Administrative Agent and its successors, permitted transferees and permitted assigns. Without limiting the generality of the foregoing, but subject to the terms and conditions of the Financing Agreement, any Lender may assign or otherwise transfer the Term Loan held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Lenders herein or otherwise. Upon the payment in full of all Secured Obligations (other than any such contingent obligations or liabilities hereunder or under the Financing Agreement that by the express terms thereof survive such payment in full of all Secured Obligations), the security interest granted hereby shall automatically terminate hereunder and of record and all rights to the Collateral shall revert to Grantors. Upon any such termination the Administrative Agent shall, at Grantors' expense, execute and deliver to Grantors or otherwise authorize the filing of such documents, agreements and instruments as Grantors shall reasonably request, including financing statement amendments to evidence such termination. Upon any disposition of property permitted by the Financing Agreement, the Liens granted herein shall be deemed to be automatically released and such property shall automatically revert to the applicable Grantor (or such other applicable Person) with no further action on the part of any Person. The Administrative Agent shall, at Grantor's expense, execute and deliver or otherwise authorize the filing of such documents, agreements and instruments as Grantors shall reasonably request, in form and substance reasonably satisfactory to the Administrative Agent, including financing statement amendments to evidence such release.

SECTION 10. STANDARD OF CARE.

The powers conferred on the Administrative Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Administrative Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Administrative Agent accords its own property. Neither the Administrative Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the 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 otherwise.

SECTION 11. MISCELLANEOUS.

Any notice required or permitted to be given under this Agreement shall be given in accordance with Section 10.1 of the Financing Agreement. No failure or delay on the part of the Administrative Agent in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement 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. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. This Agreement shall be binding upon and inure to the benefit of the Administrative Agent and Grantors and their respective successors and permitted assigns. No Grantor shall, without the prior written consent of the Administrative Agent given in accordance with the Financing Agreement, assign any right, duty or obligation hereunder. This Agreement and the other Loan Documents embody the entire agreement and understanding between Grantors and the Administrative Agent and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart.

SECTIONS 10.5 (AMENDMENTS AND WAIVERS), 10.14 (APPLICABLE LAW), 10.15 (CONSENT TO JURISDICTION) and 10.16 (WAIVER OF JURY TRIAL) OF THE FINANCING AGREEMENT ARE HEREBY INCORPORATED BY REFERENCE, *MUTATIS MUTANDIS*.

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

GRANTORS:

THERAPEUTICSMD, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer and Treasurer

VITAMEDMD, LLC

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer and Treasurer

BOCAGREENMD, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer and Treasurer

VITACARE PRESCRIPTION SERVICES, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer and Assistant Treasurer

[Signature Page to Pledge and Security Agreement]

TPG SPECIALTY LENDING, INC.
as the Administrative Agent

By: /s/ Joshua Easterly
Name: Joshua Easterly
Title: CEO

[Signature Page to Pledge and Security Agreement]

GENERAL INFORMATION

(A) Full Legal Name, Type of Organization, Jurisdiction of Organization, Chief Executive Office/Sole Place of Business and Organizational Identification Number of each Grantor:

Full Legal Name	Type of Organization	Jurisdiction of Organization	Chief Executive Office/Sole Place of Business	Organization I.D.#
TherapeuticsMD, Inc.	Corporation	Nevada	6800 Broken Sound Parkway NW, Suite 300, Boca Raton, Palm Beach County, FL 33487	20101548400
VitaMedMD LLC	Limited Liability Company	Delaware	See above.	4546519
BocaGreenMD, Inc.	Corporation	Nevada	See above.	NV20121021440
VitaCare Prescription Services, Inc.	Corporation	Florida	See above.	P15000042489

(B) Other Names (including any Trade-Name or Fictitious Business Name) under which each Grantor has conducted business for the past five (5) years:

<u>Full Legal Name</u>	<u>Trade Name or Fictitious Business Name</u>
None.	

(C) Changes in Name, Jurisdiction of Organization, Chief Executive Office or Sole Place of Business and Corporate Structure within past five (5) years:

<u>Name of Grantor</u>	<u>Date of Change</u>	<u>Description of Change</u>
None.		

(D) [Reserved]

(E) Financing Statements:

<u>Name of Grantor</u>	<u>Filing Jurisdiction(s)</u>
TherapeuticsMD, Inc.	Nevada, UCC #2018015124-8
VitaMedMD LLC	Delaware, UCC #20183582687
BocaGreenMD, Inc.	Nevada, UCC #2018015125-0
VitaCare Prescription Services, Inc.	Florida, UCC #201805366147

INVESTMENT RELATED PROPERTY

(A) Pledged Stock:

Grantor	Stock Issuer	Class of Stock	Certificated (Y/N)	Stock Certificate No.	Par Value	No. of Pledged Stock	% of Outstanding Stock of the Stock Issuer
TherapeuticsMD, Inc.	BocaGreenMD, Inc.	Common	Yes	No. 1	\$0.001	1,000	100%
TherapeuticsMD, Inc.	VitaCare Prescription Services, Inc.	Common	Yes	No. 1	\$0.01	1,000	100%

Pledged LLC Interests:

Grantor	Limited Liability Company	Certificated (Y/N)	Certificate No. (if any)	No. of Pledged Units	% of Outstanding LLC Interests of the Limited Liability Company
TherapeuticsMD, Inc.	VitaMedMD LLC	No	N/A	N/A	100%

Pledged Partnership Interests:

Grantor	Partnership	Type of Partnership Interests (e.g., general or limited)	Certificated (Y/N)	Certificate No. (if any)	% of Outstanding Partnership Interests of the Partnership
None.					

Pledged Trust Interests:

Grantor	Trust	Class of Trust Interests	Certificated (Y/N)	Certificate No. (if any)	% of Outstanding Trust Interests of the Trust
None.					

Pledged Debt:

Grantor	Issuer	Original Principal Amount	Outstanding Principal Balance	Issue Date	Maturity Date
None.					

Securities Account:

Grantor	Name of Securities Intermediary	Account Number	Account Name
***	***	***	***

Commodities Accounts:

Grantor	Name of Commodities Intermediary	Account Number	Account Name
None.			

Deposit Accounts:

Grantor	Name of Depository Bank	Account Number	Account Name
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***
***	***	***	***

(B)

Name of Grantor	Date of Acquisition	Description of Acquisition
None.		

(C)

Name of Grantor	Name of Issuer of Pledged LLC Interest/Pledged Partnership Interest
None.	

MATERIAL CONTRACTS

<u>Name of Grantor</u>	<u>Description of Material Contract</u>
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]

DESCRIPTION OF LETTERS OF CREDIT

<u>Name of Grantor</u>	<u>Description of Letters of Credit</u>
None.	

INTELLECTUAL PROPERTY - EXCEPTIONS¹²

(A) Copyrights

None.

(B) Copyright Licenses

None.

(C) Patents

Issued Patents:

	Patent Number	Title	Filing Date (mm/dd/yy)	Issue Date (mm/dd/yy)	Country
1.	8,577,716	System and Method of Ongoing Evaluation Reporting and Analysis	09/17/09	11/05/13	US
2.	8,633,178	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	01/21/14	US
3.	8,846,648	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	09/30/14	US
4.	8,846,649	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	09/30/14	US
5.	8,933,059	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	01/13/15	US
6.	8,987,237	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	03/24/15	US
7.	8,987,238	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	03/24/15	US
8.	8,993,548	Natural Combination Hormone Replacement Formulations and Therapies	09/03/14	03/31/15	US
9.	8,993,549	Natural Combination Hormone Replacement Formulations and Therapies	09/03/14	03/31/15	US
10.	9,006,222	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	04/14/15	US

¹ Borrower is the holder of all intellectual property unless otherwise indicated.

² Key: pink - Imvexxy, purple - Bijuva, blue – Annovera.

	Patent Number	Title	Filing Date (mm/dd/yy)	Issue Date (mm/dd/yy)	Country
11.	9,012,434	Natural Combination Hormone Replacement Formulations and Therapies	12/06/13	04/21/15	US
12.	9,114,145	Natural Combination Hormone Replacement Formulations and Therapies	09/03/14	08/25/15	US
13.	9,114,146	Natural Combination Hormone Replacement Formulations and Therapies	09/03/14	08/25/15	US
14.	9,180,091	Soluble Estradiol Capsule for Vaginal Insertion	12/20/13	10/10/15	US
15.	9,248,136	Transdermal Hormone Replacement Therapies	12/12/13	02/02/16	US
16.	9,289,382	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	02/17/15	03/22/16	US
17.	9,296,780*	Process for Alkynylating 16-Substituted-17-Keto Steroids	12/19/12	03/29/16	US
18.	9,301,920	Natural Combination Hormone Replacement Formulations and Therapies	03/15/13	04/05/16	US
19.	D801,518	Pharmaceutical Capsule	06/22/15	10/31/17	US
20.	9,931,349	Steroid Hormone Pharmaceutical Composition	03/30/17	04/03/18	US
21.	10,052,386	Progesterone Formulations	12/11/13	08/21/18	US
22.	10,098,894	Transdermal Cream	07/29/15	10/16/18	US
23.	10,206,932	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	02/19/19	US
24.	10,258,630	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	02/09/18	04/17/19	US
25.	89459	Pharmaceutical Capsule	12/22/15	02/17/16	AR
26.	366507	Pharmaceutical Capsule	12/21/15	01/12/16	AU
27.	2012340589	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	08/25/16	AU
28.	2013211876	Transdermal Hormone Replacement Therapies	01/25/13	05/25/17	AU
29.	2013277236	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	08/03/17	AU

* Licensed patent or patent application.

	Patent Number	Title	Filing Date (mm/dd/yy)	Issue Date (mm/dd/yy)	Country
30.	2013277234	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	08/10/17	AU
31.	MX 358440 B	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	08/03/18	MX
32.	166,044	Pharmaceutical Capsule	12/17/15	08/16/16	CA
33.	002916247-0001	Pharmaceutical Capsule	12/18/15	08/10/16	EP
34.	302015005859-5	Pharmaceutical Capsule	12/21/15	01/30/18	BR
35.	6285866	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	02/09/18	JP
36.	6298460	Progesterone Formulations	06/18/13	03/02/18	JP
37.	MX 50237 B	Pharmaceutical Capsule	12/18/15	07/19/17	MX
38.	30-2015-0065043	Pharmaceutical Capsule	12/18/15	03/06/17	KR
39.	101179	Pharmaceutical Capsule	12/21/15	01/10/17	RU
40.	A2015/01935	Pharmaceutical Capsule	12/21/15	05/16/17	ZA
41.	2015/00211	Natural Combination Hormone Replacement Therapies	06/18/13	07/27/16	ZA
42.	2015/00212	Progesterone Formulations	06/18/13	04/26/17	ZA
43.	6334519	Natural Combination Hormone Replacement Therapies	06/18/13	05/11/18	JP
44.	6342334	Transdermal Hormone Replacement Therapies	01/25/13	05/25/18	JP
45.	6342389	Transdermal Hormone Replacement Therapies	06/18/13	05/25/18	JP
46.	6397402	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	09/07/18	JP
47.	2013277235	Transdermal Hormone Replacement Therapies	06/18/13	08/02/18	AU
48.	2013277233	Progesterone Formulations	06/18/13	09/13/18	AU
49.	1624393	Pharmaceutical Capsule	12/21/15	01/18/19	JP
50.	2861234B	Progesterone Formulations	06/18/13	03/27/19	EP
51.	2806742B	Transdermal Hormone Replacement Therapies	01/25/13	03/27/19	EP

SCHEDULE 4.7 - 3

Pending Patent Applications:

	Application Number	Title	Application Date (mm/dd/yy)	Country
1.	16/104,101	Natural Combination Hormone Replacement Formulations and Therapies	08/16/18	US
2.	BR1120140124442	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	BR
3.	2,856,520	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	CA
4.	12850845.4	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	EP
5.	2017-173842	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	JP
6.	MX/a/2014/006256	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	MX
7.	15/090,493	Natural Combination Hormone Replacement Formulations and Therapies	04/04/16	US
8.	20140101244	Natural Combination Hormone Replacement Formulations and Therapies	03/17/14	AR
9.	2017206262	Natural Combination Hormone Replacement Formulations and Therapies	07/20/17	AU
10.	BR1120140319103	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	BR
11.	2,876,977	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	CA
12.	13806855.6	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	EP
13.	236358	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	IL
14.	2017-176379	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	JP
15.	10-2015-7001189	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	KR
16.	MX/a/2014/015898	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	MX
17.	2015100533	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	RU

	Application Number	Title	Application Date (mm/dd/yy)	Country
18.	15/999,040	Natural Combination Hormone Replacement Formulations and Therapies	08/16/18	US
19.	14/512,046	Natural Combination Hormone Replacement Formulations and Therapies	10/10/14	US
20.	20150101608	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	AR
21.	2015264003	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	AU
22.	BR112016 027359 1	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	BR
23.	2,947,767	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	CA
24.	15727528.0	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	EP
25.	248985	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	IL
26.	2016-565647	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	JP
27.	10-2016-7032773	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	KR
28.	MX/a/2016/014281	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	MX
29.	2016143081	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	RU
30.	2016/07541	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	ZA
31.	15/832,757	Natural Combination Hormone Replacement Formulations and Therapies	12/05/17	US
32.	PCT/US2017/064788	Natural Combination Hormone Replacement Formulations and Therapies	12/05/17	PCT
33.	15/832,750	Natural Combination Hormone Replacement Formulations and Therapies	12/05/17	US
34.	16/244,020	Natural Combination Hormone Replacement Formulations and Therapies	01/09/19	US
35.	16/355,532	Natural Combination Hormone Replacement Formulations and Therapies	03/15/19	US

SCHEDULE 4.7 - 5

	Application Number	Title	Application Date (mm/dd/yy)	Country
36.	62/822,609	Natural Combination Hormone Replacement Formulations and Therapies	03/22/19	US
37.	14/649,818	Soluble Estradiol Capsule for Vaginal Insertion	12/17/15	US
38.	2017208300	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	AU
39.	BR1120140319146	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	BR
40.	2,876,968	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	CA
41.	13807188.1	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	EP
42.	236359	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	IL
43.	10-2015-7001193	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	KR
44.	MX/A/2018/009466	Soluble Estradiol Capsule for Vaginal Insertion	08/02/18	MX
45.	2015100531	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	RU
46.	2014/09278	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	ZA
47.	2018-162966	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	JP
48.	14/521,230	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	US
49.	20140103975	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	AR
50.	2014349132	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	AU
51.	BR1120160090080	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	BR
52.	2,926,342	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	CA
53.	14862905.8	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	EP
54.	245139	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	IL
55.	2016-516086	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	JP
56.	10-2016-7010901	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	KR
57.	MX/A/2016/005092	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	MX

	Application Number	Title	Application Date (mm/dd/yy)	Country
58.	2016118396	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	RU
59.	2016/01933	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	ZA
60.	14/521,002	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	US
61.	15/372,385	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	US
62.	PCT/US2016/065466	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	PCT
63.	20160103768	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	AR
64.	2016366200	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	AU
65.	BR1120180114839	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	BR
66.	3,007,636	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	CA
67.	16873806.0	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	EP
68.	19122548.1	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	04/17/19	HK
69.	259884	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	IL
70.	2018-529574	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	JP
71.	10-2018-7019331	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	KR
72.	MX/A/2018/006882	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	MX
73.	743229	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	NZ
74.	2018121094	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	RU
75.	2018/03804	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	ZA

SCHEDULE 4.7 - 7

	Application Number	Title	Application Date (mm/dd/yy)	Country
76.	62/680,715	Vaginal Inserted Estradiol Pharmaceutical Formulations and Methods	06/06/18	US
77.	15/893,542** ⁴	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	02/09/18	US
78.	15/893,550**	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	02/09/18	US
79.	15/975,733	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	05/09/18	US
80.	15/975,723	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	05/09/18	US
81.	15/781,840	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	06/06/18	US
82.	16/004,338	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	06/08/18	US
83.	PCT/US2018/36790	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	06/08/18	PCT
84.	16/006,721	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	06/12/18	US
85.	16/037,452	Progesterone Formulations	07/17/18	US
86.	2018222947	Progesterone Formulations	06/18/13	AU
87.	BR1120140318379	Progesterone Formulations	06/18/13	BR
88.	2,876,964	Progesterone Formulations	06/18/13	CA
89.	MX/a/2014/015900	Progesterone Formulations	06/18/13	MX
90.	MX/a/2018/009467	Progesterone Formulations	08/02/18	MX
91.	15/454,898	Progesterone Formulations Having a Desirable PK Profile	03/09/17	US
92.	20150100920	Progesterone Compositions	03/27/15	AR
93.	2015237243	Progesterone Formulations	03/27/15	AU
94.	BR1120160225708	Progesterone Formulations	03/27/15	BR
95.	2,942,568	Progesterone Formulations	03/27/15	CA

** Application contains allowable subject matter and a patent will issue in due course.

	Application Number	Title	Application Date (mm/dd/yy)	Country
96.	15768772.4	Progesterone Formulations	03/27/15	EP
97.	247828	Progesterone Formulations	03/27/15	IL
98.	2016-557059	Progesterone Formulations	03/24/15	JP
99.	10-2016-7029519	Progesterone Formulations	03/27/15	KR
100.	MX/A/2016/011706	Progesterone Formulations	03/27/15	MX
101.	2016136666	Progesterone Formulations	03/27/15	RU
102.	2016/06309	Progesterone Formulations	03/27/15	ZA
103.	16/273,955	Progesterone Formulations Having a Desirable PK Profile	02/12/19	US
104.	16/125,201	Transdermal Cream	09/07/18	US
105.	P20150102431	Transdermal Cream	07/29/15	AR
106.	2015296609	Transdermal Cream	07/29/15	AU
107.	BR112016 029338 0	Transdermal Cream	07/29/15	BR
108.	2,951,284	Transdermal Cream	07/29/15	CA
109.	15827543.8	Transdermal Cream	07/29/15	EP
110.	248984	Transdermal Cream	07/29/15	IL
111.	2016-571728	Transdermal Cream	07/29/15	JP
112.	10-2017-7002451	Transdermal Cream	07/29/15	KR
113.	MX/a/2016/013693	Transdermal Cream	07/29/15	MX
114.	2016141135	Transdermal Cream	07/29/15	RU
115.	2016/07317	Transdermal Cream	07/29/15	ZA
116.	15/420,019	Transdermal Cream	01/30/17	US
117.	[***]	[***]	[***]	[***]
118.	[***]	[***]	[***]	[***]
119.	[***]	[***]	[***]	[***]
120.	15/217,301	Formulations for Solubilizing Hormones	07/22/16	US
121.	BR112014 018439 9	Transdermal Hormone Replacement Therapies	01/25/13	BR

SCHEDULE 4.7 - 9

	Application Number	Title	Application Date (mm/dd/yy)	Country
122.	2,861,346	Transdermal Hormone Replacement Therapies	01/25/13	CA
123.	MX/A/2014/009093	Transdermal Hormone Replacement Therapies	01/25/13	MX
124.	13/843,362	Transdermal Hormone Replacement Therapies	03/15/13	US
125.	1120140318247	Transdermal Hormone Replacement Therapies	06/18/13	BR
126.	2,876,947	Transdermal Hormone Replacement Therapies	06/18/13	CA
127.	13807463.8	Transdermal Hormone Replacement Therapies	06/18/13	EP
128.	MX/A/2014/015897	Transdermal Hormone Replacement Therapies	06/18/13	MX
129.	2015/00210	Transdermal Hormone Replacement Therapies	06/18/13	ZA
130.	15/475,052	Steroid Hormone Pharmaceutical Composition	03/30/17	US
131.	PCT/US2017/025211	Steroid Hormone Pharmaceutical Composition	03/30/17	PCT
132.	20170100832	Steroid Hormone Pharmaceutical Composition	04/03/17	AR
133.	2017239679	Steroid Hormone Pharmaceutical Composition	03/30/17	AU
134.	BR1120180698776	Steroid Hormone Pharmaceutical Composition	03/30/17	BR
135.	3,019,375	Steroid Hormone Pharmaceutical Composition	03/30/17	CA
136.	17776724.1	Steroid Hormone Pharmaceutical Composition	03/30/17	EP
137.	261924	Steroid Hormone Pharmaceutical Composition	03/30/17	IL
138.	2018-550593	Steroid Hormone Pharmaceutical Composition	03/30/17	JP
139.	10-2018-7031666	Steroid Hormone Pharmaceutical Composition	03/30/17	KR
140.	MX/A/2018/011706	Steroid Hormone Pharmaceutical Composition	03/30/17	MX
141.	746686	Steroid Hormone Pharmaceutical Composition	03/30/17	NZ
142.	2018133921	Steroid Hormone Pharmaceutical Composition	03/30/17	RU
143.	2018/06413	Steroid Hormone Pharmaceutical Composition	03/30/17	ZA
144.	15/475,068	Steroid Hormone Pharmaceutical Composition in Medium Chain Oils	03/30/17	US
145.	20170100831	Steroid Hormone Compositions in Medium Chain Oils	04/03/17	AR
146.	PCT/US2017/025220	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	PCT

	Application Number	Title	Application Date (mm/dd/yy)	Country
147.	15/473,742	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	US
148.	16/359,839	Steroid Hormone Compositions in Medium Chain Oils	03/20/19	US
149.	PCT/US2017/024955	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	PCT
150.	15/901,467	Steroid Hormone Compositions in Medium Chain Oils	02/21/18	US
151.	20170100830	Steroid Hormone Compositions in Medium Chain Oils	04/03/17	AR
152.	2017239645	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	AU
153.	BR1120180701998	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	BR
154.	3,020,153	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	CA
155.	17776645.8	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	EP
156.	261930	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	IL
157.	2018-550564	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	JP
158.	10-2018-7031878	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	KR
159.	MX/A/2018/011705	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	MX
160.	746682	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	NZ
161.	2018133932	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	RU
162.	2018/06414	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	ZA
163.	PCT/US2017/024994	Steroid Hormone Compositions in Medium Chain Oils	03/30/17	PCT
164.	20170100829	Steroid Hormone Compositions in Medium Chain Oils	04/03/17	AR

	Application Number	Title	Application Date (mm/dd/yy)	Country
165.	[***]	[***]	[***]	[***]
166.	[***]	[***]	[***]	[***]
167.	[***]	[***]	[***]	[***]
168.	[***]	[***]	[***]	[***]
169.	[***]*	[***]	[***]	[***]



(D) Patent Licenses

1. Borrower has licensed certain Product Patents and is obligated to pay royalties and other payments pursuant to that certain License Agreement, dated July 30, 2018, between Borrower and The Population Council, Inc.






2. Borrower has licensed certain Product Patents pursuant to that certain License and Supply Agreement, dated July 30, 2018, as amended, between Borrower and Knight Pharmaceuticals, Inc.



(E) Trademarks

Registered Trademarks:

	Registration Number	Trademark or Design	Registration Date (mm/dd/yy)	Country
1.	4430100	BOCAGREENMD	11/05/13	US
2.	4568945	BOCAGREENMD	07/15/14	US
3.	4607073	FEPLUS	09/16/14	US
4.	4581759	FOLMAX	08/05/14	US
5.	4271087		01/08/13	US
6.	5602058	IMVEXXY	11/06/18	US
7.	4444914	PRENA1	12/03/13	US
8.	4314431	REDICHEW	04/02/13	US
9.	4580454	THERAPEUTICSMD	08/05/14	US
10.	013048871	THERAPEUTICSMD	11/26/14	EU
11.	5714724	THERAPEUTICSMD	10/31/14	JP
12.	4580455	VITAMEDMD	08/05/14	US
13.	3842265	VITAMEDMD	10/31/10	US
14.	4271086		01/08/13	US
15.	5028550	VITATRUE	08/23/16	US

Pending Trademark Applications or Pending Designs:

	Serial Number	Pending Trademark or Design	Filing Date (mm/dd/yy)	Country
1.	88229031		12/13/18	US
2.	87744084	BIJUVA	10/10/14	US
3.	87916151	DUENTICA	05/10/18	US
4.	87327866	FLIRTAYIS	02/07/17	US
5.	87941900		05/30/18	US
6.	87941908		05/30/18	US
7.	88125885		09/20/18	US
8.	88125894		09/20/18	US

	Serial Number	Pending Trademark or Design	Filing Date (mm/dd/yy)	Country
9.	87916153	OVANATA	05/10/18	US
10.	87498387	SYMBODA	06/20/17	US
11.	87916147	SYMEPTO	05/10/18	US
12.	87916140	VIEPA	05/10/18	US
13.	87916139	XUBIVVA	05/10/18	US
14.	87916136	YUTHENA	05/10/18	US
15.	88125949	YUVVEXY	09/20/18	US
16.	87126380		08/03/16	US
17.	87126398		08/03/16	US
18.	1947704	BIJUVA	02/22/19	CA
19.	1947721	JOYESTA	02/22/19	CA

SERVICE MARKS**Registered Service Marks or Designs:**

	Registration Number	Service Mark or Design	Registration Date (mm/dd/yy)	Country
1.	5051435	VITAMOM	09/27/16	US

Pending Service Mark Applications or Designs:

	Serial Number	Pending Service Mark or Design	Filing Date (mm/dd/yy)	Country
1.	87340782	BIO-IGNITE	02/17/17	US
2.	87398429	FOREVHER	04/04/17	US
3.	88346838	MENOCHOICE***	03/19/19	US

(F) Trademark Licenses

Borrower has licensed certain trademarks under a June 13, 2014 Trademark License Agreement with Lang Pharma Nutrition, Inc.

(G) Trade Secret Licenses

None.

(H) Intellectual Property Exceptions

None.

*** Also in International Class 09.

COMMERCIAL TORT CLAIMS

Name of Grantor

Commercial Tort Claims

None.

PLEDGE SUPPLEMENT

This PLEDGE SUPPLEMENT, dated as of _____, 20__, is delivered by [NAME OF GRANTOR] a [NAME OF STATE OF ORGANIZATION] [entity type] (a “Additional Grantor”) pursuant to the Pledge and Security Agreement, dated as of April 24, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “Security Agreement”), among the Grantors party thereto from time to time, and TPG Specialty Lending, Inc., as the Administrative Agent. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

Additional Grantor acknowledges and agrees that such Additional Grantor shall be a “Grantor” for all purposes under the Security Agreement and to be bound by the terms thereof, and hereby confirms the grant to the Administrative Agent set forth in the Security Agreement of, and does hereby grant to the Administrative Agent, a security interest in all of Additional Grantor’s right, title and interest in and to all Collateral to secure the Secured Obligations. Additional Grantor represents and warrants that the attached Supplements to Schedules accurately and completely set forth all additional information required pursuant to the Security Agreement and hereby agrees that such Supplements to Schedules shall constitute part of the Schedules to the Security Agreement.

IN WITNESS WHEREOF, Additional Grantor has caused this Pledge Supplement to be duly executed and delivered by its duly authorized officer as of the date first set forth above.

[NAME OF ADDITIONAL GRANTOR]

By: _____
Name:
Title

TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT (this “**Agreement**”), dated as of _____, 20__, is entered into by and among _____, a _____ (the “**Grantor**”) and TPG Specialty Lending, Inc. (the “**Assignee**”), as Administrative Agent pursuant to (i) that certain Pledge and Security Agreement, dated as of April 24, 2019, among the Assignee, the Grantor and the other Grantors party thereto (as amended, restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”), and (ii) that certain Financing Agreement, dated as of April 24, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “**Financing Agreement**”), between, among others, certain of the Grantor’s affiliates, the Assignee, and certain Lenders party thereto.

Capitalized terms not otherwise defined herein have the respective meanings ascribed to them in the Security Agreement or the Financing Agreement, as applicable.

WHEREAS, pursuant to the Security Agreement, the Grantor has granted in favor of the Assignee a security interest in certain Collateral, including the federally registered Trademarks set forth on Schedule A hereto as of the date hereof.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor and the Assignee hereby agree as follows:

1. Grant of Security Interest

(a) Subject to the terms and conditions of the Security Agreement, to evidence further the security interest granted by the Grantor to the Assignee pursuant to the Security Agreement, the Grantor hereby grants to the Assignee a security interest in all of the Grantor’s right, title and interest in, to and under the Trademarks, whether now owned or existing or at any time hereafter acquired or arising and wherever located, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Grantor’s Secured Obligations. For the purposes of this Agreement, “Trademarks” means (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, Internet domain names and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, 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, and all common-law rights related thereto, including, without limitation, any of the foregoing referred to on Schedule A hereto, and (ii) the right to obtain all renewals thereof, provided that no United States intent-to-use trademark or service mark application shall be included in the Trademarks to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark or service mark application under Federal law.

(b) Schedule A hereto contains a true and accurate list of all of the Grantor’s federally registered United States registrations and applications for registration for the Trademarks (excluding Internet domain names) existing as of the date hereof.

(c) The security interest granted hereby is granted concurrently and in conjunction with the security interest granted to the Assignee under the Security Agreement. In the event that any of the provisions of this Agreement are in conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

2. Modifications

This Agreement or any provision hereof may not be changed, waived, or terminated except in accordance with the amendment provisions of the Financing Agreement. In connection with the foregoing, the Grantor authorizes the Assignee, upon notice to the Grantor, to modify this Agreement without obtaining the Grantor's signature to such modification, to the extent that such modification constitutes an amendment of Schedule A hereto, to add any right, title or interest in any Trademarks owned or subsequently acquired by the Grantor or to delete any reference to any right, title or interest in any Trademarks in which the Grantor no longer has or claims any right, title or interest. The Grantor additionally agrees to execute any additional agreement or amendment hereto as may be reasonably required by the Assignee from time to time, to subject any such owned or subsequently acquired right, title or interest in any Trademark to the security interests and perfection created or contemplated hereby or by the Security Agreement.

3. Applicable Law

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

4. Counterparts

This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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

ASSIGNEE:

TPG SPECIALTY LENDING, INC.

By: _____

Name:

Title:

Address of Assignee:

GRANTOR:

By: _____

Name:

Title:

Address of Grantor:

Schedule A to TRADEMARK SECURITY AGREEMENT

U.S. Registered Trademarks

Grantor	Trademark Name	Application Number	Filing Date	Status	Registration Number	Registration Date

Applications of Registration of Trademarks

COPYRIGHT SECURITY AGREEMENT

This COPYRIGHT SECURITY AGREEMENT (this “**Agreement**”), dated as of _____, 20__, is entered into by and among _____, a _____ (the “**Grantor**”) and TPG Specialty Lending, Inc. (the “**Assignee**”), as Administrative Agent pursuant to (i) that certain Pledge and Security Agreement, dated as of April 24, 2019, among the Assignee, the Grantor and the other Grantors party thereto (as amended, restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”), and (ii) that certain Financing Agreement, dated as of April 24, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “**Financing Agreement**”), between, among others, certain of the Grantor’s affiliates, the Assignee, and certain Lenders party thereto.

Capitalized terms not otherwise defined herein have the respective meanings ascribed to them in the Security Agreement or the Financing Agreement, as applicable.

WHEREAS, pursuant to the Security Agreement, the Grantor has granted in favor of the Assignee a security interest in certain Collateral, including the Copyrights and the applications and registrations set forth on Schedule A hereto as of the date hereof, and all proceeds thereof, including, without limitation, any and all causes of action which may exist by reason of infringement thereof and any and all damages arising from past, present and future violations thereof.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor and the Assignee hereby agree as follows:

1. Grant of Security Interest

(a) Subject to the terms and conditions of the Security Agreement, to evidence further the security interest granted by the Grantor to the Assignee pursuant to the Security Agreement, the Grantor hereby grants to the Assignee a security interest in all of the Grantor’s right, title and interest in, to and under the Copyrights, whether now owned or existing or at any time hereafter acquired or arising and wherever located, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Grantor’s Secured Obligations. For the purposes of this Agreement, “Copyrights” means (i) all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished (including, without limitation, those listed on Schedule A), all computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating any copyrights, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the United States Copyright Office, and (ii) the right to obtain all renewals thereof.

(b) Schedule A hereto contains a true and accurate list of all of the Grantor’s federally registered United States registrations and applications for registration for the Copyrights existing as of the date hereof.

(c) The security interest granted hereby is granted concurrently and in conjunction with the security interest granted to the Assignee under the Security Agreement. In the event that any of the provisions of this Agreement are in conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

2. Modifications

This Agreement or any provision hereof may not be changed, waived, or terminated except in accordance with the amendment provisions of the Financing Agreement. In connection with the foregoing, the Grantor authorizes the Assignee, upon notice to the Grantor, to modify this Agreement without obtaining the Grantor's signature to such modification, to the extent that such modification constitutes an amendment of Schedule A hereto, to add any right, title or interest in any Copyrights owned or subsequently acquired by the Grantor or to delete any reference to any right, title or interest in any Copyrights in which the Grantor no longer has or claims any right, title or interest. The Grantor additionally agrees to execute any additional agreement or amendment hereto as may be reasonably required by the Assignee from time to time, to subject any such owned or subsequently acquired right, title or interest in any Copyright to the security interests and perfection created or contemplated hereby or by the Security Agreement.

3. Applicable Law

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

4. Counterparts

This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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

ASSIGNEE:

TPG SPECIALTY LENDING, INC.

By: _____

Name:

Title:

Address of Assignee:

GRANTOR:

By: _____

Name:

Title:

Address of Grantor:

Schedule A to COPYRIGHT SECURITY AGREEMENT

U.S. Registered Copyrights

Title	Application Number	Filing Date	Status	Registration Number	Registration Date

Applications of Registration of Copyrights

Owner	Application Number	Filing Date	Status	Registration Number	Registration Date

PATENT SECURITY AGREEMENT

This PATENT SECURITY AGREEMENT (this “**Agreement**”), dated as of _____, 20__, is entered into by and among _____, a _____ (the “**Grantor**”) and TPG Specialty Lending, Inc. (the “**Assignee**”), as Administrative Agent pursuant to (i) that certain Pledge and Security Agreement, dated as of April 24, 2019, among the Assignee, the Grantor and the other Grantors party thereto (as amended, restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”), and (ii) that certain Financing Agreement, dated as of April 24, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “**Financing Agreement**”), between, among others, certain of the Grantor’s affiliates, the Assignee, and certain Lenders party thereto.

Capitalized terms not otherwise defined herein have the respective meanings ascribed to them in the Security Agreement or the Financing Agreement, as applicable.

WHEREAS, pursuant to the Security Agreement, the Grantor has granted in favor of the Assignee a security interest in certain Collateral, including the federally registered Patents set forth on Schedule A hereto as of the date hereof.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor and the Assignee hereby agree as follows:

1. Grant of Security Interest

(a) Subject to the terms and conditions of the Security Agreement, to evidence further the security interest granted by the Grantor to the Assignee pursuant to the Security Agreement, the Grantor hereby grants to the Assignee a security interest in all of the Grantor’s right, title and interest in, to and under the Patents, whether now owned or existing or at any time hereafter acquired or arising and wherever located, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Grantor’s Secured Obligations. For the purposes of this Agreement, “Patents” means (i) all letters patent of the United States, all reissues and extensions thereof and all goodwill associated therewith, including, without limitation, any of the foregoing referred to on Schedule A hereto, (ii) all applications for letters patent of the United States, continuations and continuations-in-part thereof, including, without limitation, any of the foregoing referred to on Schedule A hereto, and (iii) all rights to obtain any reissues or extensions of the foregoing.

(b) Schedule A hereto contains a true and accurate list of all of the Grantor’s federally registered United States registrations and applications for registration for the Patents existing as of the date hereof.

(c) The security interest granted hereby is granted concurrently and in conjunction with the security interest granted to the Assignee under the Security Agreement. In the event that any of the provisions of this Agreement are in conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

2. Modifications

This Agreement or any provision hereof may not be changed, waived, or terminated except in accordance with the amendment provisions of the Financing Agreement. In connection with the foregoing, the Grantor authorizes the Assignee, upon notice to the Grantor, to modify this Agreement without obtaining the Grantor’s signature to such modification, to the extent that such modification constitutes an amendment of Schedule A hereto, to add any right, title or interest in any Patents owned or subsequently acquired by the Grantor or to delete any reference to any right, title or interest in any Patents in which the Grantor no longer has or claims any right, title or interest. The Grantor additionally agrees to execute any additional agreement or amendment hereto as may be reasonably required by the Assignee from time to time, to subject any such owned or subsequently acquired right, title or interest in any Patent to the security interests and perfection created or contemplated hereby or by the Security Agreement.

3. Applicable Law

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

4. Counterparts

This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

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

ASSIGNEE:

TPG SPECIALTY LENDING, INC.

By: _____
Name:
Title:

Address of Assignee:

GRANTOR:

By: _____

Name:

Title:

Address of Grantor:

Exhibit D -2

Schedule A to PATENT SECURITY AGREEMENT

U.S. Registered Patents

Title	Application Number	Filing Date	Status	Patent Number	Registration Date

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [***] INDICATES THAT INFORMATION HAS BEEN REDACTED.

TXMD EXECUTION VERSION
DATED: JUNE 6, 2019

LICENSE AND SUPPLY AGREEMENT

by and between

TherapeuticsMD, Inc.

and

Theramex HQ UK Limited

DATE: June 6, 2019

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LICENSE AND SUPPLY AGREEMENT

This License and Supply Agreement (the “**Agreement**”) is made effective as of **June 6, 2019** (the “**Effective Date**”) by and between TherapeuticsMD, Inc., a Nevada corporation, with a principal place of business located at 6800 Broken Sound Parkway NW, Boca Raton, FL 33487 (“**TXMD**”) and Theramex HQ UK Limited, a company formed under the laws of England, with its principal place of business located at Sloane Square House, 1 Holbein Place, London SW1W 8NS United Kingdom (“**Licensee**”). TXMD and Licensee are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

Recitals

- A. TXMD is an innovative healthcare company focused on developing and commercializing products for women.
- B. Licensee has experience in all facets of commercializing pharmaceutical products in the Territory (as defined below), including applying for Marketing Approvals, distribution, marketing, and sales in the Territory.
- C. TXMD’s pipeline includes Bijuva™, recently approved by the FDA for treatment of moderate-to-severe vasomotor symptoms (VMS) due to menopause, and Imvexxy®, recently approved by the FDA for treatment of dyspareunia, a symptom of vulvar and vaginal atrophy, due to menopause.
- D. Licensee desires to secure necessary rights to Commercialize (as defined below) the Products (as defined below) in the Territory (as defined below) and, subject to the terms and conditions of this Agreement, TXMD desires to grant such rights to Commercialize the Products in the Territory and to Supply (as defined below) the Products to Licensee.

Now, THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants and conditions contained in this Agreement, the Parties agree as follows:

1. **Definitions; Construction**

1.1 **Definitions**. Unless otherwise specifically provided in this Agreement, the following terms shall have the following meanings:

“**Accounting Standards**” means IFRS as generally and consistently applied throughout Licensee’s organization.

“**Acknowledgement**” is defined in Section 7.1.

“**Actual Product Fees**” means the actual per unit COGS pricing multiplied by the number of Products ordered.

“Affiliate”, with respect to a Party, shall mean any Person that controls, is controlled by, or is under common control with that Party. For the purpose of this definition, “control” means, direct or indirect, ownership of fifty percent (50%) or more of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or fifty percent (50%) or more of the equity interest in the case of any other type of legal entity, status as a general partner in any partnership, or any other arrangement whereby the entity or person controls or has the right to control the board of directors or equivalent governing body of a corporation or other entity, or the ability to cause the direction of the management or policies of a corporation or other entity. For the avoidance of doubt, an entity that shares a common corporate parent with Party shall be considered an Affiliate of such Party if such common parent controls, either directly or indirectly (i.e., through different tiers of ownership), both the Party and the entity at issue. In the case of entities organized under the laws of certain countries, the maximum percentage ownership permitted by law for a foreign investor may be less than fifty percent (50%), and in such case such lower percentage shall be substituted in the preceding sentence, provided that such foreign investor has the power to direct the management and policies of such entity. For the avoidance of doubt, when used in connection with Licensee, the term “Affiliate” shall exclude: (i) any funds or vehicles (“**CVC Funds**”) advised by CVC Capital Partners Limited and/or its affiliates; and (ii) any portfolio companies in which any CVC Fund holds an interest or investment from time to time (together with the CVC Funds, the “**Restricted Entities**”).

“Applicable Laws” means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of any governmental authority or Regulatory Authority, domestic or foreign, that are applicable to the particular situation, obligation or circumstances.

“Background IPR” is defined in Section 2.4.1.

“Bankruptcy Code” means Title 11, U.S. Code, as amended, or analogous provisions of Applicable Laws outside the United States.

“Batch” means a defined quantity of Product that is Manufactured according to a single manufacturing order during the same cycle of Manufacture and is intended to have been Manufactured in accordance with the Manufacturing Process and Product Specifications.

“Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks located in New York, New York or London, England are authorized or required by Applicable Law to remain closed.

“Calendar Quarter” means the respective period of three consecutive calendar months ending March 31, June 30, September 30 and December 31.

“Calendar Year” means each successive twelve (12) months commencing on January 1 and ending on December 31.

“Certificate of Analysis” means the certificate of analysis to accompany Product delivered to Licensee as set forth in the Quality Technical Agreement.

“Change of Control” means, with respect to Licensee, a completed transaction where any of the following occurs upon closing of the transaction: (a) any Third Party (or group of Third Parties acting in concert) becomes the beneficial owner, directly or indirectly, of more than fifty percent (50%) of the total voting power of the stock then outstanding of Licensee normally entitled to vote in elections of directors; (b) Licensee or its Affiliate consolidates with or merges into another corporation or entity, or any corporation or entity consolidates with or merges into Licensee or its Affiliate, in either event pursuant to a transaction in which more than fifty percent (50%) of the total voting power of the stock outstanding of the surviving entity normally entitled to vote in elections of directors is not held by the parties holding at least fifty percent (50%) of the total outstanding shares of Licensee preceding such consolidation or merger; or (c) Licensee divests or otherwise conveys, transfers or leases all or substantially all of its assets relating to a Product, to any Third Party.

“Clinical Data” means, with respect to a Clinical Trial for a pharmaceutical product, all data and results from the conduct of such Clinical Trial.

“Clinical Trial” means a human clinical trial of Product.

“cGMP” means the current Good Manufacturing Practices promulgated by the U.S. Food and Drug Administration, EMA or any other Regulatory Authority in the Territory for the manufacture and testing of pharmaceutical products.

“CMC” or **“CMC Information”** means all product quality cGMP data related to the manufacturing of the Products including characterization, stability, manufacturing process development, control methods and specifications, biopharmaceutical classification and all relevant supporting data.

“COGS” means with respect to any Product supplied within the scope of this Agreement the unit cost of Manufacture consisting of (a) Direct Material Costs, (b) Direct Operating Labor Costs and (c) Indirect Expenses (Indirect Expenses shall be billed separately), each as defined below, all as fairly and reasonably attributable to Product within the scope of this Agreement:

(a) **“Direct Material Costs”** means the cost of purchased materials used in the manufacture or packaging of Product, including costs of Materials;

(b) **“Direct Operating Labor Costs”** means the personnel cost of employees directly employed in the manufacturing, Packaging, quality testing or release of Product, including basic wages, labor and related payroll taxes and benefits; and

(c) **“Indirect Expenses”** means, collectively:

(i) Costs of quality assurance activities (excluding labor costs) relating to Products;

(ii) Interim transportation, or any related transportation cost including tertiary packaging and storage of Product, as incurred or spent in connection with this Agreement;

(iii) Costs of Products as actually invoiced by Contract Manufacturers for applicable Products supplied to Licensee, including the benefit of any price reductions, payment or terms discounts or other reimbursements, such as volume discounts, that may be applicable to purchased Products);

(iv) Costs associated with changes of the Product Specifications or the Manufacturing Process;

(v) Costs and expenses relating to registration and maintenance of Drug Master Files; and

(vi) Product validation costs (including manufacturing, testing, and stability) for the Territory, Territory-specific testing requirements, and annual stability testing for the Products in the Territory.

“Commercialization,” with a correlative meaning for **“Commercialize,”** means all activities undertaken with respect to commercialization of Product in the Territory, including activities relating to submitting Regulatory Materials for Marketing Authorization and other Regulatory Approvals for Product in the Territory by using the Regulatory Materials, Regulatory Approvals, pricing and reimbursement approvals, TXMD Clinical Data and related materials necessary, in each case as provided or licensed by TXMD to Licensee hereunder, marketing, promoting, distributing, importing, exporting (to other countries in the Territory, if applicable), offering for sale and/or selling Product. Commercialization does not include Development. For the avoidance of doubt, nothing in this definition shall be interpreted to restrict Licensee’s ability to use any information in support of obtaining any Marketing Authorization for Product in the Territory.

“Commercialization Field” means human use.

“Confidential Information” means all confidential or proprietary information of a Party disclosed by or on behalf of the relevant Party (whether through its representatives, counsel, directors, officers, employees, agents, subcontractors, or Affiliates (collectively, the **“Representatives”**) to the other Party pursuant to this Agreement in written, oral or any other form (such as by permitting examination of tangible items or viewing of premises); and which may include, but is not limited to, technical data, trade secrets, know-how, intellectual property or other materials owned or controlled by Disclosing Party, including, but not limited to, research, product plans, products, samples, specifications, service plans, services, customer lists, customers, markets, software, developments, inventions, processes, formulas, chemical applications, laboratory instruments, laboratory methods of analysis, interpretation of lab results, techniques, technology, manufacturing methods, equipment, designs, drawings, engineering, marketing, distribution and sales methods and systems, sales and profit figures, pricing, finances and other business information, and all analyses, compilations, studies or other materials prepared by Recipient containing or based in whole or in part upon such information furnished to Recipient by Disclosing Party or its Representatives.

“Contract Manufacturers” means any Third Party engaged by TXMD to perform Manufacturing of Product on behalf of TXMD.

“Contract Manufacturing Agreement(s)” means the agreement(s) between TXMD and Contract Manufacturers for the Manufacture of Product or related services.

“Consulting Rate” means a blended rate of EUR [***] per hour plus all Licensee pre-approved and reasonable travel and expenses incurred by resources in performing any Project Services (following the exhaustion of any applicable Project Pool hours, at Licensee’s discretion). The Consulting Rate and categories of resources to which it is applicable, shall be periodically reviewed for appropriateness by the Joint Steering Committee in consultation with the finance departments of each Party.

“**Control**” means, with respect to any material, information, or Intellectual Property Right, that a Party has the legal right or authority (whether by ownership, license or otherwise), as of the Effective Date or during the Term, to grant to the other Party access to, ownership of, or a license or sublicense (as applicable) under, such material, information, or Intellectual Property Right on the terms and conditions set forth herein without violating the terms of any agreement or any other arrangement with any Third Party or misappropriating the proprietary or trade secret information of a Third Party.

“**Cover**” or “**Covering**” means, with respect to a Patent Right or claim of a Patent Right and a Product, that, but for the licenses granted in this Agreement, the making, use, sale, offer for sale or importation of the Product would infringe such claim or Patent Right.

“**Defective Product**” means Product that is damaged or defective when Licensee takes title to the Product pursuant to Section 8.1 below.

“**Develop**” or “**Development**” means all research and development activities for Product, including all such activities intended to research, discover or develop and/or to support INDs, NDAs or other Marketing Approvals or other post-marketing requirements for Product, including, without limitation, (a) toxicology, pre-clinical and clinical drug development activities, and (b) Clinical Trials.

“**Diligent Efforts**” means with respect to Licensee’s obligations under this Agreement, the level of efforts in carrying out such obligation in a manner that is at least consistent with the efforts that a pharmaceutical company in a similar position as Licensee typically devotes to a product of similar commercial and scientific potential at a similar stage in its lifecycle, taking into consideration safety and efficacy, cost to develop, the competitiveness of alternative Third Party products, the likelihood of receipt Marketing Authorization and other Regulatory Approvals, expected profitability, including the amounts of marketing and promotional expenditures with respect to Product and all other relevant factors. Diligent Efforts requires, with respect to a particular task or activity in Developing or Commercializing Product, that Licensee: (a) promptly assign responsibility for such task or activity to specific individuals who are held accountable for progress and to monitor such progress on an on-going basis; (b) set and consistently seek to achieve specific and meaningful objectives for carrying out such task or activity; and (c) make and implement decisions and allocate resources designed to advance progress with respect to such objectives. Diligent Efforts shall be determined individually with respect to appropriate and reasonably defined specific markets or groups of markets, and it is understood that the level of Diligent Efforts required during any specific period may vary from country to country and between different markets or groups of markets.

“**Disclosing Party**” means the Party disclosing Confidential Information.

“**Dispute**” is defined in Section 18.1.

“**DMF**” or “**Drug Master File**” means a submission to a Regulatory Authority that may be used to provide confidential detailed information about facilities, processes, or articles used in the manufacturing, processing, packaging, and storing of one or more human drugs.

“**Effective Date**” means the date as set forth in the preamble to this Agreement.

“**EMA**” means the European Medicines Agency, or any successor entity thereto performing substantially the same functions.

“**Exception Notice**” is defined in Section 8.3.

“**EUR**” means Euros, the currency of the European Union.

“**European Union**” means all of the European Union member states as of the applicable date during the Term.

“**FCPA**” is defined in Section 13.3.1.

“**Firm Commitment**” is defined in Section 6.6.

“**First Commercial Sale**” means, with respect to a Product in any country or jurisdiction in the Territory, the first sale by Licensee to a Person of such Product for use in such country or jurisdiction.

“**Force Majeure**” means an event which is beyond a non-performing Party’s reasonable control, including an act of God, strike, lock-out or other industrial/labor dispute (whether involving the workforce of the Party so prevented or of any other Person), war, riot, civil commotion, terrorist act, malicious damage, epidemic, quarantine, fire, flood, storm or natural disaster.

“**Force Majeure Party**” means a Party prevented or delayed in its performance under this Agreement by an event of Force Majeure.

“**Generic Product**” means any product containing the same active pharmaceutical ingredients as Product and that is submitted as an Abbreviated New Drug Application (or the foreign jurisdiction equivalent) that refers or compares to Product as the reference product.

“**ICC**” is defined in Section 18.3.

“**IFRS**” means International Reporting Financial Standards promulgated by the International Accounting Standards Board, as amended, supplemented or replaced from time to time.

“**IND**” means an investigational new drug application for Product filed by TXMD with the U.S. Food and Drug Administration.

“**Indemnified Party**” is defined in Section 14.3.

“**Indemnifying Party**” is defined in Section 14.3.

“Indirect Taxes” means value added taxes, sales taxes, consumption taxes and other similar taxes relating to sales or purchase of goods and supply of services.

“Initial Indication” means, with respect to a country or jurisdiction in the Territory, the first indication for which Licensee pursues Marketing Authorization for a Product in such country or jurisdiction using the TXMD Clinical Data as the basis for obtaining such Marketing Authorization. Upon the granting of the first such Marketing Authorization in such country or jurisdiction by the applicable Regulatory Authority, the indication described in such Marketing Authorization for a Product in such country or jurisdiction as specified in the applicable Product Labeling for such Product shall thereafter be the Initial Indication. As of the Effective Date, the Initial Indication for the TX-001 Product is anticipated to be comprised of hormone replacement therapy for oestrogen deficiency symptoms in post-menopausal women. As of the Effective Date, the Initial Indication for the TX-004 Product is anticipated to be comprised of the treatment of dyspareunia, a symptom of vulvar and vaginal atrophy, due to menopause.

“Intellectual Property Rights” means Know-How, Patent Rights, trademarks, service marks, trade names, design rights, copyright (including rights in computer software) or any rights or property similar to any of the foregoing in any part of the world, whether registered or not, together with the right to apply for the registration of any such rights, and all rights or forms of protection having equivalent or similar effect, in any part of the world.

“IP Improvement” means any invention, discovery, upgrading or modification and all other Intellectual Property Rights (whether patentable or not) created by either Party or jointly by the Parties during the Term in performance of a Party’s rights or obligations under this Agreement, including any manufacturing processes, dosage forms, formulations or delivery systems.

“Joint Steering Committee” is defined in Section 3.3.

“Know-How” means all technical information, know-how and data, including inventions (whether patentable or not), discoveries, trade secrets, specifications, designs, instructions, processes, formulae, materials, expertise and other technology applicable to compounds, formulations, compositions, products or to their manufacture, development, registration, use or commercialization or methods of assaying or testing them or processes for their manufacture, formulations containing them, compositions incorporating or comprising them and including all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical and analytical, safety, quality control, manufacturing, preclinical and Clinical Data, instructions, processes, formulae, expertise and information, Regulatory Materials and copies thereof, relevant to the development, manufacture, use or commercialization of and/or which may be useful in studying, testing, development, production or formulation of products, or intermediates for the synthesis thereof. Know-How includes any rights including trade secrets, copyright, database or design rights protecting such Know-How.

“Licensee Claims” is defined in Section 14.1.

“Licensee Group” is defined in Section 14.2.

“Licensee Indemnitees” is defined in Section 14.1.

“**Lead Time**” means the agreed time it will take from the date TXMD acknowledges receipt of a Purchase Order from Licensee until and including the date of delivery of Product EXW INCOTERMS (2010) by Third Party Manufacturer to Licensee. The Lead Time shall be 150 days for launch quantities unless additional testing or validation studies are required and 120 days for subsequent orders unless otherwise agreed to by the Parties in writing.

“**Long Term Forecast**” is defined in Section 6.5.

“**Major Countries**” means the United Kingdom, France, Germany, Spain, Italy, Brazil, and Mexico.

“**Manufacture**” means the manufacture of a Product, including the compounding, filling, encapsulating, testing, and Packaging of Materials by TXMD (or any of its permitted Affiliates or subcontractors) to manufacture and produce Product in accordance with the Manufacturing Process and Product Specifications.

“**Manufacturing Process**” means any process (or step in any process) used or planned to be used to Manufacture a Product as further described in the Product Specifications.

“**Marketing Authorization**” means the approval of a Product by the Regulatory Authority for Commercialization in the Territory.

“**Materials**” means raw materials, excipients, intermediates and laboratory reagents, packaging components and materials, devices, labels or other materials used in the Supply of Product.

“**Milestone Fees**” means the fees payable by Licensee based on certain milestones, as specified in Exhibit 2.

“**Net Sales**” means, with respect to a particular time period, the total amounts invoiced by Licensee and its Affiliates to Third Party purchasers (including wholesalers and non-Affiliate Sublicensees) in respect of sales of Product, less the following deductions to the extent actually allowed to customers or incurred with respect to such sales:

(a) normal and customary trade, quantity or prompt settlement discounts off the invoiced price, allowances and credits (other than price discounts granted at the time of invoicing which have already been included in the gross amount invoiced);

(b) amounts repaid or credited because of rejections, returns, rebates, price adjustments or allowances for damaged products;

(c) rebates and similar payments made with respect to sales of Product paid for by any governmental authority, chargeback payments, repayments and rebates (or the equivalent thereof) granted to or imposed by group purchasing organizations, managed health care organizations or federal, state/provincial, local and other governments, including any or all of their regulatory authorities, agencies, review boards or tribunals, or trade customers;

(d) transportation costs, pre-wholesaling costs, distribution expenses, special packaging, freight, postage, shipping, transportation and insurance charges directly allocated to Product, provided that such costs, expenses and charges shall not exceed [***] percent ([***]%) of the invoiced amount of the Product, understanding in each case that such costs, expenses and charges are on a pass-through basis without markup;

(e) sales, value-added (to the extent not refundable in accordance with applicable law excise taxes, tariffs and duties, and other taxes directly related to the sale (but not including taxes assessed against the income derived from such sale), Indirect Taxes, customs duties, customs levies and import fees imposed on the sale, importation, use or distribution of Product;

(f) any other normal and customary deductions actually allowed to customers that are consistently applied from time-to-time by Licensee in accordance with its Accounting Standards;

(g) stocking allowances;

(h) amounts written off or not collected due to uncollectable invoiced amounts including bad debts, in amounts consistent with Licensee's usual practice and with its Accounting Standards; and

(i) any other payment which reduces gross revenue and is permitted to be deducted in calculating net sales in accordance with IFRS, provided that any differences in the treatment of such other payment as determined under US GAAP and IFRS shall be discussed by the JSC.

Net Sales shall be calculated using Licensee's internal audited system used to calculate and report net sales for all its products, which at all times shall be in accordance with the Accounting Standards, as such Net Sales calculation may be adjusted for any of the items (a) to (i) above that are not taken into account in such systems. Deductions pursuant to subsection (i) above shall be taken in the Calendar Quarter in which such sales are no longer recorded as a receivable, and *provided that* if any amounts of payment for such sales are subsequently received by Licensee (or its Affiliates), such amount shall be deemed "Net Sales" in the period received. To the extent that Licensee (including its Affiliates, as applicable) provides to any Third Party purchaser discounts or allowances that are applicable to and measured by purchases of a Product and one or more other products (such as a "bundled sale" arrangement), such discounts and allowances shall be allocated between the products (for purposes of the deductions used in calculating Net Sales as above) and such other products in a commercially reasonable manner that does not unfairly or inappropriately bias the level of discounting against the Product (as compared to the other products), such allocation to be determined in good faith by the Parties through the Joint Steering Committee.

Net Sales shall include the amount or fair market value of all consideration received by Licensee and its associated parties in respect of sales of Product, whether such consideration is in cash, payment in kind, exchange, or other form. Net Sales shall not include sales between or among Licensee or its Affiliates unless any such associated party is the end user, but shall include sales to non-Affiliate Sublicensees. Subject to the above, Net Sales shall be calculated in accordance with the standard internal policies and procedures of Licensee, which shall at all times be in accordance with IFRS.

“**Package**” and “**Packaging**” means labelling, testing, inspecting, final finished packaging and packing of Product, or any activity of a nature similar to the foregoing.

“**Paid Estimated Product Fees**” means fees paid by Licensee for Product ordered by Licensee in the Calendar Year or partial Calendar Year based on the estimated COGS per unit fees.

“**Parties**” means TXMD and Licensee and “**Party**” means either TXMD or Licensee.

“**Patent Rights**” means patent applications and patents, inventors’ certificates, improvement patents, utility models and patents of addition and administrative protection (such as pipeline protection) and all foreign counterparts of them in any and all countries, and including any divisional applications and patents, refilings, renewals, continuations, continuations-in-part, extensions (including patent term extensions), reissues, re-examinations, substitutions, confirmations, registrations, revalidation, importation and additions, and any equivalents of or to any of the foregoing in any and all countries, as well as any supplementary protection certificates and equivalent protection rights in respect of any of them in any and all countries.

“**Person**” means an individual natural person, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, incorporated association, joint venture or similar entity or organization, including a government or political subdivision, department or agency of a government.

“**Pharmacovigilance Agreement**” means the pharmacovigilance agreement agreed between the Parties relating to Product, and any successor agreement thereto to be executed within twelve (12) months of the Effective Date.

“**President**” is defined in Section 3.3.3.

“**Process**” or “**Processing**” means the compounding, filling, encapsulating, producing, testing and bulk packaging of Materials into Product, in accordance with the Product Specifications.

“**Product**” means the (a) pharmaceutical product TX-001 and (b) the pharmaceutical product TX-004, each as further described in Appendix 1, and all Product Improvements thereto.

“**Product Improvements**” means any improvements to a Product including with respect to any changes to the indications, dosage strengths, reformulations, or line extensions of such Product.

“**Product Labeling**” means the approved Product label information as specified in the applicable Marketing Authorization for a given country or jurisdiction in the Territory.

“**Product Specifications**” means the finished product specifications for the Products as detailed in the Marketing Authorization in the Territory.

“**Project Manager**” is defined in Section 3.1.

“**Project Pool Hours**” means an annual pool of [***] hours per Product provided to Licensee in each Calendar Year as a credit that may be used solely for Project Services performed in such Calendar Year by Licensee.

“Project Services” means services relating to any activities that are required for the purposes of (i) introducing a new formulation or dosage or type of packaging which are only to be utilized in the Territory, or (ii) ensuring that a Product meets Licensee specific Product Specification requirements that are different from specifications in other territories.

“Project Service Fees” is defined in Section 10.1.4.

“Providing Party” is defined in Section 17.7.

“Purchase Order” means a purchase order with a unique number issued by Licensee for such quantities of Product as Licensee commits to purchase from Third Party Manufacturer through TXMD, with a statement of the date on which delivery of such shipment(s) shall be required.

“Quality Technical Agreement” means the quality assurance agreement agreed between the Parties relating to Product, and any successor agreement thereto to be executed within twelve (12) months from the Effective Date.

“Receiving Party” means the Party to whom Confidential Information is disclosed.

“Regulatory Approval” means, the Marketing Authorization and all other approvals (including supplements and amendments), licenses, registrations and authorizations of any national, supra-national, regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity, necessary for the clinical testing, manufacture, distribution, use and Commercialization of Product in a given regulatory jurisdiction in the Territory.

“Regulatory Authorities” means any applicable federal, national, regional, state, provincial or local regulatory agencies, departments, commissions, councils or other government entities regulating or otherwise in the Territory having authority with respect to Product, including the EMA.

“Regulatory Materials” means the regulatory applications, submissions, notifications, communications, correspondence, registrations, applications for Marketing Authorizations and other Regulatory Approvals and other filings made to, received from or otherwise conducted with the EMA or any other Regulatory Authority in the Territory that are necessary or reasonably desirable in order to obtain or maintain the rights from the EMA or any such other Regulatory Authority to develop, manufacture, market, sell or otherwise Commercialize Product in a particular country, territory or possession in the Territory.

“Representatives” means, with respect to a Party, such Party’s Affiliates and such Party’s and its Affiliates’ respective directors, officers, employees, agents and any other persons or entities (excluding the other Party or its Affiliates) who contribute to the performance of such Party’s obligations under this Agreement.

“Right of Reference” means the “right of reference” defined in 21 CFR 314.3(b), or its equivalents outside the United States, and shall in any event include the right to allow the applicable Regulatory Authority in the Territory or a country in the Territory to have access to relevant information (by cross-reference, incorporation by reference or otherwise) contained in Regulatory Materials (and any data contained therein) filed with such Regulatory Authority.

“**Rolling Forecast**” is defined in Section 6.6.

“**Royalty Payments**” means the fees payable by Licensee pursuant to Section 10.1.3.

“**Sublicensee**” means a Third Party to which a Party has granted a sublicense under the licensed rights granted to such Party hereunder, to the extent such sublicense grant is permitted and made in accordance with the terms thereof.

“**Supply**” means the Manufacturing and/or Packaging of Product and all related tests, analysis and all other ancillary services.

“**Taxes**” is defined in Section 10.2.

“**Term**” is defined in Section 16.1.

“**Territory**” means all countries of the world with the exception of the United States, Canada, and Israel.

“**Third Party**” means any Person other than the Parties or their respective Affiliates.

“**Trademark**” means the BIJUVA and IMVEXXY trademarks, or, if it is not possible to obtain registration of these marks in the EU, then such other trademarks as are selected in accordance with Section 4.1, but excluding the TX Trademark unless the EMA or any other Regulatory Authority requires the listing of the TX Trademark on Product that is distributed or sold within the Territory.

“**TX Trademark**” means TherapeuticsMD, and any other TXMD trade name(s) and/or any trademark(s) used by TXMD to identify TXMD as a company generally (as distinguished from any product-specific identifier(s)).

“**TXMD Claims**” is defined in Section 14.2.

“**TXMD Clinical Data**” means all Clinical Data owned or Controlled by TXMD as of the Effective Date or during the Term for a Product.

“**TXMD Indemnitees**” is defined in Section 14.2.

“**TXMD Know-How**” means all Know-How that is Controlled by TXMD or its Affiliates as of the Effective Date or during the Term, to the extent necessary for the Manufacture, Development or Commercialization of Product within the Commercialization Field and/or which is disclosed by TXMD hereunder.

“**TXMD Patents**” means (a) the Patent Rights specified on Exhibit 1, and (b) any and all Patent Rights that are Controlled by TXMD as of the Effective Date or thereafter during the Term that Cover a Product.

“**TXMD Technology**” means, collectively, the TXMD Patents, the TXMD Know-How, the TXMD Clinical Data and all IP Improvements owned or Controlled by TXMD and all other intellectual property rights owned or Controlled by TXMD as of the Effective Date and during the Term.

“United States” or “U.S.” means the United States of America and its possessions and territories, including Puerto Rico, irrespective of the political status.

“US GAAP” means the then current generally accepted accounting principles in the United States as established by the Financial Accounting Standards Board or any successor entity or other entity generally recognized as having the right to establish such principles in the United States, in each case consistently applied.

“Valid Claim” means (a) any claim of an issued and unexpired patent in a country that (i) has not been held permanently revoked, unenforceable or invalid by a decision of a court or governmental agency of competent jurisdiction, which decision is unappealable or unappealed within the time allowed for appeal and (ii) has not been abandoned, disclaimed, denied or admitted to be invalid or unenforceable or disclaimer; or (b) a claim of a pending patent application in such country that was filed and is being prosecuted in good faith and has not been abandoned or finally disallowed without the possibility of appeal or re-filing of the application.

1.2 Construction.

1.2.1 Except where the context requires otherwise, whenever used the singular includes the plural, the plural includes the singular, the use of any gender is applicable to all genders and the word “or” has the inclusive meaning represented by the phrase “and/or”. Whenever this Agreement refers to a number of days, unless otherwise specified, such number refers to calendar days. The headings of this Agreement are for convenience of reference only and do not define, describe, extend or limit the scope or intent of this Agreement or the scope or intent of any provision contained in this Agreement. The term “including” or “includes” as used in this Agreement means including “without limiting” or “without limitation.” The wording of this Agreement shall be deemed to be the wording mutually chosen by the Parties.

1.2.2 References to Recitals, Articles, Sections and Exhibits refer to the Recitals, Articles, Sections, or Exhibits of and to this Agreement.

1.2.3 The Exhibits (as amended from time to time by agreement of the Parties in writing) form part of this Agreement and have the same force and effect as if expressly set forth in the body of the Agreement. Any reference to the Agreement includes the Exhibits hereto and the Quality Technical Agreement. In the event of any conflict or inconsistency between the terms of the body of this Agreement and any Exhibits, schedules, or addenda thereto, the terms of such Exhibits, schedules or addenda shall prevail.

1.2.4 Notwithstanding the foregoing, any varying or additional terms contained in any Purchase Order or other written order confirmation, notification or document issued by either Party in relation to the subject matter hereof shall be of no effect.

2. Licenses, Commercialization, and Intellectual Property Rights

2.1 Commercialization License

2.1.1 Subject to the terms and conditions of this Agreement, TXMD hereby grants to Licensee an exclusive, sublicensable (solely in accordance with Section 2.1.4), revocable, royalty-bearing license during the Term to the TXMD Technology, solely to Commercialize Product in the Commercialization Field solely in the Territory. For the avoidance of doubt, the foregoing license does not grant Licensee the right to Manufacture Product in any location, to Commercialize Product outside of the Territory, or to Develop Product, and all of such rights are reserved to TXMD, its Affiliates and Sublicensees.

2.1.2 Negative Covenants. Licensee shall not use any TXMD Technology for any purposes other than those purposes expressly permitted in Section 2.1.

2.1.3 Trademark License. Subject to the terms and conditions of this Agreement, TXMD hereby grants to Licensee a limited, royalty-free, exclusive in the Territory, non-transferable, revocable license to use the Trademarks solely in connection with the Commercialization of the Products in the Territory and Licensee's performance of its obligations under this Agreement. For the avoidance of doubt, Licensee's use of the Trademarks is limited to use in association with the Products. Licensee acknowledges that its use of the Trademarks pursuant to this Agreement shall inure to the benefit of TXMD or its Affiliates, and TXMD and its applicable Affiliates shall own the goodwill created thereby. TXMD shall be responsible for registering and maintaining the Trademarks in the Territory.

2.1.4 Sublicense Rights. Licensee may sublicense the rights granted to Licensee by TXMD under this Agreement to Affiliates and Third Parties in accordance with this Section 2.1.4; provided however that Licensee shall seek TXMD's prior written consent, such consent not to be unreasonably withheld or delayed with respect to sublicenses to Third Parties. Any license or sublicense granted by Licensee shall be consistent in all material respects with, and subject to, the terms of this Agreement. Licensee shall send TXMD an executed copy of such license or sublicense entered into with Third Parties promptly, but in no case later than thirty (30) days, after such license or sublicense is entered into by Licensee, and shall keep TXMD reasonably informed with respect to any license or sublicense granted by it hereunder. Where such sublicenses grant rights which extend beyond the Products (for example where other products are included) then the sublicense may be redacted appropriately. Licensee shall be responsible and liable for the acts and omissions of its Affiliates, subcontractors and other Sublicensees performing Licensee's rights or obligations under this Agreement on behalf of Licensee as if the same were performed by Licensee and no sublicense or subcontract arrangement pursuant to this Section 2.1.4 shall relieve Licensee of any of its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, Licensee shall not sublicense the rights granted to Licensee by TXMD under this Agreement to Third Parties with respect to Commercialization of Products in any of the Major Countries or Australia.

2.2 Commercialization.

2.2.1 Diligent Efforts. Licensee shall be solely responsible for all aspects of Commercialization of Product in the Territory, including planning and implementation, distribution, marketing, sales, pricing, and returns and shall use Diligent Efforts to Commercialize Product in the Territory.

2.2.2 Marketing Plans. Following the Effective Date and via the JSC, Licensee shall keep TXMD regularly and reasonably informed of its general plans for Commercialization of Product in the Territory. Without limiting the generality of the foregoing, by December 1 prior to each Calendar Year following First Commercial Sale, Licensee on an annual basis shall provide an outline of the marketing strategy for Product by country in the upcoming Calendar Year, including details of attendance at major conferences, organization of significant expert advisory panels, key positioning messages, significant medical educational programs, strategic partners, and other similar information.

2.3 Diversion. Licensee hereby covenants and agrees that neither it nor its Affiliates or Sublicensees shall, either directly or indirectly, promote, market, or distribute or sell the Product in each case for or in respect of countries that are outside of the Territory. As to all such countries outside of the Territory, Licensee and its Affiliates, Sublicensees and distributors shall not, directly or indirectly, (a) engage in any advertising or promotional activities relating to Product directed to customers located in such countries; and (b) solicit or fulfill any orders for Product from any prospective purchaser or recipient located in such countries. Licensee further agrees that it shall refrain (and shall cause its Affiliates, distributors or other Sublicensees to refrain) from any Commercialization activity which could reasonably be expected to have a material negative impact upon Commercialization of Product outside of the Territory. If Licensee or its Affiliates, distributors or other Sublicensees receives any order from a prospective purchaser located in a country outside of the Territory, Licensee shall, and shall cause its Affiliates, Sublicensees or distributors to, promptly refer that order to TXMD or TXMD's designee.

2.4 Intellectual Property and IP Improvements

2.4.1 Pre-Existing IP. Any Intellectual Property Rights, including for the avoidance of doubt, Patent Rights, Know-How, results, data, inventions and information owned by either Party (or owned by a Third Party but which a Party has the right to disclose or sub-license) prior to the Effective Date ("**Background IPR**") shall remain the property of that Party (or, as the case may be, such Third Party).

2.4.2 IP Improvements.

(a) Disclosure of IP Improvements. Licensee shall promptly disclose to TXMD all material IP Improvements that Licensee's management becomes aware of that are conceived, reduced to practice, or otherwise developed arising from Licensee's performance of any Commercialization, Development or other activities hereunder performed by or on behalf of Licensee, its Affiliates, and their Sublicensees. As part of such disclosures, Licensee shall include details of all patentable inventions which Licensee, its Affiliates, and their Sublicensee may develop or discover during the Term as well as information relating to IP Improvements that may be reasonably requested by TXMD (including for use by TXMD in accordance with its reserved rights or otherwise as permitted pursuant to this Agreement).

(b) Ownership. TXMD shall have exclusive ownership of any IP Improvements. Licensee hereby unconditionally and irrevocably assigns to TXMD all of Licensee's right, title, and interest in, to and under any and all IP Improvements and shall cause all of its employees and contractors and other persons involved in the conception or development of any such Improvement to execute agreements unconditionally and irrevocably assigning all of their rights to enable TXMD to obtain exclusive rights contemplated herein.

2.4.3 Further Assurances. Each Party shall, at no cost to the other Party, perform (and shall cause its Affiliates and Sublicensees to perform) all further acts and things and execute and deliver such further documents as may be necessary or as the other Party may reasonably require to implement or give effect to this Agreement, including, with respect to execute all such documents and do all such things as may be necessary to vest in TXMD the right, title and interest to such IP Improvements.

2.5 Clinical Data; Rights of Reference.

2.5.1 TXMD Grant to Licensee. Subject to the terms and conditions of this Agreement, TXMD hereby grants Licensee a Right of Reference to any INDs, Regulatory Materials and TXMD Clinical Data in each case that are owned or Controlled by TXMD as of the Effective Date and thereafter, in each case solely to the extent necessary for the Commercialization of Product under this Agreement.

2.5.2 Cross-Reference Letter. TXMD shall allow the EMA (if required) and all other applicable Regulatory Authorities in the Territory to have access to information (by cross-reference, incorporation by reference or otherwise) contained in Regulatory Materials owned or Controlled by TXMD as of the Effective Date and during the Term for Product to the extent necessary to effectuate the Rights of Reference described above in Section 2.5.1 no later than thirty (30) days after written request by Licensee. TXMD shall provide Licensee with a cross-reference letter or similar communication to the applicable Regulatory Authority to effectuate the Right of Reference.

2.5.3 Additional Clinical Studies. Licensee is interested in participating in future clinical studies which TXMD may wish to conduct in order to expand the Initial Indication of the Products. Licensee would commit to contribute both financially and using its technical expertise. The design and cost of any such studies would need to be mutually agreed between the Parties.

2.6 Third Party Infringement of TXMD Technology

2.6.1 Notification. Each Party shall promptly notify the other Party in writing of any existing or threatened infringement of the TXMD Patents, TXMD Know-How, or the Trademarks of which it becomes aware, and shall provide all evidence in such Party's possession demonstrating such infringement.

2.6.2 Enforcement

(a) TXMD Right. If a Third Party infringes or misappropriates any TXMD Patents, TXMD Know-How, or the Trademarks, in each case in the Territory, TXMD shall have the first right, but not the obligation, to bring an appropriate suit or other action against any Third Party in the Territory.

(b) Election of Enforcement Right. TXMD shall have a period of ninety (90) days (or such shorter period as may be required to avoid prejudice to any legal rights associated with such enforcement action) after the first notice pursuant to Section 2.6.2(a) to elect to enforce the applicable TXMD Patents, TXMD Know-How, or Trademarks against such infringement in the Territory. If TXMD elects to respond to any actual or threatened infringement by initiating a proceeding, TXMD shall use legal counsel of its choice at its expense and shall have full control over the conduct of such proceeding. TXMD may settle or compromise any such proceeding without the consent of Licensee; provided, however, that if such settlement adversely affects Licensee's rights under this Agreement, or adversely affects Licensee's ability to Commercialize Product within the Territory, or requires Licensee to admit wrongdoing, fault, or liability, then TXMD shall not settle or compromise any such proceeding without the consent of Licensee, such consent not to be unreasonably withheld, conditioned, or delayed. In the event TXMD does not elect to initiate an enforcement action and thereafter diligently prosecute a suit or action or otherwise cause the cessation of such infringement within such ninety (90) day period, then Licensee shall have the right, but not the obligation, to commence suit or take action to enforce the applicable TXMD Patents, TXMD Know-How, or Trademarks against such Third Party at its own costs and expenses in which case Licensee shall have full control over the conduct of such proceeding and Licensee may settle or compromise any such proceeding without the consent of TXMD; provided, however, that if such settlement adversely affects TXMD's Intellectual Property Rights or its rights under this Agreement, or adversely affects TXMD's ability to Commercialize Product outside the Territory, or requires TXMD to admit wrongdoing, fault, or liability, Licensee shall not settle or compromise any such proceeding without the consent of TXMD, such consent not to be unreasonably withheld, conditioned, or delayed. Licensee shall be solely responsible for any legal costs or damages awards made in any proceeding that is initiated by Licensee in the event that TXMD elects not to respond to any actual or threatened infringement.

(c) Reasonable Cooperation. Each Party shall provide to the Party enforcing any such rights under this Section 2.6.2 reasonable assistance in such enforcement, at such enforcing Party's request and expense, including joining such action as a party plaintiff if required by Applicable Law to pursue such action. The enforcing Party shall keep the other Party regularly informed of the status and progress of such enforcement efforts and the Parties agree that, irrespective of which Party brings an action pursuant to this Section 2.6.2, the Parties shall discuss and reasonably consider the views of the other Party in the choice of counsel with respect to such action and strategic decisions and their implementation (including decisions regarding defending against a claim, counterclaim or defense of invalidity or unenforceability of infringes any TXMD Patents, TXMD Know-How, or the Trademarks) in connection with such action shall be managed by consensus of the Parties each acting reasonably.

(d) Separate Representation of Non-Enforcing Party. The Party not bringing an enforcement action in the Licensed Territory under this Section 2.6.2 shall be entitled to separate representation in such matter by counsel of its own choice and at its own expense, but such Party shall at all times cooperate fully with the Party bringing such action.

(e) Settlement. Licensee may not settle an action it commences hereunder that admits any wrongdoing of TXMD without TXMD's prior written consent, such consent not to be unreasonably withheld, delayed or conditioned.

(f) Costs and Proceeds. Except as otherwise agreed to by the Parties as part of a cost-sharing arrangement, any monetary award recovered from a Third Party in connection with any proceeding initiated to protect, maintain, defend, or enforce any intellectual property rights in the Territory or recovered from a Third Party in connection with any proceeding initiated for infringement or misappropriation of intellectual property rights in the Territory shall first be used to reimburse the Parties for any out-of-pocket legal expenses relating to such proceeding and the balance being retained by the Party that brought and controlled such litigation.

2.7 Patent Prosecution.

2.7.1 As between the Parties, TXMD, acting through outside patent counsel, shall have the sole right, but not the obligation to prepare, file, prosecute (including without limitation conducting any interferences, oppositions, reissue proceedings, reexaminations and patent term extensions) and maintain the TXMD Patents in the Territory. TXMD shall bear the cost and expense incurred in connection with the preparation, filing, prosecution and maintenance of such TXMD Patents in the Territory. TXMD shall carry out any preparation, filing, prosecution and maintenance of such TXMD Patents with commercially reasonable efforts. Licensee shall cooperate with TXMD in the preparation, filing, prosecution and maintenance of such TXMD Patents, including by providing TXMD with data and other information as appropriate and executing all necessary affidavits, assignments and other paperwork. TXMD shall copy Licensee on all correspondence from and to any patent office relating to such TXMD Patents in a timely manner. For the purpose of this Section 2.7.1, "prosecution" shall include any patent interference, opposition, pre-issuance Third Party submission, ex parte re-examination, post-grant review, inter partes review or other similar proceeding, appeals or petitions to any Board of Appeals in a patent office, appeals to any court for any patent office decisions, reissue proceedings, and applications for patent term extensions and the like.

2.7.2 TXMD shall not abandon maintenance of any TXMD Patents in the Territory without notifying Licensee in a timely manner of TXMD's intention and reason therefore and providing Licensee with reasonable opportunity to comment upon such abandonment and to assume responsibility for maintenance of such patent rights. TXMD shall provide such notice at least thirty (30) days prior to any payment due date, or any other due date that requires action, in connection with such TXMD Patent. In the event that TXMD abandons maintenance of any or all TXMD Patents in the Territory, Licensee may assume maintenance for such patent in the Territory.

3. **Governance**

3.1 Project Managers. Within thirty (30) days of the Effective Date, each Party shall appoint a representative having a general understanding of pharmaceutical development and commercialization issues to act as its alliance manager under this Agreement ("**Project Manager**"). The Project Managers shall be primarily responsible for facilitating the flow of information and otherwise promoting communication, coordination and collaboration within and among the Joint Steering Committee and between the Parties, providing a single point of **communication for seeking consensus both internally within the respective Party's organization** and, together, regarding key strategy and planning issues, as appropriate, including facilitating review of external corporate communications and raising cross-party or cross-functional disputes to the Joint Steering Committee in a timely manner. Each Project Manager may also serve as a non-voting attendee of its respective Party to Joint Steering Committee meetings. Each Party may replace its Project Manager upon notice to the other Party.

3.2 **Project Management Meetings.** The Project Managers shall conduct sales and operation planning meetings relating to Product in the Territory initially every ninety (90) days (or as otherwise reasonably requested by either Party). The agenda of such meetings may include: (a) market intelligence; (b) Supply capability; (c) regulatory changes; (d) long term forecasts; (e) capacity planning; or (f) such other topics that either Party may raise for discussion in connection with its obligations under this Agreement. Meetings may be conducted by telephone, video conference, or in-person, as mutually agreed by the Project Managers.

3.3 **Joint Steering Committee Formation; Purpose.** Within thirty (30) days from the Effective Date, the Parties shall establish a committee (the “**Joint Steering Committee**”), which shall consist of two (2) representatives of each Party, including: senior members of each Party’s teams. The purpose of the Joint Steering Committee shall be to keep the Parties advised and coordinated with respect to activities relating to Product and to perform such other functions as may be mutually agreed by the Parties.

3.3.1 **Joint Steering Committee Meetings.** The Joint Steering Committee shall hold meetings no less frequently than every Calendar Quarter. Each Party shall be entitled to call an extraordinary meeting of the Joint Steering Committee where it reasonably believes that a meeting is called for with regard to a matter of material importance that cannot be delayed until the next scheduled quarterly meeting.

3.3.2 **Location of Meetings; Attendees.** The Joint Steering Committee may meet via teleconference, video-conference, or in-person, as mutually agreed by the Parties, provided that at least one Joint Steering Committee meeting per calendar year would be held in person at a location to be agreed. The Joint Steering Committee may invite other personnel of the Parties to attend meetings of the Joint Steering as appropriate, after giving notice to the other Party. The Joint Steering Committee shall be dissolved upon the termination or expiration of this Agreement.

3.3.3 **Decision Making.**

(a) Subject to the other applicable provisions of this Agreement, the Joint Steering Committee shall act and make decisions only by unanimous vote, with each Party having one (1) vote. If the Joint Steering Committee is unable to reach unanimous agreement on a matter before it for decision or action, for a period in excess of fifteen (15) days after written request by a Party, the matter shall be referred to the President of the Parties for discussion and resolution. As of the Effective Date, the President of TXMD is John Milligan and the Chief Executive Officer of Licensee is Anish Mehta.

(b) If, after referral by the Joint Steering Committee, the President and CEO of the Parties have not reached agreement on the matter within fifteen (15) days after referral to the President and CEO, then: (i) Licensee shall have the right to make the final decision on such matters that relate solely to or would have a material impact on the Commercialization of Product in the Territory, (ii) TXMD shall have the right to make the final decision on such matters that would have a material adverse impact on TXMD's rights in the United States, and (iii) TXMD shall have the right to make the final determination with respect to all other matters; provided that in each case each Party shall act in good faith.

3.3.4 **Authority.** The Joint Steering Committee shall have only the powers assigned expressly to it in this Article 3 and elsewhere in this Agreement, and shall not have any power to amend, modify or waive compliance with this Agreement.

3.4 **Costs.** TXMD and Licensee each shall bear all expenses incurred by TXMD and Licensee, as applicable, of its employees related to meetings between the Parties, unless otherwise mutually agreed by the Parties.

4. Trademarks and Packaging; Materials

4.1 **Branding.** All Packaging shall be branded with the Trademark associated with each Product. All Trademarks, and all goodwill relating thereto, shall be solely and exclusively owned by TXMD and its Affiliates, as applicable. TXMD will use all reasonable commercial efforts to obtain registration of BIJUVA and IMVEXXY as a Community trade mark and as a UK trade mark as soon as practicable after the Effective Date. If the BIJUVA or IMVEXXY filing is unsuccessful then the Parties will discuss in good faith and agree upon an alternative mark which they consider will be effective in the Territory.

4.2 **Packaging Artwork.** Licensee shall be responsible for artwork and design for the packaging and labelling in the Territory, which Licensee shall ensure complies with all applicable Marketing Authorizations. Licensee shall be entitled to have its trade-marks displayed on the packaging for the Products. The Products shall also include the language "distributed by Theramex HQ UK Limited" or such other equivalent in English and any other language as may be required under Applicable Law for the Territory. The language may alternatively reference one of Licensee's Affiliates in the Territory.

4.3 **TXMD Materials.** TXMD shall use the Licensee's Long Term Forecasts, Rolling Forecasts, Purchase Orders and Firm Commitments, as defined in Sections 6 and 7, to order Materials to support manufacture of Product for Licensee.

5. Product Development and Marketing Authorizations

5.1 **Regulatory Materials and Marketing Authorizations in the Territory.**

5.1.1 **Regulatory Materials and Obligations.**

(a) **Licensee Diligent Efforts.** Licensee shall, in compliance with Applicable Laws in the Territory, prepare and file the appropriate Regulatory Materials and use Diligent Efforts to file the submission for the applicable Marketing Authorizations for [***] in [***]. Other than with respect to [***], the Parties will agree when and where to submit applications for [***] based on the approvability of the dossier, market size and opportunity. With respect to [***], Licensee shall have a period of [***] from the receipt of Regulatory Materials delivered pursuant to Section 5.1.1(b) to file the submission for the applicable Marketing Authorizations for [***].

(b) TXMD Regulatory Materials; Knowledge Transfer. Within thirty (30) days following the Effective Date, TXMD shall provide Licensee with copies of all completed Regulatory Materials and Clinical Data as submitted by or on behalf of TXMD to the EMA or any other applicable Regulatory Authority that are in TXMD's or its Affiliates Control as of the Effective Date and that are necessary for Licensee to obtain Marketing Authorizations and other applicable Regulatory Approvals for Commercializing the Products in the Territory. Upon request from Licensee, TXMD shall provide any further documentation in TXMD's or its Affiliates' Control during the Term that is mutually agreed by the Parties acting in good faith to be necessary to support obtaining Marketing Authorizations and other applicable Regulatory Approvals required to Commercialize the Products in the Territory. Within the same timeframe, TXMD will provide Licensee with the most recent draft of its US Dossier in order that Licensee can adapt it for filing in the Territory. TXMD may not have Control over its Contract Manufacturer's DMF and nothing herein shall be construed to require TXMD to provide such DMF to Licensee. However, TXMD will ensure that Licensee has access to the open part of any such DMF and that its Contract Manufacturer will provide a Letter of Access to the closed part of the DMF so the Marketing Authorization application can proceed. All such Regulatory Materials and Clinical Data shall be deemed Confidential Information of TXMD. TXMD shall provide to Licensee reasonable knowledge transfer and support services relating to Licensee's use of any Regulatory Materials or Clinical Data provided by TXMD for used solely for the purposes permitted hereunder. For the avoidance of doubt, Licensee shall be responsible for any modifications to or translation of TXMD-provided Regulatory Materials or Clinical Data for use in Licensee's Regulatory Material filings in the Territory.

(c) Cost. All costs and expenses required for Licensee to prepare any and all such regulatory submissions in the Territory shall be borne solely by Licensee.

(d) Filing Party. Subject to Section 16.6 below, all Regulatory Materials and applications for Marketing Authorizations and other Regulatory Approvals filed with the EMA and other applicable Regulatory Authorities in the Territory shall be held in Licensee's name; provided that Licensee shall discuss and collaborate with TXMD on any Regulatory Materials or any application for a Marketing Authorization or other Regulatory Approval in the Territory for the Products. Licensee will advise TXMD on the most appropriate filing strategy in the Territory and the Parties will cooperate in order to arrange pre-submission meetings and obtain a slot for filing as soon as practicable following the Effective Date.

(e) Variations. TXMD will assist Licensee with renewals, variations or updates of the Marketing Authorisations which are required by Licensee or the Regulatory Authorities from time to time and promptly do all acts and execute all documents required in order to carry out these activities. Actual and direct costs relating to variations etc. will be allocated as follows:

TXMD shall reimburse Licensee for any fees payable to the Regulatory Authority resulting from: (i) changes requested by TXMD; and (ii) changes requested by its Contract Manufacturers (e.g. variations which are required due to the establishment, maintenance and improvement of GMP-related activities or other aspects of the manufacturing process);

Licensee shall bear all regulatory costs resulting from (i) changes required by Licensee, and (ii) changes required by competent authorities relating to the Commercialization of the Products in the Territory.

5.1.2 Reporting and Review. Licensee shall provide TXMD with copies of all Marketing Authorizations and other Regulatory Approvals that it receives for the Products in the Territory, within fifteen (15) days of receipt.

5.2 Steering Committee Review. If TXMD believes that Licensee or its Affiliates or Sublicensees, as the case may be, is taking or intends to take any action with respect to a Marketing Authorization or other Regulatory Approval that TXMD believes may have an adverse impact upon the potential sales of Product outside of the Territory or the regulatory status of Product, TXMD shall have such issue addressed by the Joint Steering Committee as described in Section 3.3.3.

5.3 Adverse Event Reporting and Safety Data Exchange. Licensee shall be responsible for the monitoring of all adverse events and filing of all required reports in the Territory relating to Product throughout the Term. Licensee shall promptly notify TXMD, in accordance with Applicable Laws and the requirements of the EMA and any other applicable Regulatory Authority, if it becomes aware of any adverse event relating to Product in the Territory, including, without limitation, any event which (a) raises any material concerns regarding the safety or efficacy of Product; (b) indicates or suggests a potential material liability of either Party to Third Parties in connection with Product; (c) is reasonably likely to lead to a recall or market withdrawal of Product; or (d) relates to expedited and periodic reports of adverse events with respect to Product, or to Product complaints, and which may have a material impact on the Marketing Authorization or any other Regulatory Approval for Product or the continued Commercialization of Product. TXMD contracts with a third party pharmacovigilance vendor. Licensee shall report any adverse events to the third-party pharmacovigilance vendor in the vendor defined format, with a copy also sent to TXMD. TXMD will continue to hold the Global Safety Database and the Parties will enter into a Pharmacovigilance Agreement clarifying their respective obligations within six (6) months of the Effective Date.

5.4 Certain Regulatory Authority Communications Received by a Party.

5.4.1 General. Without limiting the generality of the foregoing, each Party shall keep the other Party informed, in a timely manner compliant with the reporting requirements of the EMA and all other applicable Regulatory Authorities in the Territory, of notification of any action by, or notification or other information which it receives (directly or indirectly) from, the EMA or any such other Regulatory Authority in the Territory which (a) raises any material concerns regarding the safety or efficacy of Product; (b) indicates or suggests a potential material liability of either Party to Third Parties in connection with Product; (c) poses a significant risk of leading to a recall or market withdrawal of Product; or (d) relates to expedited and periodic reports of adverse events with respect to Product, or to Product complaints, and which may have a material impact on any Marketing Authorization or other Regulatory Approvals for a Product or the continued Commercialization of a Product in the Territory. The other Party shall fully cooperate with and assist such Party in complying with regulatory obligations and communications, including by providing to such Party, within two (2) Business Days after a request, such information and documentation in the other Party's possession as may be necessary or helpful for the Party to prepare a response to an inquiry from the EMA or any other applicable Regulatory Authority with respect to Product. If Licensee is required to respond to any Regulatory Authority in the Territory, Licensee shall use Diligent Efforts to discuss and collaborate with TXMD before responding. Licensee shall also provide TXMD in a timely manner with a copy of all correspondence received from the EMA or any other applicable Regulatory Authority specifically regarding the matters referred to above.

5.4.2 Additional Disclosures. Licensee shall promptly (in all events, within 48 hours of receipt) disclose to TXMD the following regulatory information:

(a) Regulatory Actions. All material information in Licensee's possession and Control pertaining to actions taken by the EMA or any other applicable Regulatory Authority in the Territory in connection with Product including any notice, audit notice, notice of initiation by the EMA or any such other Regulatory Authority of any investigation, inspection, detention, seizure or injunction concerning Product, notice of violation letter (i.e., an untitled letter), warning letter, service of process or other inquiry.

(b) Regulatory Non-Compliance. All Information pertaining to notices from the EMA or any other applicable Regulatory Authority in the Territory of non-compliance with Applicable Laws in connection with Product, including receipt of a warning letter or other notice of alleged non-compliance from the EMA or any such other Regulatory Authority relating to Product.

5.4.3 Extra-territorial Disclosures. TXMD will inform Licensee in a timely fashion of any communications of which it becomes aware from regulatory authorities outside the Territory which may have a material bearing on the Commercialization of Product in the Territory.

6. **Performance of Manufacturing and Supply**

6.1 Background; TXMD Responsibilities.

6.1.1 Licensee acknowledges that as of the Effective Date, TXMD is utilizing a Contract Manufacturer to Manufacture the Products both for TXMD's purposes outside of the Territory and to fulfill TXMD's obligations to Manufacture and supply Product to Licensee under this Agreement. During the Term of the Agreement, the Parties shall discuss in good faith aligning the time frames described in Article 6, Article 7 and Article 8 with TXMD's corresponding Manufacturing and supply time frames under which TXMD is subject to with respect to such Contract Manufacturer.

6.1.2 TXMD shall perform Supply and Manufacturing service in accordance with professional standards and shall Supply Product according to this Agreement. Notwithstanding the foregoing, if there is a shortage of Product due to an operational failure at TXMD's Manufacturing facility, the Supply will be apportioned between TXMD and Licensee based on a fair consideration of all factors affecting individual markets of both Parties, including relative volumes of Product ordered. TXMD shall be responsible for the safety, health and environmental aspects of all work performed by or on behalf of TXMD, excluding any issues to the extent caused by the acts, omissions, or negligence of Licensee, its Affiliates, or Sublicensees.

6.2 Subcontracting. TXMD shall be entitled to subcontract to a Contract Manufacturer or any other Third Party any or all of its obligations to Manufacture and Supply Product for Licensee under this Agreement without Licensee's prior approval provided always that TXMD will give Licensee at least [***] months' prior notice of the appointment of any new Contract Manufacturer and provide adequate assurances to Licensee that the new appointment will not have a material adverse impact on the ability of TXMD to fulfil its obligations under this Section. TXMD must notify Licensee of any subcontracting with respect to the Manufacture of Product and the Parties shall work together to determine what information Licensee would be required to report to or file with the EMA or any other applicable Regulatory Authority in order to comply with any Applicable Law in the Territory or any country or jurisdiction in the Territory and TXMD shall use commercially reasonable efforts to assist Licensee with Licensee's compliance obligations under Applicable Law in the Territory as a result of such subcontracting, which shall include coordinating with Licensee to carry out audits of the facilities on an annual basis. Any additional actual costs relating to the participation and attendance of Licensee's representatives in such audits shall be borne by Licensee. No subcontracting pursuant to this Section 6.2 shall relieve TXMD of any of its obligations, or Licensee of any of its rights, under this Agreement.

6.3 Quality. Each Party shall comply with all of the provisions and requirements of the Quality Technical Agreement. In the event of a discrepancy between the Quality Technical Agreement and this Agreement, the terms of the Quality Technical Agreement shall control all quality matters and this Agreement shall control all other matters. The Parties will enter into the Quality Technical Agreement within twelve (12) months of the Effective Date.

6.4 GMP. All Manufacture and quality control operations by TXMD or its designee shall be in compliance with cGMP.

6.5 Long Term Forecasts. On a date to be agreed upon by the Parties following the Effective Date, but in any event such date to be no later than [***] months prior to estimated First Commercial Sale, and thereafter, prior to [***] of each Calendar Year during the Term, Licensee shall submit to TXMD a good faith estimate of the quantities of Product that Licensee expects to order from TXMD during the immediately following Calendar Year ("**Long Term Forecast**"). Subject to Section 6.6, Long Term Forecasts shall be non-binding.

6.6 Rolling Forecast; Binding Firm Commitment. On or before the [***] day of each Calendar Month, beginning at least [***] months prior to the anticipated First Commercial Sale and continuing during the Term, Licensee shall submit to TXMD a good faith estimate of its anticipated orders of Product, which shall be at a bulk SKU level, broken out on a month-by-month basis, for the upcoming Calendar Month and the succeeding twelve (12) Calendar Months (each, a “**Rolling Forecast**”). Months [***] of each Rolling Forecast shall be binding on Licensee with respect to the quantities specified therein and month [***] shall be binding but may vary by +/-[***]% (“**Firm Commitment**”); provided that TXMD has first provided Licensee with reasonable advance notice of its planned manufacture date for Product and may not be changed without TXMD’s written consent (which may be withheld in its sole discretion). The Rolling Forecast for the remaining [***] months shall not be binding but shall be provided in good faith. For avoidance of doubt, TXMD hereby covenants to provide said reasonable advance notice of its planned manufacture date for Product to Licensee during the Term.

6.7 Forecasts Exceeding the Firm Commitment. If Licensee requires more than the Firm Commitment, Licensee must provide TXMD reasonable prior notice of the delivery date requested as described in Section 6.1.1 and TXMD shall inform Licensee of the quantity of Product (if any) above the Firm Commitment that TXMD is able to Supply. TXMD shall not be obligated to supply Product in excess of the Firm Commitment to Licensee unless agreed to by TXMD in its sole discretion, and TXMD shall not be liable for any failure to supply Product to Licensee in excess of the Firm Commitment.

6.8 Licensee Rights and Responsibilities.

6.8.1 Alternative Primary and Secondary Manufacturers. Both Parties will use commercially reasonable efforts to identify potentially more cost-effective alternative primary (API manufacture) and/or secondary (processing of API into finished product) manufacturers for the Product for the Territory and with the written agreement of both Parties will collaborate so as to add such manufacturers to the Marketing Authorization and use them to Manufacture Product for Licensee in the Territory and for TXMD outside of the Territory. If the addition of such a manufacturer and use of such manufacturer to Manufacture Product is to the benefit of only one of the Parties, then such Party shall bear the costs of qualification of such manufacturer. If the addition of such a manufacturer and use of such manufacturer to Manufacture Product is to the benefit of both Parties, then the Parties shall share the costs of qualification of such manufacturer in a reasonable and proportionate manner. Licensee will not source Product from an alternative manufacturer without the prior written consent of TXMD and will coordinate with TXMD before initiating sourcing of Product from any such alternative manufacturer.

6.8.2 Primary and Secondary Packaging. Licensee will be responsible for identifying and contracting with suitable primary (blister) and secondary (outer packaging and inserts) packagers in order to convert bulk Product supplied by TXMD’s Manufacturers into finished product in final form and ready for sale.

7. **Orders**

7.1 Purchase Orders. Licensee shall submit (or shall have one of its Affiliates submit) to TXMD a Purchase Order for Product to be delivered to Licensee within the agreed Lead Time. Within five (5) days following receipt of a Purchase Order, TXMD shall provide a written acknowledgement (“**Acknowledgement**”) that it accepts the Purchase Order. The Acknowledgement shall confirm the delivery date and TXMD shall deliver Product in accordance with the Lead Time as may be superseded by the revised timeframes contemplated by 6.1.1.

7.2 Modifications; Changes to Purchase Orders.

7.2.1 TXMD shall use commercially reasonable efforts to comply with changes to Purchase Orders that Licensee may request but shall not be liable for its inability to do so. Purchase Orders may be amended only by mutual agreement of the Parties.

7.2.2 No change in any Purchase Order shall relieve Licensee of its responsibility to meet the Firm Commitment.

7.3 Supply. TXMD shall Supply or have Supplied the specified quantity of Product in accordance with the delivery terms set forth in each Purchase Order, provided that (a) TXMD shall be considered to have completed its obligations to fulfill any individual Purchase Order if it Supplies a quantity of Product that is within a plus or minus [***] per cent ([***]%) variance from the applicable Purchase Order, and (b) Licensee shall only be required to pay for the amount of Product actually delivered by TXMD to Licensee. Any such variance in quantity of Product delivered by TXMD shall not constitute a breach of this Agreement by TXMD.

8. Delivery; Review and Defective Product

8.1 Delivery Terms; Storage Fees. The Contract Manufacturer shall deliver and Supply Product ordered by Licensee EXW INCOTERMS 2010 and title to Product shall transfer directly from the Contract Manufacturer to Licensee. Product will be delivered with a minimum shelf life of [***] months remaining (for Product with a shelf life of [***] months) at the time of delivery. If a Batch is held by the Contract Manufacturer for investigation, up to two Batches per calendar year, Product with a shelf life of [***] months will be delivered with a minimum remaining shelf life of [***] months. The Parties currently anticipate that TX-001 and TX-004 will each have a shelf life of [***] months.

8.2 Release of Batches. Product shall be accompanied by a Certificate of Analysis and a certificate of manufacturing compliance, which may be contained in a single certification, and any other documentation as set forth in the Quality Technical Agreement. Issuance of a Certificate of Analysis and any other documentation as set forth in the Quality Technical Agreement constitutes release of a Batch to Licensee. Licensee is responsible for final release of Product to the market in the Territory.

8.3 Review; Defects or Shortfalls. If any shipment of Product delivered by TXMD contains a Defective Product or if there is a shortfall of the amount of Product in such delivery at the time of delivery, then Licensee shall notify TXMD (a) within thirty (30) days of receipt of the applicable Batch if such damage, defect or shortfall can be ascertained by the exercise of reasonable diligence upon examination by Licensee on receipt of such shipment, or (b) within thirty (30) days after discovery of the same if such damage, defect or shortfall cannot be ascertained by the exercise of reasonable diligence upon examination by Licensee on receipt of such shipment (including non-conformities relating to stability). Licensee shall provide TXMD with a sample of any Defective Product. If and to the extent that Licensee has failed to provide TXMD with a notice of any Defective Product (an “**Exception Notice**”) and a sample thereof by the applicable time period specified above in this Section 8.3, the relevant Batch shall be deemed to have been accepted by Licensee in satisfactory condition, without any damages, shortfalls or defects. If Licensee determines that there is a shortfall in the quantity of any shipment of Product (from quantities specified in the relevant bill of lading or other shipping documents), and it is determined that discrepancy existed at the time it was delivered to Licensee from TXMD, then Licensee shall notify TXMD in writing as soon as reasonably possible, and TXMD shall either (i) make up the shortage; or (ii) reimburse Licensee for the amounts paid for shortfall Product, in each case at Licensee’s option within thirty (30) days of such notification at no additional cost to Licensee, provided that in each case, the make up or reimbursement will be applied to future Batch orders. The remedies of Licensee under this Section 8.3 with respect to any shortage shall be the exclusive remedies of Licensee for any such shortage and in lieu of any and all other remedies of Licensee and, upon compliance with this Section 8.3, TXMD shall not be in breach of this Agreement as a result of any such shortage.

8.4 Discrepant Results. If a dispute arises between the Parties as to any claimed damage or defect in Product or as to any shortfall of Product delivered, which cannot be resolved by the Parties within twenty (20) days of a claim being notified by Licensee to TXMD, either Party may require that the matter in dispute be referred to an independent expert (such as an independent testing laboratory) nominated by agreement of the Parties or, failing agreement, appointed in accordance with the commercial arbitration rules of the International Chamber of Commerce at the request of either Party. Such referral shall be solely for the purpose of establishing whether or not there is any damage, defect or shortfall (as the case may be) in Product delivered by TXMD to Licensee. Unless otherwise agreed to by the Parties in writing, the costs associated with such testing and review shall be borne by TXMD if Product is a Defective Product attributable to Manufacturing, storage, shipping, or any other action by or on behalf of TXMD that occurs prior to delivery of Product to Licensee, and by Licensee in all other circumstances. Licensee shall be apprised in writing of all Defective Product investigations executed by TXMD, as well as final investigation outcome and conclusion(s).

8.5 Remedies for TXMD-Attributable Defective Product. If Product constitutes a Defective Product due to Manufacturing by or on behalf of TXMD, TXMD shall at TXMD’s option either: (a) replace the Defective Product with conforming Product, at TXMD’s expense; or (b) credit or refund to Licensee the amounts paid to TXMD by Licensee for such Defective Product, or, if the invoice has not been paid, cancel the invoice. **THE OBLIGATION TO REPLACE A DEFECTIVE PRODUCT OR CREDIT OR REFUND PAYMENTS MADE BY LICENSEE FOR A DEFECTIVE PRODUCT ATTRIBUTABLE TO ERRORS OR DEFECTS IN MANUFACTURING BY OR ON BEHALF OF TXMD SHALL BE LICENSEE’S SOLE AND EXCLUSIVE REMEDY THIS AGREEMENT FOR SUCH DEFECTIVE PRODUCT AND IS IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, OR REMEDY.**

8.6 Late Delivery. Where Product is delivered late then TXMD will pay a penalty equivalent to [***]% of the value of the portion of the order which was delivered late for each month which elapses beyond the original delivery date appearing on the Purchase Order but capped at a level of [***]%. Deliveries of Product may vary by up to plus or minus [***] ([***) Business Days from the delivery date specified in the related Purchase Order. Such variance in actual date of delivery shall not constitute a breach of this Agreement by TXMD.

9. Product Recall. If Product is recalled in the Territory for any reason, then Licensee, as Marketing Authorisation holder shall administer all aspects of the recall. Each Party shall notify the other in writing promptly, and in any event within one (1) business day after determining that a recall is required, and shall consult with the other Party regarding appropriate courses of action. Licensee shall have ultimate discretion over whether and under what circumstances to require the recall of Product in the Territory. TXMD shall provide all assistance that Licensee reasonably requires in connection with any Product recalls, including as required by any Regulatory Authorities or pursuant to Applicable Laws. In the event that a recall is necessary as a result of any breaches of obligations, representations or warranties hereunder or negligence of either Party, that Party shall be responsible for the proportionate share of such costs. In the event of a recall, the obligations of Licensee to Commercialise a recalled Product in the Territory and of TXMD to supply such recalled Product pursuant to this Agreement shall be suspended with immediate effect and such obligations shall only become enforceable again if the circumstances that caused the recall have been resolved.

10. Fees and Payments

10.1 Milestone Fees; Product Pricing and Royalties.

10.1.1 Milestone Fees. Upon the achievement of each milestone specified in Exhibit 2, Licensee shall issue to TXMD a written statement as to the achievement of the milestone and the associated Milestone Fees within twenty (20) days following the end of the Calendar Quarter in which such milestone is achieved. Upon receipt of each such statement, TXMD shall submit an invoice to Licensee for the associated Milestone Fees due under this Section 10.1.1, which shall be due and payable to TXMD in accordance with Section 11.3. Milestone Fees shall be non-refundable, non-creditable and not subject to set-off, except as provided in Section 8.3.

10.1.2 Product Prices.

(a) Estimated COG Per Unit Pricing. No later than [***] of each Calendar Year during the Term, TXMD shall inform Licensee of the estimated COGS per unit price for each Product, as established based on the anticipated volume of purchases and structured as a pass-through without mark-up. The initial estimated COGS per unit price as of the Effective Date for each Product is set out in Exhibit 3.

(b) Payments before Delivery/Firm Commitments. Licensee shall pay TXMD the estimated COGS per unit price for ordered Products in accordance with Section 11.2.

(c) Annual True-Up. Within sixty (60) days following the completion of each Calendar Year or termination of this Agreement, TXMD shall calculate and reconcile the Paid Estimated Product Fees versus the Actual Product Fees due for such period, issuing either an invoice to Licensee if Paid Estimated Product Fees were less than Actual Product Fees and a credit or refund if Paid Estimated Product Fees were greater than Actual Product Fees.

10.1.3 Royalties. During the Term, Licensee shall pay royalties at a rate of [***] percent ([***]%) on Net Sales of Product in the Territory (the “**Royalty Payments**”).

(a) Quarterly Sales and Royalty Reports. Within thirty (30) days following the end of each Calendar Quarter following the First Commercial Sale of each Product in the Territory, Licensee shall furnish to TXMD a quarterly written report showing the Net Sales of Product sold by Licensee, its Affiliates and their Sublicensees, and the royalties due to TXMD on such Net Sales. Upon receipt of the report and the royalty calculation, TXMD will issue an invoice for the Royalty Payments due under Section 10.1.3 for each Calendar Quarter, which shall be due and payable to TXMD in accordance with Section 11.3. Each royalty report shall describe in reasonable detail (based upon the data then available to Licensee) the Net Sales of Product (including, without limitation, the deductions specified in the Net Sales definition) and the calculation of Royalty Payments (including currency conversion as described in Section 11.3) due for the relevant calendar quarter.

(b) Royalty Reduction. On a country-by-country, Product-by-Product, jurisdiction-by-jurisdiction basis, in the event that a Generic Product gains Marketing Authorization for Commercialization and has been granted an official reimbursement price (if applicable) in any such country or jurisdiction in the Territory, then the royalty rates in Section 10.1.3 payable in respect of Net Sales for the applicable Product in such country or jurisdiction shall be reduced by [***] ([***)] percent beginning in the first Calendar Quarter after Licensee provides notice to TXMD and reasonably sufficient documentation that a Generic Product gained Marketing Authorization for Commercialization and price approval in such country or jurisdiction in the Territory.

10.1.4 Project Services; Cost of Changes. All Project Services shall be chargeable on a time and materials basis in accordance with the Consulting Rate, following utilization of any available Project Pool Hours (the “**Project Service Fees**”). Project Pool Hours do not have any cash value and cannot be used to offset any other fees due under this Agreement. Additionally, to the extent that TXMD incurs any costs or expenses arising from materials required to implement any change, TXMD shall be reimbursed for such costs and expenses, provided that Licensee has pre-approved such costs and expenses.

10.2 Taxes. All fees due under this Agreement are exclusive of all sales, use, transfer, excise, value added and other direct taxes or Indirect Taxes applied to its (or its Affiliates’) sale of Product or receipt of services (collectively, “**Taxes**”), which, if payable, shall be borne and paid by Licensee (without any set-off, deduction or withholding against any other amounts due hereunder), subject to the provision by TXMD of an appropriate invoice listing such Taxes. Licensee shall provide TXMD with proof of export and any other related documentation required by tax or Regulatory Authorities. Licensee shall make all payments to TXMD under this Agreement without deduction or withholding for Taxes except to the extent that any such deduction or withholding is required by law in effect at the time of payment. Any Tax required to be withheld on amounts payable by Licensee under this Agreement shall be timely paid by Licensee on behalf of TXMD to the appropriate governmental authority, and Licensee shall furnish TXMD with the corresponding proof of payment of such tax, as may be required in order to enable TXMD to request reimbursement or deduction of the withheld amount, or to otherwise comply with its duties. Licensee and TXMD agree to cooperate to legally minimize and reduce such withholding Taxes and provide any information or documentation required by any taxing authority.

11. Invoicing and Payment

11.1 Invoices for Fees. TXMD shall issue an invoice to Licensee for Project Service Fees or any other fees due under this Agreement that are not Milestone Fees or Royalty Payments within ninety (90) days after the end of the calendar quarter during which such services were provided or fees became payable under this Agreement. The invoice shall contain a reference identifying this Agreement and the Project Services Fees or other fees payable. Payment of such invoices shall be made in accordance with Section 11.3.

11.2 Invoices for Product. TXMD shall issue an invoice to Licensee for Product (or in the absence of such invoice, procure an invoice from its Contract Manufacturer) ninety (90) days or more after a Purchase Order has been placed for Product for a scheduled delivery date. The invoice shall contain a reference identifying this Agreement and the Purchase Order number. Payment of such invoices shall be made in accordance with Section 11.3.

11.3 Payment Terms. Payment of invoices for Milestone Fees submitted pursuant to Section 10.1.1 and invoices for Royalty Payments submitted pursuant to Section 10.1.3 shall be made by Licensee within thirty (30) days after receipt of the related invoice by Licensee. Payment of uncontested amounts of an invoice for Product submitted pursuant to Section 11.2 (including, for example, and without limitation, the estimated COGS per unit price for ordered Products) shall be made by Licensee within thirty (30) days following the end of the month in which the invoice is issued. Payment of all other invoices submitted by either Party shall be made within thirty (30) days of the month end following the date of invoice, unless any other payment terms are specified.

11.4 Means of Payment; Currency. All payments to be made by one Party to the other Party under this Agreement shall be made in U.S. Dollars and by bank wire transfer in immediately available funds to such U.S. bank account as may be designated in writing by a receiving Party from time to time. The rate of exchange to be used in computing any foreign currency to U.S. Dollars shall be made at the rate of exchange published by Bloomberg, prevailing on to the last Business Day of the month preceding the month in which any fees due under this Agreement accrue.

11.5 Late Payments. If payment of any amount is overdue, TXMD may charge interest on the overdue amount, from the due date of payment until the date of actual payment, at the rate of [***] percent ([***]%) per month but capped at a level of [***]%.

11.6 Suspension Right. If TXMD provides notice to Licensee that it has failed to pay any undisputed amounts due hereunder and Licensee failure to pay any such outstanding amount within thirty (30) days of notice of such outstanding, past due payment, more than twice in any twelve (12) month period, then TXMD may, in addition to its rights as per Section 16.4.1, stop further Supply of the Product until payment is made. *If TXMD elects to stop further Supply, TXMD shall use commercially reasonable efforts to re-start Supply of Product after payment is made by Licensee.*

12. Books and Records; Audit Rights

12.1 Maintained by TXMD. TXMD shall maintain, or cause to be maintained, all records necessary to comply with all Applicable Laws in the countries as to which Marketing Authorizations or other Regulatory Approvals have been granted relating to the Manufacturing of Product; provided Licensee has previously notified TXMD in writing of any such records requirements which are more restrictive than applicable U.S. law.

12.2 Maintained by Licensee. Licensee shall maintain complete and accurate records of all of its Product sales in each country in the Territory and payments hereunder in sufficient detail to permit TXMD to determine and confirm, using standard audit practices, that Licensee is complying with its diligence commitments as set forth in this Agreement and that all applicable Milestone Fees and Royalty Payments or other amounts are being paid to TXMD. All such records shall be maintained for at least five (5) years or such longer period as may be required by Applicable Law.

12.3 Audit Rights; Costs. Upon reasonable prior notice, each Party shall make such records available during regular business hours for a period of three (3) years from the end of the Calendar Year in which such individual records were created, for examination by the other Party and/or its representatives, for the sole purpose of verifying the accuracy of the reports furnished pursuant to this Agreement. Any such auditor shall not disclose any Confidential Information, except to the extent such disclosure is necessary to verify the accuracy of the reports furnished by a Party or the amount of payments due by it under this Agreement. Any amounts shown to be owed but unpaid shall be paid within thirty (30) days from the auditor's report, plus interest (calculated at the rate as set forth in Section 11.5) from the original due date. Any amounts shown to have been overpaid shall be refunded plus interest at the rate set forth in Section 11.5, within thirty (30) days from the auditor's report. The Party carrying out the audit shall bear the full cost of such audit unless such audit discloses an underpayment by the other Party of the amounts actually owed during the applicable audited period of more than [***] percent ([***]%), in which case the audited Party shall bear the reasonable cost of such audit.

13. Representations, Warranties and Covenants

13.1 Mutual Representations and Warranties. Each Party hereby represents, warrants, and covenants (as applicable) to the other Party as of the Effective Date and during the Term, as follows:

13.1.1 It is a company or corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated, and has full corporate power and authority and the legal right to own and operate its property and assets and to carry on its business as it is now being conducted and as contemplated in this Agreement.

13.1.2 It has the corporate power and authority and the legal right to enter into this Agreement and perform its obligations hereunder.

13.1.3 It has taken all necessary corporate action on its part required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder.

13.1.4 This Agreement has been duly executed and delivered on behalf of such Party, and constitutes a legal, valid, and binding obligation of such Party that is enforceable against it in accordance with its terms except to the extent enforceability is limited by bankruptcy, insolvency or similar laws affecting creditors' rights and remedies.

13.1.5 The performance of its obligations under this Agreement shall not conflict with its organizational documents.

13.1.6 It has not entered into, and shall not during the term of this Agreement, enter into any material agreements or contracts that would or do conflict with its obligations under this Agreement.

13.1.7 It shall perform under this Agreement and operate its business in compliance with all Applicable Laws.

13.2 Licensee Representations, Warranties and Covenants. Licensee represents, warrants and covenants to TXMD:

13.2.1 Licensee has the corporate power and authority and the legal right to bind all Affiliates to perform any Licensee obligations (to the extent performed by such Affiliates).

13.2.2 Licensee shall not, and shall cause its Affiliates and Sublicensees not to, (i) file an application for any Marketing Authorization or other Regulatory Approval relating to any Generic Product; (ii) purchase or otherwise acquire any such rights in any Generic Product and, to the extent that Licensee acquires such rights, it shall promptly divest the same, without prejudice to any rights or remedies that TXMD may have; or (iii) manufacture for another party any Generic Product.

13.2.3 Licensee, its Affiliates and its Sublicensees, (a) are not under investigation by the EMA or any other Regulatory Authority in the Territory for debarment or is not presently debarred (or subject to any similar penalty or restriction on its activities) by the EMA or any such other Regulatory Authority in any country or jurisdiction in the Territory pursuant to Applicable Law or by the rules and regulations of the EMA or any such other Regulatory Authority, and (b) have not received written notice from the EMA or any such other Regulatory Authority in any country or jurisdiction in the Territory of a pending disqualification hearing (or any similar hearing or proceeding) and has not been disqualified (or subject to any similar penalty or restriction on its activities) by the EMA or such other Regulatory Authority in any country or jurisdiction in the Territory. If, during the Term, Licensee, its Affiliates, or any of its Sublicensees (i) comes under investigation by the EMA or by any other Regulatory Authority in any country or jurisdiction in the Territory for a debarment action or disqualification (or any similar penalty or restriction on its activities), (ii) is debarred or disqualified (or any similar penalty or restriction on its activities is imposed), or (iii) engages in any conduct or activity that could lead to any of the above-mentioned disqualification or debarment actions (or any similar penalty or restriction on its activities), Licensee shall immediately notify TXMD of same.

13.3 Anti-Corruption. Each Party represents, warrants and covenants to the other as of the Effective Date and for the Term that:

13.3.1 it shall not, and shall cause its Affiliates and Sublicensees not to offer, pay, request or accept any bribe, inducement, kickback or facilitation payment, and shall not make or cause another to make any offer or payment to any individual or entity for the purpose of influencing a decision for the benefit of the other Party. Without limiting the generality of the foregoing, it shall, and shall ensure that its Affiliates and any Third Party contractors shall, comply with the United States Foreign Corrupt Practices Act (including as it may be amended) (the "FCPA"), and any analogous laws or regulations existing in the Territory or any country or region in the Territory, in connection with its performance under this Agreement. Neither Party shall make any payment, either directly or indirectly, of money or other assets, including but not limited to compensation derived from this Agreement, to government or political party officials, officials of international public organizations, candidates for public office, or representatives of other businesses or persons acting on behalf of any of the foregoing, that would constitute violation of any law, rule or regulations.

13.3.2 Neither Party nor its Affiliates, Sublicensees, or their respective Representatives are: (a) listed on the Office of Foreign Assets Control's ("OFAC") "Specially Designated National and Blocked Person List" ("SDN List") or otherwise subject to any sanction administered by OFAC ("U.S. Economic Sanctions") or (b) owned, controlled by or acting on behalf of, directly or indirectly, any person, entity, or government listed on the SDN List or otherwise subject to any U.S. Economic Sanction. Licensee, its Affiliates, Sublicensees, and their respective Representatives have not and shall not engage directly or indirectly in any transaction that could potentially violate applicable U.S. Economic Sanctions. Nothing in this Section 13.3.2 shall prevent Licensee or its Affiliates or Sublicensees from conducting business with any person, entity, or government listed on the SDN List or otherwise subject to any U.S. Economic Sanction to the extent that the conduct of such business does not violate Applicable Law.

13.3.3 A Party's failure to abide by the provisions of this Section 13.3 shall be deemed a material breach of this Agreement.

13.4 TXMD Representations, Warranties and Covenants. TXMD represents, warrants and covenants to Licensee as of the Effective Date that:

13.4.1 TXMD Controls the TXMD Patents listed on Exhibit 1 and shall, during the Term, maintain Control of such TXMD Patents.

13.4.2 (i) TXMD has the right to grant to Licensee all the licenses and other rights herein; and (ii) TXMD has not granted any license, right or interest in, to or under the TXMD Patents or TXMD Know-How to any Third Party with respect to Product, in each case with respect to this clause (ii), in any way that would conflict with this Agreement.

13.4.3 To the knowledge of TXMD, there is no litigation pending against it that alleges that the Commercialisation of Product within the Territory infringes, misappropriates or otherwise violates the intellectual property rights of a Third Party.

13.4.4 Prior to the Effective Date, TXMD has not received any written notice, claim or demand of any Third Party alleging that the development, manufacture, use, or Commercialisation of Product infringes or misappropriates the intellectual property rights of a Third Party.

13.4.5 (i) none of the TXMD Patents is subject to any pending or threatened, re-examination, opposition, interference or litigation proceedings and (ii) to TXMD's knowledge, the issued TXMD Patents are valid and enforceable;

13.4.6 There are no actual or pending, and to TXMD's knowledge, no alleged or threatened, adverse actions, suits, claims, or formal governmental investigations, or settlements or judgments, involving Product by or against TXMD or any of its Affiliates in or before any governmental authority. In particular, to its knowledge, there is no pending or threatened product liability action involving the use or administration of Product.

13.4.7 All preclinical and clinical trials of Product that have been conducted by or on behalf of TXMD that have been submitted to any Regulatory Authority in connection with any Regulatory Documentation, have been conducted in compliance in all material respects with Applicable Law, including Good Clinical Practices and good laboratory practices, as applicable.

13.5 No Other Representations or Warranties. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR NON-MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, IS MADE OR GIVEN BY OR ON BEHALF OF EITHER PARTY. ALL REPRESENTATIONS AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED, OTHER THAN THE EXPRESS WARRANTIES IN THIS ARTICLE 13.

14. Indemnification and Limitation of Liability

14.1 Indemnification by TXMD. TXMD shall defend, indemnify, and hold Licensee, its Affiliates and their respective officers, directors, employees, and agents (the "**Licensee Indemnitees**") harmless from and against any and all damages or other amounts payable to a Third Party claimant, as well as any reasonable attorneys' fees and costs of litigation incurred by such Licensee Indemnitees, all to the extent resulting from claims, suits, proceedings, or causes of action brought by such Third Party (collectively, "**Licensee Claims**") to the extent that such Licensee Claims arise out of, are based on, or result from (a) a material breach of any of TXMD's representations, warranties, covenants or obligations under the Agreement; or (b) the willful misconduct or negligent acts or omissions of any member of TXMD or its Affiliates, or the officers, directors, employees, or agents of TXMD relating to any obligations of TXMD or the exercise by TXMD of any of its rights hereunder. The foregoing indemnity obligation shall not apply to the extent that the Licensee Indemnitees fail to comply with the indemnification procedures set forth in Section 14.3 and TXMD's defense of the relevant Licensee Claims is prejudiced by such failure, or to the extent that any Licensee Claim arises from, is based on, or results from (x) a material breach of any of Licensee's representations, warranties, or obligations under the Agreement; or (y) the willful misconduct or negligent acts of any Licensee Indemnitee.

14.2 Indemnification by Licensee. Licensee shall defend, indemnify, and hold TXMD, its Affiliates and their respective officers, directors, employees, and agents (the "**TXMD Indemnitees**") harmless from and against any and all damages or other amounts payable to a Third Party claimant, as well as any reasonable attorneys' fees and costs of litigation incurred by such TXMD Indemnitees, all to the extent resulting from claims, suits, proceedings, or causes of action brought by such Third Party (collectively, "**TXMD Claims**") to the extent that such TXMD Claims arise out of, are based on, or result from (a) the storage, handling, or Commercialization of Product by Licensee or its Affiliates, or their respective Sublicensees or distributors (the "**Licensee Group**"); (b) any material breach of this Agreement or of any of Licensee's or its Affiliate's representations, warranties, covenants or obligations under the Agreement; (c) the willful misconduct or negligent acts or omissions of Licensee or its Affiliates, or the officers, directors, employees, or agents of the Licensee Group. The foregoing indemnity obligation shall not apply to the extent that the TXMD Indemnitees fail to comply with the indemnification procedures set forth in Section 14.3 and Licensee's defense of the relevant TXMD Claims is prejudiced by such failure, or to the extent that any TXMD Claim arises from, is based on, or results from (x) a material breach of any of TXMD's representations, warranties, or obligations under the Agreement; or (y) the willful misconduct or negligent acts of any TXMD Indemnitee.

14.3 Indemnification Procedures. The Party claiming indemnity under this Section 14 (the “**Indemnified Party**”) shall give written notice to the Party from whom indemnity is being sought (the “**Indemnifying Party**”) promptly after learning of such Claim. Failure to provide such notice which substantially prejudices the indemnifying Party’s ability to defend such claim or action may invalidate any obligation of indemnification. The Indemnified Party shall provide the Indemnifying Party with reasonable assistance, at the Indemnifying Party’s expense, in connection with the defense of the claim for which indemnity is being sought. The Indemnified Party may participate in and monitor such defense with counsel of its own choosing at its sole expense; provided, however, that the Indemnifying Party shall have sole case management authority, including the right to assume and conduct the defense of the claim with counsel of its choice. Neither Party may compromise or settle any matter without the other Party’s prior written consent, not to be unreasonably withheld, delayed or conditioned.

14.4 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS), INCIDENTAL, EXEMPLARY, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHERWISE, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY TO (A) THE AMOUNTS EACH PARTY IS OBLIGATED TO PAY TO A THIRD PARTY AS PART OF A THIRD PARTY CLAIM THAT IS THE SUBJECT OF AN INDEMNIFICATION OBLIGATION HEREUNDER, OR (B) DAMAGES ARISING FROM A PARTY’S GROSS NEGLIGENCE, WILLFUL OR INTENTIONAL MISCONDUCT, FRAUD OR BREACH OF THE LICENSE RESTRICTIONS, BREACH OF CONFIDENTIALITY OBLIGATIONS.

15. Force Majeure

15.1 Notice of Force Majeure Event; Excused Performance. The Force Majeure Party shall, within five (5) days of the occurrence of a Force Majeure event, give notice in writing to the other Party specifying the nature and extent of the event of Force Majeure, its anticipated duration and any action being taken to avoid or minimize its effect. Subject to providing such notice and Sections 15.2 and 15.3 below, the Force Majeure Party shall not be liable for delay in performance or for non-performance of its obligations under this Agreement to the extent due to an event of Force Majeure.

15.2 Remediation. The Force Majeure Party shall use all commercially reasonable efforts to (a) bring the Force Majeure event to a close or (b) find a solution by which the Agreement may be performed despite the continuation of the event of Force Majeure.

15.3 Termination for Prolonged Force Majeure Event. Notwithstanding the other provisions of this Section 15, if the Force Majeure Party is prevented from performing its obligations due to a Force Majeure event for a continuous period in excess of one hundred (100) days after the date of the occurrence of the Force Majeure event, and such failure to perform would constitute a material breach of this Agreement in the absence of such Force Majeure event, unless the Parties agree otherwise, the other Party may terminate this Agreement immediately by written notice to the Force Majeure Party, in which case neither Party shall have any liability to the other except as provided in Section 16 and except for those rights and liabilities that accrued prior to the date of termination. Termination shall be on a Product-by-Product and country-by-country basis where the Force Majeure event affects only one Product or less than all countries in the Territory.

16. **Term and Termination.**

16.1 Term. This Agreement shall commence on the Effective Date and shall remain in full force and effect unless and until earlier terminated in accordance with this Article 16 (the “**Term**”).

16.2 Termination by TXMD.

16.2.1 TXMD may terminate this Agreement upon written notice to Licensee if any of the following occur: (a) Licensee or any of its Affiliates, directly or indirectly divert any Products for distribution or sale outside of the Territory, unless such diversion is an isolated incident occurring not more than once in any twelve (12) month period and Licensee provides reasonable assurances to TXMD that such diversion will not recur, or (b) if Licensee or its Affiliates commences any action or proceeding that challenges the validity, enforceability or scope of any TXMD Patent.

16.2.2 TXMD shall have the right to terminate this Agreement if Licensee does not file an application with the appropriate Regulatory Authority for Marketing Authorization for [***] in [***] within [***] of the Effective Date. Notwithstanding the above, Licensee shall not be deemed to have failed to meet its obligations under this Section 16.2.2 if Licensee requires information in order to satisfy a filing requirement for the submission for the Marketing Authorization from the Regulatory Authority and TXMD has failed to provide Licensee with such required documentation, and despite using commercially reasonable efforts to obtain such information, Licensee has not been able to obtain such information.

16.2.3 TXMD shall have the right to terminate this Agreement on a country-by-country and Product-by-Product basis if Licensee fails to use Diligent Efforts to Commercialize the applicable Product in [***] for [***] after obtaining Marketing Authorization for each such Major Country.

16.3 Termination by Licensee.

16.3.1 Licensee may terminate this Agreement on thirty (30) days’ written notice if TXMD fails to meet its supply obligations (with regard to amount or timeliness) on more than three consecutive occasions or more than four times in any twelve month period.

16.3.2 On a country-by-country and Product-by-Product basis, Licensee may terminate this Agreement upon sixty (60) days' written notice to TXMD in the event that the applicable Regulatory Authority in the Territory informs Licensee or Licensee's Affiliate or Sublicensee that such Product can no longer be Commercialized in such country as a result of a safety issue.

16.4 Termination by Either Party. In addition to any other provisions of this Agreement expressly providing for termination of this Agreement, this Agreement may be terminated, in whole or in part, immediately by either Party upon notice to the other Party:

16.4.1 if the other Party is in material breach of this Agreement and such material breach is not cured within (i) sixty (60) days after written notice thereof is delivered to the defaulting or breaching Party (thirty (30) days in the case of Licensee's failure to pay any undisputed amounts due hereunder), or (ii) in the case of a breach that cannot be cured within sixty (60) days, within a reasonable period not exceeding one hundred twenty (120) days after written notice thereof is delivered to the defaulting or breaching Party; or

16.4.2 if the other Party (or Licensee's parent) shall file in any court or agency, pursuant to any statute or regulation of any state or country, a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of such other Party (or Licensee's parent) or of its assets, or if the other Party (or Licensee's parent) proposes a written agreement of composition or extension of its debts, or if the other Party (or Licensee's parent) shall be served with an involuntary petition against it, filed in an insolvency proceeding, and such petition shall not be dismissed within sixty (60) days after the filing thereof, or if the other Party (or Licensee's parent) shall propose or be a party to any dissolution or liquidation, or if the other Party (or Licensee's parent) shall make an assignment for the benefit of its creditors.

16.5 Effect of Termination. Without prejudice to any other rights or remedies each Party may have, upon the expiration or termination of this Agreement for any reason, Licensee shall:

16.5.1 immediately pay all undisputed sums which are due and payable to TXMD under this Agreement;

16.5.2 immediately cease all use of any property of TXMD unless required for the continuation of any performance permitted hereunder, including any of TXMD's Confidential Information; and

16.5.3 be entitled to sell off any inventory of Product existing on the date such termination is effective for the six (6) month period following the effective date of such termination, and thereafter shall return or destroy (at TXMD's cost) and for a full refund all such remaining inventory in accordance with TXMD's written instruction.

16.6 Effect of Termination Related to Licensee Events. Upon the termination of this Agreement pursuant to Section 15.3 or Section 16, the following shall apply:

16.6.1 Termination of License Rights. All licenses granted to Licensee hereunder shall terminate immediately upon such termination, except to the extent necessary for Licensee to exercise its obligation under Section 16.5.3, if applicable.

16.6.2 Step-In Rights. Upon TXMD's written request:

(a) as soon as practicable but in any event no more than ninety (90) days after such termination, Licensee shall perform all reasonable steps required to file for the transfer of the Marketing Authorization and all other Regulatory Approvals to TXMD in order to assign to TXMD all Regulatory Materials, marketing Authorizations and other Regulatory Approvals (including with respect to all Regulatory Materials and all Clinical Data contained therein) owned or Controlled by Licensee for the Products; provided that, for clarity, TXMD shall not exercise any rights under such assignment until such termination date. Licensee shall promptly notify the EMA and any other applicable Regulatory Authority of such transfer and assignment in the customary manner;

(b) upon the effective date of such a termination, if requested by TXMD, Licensee shall provide reasonable transition services according to a transition plan reasonably agreed to mutually by the Parties; provided that if Licensee terminated this Agreement, in whole or in part (i.e., by country), due to TXMD's uncured material breach pursuant to Section 16.4.1 (following the cure period specified therein) or pursuant to Section 16.3), the transition services provided under this Section 16.6.2 shall be at TXMD's cost and expense; and

(c) in the event that Licensee or any of its Affiliates has one or more agreements with Third Parties with respect to the Commercialization of the Products, at TXMD's request, Licensee shall use Diligent Efforts to assign or sublicense its rights under such agreement(s) (solely to the extent such agreements pertain to the Products) to TXMD upon any such termination and TXMD shall assume all of Licensee's obligations under such agreement(s).

16.7 Alternative to Termination Related to Supply Problems.

16.7.1 In the event that Licensee has a right to terminate this Agreement pursuant to Section 16.3.1, Licensee shall have the right, as an alternative to termination of this Agreement pursuant to Section 16.3.1, exercisable by written notice to TXMD, to continue this Agreement in effect in accordance with this Section 16.7 (the "Alternate Remedy").

16.7.2 In the event that Licensee exercises the Alternate Remedy pursuant to this Section 16.7, Licensee shall have the right to enter into a supply agreement directly with the Contract Manufacturer or with another Third Party supplier selected by Licensee for the supply of Product in the Territory. Any Third Party supplier selected by Licensee shall be subject to the approval of TXMD, which shall not be unreasonably withheld. Licensee shall provide a copy of the supply agreement with the Contract Manufacturer or Third Party supplier to TXMD promptly after the supply agreement is executed.

16.7.3 Licensee shall be responsible for adding any Third Party supplier to the Marketing Authorizations in the Territory and shall be responsible for the costs incurred by Licensee to qualify any such Third Party supplier.

16.7.4 Licensee shall ensure that the Contract Manufacturer or such Third Party supplier enters into confidentiality obligations in respect of the Confidential Information which are no less onerous than those set out in this Agreement. In addition, the Contract Manufacturer or such Third Party supplier shall covenant not to manufacture for Licensee or another party any Generic Product during the term of such supply agreement. Licensee shall provide prompt written notice to TXMD of any breach by the Contract Manufacturer or Third Party supplier of any of such confidentiality obligations or covenant relating to Generic Products and, at the request of TXMD, shall use commercially reasonable efforts to enforce such confidentiality obligation or covenant at its cost. TXMD shall be a third-party beneficiary of such confidentiality obligations and covenant and shall have the right to enforce such confidentiality obligations and covenant directly against the Contract Manufacturer or Third Party supplier at its cost. Any recovery in an action against the Contract Manufacturer or Third Party supplier by Licensee or TXMD for any such breach shall for the benefit TXMD.

16.7.5 Commencing with the Calendar Quarter after the exercise of the Alternate Remedy, Licensee shall pay TXMD royalties pursuant to Section 10.1.3 at a rate of [***] percent ([***]%) on Net Sales of Product in the Territory.

16.7.6 Upon the exercise by Licensee of the Alternate Remedy, all obligations of TXMD under this Agreement with respect to the manufacture and supply of Product shall terminate, including the obligations of TXMD under Section 4.3, Section 6, Section 7, Section 8 and Section 9. TXMD shall have no liability or obligation under this Agreement or otherwise for Product supplied to Licensee or its Sublicensees by the Contract Manufacturer or such Third Party supplier.

16.7.7 The exercise by Licensee of the Alternate Remedy in this Section 16.8 shall terminate any right of Licensee to terminate this Agreement pursuant to Section 16.3.1 as a result of such supply failure and shall be the exclusive remedy of Licensee and in lieu of any and all other remedies of Licensee under this Agreement or otherwise for any such supply failure by TXMD.

16.7.8 Subject to this Section 16.7, the terms of this Agreement shall remain in full force and effect after the exercise by Licensee of the Alternate Remedy.

16.8 Rights in Bankruptcy. The Parties agree that all rights, powers and remedies of each of the Parties, respectively provided herein are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity (including the Bankruptcy Code) in the event of the commencement of a case under the Bankruptcy Code.

16.9 Survival. The following provisions shall survive any expiration or early termination of this Agreement: Articles 1, 14, 17, 18, 20, Sections 2.3, 2.4.1, 8.3, 8.4, 8.5, 8.7, 9, 15.3, 16.6.2 (for the time periods described therein), 16.7, 16.8 and 16.9, and any other provisions of the Agreement required to give effect to their intent and meaning.

17. Confidentiality

17.1 Nondisclosure. Except as otherwise provided in this Agreement, any Confidential Information which is disclosed by or on behalf of one Party to the other in connection with this Agreement shall remain the property of the Disclosing Party and the Receiving Party undertakes:

17.1.1 to use the Confidential Information solely and exclusively for the purposes of this Agreement, and not to use the Confidential Information for any other purpose whatsoever, including the Development, Manufacture, marketing, sale or licensing of any process or product or any other commercial purpose anywhere in the world, unless the Parties specify otherwise; and

17.1.2 to maintain the confidentiality of the Confidential Information and not to disclose it directly or indirectly to any other Person (including any Restricted Entities), except as otherwise permitted pursuant to this Article 17; and

17.1.3 at the request of the Disclosing Party and/or upon termination of this Agreement, to return, delete or destroy all copies of the Confidential Information, in whatever form it is held, provided that the Receiving Party may retain one (1) copy of the Confidential Information for the sole purpose of determining its obligations under this Agreement but may make no further use of such Confidential Information whatsoever. Notwithstanding the foregoing, Receiving Party may retain Confidential Information on electronic backup systems to which access within the organization of Receiving Party or its Representatives, as the case may be, is limited to purposes of backup and contingency planning. The return of any Confidential Information shall not relieve Receiving Party of its obligation to maintain the confidentiality of the Confidential Information in accordance with the terms hereof; and

17.1.4 not to copy or reproduce in any form or medium Confidential Information or any part thereof except as may be reasonably necessary for or in connection with the purpose of this Agreement and that any such copies or reproductions shall be the property of the Disclosing Party.

17.2 Permitted Recipients. Notwithstanding Section 17.1, the Receiving Party may only disclose the Disclosing Party's Confidential Information to its officers, employees, professional advisors and distributors and (with respect to TXMD only, Contract Manufacturers or other TXMD Sublicensees or subcontractors but in the case of other TXMD Sublicensees subject to Licensee's prior written consent which shall not be unreasonably withheld, delayed or conditioned) on a purely need to know basis to the extent necessary or required for the purposes of carrying out their respective obligations under the Agreement and in order to fulfill the purpose of this Agreement, provided that the Receiving Party shall ensure that, prior to such disclosure, each such Person to whom Confidential Information is to be disclosed is made aware of the obligations contained in this Agreement, and adhere to these terms as if it were a party to this Agreement.

17.3 Disclosure Required by Law. Nothing in Section 17.1, shall preclude disclosure of any Confidential Information required by any governmental, quasi-governmental or regulatory agency or authority or court entitled by law to disclosure of the same, or which is required by law or the requirements of a national securities exchange or another similar regulatory body to be disclosed, provided that the Receiving Party promptly notifies the Disclosing Party when such requirement to disclose has arisen to enable the Disclosing Party to seek an appropriate protective order, to make known to the relevant agency, authority, court or securities exchange the proprietary nature of the Confidential Information, and to make any applicable claim of confidentiality. The Receiving Party agrees to co-operate in any action, which the Disclosing Party may decide to take. If the Receiving Party is required to make a disclosure in accordance with this clause, it shall only make a disclosure to the extent to which it is obliged and any such disclosed information shall remain Confidential Information.

17.4 Exceptions. The provisions of Section 17.1, shall not apply to any Confidential Information which the Receiving Party can demonstrate, to the reasonable satisfaction of the Disclosing Party based on authenticated written records:

17.4.1 was already in the possession of the Receiving Party or any of its Affiliates and at the Receiving Party's or any of its Affiliates' free use and disposal or in the public domain (through in each case no fault of the Receiving Party or any of its Affiliates or no breach of this Agreement by the Receiving Party) prior to its disclosure by the Disclosing Party under this Agreement as documented by the Receiving Party's written records; or

17.4.2 is purchased or otherwise legally acquired by the Receiving Party or any of its Affiliates at any time from a third Person having and the right to disclose it; or

17.4.3 comes into the public domain, otherwise than through the fault of the Receiving Party or any of its Affiliates; or

17.4.4 is independently generated by the Receiving Party or any of its Affiliates without any recourse or reference to the Confidential Information as documented by the Receiving Party's written records.

17.5 The obligations of each Party in this Article 17 shall survive the termination of this agreement.

17.6 Publicity. Subject to the special authorized disclosure provisions set forth in this Article 17), neither Party shall disclose to any Third Party the nature of their relationship or the terms of this Agreement. If either Party desires to make a public announcement concerning the terms of this Agreement, such Party shall give reasonable prior advance notice of the proposed text of such announcement to the other Party for its prior review and approval (except as otherwise provided herein), such approval not to be unreasonably withheld. A Party commenting on such a proposed press release shall provide its comments, if any, within five (5) Business Days after receiving the press release for review.

17.7 Financings; Press Release. Except as expressly provided in this Section 17, each Party agrees not to disclose any terms of this Agreement to any third party without the prior written consent of the other Party (which shall not be unreasonably withheld or delayed). Each Party (the "**Providing Party**") may, however, provide a copy of this Agreement or otherwise disclose its terms in connections with any financing transaction, provided that the person or entity to whom a copy of this Agreement is provided or to whom the terms of this Agreement are disclosed is bound to the Providing Party by reasonable confidentiality obligations, and provided further that the Providing Party is responsible for breaches or confidentiality hereunder by such person or entity to whom a copy of this Agreement is provided or to whom the terms of this Agreement are disclosed. Notwithstanding the foregoing and subject to Section 17.7, the Parties may issue a mutually agreed upon press release announcing the execution of this Agreement and describing the relationship of the Parties under the Agreement. In addition, each Party may disclose to third parties the information disclosed in such press release without the need for further approval by the other Party, and TXMD may disclose to third parties (via press releases or otherwise) the achievement of any material milestones in connection with this Agreement without prior approval by Licensee.

17.8 Filing of Agreement with Regulatory Authority. The Parties acknowledge that each Party (or its Affiliate) may at some point in time be obligated to file a copy of this Agreement with the applicable governmental authorities having regulatory authority over the securities of such Party (or such Affiliate) or the exchange thereof. In such an event, the Party obligated to file the Agreement shall promptly inform the other Party thereof and shall use reasonable efforts to maintain the confidentiality of the other Party's Confidential Information and terms of this Agreement in any such filing or disclosure. Prior to making any such filing of a copy of this Agreement, the Parties shall negotiate in good faith to mutually agree on the provisions of this Agreement for which the Parties shall seek confidential treatment, it being understood that if one Party determines to seek confidential treatment for a provision for which the other Party does not, then the Parties shall use reasonable efforts in connection with such filing to seek the confidential treatment of any such provision. The Parties shall cooperate, each at its own expense, in such filing, including without limitation such confidential treatment request, and shall execute all documents reasonably required in connection therewith. The Parties shall reasonably cooperate in responding promptly to any comments received from such Regulatory Authority with respect to such filing in an effort to achieve confidential treatment of such redacted form; provided that a Party shall be relieved of such obligation to seek confidential treatment for a provision requested by the other Party if such treatment is not achieved after the first round of responses to comments from the requesting governmental authority.

18. Dispute Resolution

18.1 Disputes. The Parties recognize that disputes or issues between the Parties as to certain matters may from time to time arise during the Term concerning either Party's rights and/or obligations under this Agreement. It is the objective of the Parties to establish procedures to facilitate the resolution of issues and disputes arising under this Agreement in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the Parties agree to follow the procedures set forth in this Article 18 to resolve any issue, dispute, controversy or claim arising out of, relating to or in connection with any provision of this Agreement (a "**Dispute**"), if and when any such Dispute arises under this Agreement.

18.2 Arising Between the Parties. With respect to all Disputes arising between the Parties, including any alleged failure to perform, or breach, of this Agreement, or any issue relating to the interpretation or application of this Agreement, if the Parties are unable to resolve such Dispute within thirty (30) days after such Dispute is first identified by either Party in writing to the other, the Parties shall refer such Dispute to the senior executive officers for each Party for attempted resolution by good faith negotiations within thirty (30) days after such notice is received.

18.3 **Binding Arbitration.** Any unresolved disputes between the Parties relating to, arising out of or in any way connected with this Agreement or any term or condition hereof, or the performance by either Party of its obligations hereunder, whether before or after termination of this Agreement, shall be resolved by final and binding arbitration. Whenever a Party shall decide to institute arbitration proceedings, it shall give written notice to that effect to the other Party. Arbitration shall be held in London, United Kingdom according to the commercial rules of the International Chamber of Commerce (“**ICC**”). The arbitration shall be conducted by a panel of three arbitrators appointed in accordance with ICC rules; provided that each Party shall within thirty (30) days after the institution of the arbitration proceedings appoint an arbitrator, and such arbitrators shall together, within thirty (30) days, select a third arbitrator as the chairman of the arbitration panel, each arbitrator shall have significant experience in the pharmaceutical business. If the two initial arbitrators are unable to select a third arbitrator within such thirty (30) day period, the third arbitrator shall be appointed in accordance with ICC rules. The arbitrators shall render their opinion within thirty (30) days of the final arbitration hearing. Decisions of the panel of arbitrators shall be final and binding on the Parties; provided, that the arbitrators shall have no authority to award damages that exceed the scope of the limitations set forth in Section 14.4 above. Judgment on the award so rendered may be entered in any court of competent jurisdiction.

18.4 **Prevailing Party Costs and Fees.** The losing Party to the arbitration (if any) as determined by the arbitrators shall reimburse the prevailing Party for its costs and expenses arising from the arbitration, including the ICC fees and reasonable attorneys’ fees.

18.5 **Injunctive Relief.** Notwithstanding anything to the contrary herein, either Party may seek seeking a preliminary injunction or temporary restraint order in order to prevent any irreparable harm from occurring, including preventing Confidential Information from being disclosed without appropriate authorization under this Agreement.

19. **Insurance.** Each Party shall procure and maintain insurance, including product liability insurance, adequate to cover its obligations hereunder and which are consistent with this Agreement and with normal business practices in the Territory. It is understood that such insurance shall not be construed to create a limit with respect to its indemnification obligations or any other liabilities hereunder. Each Party shall provide written evidence of such insurance to the other Party prior to the occurrence of the First Commercial Sale or as otherwise requested by such other Party. Notwithstanding the foregoing, Licensee shall have the right to self-insure in order to fulfill its insurance obligations under this Section 19 and shall provide written confirmation to TXMD of Licensee’s decision to do so within thirty (30) days of receiving a written request from TXMD.

20. **Miscellaneous**

20.1 **Governing Law.** This Agreement shall be governed by and construed under the laws of State of Delaware, without giving effect to the conflicts of laws provision thereof.

20.2 Notice Requirements. Any notice, request, demand, waiver, consent, approval or other communication permitted or required under this Agreement shall be in writing and shall be delivered by hand or by internationally recognized overnight delivery service that requires a signature for delivery and maintains records of such delivery, addressed to the Parties at the following addresses specified in this Section 20.2 (or to such other addresses of which notice shall have been given in accordance with this Section 20.1):

If to TXMD: Therapeutics MD, Inc.
6800 Broken Sound Parkway, NW
3rd Floor
Boca Raton, FL 33487
USA
Attention: Legal Department

With a copy to:

King & Spalding LLP
601 S. California Avenue
Suite 100
Palo Alto, CA 94304
Attention: Jack Capers

Telephone: [***]
Fax: [***]
Email: [***]

If to Licensee: Theramex HQ UK Limited
Sloane Square House
1 Holbein Place
London
SW1W 8NS
United Kingdom
Attention: Chief Corporate Development Officer

With a copy to:

Legal Department
Attention: General Counsel

E-mail: [***]

This Section is not intended to govern the day-to-day business communications necessary between the Parties in performing their obligations under the terms of this Agreement.

20.3 Relationship of the Parties. The status of a Party under this Agreement shall be that of an independent contractor. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between the Parties or, except as otherwise expressly provided in this Agreement, as granting either Party the authority to bind or contract any obligation in the name of or on the account of the other Party or to make any statements, representations, warranties or commitments on behalf of the other Party. All persons employed by a Party shall be employees of such Party and not of the other Party and all costs and obligations incurred by reason of any such employment shall be for the account and expense of such Party.

20.4 Assignment.

20.4.1 Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other, such consent not to be unreasonably withheld, delayed, or conditioned, except that either Party may make such an assignment without the other Party's consent in the event of a Change of Control or to a successor to all or substantially all of the assets of the Party that are the subject of this Agreement or a purchaser of all or substantially all of the rights to a Product as part of a divestiture, whether in a merger, sale of stock, sale of assets or other transaction. Any permitted assignment shall be binding on the successors of the assigning Party.

20.4.2 Whether or not this Agreement is assigned pursuant to Section 20.4, the rights to Clinical Data, information, materials, Patent Rights, Know-How or other intellectual property rights: (i) controlled by a Third Party permitted assignee of a Party or any of its Affiliates that were controlled by such assignee or any of its Affiliates (and not such Party) immediately prior to such assignment (other than as a result of a license or other grant of rights, covenant or assignment by such Party or its Affiliates to, or for the benefit of, such Third Party); or (ii) controlled by any successor-in-interest of a Party as a result of a Change of Control or any Person that becomes an Affiliate of a Party through any Change of Control of such Party, that were controlled by such successor or Person (and not such Party) immediately prior to such Change of Control (other than as a result of a license or other grant of rights, covenant or assignment by such Party or its other Affiliates to, or for the benefit of, such Person), in each case ((i) and (ii)), shall be automatically excluded from the rights licensed or granted to the other Party under this Agreement.

20.4.3 Any assignment or attempted assignment by either Party in violation of the terms of this Section 20.4 shall be null, void and of no legal effect.

20.5 Expenses. Except as otherwise expressly provided in Section 18.4, each Party shall pay the fees and expenses of its respective lawyers and all other expenses and costs incurred by such Party incidental to the negotiation, preparation, execution and delivery of this Agreement.

20.6 Waiver and Non-Exclusion of Remedies. A Party's failure to enforce, at any time or for any period of time, any provision of this Agreement, or to exercise any right or remedy shall not constitute a waiver of that provision, right or remedy or prevent such Party from enforcing any or all provisions of this Agreement and exercising any rights or remedies. To be effective any waiver must be in writing and signed by the waiving Party. All rights and remedies are cumulative and do not exclude any other right or remedy provided by law or otherwise available. The acceptance by TXMD of any payment by Licensee hereunder shall not operate as any waiver by TXMD of any right, power or remedy provided by law or under this Agreement.

20.7 Severability. To the fullest extent permitted by Applicable Law, the Parties waive any provision of law that would render any provision in this Agreement invalid, illegal or unenforceable in any respect. If any provision of this Agreement is held to be invalid, illegal or unenforceable, in any respect, then such provision shall be given no effect by the Parties and shall not form part of this Agreement. To the fullest extent permitted by Applicable Law and if the rights or obligations of any Party shall not be materially and adversely affected, all other provisions of this Agreement shall remain in full force and effect and the Parties shall use their best efforts to negotiate a provision in replacement of the provision held invalid, illegal or unenforceable that is consistent with Applicable Law and achieves, as nearly as possible, the original intention of the Parties.

20.8 Entirety. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement. This Agreement supersedes all prior agreements, whether written or oral, with respect to the subject matter of the Agreement. Any amendment or modification of this Agreement must be in writing and signed by authorized representatives of both Parties.

20.9 Language. This Agreement was prepared in the English language, which language shall govern the interpretation of, and any dispute regarding, the terms of this Agreement.

20.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together shall be deemed to constitute one and the same instrument.

[Signature page follows.]

This Agreement is executed by the authorized representatives of the Parties as of the date first written above.

THERAPEUTICSMD, INC.

THERAMEX HQ UK LIMITED

/s/ Daniel Cartwright
Signature

/s/ Anish Mehta
Signature

Name: Daniel Cartwright

Name: Anish Mehta

Title: CFO

Title: CEO

[Signature Page to License and Supply Agreement]

Appendix 1 Product

TX-001: [***].¹

TX-004: [***].²

¹ The TX-001 Product does not include [***].

² The TX-004 Product does not include [***].

Exhibit 1
TXMD Patents³

Issued Patents:

	Patent Number	Title	Filing Date (mm/dd/yy)	Issue Date (mm/dd/yy)	Country
1.	89459	Pharmaceutical Capsule	12/22/15	02/17/16	AR
2.	366507	Pharmaceutical Capsule	12/21/15	01/12/16	AU
3.	2012340589	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	08/25/16	AU
4.	2013277236	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	08/03/17	AU
5.	2013277234	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	08/10/17	AU
6.	MX 358440 B	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	08/03/18	MX
7.	002916247-0001	Pharmaceutical Capsule	12/18/15	08/10/16	EP
8.	302015005859-5	Pharmaceutical Capsule	12/21/15	01/30/18	BR
9.	6285866	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	02/09/18	JP
10.	MX 50237 B	Pharmaceutical Capsule	12/18/15	07/19/17	MX
11.	30-2015-0065043	Pharmaceutical Capsule	12/18/15	03/06/17	KR
12.	101179	Pharmaceutical Capsule	12/21/15	01/10/17	RU
13.	A2015/01935	Pharmaceutical Capsule	12/21/15	05/16/17	ZA
14.	2015/00211	Natural Combination Hormone Replacement Therapies	06/18/13	07/27/16	ZA
15.	6334519	Natural Combination Hormone Replacement Therapies	06/18/13	05/11/18	JP
16.	6397402	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	09/07/18	JP
17.	1624393	Pharmaceutical Capsule	12/21/15	01/18/19	JP

³ Exhibit does not include TXMD IP rights in the U.S., Canada, or Israel.

Pending Patent Applications:

	Application Number	Title	Application Date (mm/dd/yy)	Country
1.	BR1120140124442	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	BR
2.	12850845.4	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	EP
3.	2017-173842	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	JP
4.	MX/a/2014/006256	Natural Combination Hormone Replacement Formulations and Therapies	11/21/12	MX
5.	20140101244	Natural Combination Hormone Replacement Formulations and Therapies	03/17/14	AR
6.	2017206262	Natural Combination Hormone Replacement Formulations and Therapies	07/20/17	AU
7.	BR1120140319103	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	BR
8.	13806855.6	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	EP
9.	2017-176379	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	JP
10.	10-2015-7001189	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	KR
11.	MX/a/2014/015898	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	MX
12.	2015100533	Natural Combination Hormone Replacement Formulations and Therapies	06/18/13	RU
13.	20150101608	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	AR
14.	2015264003	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	AU
15.	BR112016 027359 1	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	BR
16.	15727528.0	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	EP
17.	2016-565647	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	JP

	Application Number	Title	Application Date (mm/dd/yy)	Country
18.	10-2016-7032773	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	KR
19.	MX/a/2016/014281	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	MX
20.	2016143081	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	RU
21.	2016/07541	Natural Combination Hormone Replacement Formulations and Therapies	05/22/15	ZA
22.	PCT/US2017/064788	Natural Combination Hormone Replacement Formulations and Therapies	12/05/17	PCT
23.	2017208300	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	AU
24.	BR1120140319146	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	BR
25.	13807188.1	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	EP
26.	10-2015-7001193	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	KR
27.	MX/A/2018/009466	Soluble Estradiol Capsule for Vaginal Insertion	08/02/18	MX
28.	2015100531	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	RU
29.	2014/09278	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	ZA
30.	2018-162966	Soluble Estradiol Capsule for Vaginal Insertion	06/18/13	JP
31.	20140103975	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	AR
32.	2014349132	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	AU
33.	BR1120160090080	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	BR
34.	14862905.8	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	EP
35.	2016-516086	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	JP
36.	10-2016-7010901	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	KR
37.	MX/A/2016/005092	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	MX

	Application Number	Title	Application Date (mm/dd/yy)	Country
38.	2016118396	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	RU
39.	2016/01933	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	10/22/14	ZA
40.	PCT/US2016/065466	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	PCT
41.	20160103768	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	AR
42.	2016366200	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	AU
43.	BR1120180114839	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	BR
44.	16873806.0	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	EP
45.	2018-529574	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	JP
46.	10-2018-7019331	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	KR
47.	MX/A/2018/006882	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	MX
48.	743229	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	NZ
49.	2018121094	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	RU
50.	2018/03804	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	12/07/16	ZA
51.	PCT/US2018/36790	Vaginal Inserted Estradiol Pharmaceutical Compositions and Methods	06/08/18	PCT
52.	2018222947	Progesterone Formulations	06/18/13	AU
53.	MX/a/2018/009467	Progesterone Formulations	08/02/18	MX
54.	20150100920	Progesterone Compositions	03/27/15	AR
55.	2015237243	Progesterone Formulations	03/27/15	AU
56.	BR1120160225708	Progesterone Formulations	03/27/15	BR

	Application Number	Title	Application Date (mm/dd/yy)	Country
57.	15768772.4	Progesterone Formulations	03/27/15	EP
58.	2016-557059	Progesterone Formulations	03/24/15	JP
59.	10-2016-7029519	Progesterone Formulations	03/27/15	KR
60.	MX/A/2016/011706	Progesterone Formulations	03/27/15	MX
61.	2016136666	Progesterone Formulations	03/27/15	RU
62.	2016/06309	Progesterone Formulations	03/27/15	ZA

Exhibit 2
Milestone Fees

Upfront Payment. Licensee shall pay TXMD a payment of Fourteen Million Euros (€14,000,000) within sixty (60) days after the Effective Date. Notwithstanding anything to the contrary in the Agreement, this upfront payment is non-refundable, non-creditable and not subject to set-off. A failure of Licensee to pay this upfront payment when due (i.e. upon receipt of the corresponding invoice from TXMD) will be deemed to be a material breach of this Agreement by Licensee.

Milestones. Licensee shall make the following one-time, non-refundable, milestone payments to TXMD following the first achievement of each of the milestones below with respect to the Products (and any Product Improvements) in accordance with Section 10.1.1 of this Agreement:

Regulatory Milestone	Milestone Fee
Regulatory Approval for Commercialization of [***] in [***]	€[***] (in equal installments of € [***] upon Regulatory Approval for Commercialization of [***] in [***])
Regulatory Approval for Commercialization of [***] in [***]	€[***]

Sales Milestone for TX-001 and TX-004 Products	Milestone Fee
First attaining annual Net Sales of the TX-001 and TX-004 Products in the Territory of €25,000,000	€[***]
First attaining annual Net Sales of the TX-001 and TX-004 Products in the Territory of €[***]	€[***]
First attaining annual Net Sales of the TX-001 and TX-004 Products in the Territory of €[***]	€[***]
First attaining annual Net Sales of the TX-001 and TX-004 Products in the Territory of €100,000,000	€[***]

Exhibit 3

Estimated COGS Per Unit Price as of Effective Date

Bijuva® 1mg/100mg

	Unit	Price per unit US\$
Current price	1 capsule (in bulk packaging)	[***] ([***] cents per capsule)
Pre-launch price	1 capsule (in bulk packaging)	[***] ([***] cents per capsule)

The current price will be reduced to the future price as soon as [***]. Both Parties will use their best efforts to include the [***].

Imvexxy®

	Unit	Price per unit US\$
Current price (4mcg dose)	1 capsule (in bulk packaging)	[***] ([***] cents per capsule)
Current price (10mcg dose)	1 capsule (in bulk packaging)	[***] ([***] cents per capsule)

Exhibit 4

Current and Intended Suppliers

Estradiol Hemihydrate:

Item	Description
Company Name:	***
Address Facility 1:	***
Address Facility 2:	***
Contact Information:	***

Progesterone:

Item	Description
Company Name:	***
Address Facility:	***
Contact Information:	***
Company Name:	***
Address Facility:	***

Drug Product Bijuva (Bulk)

Item	Description
Company Name:	Catalent Pharma Solutions, LLC
Address:	***

Item	Description
Company Name:	[***]
Address:	[***]

Drug Product Imvexxy (Bulk)

Item	Description
Company Name:	Catalent Pharma Solutions, LLC
Address:	[***]
Company Name:	[***]
Address:	[***]

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Robert G. Finizio, certify that:

- (1) I have reviewed this quarterly report on Form 10-Q of TherapeuticsMD, 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 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 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.

August 9, 2019

/s/ Robert G. Finizio
Robert G. Finizio
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Daniel A. Cartwright, certify that:

- (1) I have reviewed this quarterly report on Form 10-Q of TherapeuticsMD, 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 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 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.

August 9, 2019

/s/ Daniel A. Cartwright

Daniel A. Cartwright

Chief Financial Officer

(Principal Financial and Accounting Officer)

SECTION 1350 CERTIFICATION OF CHIEF EXECUTIVE OFFICER

In connection with the quarterly report of TherapeuticsMD, Inc. (the "Company") on Form 10-Q for the quarterly period ended June 30, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert G. Finizio, Chief Executive Officer of the Company, certify, to my best knowledge and belief, 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 (15 U.S.C. 78m(a) or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

August 9, 2019

/s/ Robert G. Finizio

Robert G. Finizio
Chief Executive Officer
(Principal Executive Officer)

A signed original of this certification has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

SECTION 1350 CERTIFICATION OF CHIEF FINANCIAL OFFICER

In connection with the quarterly report of TherapeuticsMD, Inc. (the "Company") on Form 10-Q for the quarterly period ended June 30, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Daniel A. Cartwright, Chief Financial Officer of the Company, certify to my best knowledge and belief, 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 (15 U.S.C. 78m(a) or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

August 9, 2019

/s/ Daniel A. Cartwright

Daniel A. Cartwright
Chief Financial Officer
(Principal Financial and Accounting Officer)

A signed original of this certification has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.