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, 2018

☐ **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. **001-001000**

THERAPEUTICSMD, INC.

(Exact Name of Registrant as Specified in Its Charter)

Nevada	**87-0233535**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)
6800 Broken Sound Parkway NW, Third Floor, Boca Raton, FL 33487	**(561) 961-1900**
(Address of Principal Executive Offices)	(Issuer's Telephone Number)

N/A

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

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 ☒	Accelerated filer ☐
Non-accelerated filer ☐	Smaller reporting company ☐
(Do not check if a 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 July 23, 2018 was 216,834,059.

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THERAPEUTICSMD, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

	June 30, 2018	December 31, 2017
	(Unaudited)	
ASSETS		
Current Assets:		
Cash	$ 154,386,930	$ 127,135,628
Accounts receivable, net of allowance for doubtful accounts of $418,604 and $380,580, respectively	5,625,987	4,328,802
Inventory	1,880,577	1,485,358
Other current assets	5,203,734	6,604,284
Total current assets	167,097,228	139,554,072
Fixed assets, net	403,574	437,055
Other Assets:		
Intangible assets, net	3,488,401	3,099,747
Prepaid expenses-long term	759,229	—
Security deposit	150,522	139,036
Total other assets	4,398,152	3,238,783
Total assets	$ 171,898,954	$ 143,229,910
LIABILITIES AND STOCKHOLDERS EQUITY		
Current Liabilities:		
Accounts payable	$ 11,427,160	$ 4,097,600
Accrued expenses and other current liabilities	9,785,210	9,223,595
Total current liabilities	21,212,370	13,321,195
Long-term Liabilities:		
Long-term debt	73,141,311	—
Total long-term liabilities	73,141,311	—
Total liabilities	94,353,681	13,321,195
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:		
216,834,059 and 216,429,642 issued and outstanding, respectively	216,834	216,430
Additional paid-in capital	521,608,436	516,351,405
Accumulated deficit	(444,279,997)	(386,659,120)
Total stockholders' equity	77,545,273	129,908,715
Total liabilities and stockholders' equity	$ 171,898,954	$ 143,229,910

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,	
	2018	**2017**	**2018**	**2017**
Revenues, net	$ 3,763,010	$ 4,250,433	$ 7,536,402	$ 8,235,897
Cost of goods sold	454,161	681,725	1,087,784	1,341,360
Gross profit	3,308,849	3,568,708	6,448,618	6,894,537
Operating expenses:				
Sales, general, and administration	29,466,770	14,628,927	50,224,007	31,466,544
Research and development	6,798,380	8,716,395	13,837,677	16,441,235
Depreciation and amortization	65,603	53,189	125,224	102,888
Total operating expense	36,330,753	23,398,511	64,186,908	48,010,667
Operating loss	(33,021,904)	(19,829,803)	(57,738,290)	(41,116,130)
Other income (expense):				
Miscellaneous income	334,238	149,054	648,795	275,022
Accreted interest	—	3,832	—	7,699
Interest expense	(531,382)	—	(531,382)	—
Total other (expense) income	(197,144)	152,886	117,413	282,721
Loss before taxes	(33,219,048)	(19,676,917)	(57,620,877)	(40,833,409)
Provision for income taxes	—	—	—	—
Net loss	$ (33,219,048)	$ (19,676,917)	$ (57,620,877)	$ (40,833,409)
Net loss per share, basic and diluted	$ (0.15)	$ (0.10)	$ (0.27)	$ (0.20)
Weighted average number of common shares outstanding	216,640,186	203,384,610	216,583,067	200,602,778

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, 2018	**June 30, 2017**
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	$ (57,620,877)	$ (40,833,409)
Adjustments to reconcile net loss to net cash flows used in operating activities:		
Depreciation of fixed assets	79,201	69,000
Amortization of intangible assets	46,023	33,888
Provision for (recovery of) doubtful accounts	38,024	(18,106)
Share-based compensation	4,128,440	3,051,357
Amortization of deferred financing costs	30,155	—
Changes in operating assets and liabilities:		
Accounts receivable	(1,335,209)	1,122,386
Inventory	(395,219)	(337,694)
Other current assets	2,539,394	(58,601)
Accounts payable	7,329,560	749,520
Accrued interest	501,227	—
Accrued expenses and other current liabilities	60,388	(2,443,867)
Net cash used in operating activities	(44,598,893)	(38,665,526)
CASH FLOWS FROM INVESTING ACTIVITIES		
Patent costs	(434,677)	(367,602)
Purchase of fixed assets	(45,720)	(35,849)
Payment of security deposit	(11,486)	—
Net cash used in investing activities	(491,883)	(403,451)
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from term loan	75,000,000	—
Payment of deferred financing fees	(3,786,918)	—
Proceeds from exercise of options	1,128,996	212,360
Proceeds from exercise of warrants	—	3,798,999
Net cash provided by financing activities	72,342,078	4,011,359
Increase (decrease) in cash	27,251,302	(35,057,618)
Cash, beginning of period	127,135,628	131,534,101
Cash, end of period	$ 154,386,930	$ 96,476,483

The accompanying footnotes are an integral part of these 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 health care company focused on creating and commercializing products targeted exclusively for women. Currently, we are focused on commercializing our recently U.S. Food and Drug Administration, or 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, and pursuing the regulatory approvals and pre-commercialization activities necessary for commercialization of TX-001HR, our bio-identical hormone therapy combination of 17ß- estradiol and progesterone in a single, oral softgel drug candidate, for the treatment of moderate to severe vasomotor symptoms, or VMS, due to menopause in menopausal women with an intact uterus. The new drug application, or NDA, for TX-001HR has a Prescription Drug User Fee Act target action date for the completion of the FDA's review of October 28, 2018. IMVEXXY™ and TX-001HR are designed to alleviate the symptoms of and reduce the health risks resulting from menopause-related hormone deficiencies, including hot flashes, osteoporosis and vaginal discomfort. With our SYMBODA™ technology, we are developing advanced hormone therapy pharmaceutical products to enable delivery of bio-identical hormones through a variety of dosage forms and administration routes. In addition, we manufacture and distribute branded and generic prescription prenatal vitamins.

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, 2017, as filed with the Securities and Exchange Commission, or the SEC, from which we derived the accompanying consolidated balance sheet as of December 31, 2017. 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 June 2018, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update, or 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 Accounting Standards Codification, or 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 are currently evaluating the effect of this guidance on our consolidated financial statements and disclosures.

In February 2016, the FASB issued ASU 2016-02, Leases. This guidance requires lessees to record most leases on their balance sheets but recognize 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. We are in the process of analyzing the quantitative impact of this guidance on our results of operations and financial position. While we are continuing to assess all potential impacts of the standard, we currently believe the impact of this standard will be primarily related to the accounting for our operating lease.

In May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606). The standard's core principle is that a company will recognize revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. In doing so, companies will need to use more judgment and make more estimates than under previous guidance. This may include identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each separate performance obligation. In July 2015, the FASB approved the proposal to defer the effective date of ASU 2014-09 standard by one year. Early adoption is permitted after December 15, 2016, and the standard is effective for public entities for annual reporting periods beginning after December 15, 2017 and interim periods therein. In 2016, the FASB issued final amendments to clarify the implementation guidance for principal versus agent considerations (ASU 2016-08), accounting for licenses of intellectual property and identifying performance obligations (ASU 2016-10), narrow-scope improvements and practical expedients (ASU 2016-12) and technical corrections and improvements to topic 606 (ASU 2016-20) in its new revenue standard. We adopted this standard under the modified retrospective method to all contracts not completed as of January 1, 2018 and the adoption did not have a material effect on our financial statements but we expanded our disclosures related to contracts with customers in Note 3.

NOTE 3 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Fair Value of Financial Instruments

Our financial instruments consist primarily of cash, accounts receivable, accounts payable and 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.

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 or disclosed 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, 2018 and 2017, 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. There was no impairment of intangible assets or long-lived assets during the three and six months ended June 30, 2018 and 2017.

The carrying amounts for the Term Loan (as discussed in Note 9) approximate fair value based on market activity for other debt instruments with similar characteristics and comparable risk.

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 charge-backs 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.

Inventories

Inventories are valued at the lower of cost or net realizable value. Inventories related to packaged vitamins, nutritional products and supplements and raw materials are valued using the average-cost method and inventories related to our progesterone and estradiol products are valued using first in first out method. We review our inventory for excess or obsolete inventory and write-down obsolete or otherwise unmarketable inventory to its estimated net realizable value. Obsolescence may occur due to product expiring or product improvements rendering previous versions obsolete.

Pre-Launch Inventory

Inventory costs associated with product candidates that have not yet received regulatory approval are capitalized if we believe there is probable future commercial use and future economic benefit. If the probability of future commercial use and future economic benefit cannot be reasonably determined, then pre-launch inventory costs associated with such product candidates are expensed as research and development expenses during the period the costs are incurred. We have no capitalized pre-launch inventory as of June 30, 2018 and 2017.

Revenue Recognition

We adopted Accounting Standards Codification, or 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 the 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, 2018, we have not recognized any revenue related to our recently approved product: IMVEXXY™.

We sell our name brand and generic prescription products primarily through wholesale distributors and retail pharmacy distributors. 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 pharmacy distributors, 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. All of our performance obligations, and associated revenue, are transferred to customers at a point in time. Payment for goods or services sold by us is typically due between 30 and 60 days after an invoice is sent to the customer.

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. 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. We include amounts of variable consideration in a contract's transaction price only to the extent that we have a relatively high level of confidence that the amounts will not be subject to significant reversals, that is, downward adjustments to revenue recognized for satisfied performance obligations. 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. When determining if variable consideration should be constrained, we consider whether there are factors outside our control that could result in a significant reversal of revenue. In making these assessments, we consider the likelihood and magnitude of a potential reversal of revenue. These estimates are re-assessed each reporting period as required.

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 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 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. Rebates estimates are recorded in accrued expenses and coupon estimates and distributor fees are recorded in the other current liabilities on the consolidated balance sheet. We estimate chargebacks based on prices stated in contracts based the number of units sold each period. We provide invoice discounts to our customers for prompt payment. We deduct invoice discounts and chargebacks from our gross product revenues at the time such discounts are earned by customers.

OTC Products

Our OTC and prescription prenatal vitamin products are generally variations of the same product with slight modifications in formulation and marketing. As of January 1, 2017, we decided to focus on selling our prescription vitamins and ceased manufacturing and distributing our OTC product lines, except for Iron 21/7 which we ceased manufacturing in October 2017. We generate OTC revenue from product sales primarily to retail consumers. We recognize revenue from product sales upon shipment, when the rights of ownership and risk of loss have passed to the consumer. We include outbound shipping and handling fees, if any, in revenues, net, and bill them upon shipment. We include shipping expenses in cost of goods sold. A majority of our OTC customers pay for our products with credit cards, and we usually receive the cash settlement in two to three banking days. Credit card sales minimize accounts receivable balances relative to OTC sales. We provide an unconditional 30-day money-back return policy under which we accept product returns from our retail and eCommerce OTC customers. We recognize revenue from OTC sales, net of estimated returns and sales discounts.

Disaggregation of revenue

We sell our name brand and generic prescription products primarily through wholesale distributors and retail pharmacy distributors which accounted for all sales during 2018 and the vast majority of sales during 2017. As of January 1, 2017, we decided to focus on selling our prescription vitamins and ceased manufacturing and distributing our OTC product lines, except for Iron 21/7 which we ceased manufacturing in October 2017. The sales of Iron 21/7 during the three months ended June 30, 2018 and 2017 were approximately $0 and $12,000, respectively, and $0 and $20,000 for the six months ended June 30, 2018 and 2017, respectively.

Contract assets and contract liabilities

Based on our contracts, we invoice customers once our performance obligations have been satisfied, at which point payment is unconditional. Accordingly, our contracts do not give rise to contract assets or liabilities under ASC 606. Accounts receivable are recorded when the right to consideration becomes unconditional. We disclose receivables from contracts with customers separately in the statement of financial position. Estimates related to cash discounts and chargebacks are included in net accounts receivable. Estimates related to distributors fees, rebates, coupons and returns are disclosed in Note 8.

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. 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, including forfeiture rates, 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.

Equity instruments (“instruments”) issued to non-employees are recorded on the basis of the fair value of the instruments, as required by ASC 505, Equity - Based Payments to Non-Employees, or ASC 505. ASC 505 defines the measurement date and recognition period for such instruments. In general, the measurement date is when either (a) a performance commitment, as defined, is reached or (b) the earlier of (i) the non-employee performance is complete or (ii) the instruments are vested. The estimated expense is recognized each period based on the current fair value of the award. As a result, the amount of expense related to awards to non-employees can fluctuate significantly during the period from the date of the grant through the final measurement date. The measured value related to the instruments is recognized over a period based on the facts and circumstances of each particular grant as defined in ASC 505.

We recognize the compensation expense for all 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.

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 U.S. Food and Drug Administration, or the 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.

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.

NOTE 4 – INVENTORY

Inventory consists of the following:

	June 30, 2018	December 31, 2017
Finished product	$ 1,652,700	$ 1,485,358
Work in process	227,877	—
TOTAL INVENTORY	$ 1,880,577	$ 1,485,358

NOTE 5 – OTHER CURRENT ASSETS

Other current assets consist of the following:

	June 30, 2018	December 31, 2017
Prepaid sales and marketing costs	$ 2,646,988	$ 5,335,936
Debt financing fees	1,138,844	—
Prepaid insurance	535,446	680,243
Other prepaid costs	846,889	523,694
Prepaid vendor deposits	35,567	64,411
TOTAL OTHER CURRENT ASSETS	$ 5,203,734	$ 6,604,284

NOTE 6 – FIXED ASSETS, NET

Fixed assets, net consist of the following:

	June 30, 2018	December 31, 2017
Accounting system	$ 301,096	$ 301,096
Equipment	319,257	273,536
Furniture and fixtures	116,542	116,542
Computer hardware	80,211	80,211
Leasehold improvements	37,888	37,888
	854,994	809,273
Accumulated depreciation	(451,420)	(372,218)
TOTAL FIXED ASSETS, NET	$ 403,574	$ 437,055

Depreciation expense for the three months ended June 30, 2018 and 2017 was $40,777 and $35,400, respectively, and $79,201 and $69,000 for the six months ended June 30, 2018 and 2017, respectively.

NOTE 7 – INTANGIBLE ASSETS

The following tables sets forth the gross carrying amount, accumulated amortization and net carrying amount of our intangible assets as of June 30, 2018 and December 31, 2017:

	June 30, 2018			
	Gross Carrying Amount	Accumulated Amortization	Net Amount	Weighted-Average Remaining Amortization Period (yrs.)
Amortizable intangible assets:				
OPERA® software patent	$ 31,951	$ (9,486)	$ 22,465	11.25
Development costs of corporate website	91,743	(91,743)	—	n/a
Approved hormone therapy drug candidate patents	1,662,562	(216,934)	1,445,628	14.5
Hormone therapy drug candidate patents (pending)	1,769,681	—	1,769,681	n/a
Non-amortizable intangible assets:				
Multiple trademarks	250,627	—	250,627	indefinite
Total	$ 3,806,564	$ (318,163)	$ 3,488,401	

	December 31, 2017			
	Gross Carrying Amount	Accumulated Amortization	Net Amount	Weighted-Average Remaining Amortization Period (yrs.)
Amortizable intangible assets:				
OPERA® software patent	$ 31,951	$ (8,487)	$ 23,464	11.75
Development costs of corporate website	91,743	(91,743)	—	n/a
Approved hormone therapy drug candidate patents	1,293,614	(171,911)	1,121,703	15
Hormone therapy drug candidate patents (pending)	1,721,305	—	1,721,305	n/a
Non-amortizable intangible assets:				
Multiple trademarks	233,275	—	233,275	indefinite
Total	$ 3,371,888	$ (272,141)	$ 3,099,747	

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 three and six months ended June 30, 2018 and year ended December 31, 2017, there was no impairment recognized related to intangible assets.

We have numerous pending foreign and domestic patent applications. As of June 30, 2018, we had 20 issued foreign patents and 19 issued domestic, or U.S., patents including:

- 13 domestic utility patents that relate to our combination progesterone and estradiol product candidates, which are owned by us. These domestic utility patents will expire in 2032. In addition, we have pending patent applications with respect to our combination progesterone and estradiol product candidates in the U.S., Argentina, Australia, Brazil, Canada, Europe, Israel, Japan, Mexico, Russia, South Africa, and South Korea;
- Three domestic patents that relate to Imvexxy®, our applicator-free vaginal estradiol softgel product. These patents establish an important intellectual property foundation for Imvexxy® and are owned by us. These domestic patents will expire in 2032 or 2033. In addition, we have pending patent applications related to Imvexxy® in the U.S., Argentina, Australia, Brazil, Canada, Europe, Israel, Japan, Mexico, Russia, South Africa, and South Korea;
- One domestic utility patent that relates to our pipeline transdermal patch technology, which is owned by us. The domestic utility patent will expire in 2032. We have pending patent applications with respect to this technology in the U.S., Australia, Brazil, Canada, Europe, Mexico, Japan, and South Africa; and
- One utility patent that relates to our OPERA® information-technology platform, which is owned by us and is a domestic patent that will expire in 2029.
- One domestic utility patent that relates to TX-009HR, our progesterone and estradiol product candidate, which is owned by us and will expire in 2037.

Amortization expense was $24,826 and $17,789 for the three months ended June 30, 2018 and 2017, respectively and $46,023 and $33,888 for the six months ended June 30, 2018 and 2017, respectively. Estimated amortization expense for the next five years for the patent cost currently being amortized is as follows:

Year Ending December 31,		Estimated Amortization
2018(6 months)	$	49,652
2019	$	99,304
2020	$	99,304
2021	$	99,304
2022	$	99,304
Thereafter	$	1,021,225

NOTE 8 – OTHER CURRENT LIABILITIES

Other current liabilities consist of the following:

	June 30, 2018	December 31, 2017
Accrued payroll, bonuses and commission costs	$ 2,825,316	$ 4,240,379
Allowance for coupons and returns	1,802,125	1,432,846
Accrued sales and marketing costs	1,412,570	420,162
Accrued compensated absences	1,039,684	945,457
Accrued legal and accounting expense	688,012	600,350
Accrued research and development	492,577	366,933
Accrued interest	501,227	—
Accrued rent	383,110	327,099
Other accrued expenses	234,937	525,999
Accrued rebates	207,018	76,917
Allowance for wholesale distributor fees	198,634	172,973
Accrued royalties	—	114,480
TOTAL OTHER CURRENT LIABILITIES	$ 9,785,210	$ 9,223,595

NOTE 9 – DEBT

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).

The Credit Agreement provides 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 will be made in three separate tranches, each, a Tranche, with each Tranche to be made available to us, at our option, upon our achievement of certain milestones. The first Tranche of $75,000,000, or Tranche 1, was drawn by us on June 7, 2018, following approval by the FDA of the NDA for our TX-004HR drug candidate. The second Tranche of $75,000,000, or Tranche 2, may be drawn by us on or before May 31, 2019, provided that we satisfy certain conditions described in the Credit Agreement, including (i) that Tranche 1 has been drawn, (ii) the approval by the FDA of the NDA for our TX001HR drug candidate and (iii) we have consummated our first commercial sale in the United States of TX-001HR. The third Tranche of $50,000,000, or Tranche 3, may be drawn by us on or before December 31, 2019, provided that we satisfy certain conditions described in the Credit Agreement, including that (i) Tranche 2 has been drawn and (ii) we have generated at least $75,000,000 of consolidated net revenue attributable to commercial sales of TX-001HR and TX-004HR during the twelve-month period ending immediately prior to the funding of Tranche 3.

Amounts borrowed under the Term Loan bear 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. Interest on amounts borrowed under the Term Loan is due and payable monthly in arrears. Principal on each Tranche is payable in 36 equal monthly installments beginning May 1, 2020 until paid in full on May 1, 2023, or the Maturity Date. However, if we generate at least $95,000,000 of consolidated net revenue attributable to commercial sales of TX-001HR and TX-004HR by December 31, 2019, we may extend the interest-only period by an additional 12 months to May 1, 2021. Interest expense related to this Term Loan for the three and six months ending June 30, 2018 was $501,227.

The Term Loan may be prepaid, in whole or in part, subject to a prepayment fee on the amount being prepaid (or required to be prepaid, if such amount is greater) of (i) 4.0% for the first year following the Tranche 1 funding date, (ii) 3.0% for the second year following the Tranche 1 funding date and (iii) 2.0% thereafter. Upon repayment of the Term Loan at the Maturity Date or prepayment on any earlier date, we will be required to pay a termination payment based on the principal amount paid or prepaid. In connection with the execution of the Credit Agreement, we paid the Agent, for the benefit of all Lenders, an origination fee equal to 1.00% of the maximum potential amount of the Term Loan. We are also required to pay the Agent an annual administration fee of 0.25% based on the amounts borrowed under the Term Loan, in addition to other fees and expenses.

Our obligations under the Credit Agreement are secured, subject to customary permitted liens and other agreed upon exceptions, by a first priority perfected security interest in all of our existing and after-acquired assets. Our obligations under the Credit Agreement are guaranteed by each of our future direct and indirect subsidiaries (other than certain non-U.S. subsidiaries of ours and certain U.S. subsidiaries substantially all of whose assets consist of equity interests in non-U.S. subsidiaries, subject to certain exceptions). The Credit Agreement contains customary restrictions and covenants. Among other requirements, we must (i) maintain a minimum cash balance of $50,000,000 and (ii) achieve certain minimum consolidated net revenue amounts attributable to commercial sales of our products. As of June 30, 2018, we were in compliance with the covenants under the Credit Agreement.

The Credit Agreement also contains customary covenants that limit, among other things, our ability to (i) incur indebtedness, (ii) incur liens on our property, (iii) pay dividends or make other distributions, (iv) sell our assets, (v) make certain loans or investments, (vi) merge or consolidate, (vii) voluntarily repay or prepay certain permitted indebtedness and (viii) enter into transactions with affiliates, in each case subject to certain exceptions. The Credit Agreement contains customary representations and warranties and events of default relating to, among other things, payment defaults, breaches of covenants, the occurrence of any fact, event or circumstance that could reasonably be expected to result in a Material Adverse Effect (as defined in the Credit Agreement), delisting of the our common stock, par value $0.001 per share, or Common Stock, bankruptcy and insolvency, cross defaults with certain material indebtedness and certain material contracts, judgments and inaccuracies of representations and warranties. Upon or after an event of default, the agent and the Lenders may declare all or a portion of our obligations under the Credit Agreement to be immediately due and payable and exercise other rights and remedies provided for under the Credit Agreement.

As of June 30, 2018, we had $75,000,000 in borrowings outstanding under the Term Loan, which are classified as long-term debt in the accompanying unaudited consolidated financial statements. We incurred $3,786,918 in debt issuance costs related to the Term Loan. Debt financing fees related to the entire Term Loan have been allocated pro rata between the funded and unfunded portions of each tranche. Allocated debt financing fees related to Tranche 1 of $1,888,844 have been reclassified to debt discount and are accreted to interest expense using the effective interest method. Debt financing fees associated with unfunded tranches are deferred as assets until Tranche 1 and Tranche 2 milestones have been met. Deferred financing fees related to Tranche 1 are included in Other current assets and deferred financing fees related to Tranche 2 are included in Prepaid expenses - long term in the accompanying unaudited consolidated financial statements. During the three and six months ended June 30, 2018, we amortized $30,155 of debt issuance costs related to Tranche 1 as interest expense in our accompanying unaudited consolidated financial statements. The overall effective interest rate was 10.6% as of June 30, 2018. As of June 30, 2018, the carrying value of debt consists of the following:

	June 30, 2018
Term Loan	$75,000,000
Debt discount and financing fees	(1,858,689)
Total long-term debt	$73,141,311

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 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 and warrants and were excluded from the calculation of diluted earnings per share because their effect would have been anti-dilutive 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, 2018	June 30, 2017
Stock options	25,210,899	23,402,100
Warrants	3,007,571	3,115,905
	28,218,470	26,518,005

NOTE 11 – STOCKHOLDERS' EQUITY

Preferred Stock

At June 30, 2018, we had 10,000,000 shares of preferred stock, par value $0.001, authorized for issuance, of which no shares of preferred stock were issued or outstanding.

Common Stock

At June 30, 2018, we had 350,000,000 shares of Common Stock authorized for issuance, of which 216,834,059 shares of Common Stock were issued and outstanding.

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.

Issuances During the Three and Six Months Ended June 30, 2017

During the three months ended June 30, 2017, certain individuals exercised stock options to purchase 5,000 shares of Common Stock for $20,050 in cash. During the six months ended June 30, 2017, certain individuals exercised stock options to purchase 100,046 shares of Common Stock for $212,360 in cash.

Warrants to Purchase Common Stock

As of June 30, 2018, we had warrants outstanding to purchase an aggregate of 3,007,571 shares of Common Stock with a weighted-average contractual remaining life of approximately 2.08 years, and exercise prices ranging from $0.24 to $8.20 per share, resulting in a weighted average exercise price of $2.78 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, 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 six months ended June 30, 2017, we granted warrants to purchase 125,000 shares of Common Stock to outside consultants at an exercise price of $6.83 per share. The fair value for these warrants was determined by using the Black-Scholes Model on the date of the grant using a term of five years; volatility of 63.24%; risk free rate of 1.47%; and dividend yield of 0%. The grant date fair value of the warrants was $3.67 per share. The warrants vest ratably over a 12-month period and have an expiration date of March 15, 2022.

During the three months ended June 30, 2018 and 2017, we recorded $164,840 and $69,089, respectively, and during the six months ended June 30, 2018 and 2017, we recorded $256,315 and $115,774, respectively, as share based compensation expense in the accompanying consolidated financial statements related to warrants. As of June 30, 2018, total unrecognized estimated compensation expense related to the unvested portion of these warrants was approximately $345,000 which is expected to be recognized over a weighted-average period of 0.7 years.

In May 2013, we entered into a consulting agreement with Sancilio and Company, Inc., or SCI, to develop drug platforms to be used in our hormone replacement drug candidates. These services include support of our efforts to successfully obtain FDA approval for our drug candidates, including a vaginal capsule for the treatment of VVA. In connection with the agreement, SCI agreed to forfeit its rights to receive warrants to purchase 833,000 shares of our Common Stock that were to be granted pursuant to the terms of a prior consulting agreement dated May 17, 2012. As consideration under the agreement, we agreed to issue to SCI a warrant to purchase 850,000 shares of our Common Stock at $2.01 per share that has vested or will vest, as applicable, as follows:

1. 283,333 shares were earned on May 11, 2013 upon acceptance of an Investigational New Drug application by the FDA for an estradiol-based drug candidate in a softgel vaginal capsule for the treatment of VVA; however, pursuant to the terms of the consulting agreement, the shares did not vest until June 30, 2013. The fair value of $405,066 for the shares vested on June 30, 2013 was determined by using the Black-Scholes Model on the date of vesting using a term of 5 years; a volatility of 45.89%; risk free rate of 1.12%; and a dividend yield of 0%. We recorded the entire $405,066 as non-cash compensation as of June 30, 2013. These shares were exercised in 2017.

2. 283,333 shares vested on June 30, 2013. The fair value of $462,196 for these shares was determined by using the Black-Scholes Model on the date of vesting using a term of 5 years; a volatility of 45.84%; risk free rate of 1.41%; and a dividend yield of 0%. As of June 30, 2016, this warrant was fully amortized. These shares were exercised in 2017; and

3. 283,334 shares were going to vest upon the receipt by us, prior to the warrant expiration date of April 30, 2018, of any final FDA approval of a drug candidate that SCI helped us design. Since the receipt of such approval did not occur before warrant's expiration date, the warrant expired on April 30, 2018.

In May 2012, we issued warrants to purchase an aggregate of 1,300,000 shares of Common Stock to SCI for services to be rendered over approximately five years beginning in May 2012. The warrants vested upon issuance. Services provided are to include (a) services in support of our drug development efforts, including services in support our ongoing and future drug development and commercialization efforts, regulatory approval efforts, third-party investment and financing efforts, marketing efforts, chemistry, manufacturing and controls efforts, drug launch and post-approval activities, and other intellectual property and know-how transfer associated therewith; (b) services in support of our efforts to successfully obtain new drug approval; and (c) other consulting services as mutually agreed upon from time to time in relation to new drug development opportunities. The warrants were valued at $1,532,228 on the date of the issuance using an exercise price of $2.57; a term of five years; a volatility of 44.71%; risk free rate of 0.74%; and a dividend yield of 0%. During the three months ended June 30, 2018 and 2017, we recorded $0 and $64,449, respectively, and during the six months ended June 30, 2018 and 2017, we recorded $0 and $128,898, respectively, as non-cash compensation with respect to these warrants in the accompanying consolidated financial statements. This warrant was fully exercised, of which 800,000 shares were exercised in 2017 and 500,000 shares were exercised in 2016. As of June 30, 2018, the SCI warrants issued in 2013 and 2012 were fully amortized.

During the three months ended June 30, 2018, no warrants were exercised. During the three months ended June 30, 2017, certain individuals exercised warrants to purchase 666,666 shares of Common Stock for $1,338,999 in cash. In addition, during the three months ended June 30, 2017, certain individuals exercised warrants to purchase 6,590,000 shares of Common Stock pursuant to the warrants' cashless exercise provisions, wherein 4,762,208 shares of Common Stock were issued. During the six months ended June 30, 2018, no warrants were exercised. During the six months ended June 30, 2017, certain individuals exercised warrants to purchase 2,476,666 shares of Common Stock for $3,798,999 in cash. In addition, during the three months ended June 30, 2017, certain individuals exercised warrants to purchase 6,590,000 shares of Common Stock pursuant to the warrants' cashless exercise provisions, wherein 4,762,208 shares of Common Stock were issued.

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. There are 25,000,000 shares of Common Stock authorized for issuance thereunder. 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, 2018, there were non-qualified stock options to purchase 18,932,425 shares of Common Stock outstanding under the 2009 Plan. As of June 30, 2018, there were 1,578,787 shares of Common Stock available to be issued under 2009 Plan.

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. There are 10,000,000 shares of Common Stock authorized for issuance thereunder. As of June 30, 2018, there were non-qualified stock options to purchase 6,278,474 shares of Common Stock outstanding under the 2012 Plan. As of June 30, 2018, there were 3,473,333 shares of Common Stock available to be issued under 2012 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, 2018 and 2017 are set forth in the table below.

	Six Months Ended June 30, 2018	Six Months Ended June 30, 2017
Risk-free interest rate	2.38-2.63%	1.84-2.01%
Volatility	61.82-64.04%	61.56-63.95%
Term (in years)	5.1-6.25	5.5-6.25
Dividend yield	0.00%	0.00%

A summary of activity under the 2009 and 2012 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, 2017	23,365,225	$ 3.78	5.13	$ 64,664,821
Granted	2,315,500	$ 5.26		
Exercised	(404,576)	$ 2.79		$ 1,386,827
Expired/Forfeited	(62,250)	$ 7.61		
Balance at June 30, 2018	25,210,899	$ 3.92	5.16	$ 69,013,547
Vested and Exercisable at June 30, 2018	20,565,025	$ 3.46	4.30	$ 66,096,342
Unvested at June 30, 2018	4,645,874	$ 5.98	8.96	$ 2,917,204

At June 30, 2018, 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 $3.15 and $3.82 during the six months ended June 30, 2018 and 2017, respectively. Share-based compensation expense for options recognized in our results of operations for the three months ended June 30, 2018 and 2017 ($2,212,241 and $1,505,625, respectively) and for the six months ended June 30, 2018 and 2017 ($3,872,125 and $2,806,685, respectively) is based on vested awards. At June 30, 2018, total unrecognized estimated compensation expense related to unvested options granted prior to that date was approximately $13,817,000 which may be adjusted for future forfeitures. This cost is expected to be recognized over a weighted-average period of 2.4 years. No tax benefit was realized due to a continued pattern of operating losses.

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 2018 as a result of (i) the losses recorded during the six months ended June 30, 2018, (ii) additional losses expected for the remainder of 2018, 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, 2018, 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, 2018 and 2017, we were billed by Catalent approximately $1,266,000 and $1,754,000, respectively, for manufacturing activities related to our clinical trials, scale-up, registration batches, stability and validation testing. During the six months ended June 30, 2018 and 2017, we were billed by Catalent approximately $2,040,000 and $2,460,000, respectively, for manufacturing activities related to our clinical trials, scale-up, registration batches, stability and validation testing. As of June 30, 2018 and December 31, 2017, there were amounts due to Catalent of approximately $751,000 and $523,000, respectively.

NOTE 14 – BUSINESS CONCENTRATIONS

We purchase our products from several suppliers with approximately 100% of our purchases supplied from one vendor for both the six months ended June 30, 2018 and 2017.

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, 2018, four customers each generated more than 10% of our total revenues. During the six months ended June 30, 2017, five customers each generated more than 10% of our total revenues. Revenue generated from four major customers combined accounted for approximately 71% of our recognized revenue for the six months ended June 30, 2018 and revenue generated from five major customers combined accounted for approximately 70% of our recognized revenue for the six months ended June 30, 2017.

During the six months ended June 30, 2018, PI Services generated approximately $981,000 of our revenue, Pillpack, Inc. generated approximately $2,088,000 of our revenue, AmerisourceBergen generated approximately $1,283,000 of our revenue and Cardinal Health generated approximately $971,000 of our revenue. During the six months ended June 30, 2017, Pharmacy Innovations TX generated approximately $834,000 of our revenue, Pharmacy Innovations PA generated approximately $1,863,000 of our revenue, AmerisourceBergen generated approximately $1,053,000 of our revenue, Cardinal Health generated approximately $1,119,000 of our revenue and McKesson Corporation generated approximately $907,000 of our revenue.

As a result of developments in the pharmaceutical industry that negatively affected independent pharmacies, including such pharmacies' reliance on third party payors, in 2016, we identified that payment periods for our retail pharmacy distributors were becoming longer than in prior years. As a result, during the third quarter of 2016, we centralized the distribution channel for both our retail pharmacy distributors and wholesale distributors, in order to facilitate sales to a broader population of retail pharmacies and minimize business risk exposure to any one retail pharmacy. During the third quarter of 2016, we entered into new distribution agreements with our retail pharmacy distributors to effectuate this centralization which were effective September 1, 2016.

NOTE 15 – COMMITMENTS AND CONTINGENCIES

Operating Lease

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.

The rental expense related to our current lease during the three months ended June 30, 2018 and 2017 was approximately $257,000 and $265,000, respectively. The rental expense related to our current lease during both the six months ended June 30, 2018 and 2017 was $515,000.

As of June 30, 2018, future minimum rental payments on non-cancelable operating leases are as follows:

Years Ending December 31,	
2018 (6 months)	$ 499,831
2019	1,094,116
2020	1,113,069
2021	943,127
2022	—
Total minimum lease payments	$ 3,650,143

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, 2017 filed with the Securities and Exchange Commission, or the SEC, on February 23, 2018, or the 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. 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: whether the FDA will approve the NDA for the company’s TX-001HR product candidate and whether such approval will occur by the PDUFA target action date; our ability to maintain or increase sales of our products; our ability to develop and commercialize our hormone therapy drug candidates and obtain additional financing necessary therefor; 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 preclude the approval of our hormone therapy drug candidates or 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 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.

Overview

We are a women’s health care company focused on creating and commercializing products targeted exclusively for women. Currently, we are focused on commercializing our recently U.S. Food and Drug Administration, or 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, and pursuing the regulatory approvals and pre-commercialization activities necessary for commercialization of TX-001HR, our bio-identical hormone therapy combination of 17ß- estradiol and progesterone in a single, oral softgel drug candidate, for the treatment of moderate to severe vasomotor symptoms, or VMS, due to menopause in menopausal women with an intact uterus. The new drug application, or NDA, for TX-001HR has a Prescription Drug User Fee Act target action date for the completion of the FDA’s review of October 28, 2018. IMVEXXY™ and TX-001HR are designed to alleviate the symptoms of and reduce the health risks resulting from menopause-related hormone deficiencies, including hot flashes, osteoporosis and vaginal discomfort. With our SYMBODA™ technology, we are developing advanced hormone therapy pharmaceutical products to enable delivery of bio-identical hormones through a variety of dosage forms and administration routes. In addition, we manufacture and distribute branded and generic prescription prenatal vitamins.

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, www.vitamedmdrx.com, www.bocagreenmd.com, and www.IMVEXXY.com. 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.

Research and Development

We have submitted two NDAs to the FDA. In December 2017, we submitted our NDA for TX-001HR, our bio-identical hormone therapy combination of 17ß- estradiol and progesterone in a single, oral softgel drug candidate, for the treatment of moderate to severe vasomotor symptoms, or VMS, due to menopause in menopausal women with an intact uterus. The Prescription Drug User Fee Act, or PDUFA, target action date for our TX-001HR drug candidate is October 28, 2018. In November 2017, we re-submitted our NDA for TX-004HR, our applicator-free vaginal estradiol softgel drug candidate for the treatment of moderate to severe dyspareunia (vaginal pain during sexual intercourse), a symptom of vulvar and vaginal atrophy, or VVA, in menopausal women with vaginal linings that do not receive enough estrogen. On May 30, 2018, we announced that the FDA had approved the 4 mcg and 10 mcg doses of TX-004HR: 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-mcg formulation of TX-004HR represents the lowest FDA-approved dose of vaginal estradiol available. We intend to leverage and grow our current marketing and sales organization to commercialize our advanced hormone therapy drug candidates in the United States assuming the successful completion of the FDA regulatory process. We believe that our national sales force has developed strong relationships in the OB/GYN market to sell our current prescription prenatal vitamin products and that by delivering additional products through the same sales channel we can leverage our already deployed assets.

TX-001HR

TX-001HR is our bio-identical hormone therapy combination of 17ß- estradiol and progesterone in a single, oral softgel drug candidate for the treatment of moderate to severe VMS due to menopause, including hot flashes, night sweats and sleep disturbances for menopausal women with an intact uterus. The hormone therapy drug candidate is bioidentical to – or having the same chemical and molecular structure as - the hormones that naturally occur in a woman's body, namely estradiol and progesterone, and is being studied as a continuous-combined regimen, in which the combination of estrogen and progesterone are taken together in one product daily. If approved by the FDA, we believe this would represent the first time a combination product of estradiol and progesterone bioidentical to the estradiol and progesterone produced by the ovaries would be approved for use in a single combined product.

On September 5, 2013, we began enrollment in the REPLENISH Trial, a multicenter, double-blind, placebo-controlled, phase 3 clinical trial of TX-001HR in menopausal women with an intact uterus. The trial was designed to evaluate the efficacy of TX-001HR for the treatment of moderate to severe VMS due to menopause and the endometrial safety of TX-001HR. Patients were assigned to one of five arms, four active and one placebo, and received study medication for 12 months. The primary endpoint for the reduction of endometrial hyperplasia was an incidence of endometrial hyperplasia of less than 1% at 12 months, as determined by endometrial biopsy. The primary endpoint for the treatment of moderate to severe VMS was the mean change of frequency and severity of moderate to severe VMS at weeks four and 12 compared to placebo, as measured by the number and severity of hot flashes. Only subjects experiencing a minimum daily frequency of seven moderate to severe hot flashes at screening were included in the VMS analysis, while all subjects were included in the endometrial hyperplasia analysis. The secondary endpoints included reduction in sleep disturbances and improvement in quality of life measures, night sweats and vaginal dryness, measured at 12 weeks, six months and 12 months. The trial evaluated 1,835 patients between 40 and 65 years old at 111 sites. On December 5, 2016, we announced positive topline data for the REPLENISH Trial.

The REPLENISH Trial evaluated four doses of TX-001HR and placebo; the doses studied were:

- 17ß-estradiol 1 mg/progesterone 100 mg (n = 416)
- 17ß-estradiol 0.5 mg/progesterone 100 mg (n = 423)
- 17ß-estradiol 0.5 mg/progesterone 50 mg (n = 421)
- 17ß-estradiol 0.25 mg/progesterone 50 mg (n = 424)
- Placebo (n = 151)

The REPLENISH Trial results demonstrated:

- TX-001HR estradiol 1 mg/progesterone 100 mg and TX-001HR estradiol 0.5 mg/progesterone 100 mg both achieved all four of the co-primary efficacy endpoints and the primary safety endpoint.

- TX-001HR estradiol 1 mg/progesterone 100 mg and TX-001HR estradiol 0.5 mg/progesterone 100 mg both demonstrated a statistically significant and clinically meaningful reduction from baseline in both the frequency and severity of hot flashes compared to placebo.

- TX-001HR estradiol 0.5 mg/progesterone 50 mg and TX-001HR estradiol 0.25 mg/progesterone 50 mg were not statistically significant at all of the co-primary efficacy endpoints. The estradiol 0.25 mg/progesterone 50 mg dose was included in the clinical trial as a non-effective dose to meet the recommendation of the FDA guidance to identify the lowest effective dose.

- The incidence of consensus endometrial hyperplasia or malignancy was 0 percent across all four TX-001HR doses, meeting the recommendations established by the FDA's draft guidance.

As outlined in the FDA guidance, the co-primary efficacy endpoints in the REPLENISH Trial were the change from baseline in the number and severity of hot flashes at weeks four and 12 as compared to placebo. The primary safety endpoint was the incidence of endometrial hyperplasia with up to 12 months of treatment. General safety was also evaluated.

The results of the REPLENISH Trial are summarized in the table below (p-values of < 0.05 meet FDA guidance and support evidence of efficacy):

Replenish Trial Co-Primary Efficacy Endpoints: Mean Change in Frequency and Severity of Hot Flashes Per Week Versus Placebo at Weeks 4 and 12, VMS-MITT Population					
Estradiol/Progesterone	1 mg/100 mg (n = 141)	0.5 mg/100 mg (n = 149)	0.5 mg/50 mg (n = 147)	0.25 mg/50 mg (n = 154)	Placebo (n = 135)
			Frequency		
Week 4 P-value versus placebo	<0.001	0.013	0.141	0.001	—
Week 12 P-value versus placebo	<0.001	<0.001	0.002	<0.001	—
			Severity		
Week 4 P-value versus placebo	0.031	0.005	0.401	0.100	—
Week 12 P-value versus placebo	<0.001	<0.001	0.018	0.096	—
Replenish Trial Primary Safety Endpoint: Incidence of Consensus Endometrial Hyperplasia or Malignancy up to 12 months, Endometrial Safety Population‡					
Endometrial Hyperplasia	0% (0/280)	0% (0/303)	0% (0/306)	0% (0/274)	0% (0/92)

MITT = Modified intent to treat

ŦPer FDA, consensus hyperplasia refers to the concurrence of two of the three pathologists be accepted as the final diagnosis

We submitted the NDA for TX-001HR to the FDA on December 28, 2017. In March 2018, the FDA, in its 74-day letter, stated that the application was sufficiently complete to permit a substantive review and that, as of the date of the letter, the FDA had not identified any potential review issues. The FDA noted that the filing review was only a preliminary evaluation of the application and was not indicative of deficiencies that may be identified during the FDA's review. The PDUFA target action date for the completion of the FDA's review is October 28, 2018.

TX-002HR

TX-002HR is a natural progesterone formulation for the treatment of secondary amenorrhea without the potentially allergenic component of peanut oil. The hormone therapy drug candidate is bioidentical to – or having the same chemical and molecular structure as - the hormones that naturally occur in a woman's body. In July 2014, we suspended enrollment and in October 2014 we stopped the SPRY Trial, our phase 3 clinical trial for TX-002HR, to update the phase 3 protocol based on discussions with the FDA. Our Investigational New Drug Application, or IND, related to TX-002HR is currently in inactive status. We have currently suspended further development of this drug candidate to prioritize our leading drug candidates.

TX-003HR

TX-003HR is a natural estradiol formulation. This hormone therapy drug candidate is bioidentical to the hormones that naturally occur in a woman's body. We currently do not have plans to further develop this hormone therapy drug candidate. Our IND related to TX-003HR is currently inactive.

TX-004HR: IMVEXXY™

On May 30, 2018, we announced that the FDA had approved the 4 mcg and 10 mcg 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-mcg formulation of IMVEXXY™ represents the lowest FDA-approved dose of vaginal estradiol available. IMVEXXY™ became available for commercial distribution in late July 2018. We anticipate that IMVEXXY™ will be widely commercially available in August 2018.

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, such as IMVEXXY™. In connection with the observational study, we will be required to provide progress reports to the FDA on an annual basis.

As of June 30, 2018, we had 20 issued foreign patents and 19 issued domestic or, U.S., patents, which included 13 domestic utility patents that relate to our combination progesterone and estradiol formulations, three 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 OPERA® information technology platform and one domestic utility patent that relates to TX-009HR, our progesterone and estradiol drug candidate.

Research and Development Expenses

A significant 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 a significant amount of research and development. Our research and development expenses consist primarily of expenses incurred under agreements with contract research organizations, or CROs, investigative sites and consultants that conduct our clinical trials and a substantial portion of 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 IND application approval from the FDA.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
	(000s)		(000s)	
TX 001-HR	$ 2,062	$ 5,377	$ 5,415	$ 8,905
TX 002-HR	—	—	—	—
TX 004-HR	1,758	2,767	3,158	4,712
Other research and development	2,979	572	5,265	2,824
Total	$ 6,799	$ 8,716	$ 13,838	$ 16,441

Research and development expenditures will continue to be incurred as we continue development of our drug candidates and advance the development of our proprietary pipeline of novel drug candidates. We expect to incur ongoing research and development costs as we develop our drug pipeline, continue stability testing and validation on our drug candidates, 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 factors that include, but are not limited to, the following: per patient trial costs; the number of patients that participate in the trials; the number of sites included in the trials; the length of time each patient is enrolled in the trial; the number of doses that patients receive; the drop-out or discontinuation rates of patients; the amount of time required to recruit patients for the trial; the duration of patient follow-up; and the efficacy and safety profile of the drug candidate. 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.

Results of Operations

Three months ended June 30, 2018 compared with three months ended June 30, 2017

	Three Months Ended June 30,		
	2018	2017	Change
	(000s)		
Revenues, net	$ 3,763	$ 4,250	$ (487)
Cost of goods sold	454	682	(228)
Operating expenses	36,331	23,398	12,933
Operating loss	(33,022)	(19,830)	(13,192)
Other (expense) income, net	(197)	153	(350)
Net loss	$ (33,219)	$ (19,677)	$ (13,542)

Revenues and Cost of Goods Sold

Revenues for the three months ended June 30, 2018 decreased approximately $487,000, or 11%, to approximately $3,763,000, compared with approximately $4,250,000 for the three months ended June 30, 2017. This decrease was primarily attributable to a decrease in the average net revenue per unit of our products, which was primarily related to higher estimates related to offered discounts in 2018, partially offset by an increase in the number of units sold. Cost of goods sold decreased approximately $228,000 or 33%, to approximately $454,000 for the three months ended June 30, 2018, compared with approximately $682,000 for the three months ended June 30, 2017. Our gross margin was approximately 88% and 84% for the three-month periods ended June 30, 2018 and 2017, respectively.

Operating Expenses

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

	Three Months Ended June 30,	
	2018	2017
Research and development costs	18.7%	37.2%
Human resource related costs, including salaries, benefits and taxes	21.9%	24.7%
Sales and marketing costs, excluding human resource costs	45.8%	24.5%
Professional fees for legal, accounting and consulting	5.4%	5.1%
Other operating expenses	8.2%	8.5%

Operating expenses increased by approximately $12,933,000, or 55%, to approximately $36,331,000 for the three months ended June 30, 2018, from approximately $23,398,000 for the three months ended June 30, 2017 as a result of the following items:

	Three Months Ended June 30,		
	2018	2017	Change
		(000s)	
Research and development costs	$ 6,799	$ 8,716	$ (1,917)
Human resources related costs including salaries, benefits and taxes	7,968	5,785	2,183
Sales and marketing, excluding human resources costs	16,623	5,729	10,894
Professional fees for legal, accounting and consulting	1,966	1,184	782
Other operating expenses	2,975	1,984	991
Total operating expenses	$ 36,331	$ 23,398	$ 12,933

Research and development costs for the three months ended June 30, 2018 decreased by approximately $1,917,000, or 22%, to approximately $6,799,000, compared with $8,716,000 for the three months ended June 30, 2017. Research and development costs include costs related to 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 as a direct result of the completion of the REPLENISH Trial for TX-001HR, our combination estradiol and progesterone drug candidate, and FDA approval of IMVEXXY™, our applicator-free vaginal estradiol softgel drug. Research and developments costs during the three months ended June 30, 2018 included the following research and development projects.

During the three months ended June 30, 2018 and the period from February 2013 (project inception) through June 30, 2018, we have incurred approximately $2,062,000 and $120,812,000, respectively, in research and development costs with respect to TX-001HR, our combination estradiol and progesterone drug candidate.

During the three months ended June 30, 2018 and the period April 2013 (project inception) through June 30, 2018, we have incurred approximately $0 and $2,525,000, respectively, in research and development costs with respect to TX-002HR, our progesterone only drug candidate.

During the three months ended June 30, 2018 and the period from August 2014 (project inception) through June 30, 2018, we have incurred approximately $2,979,000 and $44,007,000, respectively, in research and development costs with respect to IMVEXXY™, our applicator-free vaginal estradiol softgel drug.

For a discussion of the nature of efforts and steps necessary to complete these projects, see “Item 1. Business — Pharmaceutical Regulation” in our Annual Report and “Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations – Overview – Research and Development” above. For a discussion of the risks and uncertainties associated with completing development of our products, see “Item 1A. Risk Factors — Risks Related to Our Business” in our Annual Report. For a discussion of the extent and nature of additional resources that we may need to obtain if our current liquidity is not expected to be sufficient to complete these projects, see “— Liquidity and Capital Resources” below. For a discussion as to whether a future milestone such as completion of a development phase, date of filing an NDA with a regulatory agency or approval from a regulatory agency can be reliably determined, see “Item 1. Business — Our Hormone Therapy Drug Candidates,” and “Item 1. Business — Pharmaceutical Regulation” in our Annual Report. Future milestones, including NDA submission dates and potential approval dates, are not easily determinable as such milestones are dependent on various factors related to our clinical trials, scale-up and manufacturing activities.

Sales and marketing costs for the three months ended June 30, 2018 increased by approximately $10,894,000, or 190%, to approximately $16,623,000, compared with approximately $5,729,000 for the three months ended June 30, 2017, primarily as a result of increased expenses associated with sales and marketing efforts to support launch and commercialization of IMVEXXY™ and our pre-commercialization expenses for our TX-001HR drug candidate, including costs related to outsourced sales personnel and their related expenses. We expect sales and marketing expenses to continue to increase as we continue to support commercialization of our products and drug candidates.

Other operating expense for the three months ended June 30, 2018 increased by approximately $991,000, or 50%, to approximately $2,975,000, compared with approximately $1,984,000 for the three months ended June 30, 2017, as a result of increased information technology, travel and other office expenses.

Human resource costs, including salaries, benefits and taxes, for the three months ended June 30, 2018 increased by approximately $2,183,000, or 38%, to approximately $7,968,000, compared with approximately $5,785,000 for the three months ended June 30, 2017, primarily as a result of an increase of approximately $1,375,000 in personnel costs in sales, marketing and regulatory areas to support commercialization of IMVEXXY™, pre-commercialization expenses for our TX-001HR drug candidate and an increase of approximately $808,000 in non-cash compensation expense included in this category related to employee stock based compensation during 2018 as compared to 2017.

Professional fees for the three months ended June 30, 2018 increased by approximately $782,000, or 66%, to approximately $1,966,000, compared with approximately $1,184,000 for the three months ended June 30, 2017, primarily as a result of increased legal expenses.

Operating Loss

As a result of the foregoing, our operating loss increased approximately $13,192,000, or 67%, to approximately $33,022,000 for the three months ended June 30, 2018, compared with approximately $19,830,000 for the three months ended June 30, 2017, primarily as a result of increased personnel costs, sales and marketing expenses to support commercialization of IMVEXXY™ and pre-commercialization expenses for our TX-001HR drug candidate, 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.

As a result of the continued development of our hormone therapy drug candidates and IMVEXXY™, we anticipate that we will continue to have operating losses for the near future until we successfully commercialize IMVEXXY™, and receive approval from the FDA for, and successfully commercialize, our TX-001HR drug candidate, although there is no assurance that we will attain such approval or that any commercialization of IMVEXXY™ and TX-001HR, if approved, will be successful.

Other (expense) income, net

Other non-operating (expense) income, net decreased by approximately $350,000, or 229%, to other expense, net of approximately $197,000 for the three months ended June 30, 2018, compared with other income, net of approximately $153,000 for the comparable period in 2017, primarily as a result of increased interest expense related to our Term Loan, partially offset by increased interest income.

Net Loss

As a result of the net effects of the foregoing, net loss increased approximately $13,542,000, or 69%, to approximately $33,219,000 for the three months ended June 30, 2018, compared with approximately $19,677,000 for the three months ended June 30, 2017. Net loss per share of Common Stock, basic and diluted, was ($0.15) for the three months ended June 30, 2018 and ($0.10) for the three months ended June 30, 2017.

Six months ended June 30, 2018 compared with six months ended June 30, 2017

	Six Months Ended June 30,		
	2018	2017	Change
		(000s)	
Revenues, net	$ 7,536	$ 8,236	$ (700)
Cost of goods sold	1,088	1,341	(253)
Operating expenses	64,186	48,011	16,175
Operating loss	(57,738)	(41,116)	(16,622)
Other income, net	117	283	(166)
Net loss	$ (57,621)	$ (40,833)	$ (16,788)

Revenues and Cost of Goods Sold

Revenues for the six months ended June 30, 2018 decreased approximately $700,000, or 8%, to approximately $7,536,000, compared with approximately $8,236,000 for the six months ended June 30, 2017. This decrease was primarily attributable to a decrease in the average net revenue per unit of our products, which was primarily related to higher estimates related to offered discounts in 2018, partially offset by an increase in the number of units sold. Cost of goods sold decreased approximately $253,000, or 19%, to approximately $1,088,000 for the six months ended June 30, 2018, compared with approximately $1,341,000 for the six months ended June 30, 2017. Our gross margin was approximately 86% and 84% for the six-month periods ended June 30, 2018 and 2017, respectively.

Operating Expenses

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

	Six Months Ended June 30,	
	2018	2017
Research and development costs	21.6%	34.2%
Human resource related costs, including salaries, benefits and taxes	22.4%	23.9%
Sales and marketing costs, excluding human resource costs	42.2%	28.0%
Professional fees for legal, accounting and consulting	5.9%	5.8%
Other operating expenses	7.9%	8.1%

Operating expenses increased by approximately $16,175,000, or 34%, to approximately $64,186,000 for the six months ended June 30, 2018, from approximately $48,011,000 for the six months ended June 30, 2017 as a result of the following items:

	Six Months Ended June 30,		
	2018	2017	Change
	(000s)		
Research and development costs	$ 13,838	$ 16,441	$ (2,603)
Human resources related costs including salaries, benefits and taxes	14,385	11,449	2,936
Sales and marketing, excluding human resources costs	27,118	13,428	13,690
Professional fees for legal, accounting and consulting	3,761	2,790	971
Other operating expenses	5,084	3,903	1,181
Total operating expenses	$ 64,186	$ 48,011	$ 16,175

Research and development costs for the six months ended June 30, 2018 decreased by approximately $2,603,000, or 16%, to approximately $13,838,000, compared with $16,441,000 for the six months ended June 30, 2017. Research and development costs include costs related to 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 as a direct result of the completion of the REPLENISH Trial for TX-001HR, our combination estradiol and progesterone drug candidate, and FDA approval of IMVEXXY™, our applicator-free vaginal estradiol softgel drug. Research and developments costs during the six months ended June 30, 2018 included the following research and development projects.

During the six months ended June 30, 2018 and the period from February 2013 (project inception) through June 30, 2018, we have incurred approximately $5,415,000 and $120,812,000, respectively, in research and development costs with respect to TX-001HR, our combination estradiol and progesterone drug candidate.

During the six months ended June 30, 2018 and the period April 2013 (project inception) through June 30, 2018, we have incurred approximately $0 and $2,525,000, respectively, in research and development costs with respect to TX-002HR, our progesterone only drug candidate.

During the six months ended June 30, 2018 and the period from August 2014 (project inception) through June 30, 2018, we have incurred approximately $3,158,000 and $44,007,000, respectively, in research and development costs with respect to IMVEXXY™, our applicator-free vaginal estradiol softgel drug.

For a discussion of the nature of efforts and steps necessary to complete these projects, see “Item 1. Business — Pharmaceutical Regulation” in our Annual Report and “Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations – Overview – Research and Development” above. For a discussion of the risks and uncertainties associated with completing development of our products, see “Item 1A. Risk Factors — Risks Related to Our Business” in our Annual Report. For a discussion of the extent and nature of additional resources that we may need to obtain if our current liquidity is not expected to be sufficient to complete these projects, see “— Liquidity and Capital Resources” below. For a discussion as to whether a future milestone such as completion of a development phase, date of filing an NDA with a regulatory agency or approval from a regulatory agency can be reliably determined, see “Item 1. Business — Our Hormone Therapy Drug Candidates,” and “Item 1. Business — Pharmaceutical Regulation” in our Annual Report. Future milestones, including NDA submission dates and potential approval dates, are not easily determinable as such milestones are dependent on various factors related to our clinical trials, scale-up and manufacturing activities.

Sales and marketing costs for the six months ended June 30, 2018 increased by approximately $13,690,000, or 102%, to approximately $27,118,000, compared with approximately $13,428,000 for the six months ended June 30, 2017, primarily as a result of increased expenses associated with sales and marketing efforts to support launch and commercialization of IMVEXXY™ and pre-commercialization expenses for our TX-001HR drug candidate, including costs related to outsourced sales personnel and their related expenses. We expect sales and marketing expenses to continue to increase as we continue to support commercialization of our products and drug candidates.

Other operating expense for the six months ended June 30, 2018 increased by approximately $1,181,000, or 30%, to approximately $5,084,000, compared with approximately $3,903,000 for the six months ended June 30, 2017, as a result of increased information technology and other office expenses, insurance, licensing and exchange fees partially offset by decreased investor relations expenses.

Human resource costs, including salaries, benefits and taxes, for the six months ended June 30, 2018 increased by approximately $2,936,000, or 26%, to approximately $14,385,000, compared with approximately $11,449,000 for the six months ended June 30, 2017, primarily as a result of an increase of approximately $1,704,000 in personnel costs in sales, marketing and regulatory areas to support commercialization of IMVEXXY™, pre-commercialization expenses for our TX-001HR drug candidate and an increase of approximately $1,232,000 in non-cash compensation expense included in this category related to employee stock based compensation during 2018 as compared to 2017.

Professional fees for the six months ended June 30, 2018 increased by approximately $971,000, or 35%, to approximately $3,761,000, compared with approximately $2,790,000 for the six months ended June 30, 2017, primarily as a result of increased legal expenses.

Operating Loss

As a result of the foregoing, our operating loss increased approximately $16,622,000, or 40%, to approximately $57,738,000 for the six months ended June 30, 2018, compared with approximately $41,116,000 for the six months ended June 30, 2017, primarily as a result of increased personnel costs, sales and marketing expenses to support launch and commercialization of IMVEXXY™, pre-commercialization expenses for our TX-001HR drug candidate, 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.

As a result of the continued development of our hormone therapy drug candidates and IMVEXXY™, we anticipate that we will continue to have operating losses for the near future until we successfully commercialize IMVEXXY™, and receive approval from the FDA for, and successfully commercialize, our TX-001HR drug candidate, although there is no assurance that we will attain such approval or that any commercialization of IMVEXXY™ or TX-001HR, if approved, will be successful.

Other Income, Net

Other non-operating income, net decreased by approximately $166,000, or 59%, to approximately $117,000 for the six months ended June 30, 2018 compared with approximately $283,000 for the comparable period in 2017, primarily as a result of an increase in interest expense on our Term Loan, partially offset by increased interest income.

Net Loss

As a result of the net effects of the foregoing, net loss increased approximately $16,788,000, or 41%, to approximately $57,621,000 for the six months ended June 30, 2018, compared with approximately $40,833,000 for the six months ended June 30, 2017. Net loss per share of Common Stock, basic and diluted, was ($0.27) for the six months ended June 30, 2018 and ($0.20) for the six months ended June 30, 2017.

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 year ended December 31, 2017, we received approximately $68,573,000 in net proceeds from the issuance of shares of our Common Stock. As of June 30, 2018, we had cash totaling approximately $154,387,000, 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. We currently intend to fund the next phase of our commercialization expenses for our recently approved IMVEXXY™ and pre-commercialization expenses for our TX-001HR drug candidate through funds available under our Term Loan.

On May 1, 2018, we entered into a Credit and Security Agreement, or the Credit Agreement, by and among us and our subsidiaries party thereto from time to time, each as a borrower, MidCap Financial Trust, as an agent and as lender, and the additional lenders party thereto from time to time, which provides 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 will be made in three separate tranches, each, a Tranche, with each Tranche to be made available to us, at our option, upon our achievement of certain milestones. The first Tranche of $75,000,000, or Tranche 1, was drawn by us on June 7, 2018, following approval by FDA of the NDA for IMVEXXY™. We intend to use the proceeds from the first draw down to support the commercial launch of IMVEXXY™. The second Tranche of $75,000,000, or Tranche 2, may be drawn by us on or before May 31, 2019, provided that we satisfy certain conditions described in the Credit Agreement, including (i) that Tranche 1 has been drawn, (ii) the approval by the FDA of the NDA for our TX-001HR drug candidate and (iii) we have consummated our first commercial sale in the United States of TX-001HR. The third Tranche of $50,000,000, or Tranche 3, may be drawn by us on or before December 31, 2019, provided that we satisfy certain conditions described in the Credit Agreement, including that (i) Tranche 2 has been drawn and (ii) we have generated at least $75,000,000 of consolidated net revenue attributable to commercial sales of TX-001HR and TX-004HR during the twelve-month period ending immediately prior to the funding of Tranche 3.

During the six months ended June 30, 2018, certain individuals exercised options to purchase 394,576 shares of Common Stock for $1,128,996.

For the six months ended June 30, 2018, our days sales outstanding, or DSO, was 136 days compared to 97 days for the year ended December 31, 2017. The increase in our DSO as of June 30, 2018 was partially related to extended terms given to our customers in connection with the launch of IMVEXXY™, which resulted in later timing of payments received from our customers subsequent to June 30, 2018, in addition to increased coupons and discounts during the second quarter which lowered our net revenues. We anticipate that our DSO will fluctuate in the future based upon a variety of factors, including longer payment terms associated with the centralization of the distribution channel for both our retail pharmacy distributors and wholesale distributors, as compared to the terms previously provided to our retail pharmacy distributors, changes in the healthcare industry and specific terms that may be extended in connection with the launch of our hormone therapy drug candidates, if approved.

We believe that our existing cash and availability under the Term Loan 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 our hormone therapy drug candidates is delayed, our existing cash may be insufficient to satisfy our liquidity requirements until we are able to commercialize our hormone therapy drug candidates and we may not be able to access funds under the Term Loan. If our available cash is insufficient to satisfy our liquidity requirements, we may curtail our sales, marketing and other pre-commercialization efforts and we may seek to sell additional equity or debt securities. Our ability to obtain additional debt financing is restricted pursuant to the Credit Agreement. To the extent that we raise additional capital through the sale of equity or convertible debt securities, to the extent permitted under the Credit 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 Credit Agreement, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs, or proposed products, if permitted under the Credit Agreement. Additionally, we may have to grant licenses on terms that may not be favorable to us.

We need substantial amounts of cash to complete the clinical development of and commercialize of our hormone therapy drug candidates. 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,	
	2018	2017
	(000s)	
Net cash used in operating activities	$ (44,599)	$ (38,666)
Net cash used in investing activities	$ (492)	$ (403)
Net cash provided by financing activities	$ 72,342	$ 4,011

Operating Activities

The principal use of cash in operating activities for the six months ended June 30, 2018 was to fund our current expenses primarily related to supporting clinical development, scale-up and manufacturing activities and future commercial activities, adjusted for non-cash items. The increase of approximately $5,933,000 in cash used in operating activities for the six months ended June 30, 2018 compared with the comparable period in the prior year was due primarily to an increase in our net loss and non-cash compensation expense coupled with changes in the components of working capital.

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, 2018 compared with the same period in 2017.

Financing Activities

Financing activities represent the principal source of our cash flow. 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 Term Loan (approximately $71,213,000) and the exercise of options (approximately $1,129,000). The cash provided by financing activities during the six months ended June 30, 2017 included approximately $4,011,000 in proceeds from the exercise of options and warrants.

New Accounting Pronouncements

In June 2018, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update, or 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 Accounting Standards Codification, or 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 are currently evaluating the effect of this guidance on our consolidated financial statements and disclosures.

In February 2016 FASB issued ASU 2016-02, Leases. This guidance requires lessees to record most leases on their balance sheets but recognize 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. We are in the process of analyzing the quantitative impact of this guidance on our results of operations and financial position. While we are continuing to assess all potential impacts of the standard, we currently believe the impact of this standard will be primarily related to the accounting for our operating lease.

In May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606). The standard's core principle is that a company will recognize revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. In doing so, companies will need to use more judgment and make more estimates than under previous guidance. This may include identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price and allocating the transaction price to each separate performance obligation. In July 2015, the FASB approved the proposal to defer the effective date of ASU 2014-09 standard by one year. Early adoption is permitted after December 15, 2016, and the standard is effective for public entities for annual reporting periods beginning after December 15, 2017 and interim periods therein. In 2016, the FASB issued final amendments to clarify the implementation guidance for principal versus agent considerations (ASU 2016-08), accounting for licenses of intellectual property and identifying performance obligations (ASU 2016-10), narrow-scope improvements and practical expedients (ASU 2016-12) and technical corrections and improvements to topic 606 (ASU 2016-20) in its new revenue standard. We adopted this standard under the modified retrospective method to all contracts not completed as of January 1, 2018 and the adoption did not have a material effect on our financial statements but we expanded our disclosures related to contracts with customers in Note 3 to the consolidated financial statements included in this Quarterly Report on Form 10-Q.

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.

We are also subject to market risk in connection with borrowings under our Term Loan. Amounts borrowed under our Term Loan bear 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. At June 30, 2018, the outstanding principal balance on our Term Loan, net of issuance costs, was approximately $73,141,000. Considering the total outstanding balance of approximately $75,000,000, as of June 30, 2018, a 1.0% change in interest rates would result in an impact to income before income taxes of approximately $750,000 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, 2018, 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 (the "SEC") 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 20, 2016	Softgel Commercial Supply Agreement, by and between TherapeuticsMD, Inc. and Catalent Pharma Solutions, LLC.
10.2+	May 1, 2018	Credit and Security Agreement, by and among TherapeuticsMD, Inc., as borrower, its subsidiaries party thereto from time to time, each as a borrower, MidCap Financial Trust, as agent and as lender, and the additional lenders party thereto from time to time.
10.3*	May 9, 2018	Fourth Amendment to Lease between the Company and 6800 Broken Sound, LLC.
31.1*	July 30, 2018	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a)
31.2*	July 30, 2018	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a)
32.1*	July 30, 2018	Section 1350 Certification of Chief Executive Officer
32.2*	July 30, 2018	Section 1350 Certification of Chief Financial Officer
101.INS*	n/a	XBRL Instance 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

* Filed herewith.

+ Certain confidential material contained in the document has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to this omitted information.

SIGNATURES

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

DATE: July 30, 2018

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)

Exhibit 10.1

CONFIDENTIAL TREATMENT HAS BEEN REQUESTED FOR PORTIONS OF THIS EXHIBIT. THE COPY FILED HEREWITH OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST. OMISSIONS ARE DESIGNATED AS [***]. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

EXECUTION VERSION

SOFTGEL COMMERCIAL SUPPLY AGREEMENT
(Estradiol softgel capsules)

This Softgel Commercial Supply Agreement ("**Agreement**") is made as of this 20th day of April, 2016 ("**Effective Date**"), by and between TherapeuticsMD, Inc., a Nevada corporation, with a place of business at 6800 Broken Sound Parkway NW, Third Floor, Boca Raton, Florida 33487 ("**Client**"), and Catalent Pharma Solutions, LLC, a Delaware limited liability company, having a place of business at 14 Schoolhouse Road, Somerset, New Jersey 08873 ("**Catalent**").

RECITALS

A. Client is a company that develops, markets and sells pharmaceutical products;

B. Catalent is a leading provider of advanced technologies, and development, manufacturing and packaging services for pharmaceutical, biotechnology and consumer healthcare companies;

C. Client and Catalent have entered into the Master Development and Clinical Supply Agreement dated as of December 4, 2015 (the "**Development Agreement**"); and

D. Client desires to engage Catalent to provide certain services to Client in connection with the processing of Client's Product, and Catalent desires to provide such services, all pursuant to the terms and conditions set forth in this Agreement.

THEREFORE, in consideration of the mutual covenants, terms and conditions set forth below, the parties agree as follows:

ARTICLE 1
DEFINITIONS

The following terms have the following meanings in this Agreement:

1.1 "**Acknowledgement**" has the meaning set forth in Section 4.3.

1.2 "**Affiliate(s)**" means, with respect to Client or any third party, any corporation, firm, partnership or other entity that controls, is controlled by or is under common control with such entity; and with respect to Catalent, Catalent Pharma Solutions, Inc. and any corporation, firm, partnership or other entity controlled by it. For the purposes of this definition, "**control**" means the ownership of at least 50% of the voting share capital of an entity or any other comparable equity or ownership interest or possession of the right to control the management and policies of such entity.

1.3 "**Agreement**" has the meaning set forth in the introductory paragraph, and includes all its Attachments and other appendices agreed to by the parties (all of which are incorporated herein by reference) and any amendments to any of the foregoing made as provided herein or therein.

1.4 "**API**" means the generic compound Estradiol, as further described in the Specifications that has been released by Client and provided to Catalent, along with a certificate of analysis, as provided in this Agreement.

1.5 "**Applicable Laws**" means, with respect to Client, all laws, ordinances, rules and regulations of each jurisdiction in which API or Product is produced, marketed, distributed, used or sold; and with respect to Catalent, all laws, treaties, or ordinances, rules, regulations, cGMP, guidances, interpretations, authorizations, judgments, directives, injunctions, or orders of any court of any international, national, regional, local, or other governmental body, agency, authority, or court, or arbitrator, that has jurisdiction over the location where Catalent performs services under this Agreement (and applicable cGMP), including, but not limited to, the Federal Food, Drug and Cosmetic Act and Good Laboratory Practices, in each of the foregoing cases as in effect from time-to-time.

1.6 "**Batch**" means a defined quantity of Product that has been or is being Processed in accordance with the Specifications.

1.7 "**Catalent**" has the meaning set forth in the introductory paragraph, or any successor or permitted assign. Catalent shall have the right to cause any of its Affiliates, upon prior written notice to and approval from Client, to perform any of its obligations hereunder, and Client upon its prior approval of the use of the Affiliate, shall accept such performance as if it were performance by Catalent, but Catalent shall remain jointly and severally liable for the performance by any of its Affiliates under this Agreement.

1.8 "**Catalent Defective Processing**" has the meaning set forth in Section 5.2.

1.9 "**Catalent Indemnitees**" has the meaning set forth in Section 13.2.

1.10 "**Catalent IP**" has the meaning set forth in the Development Agreement.

1.11 "**cGMP**" means current Good Manufacturing Practices promulgated by the Regulatory Authorities in the jurisdictions included in Applicable Laws (as applicable to Client and Catalent respectively). In the United States, this includes 21 C.F.R. Parts 210 and 211, as amended together with pertinent guidelines and guidance documents; in the European Union, this includes 2003/94/EEC Directive (as supplemented by Volume 4 of EudraLex published by the European Commission), as amended, if and as implemented in the relevant constituent country, together with pertinent guidelines and guidance documents, in Japan (this includes the guidelines of good manufacturing control and quality control based on the requirements of the Pharmaceutical Affairs law of Japan as implemented in April of 2005), and in Canada (including the Food and Drugs Act, pertinent rules and regulations promulgated by Health Canada including Part C, Division 2 of the Food and Drugs Regulations and the Good Manufacturing Practices (GMP) Guidelines – 2009 Edition, Version 2).

1.12 "**Client**" has the meaning set forth in the introductory paragraph, or any successor or permitted assign.

1.13 "**Client Indemnitees**" has the meaning set forth in Section 13.1.

1.14 "**Client IP**" has the meaning set forth in the Development Agreement.

1.15 "**Client-supplied Materials**" means any materials to be supplied by or on behalf of Client to Catalent for Processing, as provided in Attachment A, including API and reference standards.

1.16 "**Commencement Date**" means the date of first commercial sale by Client following approval by a Regulatory Authority of Catalent as a manufacturer of the Product. Client shall notify Catalent in writing promptly following such first commercial sale.

1.17 "**Confidential Information**" has the meaning set forth in Section 10.1.

1.18 "**Contract Year**" means each consecutive 12 month period beginning on the Commencement Date or anniversary thereof, as applicable.

1.19 "**Defective Product**" has the meaning set forth in Section 5.2.

1.20 "**Development Agreement**" has the meaning set forth in Recital C.

1.21 "**Development Batch**" has the meaning set forth in the Development Agreement.

1.22 "**Discloser**" has the meaning set forth in Section 10.1.

1.23 "**Effective Date**" has the meaning set forth in the introductory paragraph.

1.24 "**Exception Notice**" has the meaning set forth in Section 5.2.

1.25 "**Facility**" means Catalent's facility located in St. Petersburg, Florida or Morrisville, North Carolina; or such other facility as agreed by the parties in writing.

1.26 "**Firm Commitment**" has the meaning set forth in Section 4.2.

1.27 "**Generic Product"** has the meaning set forth in Section 11.5.

1.28 "**Invention**" has the meaning set forth in Article 11.

1.29 "**Losses**" has the meaning set forth in Section 13.1.

1.30 "**Marks**" means trademarks, trade names, service marks, logos and symbols.

1.31 "**Minimum Requirement**" has the meaning set forth in Section 4.1.

1.32 "**Process**" or "**Processing**" means the compounding, filling, encapsulating, producing, testing and bulk packaging (but not secondary or retail packaging) of Client-supplied Materials and Raw Materials into Product by Catalent, in accordance with the Specifications and under the terms of this Agreement.

1.33 "**Processing Date**" means the day on which the first step of physical Processing is scheduled to occur, as identified in an Acknowledgement.

1.34 "**Process Know-How**" means all know-how provided by Client to Catalent and, subject to the exclusions in the next sentence, certain know-how to the extent it relates to the processing, manufacture, quality control, formulation, filling, finishing, testing and packaging of a Product, whether in bulk or final form, and regardless of container, including, without limitation, analytical tests methods for in-process and final Product, copies of manufacturing records, formulation recipes, designs and drawings (limited to ink print design, and capsule color, shape, and design), and formulae, used in the delivery of Processing for a Product to the extent it is in the possession, or under the control, of Catalent, its Affiliates and their respective subcontractors; "Process Know-How" does not include any of the following: (i) Catalent IP, and (ii) the proprietary process information contained in the drug master file, including without limitation, the gelatin master batch record, the gelatin conversion section of the master batch record, the encapsulation set up page, and processing aids (lubricants and wash solution).

1.35 "**Process Know-How Transfer**" means the commercially reasonable efforts of the parties undertaken pursuant to the Process Know-How Transfer Plan to transfer copies of all Process Know-How (together with relevant books and records) and the "Standards" (defined below) in Catalent's possession, to Client as set forth in greater detail in the Process Know-How Transfer Plan. Catalent shall only be obligated to use its commercially reasonable efforts in the implementation of the Process Know-How Transfer Plan, and in no case shall Catalent personnel visit the site of Client or any third party manufacturer of softgels, as the case may be. For the avoidance of doubt, the foregoing prohibition shall not be construed as a basis for Catalent refusing to assist in the transfer of analytical methods to an independent laboratory, including a visit by Catalent personnel to such site to assist in method transfer, if, and only as, reasonably necessary, and at Client's cost and expense. As used herein "Standards" means data, information, or samples of validated or Catalent manufactured or partially manufactured Product or other indicia measured at various points during Processing, to the extent Catalent possesses such data, information, or samples. "Standards" does not include any of the following: (i) Catalent IP, and (ii) the proprietary process information contained in the drug master file, including without limitation, the gelatin master batch record, the gelatin conversion section of the master batch record, the encapsulation set up page, and processing aids (lubricants and wash solution).

1.36 "**Process Know-How Transfer Plan**" means that plan addressing orderly Process Know-How Transfer, to be prepared in writing and reasonably agreed to by the parties within the sixty (60) day period following notice from Client to Catalent of its intention to commence Process Know-How Transfer.

1.37 "**Product**" means the bulk pharmaceutical product containing the API, as more specifically described in the Specifications.

1.38 "**Product Maintenance Services**" has the meaning set forth in Section 2.2.

1.39 "**Purchase Order**" has the meaning set forth in Section 4.3.

1.40 "**Quality Agreement**" has the meaning set forth in Section 9.6.

1.41 "**Raw Materials**" means all raw materials, supplies, components and packaging necessary to manufacture and ship Product in accordance with the Specifications, but excluding Client-supplied Materials.

1.42 "**Recall**" has the meaning set forth in Section 9.5.

1.43 "**Recipient**" has the meaning set forth in Section 10.1.

1.44 "**Regulatory Approval**" means any approvals, permits, product and/or establishment licenses, registrations or authorizations, including approvals pursuant to U.S. Investigational New Drug Applications, New Drug Applications and Abbreviated New Drug Applications, as applicable, of any Regulatory Authorities that are necessary or advisable in connection with the development, manufacture, testing, use, storage, exportation, importation, transport, promotion, marketing, distribution or sale of API or Product in the Territory.

1.45 "**Regulatory Authority**" means the international, federal, state or local governmental or regulatory bodies, agencies, departments, bureaus, courts or other entities in the Territory that are responsible for (A) the regulation (including pricing) of any aspect of pharmaceutical or medicinal products intended for human use including, but not limited to, their manufacture, handling and storage, or (B) health, safety or environmental matters generally. In the United States, this includes the United States Food and Drug Administration.

1.46 "**Representatives**" of an entity mean such entity's duly-authorized officers, directors, employees, agents, accountants, attorneys or other professional advisors.

1.47 "**Review Period**" has the meaning set forth in Section 5.2.

1.48 "**Rolling Forecast**" has the meaning set forth in Section 4.2.

1.49 "**Sample**" has the meaning set forth in Section 5.1.

1.50 "**Softgel Technology**" means Catalent's proprietary technology, whether or not patented or patentable, for the manufacture of softgels for various uses, including the oral administration of pharmaceutically active ingredients (including health and nutritional substances). The Softgel Technology includes proprietary know how relating to (A) the development of fill and shell formulations, (B) the design and use of the encapsulation process to enhance stability, solubility, bioavailability and manufacturability of active ingredient chemical entities in softgels, (C) the selection and preparation of solvents, vehicles, excipients, surfactants, stabilizers, gelatin and gelatin substitutes, plasticizers and other components of the liquid fill and the shell and (D) certain encapsulation, drying and related manufacturing techniques and machinery for making experimental, clinical, or commercial quantities of softgels. For clarity, Softgel Technology does not encompass any technology or information provided by Client to Catalent, including, but not limited to, the formulation of the Product.

1.51 "**Specifications**" means the procedures, requirements, standards, quality control testing and other data and the scope of services as set forth in Attachment A, as modified from time to time in accordance with Article 8.

1.52 "**Term**" has the meaning set forth in Section 16.1.

1.53 "**Territory**" means the United States of America, and any other country that the parties agree in writing to add to this definition of Territory in an amendment to this Agreement, except shall not include countries that are targeted by the comprehensive sanctions, restrictions or embargoes administered by the United Nations, European Union, United Kingdom, or the United States. Catalent shall not be obliged to Process Products for sale in any of such countries if it is prevented from doing so, or would be required to obtain or apply for special permission to do so, due to any restrictions (such as embargoes) imposed on it by any governmental authorities, including without limitation, those imposed by the U.S. Office of Foreign Asset Control.

1.54 "**Unit Pricing**" has the meaning set forth in Section 7.1(A).

1.55 "**Vendor**" has the meaning set forth in Section 3.2(B).

ARTICLE 2
PROCESSING & RELATED SERVICES

2.1 Supply and Purchase of Product. Catalent shall Process Product in accordance with the Specifications, Applicable Laws and the terms and conditions of this Agreement.

2.2 Product Maintenance Services. Client will receive the following product maintenance services (the "**Product Maintenance Services**"): one annual audit (as further described in Section 9.5); regulatory audits (as further described in Section 9.4); one annual Product review (within the meaning of 21 CFR § 221.180); drug master file updates for the Territory, if applicable; access to document library over and above the Quality Agreement, including additional copies of Batch paperwork or other Batch documentation; assistance in preparing Regulatory Approvals; Product document and sample storage relating to cGMP requirements; vendor re-qualification; and maintenance, updates and storage of master batch records and audit reports. For avoidance of doubt, the following services and items are not included in Product Maintenance Services: technology transfer; analytical work; stability; and process rework.

2.3 Other Related Services. Catalent shall provide such Product-related services, other than Processing or Product Maintenance Services, as agreed to in writing by the parties from time to time. Such writing shall include the scope and fees for any such services and be appended to this Agreement. The terms and conditions of this Agreement shall govern and apply to such services.

2.4 Validation Services. Catalent shall Process validation Batches and perform validation services at prices to be agreed in writing between the parties.

ARTICLE 3
MATERIALS

3.1 Client-supplied Materials.

A. Client shall supply to Catalent for Processing, at Client's cost, all Client-supplied Materials, in quantities sufficient to meet Client's requirements for Product. Client shall deliver such items and associated certificates of analysis to the Facility no later than 60 days (but not earlier than 90 days, unless agreed to by the Parties or accepted by Catalent) before the Processing Date. Client's failure to fulfill the foregoing obligations in this Section 3.1 shall not by itself give rise to a cause of action in Catalent or a right by it to terminate this Agreement. Client shall be responsible at its expense for securing any necessary DEA, export or import, similar clearances, permits or certifications required in respect of such supply. Catalent shall use such items solely for Processing. Prior to delivery of any such items, Client shall provide to Catalent a copy of all associated material safety data sheets, safe handling instructions and health and environmental information and any Regulatory certifications or authorizations that may be required under Applicable Laws relating to the API and Product, and shall promptly provide any updates thereto.

B. Following receipt of Client-supplied Materials, Catalent shall inspect such items employing such measures as are set forth in the Specifications. Catalent will receive, handle, store and use all Client-supplied Materials in compliance with all Applicable Laws and labeled storage requirements, or lacking labeled storage requirement, the written instructions of Client, as agreed to by Catalent, such agreement not to be unreasonably withheld. Unless otherwise expressly required by the Specifications, Catalent shall have no obligation to test such items to confirm that they meet the associated specifications or certificate of analysis or otherwise; but in the event that Catalent detects a nonconformity with Specifications, Catalent shall give Client prompt notice of such nonconformity. Catalent shall not be liable for any defects in Client-supplied Materials, or in Product resulting from defective Client-supplied Materials, unless Catalent failed to properly perform the foregoing obligations. Catalent shall follow Client's reasonable written instructions in respect of return or disposal of defective Client-supplied Materials, at Client's cost.

C. Client shall retain title to Client-supplied Materials at all times and shall bear the risk of loss thereof, except for losses to the extent due to the negligent acts or omissions of Catalent or Catalent's failure to follow storage and handling requirements or mutually agreed to written instructions of Client, in each case, subject to Article 14.

3.2 Raw Materials.

A. Catalent shall be responsible for procuring, inspecting and releasing adequate Raw Materials as necessary to meet the Firm Commitment, unless otherwise agreed to by the parties in writing. Catalent shall not be liable for any delay in delivery of Product if (i) Catalent is unable to obtain, in a timely manner, a particular Raw Material necessary for Processing and (ii) Catalent placed orders for such Raw Materials promptly following receipt of Client's Firm Commitment. In the event that any Raw Material becomes subject to purchase lead time beyond the Firm Commitment time frame, the parties will negotiate in good faith an appropriate amendment to this Agreement, including Section 4.2.

B. In certain instances, Client may require a specific supplier, manufacturer or vendor ("**Vendor**") to be used for Raw Material. In such an event occurring after the Effective Date, (i) such Vendor will be identified in the Specifications and (ii) the Raw Materials from such Vendor shall be deemed Client-supplied Materials for purposes of this Agreement. If the cost of the Raw Material from any such Vendor is greater than Catalent's costs for the same raw material of equal quality from other vendors, Catalent shall add the difference between Catalent's cost of the Raw Material and the Vendor's cost of the Raw Material to the Unit Pricing. Client will be responsible for all costs associated with qualification of any Vendor specifically required to be used upon written instruction from Client, which Vendor has not been previously qualified by Catalent.

C. In the event of (i) a Specification change for any reason, (ii) obsolescence of any Raw Material or (iii) termination or expiration of this Agreement, Client shall bear the cost of any unused Raw Materials (including packaging), so long as Catalent purchased such Raw Materials in quantities consistent with Client's most recent Firm Commitment and the vendor's minimum purchase obligations. Such Raw Material shall be the property of Client upon payment therefor.

3.3 Artwork and Labeling. Client shall provide or approve, prior to the procurement of applicable Raw Material, all artwork, advertising and labeling information necessary for Processing, if any. Such artwork, advertising and labeling information is and shall remain the exclusive property of Client, and Client shall be solely responsible for the content thereof. Such artwork, advertising and labeling information or any reproduction thereof may not be used by Catalent in any manner other than performing its obligations hereunder.

ARTICLE 4
MINIMUM COMMITMENT, PURCHASE ORDERS & FORECASTS

4.1 Minimum Requirement. During each Contract Year, Client shall purchase the minimum number of units of Product set forth on Attachment B ("**Minimum Requirement**"). If Client does not purchase such Minimum Requirement during any Contract Year, then within [***] days after the end of such Contract Year, Client shall pay Catalent [***] of difference between (A) the total amount Client would have paid to Catalent if the Minimum Requirement had been fulfilled for the Product and (B) the sum of all purchases of Product from Catalent during such Contract Year. For the avoidance of doubt, validation Batches which are commercialized by Client shall count towards satisfaction of the Minimum Requirement in the first Contract Year.

4.2 Forecast. On or before the [***] of each calendar month, beginning at least [***] prior to the anticipated Commencement Date, Client shall furnish to Catalent a written [***] rolling forecast of the quantities of Product that Client intends to order from Catalent during such period ("**Rolling Forecast**"); *provided*, that the quantities forecasted to be purchased in any rolling [***] period commencing on the [***] of the Commencement Date shall not be less than [***] of the Minimum Requirement for the relevant Contract Year. The first [***] of each such Rolling Forecast shall constitute a binding order for the quantities of Product specified therein ("**Firm Commitment**") and the following [***] of the Rolling Forecast shall be non-binding, good faith estimates.

4.3 Purchase Orders.

A. From time to time as provided in this Section 4.3(A), Client shall submit to Catalent a binding, non-cancelable purchase order for Product specifying the number of Batches to be Processed, the Batch size (to the extent the Specifications permit Batches of different sizes) and the requested delivery date for each Batch ("**Purchase Order**"); *provided*, that no Purchase Order may be for less than [***]. Concurrently with the submission of each Rolling Forecast, Client shall submit a Purchase Order for the Firm Commitment. Purchase Orders for quantities of Product in excess of the Firm Commitment shall be submitted by Client at least [***] days in advance of the delivery date requested in the Purchase Order.

B. Promptly following receipt of a Purchase Order, Catalent shall issue a written acknowledgement ("**Acknowledgement**") that it accepts or rejects such Purchase Order. Each acceptance Acknowledgement shall either confirm the delivery date set forth in the Purchase Order or set forth a reasonable alternative delivery date, and shall include the Processing Date. Catalent may reject any Purchase Order in excess of the Firm Commitment or otherwise not given in accordance with this Agreement; provided, however, Catalent shall accept any Purchase Order that meets the requirements of this Agreement if Client is not in arrears in paying amounts due and payable under this Agreement.

C. Notwithstanding Section 4.3(B), Catalent shall use commercially reasonable efforts to supply Client with quantities of Product which are up to [***] in excess of the quantities specified in the Firm Commitment, subject to Catalent's other supply commitments and manufacturing, packaging and equipment capacity.

D. In the event of a conflict between the terms of any Purchase Order or Acknowledgement and this Agreement, the terms of this Agreement shall control.

4.4 Catalent's Cancellation of Purchase Orders. Notwithstanding Section 4.5, Catalent reserves the right to cancel all, or any part of, a Purchase Order upon written notice to Client, and Catalent shall have no further obligations or liability with respect to such Purchase Order, if Client refuses or fails to timely supply conforming Client-supplied Materials in accordance with Section 3.1. Any such cancellation of Purchase Orders shall not constitute a breach of this Agreement by Catalent nor shall it absolve Client of its obligation in respect of the Minimum Requirement. Catalent shall use reasonable efforts to re-schedule Processing reflected on such Purchase Order promptly after conforming Client-supplied Materials are delivered to Catalent.

4.5 Client's Modification or Cancellation of Purchase Orders.

A. Client may modify the delivery date or quantity of Product in a Purchase Order only by submitting a written change order to Catalent at least [***] business days in advance of the earliest Processing Date covered by such change order. Such change order shall be effective and binding against Catalent only upon the written approval of Catalent, and notwithstanding the foregoing, Client shall remain responsible for the Firm Commitment.

B. Notwithstanding any amounts due to Catalent under Section 4.4 or Section 4.1, if Client fails to place Purchase Orders sufficient to satisfy the Firm Commitment, Client shall pay to Catalent the Unit Pricing for all Units that would have been Processed if Client has placed Purchase Orders sufficient to satisfy the Firm Commitment and Catalent shall Process and deliver such quantity of Product as if Purchase Orders sufficient to satisfy the Firm Commitment had been placed.

C. Neither changes to nor postponement of any Batch of Product, nor the payment of the fees described in this Section 4.5, will reduce or in any way effect Client's Minimum Requirement obligations set forth in Section 4.1; provided, however, any payment pursuant to this Section 4.5 shall be applied towards the Minimum Requirement.

4.6 Unplanned Delay or Elimination of Processing. Catalent shall use commercially reasonable efforts to meet the Purchase Orders, subject to the terms and conditions of this Agreement. Catalent shall provide Client with as much advance notice as practicable if Catalent determines that any Processing will be delayed or eliminated for any reason. Any delay in Processing by Catalent in excess of [***], but less than [***], days shall result in a proportional reduction of the Minimum Requirement pertaining to the then-current Contract Year, based on the actual number of days of delay until normal, orderly Processing re-commences. Any delay in Processing subsisting for a continuous period of [***] days, or the elimination of Processing representing in excess of [***] of the Minimum Requirement for the Contract Year in which the relevant Purchase Orders were submitted shall result in an elimination of the Minimum Requirement for the balance of such Contract Year, so long as such delay or elimination was not attributable to an act or omission of Client.

4.7 Observation of Processing. In addition to Client's audit right pursuant to Section 9.4, Client may send up to 2 Representatives to the Facility to observe Processing for a maximum of 10 days per Contract Year (unless otherwise agreed by Catalent in writing), upon at least 10 business days' prior notice, at reasonable times during regular business hours. The foregoing limitations shall not apply to time spent by Client Representatives on site at the Facility to participate in or witness research and development activities or to witness Processing of validation Batches of Product. Such Representatives shall abide by all Catalent safety rules and other applicable employee policies and procedures, and Client shall be responsible for such compliance. Client shall indemnify and hold harmless Catalent for any action, omission or other activity of such Representatives while on Catalent's premises. Client's Representatives who are not employees of Client shall be required to sign Catalent's standard visitor confidentiality agreement prior to being allowed access to the Facility.

ARTICLE 5
TESTING; RELEASE

5.1 Batch Release. After Catalent completes Processing of a Batch, Catalent shall also provide Client or its designee with Catalent's certificate of analysis and certificate of compliance for such Batch. Issuance of a certificate of analysis and a certificate of compliance by Catalent constitutes release of the Batch by Catalent to Client. Client shall be responsible for final release of Product to the market.

5.2 Testing; Rejection. No later than [***] days after receipt of the Batch ("**Review Period**"), Client or its designee shall notify Catalent whether the Batch conforms to Specifications. Upon receipt of notice from Client that a Batch meets Specifications, or upon failure of Client to respond by the end of the Review Period, the Batch shall be deemed accepted by Client and Client shall have no right to reject such Batch other than for defects which existed at the time of delivery and were not discovered or discoverable in the exercise of reasonable care ("**Latent Defects**"). For the avoidance of doubt, (i) Batches failing to meet Specifications at the time of delivery due to Latent Defects may be rejected, if at all, only upon notice to Catalent within [***] days following the date on which such Latent Defect was discovered or should have been discovered in the exercise of reasonable care and (ii) in no event may Client reject Product after such Product's expiration date. If Client or its designee timely notifies Catalent in writing (an "**Exception Notice**") that a Batch does not conform to the Specifications or otherwise does not meet the warranty set forth in Section 12.1(A), whether due to a Latent Defect or otherwise ("**Defective Product**"), and provides a sample of the alleged Defective Product, Catalent shall conduct an appropriate investigation in its discretion to determine whether or not it agrees with Client that Product is Defective Product and to determine the cause of any nonconformity. If Catalent agrees that Product is Defective Product and determines that the cause of nonconformity is attributable to Catalent's failure to perform the Processing in accordance with the Specifications ("**Catalent Defective Processing**"), then Section 5.4 shall apply. For avoidance of doubt, where the cause of nonconformity cannot be determined or assigned, it shall be deemed not Catalent Defective Processing.

5.3 Discrepant Results. If the parties disagree as to whether Product is Defective Product and/or whether the cause of the nonconformity is Catalent Defective Processing, and this is not resolved within 30 days of the Exception Notice date, the parties shall cause a mutually acceptable independent third party to review records, test data and to perform comparative tests and/or analyses on samples of the alleged Defective Product and its components, including Client-supplied Materials. The independent party's results as to whether or not Product is Defective Product and the cause of any nonconformity shall be final and binding. Unless otherwise agreed to by the parties in writing, the costs associated with such testing and review shall be borne by Catalent if Product is Defective Product attributable to Catalent Defective Processing, and by Client in all other circumstances. Client will be apprised in writing of all Defective Product investigations executed by Catalent on Client's materials/products, including Product and Client-supplied Materials, as well as final investigation outcome and conclusion(s).

5.4 Defective Processing. Catalent shall, at Client's option, either (A) replace at its cost another Batch of Product (as a replacement for any Batch of Defective Product attributable to Catalent Defective Processing) using Client-supplied Materials provided at Client's cost or (B) credit any payments made by Client for such Batch. THE OBLIGATION OF CATALENT TO REPLACE CATALENT DEFECTIVE PROCESSING IN ACCORDANCE WITH THE SPECIFICATIONS OR CREDIT PAYMENTS MADE BY CLIENT FOR DEFECTIVE PRODUCT ATTRIBUTABLE TO CATALENT DEFECTIVE PROCESSING SHALL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR DEFECTIVE PRODUCT AND IS IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED.

ARTICLE 6
DELIVERY

6.1 Delivery. Catalent shall deliver Product ExWorks (Incoterms 2010) at the Facility promptly following Catalent's release of Product; provided, however, Catalent shall be responsible for loading the Product on the carrier's vehicle using due care. Catalent shall segregate and store all Product until tender of delivery. Title to Product shall transfer to Client upon such delivery. Client shall qualify at least 2 carriers to ship Product and then designate the priority of such qualified carriers to Catalent.

6.2 Storage Fees. If Client fails to take delivery of any Product on any scheduled delivery date, Catalent shall store such Product until otherwise instructed by Client and Client shall be invoiced on the first day of each month following such scheduled delivery for reasonable administration and storage costs ([***] per pallet per month). Client will have at least [***] days after being notified that Product is released to take delivery, and Catalent will provide reasonable notification of the scheduled dates when Product is expected to be released. Such items shall be stored in compliance with requirements set forth in the Specification, or if no such storage Specification exists for such item, Catalent shall store such items using due care taking into account the identity of such item.

6.3 Subcontracting. Catalent may utilize third parties to provide any part of the Processing only with the prior written approval of Client, provided that the foregoing will not apply to generally available goods and services or to subcontracting to Catalent Affiliates. If Client approves a subcontractor, then Catalent shall enter a written agreement with such subcontractor that enables Catalent to comply with its obligations under this Agreement and places such subcontractors under obligations of confidentiality, non-use and intellectual property ownership no less burdensome than those set forth herein and applicable to Catalent. Catalent will oversee all services performed by any subcontractor, and will be responsible for such services as if such services were performed by Catalent. Catalent shall remain liable for the performance of its subcontractors under this Agreement. The use of subcontractors shall not relieve Catalent of any responsibility under this Agreement.

ARTICLE 7
PAYMENTS

7.1 Fees. In consideration for Catalent performing services hereunder:

A. Client shall pay Catalent the unit pricing for Product set forth on Attachment B ("**Unit Pricing**"). Catalent shall submit an invoice to Client for such fees upon tender of delivery of Product as provided in Section 6.1.

B. Client shall pay Catalent the annual fees for Product Maintenance Services set forth on Attachment B. Catalent shall submit an invoice to Client for such fees upon the Effective Date and upon each anniversary of the Effective Date during the Term.

C. Other Fees. Client shall pay Catalent for all other fees and expenses of Catalent owing in accordance with the terms of this Agreement, including pursuant to Sections 2.3, 4.1, 6.2 and 16.3. Catalent shall submit an invoice to Client for such fees as and when appropriate.

7.2 Unit Pricing Increase. The Unit Pricing shall be adjusted on an annual basis, effective on each July 1st (with the first price adjustment to be effective on July 1, 2017), upon 60 days' prior written notice from Catalent to Client, to reflect increases in labor, utilities and overhead and shall be in an amount equal to the change in the Producer Price Index ("PPI"), "Pharmaceutical Preparation Manufacturing" (Series ID: PCU325412325412), not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics. The initial base period for comparison shall be the twelve (12) month period ending on the date most closely preceding July 1, 2017, but which allows enough time for Catalent to provide to Client the notice required by this Section 7.2. In addition, price increases for raw materials, and components shall be passed through to Client. For the avoidance of doubt, no such annual increase shall exceed [***] in the aggregate for the PPI and raw materials and component costs.

7.3 Payment Terms. Payment of all Catalent invoices shall be due 30 days after the date of invoice. No invoice shall be issued to Client for Processing until the Batch so Processed has been delivered to Client pursuant to Section 6.1. Client shall make payment in U.S. dollars, and otherwise as directed in the applicable invoice. If any payment is not received by Catalent by its due date, then Catalent may, in addition to any other remedies available at equity or in law, charge interest on the outstanding sum from the due date (both before and after any judgment) at 1.5% per month until paid in full (or, if less, the maximum amount permitted by Applicable Laws).

7.4 Advance Payment. Notwithstanding any other provision of this Agreement, if at any time Catalent reasonably determines that Client's credit has materially eroded as compared to its status as of the Effective Date, and Client is in arrears in paying amounts due under this Agreement, Catalent may require payment in advance before performing any further services or making any further shipment of Product. If Client shall fail, within a reasonable time, to make such payment in advance, or if Client shall fail to make any payment when due, Catalent shall have the right, at its option, to suspend any further performance hereunder until such default is corrected, without thereby releasing Client from its obligations under this Agreement.

7.5 Taxes. All taxes, duties and other amounts assessed (excluding tax based on net income and franchise taxes) on Client-supplied Materials, services or Product prior to or upon provision or sale to Catalent or Client, as the case may be, are the responsibility of Client, and Client shall reimburse Catalent for all such taxes, duties or other expenses paid by Catalent or such sums will be added to invoices directed at Client, where applicable.

7.6 Client and Third Party Expenses. Except as may be expressly covered by Product Maintenance Service fees, Client shall be responsible for 100% of its own and all third-party expenses associated with the development, Regulatory Approvals and commercialization of Product, including regulatory filings and post-approval marketing studies. The preceding sentence shall not be construed in derogation of Catalent's obligations pursuant to Section 9.2 herein.

7.7 Development Batches. Development Batches produced after the Effective Date shall be deemed to have been produced under the Development Agreement. Client will be responsible for the cost of such Development Batches, including those necessary to support the validation portion of Client's submissions for Regulatory Approvals, which fail to meet the Specifications as set forth in Section 4.1 of the Development Agreement. Catalent and Client shall cooperate in good faith to resolve any problems causing the out-of-Specification Batch.

ARTICLE 8
CHANGES TO SPECIFICATIONS

8.1 All Specifications and any changes thereto agreed to by the parties from time to time shall be in writing, dated and signed by the parties. No change in the Specifications shall be implemented by Catalent, whether requested by Client or requested or required by any Regulatory Authority, until the parties have agreed in writing to such change, the implementation date of such change, and any increase or decrease in costs, expenses or fees associated with such change (including any change to Unit Pricing). Catalent shall respond promptly to any request made by Client for a change in the Specifications, and both parties shall use commercially reasonable, good faith efforts to agree to the terms of such change in a timely manner. As soon as possible after a request is made for any change in Specifications, Catalent shall notify Client of the costs associated with such change and shall provide such supporting documentation as Client may reasonably require. Client shall pay all costs associated with such agreed upon changes. If there is a conflict between the terms of this Agreement and the terms of the Specifications, this Agreement shall control. Catalent reserves the right to postpone effecting changes to the Specifications until such time as the parties agree to and execute the required written amendment.

ARTICLE 9
RECORDS; REGULATORY MATTERS

9.1 Recordkeeping. Catalent shall maintain complete and accurate Batch, laboratory data, reports and other technical records relating to Processing in accordance with Catalent standard operating procedures. Such information shall be maintained for a period of at least 2 years from the relevant finished Product expiration date or longer if required under Applicable Laws or the Quality Agreement. Catalent will retain samples required by cGMP and such samples shall be stored at the Facility pursuant to Catalent's standard operating procedures. Prior to the destruction of any such Product specific items, Catalent shall notify Client of the impending destruction and provide Client a reasonable opportunity to receive any or all such items.

9.2 Regulatory Compliance. Catalent shall obtain and maintain, at its cost and expense, all permits and licenses with respect to general Facility operations required by any Regulatory Authority in the jurisdiction in which Catalent Processes Product. Client shall obtain and maintain, at its cost and expense, all other Regulatory Approvals, authorizations and certificates, including those necessary for Catalent to commence Processing. Client shall reimburse Catalent for any payments Catalent is required to make to any Regulatory Authority pursuant to Applicable Laws resulting from Catalent's formulation, development, manufacturing, processing, filling, packaging, storing or testing of Client's Product or Client-supplied Materials at the Facility (including without limitation any payments or fees Catalent is required to make pursuant to the Generic Drug User Fee Amendments of 2012 ("GDUFA") and pursuant to Applicable Laws similar to GDUFA; provided, however, that on a Facility by Facility basis, in the event Catalent's Facility is referenced in a third party(ies) regulatory filing, the pertinent fee shall be apportioned and reduced accordingly between the third party(ies) and Client for each year thereafter (e.g., in the event that Catalent is required to pay such fee as a result of Client and a single third party, Client shall only be obligated to reimburse Catalent for [***]% of such fee payment). Catalent and Client hereby acknowledge that as of the Effective Date, GDUFA does not apply to the Product or its Processing. Upon reasonable written request, Client shall provide Catalent with a copy of applicable Regulatory Approvals required to distribute, market and sell Product in the Territory. If Client is unable to provide such information, Catalent shall have no obligation to deliver Product to Client, notwithstanding anything to the contrary in this Agreement. During the Term, Catalent will assist Client with all regulatory matters relating to Processing and review the Common Technical Document pertaining to the Product and make such corrections as are necessary to accurately reflect the Product, in each case at Client's request and reasonable expense; provided, however, Catalent shall review and correct such documents as they relate to Catalent activities at no charge to Client. In addition, Catalent will maintain at Catalent's expense, the relevant Drug Master File, including any updates thereto, and shall provide a letter authorizing Client to reference Catalent Drug Master Files on file with the FDA and other regulatory authorities in connection with the pursuit of Regulatory Approval for the Product. The parties intend and commit to cooperate to allow each party to satisfy its obligations under Applicable Laws relating to Processing under this Agreement.

9.3 Regulatory Communications.

A. Each party may communicate with any governmental agency, including, but not limited to, governmental agencies responsible for granting regulatory approval for the Products, regarding such Products if in the opinion of that party's counsel, such communication is necessary to comply with the terms of this Agreement or the requirements of any Applicable Law; provided, however, that unless in the reasonable opinion of its counsel there is a legal prohibition against doing so, such party will permit the other party to review and take part in any communications with the applicable agency, and to receive copies of all such communications from that agency.

B. Catalent will notify Client promptly if Catalent receives any warning letters from or on behalf of a governmental agency directly related to the Product or systems utilized in Processing the Product including, without limitation, any Form FDA-483. Catalent will provide Client copies of any written communication from a governmental agency relating to a Client Product within three (3) business days of its receipt.

C. Catalent will promptly notify Client upon receipt of a notice from a Regulatory Authority for an inspection of any Facility where the Processing is being performed due to an issue related to the Product or a system used in the performance of such services, or, in the event of an unannounced inspection, Catalent will provide such prior notice as is possible and permissible. If not prohibited by the Regulatory Authority, Client will have the right to be present during such audit or inspection and any wrap-up meeting with such Regulatory Authority as it applies to the Product. If Catalent receives any request by a Regulatory Authority with respect to the Product, including, but not limited to, a notice of deficiency or FDA-483 that requires a written response regarding Client-supplied Materials, project, or protocol, Catalent will provide a copy to Client of the deficiency notice within forty-eight (48) hours of Catalent's receipt of the notice. Catalent will provide Client a draft of the response prior to the response being submitted to the Regulatory Authority so as to provide Client with reasonable time to review and comment on the response, which comments Catalent, in good faith, will consider incorporating into the response.

9.4 Governmental Inspections and Requests. Catalent shall promptly advise Client if an authorized agent of any Regulatory Authority notifies Catalent that it intends to or does visit a Facility or any other site for the purpose of reviewing the Processing or testing. Upon request, Catalent shall provide Client with a copy of any report issued by such Regulatory Authority received by Catalent following such visit, redacted as appropriate to protect any confidential information of Catalent and Catalent's other customers. Client acknowledges that it may not direct the manner in which Catalent fulfills its obligations to permit inspection by and to communicate with Regulatory Authorities, but such acknowledgement shall not be construed to vitiate Catalent's obligations to Client pursuant to this Agreement. Client shall reimburse Catalent for all reasonable and documented costs, at a rate of [***] per hour, associated with inspections by Regulatory Authorities specifically concerning the Product, such as the pre-approval inspection. Client will not be required to pay costs to mitigate any deficiencies cited in a Form 483 or Catalent's Facility deficiencies. Such documentation will include a description of the activities and time expended for such inspections.

9.5 Client Facility Audits. During the Term, Client's Representatives shall be granted access upon at least 10 business days' prior notice, at reasonable times during regular business hours, to (A) the portion of the Facility where Catalent performs Processing, (B) relevant personnel involved in Processing and (C) Processing records described in Section 9.2, in each case solely for the purpose of verifying that Catalent is Processing in accordance with cGMPs, Applicable Laws, the Specifications and the Product master Batch records. Client may not conduct an audit under this Section more than once during any 12 month period; provided, that additional inspections may be conducted by or on behalf of Client as deemed appropriate by Client in the event there is a material quality or compliance issue concerning Product or its Processing or to measure remediation following an audit by either Client or a Regulatory Authority that resulted in a finding of deficiency. Client's Quality Assurance Manager will arrange Client audits with Catalent Quality Management. Audits shall be designed to minimize disruption of operations at the Facility. Client's Representatives who are not employees of Client shall be required to sign Catalent's standard visitor confidentiality agreement prior to being allowed access to the Facility. Such Representatives shall comply with the Facility's rules and regulations which are made known in advance to Client. Client shall indemnify and hold harmless Catalent for any action or activity of such Representatives while on Catalent's premises.

9.6 Recall. If a Regulatory Authority orders or requires the recall of any Product supplied hereunder or if either Catalent or Client believes a recall, field alert, Product withdrawal or field correction ("**Recall**") may be necessary with respect to any Product supplied under this Agreement, the party receiving the notice from the Regulatory Authority or that holds such belief shall promptly notify the other party in writing. With respect to any Recall, Catalent shall provide all necessary cooperation and assistance to Client. Client shall provide Catalent with an advance copy of any proposed submission to a Regulatory Authority in respect of any Recall, and shall consider in good faith any comments from Catalent. The cost of any Recall shall be borne by Client, and Client shall reimburse Catalent for expenses incurred in connection with any Recall, in each case except to the extent such Recall is caused by Catalent's breach of its Processing obligations under this Agreement or Catalent's violation of Applicable Laws, then such cost shall be borne by Catalent in proportion to Catalent's contribution to the cause of the Recall. For purposes hereof, such Catalent cost shall be limited to reasonable, actual and documented administrative costs incurred by Client for such Recall and if applicable, replacement of the Product subject to Recall both in accordance with Article 5.

9.7 Quality Agreement. Within 6 months after the Effective Date, and in any event prior to the first Processing of Product hereunder, the parties shall negotiate in good faith and enter into a quality agreement on Catalent's standard template or such other template agreed to by the parties (the "**Quality Agreement**"). The Quality Agreement shall in no way determine liability or financial responsibility of the parties for the responsibilities set forth therein. In the event of a conflict between any of the provisions of this Agreement and the Quality Agreement with respect to quality-related activities, including compliance with cGMP, the provisions of the Quality Agreement shall govern. In the event of a conflict between any of the provisions of this Agreement and the Quality Agreement with respect to any commercial matters, including allocation of risk, liability and financial responsibility, the provisions of this Agreement shall govern.

ARTICLE 10
CONFIDENTIALITY AND NON-USE

10.1 Definition. As used in this Agreement, the term "**Confidential Information**" includes all information furnished by or on behalf of Catalent or Client, their respective Affiliates or any of its or their respective Representatives (the "**Discloser**"), to the other party (the "**Recipient**"), its Affiliates or any of its or their respective Representatives, whether furnished before, on or after the Effective Date and furnished in any form, including written, verbal, visual, electronic or in any other media or manner and information acquired by observation or otherwise during any site visit at the other party's facility. Confidential Information includes all proprietary technologies, know-how, trade secrets, discoveries, inventions and any other intellectual property (whether or not patented), analyses, data, regulatory submission Information, compilations, business or technical information, strategies, or plan, samples, and other materials prepared or possessed by either party, their respective Affiliates, or any of its or their respective Representatives, containing or based in whole or in part on any information furnished by the Discloser, its Affiliates or any of its or their respective Representatives. Confidential Information also includes the existence of this Agreement and its terms. The manufacturing process parameters which are being provided to Catalent from Client, the Specifications and data resulting from performance of this Agreement by Catalent shall be considered Client's Confidential Information. Items and information for which ownership has been allocated to Client under the Development Agreement shall be deemed to be the Confidential Information of Client under this Agreement.

10.2 Exclusions. Notwithstanding Section 10.1, Confidential Information does not include information that (A) is or becomes generally available to the public or within the industry to which such information relates other than as a result of a breach of this Agreement, (B) is already known by the Recipient at the time of disclosure as evidenced by the Recipient's written records created in the ordinary course of business, (C) becomes available to the Recipient on a non-confidential basis from a source that is entitled to disclose it on a non-confidential basis or (D) was or is independently developed by or for the Recipient without reference to the Confidential Information of the Discloser as evidenced by the Recipient's contemporaneously created written records.

10.3 Mutual Obligation. The Recipient agrees that it will not use the Discloser's Confidential Information except in connection with the performance of its obligations or the exercise of its rights under this Agreement, and will not disclose, without the prior written consent of the Discloser, Confidential Information of the Discloser to any third party, except that the Recipient may disclose the Discloser's Confidential Information to any of its Affiliates and its or their respective Representatives and subcontractors for which consent has been given pursuant to Section 6.3 and who have obligations of confidentiality and non-use at least as rigorous as those terms herein, in each case, that (A) need to know such Confidential Information for the purpose of performing under this Agreement, (B) are advised of the contents of this Article and (C) are bound to the Recipient by obligations of confidentiality at least as restrictive as the terms of this Article. Each party shall be responsible for any breach of this Article by its Affiliates or any of its or their respective Representatives or any person receiving Confidential Information directly or indirectly from or through the Recipient.

10.4 Permitted Disclosure. The Recipient may disclose the Discloser's Confidential Information to the extent required by law or regulation; *provided*, that prior to making any such legally required disclosure, the Recipient shall give the Discloser as much prior notice of the requirement for and contents of such disclosure as is practicable under the circumstances. Any such disclosure, however, shall not relieve the Recipient of its obligations contained herein.

10.5 No Implied License. Except as expressly set forth in Section 10.1, the Recipient will obtain no right of any kind or license under any Confidential Information of the Discloser, including any patent application or patent, by reason of this Agreement. All Confidential Information will remain the sole property of the Discloser, subject to Article 11.

10.6 Return of Confidential Information. Upon expiration or termination of this Agreement, the Recipient will (and will cause its Affiliates and its and their respective Representatives to) cease its use and, upon written request, within 30 days either return or destroy (and certify as to such destruction) all Confidential Information of the Discloser, including any copies thereof, except for a single copy which may be retained for the sole purpose of ensuring compliance with its continuing obligations under this Agreement.

10.7 Survival. The obligations of this Article will terminate with respect to items of Confidential Information upon the entry thereof into general knowledge in the public domain, other than due to breach of this Agreement by the Recipient thereof or by a person receiving such Confidential Information from or through the Recipient, but in no event earlier than five (5) years from the expiration or earlier termination of this Agreement.

10.8 Reverse Engineering. Unless otherwise consented to by the Discloser in writing or provided for in a separate agreement between the parties, the Recipient will not analyze for chemical composition any samples or materials that are the Confidential Information of Discloser, nor to allow or cause any such samples or materials that are the Confidential Information of Discloser to be released to third parties for analysis; provided, however, (i) this Section 10.8 shall not be construed to prevent Client from testing Product or items related to Product itself or through third parties, as it sees fit in its sole and absolute discretion; and (ii) this Section 10.8 shall not be construed to prevent Catalent from analyzing for chemical composition samples or materials that are commercially available or from developing or manufacturing products containing Estradiol, including Generic Products so long as Catalent does not utilize Client's Confidential Information to do so.

ARTICLE 11
INTELLECTUAL PROPERTY

11.1 The parties hereby acknowledge that it is neither their intention nor the purpose of this Agreement to engage in inventive steps in the conception, reduction to practice or development of intellectual property. Nevertheless, in the event, and to the extent, that intellectual property is conceived, reduced to practice, developed or otherwise created by or on behalf of either or both of the parties in connection with this Agreement, the ownership of such intellectual property shall be subject to the terms and conditions of Sections 7.1 and 7.2 of the Development Agreement, as if such intellectual property was conceived, reduced to practice or developed pursuant to the Development Agreement.

11.2 Transfer. Following notice given by Client to Catalent, Catalent will provide reasonable assistance to effect the timely and orderly transfer of the Process Know-How, and pertinent books and records (or copies thereof, as the case may be) pursuant to the Process Know-How Transfer Plan to Client pursuant to this Section 11.2 and the Process Know-How Transfer Plan whether to establish a second source during the term of this Agreement or at or about the time of termination or expiration of this Agreement. Catalent shall only be obligated to use its commercially reasonable efforts in the implementation of the Process Know-How Transfer Plan, and in no case shall Catalent personnel visit the site of Client or any third party manufacturer of softgels, as the case may be. For the avoidance of doubt, the foregoing prohibition shall not be construed as a basis for Catalent refusing to assist in the transfer of analytical methods to an independent laboratory, including a visit by Catalent personnel to such site to assist in method transfer, if, and only as, reasonably necessary, and at Client's cost and expense.

11.3 Books and Records. Where any document, or books and records contain Process Know-How together with other information of Catalent, its Affiliates or their respective subcontractors, or other Catalent customers, Catalent shall only be required to provide to Client a copy of that portion of that document or books and records that discloses the Process Know-How that pertains to the Product. When transferred to Client, such copies will be the property of Client. Catalent may retain the original books and records and any documents required by Applicable Laws to be retained by Catalent, which disclose the Process Know-How. After completion of performance of the Process Know-How Transfer Plan, before destroying any documents, or books and records which contain material disclosures of Process Know-How that have not been previously been provided to Client (whether in the same form or some other form), Catalent will notify Client of such intended destruction and provide Client with thirty (30) days to notify Catalent in writing whether Client wishes to obtain the same to the extent it is entitled to under this Agreement, in which case Catalent will deliver the requested document or books and records (or copies of all or a portion thereof, as the case may be) to Client at Client's sole cost and expense.

11.4 Client Marks. Catalent will not use Client's Marks without prior written authorization from Client. The Marks are, and will remain, Client's sole and exclusive property, and Catalent has not acquired, and will not acquire (by operation of law, this Agreement, or otherwise), any right, title, or interest in any of Client's Marks other than as explicitly provided in writing by Client. Any and all goodwill and rights that arise under trademark and copyright law, and all other intellectual property rights that arise in favor of Client's Marks as a result of this Agreement or otherwise, will inure to the sole and exclusive benefit of Client. Subject to the next sentence, during the Term of this Agreement, Catalent will not attack, dispute, or challenge Client's right, title, and interest in and to Client's Marks or assist others in so doing. Catalent reserves the right to attack, dispute, or challenge Client's right, title, and interest in and/or to Client's Marks or assist others in so doing, if Catalent believes in good faith that Client's Mark infringes a Mark owned by or licensed to Catalent or one of its Affiliates.

11.5 Analytical Methods. Catalent, in the development of analytical methods for a Generic Product, whether on its own behalf or on behalf of a third party, shall not use the services of any person, whether an employee or contractors, in the development of such methods, who either (i) provided analytical method development services on behalf of Catalent under this Agreement or the Development Agreement, or (ii) has such intimate knowledge of the Client's analytical methods or the manner in which such methods were developed that such persons participation in the development of the analytical method for a Generic Product could reasonably be determined to materially accelerate the development of such methods for the Generic Product. "Generic Product" shall mean [***].

ARTICLE 12
REPRESENTATIONS AND WARRANTIES AND COMPLIANCE

12.1 Catalent. Catalent represents, warrants and undertakes to Client that:

A. at the time of delivery by Catalent as provided in Section 6.1, Product shall have been Processed in accordance with this Agreement and with Applicable Laws and in conformance with the Specifications and shall not be adulterated, misbranded or mislabeled within the meaning of Applicable Laws; *provided*, that Catalent shall not be liable for defects attributable to Client-supplied Materials (including artwork, advertising and labeling);

B. all personnel, employees, and agents of Catalent and its Affiliates and their respective subcontractors who perform services, are and will continue to be qualified and to have sufficient technical expertise to perform Catalent's obligations under this Agreement;

C. Catalent has the full power and authority to execute and deliver this Agreement and perform its covenants, duties, and obligations described in this Agreement, and once executed, this Agreement will be a valid, legal, and binding obligation upon Catalent;

D. Catalent is not now, nor will it be, a party to any agreement which would prevent Catalent from fulfilling its obligations under this Agreement, and that during the Term of this Agreement will not enter into any agreement with any other party that would in any way prevent Catalent from performing its obligations under this Agreement;

E. Catalent will maintain all records and reports as required under this Agreement, and as required to comply with Applicable Laws;

F. Catalent will not in the performance of its obligations under this Agreement use the services of any person debarred or suspended (or subject to debarment or suspension) under 21 U.S.C. §335(a) or (b) or otherwise disqualified by Applicable Law;

G. (i) Catalent is not nor has it ever been, and (ii) Catalent has not used, and will not use, the services of any person excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or non-procurement programs, and has not used, and will not use, the services of any person listed on the HHS/OIG List of Excluded Individuals/Entities (http://www.oig.hhs.gov), the GSA's List of Parties Excluded from Federal Programs (http://www.epls.gov), or the FDA Debarment List (http://www.fda.gov/ora/compliance_ref/debar/default.htm), as amended or replaced from time to time, in connection with any of the services performed under this Agreement. Catalent further certifies that it, and any other person or entity used by Catalent in performing any of the services under this Agreement, has not been convicted of a criminal offense that falls within the ambit of 42 U.S.C. §1320a-7(a). Catalent agrees to notify Client promptly in the event Catalent, or any person used by Catalent in connection with this Agreement, ever becomes excluded, debarred, suspended, or otherwise ineligible to participate in Federal health care programs or in Federal procurement or non-procurement programs. This certification applies to Catalent and its respective officers, agents, and employees as well as subcontractors performing on behalf of Catalent under this Agreement;

H. Catalent has all necessary authority to use the Catalent technology utilized with the Product and as contemplated by this Agreement; there are no patents owned by others related to the Catalent IP utilized with the Product that would be infringed or misused by Catalent's performance of the Agreement; and, to its knowledge, no trade secrets or other proprietary rights of others related to the Catalent IP utilized with the Product that would be infringed or misused by Catalent's performance of this Agreement;

I. Catalent will not release any Batch of Product if the required certificates of conformance indicate that Product does not comply with the Specifications; and

J. no transactions or dealings under this Agreement shall be conducted with or for an individual or entity that is designated as the target of any sanctions, restrictions or embargoes administered by the United Nations, European Union, United Kingdom, or the United States.

12.2 Client. Client represents, warrants and undertakes to Catalent that:

A. all Client-supplied Materials shall have been produced in accordance with Applicable Laws, shall comply with all applicable specifications, including the Specifications, shall not be adulterated, misbranded or mislabeled within the meaning of Applicable Laws, and shall have been provided in accordance with the terms and conditions of this Agreement;

B. the content of all artwork provided to Catalent shall comply with all Applicable Laws;

C. all Product delivered to Client by Catalent shall be held, used and disposed of by or on behalf of the Client in accordance with all Applicable Laws, and Client will otherwise comply with all laws, rules, regulations and guidelines applicable to Client's performance under this Agreement;

D. Client will not release any Batch of Product if the required certificates of conformance indicate that Product does not comply with the Specifications or if Client does not hold all necessary Regulatory Approvals to market and sell the Product;

E. Client has all necessary authority to use and to permit Catalent to use pursuant to this Agreement all intellectual property related to Product or Client-supplied Materials (including artwork), and the Processing by Catalent of the foregoing, including any copyrights, trademarks, trade secrets, patents, inventions and developments; to Client's knowledge there are no patents owned by others related to the Client IP utilized with the Product that would be infringed or misused by Client's performance of the Agreement; and, to its knowledge, no trade secrets or other proprietary rights of others related to the Client IP utilized with the Product that would be infringed or misused by Client's performance of this Agreement;

F. To Client's knowledge the services to be performed by Catalent under this Agreement will not violate or infringe upon any trademark, tradename, copyright, patent, trade secret, or other intellectual property or other right held by any person or entity; provided that Client makes no representation with respect to the Catalent IP;

G. Client has all authorizations and permits required to deliver API (or have delivered) to Catalent's Facility;

H. Client has the full power and authority to execute and deliver this Agreement and perform its covenants, duties, and obligations described in this Agreement, and once executed, this Agreement will be a valid, legal, and binding obligation upon Client; and

I. no transactions or dealings under this Agreement shall be conducted with or for an individual or entity that is designated as the target of any sanctions, restrictions or embargoes administered by the United Nations, European Union, United Kingdom, or the United States.

12.3 Limitations. THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE ARE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES MADE BY EACH PARTY TO THE OTHER PARTY, AND NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND WHATSOEVER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

12.4 Compliance with Anti-Corruption Laws.

Each party agrees that, in the performance of its obligations under this Agreement, it will not: (i) provide or promise to provide, directly or indirectly, any unlawful contribution, gift, entertainment, or other unlawful payment to any foreign or domestic government employee relating to political activity; (ii) take any action, directly or indirectly, that violates Foreign Corrupt Practices Act ("FCPA"), or any other applicable anti-corruption law of any foreign jurisdiction, including, without limitation, "use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value" to any "foreign official" (as is defined in the FCPA), any foreign political party or official thereof, or any candidate for foreign political office, to influence their acts or decisions in their official capacity, to induce them to do or omit from doing any act in violation of their lawful duty, or to secure any improper advantage in order to assist in obtaining business, or retaining business, or directing business to any person; and (iii) make or propose to make any bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature, including to healthcare providers or those employed by any governmental institutions.

ARTICLE 13
INDEMNIFICATION

13.1 Indemnification by Catalent. Catalent shall indemnify, defend and hold harmless Client, its Affiliates, and their respective shareholders, directors, officers and employees ("**Client Indemnitees**") from and against any and all suits, claims, losses, demands, liabilities, damages, costs and expenses (including reasonable attorneys' fees and reasonable investigative costs) in connection with any suit, demand or action brought by any third party ("**Losses**") directly or indirectly arising out of or resulting from (a) any breach of its representations, warranties or obligations set forth in this Agreement; (b) any negligence or willful misconduct by Catalent, its Affiliates, subcontractors, employees or agents; (c) any misrepresentation made by Catalent in this Agreement; (d) a violation of, or non-compliance with any Applicable Law by Catalent, its Affiliates, subcontractors, employees or agents in the performance of this Agreement; or (e) the infringement or alleged infringement of any trade secrets, copyrights, trademarks, trade names, or other proprietary or contractual rights of any third party arising from Catalent's performance of services under this Agreement (except to the extent arising from the making or using of Client-supplied Materials, Client Confidential Information, or API), in each case of clauses (a) through (e) above, except to the extent that Client is obligated to indemnify any of the Catalent Indemnitees pursuant to Section 13.2 for such events.

13.2 Indemnification by Client. Client shall indemnify, defend and hold harmless Catalent, its Affiliates, and their respective shareholders, directors, officers and employees ("**Catalent Indemnitees**") from and against any and all Losses directly or indirectly arising out of or resulting from (a) any manufacture (other than due to negligence by or on behalf of Catalent), packaging (other than due to negligence by or on behalf of Catalent), promotion, distribution, sale or use of or exposure to the Product or Client-supplied Materials, including API and including product liability or strict liability, other than claims by Catalent employees arising from their handling of Client-supplied Materials in performing the services under this Agreement; provided, however, Client delivered to Catalent all known material information regarding such risks of handling or such information was otherwise in the public domain; (b) any negligence or willful misconduct of Client, its Affiliates, subcontractors, employees or agents, (c) any breach of its representations, warranties or obligations set forth in this Agreement; (d) the content of Client's instructions to the extent they are followed by Catalent and violate Applicable Laws; (e) the conduct of any clinical trials utilizing Product or API; (f) Client's exercise of control over the Processing, to the extent that Client's instructions or directions violate Applicable Laws, (g) any actual or alleged infringement or violation of any third party patent, trade secret, copyright, trademark or other proprietary right by the use, as authorized, of intellectual property or other information provided by Client to Catalent, including Client-supplied Material; in each case of clauses (a) through (g) above, except to the extent that Catalent is obligated to indemnify any of the Client Indemnitees pursuant to Section 13.1 for such events.

13.3 Indemnification Procedures. All indemnification obligations in this Agreement are conditioned upon the indemnified party (a) promptly notifying the indemnifying party of any claim or liability of which the indemnified party becomes aware (including a copy of any related complaint, summons, notice or other instrument); provided, that failure to provide such notice within a reasonable period of time shall not relieve the indemnifying party of any of its obligations hereunder except to the extent the indemnifying party is prejudiced by such failure, (b) allowing the indemnifying party to conduct and control the defense of any such claim or liability and any related settlement negotiations (at the indemnifying party's expense), (C) cooperating with the indemnifying party in the defense of any such claim or liability and any related settlement negotiations (at the indemnifying party's expense) and (D) not compromising or settling any claim or liability without prior written consent of the indemnifying party.

ARTICLE 14
LIMITATIONS OF LIABILITY

14.1 CATALENT'S LIABILITY UNDER THIS AGREEMENT FOR ANY AND ALL CLAIMS FOR LOST, DAMAGED OR DESTROYED CLIENT-SUPPLIED MATERIALS, WHETHER OR NOT SUCH CLIENT SUPPLIED MATERIALS ARE USED IN THE SERVICES OR INCORPORATED INTO PRODUCT, CAUSED BY CATALENT'S NEGLIGENCE OR BREACH SHALL NOT EXCEED [***] PER INCIDENT.

14.2 CATALENT'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL FEES PAID BY CLIENT TO CATALENT OR INVOICED BY CATALENT UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING RELEASE OF THE BATCH OR SERVICES GIVING RISE TO THE CLAIM. DURING THE FIRST CONTRACT YEAR, SUCH LIMITATION SHALL BE THE GREATER OF (I) TOTAL FEES PAID BY CLIENT TO CATALENT OR INVOICED BY CATALENT FROM THE COMMENCEMENT DATE, OR (II) [***]. THE FOREGOING LIMITATION SHALL NOT BE DEEMED TO LIMIT CATALENT'S LIABILITY UNDER SECTION 13.1 (INDEMNIFICATION) WITH RESPECT TO AMOUNTS PAID BY CLIENT TO THIRD PARTIES FOR BODILY INJURY.

14.3 NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSS OF REVENUES, PROFITS OR DATA ARISING OUT OF PERFORMANCE UNDER THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ARTICLE 15
INSURANCE

15.1 Each of Catalent and Client shall, at its own cost and expense, obtain and maintain in full force and effect during the Term the following: (A) Commercial General Liability Insurance with a per-occurrence limit of not less than $[***]; (B) Products and Completed Operations Liability Insurance with a per-occurrence limit of not less than $[***]; (C) Workers' Compensation Insurance with statutory limits and Employers Liability Insurance with limits of not less than $[***] per accident; and (D) All Risk Property Insurance, including transit coverage, in an amount equal to the full replacement value of its property while in, or in transit to, a Catalent facility as required under this Agreement. Each party may self-insure all or any portion of the required insurance as long as, together with its Affiliates, its US GAAP net worth is greater than $[***] million or its annual EBITDA (earnings before interest, taxes, depreciation and amortization) is greater than $[***] million. If any of the required policies of insurance are written on a claims made basis, such policies shall be maintained throughout the Term and for a period of at least [***] years thereafter. Each required insurance policy, other than self-insurance, shall be obtained from an insurance carrier with an A.M. Best rating of at least A- VII. To secure the performance of its obligations under this Agreement, Client will at all times during the Term of this Agreement, maintain commercial general liability insurance providing coverage of no less than $[***] per occurrence, professional liability insurance providing coverage of no less than $[***] per occurrence, errors and omissions insurance providing coverage of no less than $[***] per occurrence and Workers' Compensation Insurance with statutory amounts and Employers Liability Insurance with limits of not less than $[***] per accident; and Auto Liability insurance for owned, hired and non-owned vehicles in a minimum amount of $[***] combined single limit. If requested by the other party, the party will furnish certificates of insurance evidencing such coverages or the original of the insurance policies. No such policies required hereunder will be cancelable or subject to reduction of coverage or other modification except after [***] days' prior written notice to the other party.

ARTICLE 16
TERM AND TERMINATION

16.1 Term. This Agreement shall commence on the Effective Date and shall continue until the end of the seventh Contract Year, unless earlier terminated in accordance with Section 16.2 (as may be extended in accordance with this Section, the "**Term**"). The Term shall automatically be extended for successive 2-year periods unless and until one party gives the other party at least 12 months' prior written notice of its desire to terminate as of the end of the then-current Term.

16.2 Termination. This Agreement may be terminated immediately without further action:

A. by either party if the other party files a petition in bankruptcy, or enters into an agreement with its creditors, or applies for or consents to the appointment of a receiver, administrative receiver, trustee or administrator, or makes an assignment for the benefit of creditors, or suffers or permits the entry of any order adjudicating it to be bankrupt or insolvent and such order is not discharged within 30 days, or takes any equivalent or similar action in consequence of debt in any jurisdiction; or

B. by either party if the other party materially breaches any of the provisions of this Agreement and such breach is not cured within 60 days after the giving of written notice requiring the breach to be remedied; *provided*, that in the case of a failure of Client to make payments in accordance with the terms of this Agreement, Catalent may terminate this Agreement if such payment breach is not cured within 30 days of receipt of notice of non-payment from Catalent.

C. By Client upon one hundred eighty (180) days prior written notice to Catalent in the event Client ceases pursuit of Regulatory Approval for, or to offer for sale or to sell, Product, due to material regulatory, patient health, or intellectual property issues.

16.3 Effect of Termination. Expiration or termination of this Agreement shall be without prejudice to any rights or obligations that accrued to the benefit of either party prior to such expiration or termination. In the event of a termination of this Agreement:

A. Catalent shall promptly return to Client, at Client's expense and direction, any remaining inventory of Product or Client-supplied Materials; *provided*, that all outstanding invoices have been paid in full;

B. Client shall pay Catalent all invoiced amounts outstanding hereunder, plus, upon receipt of invoice therefor, for any (i) Product that has been shipped pursuant to Purchase Orders but not yet invoiced, (ii) Product Processed pursuant to Purchase Orders that has been completed but not yet shipped, and (iii) in the event that this Agreement is terminated for any reason other than by Client pursuant to Section 16.2(A) or (B), or by Catalent pursuant to Section 16.2(C), all Product in process of being Processed pursuant to Purchase Orders (or, alternatively, Client may instruct Catalent to complete such work in process, and the resulting completed Product shall be governed by clause (ii)); and

C. in the event that this Agreement is terminated for any reason other than by Client pursuant to Section 16.2(A) or (B), or by Catalent pursuant to Section 16.2(C), Client shall pay Catalent for all costs and expenses incurred, and all noncancellable commitments made, in connection with Catalent's performance of this Agreement, so long as such costs, expenses or commitments were made by Catalent consistent with Client's most recent Firm Commitment and the vendor's minimum purchase obligations.

16.4 Survival. The rights and obligations of the parties shall continue under Articles 11 (Intellectual Property), 13 (Indemnification), 14 (Limitations of Liability), 17 (Notice), 18 (Miscellaneous); under Articles 10 (Confidentiality and Non-Use) and 15 (Insurance), in each case to the extent expressly stated therein; and under Sections 7.3 (Payment Terms), 7.5 (Taxes), 7.6 (Client and Third Party Expenses), 9.1 (Recordkeeping), 9.6 (Recall), 12.3 (Limitations on Warranties), 16.3 (Effect of Termination) and 16.4 (Survival), in each case in accordance with their respective terms if applicable, notwithstanding expiration or termination of this Agreement.

ARTICLE 17
NOTICE

All notices and other communications hereunder shall be in writing and shall be deemed given: (A) when delivered personally or by hand; (B) when delivered by facsimile transmission (receipt verified); (C) when received or refused, if sent by registered or certified mail (return receipt requested), postage prepaid; or (D) when delivered, if sent by express courier service; in each case to the parties at the following addresses (or at such other address for a party as shall be specified by like notice; *provided*, that notices of a change of address shall be effective only upon receipt thereof):

To Client:	TherapeuticsMD, Inc. 6800 Broken Sound Parkway NW, Third Floor Boca Raton, Florida 33487 Attn: President
With a copy to:	Chief Legal Counsel at the above address
To Catalent:	Catalent Pharma Solutions, LLC 2725 Scherer Drive N. St. Petersburg, FL 33716 Attn: President, Softgel
With a copy to:	Catalent Pharma Solutions 14 Schoolhouse Road Somerset, NJ 08873 Attn: General Counsel (Legal Department) Facsimile: +1 (732) 537-6491

ARTICLE 18
MISCELLANEOUS

18.1 Entire Agreement; Amendments. This Agreement, together with the Quality Agreement, constitutes the entire understanding between the parties, and supersedes any contracts, agreements or understandings (oral or written) of the parties, with respect to the subject matter hereof. For the avoidance of doubt, this Agreement does not supersede any existing generally applicable confidentiality agreement between the parties as it relates to time periods prior to the date hereof or to business dealings not covered by this Agreement. No term of this Agreement may be amended except upon written agreement of both parties, unless otherwise expressly provided in this Agreement.

18.2 Captions; Certain Conventions. The captions in this Agreement are for convenience only and are not to be interpreted or construed as a substantive part of this Agreement. Unless otherwise expressly provided herein or the context of this Agreement otherwise requires, (A) words of any gender include each other gender, (B) words such as “herein”, “hereof”, and “hereunder” refer to this Agreement as a whole and not merely to the particular provision in which such words appear, (C) words using the singular shall include the plural, and vice versa, (D) the words “include(s)” and “including” shall be deemed to be followed by the phrase “but not limited to”, “without limitation” or words of similar import, (E) the word “or” shall be deemed to include the word “and” (e.g., “and/or”) and (F) references to “Article,” “Section,” “subsection,” “clause” or other subdivision, or to an Attachment or other appendix, without reference to a document are to the specified provision or Attachment of this Agreement. This Agreement shall be construed as if it were drafted jointly by the parties.

18.3 Further Assurances. The parties agree to execute, acknowledge and deliver such further instruments and to take all such other incidental acts as may be reasonably necessary or appropriate to carry out the purpose and intent of this Agreement.

18.4 No Waiver. Failure by either party to insist upon strict compliance with any term of this Agreement in any one or more instances will not be deemed to be a waiver of its rights to insist upon such strict compliance with respect to any subsequent failure.

18.5 Severability. If any term of this Agreement is declared invalid or unenforceable by a court or other body of competent jurisdiction, the remaining terms of this Agreement will continue in full force and effect.

18.6 Independent Contractors. The relationship of the parties is that of independent contractors, and neither party will incur any debts or make any commitments for the other party except to the extent expressly provided in this Agreement. Nothing in this Agreement is intended to create or will be construed as creating between the parties the relationship of joint ventures, co-partners, employer/employee or principal and agent. Neither party shall have any responsibility for the hiring, termination or compensation of the other party’s employees or contractors or for any employee benefits of any such employee or contractor.

18.7 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties, their successors and permitted assigns. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except that either party may, without the other party’s consent (but subject to prior written notice), assign this Agreement in its entirety to an Affiliate or to a successor to substantially all of the business or assets of the assigning party or the assigning party’s business unit responsible for performance under this Agreement.

18.8 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person or entity other than the parties named herein and their respective successors and permitted assigns.

18.9 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Delaware, USA, excluding its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

18.10 Dispute Resolution. Any dispute that arises between the parties in connection with this Agreement shall first be presented to the senior executives of the parties for consideration and resolution. If such executives cannot reach a resolution of the dispute within a reasonable time, then the parties may seek remedies in a court of law.

18.11 Prevailing Party. In any dispute resolution proceeding between the parties in connection with this Agreement, the prevailing party may be entitled to recover its reasonable attorney's fees and costs in such proceeding from the other party.

18.12 Publicity. Neither party will make any press release or other public disclosure regarding this Agreement or the transactions contemplated hereby without the other party's express prior written consent, except as required under Applicable Laws, by any governmental agency or by the rules of any stock exchange on which the securities of the disclosing party are listed, in which case the party required to make the press release or public disclosure shall use commercially reasonable efforts to obtain the approval of the other party as to the form, nature and extent of the press release or public disclosure prior to issuing the press release or making the public disclosure.

18.13 Right to Dispose and Settle. If Catalent requests in writing from Client direction with respect to disposal of any inventories of Product, Client-supplied Materials, equipment, samples or other items belonging to Client and is unable to obtain a response from Client within a reasonable time period after making reasonable efforts to do so, Catalent shall be entitled in its sole discretion to (A) dispose of all such items and (B) set-off any and all amounts due to Catalent or any of its Affiliates from Client against any credits Client may hold with Catalent or any of its Affiliates.

18.14 Force Majeure. Except as to payments required under this Agreement, neither party shall be liable in damages for, nor shall this Agreement be terminable or cancelable by reason of, any delay or default in such party's performance hereunder if such default or delay is caused by events beyond such party's reasonable control, including acts of God, law or regulation or other action or failure to act of any government or agency thereof, war or insurrection, civil commotion, destruction of production facilities or materials by earthquake, fire, flood or weather, labor disturbances, epidemic or failure of suppliers, vendors, public utilities or common carriers; *provided*, that the party seeking relief under this Section shall immediately notify the other party of such cause(s) beyond such party's reasonable control. The party that may invoke this Section shall use commercially reasonable efforts to reinstate its ongoing obligations to the other party as soon as practicable. If the cause(s) shall continue unabated for 180 days, then both parties shall meet to discuss and negotiate in good faith what modifications to this Agreement should result from such cause(s).

18.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Any photocopy, facsimile or electronic reproduction of the executed Agreement shall constitute an original.

[Signature page follows]

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IN WITNESS WHEREOF, the parties have caused their respective duly authorized Representatives to execute this Agreement effective as of the Effective Date.

CATALENT PHARMA SOLUTIONS, LLC **THERAPEUTICSMD, INC.**

By: /s/Aris Gennadios

Name: Aris Gennadios, Ph.D.

Title: President Softget Technology

By: /s/ Robert Finizio

Name: Robert Finizio

Title: CEO

Signature Page to Softgel Commercial Supply Agreement

EXECUTION VERSION

ATTACHMENT A

SPECIFICATIONS

I. Client-supplied Materials (and associated specifications)

- **API**

Test	**Acceptance Criteria**	**Analytical Method**
Appearance	[***]	[***]
Identification A (IR)	[***]	[***]
Identification B (UV)	[***]	[***]
Melting range	[***]	[***]
Specific rotation	[***]	[***]
Water	[***]	[***]
Assay (HPLC)	[***]	[***]
Microbial limits Total aerobic microbial count (TAMC):	[***]	[***]
Total combined yeasts and mold count (TYMC):	[***]	
Escherichia in 1 g	[***]	
Related substances (HPLC): Estrone (Ph.Eur.A)	[***]	[***]
17α-estradiol (Ph.Eur.B)	[***]	
Δ9(11)-estradiol (Ph.Eur.D)	[***]	

Test	Acceptance Criteria	Analytical Method
4-Cl-estradiol	[***]	
Individual unspecified impurity	[***]	
Total impurities	[***]	
Residual Solvents (GC): Benzene	[***]	
Dichloromethane	[***]	
Ethanol	[***]	[***][1]
Ethyl acetate	[***]	
Methanol	[***]	
Pyridine	[***]	
Tetrachloroethylene	[***]	
Acetic acid	[***]	
Particle size by laser diffraction	[***]	[***][2]

[1] [***]

[2] [***]

[***]

HPLC = high performance liquid chromatography
UV = ultraviolet
IR = infrared
GC = gas chromatograph
Ph. Eur. or EP = European Pharmacopeia
USP = United States Pharmacopeia
cfu = colony forming unit
ppm = parts per million

II. Product Specifications

DRAFT SPECIFICATIONS – final to be agreed to in writing by the parties after execution of this Agreement.

Estradiol 4 µg

Test	Method	Limits
Appearance	[***]	[***]
Estradiol Assay (4 µg/capsule)	[***]	[***]
Related Compounds (Tested at RTP)	[***]	[***]
		[***]
		[***]
		[***]
		[***]
Dissolution	[***]	[***]
		[***]
		[***]
		[***]
Moisture Content	[***]	[***]
Total Aerobic Plate Count	[***]	[***]
Total Combined Yeast and Mold	[***]	[***]
P. aeruginosa	[***]	[***]
S. aureus	[***]	[***]
Candida albicans	[***]	[***]

Estradiol 10 µg

Test	**Method**	**Limits**
Appearance	[***]	[***]
Estradiol Assay (10 µg/capsule)	[***]	[***]
Related Compounds (Tested at RTP)	[***]	[***]
		[***]
		[***]
		[***]
		[***]
Dissolution	[***]	[***]
		[***]
		[***]
		[***]
Moisture Content	[***]	[***]
Total Aerobic Plate Count	[***]	[***]
Total Combined Yeast and Mold	[***]	[***]
P. aeruginosa	[***]	[***]
S. aureus	[***]	[***]
Candida albicans	[***]	[***]

Estradiol 25 µg

Test	**Method**	**Limits**
Appearance	[***]	[***]
Estradiol Assay (25 µg/capsule)	[***]	[***]
Related Compounds (Tested at RTP)	[***]	[***]
		[***]
		[***]
		[***]
		[***]
Dissolution	[***]	[***]
		[***]
		[***]
		[***]
Moisture Content	[***]	[***]
Total Aerobic Plate Count	[***]	[***]
Total Combined Yeast and Mold	[***]	[***]
P. aeruginosa	[***]	[***]
S. aureus	[***]	[***]
Candida albicans	[***]	[***]

EXECUTION VERSION

ATTACHMENT B

UNIT PRICING, FEES AND MINIMUM REQUIREMENT

UNIT PRICING- Theoretical Batch Size of **[***]** softgels per strength		
Any Volume- Lot size to be phased out after first Contract Year based on validation of larger batch size		
Product	**Unit Strength**	**Initial Unit Price**
Softgel Ovule	Estradiol 25 mcg	$[***]
Softgel Ovule	Estradiol 10 mcg	$[***]
Softgel Ovule	Estradiol 4 mcg	$[***]

UNIT PRICING- Theoretical Batch Size of 1,200,000 softgels per strength		
Tier 1 Volume: [***] Total Softgels Shipped in Calendar Year		
Product	**Unit Strength**	**Initial Unit Price**
Softgel Ovule	Estradiol 25 mcg	$[***]
Softgel Ovule	Estradiol 10 mcg	$[***]
Softgel Ovule	Estradiol 4 mcg	$[***]
Tier 2 Volume: Over [***] Total Softgels Shipped in Calendar Year		
Product	**Unit Strength**	**Initial Unit Price For All Incremental Volume Over** [***]
Softgel Ovule	Estradiol 25 mcg	$[***]
Softgel Ovule	Estradiol 10 mcg	$[***]
Softgel Ovule	Estradiol 4 mcg	$[***]

* One unit is [***] softgel capsules. Prices include full API release testing, cost of Processed softgels, Product full release testing and bulk packaging. Prices do not include cost of API, tooling or other Product-specific capital items, artwork, shipping, insurance or duty. Prices also do not include any testing, retesting or testing supplies other than as expressly set forth in the Specifications. Prices are based on certain assumptions as to manufacturing processes, storage conditions, etc. Accordingly, prices are subject to adjustment in the event any such assumptions are subject to revision in connection with the validation of the Product. The foregoing prices are for the United States only. Prices will be adjusted for the Processing of Product for use in other jurisdictions based upon actual differences in cost resulting from the intended use of Product in countries other than the United States.

MINIMUM REQUIREMENT		
Contract Year	**Product**	**Minimum Requirement***
[***]	Across all three strengths	[***] Softgels
[***]	Across all three strengths	[***] Softgels
[***]	Across all three strengths	[***] Softgels
[***]	Across all three strengths	[***] Softgels
[***]	Across all three strengths	[***] Softgels
[***]	Across all three strengths	[***] Softgels

* Softgels shipped per Contract Year qualify towards the Minimum Requirement.

ADDITIONAL FEES		
Type of Fee	**Amount**	**Payable**
Product Maintenance Fee	$[***] for the first strength; $[***] for each additional strength	[***]
Hormone Suite Occupancy Fee	Waived based on minimum volume guarantees	N/A

Exhibit 10.2

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Execution Version

CREDIT AND SECURITY AGREEMENT

dated as of May 1, 2018

by and among

THERAPEUTICSMD, INC.,

ITS SUBSIDIARIES FROM TIME TO TIME PARTY HERETO,

each as Borrower, and collectively as Borrowers,

and

MIDCAP FINANCIAL TRUST,

as Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO

CONFIDENTIAL TREATMENT HAS BEEN REQUESTED FOR PORTIONS OF THIS EXHIBIT. THE COPY FILED HEREWITH OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST. OMISSIONS ARE DESIGNATED AS [***]. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

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CREDIT AND SECURITY AGREEMENT

This **CREDIT AND SECURITY AGREEMENT** (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of May 1, 2018 by and among **THERAPEUTICSMD, INC.**, a Nevada corporation ("**TherapeuticsMD**"), each of its direct and indirect Subsidiaries set forth on the signature pages hereto and any additional borrower that may hereafter be added to this Agreement (individually as a "**Borrower**", and collectively with any entities that become party hereto as Borrower and each of their successors and permitted assigns, the "**Borrowers**"), **MIDCAP FINANCIAL TRUST,** a Delaware statutory trust, individually as a Lender, and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender.

RECITALS

Borrowers have requested that Lenders make available to Borrowers the financing facilities as described herein. Lenders are willing to extend such credit to Borrowers under the terms and conditions herein set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Borrowers, Lenders and Agent agree as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

"**Acceleration Event**" means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2 and/or (b) pursuant to either Section 10.1(e) and/or Section 10.1(f).

"**Account Debtor**" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"**Accounts**" means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any "account" (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any "health-care-insurance receivables" (as defined in the UCC), any "payment intangibles" (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, "general intangibles" (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

"**Additional Titled Agents**" has the meaning set forth in Section 11.15.

"**Acquisition**" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business, business line or product line, division or other unit operation of any Person, (b) the acquisition of in excess of fifty percent (50%) of the Equity Interests of any Person or otherwise causing any Person to become a Subsidiary of a Borrower, (c) a merger or consolidation or any other combination with another Person (other than a Credit Party permitted under Section 5.6(a)), or (d) the acquisition (including through licensing that requires an upfront payment) of any material Product from any other Person.

"**Affiliate**" means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person's (other than, with respect to any Lender, any Lender's) executive officers or directors (or Persons functioning in substantially similar roles) and the spouses, parents, descendants and siblings of such executive officers, directors or other Persons. As used in this definition, the term "control" of a Person means the possession, directly or indirectly, of the power to vote more than (i) in the case of Agent or any Lender, ten percent (10%) or (ii) in the case of any Credit Party or Subsidiary thereof, thirty percent (30%), of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agent**" means MCF, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MCF in such capacity.

"**Anti-Terrorism Laws**" means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

"**Applicable Margin**" means seven and three quarters percent (7.75%).

"**Approved Fund**" means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Asset Disposition**" means any sale, lease, license, transfer, assignment or other consensual disposition by any Credit Party or any Subsidiary thereof of any asset.

"**Assignment Agreement**" means an assignment agreement in form and substance acceptable to Agent.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

"**Base LIBOR Rate**" means, for each Interest Period, the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Interest Period) in the amount of $1,000,000 are offered to major banks in the London interbank market on or about 11:00 a.m. (London time) two (2) Business Days prior to the commencement of such Interest Period, for a term comparable to such Interest Period, which determination shall be conclusive in the absence of manifest error; *provided*, *however*, if timely, adequate and reasonable means do not exist for ascertaining such rate and the circumstances giving rise to the Agent's inability to ascertain LIBOR are unlikely to be temporary as determined in Agent's reasonable discretion, then Agent may, upon prior written notice to Borrower Representative, choose, in consultation with Borrower, a reasonably comparable index or source together with corresponding adjustments to "Applicable Margin" or scale factor or floor to such index that Agent, in its reasonable discretion, has determined is necessary to preserve the current all-in yield (including interest rate margins, any interest rate floors, original issue discount and upfront fees, but without regard to future fluctuations of such alternative index, it being acknowledged and agreed that neither Agent nor any Lender shall have any liability whatsoever from such future fluctuations) to use as the basis for Base LIBOR Rate.

"**Base Rate**" means a per annum rate of interest equal to the greater of (a) one and one half percent (1.50%) per annum and (b) the rate of interest announced, from time to time, within Wells Fargo Bank, National Association ("**Wells Fargo**") at its principal office in San Francisco as its "prime rate," with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided*, *however*, that Agent may, upon prior written notice to Borrower, choose a reasonably comparable index or source used by Agent in its other credit facilities for similarly situated borrowers to use as the basis for the Base Rate.

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

"**Bail-In Legislation**" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Blocked Person**" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list or is named as a "listed person" or "listed entity" on other lists made under any Anti-Terrorism Law.

"**Borrower**" and "**Borrowers**" has the meaning set forth in the introductory paragraph hereto.

"**Borrower Representative**" means TherapeuticsMD, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

"**Borrower Unrestricted Cash**" means unrestricted cash and Cash Equivalents of the Borrowers that (a) are subject to Agent's first priority perfected lien and held in the name of a Borrower in a Deposit Account or Securities Account that is subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable, in favor of Agent at a bank or financial institution located in the United States, (b) is not subject to any Lien (other than a Lien in favor of Agent or Permitted Liens), and (c) are not funds for the payment of a drawn or committed but unpaid draft, ACH or EFT transaction.

"**Business Day**" means any day except a Saturday, Sunday or other day on which either the Nasdaq Stock Market is closed, or on which commercial banks in Washington, DC and New York City are authorized by law to close.

"**Capital Lease**" of any Person means any lease of any property by such Person as lessee which would, in accordance with GAAP, be required to be accounted for as a capital lease on the balance sheet of such Person.

"**Cash Equivalents**" means any Investment in (a) securities issued or directly and fully guaranteed or insured by the US or any agency or instrumentality thereof (*provided* that the full faith and credit of the US is pledged in support thereof) having maturities of not more than one (1) year from the date of acquisition by such Person, (b) Dollar-denominated time deposits and certificates of deposit with a duration of not more than one (1) year issued or accepted by any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any State thereof or, the District of Columbia having capital, surplus and undivided profits aggregating in excess of $500,000,000, (c) repurchase obligations with a term of not more than ninety (90) days for underlying securities of the types described in subsection (a) above entered into with any bank meeting the qualifications specified in subsection (b) above, (d) commercial paper issued by any issuer rated at least A-1 by Standard & Poor's Corporation or at least P-1 by Moody's Investors Service, Inc., and in each case maturing not more than one (1) year after the date of acquisition by such Person or (e) money market or mutual fund which invests only in the foregoing types of Investments, has portfolio assets in excess of $500,000,000, complies with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act, and has the highest rating obtainable from either Standard & Poor's Corporation or Moody's Investors Service, Inc.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq*., as the same may be amended from time to time.

"**Change in Control**" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) of Equity Interests representing more than fifty percent (50%) of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of TherapeuticsMD or (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the TherapeuticsMD by persons who were neither (i) nominated by the board of directors of the TherapeuticsMD nor (ii) appointed by the directors so nominated.

"**Closing Date**" means the date of this Agreement.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"**Collateral**" means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and Lenders, pursuant to this Agreement and the Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto; *provided that*, the Collateral shall not, at any time, include any "Excluded Property".

"**Commitment Annex**" means Annex A to this Agreement.

"**Competitor**" means, at any time of determination, any Person engaged in the same or substantially the same business as the Borrower and the other Credit Parties and such business accounts for ten percent (10%) or more of the revenue or net income of such Person at the time of such determination.

"**Compliance Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit A hereto.

"**Consolidated Subsidiary**" means, at any date, any Subsidiary the accounts of which would be consolidated with those of "parent" Borrower (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

"**Contingent Obligation**" means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a "**Third Party Obligation**") if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) under any Swap Contract, to the extent not yet due and payable; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so Guaranteed or otherwise supported.

"**Controlled Group**" means all members of a group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with the Credit Parties, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA and, solely for purposes of Section 412 and 436 of the Code, Section 414(m) or (o) of the Code.

"**Correction**" means repair, modification, adjustment, relabeling, destruction or inspection (including patient monitoring) of a Product without its physical removal to some other location.

"**Credit Exposure**" means, at any time, any portion of the Term Loan Commitments and/or any other Obligations that remains outstanding; *provided*, *however*, that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

"**Credit Party**" means each Borrower and each Guarantor; and "**Credit Parties**" means all such Persons, collectively.

"**DEA**" means the Drug Enforcement Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

"**Debt**" of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the Ordinary Course of Business and not more than 60 days past due unless subject to a Permitted Contest, (d) all Capital Leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, (f) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (i) all Debt of others Guaranteed by such Person, and (j) off-balance sheet liabilities and/or Pension Plan or Multiemployer Pension Plan liabilities of such Person. Without duplication of any of the foregoing, Debt of Borrowers shall include any and all Loans.

"**Default**" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defaulted Lender**" means, so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document.

"**Defined Period**" means for any given calendar month or date of determination, the twelve (12) month period ending on the last day of such calendar month or if such date of determination is not the last day of a calendar month, the twelve (12) month period immediately preceding any such date of determination.

"**Deposit Account**" means a "deposit account" (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Borrower.

"**Deposit Account Control Agreement**" means an agreement, in form and substance reasonably satisfactory to Agent, among Agent, any Borrower and each financial institution in which such Borrower maintains a Deposit Account, which agreement provides that (a) such financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Deposit Account without further consent by the applicable Borrower, and (b) such financial institution shall agree that it shall have no Lien on, or right of setoff or recoupment against, such Deposit Account or the contents thereof, other than in respect of usual and customary service fees and returned items, and containing such other terms and conditions as Agent may reasonably require.

"**Disqualified Stock**" means, with respect to any Person, any Equity Interest in such Person that, within less than 91 days after the Termination Date, either by its terms (or by the terms of any security or other equity interests into which it is convertible or for which it is exchangeable) or upon the happening of any event or condition, (a) matures or is mandatorily redeemable (other than solely for Permitted Debt or other equity interests in such Person or of TherapeuticsMD that do not constitute Disqualified Stock and cash in lieu of fractional shares of such equity interests), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof, in whole or in part (other than solely for Permitted Debt or other Equity Interests in such Person or of TherapeuticsMD that do not constitute Disqualified Stock and cash in lieu of fractional shares of such equity interests), (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is or becomes convertible into or exchangeable for Debt (other than Permitted Debt) or any other Equity Interests that would constitute Disqualified Stock.

"**Distribution**" means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any Equity Interest in such Person (except those payable solely in its Equity Interests of the same class or in common Equity Interests), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any Equity Interests in such Person or any claim respecting the purchase or sale of any Equity Interest in such Person, or (ii) any option, warrant or other right to acquire any Equity Interests in such Person, (c) any lease or rental payments to an Affiliate or Subsidiary of a Borrower, or (d) repayments of or debt service on loans or other indebtedness held by an Affiliate of any Subsidiary of a Borrower unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness.

"**Dollars**" or "**$**" means the lawful currency of the United States of America.

"**Drug Application**" means a New Drug Application (NDA) or an Abbreviated New Drug Application (ANDA) for any Product, as appropriate, as those terms are defined in section 505 of the FDCA.

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

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

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

"**Eligible Assignee**" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by (1) Agent, and (2) the Borrower Representative, but only if and to the extent that: (A) no Event of Default has occurred and is continuing and (B) such proposed assignment would result in the then-existing Lenders, their Affiliates and Approved Funds holding less than fifty one percent (51%) of the Term Loans and outstanding Term Loan Commitment Amounts; *provided*, *however*, that notwithstanding the foregoing, (x) so long as no Event of Default has occurred and is continuing, "**Eligible Assignee**" shall not include (i) any Borrower or any of a Borrower's Subsidiaries, or (ii) any Competitor, and (y) no proposed assignee intending to assume any unfunded portion of the Term Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Term Loan Commitment, or has been approved as an Eligible Assignee by Agent. Notwithstanding the foregoing, Borrowers shall be deemed to have approved any prospective assignee for purposes of clause (d)(2) above unless Agent shall have received Borrowers' objection thereto in writing within five (5) Business Days after Borrowers' receipt of notice of such proposed assignment.

"**Equity Interests**" means any and all shares, interests, participations or other equivalents (however designated) of equity interests of a corporation, membership interests in a limited liability company, partnership interests in a partnership, and any and all similar ownership interests in any Person, and any and all warrants, rights or options to purchase any of the foregoing.

"**Environmental Laws**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common law, pertaining to the environment, natural resources, pollution, health (including any environmental clean-up statutes and all regulations adopted by any local, state, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to any Borrower and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 *et seq.*), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"**ERISA Plan**" means any "employee benefit plan", as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Pension Plan), which any Credit Party or any Subsidiary maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA (other than a Multiemployer Pension Plan), to which any Credit Party or any Subsidiary has any liability, including on account of any member of the Controlled Group, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

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

"**Event of Default**" has the meaning set forth in Section 10.1.

"**Excluded Accounts**" means Deposit Accounts of a Credit Party or any Subsidiary (a) into which there is deposited no funds other than those intended solely to cover wages and payroll for employees of a Credit Party for a period of service no longer than two weeks at any time (and related contributions to be made on behalf of such employees to health and benefit plans) plus balances for outstanding checks for wages and payroll from prior periods; (b) constituting employee withholding accounts and contain only funds deducted from pay otherwise due to employees for services rendered to be applied toward the tax obligations of such employees; (c) owned by Excluded Foreign Subsidiaries and maintained outside of the United States; and (d) other than the accounts set forth in the preceding clauses (a)-(c), accounts of Credit Parties in which there is not maintained at any point in time funds on deposit greater than $500,000 in the aggregate for all such accounts.

"**Excluded Foreign Subsidiary**" means each direct and indirect Subsidiary of a Borrower (i)(a) that is a "controlled foreign corporation" as defined in Section 957 of the Code, (b) that is a direct or indirect Subsidiary of a "controlled foreign corporation" as defined in Section 957 of the Code, or (c) substantially all of the assets of which are equity or debt interests in one or more "controlled foreign corporations" as defined in Section 957 of the Code, and in each case, either (x) the pledge of all of the capital stock of such Subsidiary as Collateral or (y) the guaranteeing by such Subsidiary of the Obligations, could, in the good faith judgment of Borrowers, reasonably be expected to result in material adverse tax consequences to the Credit Parties; and (ii) designated as an Excluded Foreign Subsidiary by Borrowers or Agent, *provided*, that after giving effect to such designation, the aggregate gross revenues attributable to all Excluded Foreign Subsidiary in the aggregate for the most recently ended fiscal year of Borrowers does not exceed ten percent (10%) of the aggregate consolidated gross revenues for Borrowers and their Consolidated Subsidiaries for such fiscal year.

"**Excluded Property**" means:

(a) any lease, license, contract, permit, letter of credit, instrument, or agreement to which a Credit Party is a party or any of its rights or interests thereunder if and to the extent that the grant of a security interest thereon shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Credit Party therein or (ii) result in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, permit, agreement or other property right;

(b) governmental licenses, state or local franchises, charters and authorizations and any other property and assets to the extent that Agent may not validly possess a security interest therein under applicable Law (including, without limitation, rules and regulations of any Governmental Authority or agency) or the pledge or creation of a security interest in which would require governmental consent, approval, license or authorization;

(c) any "intent-to-use" trademark or service mark application 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;

(d) more than 65% the voting capital stock of any Excluded Foreign Subsidiary; *provided* that immediately upon any amendment of the Code that would allow the pledge of a greater percentage of such voting stock without material adverse tax consequences to such Borrower, "Collateral" shall automatically and without further action required by, and without notice to, any Person include such greater percentage of voting stock of such Excluded Foreign Subsidiary from that time forward;

provided that (x) any such limitation described in the foregoing clauses (a) and (b) on the security interests granted hereunder shall apply only to the extent that any such prohibition could not be rendered ineffective pursuant to the UCC or any other applicable Law (including Sections 9-406, 9-407 and 9-408 of the UCC) or principles of equity, (y) in the event of the termination or elimination of any such prohibition or the requirement for any consent contained in such contract, agreement, permit, lease or license or in any applicable Law, to the extent sufficient to permit any such item to become Collateral hereunder, or upon the granting of any such consent, or waiving or terminating any requirement for such consent, a security interest in such contract, agreement, permit, lease, license, franchise, authorization or asset shall be automatically and simultaneously granted hereunder and shall be included as Collateral hereunder, and (z) all rights to payment of money due or to become due pursuant to, and all rights to the proceeds from the sale of, any such Excluded Property shall be and at all times remain subject to the security interests created by this Agreement (unless such proceeds would independently constitute Excluded Property).

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Agent, any Lender or any other recipient of any payment to be made by or on behalf of any obligation of Credit Parties hereunder or the Obligations or required to be withheld or deducted from a payment to Agent, such Lender or such recipient (including any interest and penalties thereon): (a) Taxes to the extent imposed on or measured by Agent's, any Lender's or such recipient's net income (however denominated), branch profits Taxes, and franchise Taxes and similar Taxes, in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under which Agent, such Lender or such recipient is organized, has its principal office or conducts business with respect to entering into any of the Financing Documents or taking any action thereunder or (ii) that are Other Connection Taxes; (b) in the case of a Lender, United States withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Loans pursuant to a Law in effect on the date on which (i) such Lender becomes a party to this Agreement other than as a result of an assignment requested by a Credit Party under the terms hereof or (ii) such Lender changes its lending office for funding its Loan, except in each case to the extent that, pursuant to Section 2.8, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Term Loan Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to any Agent's, Lender's or other recipient's failure to comply with Section 2.8(c); and (d) any U.S. federal withholding taxes imposed under FATCA.

"**FATCA**" means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future U.S. Treasury regulations or official interpretations thereof and any agreement entered into pursuant to the implementation of Section 1471(b)(1) of the Code, and any intergovernmental agreement between the United States Internal Revenue Service, the U.S. Government and any governmental or taxation authority under any other jurisdiction which agreement's principal purposes deals with the implementation of such sections of the Code.

"**FDA**" means the Food and Drug Administration of the United States of America and any successor agency of any of the foregoing.

"**FDCA**" means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. Section 301 *et seq.*, and all regulations promulgated thereunder.

"**Federal Funds Rate**" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided*, *however*, that (a) 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, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

"**Fee Letter**" means each agreement between Agent and Borrower relating to fees payable to Agent, in connection with this Agreement.

"**Financing Documents**" means this Agreement, any Notes, the Security Documents, each Fee Letter, each subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and all other documents, instruments and agreements related to the Obligations and heretofore executed, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Foreign Lender**" has the meaning set forth in Section 2.8(c)(i).

"**GAAP**" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession), which are applicable to the circumstances as of the date of determination.

"**General Intangible**" means any "general intangible" as defined in Article 9 of the UCC, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

"**Good Manufacturing Practices**" means current good manufacturing practices, including as set forth in 21 C.F.R. Parts 210 and 211, and analogous requirements and standards set forth by a Governmental Authority in any applicable non-United States jurisdiction.

"**Governmental Authority**" means any nation or government, any state, local or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of any of the foregoing, whether domestic or foreign.

"**Guarantee**" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided*, *however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means any Credit Party that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the Obligations in accordance with Section 4.11(d) or as otherwise approved by Agent.

"**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Environmental Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," "pollutant" or other words of similar import within the meaning of any Environmental Law, including: (a) any "hazardous substance" defined as such in (or for purposes of) CERCLA, or any so-called "superfund" or "super lien" Law, including the judicial interpretation thereof; (b) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls ("**PCB's**"), flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

"**Hazardous Materials Contamination**" means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

"**Healthcare Laws**" means all applicable Laws relating to the procurement, development, provision, clinical and non-clinical testing, evaluation or investigation, product approval or clearance, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, reimbursement, reporting, sale, marketing, labeling, advertising, or promotion of any drug, biologic, medical device, dietary supplement or other product (including, without limitation, any ingredient or component of, or accessory to, the foregoing products) subject to regulation under the FDCA, the Public Health Service Act (42 U.S.C. §§ 201 *et seq.*), or the Controlled Substances Act (21 U.S.C. §§ 801 *et seq.*); including but not limited to all applicable Laws concerning fraud and abuse, including the Federal Anti-Kickback Statute (42 U.S.C. § 1320a- 7b(b)), the federal Physician Self-Referral Law (42 U.S.C. § 1395nn), and the federal Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a); and the federal False Claims Act (31 U.S.C. §§ 3729 *et seq.*); all applicable Laws governing health benefits programs sponsored by a Governmental Authority, including Medicare and Medicaid ; the Federal Trade Commission Act (15 U.S.C. §§ 41 *et seq.*) and other applicable consumer protection Laws; all applicable Laws governing the collection, dissemination, use, privacy, transfer, security, and confidentiality of medical records and personal information; any analogous state, local or foreign Laws; all Laws pursuant to which Permits are issued; all regulations and legally binding guidance or rules promulgated thereunder; and in each case, as the same may be amended from time to time.

"**HHS**" has the meaning set forth in Section 4.1(i)(v).

"**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 Borrowers or any other Credit Party under any Financing Documents and (b) to the extent not otherwise described in (a), Other Taxes.

"**Instrument**" means "instrument", as defined in Article 9 of the UCC.

"**Intellectual Property**" means all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, trade names, service marks, mask works, rights of use of any name, domain names, or any other similar rights, any applications therefor, whether registered or not, know-how, operating manuals, trade secret rights, clinical and non-clinical data, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing.

"**Interest Period**" means any period commencing on the first day of a calendar month and ending on the last day of such calendar month.

"**Inventory**" means "inventory" as defined in Article 9 of the UCC.

"**Investment**" means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any stock or stock equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make or commit to make any Acquisition or (c) make or purchase any advance, loan, extension of credit or capital contribution to, or any other investment in, any 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 thereto.

"**Investment Company Act**" means the Investment Company Act of 1940, as amended.

"**IRS**" has the meaning set forth in Section 2.8(c)(i).

"**Laws**" means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial or administrative decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, governmental agreements and governmental restrictions enacted, issued or promulgated by, or entered into with, a Governmental Authority, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. "**Laws**" includes, without limitation, Healthcare Laws and Environmental Laws.

"**Lender**" means each of (a) MCF, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and "**Lenders**" means all of the foregoing.

"**LIBOR Rate**" means, for each Loan, a per annum rate of interest equal to the greater of (a) one and one-half percent (1.50%) and (b) the rate determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by *dividing* (i) the Base LIBOR Rate for the Interest Period, *by* (ii) the sum of one *minus* the daily average during such Interest Period of the aggregate maximum reserve requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for "Eurocurrency Liabilities" (as defined therein).

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement relating to such asset.

"**Litigation**" means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

"**Loan Account**" has the meaning set forth in Section 2.6(b).

"**Loan(s)**" means the Term Loan and each and every advance under the Term Loan. All references herein to the "making" of a Loan or words of similar import mean, with respect to the Term Loan, the making of any advance in respect of a Term Loan.

"**Market Withdrawal**" means a Person's Removal or Correction of a distributed product which involves a minor violation that would not be subject to legal action by the FDA (or any applicable and comparable state or local Governmental Authority, any applicable and comparable Governmental Authority in any applicable non-United States jurisdiction), or which involves no violation, such as routine stock rotation practices or routine equipment adjustments and repairs.

"**Material Adverse Effect**" means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, a material adverse change in, or a material adverse effect upon, any of (a) the condition (financial or otherwise), operations, business, or properties of the Credit Parties (taken as a whole), (b) the rights and remedies of Agent or Lenders under any Financing Document, or the ability of any Credit Party to perform any of its obligations under any Financing Document to which it is a party, (c) the legality, validity or enforceability of any Financing Document, (d) the existence, perfection or priority of any security interest granted in any Financing Document (other than solely as a result of any action or inaction of Agent or Lenders provided that such action or inaction is not caused by a Credit Party's failure to comply with the terms of the Financing Documents), or (e) the prospect of repayment of any material portion of the Obligations.

"**Material Contracts**" means (a) the Operative Documents, (b) the agreements listed on Schedule 3.17, and (c) each agreement or contract to which a Credit Party or its Subsidiaries is a party the termination of which could reasonably be expected to result in a Material Adverse Effect.

"**Material Intangible Assets**" means all of (a) Borrower's Intellectual Property and (b) license or sublicense agreements or other agreements with respect to rights in Intellectual Property, in each case that are material to the condition (financial or other), business or operations of Borrower, as reasonably determined by Agent.

"**Maturity Date**" means May 1, 2023.

"**Maximum Lawful Rate**" has the meaning set forth in Section 2.7.

"**MCF**" means MidCap Financial Trust, a Delaware statutory trust, and its successors and assigns.

"**Medicaid**" means, collectively, the healthcare assistance program established by Title XIX of the Social Security Act (42 U.S.C. §§ 1396 *et seq*.) and any statutes succeeding thereto, all state statutes and plans for medical assistance enacted in connection with such program, and all laws, rules, regulations, manuals, orders, guidelines or requirements (whether or not having the force of Law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"**Medicare**" means, collectively, the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. §§ 1395 *et seq*.) and any statutes succeeding thereto, and all laws, rules, regulations, manuals, orders or guidelines (whether or not having the force of Law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"**Monthly Cash Burn Amount**" means, with respect to Credit Parties, an amount equal to Credit Parties' change in cash and Cash Equivalents, without giving effect to any increase resulting from contributions or proceeds of financings, for either (a) the immediately preceding six (6) month period as determined as of the last day of the month immediately preceding the proposed consummation of any applicable Permitted Acquisition and based upon the financial statements delivered to Agent in accordance with this Agreement for such period or (b) the immediately succeeding six (6) month period based upon the Transaction Projections, using whichever calculation as between clause (a) and clause (b) demonstrates a higher burn rate (or, in other words, more cash used), in either case, divided by six (6).

"**Multiemployer Pension Plan**" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any Credit Party or any Subsidiary has any liability, including on account of any member of the Controlled Group.

"**Net Revenue**" means, for any period, (a) the consolidated gross revenues of Borrowers and their Subsidiaries generated solely through the commercial sale of Products by Borrowers and their Subsidiaries during such period, less, without duplication, (b)(i) trade, quantity and cash discounts allowed by Borrowers, (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 in the Ordinary Course of Business.

"**Notes**" has the meaning set forth in Section 2.3.

"**Notice of Borrowing**" means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

"**Obligations**" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

"**OFAC**" means the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Operative Documents**" means the Financing Documents and Subordinated Debt Documents.

"**Ordinary Course of Business**" means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party, as conducted by such Credit Party in accordance with past practices.

"**Organizational Documents**" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating agreement, joint venture agreement, limited liability company agreement or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other Equity Interests of such Person.

"**Other Connection Taxes**" means taxes imposed as a result of a present or former connection between Agent or any Lender and the jurisdiction imposing such tax (other than connections arising from Agent or such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loans or any Financing Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Financing Document, except any such taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.8(i)).

"**Participant Register**" has the meaning set forth in Section 11.17(a)(iii).

"**Payment Account**" means the account specified on the signature pages hereof into which all payments by or on behalf of each Borrower to Agent under the Financing Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

"**Payment Notification**" means a written notification substantially in the form of Exhibit C hereto.

"**PBGC**" means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

"**Pension Plan**" means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA, which for the avoidance of doubt shall not include a Multiemployer Pension Plan.

"**Permit**" means all licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, supplier numbers, marketing authorizations, drug or device authorizations and approvals, other authorizations, franchises, qualifications, accreditations, registrations, permits, consents and approvals of a Credit Party issued or required under Laws applicable to the business of Borrowers or any of their Subsidiaries or necessary in the testing, development, manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Laws applicable to the business of Borrower or any of its Subsidiaries. Without limiting the generality of the foregoing, "**Permit**" includes any Regulatory Required Permit.

"Permitted Acquisition" means any Acquisition by a Borrower, in each case, to the extent that each of the following conditions shall have been satisfied:

(a) the Borrower Representative shall have delivered to Agent at least ten (10) Business Days (or such shorter period as may be agreed by Agent) prior to the closing of the proposed Acquisition: (i) a description of the proposed Acquisition; and (ii) copies of the current versions of the respective agreements, documents or instruments pursuant to which such Acquisition is to be consummated (and as soon as available, final drafts thereof), any schedules to such agreements, documents or instruments and all other material ancillary agreements, instruments and documents to be executed or delivered in connection therewith;

(b) the Credit Parties (including any new Subsidiary to the extent required by Section 4.11) shall execute and deliver the agreements, instruments and other documents to the extent required by the terms of this Agreement, including, without limitation, Section 4.11 hereof, including such agreements, instruments and other documents necessary to ensure that Agent receives a first priority perfected Lien in all entities and assets acquired in connection with the proposed Acquisition to the extent required by this Agreement;

(c) if the Acquisition is an equity purchase, the target and its Subsidiaries must have as its jurisdiction of formation a state within the United States and if the Acquisition is an asset purchase or a merger, not less than 85% of the fair market value of all of the assets so acquired shall be located within the United States (or, in the case of any Intellectual Property so acquired, registered or otherwise located in the United States);

(d) at the time of such Acquisition and after giving effect thereto, no Default or Event of Default has occurred and is continuing;

(e) the assets acquired in such Acquisition are for use in the same lines of business as the Credit Parties are currently engaged or a line of business reasonably related thereto;

(f) such Acquisition shall not be hostile and, if applicable, shall have been approved by the board of directors (or other similar body) and/or the stockholders or other equity holders of any Person being acquired in such Acquisition;

(g) all transactions in connection with such Acquisition shall be consummated in accordance with applicable Law;

(h) no Debt or Liens are assumed or created (other than Permitted Liens and Permitted Debt) in connection with such Acquisition;

(i) Agent shall have received a certificate of a Responsible Officer of the Borrower Representative demonstrating, on a pro forma basis after giving effect to the consummation of such Acquisition, that Credit Parties are in compliance with the financial covenants set forth in Article 6 hereof;

(j) the sum of all cash amounts paid or payable in connection with all Permitted Acquisitions (including all Debt, liabilities and Contingent Obligations (in each case to the extent otherwise permitted hereunder) incurred or assumed and the maximum amount of any earn-out or comparable payment obligation in connection therewith, regardless of when due or payable and whether or not reflected on a consolidated balance sheet of Borrowers) shall not exceed $10,000,000 in the aggregate for any calendar year or $50,000,000 in the aggregate during the term of this Agreement; *provided* that the foregoing shall not prohibit or limit any Equity Interests of TherapeuticsMD (other than Disqualified Stock) issued by a Borrower as consideration; and

(k) Agent has received, prior to the consummation of such proposed Acquisition, updated financial projections, in form and substance reasonably satisfactory to Agent, for the immediately succeeding twelve (12) months following the proposed consummation of the Acquisition beginning with the month during which the Acquisition is to be consummated (the "**Transaction Projections**") and such other evidence as Agent may reasonably request demonstrating that Credit Parties have, immediately before and immediately after giving effect to the consummation of such Acquisition, an aggregate amount of Borrower Unrestricted Cash equal to or greater than the sum of the (i) positive value of the product of (x) twelve (12) *multiplied by* (y) the Monthly Cash Burn Amount, as determined as of the last day of the month immediately preceding such Acquisition and (ii) $50,000,000.

"**Permitted Asset Dispositions**" means the following Asset Dispositions:

(a) dispositions of Inventory in the Ordinary Course of Business and not pursuant to any bulk sale;

(b) dispositions of furniture, fixtures and equipment in the Ordinary Course of Business that is obsolete, worn out, damaged, replaced, is no longer used or useful, unmerchantable or unsaleable, in each case, in the Ordinary Course of Business;

(c) so long as no Default or Event of Default exists or would result from such Asset Disposition (i) Asset Dispositions among the Borrowers, and (ii) Asset Dispositions among Excluded Foreign Subsidiaries;

(d) Permitted Licenses; *provided* that at the time such Permitted License is entered into, no Default or Event of Default exists or would result from such Asset Disposition;

(e) the abandonment in the Ordinary Course of Business of Intellectual Property (other than Material Intangible Assets) that is no longer used or useful to Borrowers or their Subsidiaries;

(f) sales, forgiveness or discounting, on a non-recourse basis and in the Ordinary Course of Business, of past due Accounts in connection with the collection or compromise thereof or the settlement of delinquent Accounts or in connection with the bankruptcy or reorganization of suppliers or customers in accordance with the applicable terms of this Agreement; and

(g) other dispositions approved by Agent from time to time in its sole discretion.

"**Permitted Contest**" means a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made; provided that compliance with the obligation that is the subject of such contest is effectively stayed during such challenge.

"**Permitted Contingent Obligations**" means

(a) Contingent Obligations arising in respect of the Debt under the Financing Documents;

(b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business;

(c) Contingent Obligations outstanding on the date of this Agreement and set forth on Schedule 5.1 including extension and renewals thereof which (i) do not increase the amount of such Contingent Obligations (other than an interest rate increase to then prevailing market levels), (ii) do not impose materially more restrictive or adverse terms on the Credit Parties as compared to the terms of the Contingent Obligations being renewed or extended, (iii) are not secured by any assets other than the assets securing the Contingent Obligations being extended or renewed, or (iv) do not have obligors who are different from the obligors of the Contingent Obligations being extended or renewed;

(d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed $1,000,000 in the aggregate at any time outstanding;

(e) Contingent Obligations arising under indemnification obligations contained in commercial agreements entered in the ordinary course of business, including those with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies;

(f) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Section 5.6;

(g) Contingent Obligations arising with respect to customary indemnification obligations, adjustment of purchase price, or similar obligations of any Credit Party, to the extent such Contingent Obligations arise in connection with a Permitted Acquisition;

(h) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any Swap Contract, *provided*, *however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation; and

(i) other Contingent Obligations not to exceed $500,000 in the aggregate at any time outstanding.

"**Permitted Debt**" means:

(a) Borrowers' and its Subsidiaries' Debt to Agent and each Lender under this Agreement and the other Financing Documents;

(b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business;

(c) purchase money Debt or Capital Lease obligations not to exceed $1,000,000 in the aggregate at any time (whether in the form of a loan or a lease) used solely to acquire equipment used in the Ordinary Course of Business and secured only by such equipment and accessions thereto and proceeds thereof;

(d) Debt existing on the date of this Agreement and described on Schedule 5.1 and any refinancing, extensions or renewals thereof, provided that the refinanced, extended, or renewed Debt shall not (i) have an aggregate outstanding principal amount in excess of the aggregate principal amount of the Debt being refinanced, extended or renewed, and any accrued interest, reasonable fees and reasonable out-of-pocket costs related thereto, (ii) impose materially more restrictive or adverse terms on any Credit Party or any Subsidiary as compared to the terms of the Debt being refinanced, extended or renewed (other than an interest rate increase to then prevailing market levels), (iii) be secured by any assets other than the assets securing the Debt being refinanced, extended or renewed, or (iv) have additional obligors from the obligors of the Debt being refinanced, extended or renewed;

(e) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Debt existing or arising under any Swap Contract, *provided*, *however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(f) Debt in the form of insurance premiums not to exceed $1,000,000 in the aggregate at any time outstanding owed to any Person providing property, casualty, liability, or other insurance to Borrowers, financed through the applicable insurance company so long as the amount of such Debt 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 policy year in which such Debt is incurred and such Debt is outstanding only during such policy year;

(g) Subordinated Debt;

(h) unsecured Debt in respect of (i) credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services, in each case, incurred in the Ordinary Course of Business and to the extent such Debt is unsecured and does not exceed $2,500,000 in the aggregate at any time outstanding, and (ii) netting services or overdraft protections and similar arrangements in connection with Deposit Accounts, in each case solely to the extent incurred in the Ordinary Course of Business;

(i) Debt in respect of performance, surety or appeal bonds, workers' compensation claims, self-insurance obligations and bankers acceptances issued for the account of any Credit Party or any Subsidiary, in each case, provided in the Ordinary Course of Business, and not to exceed $1,000,000 in the aggregate at any time outstanding, but excluding (in each case) Debt incurred through the borrowing of money;

(j) without duplication, any Debt of any Borrower or any Subsidiary that constitutes a Permitted Contingent Obligation;

(k) Debt consisting of unsecured intercompany loans and advances incurred by (i) any Borrower or Guarantor owing to any other Borrower or Guarantor, (ii) any Excluded Foreign Subsidiary owing to any other Excluded Foreign Subsidiary, (iii) any Borrower or Guarantor owing to any Excluded Foreign Subsidiary, or (iv) any Excluded Foreign Subsidiary owing to any Borrower or any Guarantor so long as such Debt constitutes a Permitted Investment of the applicable Credit Party pursuant to clause (l) of the definition of Permitted Investments; *provided*, *however*, that upon the request of Agent at any time, any such Debt shall be evidenced by promissory notes having terms reasonably satisfactory to Agent, the sole originally executed counterparts of which shall be pledged and delivered to Agent, for the benefit of Agent and Lenders, as security for the Obligations; and

(l) unsecured Debt not to exceed $1,000,000 in the aggregate at any time outstanding.

"**Permitted Distributions**" means the following Distributions: (a) dividends by any Borrower or Subsidiary of any Borrower or Guarantor to any Borrower or Guarantor; (b) dividends payable solely in common stock; and (c) repurchases of stock of former employees, directors or consultants pursuant to stock purchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, *provided*, *however*, that such repurchase does not exceed $500,000 in the aggregate per fiscal year.

"**Permitted Investments**" means:

(a) Investments shown on Schedule 5.7 and existing on the Closing Date;

(b) Investments in cash and Cash Equivalents;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(d) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrowers or their Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrowers' Board of Directors (or other governing body), but the aggregate of all such loans outstanding may not exceed $1,000,000 at any time;

(e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business;

(f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided, however*, that this subpart (f) shall not apply to Investments of Borrowers in any Subsidiary;

(g) Deposit Accounts established in accordance with Section 5.14 and Investments in negotiable instruments deposited or to be deposited for collection in the Ordinary Course of Business;

(h) Investments by any Borrower in any Subsidiary now owned or hereafter created by such Borrower, which Subsidiary is a Borrower or has provided a Guarantee of the Obligations of the Borrowers which Guarantee is secured by a Lien granted by such Subsidiary to Agent in all or substantially all of its property of the type described in Schedule 9.1 hereto and otherwise made in compliance with Section 4.11(d);

(i) deposits required to be made to a landlord in the Ordinary Course of Business to secure or support obligations of any Credit Party or any Subsidiary under a lease of real property;

(j) accounts receivable created, acquired or made and trade credit extended in the Ordinary Course of Business and payable in accordance with customary trade terms;

(k) Investments constituting Permitted Acquisitions;

(l) Investments of cash and Cash Equivalents in an Excluded Foreign Subsidiary but solely to the extent that the aggregate amount of such Investments with respect to all Excluded Foreign Subsidiaries does not, at any time, exceed $250,000 in the aggregate in any twelve (12) month period; *provided* that in no event shall the aggregate amount of Investments made in any Excluded Foreign Subsidiary exceed the amount necessary to fund the current operating expenses of such Excluded Foreign Subsidiary (taking into account their revenue from other sources);

(m) Investments by any Excluded Foreign Subsidiary in a Credit Party or any other Excluded Foreign Subsidiary; and

(n) so long as no Event of Default exists at the time of such Investment or after giving effect to such Investment, other Investments of cash and Cash Equivalents in an amount not exceeding $1,000,000 in the aggregate.

"**Permitted License**" means (a) any non-exclusive license of patent rights of Borrower or its Subsidiaries so long as all such Permitted Licenses are granted to third parties in the Ordinary Course of Business, do not result in a legal transfer of title to the licensed property, and have been granted in exchange for fair consideration, and (b) any exclusive license of patent rights of Borrower or its Subsidiaries so long as such Permitted Licenses are granted to third parties in the Ordinary Course of Business, do not result in a legal transfer of title to the licensed property, are exclusive solely as to discrete geographical areas outside of the United States, and have been granted in exchange for fair consideration.

"**Permitted Liens**" means:

(a) deposits or pledges of cash to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA or, with respect to any Pension Plan or Multiemployer Pension Plan, the Code) pertaining to a Borrower's or its Subsidiary's employees, if any;

(b) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business;

(c) carrier's, warehousemen's, mechanic's, workmen's, materialmen's or other like Liens on Collateral, other than any Material Intangible Assets, arising in the Ordinary Course of Business with respect to obligations which are not overdue, or which are being contested pursuant to a Permitted Contest;

(d) Liens for taxes, assessments or other governmental charges not at the time delinquent or the subject of a Permitted Contest;

(e) attachments, appeal bonds, judgments and other similar Liens arising in connection with court proceedings not constituting an Event of Default under Section 10.1(h); *provided*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest;

(f) with respect to real estate, easements, rights of way, restrictions, minor defects or irregularities of title, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Security Documents, materially affect the value or marketability of the Collateral, impair the use or operation of the Collateral for the use currently being made thereof or impair Borrowers' ability to pay the Obligations in a timely manner or impair the use of the Collateral or the ordinary conduct of the business of the Borrowers taken as a whole or any Subsidiary and which, in the case of any real estate that is part of the Collateral, are set forth as exceptions to or subordinate matters in the title insurance policy accepted by Agent insuring the lien of the Security Documents;

(g) Liens and encumbrances in favor of Agent under the Financing Documents;

(h) Liens existing on the date hereof and set forth on Schedule 5.2 and any renewals or extensions of such Liens; *provided* that (i) the Debt secured by such Liens is permitted under clause (d) of the definition Permitted Debt and (ii) any such renewal or extension does not encumber any additional assets or properties of any Credit Party;

(i) any Lien on any equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, *provided*, *however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof;

(j) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases or consignments of personal property entered into the Ordinary Course of Business;

(k) 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 clause (f) of the definition of Permitted Debt;

(l) Liens that are rights of set-off, bankers' liens or similar non-consensual Liens relating to deposit or securities accounts in favor of banks, other depositary institutions and securities intermediaries arising in the Ordinary Course of Business;

(m) 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 in the Ordinary Course of Business;

(n) To the extent constituting a Lien, the granting of a Permitted License; and

(o) Liens solely on any cash earnest money deposits made by a Borrower or Subsidiary thereof in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition or other Investment expressly permitted under this Agreement.

"**Permitted Modifications**" means (a) such amendments or other modifications to a Borrower's or Subsidiary's Organizational Documents as are required under this Agreement or by applicable Law and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective, and (b) such amendments or modifications to a Borrower's or Subsidiary's Organizational Documents (other than those involving a change in the name of a Borrower or Subsidiary or involving a reorganization of a Borrower or Subsidiary under the laws of a different jurisdiction) that would not adversely affect the rights and interests of Agent or Lenders and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective.

"**Person**" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"**Prepayment Fee**" has the meaning set forth in Section 2.2.

"**Products**" means, from time to time, any products currently manufactured, marketed, promoted, sold, distributed, developed or being developed, or tested or being tested by or on behalf of any Borrower or any of its Subsidiaries, including without limitation, those products set forth on Schedule 4.15 (as updated from time to time in accordance with the terms of this Agreement); provided, that, for the avoidance of doubt, any new Product not disclosed on Schedule 4.15 shall still constitute a "Product" as herein defined.

"**Pro Rata Share**" means (a) with respect to a Lender's obligation to make advances in respect of a Term Loan and such Lender's right to receive payments of principal and interest with respect to the Term Loans, the Term Loan Commitment Percentage of such Lender in respect of such Term Loan, and (b) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by *dividing* (i) the Term Loan Commitment Amount of such Lender (or, in the event the Term Loan Commitment shall have been terminated, such Lender's then outstanding principal advances of such Lender under the Term Loan), *by* (ii) the sum of the Term Loan Commitment (or, in the event the Term Loan Commitment shall have been terminated, the then outstanding principal advances of such Lenders under the Term Loan) of all Lenders.

"**Recall**" means a Person's Removal or Correction of a marketed product that the FDA considers to be in violation of the FDCA and other Laws it administers and against which the FDA would initiate legal action.

"**Registered Intellectual Property**" means any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing.

"**Regulatory Reporting Event**" has the meaning set forth in Section 4.1(i).

"**Regulatory Required Permit**" means any and all Permits issued by the FDA, DEA or any other applicable Governmental Authority, including without limitation approved Drug Applications, necessary for the development, testing, manufacture, import, export, possession, ownership, holding, marketing, promotion, sale, labeling, or distribution, as applicable, of any Product by or on behalf of any applicable Borrower(s) and its Subsidiaries as such activities are being conducted with respect to such Product at such time, including but not limited to any drug listings and drug establishment registrations under 21 U.S.C. Section 360, registrations issued by DEA under 21 U.S.C. Section 823 (if applicable to any Product), and those issued by state Governmental Authorities for the conduct of Borrower's or any Subsidiary's business.

"**Removal**" means the physical removal of a product from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

"**Required Lenders**" means, at any time, Lenders holding unfunded Term Loan Commitments (which have not been terminated or expired) and outstanding Term Loans representing more than fifty one percent (51%) of the sum of the total unfunded Term Loan Commitments (which have not been terminated or expired) and outstanding Term Loans as of such date.

"**Responsible Officer**" means any of the Chief Executive Officer, Chief Financial Officer or any other officer of the applicable Borrower acceptable to Agent.

"**SEC**" means the United States Securities and Exchange Commission.

"**Securities Account**" means a "securities account" (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Borrower.

"**Securities Account Control Agreement**" means an agreement, in form and substance reasonably satisfactory to Agent, among Agent, any applicable Borrower and each securities intermediary in which such Borrower maintains a Securities Account pursuant to which Agent shall obtain "control" (as defined in Article 9 of the UCC) over such Securities Account.

"**Security Document**" means this Agreement and any other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Solvent**" means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its debts and liabilities (including subordinated and Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

"**Stated Rate**" has the meaning set forth in Section 2.7.

"**Subordinated Debt**" means any Debt of Borrowers incurred pursuant to the terms of the Subordinated Debt Documents and with the prior written consent of Agent, all of which documents must be in form and substance reasonably acceptable to Agent. As of the Closing Date, there is no Subordinated Debt.

"**Subordinated Debt Documents**" means any documents evidencing and/or securing Debt governed by a Subordination Agreement, all of which documents must be in form and substance reasonably acceptable to Agent. As of the Closing Date, there are no Subordinated Debt Documents.

"**Subordination Agreement**" means any agreement between Agent and another creditor of Borrowers, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Debt owing from any Borrower(s) and/or the Liens securing such Debt granted by any Borrower(s) to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its sole discretion.

"**Subsidiary**" means, with respect to any Person, (a) any corporation (or any foreign equivalent thereof) of which an aggregate of more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, capital stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such capital stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company (or any foreign equivalent thereof) in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Borrower.

"**Swap Contract**" means any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by Borrower to provide protection against fluctuations in interest or currency exchange rates, but only if Agent provides its prior written consent to the entry into such "swap agreement".

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

"**Termination Date**" means the earlier to occur of (a) the Maturity Date, (b) any date on which Agent accelerates the maturity of the Loans pursuant to Section 10.2, (c) if the Term Loan Tranche 1 Funding Date has not occurred by the Term Loan Tranche 1 Commitment Termination Date, the Term Loan Tranche 1 Commitment Termination Date or (d) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.11.

"**Term Loan**" means, collectively, Term Loan Tranche 1, Term Loan Tranche 2 and Term Loan Tranche 3.

"**Term Loan Commitment Amount**" means, with respect to each Lender, the sum of such Lender's Term Loan Tranche 1 Commitment Amount, Term Loan Tranche 2 Commitment Amount and Term Loan Tranche 3 Commitment Amount.

"**Term Loan Commitment Percentage**" means, as to any Lender with respect to each of such Lender's Term Loan Commitments, (a) on the Closing Date with respect to each tranche of the Term Loan, the applicable percentage set forth opposite such Lender's name on the Commitment Annex under the column "Term Loan Tranche 1 Commitment Percentage," "Term Loan Tranche 2 Commitment Percentage," and "Term Loan Tranche 3 Commitment Percentage", (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, as applicable to each tranche of Term Loan, the percentage equal to (i) the Term Loan Tranche 1 Commitment of such Lender on such date *divided by* the aggregate Term Loan Tranche 1 Commitments on such date, (ii) the Term Loan Tranche 2 Commitment of such Lender on such date *divided by* the aggregate Term Loan Tranche 2 Commitments on such date or (iii) the Term Loan Tranche 3 Commitment of such Lender on such date *divided by* the aggregate Term Loan Tranche 3 Commitments on such date.

"**Term Loan Commitments**" means the Term Loan Tranche 1 Commitments, Term Loan Tranche 2 Commitments and the Term Loan Tranche 3 Commitments. For the avoidance of doubt, the aggregate Term Loan Commitments of all Lenders on the Closing Date shall be $200,000,000.

"**Term Loan Tranche 1**" has the meaning set forth in Section 2.1(a)(i)(A)

"**Term Loan Tranche 1 Activation Date**" means the date, if any, prior to July 31, 2018, on which the Agent receives documentation and information evidencing, to Agent's reasonable satisfaction, that the FDA has approved Borrowers' Drug Application for the testing, manufacturing, marketing and commercial sale in the United States of TX-004HR, in both 4 microgram and 10 microgram doses, for the treatment of moderate to severe dyspareunia, a symptom of vulvar and vaginal atrophy, due to menopause.

"**Term Loan Tranche 1 Commitment Amount**" means, with respect to each Lender, the amount set forth opposite such Lender's name on Annex A hereto under the caption "Term Loan Tranche 1 Commitment Amount", as amended from time to time to reflect any permitted and effective assignments and as such amount may be reduced or terminated pursuant to this Agreement.

"**Term Loan Tranche 1 Commitment Termination Date**" means the earlier of (a) the date that is fifteen (15) Business Days following the Term Loan Tranche 1 Activation Date and (b) July 31, 2018.

"**Term Loan Tranche 1 Commitments**" means the sum of each Lender's Term Loan Tranche 1 Commitment Amount. For the avoidance of doubt, the aggregate Term Loan Tranche 1 Commitments of all Lenders on the Closing Date shall be $75,000,000.

"**Term Loan Tranche 1 Funding Date**" has the meaning set forth in Section 2.1(a)(i)(A).

"**Term Loan Tranche 2**" has the meaning set forth in Section 2.1(a)(i)(B).

"**Term Loan Tranche 2 Activation Date**" means the date, if any, after the Term Loan Tranche 1 Funding Date and prior to the Term Loan Tranche 2 Commitment Termination Date, on which the Agent receives documentation and information evidencing, to Agent's reasonable satisfaction, both that (a) the FDA has approved Borrowers' Drug Application for the testing, manufacturing, marketing and commercial sale in the United States of TX-001HR for the treatment of moderate to severe vasomotor symptoms associated with menopause in women with a uterus, and (b) Borrower has, in the ordinary course of business, consummated its first commercial sale in the United States of TX-001HR for the treatment of moderate to severe vasomotor symptoms associated with menopause in women with a uterus (the "**TX-001HR First Commercial Sale**").

"**Term Loan Tranche 2 Commitment Amount**" means, with respect to each Lender, the amount set forth opposite such Lender's name on Annex A hereto under the caption "Term Loan Tranche 2 Commitment Amount", as amended from time to time to reflect any permitted and effective assignments and as such amount may be reduced or terminated pursuant to this Agreement.

"**Term Loan Tranche 2 Commitment Termination Date**" means (a) if the Term Loan Tranche 1 Funding Date has not occurred by the Term Loan Tranche 1 Commitment Termination Date, the Term Loan Tranche 1 Commitment Termination Date or (b) otherwise, May 31, 2019.

"**Term Loan Tranche 2 Commitments**" means the sum of each Lender's Term Loan Tranche 2 Commitment Amount. For the avoidance of doubt, the aggregate Term Loan Tranche 2 Commitments of all Lenders on the Closing Date shall be $75,000,000.

"**Term Loan Tranche 2 Funding Date**" has the meaning set forth in Section 2.1(a)(i)(B).

"**Term Loan Tranche 3**" has the meaning set forth in Section 2.1(a)(i)(C).

"**Term Loan Tranche 3 Activation Date**" means the date, if any, following the Term Loan Tranche 2 Funding Date but prior to the Term Loan Tranche 3 Commitment Termination Date on which Agent receives a Compliance Certificate and such other documentation and information as Agent may reasonably request evidencing, to Agent's reasonable satisfaction, that Borrowers' consolidated Net Revenue attributable solely to the commercial sale of TX-001HR and TX-004HR for the twelve (12) month period ending on the last day of the month immediately preceding such proposed Term Loan Tranche 3 Funding Date is greater than or equal to $75,000,000.

"**Term Loan Tranche 3 Commitment Amount**" means, with respect to each Lender, the amount set forth opposite such Lender's name on Annex A hereto under the caption "Term Loan Tranche 3 Commitment Amount", as amended from time to time to reflect any permitted and effective assignments and as such amount may be reduced or terminated pursuant to this Agreement.

"**Term Loan Tranche 3 Commitment Termination Date**" means the earliest to occur of the following: (a) if the Term Loan Tranche 1 Funding Date has not occurred by the Term Loan Tranche 1 Commitment Termination Date, the Term Loan Tranche 1 Commitment Termination Date; (b) if the Term Loan Tranche 2 Funding Date has not occurred by the Term Loan Tranche 2 Commitment Termination Date, the Term Loan Tranche 2 Commitment Termination Date; and (c) otherwise, December 31, 2019.

"**Term Loan Tranche 3 Commitments**" means the sum of each Lender's Term Loan Tranche 3 Commitment Amount. For the avoidance of doubt, the aggregate Term Loan Tranche 3 Commitments of all Lenders on the Closing Date shall be $50,000,000.

"**Term Loan Tranche 3 Funding Date**" has the meaning set forth in Section 2.1(a)(i)(C).

"**TRICARE**" means the program administered pursuant to 10 U.S.C. §§ 1071 *et seq*., Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes.

"**UCC**" means the Uniform Commercial Code of the State of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"**United States**" means the United States of America.

"**U.S. Tax Compliance Certificate**" has the meaning set forth in Section 2.8(c)(i).

"**Withholding Agent**" means any Borrower or Agent.

"**Write-Down and Conversion Powers"** means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided*, *however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value", as defined therein.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to "Articles", "Sections", "Annexes", "Exhibits", or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable.

Section 1.4 Settlement and Funding Mechanics. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds.

Section 1.5 Time is of the Essence. Time is of the essence in Borrower's and each other Credit Party's performance under this Agreement and all other Financing Documents.

Section 1.6 Time of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight savings or standard, as applicable).

ARTICLE 2 - LOANS

Section 2.1 Loans.

(a) Term Loans.

(i) Term Loan Amounts.

(A) On the terms and subject to the conditions set forth herein and in the other Financing Documents, each Lender with a Term Loan Tranche 1 Commitment severally hereby agrees to make to Borrowers a term loan on a Business Day occurring on or after the Term Loan Tranche 1 Activation Date (the "**Term Loan Tranche 1 Funding Date**") in an original aggregate principal amount equal to the Term Loan Tranche 1 Commitment (the "**Term Loan Tranche 1**"). Each such Lender's obligation to fund the Term Loan Tranche 1 shall be limited to such Lender's Term Loan Tranche 1 Commitment Percentage, and no Lender shall have any obligation to fund any portion of any Term Loan required to be funded by any other Lender, but not so funded. Unless previously terminated, upon the Term Loan Tranche 1 Commitment Termination Date, the Term Loan Tranche 1 Commitment shall thereupon automatically be terminated and the Term Loan Tranche 1 Commitment Amount of each Lender as of such date shall be reduced by such Lender's Pro Rata Share of such total reduction in the Term Loan Commitments.

(B) On the terms and subject to the conditions set forth herein and in the other Financing Documents, each Lender with a Term Loan Tranche 2 Commitment severally hereby agrees to make to Borrowers a term loan on a Business Day occurring on or after the Term Loan Tranche 2 Activation Date and prior to the Term Loan Tranche 2 Commitment Termination Date (the "**Term Loan Tranche 2 Funding Date**") in an original aggregate principal amount equal to (but not less than) the Term Loan Tranche 2 Commitment (the "**Term Loan Tranche 2**"). Each such Lender's obligation to fund the Term Loan Tranche 2 shall be limited to such Lender's Term Loan Tranche 2 Commitment Percentage, and no Lender shall have any obligation to fund any portion of any Term Loan required to be funded by any other Lender, but not so funded. Unless previously terminated, upon the Term Loan Tranche 2 Commitment Termination Date, the Term Loan Tranche 2 Commitment shall thereupon automatically be terminated and the Term Loan Tranche 2 Commitment Amount of each Lender as of such date shall be reduced by such Lender's Pro Rata Share of such total reduction in the Term Loan Commitments.

(C) On the terms and subject to the conditions set forth herein and in the other Financing Documents, each Lender with a Term Loan Tranche 3 Commitment severally hereby agrees to make to Borrowers a term loan on a Business Day occurring on or after the Term Loan Tranche 3 Activation Date and prior to the Term Loan Tranche 3 Commitment Termination Date (the "**Term Loan Tranche 3 Funding Date**") in an original aggregate principal amount equal to the Term Loan Tranche 3 Commitment (the "**Term Loan Tranche 3**"). Each such Lender's obligation to fund the Term Loan Tranche 3 shall be limited to such Lender's Term Loan Tranche 3 Commitment Percentage, and no Lender shall have any obligation to fund any portion of any Term Loan required to be funded by any other Lender, but not so funded. Unless previously terminated, upon the Term Loan Tranche 3 Commitment Termination Date, the Term Loan Tranche 3 Commitment shall thereupon automatically be terminated and the Term Loan Tranche 3 Commitment Amount of each Lender as of such date shall be reduced by such Lender's Pro Rata Share of such total reduction in the Term Loan Commitments.

(ii) No Borrower shall have any right to reborrow any portion of the Term Loan that is repaid or prepaid from time to time. Each of the Term Loan Tranche 1, Term Loan Tranche 2 and the Term Loan Tranche 3 may be funded in one advance in an aggregate amount not to exceed the Term Loan Tranche 1 Commitment Amount, Term Loan Tranche 2 Commitment Amount and the Term Loan Tranche 3 Commitment Amount, as applicable. Borrowers shall deliver to Agent a Notice of Borrowing with respect to each proposed Term Loan advance, such Notice of Borrowing to be delivered, (i) in the case of a Term Loan Tranche 1 borrowing, no later than 12:00 P.M. (Eastern time) five (5) Business Day (or such shorter period as may be agreed by Agent and the Lenders) prior to such proposed borrowing or (ii) in the case of a Term Loan Tranche 2 or Term Loan Tranche 3 borrowing, no later than noon (Eastern time) ten (10) Business Days (or such shorter period as may be agreed by Agent and the Lenders) prior to such proposed borrowing.

(iii) Scheduled Repayments; Mandatory Prepayments; Optional Prepayments.

(A) There shall become due and payable, and Borrowers shall repay the Term Loan through, scheduled payments as set forth on Schedule 2.1 attached hereto. Notwithstanding the payment schedule set forth above, the outstanding principal amount of the Term Loan shall become immediately due and payable in full on the Termination Date.

(B) There shall become due and payable and Borrowers shall prepay the Term Loan in the following amounts and at the following times:

(i) Unless Agent shall otherwise consent in writing, on the date on which any Credit Party (or Agent as loss payee or assignee) receives any casualty proceeds in excess of $500,000 with respect to assets upon which Agent maintained a Lien, an amount equal to one hundred percent (100%) of such proceeds (net of out-of-pocket expenses and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering the property that suffered such casualty), or such lesser portion of such proceeds as Agent shall elect to apply to the Obligations;

(ii) an amount equal to any interest that is deemed to be in excess of the Maximum Lawful Rate (as defined below) and is required to be applied to the reduction of the principal balance of the Loans by any Lender as provided for in Section 2.7; and

(iii) unless Agent shall otherwise consent in writing, upon receipt by any Credit Party of the proceeds of any Asset Disposition (excluding Permitted Asset Dispositions), an amount equal to one hundred percent (100%) of the net cash proceeds of such asset disposition (net of out-of-pocket expenses and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering such asset), or such lesser portion as Agent shall elect to apply to the Obligations; *provided*, that no prepayment shall be required pursuant to this Section 2.1(a)(iii)(B) subpart (iii) unless and until the aggregate net cash proceeds received during any Fiscal Year from Asset Dispositions exceeds $500,000 (in which case all net cash proceeds in excess of such amount shall be used to make prepayments pursuant to this Section 2.1(a)(iii)(B) subpart (iii)).

Notwithstanding the foregoing and so long as no Event of Default or Default then exists: (1) any such casualty proceeds in excess of $500,000 and less than $2,500,000 (other than with respect to Inventory as to which there shall be no limit on the use of such proceeds pursuant to this Section) may be used by Borrowers within one (1) year from the receipt of such proceeds to replace or repair any assets in respect of which such proceeds were paid so long as such proceeds are deposited into a Deposit Account that is subject to a Deposit Account Control Agreement promptly upon receipt by such Borrower; and (2) proceeds of personal property asset dispositions that are not made in the Ordinary Course of Business (other than Collateral consisting of Intellectual Property, unless Agent shall otherwise elect) may be used by Borrowers within one (1) year from the receipt of such proceeds to purchase new or replacement assets of comparable value, provided, however, that such proceeds are deposited into a Deposit Account that is subject to a Deposit Account Control Agreement promptly upon receipt by such Borrower. All sums held by Agent pending reinvestment as described in subsections (1) and (2) above shall be deemed additional collateral for the Obligations and may be commingled with the general funds of Agent.

(C) Borrowers may from time to time, with at least ten (10) Business Days' prior delivery to Agent of an appropriately completed Payment Notification, prepay the Term Loan in whole or in part; *provided, however*, that each such prepayment shall be in an amount equal to the lesser of (x) $5,000,000 (or a higher integral multiple of $1,000,000) and (y) the aggregate outstanding Obligations hereunder; and *provided, further*, that each such prepayment shall be accompanied by any prepayment fees and other applicable fees and amounts required hereunder or any Fee Letter or other Financing Document.

(iv) All Prepayments. Except as this Agreement may specifically provide otherwise, all prepayments of the Term Loan shall be applied by Agent to the Obligations in inverse order of maturity. The monthly payments required under Schedule 2.1 shall continue in the same amount (for so long as the Term Loan and/or (if applicable) any advance thereunder shall remain outstanding) notwithstanding any partial prepayment, whether mandatory or optional, of the Term Loan. Notwithstanding anything to the contrary contained in the foregoing, in the event that there have been multiple advances under the Term Loan each of which such advances has a separate amortization schedule of principal payments under Schedule 2.1 attached hereto, each prepayment of the Term Loan shall be applied by Agent to reduce and prepay the principal balance of the earliest-made advance then outstanding in the inverse order of maturity of the scheduled payments with respect to such advance until such earliest-made advance is paid in full (and to the extent the total amount of any such partial prepayment shall exceed the outstanding principal balance of such earliest-made advance, the remainder of such prepayment shall be applied successively to the remaining advances under the Term Loan in the direct order of the respective advance dates in the manner provided for in this sentence).

(v) LIBOR Rate.

(A) Except as provided in subsection (C) below, the Term Loan shall accrue interest at the LIBOR Rate *plus* the Applicable Margin.

(B) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of such Lender funding loans bearing interest based upon the LIBOR Rate; *provided*, *however,* that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (II) repay the Loans of such Lender bearing interest based upon the LIBOR Rate with respect to which such adjustment is made.

(C) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to maintain Loans bearing interest based upon the LIBOR Rate or to continue such maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender, (I) in the case of the Pro Rata Share of the Term Loan held by such Lender and then outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such portion of the Term Loan, and interest upon such portion thereafter shall accrue interest at the Base Rate *plus* the Applicable Margin, and (II) such portion of the Term Loan shall continue to accrue interest at the Base Rate *plus* the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Term Loan at the LIBOR Rate.

(D) Anything to the contrary contained herein notwithstanding, neither Agent nor any Lender is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the sum of the LIBOR Rate *plus* the Applicable Margin. Interest on the Loans shall be paid in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other Obligations shall be payable upon demand.

(b) Fee Letter. In addition to the other fees set forth herein, the Borrowers agree to pay Agent the fees set forth in the Fee Letter.

(c) Origination Fee. Contemporaneous with Borrowers execution of this Agreement, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Term Loans on the Closing Date, a fee in an amount equal to $2,000,000. All fees payable pursuant to this paragraph shall be deemed fully earned when due and payable and non-refundable as of the Closing Date.

(d) Reserved.

(e) Prepayment Fee. If any advance under the Term Loan is prepaid at any time, in whole or in part, for any reason (whether by voluntary prepayment by Borrowers, by reason of the occurrence of an Event of Default or the acceleration of the Term Loan, or otherwise), or if the Term Loan shall become accelerated and due and payable in full, or if the Lenders' funding obligations in respect of any unfunded portion of the Term Loan shall terminate prior to the Maturity Date, Borrowers shall pay to Agent, for the benefit of all Lenders, as compensation for the costs of such Lenders making funds available to Borrowers under this Agreement, a prepayment fee (the "**Prepayment Fee**") in an amount equal to the amount being prepaid (or required to be prepaid, if such amount is greater) *multiplied by* the following applicable percentage amount: (x) four percent (4.0%) for the first year following the Term Loan Tranche 1 Funding Date, (y) three percent (3.0%) for the second year following the Term Loan Tranche 1 Funding Date and (z) two percent (2.0%) thereafter. The Prepayment Fee shall not apply to or be assessed upon any prepayment made by Borrowers if such payments were required by Agent to be made pursuant to Section 2.1(a)(iii)(B) subpart (i) (relating to casualty proceeds), or subpart (ii) (relating to payments exceeding the Maximum Lawful Rate), or repaid pursuant to Section 2.1(a)(v)(B)(II). All fees payable pursuant to this paragraph shall be deemed fully earned as of the Closing Date (provided that such fees shall nonetheless only become due and payable in the circumstances described in this paragraph) and non-refundable as of the applicable date of prepayment.

(f) Reserved.

(g) Audit Fees. Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers. Notwithstanding the foregoing to the contrary, so long as no Event of Default has occurred and is continuing, Borrowers shall not be responsible for the costs of more than one (1) such audit or inspection in any calendar year.

(h) Wire Fees. Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers, such fees to be based on Agent's then current wire fee schedule (available upon written request of the Borrowers).

(i) Late Charges. If payments of principal (other than a final installment of principal upon the Termination Date), interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents are not timely made and remain overdue for a period of five (5) days, Borrowers, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to three percent (3.0%) of each delinquent payment.

(j) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

(k) Automated Clearing House Payments. If Agent (or its designated servicer or trustee on behalf of a securitization vehicle) so elects, monthly payments of principal, interest, fees, expenses or any other amounts due and owing from Borrower to Agent hereunder shall be paid to Agent by Automated Clearing House debit of immediately available funds from the financial institution account designated by Borrower Representative in the Automated Clearing House debit authorization executed by Borrowers or Borrower Representative in connection with this Agreement, and shall be effective upon receipt. Borrowers shall execute any and all forms and documentation necessary from time to time to effectuate such automatic debiting. In no event shall any such payments be refunded to Borrowers.

Section 2.3 Notes. The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a "**Note**") in an original principal amount equal to such Lender's Term Loan Commitments.

Section 2.4 Reserved.

Section 2.5 Reserved.

Section 2.6 General Provisions Regarding Payment; Loan Account.

(a) All payments to be made by each Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on such date, and any payments received in the Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on the next succeeding Business Day.

(b) Agent shall maintain a loan account (the "**Loan Account**") on its books to record Loans and other extensions of credit made by the Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided*, *however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Agent shall endeavor to provide Borrowers with a monthly statement regarding the Loan Account (but neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable law to be charged (the "**Maximum Lawful Rate**"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided*, *however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

Section 2.8 Taxes; Capital Adequacy; Mitigation Obligations.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future Taxes, except as required by applicable Law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and if any such withholding or deduction is in respect of any Indemnified Taxes, then the Borrowers shall pay such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent and each Lender will equal the full amount Agent and such Lender would have received had no such withholding or deduction of Indemnified Taxes been required (including, without limitation, such withholdings and deductions applicable to additional sums payable under this Section 2.8). After payment of any Tax by a Borrower to a Governmental Authority pursuant to this Section 2.8, such Borrower shall promptly forward to Agent the original or a certified copy of an official receipt, a copy of the return reporting such payment, or other documentation reasonably satisfactory to Agent evidencing such payment to such authority. Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Agent timely reimburse it for the payment of, any Other Taxes.

(b) The Borrowers shall indemnify Agent and Lenders, within ten (10) days after demand thereof, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.8) payable or paid by Agent or any Lender or required to be withheld or deducted from a payment to Agent or any Lender and any reasonable out of pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes and Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate in reasonable detail as to the amount of such payment or liability delivered to Borrowers by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(c) Each Agent and Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Financing Document shall deliver to Borrower Representative and Agent (in the case of deliveries by a Lender), at the time or times prescribed by applicable Law or reasonably requested by Borrower Representative or Agent (in the case of deliveries by a Lender), such properly completed and executed documentation reasonably requested by Borrower Representative or Agent (in the case of deliveries by a Lender) as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, each Agent and Lender, if reasonably requested by Borrower Representative or Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrowers or Agent (in the case of deliveries by a Lender) as will enable Borrowers or Agent (in the case of deliveries by a Lender) to determine whether or not such Agent or Lender, as applicable, is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.8(c)(i), 2.8(c)(ii) and 2.8(e) below) shall not be required if in such Agent's or Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Each Agent and Lender that is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a "**Foreign Lender**") shall, to the extent permitted by Law, execute and deliver to Borrower Representative and Agent (in the case of deliveries by a Lender) (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Agent or Foreign Lender becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or Agent) whichever of the following is applicable: (A) in the case of an Agent or Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Financing Document, two (2) properly completed and executed originals of United States Internal Revenue Service ("**IRS**") Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Financing Documents, two (2) properly completed and executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty; (B) two (2) executed originals of Form W-8ECI (or successor form); (C) in the case of an Agent or Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit D-1 to the effect that such Agent or Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**") and (y) two (2) executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form); (D) to the extent an Agent or Foreign Lender is not the beneficial owner, two (2) executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-2 or Exhibit D-3, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Agent or Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Agent or Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-4 on behalf of each such direct and indirect partner; or (E) other applicable forms, certificates or documents prescribed by the IRS. Each Agent and Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower Representative and Agent in writing of its legal inability to do so. In addition, to the extent permitted by applicable Law, such forms shall be delivered by each Agent and Foreign Lender upon the obsolescence or invalidity of any form previously delivered by such Foreign Lender. Each Agent and Foreign Lender shall promptly notify Borrower Representative at any time it determines that it is no longer in a position to provide any previously delivered certificate to Borrower Representative (or any other form of certification adopted by the U.S. taxing authorities for such purpose).

(ii) Each Agent and Lender that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall, to the extent permitted by Law, provide to Borrower Representative and Agent (in the case of deliveries by a Lender) on or prior to the date on which such Agent or Lender becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or Agent), a properly completed and executed IRS Form W-9 or any successor form certifying as to such Agent's or Lender's entitlement to an exemption from U.S. backup withholding and other applicable forms, certificates or documents prescribed by the IRS or reasonably requested by Borrower Representative or Agent. Each such Agent and Lender shall promptly notify Borrowers at any time it determines that any certificate previously delivered to Borrower Representative (or any other form of certification adopted by the U.S. governmental authorities for such purposes) is no longer valid.

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

(d) If any Agent or Lender determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any Taxes as to which it has been indemnified by any Borrower pursuant to this Section 2.8 (including by the payment of additional amounts pursuant to this Section 2.8), then it shall promptly pay an amount equal to such refund to Borrowers, net of all reasonable out-of-pocket expenses of such Lender or of Agent with respect thereto, including any Taxes; *provided*, *however*, that Borrowers, upon the written request of such Lender or Agent, agree to repay any amount paid over to Borrowers to such Lender or to Agent (plus any related penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such Lender or Agent is required, for any reason, to disgorge or otherwise repay such refund. Notwithstanding anything to the contrary in this Section 2.8, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.8(d) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.8 shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(e) If a payment made to an Agent or Lender under any Financing Document would be subject to U.S. federal withholding tax imposed by FATCA if such Agent or Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Agent or Lender shall deliver to Borrower Representative and Agent (in the case of deliveries by a Lender) at the time or times prescribed by Law and at such time or times reasonably requested by Borrower Representative or Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower Representative or Agent as may be necessary for Borrowers and 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 to deduct and withhold from such payment. Solely for purposes of this clause (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Each Lender shall severally indemnify Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.17 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Agent in connection with any Financing Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender under any Financing Document or otherwise payable by Agent to such Lender from any other source against any amount due to Agent under this paragraph (f).

(g) Each party's obligations under Section 2.8(a) through (f) shall survive the resignation or replacement of Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all Obligations hereunder.

(h) If any Lender shall reasonably determine that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of Law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon demand by such Lender (which demand shall be accompanied by a certificate setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which such Lender first made demand therefor; *provided* that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(i) If any Lender requests compensation under either Section 2.1(a)(iv) or Section 2.8(h), or requires Borrowers to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8, then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the provisions of Section 11.17) to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such Section, as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense and (iii) would not otherwise be disadvantageous to such Lender (as determined in its sole good faith discretion). Without limitation of the provisions of Section 12.14, each Borrower hereby agrees to pay all reasonable and documented, out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 2.9 Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing, give instructions with respect to the disbursement of the proceeds of the Loans , giving and receiving all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Financing Documents. Agent and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent, Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent as such successor). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" means such successor Borrower Representative for all purposes of this Agreement and the other Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation.

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided, however*, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "**Fraudulent Conveyance**" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of any Borrower, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Without limitations of the foregoing, with respect to the Obligations, each Borrower hereby makes and adopts each of the agreements and waivers set forth in each Guarantee, the same being incorporated hereby by reference. Except as specifically provided in this Agreement or any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of the other Borrower.

(d) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the institution of any proceeding under the Bankruptcy Code, or any similar proceeding, by or against a Borrower or Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Agent's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; *provided*, *however*, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and *provided*, *further*, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been indefeasibly paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations have been indefeasibly paid and satisfied in full. As used in this Section 2.10(e), the term "**Recovery Amount**" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "**Deficiency Amount**" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to Zero Dollars ($0) through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11 Termination; Restriction on Termination.

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2, Agent may, and at the direction of Required Lenders shall, terminate this Agreement without notice upon or after the occurrence and during the continuance of an Event of Default.

(b) Termination by Borrowers. Upon at least fifteen (15) days' prior written notice and pursuant to payoff documentation in form and substance reasonably satisfactory to Agent and Lenders, Borrowers may, at its option, terminate this Agreement; provided, however, that no such termination shall be effective until Borrowers have complied with Section 2.2 and the terms of any Fee Letter. Any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing; *provided* that such notice may state that it is conditioned upon the effectiveness of other credit facilities, indentures or similar agreements or other transactions, in which case such notice may be revoked by the Borrowers (by notice to the Agent on or prior to the specified effective date) if such condition is not satisfied and no Lender shall have any obligation to make any Loans on or after the termination date stated in such notice. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. All of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the Financing Documents shall survive any such termination and Agent shall retain its Liens in the Collateral and Agent and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations have been discharged or paid, in full, in immediately available funds, including, without limitation, all Obligations under Section 2.2 and the terms of any Fee Letter resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall, at its option, have retained cash Collateral or other Collateral for such period of time as Agent, in its reasonable discretion, may deem necessary to protect Agent and each Lender from any such loss or damage; *provided, however* that such retained cash Collateral or other Collateral shall not exceed $20,000 in the aggregate at any time.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Borrower hereby represents and warrants to Agent and each Lender that:

Section 3.1 Existence and Power. Each Credit Party (a) is an entity as specified on Schedule 3.1, (b) is duly organized, validly existing and in good standing under the laws of the jurisdiction specified on Schedule 3.1 and no other jurisdiction, (c) has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, (d) has all powers to own its assets and has powers and all Permits necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such Permits could not reasonably be expected to have a Material Adverse Effect, and (e) is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except in the case of this clause (e) where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (x) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (y) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. The execution, delivery and performance by each Credit Party of the Financing Documents to which it is a party (a) are within its powers, (b) have been duly authorized by all necessary action pursuant to its Organizational Documents, (c) require no further action by or in respect of, or filing with, any Governmental Authority and (d) do not violate, conflict with or cause a breach or a default under (i) any Law applicable to any Credit Party, (ii) any of the Organizational Documents of any Credit Party, or (iii) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as could not, with respect to this clause (iii), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Financing Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles. Each Financing Document has been duly executed and delivered by each Credit Party party thereto.

Section 3.4 Capitalization. The authorized equity securities of each of the Credit Parties as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of the Credit Parties are duly authorized and validly issued, fully paid and nonassessable. All issued and outstanding equity securities of any Subsidiary of any Credit Party are free and clear of all Liens other than Permitted Liens, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties (other than TherapeuticsMD) and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties as of the Closing Date is set forth on Schedule 3.4. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All financial statements and related information delivered to Agent and pertaining to the financial condition of any Credit Party fairly presents the financial position of such Credit Party as of such date in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since December 31, 2017, there has been no Material Adverse Effect.

Section 3.6 Litigation. Except as set forth on Schedule 3.6 as of the Closing Date, and except as hereafter disclosed to Agent in writing, there is no Litigation pending against, or to such Borrower's knowledge threatened in writing, against any Credit Party or, to such Borrower's knowledge, any party (other than a Credit Party) to any Operative Document that would reasonably be expected to result in a judgment against, or liability for, any Credit Party or any Subsidiary thereof in an amount in excess of $1,000,000. There is no Litigation pending in which an adverse decision would reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Financing Documents.

Section 3.7 Ownership of Property. Each Borrower and its Subsidiaries are the lawful sole owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties, accounts and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.8 No Default. No Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing. No Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other material labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party. Except as could not reasonably be expected to result in a Material Adverse Effect, (a) hours worked and payments made to the employees of each Borrower and each of its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters and (b) all payments due from each Borrower and each of its Subsidiaries, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Borrower or any Subsidiary is a party or by which it is bound.

Section 3.10 Regulated Entities. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act.

Section 3.11 Margin Regulations. None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such Laws the noncompliance with which could not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (i) is in violation of any Anti-Terrorism Law, (ii) 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 prohibitions set forth in any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (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 interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

Section 3.13 Taxes. All federal and material state and local tax returns, reports and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest, all Taxes (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all material state and local sales and use Taxes required to be paid by each Credit Party have been paid. All federal and material state tax returns have been filed by each Credit Party for all periods for which tax returns were due with respect to employee income tax withholding, social security and unemployment taxes, and, except to the extent subject to a Permitted Contest, the amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made.

Section 3.14 Compliance with ERISA.

(a) Except as would not reasonably be expected to have a Material Adverse Effect, (i) each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, (ii) each ERISA Plan (and the related trusts and funding agreements) has been administered in compliance with, (iii) the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code, and (iv) no Credit Party or any Subsidiary of any Credit Party has incurred liability for any excise tax under Sections 4971 through 5000 of the Code.

(b) During the six (6) year period prior to the Closing Date or the making of any Loan and except as would not reasonably be expected to have a Material Adverse Effect, (x) no steps have been taken to terminate any Pension Plan and (y) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA. (i) No condition exists or event or transaction has occurred with respect to any Pension Plan which could reasonably be expected to result in the incurrence by any Credit Party or any Subsidiary of any liability, fine or penalty (other than, for the avoidance of doubt, accrual of benefits in the Ordinary Course of Business), (ii) no Credit Party or any Subsidiary of any Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any Pension Plan, (iii) all contributions (if any) have been made on a timely basis to any Multiemployer Pension Plan that are required to be made by any Credit Party, any Subsidiary of any Credit Party, or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; (iv) no Credit Party, Subsidiary of any Credit Party, or to the knowledge of the Credit Parties, any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Pension Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, could reasonably be expected to result in a withdrawal or partial withdrawal from any such plan, and (v) no Credit Party, Subsidiary of any Credit Party or any member of the Controlled Group has received any notice that any Multiemployer Pension Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent, except, with respect to clauses (i), (ii), (iii) and (iv), as would not reasonably be expected to have a Material Adverse Effect.

Section 3.15 Brokers. Except for fees payable to Agent and/or Lenders, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Financing Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 Reserved.

Section 3.17 Material Contracts. Except for the Financing Documents and the other agreements set forth on Schedule 3.17, as of the Closing Date there are no Material Contracts. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials. Except in each case as set forth on Schedule 3.18 and as would not reasonably be expected to have a Material Adverse Effect:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Borrower's knowledge, threatened by any Governmental Authority or other Person with respect to any (i) alleged violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Borrower, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Borrower's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Borrower, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property and License Agreements. A list of all Registered Intellectual Property of each Credit Party and all in-bound license or sublicense agreements, exclusive out-bound license or sublicense agreements, or other rights of any Credit Party to use Intellectual Property (but excluding in-bound licenses of over-the-counter software that is commercially available to the public), as of the Closing Date and, as updated pursuant to Section 4.14, is set forth on Schedule 3.19. Schedule 3.19 shall be prepared by Borrowers in the form provided by Agent and contain all information required in such form. Except for Permitted Licenses, each Credit Party is the sole owner of its Intellectual Property free and clear of any Liens. Each patent set forth on Schedule 3.19 is valid and enforceable and no part of the Material Intangible Assets has been judged invalid or unenforceable, in whole or in part, and to the best of Borrowers' knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party.

Section 3.20 Solvency. Each Borrower is, and after giving effect to the Loan advance and the liabilities and obligations of each Borrower under the Operative Documents, will be, Solvent; and each other Credit Party together with Borrower and its Subsidiaries, taken as a whole, is Solvent.

Section 3.21 Full Disclosure. None of the written information (financial or otherwise, but excluding any projections and forward-looking statements, estimates, budgets and industry data of a general nature) furnished by or on behalf of any Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Financing Documents (in each case, taken as a whole and as modified or supplemented by other information so furnished promptly after the same becomes available) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made. All financial projections and forward-looking statements delivered to Agent and the Lenders by the Borrowers have been prepared on the basis of the assumptions stated therein and such projections represent the Borrowers' best estimate of the Borrowers' future financial performance as of the date of delivery and such assumptions are believed by the Borrowers to be fair and reasonable in light of current business conditions at the time of delivery to Agent, *provided* that it being understood that such projections are subject to uncertainties and contingencies, some of which are beyond the control of the Borrowers, and the Borrowers can give no assurance that such projections will be attained, that actual results may differ in a material manner from such projections and any failure to meet such projections shall not automatically be deemed to be a breach of any representation or covenant herein.

Section 3.22 Subsidiaries. Borrowers do not own any stock, partnership interests, limited liability company interests or other equity securities or Subsidiaries except for Permitted Investments.

Section 3.23 Regulatory Matters.

(a) All of Borrower's and its Subsidiaries' material Products and material Regulatory Required Permits as of the Closing Date are listed on Schedule 4.15. With respect to each such Product, (i) Borrower and its Subsidiaries have received, and such Product is the subject of, all Regulatory Required Permits needed in connection with the development, testing, manufacture, import, export, holding, marketing, promotion, sale, labeling, and distribution, as applicable, of such Product as currently being conducted by or on behalf of Borrower, and have provided Agent with all notices and other information required by Section 4.1, and (ii) such Product has been and is being developed, tested, manufactured, imported, exported, held, marketed, promoted, or sold, labeled, or distributed, as the case may be, in material compliance with all applicable Laws, including but not limited to Healthcare Laws, and Regulatory Required Permits.

(b) None of the Borrowers or any Subsidiary thereof are in violation of any Healthcare Law or any judgment, order, writ, injunction, settlement, or agreement issued by or entered into with the FDA or any other applicable Governmental Authority, except where any such violation could not reasonably be expected to result in a Material Adverse Effect. None of Borrowers or any Subsidiary thereof has received (i) any unresolved inspection reports, warning letters, untitled letters or similar documents with respect to TX-001HR, TX-004HR or any other Product material to the business of the Borrowers (taken as a whole) from any Governmental Authority that assert material lack of compliance with any applicable Healthcare Law; or (ii) any written notice of a regulatory enforcement action, investigation or inquiry (other than non-material routine or periodic inspections or reviews) or any criminal, civil, injunctive, seizure or detention action against or relating to it or any Product for alleged lack of compliance with any applicable Healthcare Law, except with respect to this clause (ii), where any such lack of compliance could not reasonably be expected to have a Material Adverse Effect; and, to the knowledge of Borrower, there is no such regulatory enforcement action, investigation or inquiry or criminal, civil, injunctive, seizure or detention action pending.

(c) To the Borrowers' knowledge, none of the Borrowers' or their Subsidiaries' officers, directors, employees, shareholders, agents or affiliates has made an untrue statement of material fact or fraudulent statement to the FDA or failed to disclose a material fact required to be disclosed to the FDA, committed an act, made a statement, or failed to make a statement that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Reg. 46191 (September 10, 1991) or for any other Governmental Authority to invoke a similar policy or Law.

(d) None of Borrowers or any Subsidiary thereof or, to the knowledge of Borrower, any of their respective suppliers is employing or utilizing the services of any Person who has been debarred, disqualified, suspended or otherwise excluded under any applicable Healthcare Law.

(e) There have been no Recalls, safety alerts, withdrawals, clinical holds, marketing suspensions, or similar actions conducted, undertaken or issued by the Borrowers or any Subsidiary thereof or, to Borrowers' knowledge, any other Person, whether or not at the request, demand or order of any Governmental Authority, with respect to any Product.

(f) As of the Closing Date, no Borrower or any Subsidiary thereof receives any payments from Medicare, Medicaid, or TRICARE.

(g) As of the Closing Date, there have been no Regulatory Reporting Events.

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 4.1 Financial Statements and Other Reports. Each Borrower will deliver to Agent:

(a) as soon as available, but no later than forty-five (45) days after the last day of each fiscal quarter, a company prepared consolidated (and, if any Excluded Foreign Subsidiaries then exist, consolidating) balance sheet, cash flow and income statement (including year-to-date results) covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, prepared under GAAP, consistently applied, setting forth in comparative form the corresponding figures as at the end of the corresponding fiscal quarter of the previous fiscal year and the projected figures for such period based upon the projections required hereunder, all in reasonable detail, certified by a Responsible Officer and in a form acceptable to Agent;

(b) [reserved];

(c) as soon as available, but no later than ninety (90) days after the last day of Borrower's fiscal year, audited consolidated (and, if any Excluded Foreign Subsidiaries then exist, consolidating) financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent in its reasonable discretion, it being agreed by Agent that Grant Thornton LLP and its successors are acceptable to Agent;

(d) within five (5) days of delivery or filing thereof, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and copies of all reports and other filings made by Borrower with any stock exchange on which any securities of any Borrower are traded and/or the SEC; provided that, such delivery requirement shall be satisfied to the extent such reports and other filings are publically available on the SEC's EDGAR system or any successor thereto;

(e) prompt written notice of an event that materially and adversely affects the value of any Material Intangible Asset;

(f) within sixty (60) days after the start of each fiscal year, projections for the forthcoming two fiscal years, on a quarterly basis for the current year and on an annual basis for the subsequent year;

(g) promptly (but in any event within ten (10) days of any request therefor) such other readily available budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrowers, their business and the Collateral as Agent may from time to time reasonably request;

(h) within thirty (30) days after the last day of each month (or, in the case of the last month in each fiscal quarter, within forty-five (45) days after the last day of such month), a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing monthly cash and Cash Equivalents of Borrowers and Borrowers and their Consolidated Subsidiaries and compliance with the financial covenants set forth in this Agreement;

(i) written notice to Agent promptly, but in any event within five (5) Business Days of a Responsible Officer of a Borrower receiving written notice or otherwise becoming aware that:

(i) any development, testing, manufacturing, or distribution of any Product that is material to Borrowers' business should cease, whether (A) temporarily and (1) outside of the ordinary course of business or (2) pursuant to an order by a Governmental Authority, or (B) permanently;

(ii) any sales of a Product which is material to Borrowers' business should cease or such Product should be withdrawn from the marketplace, whether temporarily or permanently;

(iii) any Governmental Authority is conducting a non-routine investigation, audit, or review of any material Regulatory Required Permit;

(iv) any material Regulatory Required Permit has been suspended, revoked. withdrawn, or adversely limited, modified, or restricted;

(v) any Governmental Authority, including without limitation the FDA, DEA, the Office of the Inspector General of the Department of Health and Human Services ("**HHS**") or the United States Department of Justice, has commenced or threatened to initiate any administrative, regulatory, civil or criminal enforcement action, injunction, seizure, investigation or non-routine inspection related to or against any Product or any Credit Party or a Subsidiary thereof, or any action to enjoin a Credit Party or a Subsidiary thereof, or their officers, directors, employees, shareholders or their agents and Affiliates, in such capacity, from conducting their businesses at any facility owned or used by them;

(vi) receipt by Borrower or any Subsidiary thereof from the FDA of a warning letter, Form FDA-483, untitled letter, other correspondence or notice setting forth alleged violations of any Law, including any Healthcare Law or other laws and regulations enforced by the FDA, or any comparable correspondence or notice from any other Governmental Authority responsible for regulating drug products and establishments with regard to any Product or the testing, development, manufacture, processing, packing, holding, import, export, labeling, or distribution thereof;

(vii) any failures in the manufacturing of any Product have occurred such that the amount of such Product successfully manufactured in accordance with applicable Laws and all specifications thereof and sales by Borrower therefor in any month shall decrease significantly as compared to the quantities of such Product and sales otherwise planned to be generated in such month;

(viii) any Borrower or any Subsidiary thereof becoming subject to any proceeding, suit, administrative or regulatory enforcement action, investigation or non-routine inspection by any federal, state or local Governmental Authority or quasi-governmental body, agency, board or authority or any other administrative or investigative body (including the Office of the Inspector General of HHS); or

(ix) any Borrower or any Subsidiary thereof engaging in any Recalls, Market Withdrawals, or other forms of product retrieval from the marketplace of any Products, except for routine stock rotation practices or routine equipment adjustments and repairs (each of the events set forth in clauses (i)-(ix) a "**Regulatory Reporting Event**"). Borrower shall, and shall cause each Credit Party, to promptly provide such further information (including copies of relevant documentation) as Agent or any Lender shall reasonably request with respect to any Regulatory Reporting Event;

(j) promptly after the request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act;

(k) promptly, but in any event within five (5) Business Days, after any Responsible Officer of any Borrower obtains knowledge of the occurrence of any event or change (including, without limitation, any notice of any violation of Healthcare Laws) that has resulted or could reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect, a certificate of a Responsible Officer specifying the nature and period of existence of any such event or change, or specifying the notice given or action taken by such holder or Person and the nature of such event or change, and what action the applicable Credit Party or Subsidiary has taken, is taking or proposes to take with respect thereto;

(l) promptly, but in any event within five (5) Business Days, after any Responsible Officer of any Borrower obtains knowledge of the occurrence of a reportable event under Section 4043 of ERISA (for which a reporting requirement is not waived) with respect to any Pension Plan;

(m) promptly, but in any event within five (5) Business Days, upon receipt of the same, copies of all notices, requests and other documents received by any Credit Party or any Subsidiary under or pursuant to any Material Contract regarding or related to any material breach or default by any party thereto or any other event that could reasonably be expected to materially impair the value of the interests or the rights of any Credit Party or any Subsidiary under any Material Contract or otherwise have a Material Adverse Effect;

(n) together with the next Compliance Certificate required to be delivered under subsection (i) with respect to the last month of a fiscal quarter, following the request of Agent written notice of the execution of any material amendment, consent, waiver or other modification to any Material Contract or the entry into any new Material Contract and, following the request of Agent, a copy of any such amendment, consent, waiver, other modification or new Material Contract;

(o) written notice to Agent promptly, but in any event within three (3) Business Days, of a Responsible Officer of a Borrower receiving written notice or otherwise becoming aware of:

(i) any legal actions pending or threatened in writing against any Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to any Borrower or any of its Subsidiaries of One Million Dollars ($1,000,000) or more;

(ii) the institution of any proceeding (A) seeking equitable relief with respect to a Credit Party or Subsidiary or involving an alleged liability of any Credit Party or any Subsidiary equal to or greater than $1,000,000 or any adverse determination in any proceeding involving equitable relief or a potential liability of any Credit Party or any Subsidiary equal to or greater than $1,000,000 or (B) which in any manner calls into question the validity or enforceability of any Financing Document;

(iii) any Default or Event of Default; or

(iv) any strikes or other labor disputes pending or, to any Borrower’s knowledge, threatened in writing against any Credit Party;

Borrowers represent and warrant that Schedule 4.1(o) sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under clause (o) above. Borrower shall, and shall cause each Credit Party, to provide such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any of the events or notices described in clauses (j) and (o) above.

Section 4.2 Payment and Performance of Obligations. Each Borrower (a) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, or (ii) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) will without limiting anything contained in the foregoing clause (a), except to the extent subject to a Permitted Contest, pay all amounts due and owing in respect of Taxes (including without limitation, payroll and withholdings tax liabilities) on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, except as the nonpayment of such amounts is less than $250,000 in the aggregate at any one time outstanding, (c) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (d) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence. Each Borrower will preserve, renew and keep in full force and effect, and will cause each Subsidiary to preserve, renew and keep in full force and effect, (a) their respective existence, except in connection with a transaction permitted under Section 5.6, (b) their respective rights, privileges and franchises necessary or desirable in the normal conduct of business, except in connection with a transaction permitted under Section 5.6 or where the failure to maintain such rights, privileges and franchises could not reasonably be expected to have a Material Adverse Effect, and (c) their respective qualification to do business and good standing in each jurisdiction in which it conducts business, except where the failure to be qualified or in good standing could not reasonably be expected to have a Material Adverse Effect.

Section 4.4 Maintenance of Property; Insurance.

(a) Each Borrower will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. If all or any part of the Collateral useful or necessary in its business becomes damaged or destroyed, each Borrower will, and will cause each Subsidiary to, promptly and completely repair and/or restore the affected Collateral in a good and workmanlike manner, subject to Agent agreeing to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction.

(b) Upon completion of any Permitted Contest, Borrowers shall, and will cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Agent proof of the completion of the contest and payment of the amount due, if any.

(c) Each Borrower will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake where available at commercially reasonable cost), covering the repair and replacement cost of all such property and business interruption coverages with extended period of indemnity (for the period reasonably required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), and (iii) such other insurance coverage, in each case against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons; *provided*, *however*, that, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating, or otherwise reasonably acceptable to Agent.

(d) On or prior to the Term Loan Tranche 1 Funding Date, and at all times thereafter, each Borrower will cause Agent to be named as an additional insured, assignee and lender loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance reasonably acceptable to Agent. Borrowers shall deliver to Agent and the Lenders (i) on the Closing Date, a certificate from Borrowers' insurance broker dated no more than five (5) Business Days prior to such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within five (5) Business Days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Borrower, and (v) at least thirty (30) days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(e) In the event any Borrower fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may, following written notice to Borrower Representative, purchase insurance at Borrowers' expense to protect Agent's interests in the Collateral. This insurance may, but need not, protect such Borrower's interests. The coverage purchased by Agent may not pay any claim made by such Borrower or any claim that is made against such Borrower in connection with the Collateral. Such Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Borrower has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Borrowers will be responsible for the costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance such Borrower is able to obtain on its own.

Section 4.5 Compliance with Laws and Material Contracts. Each Borrower will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws and Material Contracts, except to the extent that failure to so comply could not reasonably be expected to (a) have a Material Adverse Effect, or (b) result in any Lien upon a material portion of the assets of any such Person in favor of any Governmental Authority.

Section 4.6 Inspection of Property, Books and Records. Each Borrower will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any applicable Subsidiary, representatives of Agent to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective operations and the Collateral, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Borrowers and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants (subject to applicable confidentiality and legal privilege restrictions) as often as may reasonably be desired; provided, however, that so long as no Default or Event of Default exists and is continuing, the Borrowers and their Subsidiaries shall only be required to reimburse Agent for one such visit or inspection in any calendar year. In the absence of a Default or an Event of Default, Agent shall give the applicable Borrower or any applicable Subsidiary commercially reasonable prior notice of such exercise. No notice shall be required during the existence and continuance of any Default.

Section 4.7 Use of Proceeds. Borrowers shall use the proceeds of the Term Loan solely for working capital needs of Borrowers and their Subsidiaries and other general corporate purposes. The proceeds of the Term Loans will not be used, directly or indirectly, for the purpose of purchasing or carrying any “margin stock” (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any “margin stock” or for any other purpose which might cause any of the Term Loans to be considered a “purpose credit” within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 4.8 Reserved.

Section 4.9 Reserved.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will use commercially reasonable efforts to cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and Healthcare Laws. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply in all material respects with each Environmental Law and Healthcare Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Borrowers will provide Agent within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent’s reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances.

(a) Each Borrower will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the date hereof), and (ii) unless Agent shall agree otherwise in writing, cause all Subsidiaries of Borrowers (other than Excluded Foreign Subsidiaries) to be jointly and severally obligated with the other Borrowers under all covenants and obligations under this Agreement, including the obligation to repay the Obligations.

(b) Upon receipt of an affidavit of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Borrowers will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Upon the request of Agent, Borrowers shall obtain a landlord's agreement or mortgagee agreement, as applicable, from the lessor of each leased property or mortgagee of owned property with respect to any business location where Collateral with an aggregate value in excess of $1,000,000 is located, or material records relating to such Collateral and/or software and equipment relating to such records or Collateral, is stored or located, which agreement or letter shall be reasonably satisfactory in form and substance to Agent. Borrowers shall timely and fully pay and perform its material obligations under all leases and other agreements with respect to each leased location where any such amount of Collateral, or any material records related thereto, is or may be located.

(d) Borrower shall provide Agent with at least five (5) Business Days (or such shorter period as Agent may accept in its sole discretion) prior written notice of its intention to create (or to the extent permitted under this Agreement, acquire) a new Subsidiary. Promptly upon, but in any event within ten (10) Business Days following the formation (or to the extent permitted under this Agreement, acquisition) of a new Subsidiary, Borrowers shall (i) pledge, have pledged or cause or have caused to be pledged to Agent pursuant to a pledge agreement in form and substance reasonably satisfactory to Agent, all of the outstanding shares of Equity Interests or other Equity Interests of such new Subsidiary (except to the extent such shares constitute Excluded Property) owned directly or indirectly by any Borrower, along with undated stock or equivalent powers for such certificates, executed in blank; (ii) unless Agent shall agree otherwise in writing, cause the new Subsidiary (other than an Excluded Foreign Subsidiary) to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of Agent in order to grant Agent, acting on behalf of the Lenders, a first priority Lien (subject to Permitted Liens which have priority by operation of Law) on all real and personal property of such Subsidiary in existence as of such date and in all after acquired property, which first priority Liens are required to be granted pursuant to this Agreement; (iii) unless Agent shall agree otherwise in writing, cause such new Subsidiary (other than an Excluded Foreign Subsidiary) to either (at the election of Agent) become a Borrower hereunder with joint and several liability for all obligations of Borrowers hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance reasonably satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance reasonably satisfactory to Agent; and (iv) cause the new Subsidiary to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and authorize the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be reasonably requested by Agent, in each case, in form and substance reasonably satisfactory to Agent.

(e) From the date hereof and continuing through the termination of this Agreement, Borrower shall, and shall cause each Credit Party to, make reasonably available to Agent and each Lender, at reasonably times and frequency without expense to Agent or any Lender, each Credit Party's officers, employees and agents and books, to the extent that Agent or any Lender may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Agent or any Lender with respect to any Collateral or relating to a Credit Party.

Section 4.12 Reserved.

Section 4.13 Power of Attorney. Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrowers (without requiring any of them to act as such) with full power of substitution to do the following: (a) after the occurrence and during the continuance of an Event of Default, endorse the name of Borrowers upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrowers and constitute collections on Borrowers' Accounts; (b) after the occurrence and during the continuance of an Event of Default, execute in the name of Borrowers any schedules, assignments, instruments, documents, and statements that Borrowers are obligated to give Agent under this Agreement; (c) after the occurrence and during the continuance of an Event of Default, take any action Borrowers are required to take under this Agreement; (d) after the occurrence and during the continuance of an Event of Default, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) after the occurrence and during the continuance of an Event of Default, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Intellectual Property and Licensing.

(a) To the extent (A) Borrower acquires and/or develops any new Registered Intellectual Property, (B) Borrower enters into or becomes bound by any additional in-bound license or sublicense agreement, any additional out-bound license or sublicense agreement or other material agreement with respect to rights in Intellectual Property (other than over-the-counter software that is commercially available to the public), or (C) there occurs any other material change in Borrower's Registered Intellectual Property, in-bound licenses or sublicenses or exclusive out-bound licenses or sublicenses from that listed on Schedule 3.19, Borrower shall, together with the next Compliance Certificate required to be delivered pursuant to Section 4.1 with respect to the last month of a fiscal quarter, deliver to Agent an updated Schedule 3.19 reflecting such updated information. With respect to any updates to Schedule 3.19 involving exclusive out-bound licenses or sublicenses, such licenses shall be consistent with the definitions of and limitations herein pertaining to Permitted Licenses.

(b) If Borrower obtains any Registered Intellectual Property (other than copyrights, mask works and related applications, which are addressed below), Borrower shall promptly (and in any event within fifteen (15) days of obtaining same) notify Agent and execute such documents and provide such other information (including, without limitation, copies of applications) and take such other actions as Agent shall request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Agent, for the ratable benefit of Lenders, in such Registered Intellectual Property.

(c) Borrower shall own, or be licensed to use or otherwise have the right to use, all Material Intangible Assets. Borrower shall cause all Registered Intellectual Property to be duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. Borrower shall at all times conduct its business without material infringement of any Intellectual Property rights of others. Borrower shall (i) protect, defend and maintain the validity and enforceability of its Material Intangible Assets (ii) promptly advise Agent in writing of material infringements of its Material Intangible Assets, or of a material claim of infringement by Borrower on the Intellectual Property rights of others; and (iii) not allow any of Borrower's Material Intangible Assets to be abandoned, invalidated, forfeited or dedicated to the public or to become unenforceable other than by operation of Law. Borrower shall not become a party to, nor become bound by, any material license or other agreement with respect to which Borrower is the licensee that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or other property.

Section 4.15 Regulatory Covenants.

(a) Borrowers shall have, and shall ensure that it and each of its Subsidiaries has, each material Permit and other material rights from, and have made all declarations and filings with, all applicable Governmental Authorities, all self-regulatory authorities and all courts and other tribunals necessary to engage in the ownership, management and operation of the business or the assets of any Borrower and Borrowers shall ensure that no Governmental Authority has taken action to limit, suspend or revoke any such material Permit. Borrower shall ensure that all such Permits are valid and in full force and effect and Borrowers are in material compliance with the terms and conditions of all such Permits in all material respects.

(b) Borrowers will, and will cause each of its Subsidiaries to, maintain in full force and effect, and free from restrictions, probations, conditions or known conflicts which would materially impair the use or operation of Borrowers' or such Subsidiary's business and assets, all Permits necessary under Healthcare Laws to carry on the business of Borrowers and its Subsidiaries as it is conducted on the Closing Date in all material respects.

(c) In connection with the development, testing, manufacture, import, export, holding, marketing, promotion, sale, labeling, or distribution of any Product by or on behalf of any Borrower or any Subsidiary thereof, each Borrower and Subsidiary shall have obtained and comply in all material respects with all material Regulatory Required Permits at all times issued or required to be issued by any Governmental Authority, specifically including the FDA, with respect to such activities being conducted by or behalf of Borrower or such Subsidiaries at any such time.

(d) Borrowers will, and will cause each of its Subsidiaries to, timely file or cause to be timely filed (with applicable Governmental Authorities all material notifications, reports, submissions, Permit renewals and reports required by Healthcare Laws (which reports will be materially accurate and complete in all respects and not misleading in any respect and shall not remain open or unsettled).

(e) If, after the Closing Date, Borrowers or any of their Subsidiaries determine to manufacture, sell, develop (beyond initial testing), or market any new material Product, Borrowers shall deliver prior written notice to Agent of such determination (which shall include a brief description of such Product) and, together with delivery of the next Compliance Certificate required to be delivered pursuant to Section 4.1 with respect to the last month of a fiscal quarter, shall provide an updated Schedule 4.15 (and copies of such Permits as Agent may request) reflecting updates related to such determination.

(f) Borrower shall notify Agent at least ten (10) Business Days prior to it or any of its Subsidiaries beginning to receive payments from Medicare, Medicaid, or TRICARE.

(g) Borrower shall ensure that each Product (i) is not adulterated or misbranded within the meaning of the FDCA or any other applicable Laws in any material respect; (ii) is not an article prohibited from introduction into interstate commerce under the provisions of Sections 505 of the FDCA; (iii) has been and/or shall be developed, tested, manufactured, imported, exported, held, marketed, advertised, promoted, sold, labeled, and distributed, as applicable, and each service has been conducted, in material compliance with all applicable Permits and Laws; and (iv) each Product has been and/or shall be manufactured in accordance with Good Manufacturing Practices in all material respects.

ARTICLE 5 - NEGATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 5.1 Debt; Contingent Obligations. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

Section 5.2 Liens. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Distributions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Distribution, except for Permitted Distributions.

Section 5.4 Restrictive Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than (i) the Financing Documents, (ii) any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt provided that such restriction relates solely to the equipment (and accessions thereto and the proceeds thereof) being purchased or leased with such purchase money Debt, and (iii) customary provisions in leases of real property and tangible personal property restricting the assignment thereof or the assets governed thereby) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents) on the ability of any Subsidiary to: (i) pay or make Distributions to any Borrower or any Subsidiary; (ii) pay any Debt owed to any Borrower or any Subsidiary; (iii) make loans or advances to any Borrower or any Subsidiary; or (iv) transfer any of its property or assets to any Borrower or any Subsidiary.

Section 5.5 Payments and Modifications of Subordinated Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt or any other Debt that has been subordinated to any of the Obligations, except for payments made in full compliance with and expressly permitted under the Subordination Agreement or the terms of such subordination, (b) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with the Subordination Agreement, (c) declare, pay, make or set aside any amount for payment in respect of any Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations, except for payments made in full compliance with and expressly permitted under the subordination provisions applicable thereto, or (d) amend or otherwise modify the terms of any such Debt if the effect of such amendment or modification is to (i) increase the interest rate or fees on, or change the manner or timing of payment of, such Debt, (ii) accelerate or shorten the dates upon which payments of principal or interest are due on, or the principal amount of, such Debt, (iii) change in a manner adverse to any Credit Party or Agent any event of default or add or make more restrictive any covenant with respect to such Debt, (iv) change the prepayment provisions of such Debt or any of the defined terms related thereto, (v) change the subordination provisions thereof (or the subordination terms of any guaranty thereof), or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Debt in a manner adverse to Borrowers, any Subsidiaries, Agent or Lenders.

Section 5.6 Consolidations, Mergers and Sales of Assets; Change in Control.

(a) No Borrower will, or will permit any Subsidiary to, directly or indirectly consolidate or merge or amalgamate with or into any other Person other than (i) consolidations or mergers among Borrowers where a Borrower is a surviving entity, (ii) consolidations or mergers among a Guarantor and a Borrower so long as the Borrower is the surviving entity, (iii) consolidations or mergers among Guarantors or (iv) consolidations or mergers among Subsidiaries that are not Credit Parties.

(b) No Borrower will, or will permit any Subsidiary to, directly or indirectly consummate any Asset Dispositions other than Permitted Asset Dispositions.

Section 5.7 Purchase of Assets, Investments. No Borrower will, or will permit any Subsidiary to, directly or indirectly:

(a) acquire, make, own or hold any Investment other than Permitted Investments;

(b) make or otherwise consummate any Acquisition other than a Permitted Acquisitions;

(c) without limiting clauses (a) or (b), acquire any assets other than in the Ordinary Course of Business and other than Permitted Acquisitions; or

(d) form any joint venture or partnership entity with any other Person without the prior written consent of Agent (which consent shall not be unreasonably withheld, conditioned or delayed).

Section 5.8 Transactions with Affiliates. Except (a) as otherwise disclosed on Schedule 5.8, (b) for Permitted Distributions, (c) for transactions among the Credit Parties that are permitted by the Financing Documents, (d) for (i) payments of salaries, bonuses and fringe benefits to individuals, (ii) directors fees and awards of Equity Interests and (iii) advances and reimbursements to employees, officers or directors, in each case, made in the Ordinary Course of Business and to the extent not otherwise constituting "Debt" of the Borrowers or their Subsidiaries and (e) for transactions that contain terms that are no less favorable to the applicable Borrower or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party, no Borrower will, or will permit any Subsidiary 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 any Borrower.

Section 5.9 Modification of Organizational Documents. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document; or (b) could reasonably be expected to be materially adverse to the rights, interests or privileges of Agent or the Lenders or their ability to enforce the same. Each Borrower shall, prior to entering into any such amendment or other modification of any of the foregoing documents, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy of amendments or other modifications to such documents, and such Borrower agrees not to take, nor permit any of its Subsidiaries to take, any such action with respect to any such documents without obtaining such approval from Agent.

Section 5.11 Conduct of Business. No Borrower will, or will permit any Subsidiary to, directly or indirectly, engage in any line of business other than those businesses engaged in on the Closing Date and described on Schedule 5.11 and businesses reasonably related thereto. No Borrower will, or will permit any Subsidiary to, other than in the ordinary course of business, change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 Excluded Foreign Subsidiaries.

(a) Borrower shall not permit, at any time, the total amount of cash and cash equivalents held by (x) each Excluded Foreign Subsidiary (individually) to exceed $250,000 (or the equivalent thereof in any foreign currency) or (y) the Excluded Foreign Subsidiaries (taken collectively) to exceed $1,000,000 (or the equivalent thereof in any foreign currency) in the aggregate; *provided, however,* that nothing in this Section 5.12(a) shall require an Excluded Foreign Subsidiary to make any Distribution that would be prohibited by applicable Law.

(b) No Credit Party shall make any Asset Disposition to or Investment in any Excluded Foreign Subsidiary other than Investments of cash and cash equivalents permitted to be made pursuant to clause (l) of the definition of "Permitted Investment".

(c) No Borrower will, or will permit any Subsidiary, to commingle any of its assets (including any bank accounts, cash or cash equivalents) with the assets of any Person other than a Credit Party.

Section 5.13 Limitation on Sale and Leaseback Transactions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, any Borrower or any Subsidiaries sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts.

(a) Except for Excluded Accounts, no Credit Party shall, directly or indirectly, establish any new Deposit Account or Securities Account without prior written notice to Agent, and unless Agent, such Borrower or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account.

(b) As of the Closing Date and each date the Compliance Certificate is required to be delivered pursuant to Section 4.1 with respect to the last month of a fiscal quarter, Borrowers represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Borrower. On or prior to the Term Loan Tranche 1 Funding Date and at all times thereafter, Borrowers will cause all Deposit Accounts and Securities Accounts of each Borrower (other than Excluded Accounts) to be subject to a Deposit Account Control Agreement or a Securities Account Control Agreement, as applicable, in favor of Agent.

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Borrowers that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrowers and its principals, which information includes the name and address of each Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Borrower will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any Material Contracts with any Blocked Person or any Person listed on the OFAC Lists. Each Borrower shall immediately notify Agent if such Borrower has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

Section 5.16 Change in Accounting. No Borrower shall, and no Borrower shall suffer or permit any of its Subsidiaries to, (a) make any significant change in accounting treatment or reporting practices, except as required by GAAP or (b) change the fiscal year or method for determining fiscal quarters of any Credit Party or of any Consolidated Subsidiary of any Credit Party.

Section 5.17 Investment Company Act.No Borrower shall, nor shall it permit any Subsidiary to, directly or indirectly, engage in any business, enter into any transaction, use any securities or take any other action or permit any of its Subsidiaries to do any of the foregoing, that would cause it or any of its Subsidiaries to become subject to the registration requirements of the Investment Company Act, by virtue of being an "investment company" or a company "controlled" by an "investment company" not entitled to an exemption within the meaning of the Investment Company Act.

ARTICLE 6 - FINANCIAL COVENANTS

Section 6.1 Minimum Net Revenue.

(a) At all times prior to the Term Loan Tranche 2 Funding Date, Borrower shall not permit its consolidated Net Revenue attributable solely to the commercial sale of TX-004HR for any Defined Period, commencing with the Defined Period ending on September 30, 2018 (and as tested quarterly thereafter), to be less than the minimum amount set forth on Schedule 6.1(a) for such Defined Period.

(b) At all times following the Term Loan Tranche 2 Funding Date, Borrower shall not permit its consolidated Net Revenue attributable solely to the commercial sale of TX-004HR and TX-001HR for any Defined Period, commencing with the Defined Period ending on September 30, 2018 (and as tested quarterly thereafter), to be less than (i) if the TX-001HR First Commercial Sale occurs on or before March 31, 2019, the minimum amount set forth on Schedule 6.1(b) for such Defined Period or (ii) if the TX-001HR First Commercial Sale occurs after March 31, 2019, the minimum amount set forth on Schedule 6.1(c) for such Defined Period.

(c) A breach of a financial covenant contained in this Section 6.1 shall be deemed to have occurred as of the last day of the applicable Defined Period, regardless of when the financial statements reflecting such breach are delivered to Agent.

Section 6.2 Minimum Liquidity. Borrowers will not permit Borrower Unrestricted Cash at any time during the term of this Agreement to be less than $50,000,000.

Section 6.3 Evidence of Compliance. Borrowers shall furnish to Agent, as required by Section 4.1, a Compliance Certificate as evidence (x) of the monthly cash and Cash Equivalents of Borrowers and Borrowers and their Consolidated Subsidiaries, (y) of Borrowers' compliance with the covenants in this Article, and (z) that no Event of Default specified in this Article has occurred. The Compliance Certificate shall include, without limitation, (a) a statement and report, in form and substance reasonably satisfactory to Agent, detailing Borrowers' calculations, and (b) to the extent reasonably requested by Agent, back-up documentation (including, without limitation, bank statements, invoices, receipts and other evidence of costs incurred during such quarter as Agent shall reasonably require) evidencing the propriety of the calculations.

ARTICLE 7 - CONDITIONS

Section 7.1 Conditions to Closing. The obligation of each Lender to enter into this Agreement on the Closing Date shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist attached hereto as Exhibit E, each in form and substance reasonably satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the satisfaction of Agent and Lenders in their sole discretion:

(a) the receipt by Agent of executed counterparts of this Agreement and the other Financing Documents;

(b) the payment of all fees, expenses and other amounts due and payable under each Financing Document;

(c) the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the Closing Date, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date; and

(d) since December 31, 2017, the absence of any material adverse change in any aspect of the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party, or any event or condition which could reasonably be expected to result in a Material Adverse Effect.

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

Section 7.2 Conditions to Each Loan. The obligation of the Lenders to make a Loan or an advance in respect of any Loan, is subject to the satisfaction of the following additional conditions:

(a) the fact that, immediately before and after such advance or issuance, no Default or Event of Default shall have occurred and be continuing;

(b) the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete in all material respects on and as of the date of such borrowing, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date; provided, however, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof;

(c) the fact that no material adverse change in the condition (financial or otherwise), properties, business, or operations of Borrowers or any other Credit Party shall have occurred and be continuing with respect to Borrowers or any Credit Party since the date of this Agreement;

(d) in the case of each borrowing of the Term Loan Tranche 1, Term Loan Tranche 2 or Term Loan Tranche 3, Agent has received a duly executed Notice of Borrowing in accordance with the provisions of Section 2.1(a)(ii);

(e) in the case of a borrowing of the Term Loan Tranche 1, the Term Loan Tranche 1 Activation Date shall have occurred;

(f) in the case of a borrowing of the Term Loan Tranche 1, receipt by Agent of each agreement, document and instrument set forth on Schedule 7.2 hereto, each in form and substance reasonably satisfactory to Agent, and the satisfaction of each other condition set forth on Schedule 7.2 to the reasonable satisfaction of Agent;

(g) in the case of a borrowing of the Term Loan Tranche 2, (i) the Term Loan Tranche 1 Funding Date shall have occurred and (ii) the Term Loan Tranche 2 Activation Date shall have occurred; and

(h) in the case of any borrowing of the Term Loan Tranche 3, (i) each of the Term Loan Tranche 1 Funding Date and the Term Loan Tranche 2 Funding Date shall have occurred and (ii) the Term Loan Tranche 3 Activation Date shall have occurred.

Each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section.

Section 7.3 Searches. Before the Closing Date, and thereafter (as and when determined by Agent in its discretion), Agent shall have the right to perform, all at Borrowers' expense, the searches described in clauses (a), (b), and (c) below against Borrowers and any other Credit Party, the results of which are to be consistent with Borrowers' representations and warranties under this Agreement and the satisfactory results of which shall be a condition precedent to all advances of Loan proceeds: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

Section 7.4 Post-Closing Requirements. Borrowers shall complete each of the post-closing obligations and/or provide to Agent each of the documents, instruments, agreements and information listed on Schedule 7.4 attached hereto on or before the date set forth for each such item thereon, each of which shall be completed or provided in form and substance reasonably satisfactory to Agent.

ARTICLE 8 - RESERVED

ARTICLE 9 - SECURITY AGREEMENT

Section 9.1 Generally. As security for the payment and performance of the Obligations, and without limiting any other grant of a Lien and security interest in any Security Document, Borrowers hereby assign and grant to Agent, for the benefit of itself and Lenders a continuing first priority Lien on and security interest in, upon, and to the personal property set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

(a) The security interest granted pursuant to this Agreement constitutes a valid and, to the extent such security interest is required to be perfected by this Agreement and any other Financing Document, continuing perfected security interest in favor of Agent in all Collateral subject, for the following Collateral, to the occurrence of the following: (i) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of the filings and other actions specified on Schedule 9.2(b) (which, in the case of all filings and other documents referred to on such schedule, have been delivered to Agent in completed and duly authorized form), (ii) with respect to any Deposit Account, the execution of Deposit Account Control Agreements, (iii) in the case of letter-of-credit rights that are not supporting obligations of Collateral, the execution of a contractual obligation granting control to Agent over such letter-of-credit rights, (iv) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Agent over such electronic chattel paper, (v) in the case of all certificated stock, debt instruments and investment property, the delivery thereof to Agent of such certificated stock, debt instruments and investment property consisting of instruments and certificates, in each case properly endorsed for transfer to Agent or in blank, (vi) in the case of all investment property not in certificated form, the execution of control agreements with respect to such investment property and (vii) in the case of all other instruments and tangible chattel paper that are not certificated stock, debt instructions or investment property, the delivery thereof to Agent of such instruments and tangible chattel paper. Such security interest shall be prior to all other Liens on the Collateral except for Permitted Liens.

(b) Schedule 9.2(b) sets forth (i) each chief executive office and principal place of business of each Borrower and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral with a value in excess of $500,000 in the aggregate is located and/or books and records of Borrowers regarding any Collateral or any of Borrower's assets, liabilities, business operations or financial condition are kept, which such Schedule 9.2(b) indicates in each case which Borrower(s) have Collateral and/or books located at such address, and, in the case of any such address not owned by one or more of the Borrowers(s), indicates the nature of such location (e.g., leased business location operated by Borrower(s), third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(c) Without limiting the generality of Section 3.19, except as indicated on Schedule 3.19 with respect to any rights of any Borrower as a licensee under any material license of Intellectual Property owned by another Person, and except for the filing of financing statements under the UCC, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Borrower to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a material default under any agreement between any Borrower and any other Person relating to any such collateral, including any material license to which a Borrower is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Borrower or any other Person.

(d) As of the Closing Date, except as set forth on Schedule 9.2(d), no Borrower has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than Equity Interests in any Subsidiaries of such Borrower disclosed on Schedule 3.4) in each case with a value in excess of $500,000 in the aggregate, and Borrowers shall give notice to Agent promptly (but in any event not later than the delivery by Borrowers of the next Compliance Certificate required pursuant to Section 4.1 with respect to the last month of a fiscal quarter) upon the acquisition by any Borrower of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents, investment property in each case with a value in excess of $500,000 in the aggregate. No Person other than Agent or (if applicable) any Lender has "control" (as defined in Article 9 of the UCC) over any Deposit Account, investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper with a value in excess of $500,000 in the aggregate in which any Borrower has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of Borrowers is maintained).

(e) Borrowers shall not, and shall not permit any Credit Party to, take any of the following actions or make any of the following changes unless Borrowers have given at least thirty (30) days prior written notice to Agent of Borrowers' intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions related to such notice that Agent may reasonably request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Borrower as it appears in official filings with the Secretary of State or other applicable governing body in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Borrower or Credit Party or allow any Borrower or Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for such Borrower or Credit Party, or change the type of entity that it is, or (iii) change its chief executive office, principal place of business, or the location of its books and records (other than electronic duplications thereof) or move any Collateral (other than Inventory in-transit) with a value in excess of $500,000 in the aggregate to or place any such Collateral on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(f) At any time after the occurrence and during the continuance of an Event of Default, Borrowers shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business) without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrowers with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Borrowers and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(g) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) Borrowers shall deliver to Agent all tangible Chattel Paper and all Instruments and documents with a value in excess of $500,000 in the aggregate owned by any Borrower and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to Agent. Borrowers shall provide Agent with "control" (as defined in Article 9 of the UCC) of all electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Borrowers also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments. Borrowers will mark conspicuously all such Chattel Paper and all such Instruments and documents with a legend, in form and substance reasonably satisfactory to Agent, indicating that such Chattel Paper and such instruments and documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents. Borrowers shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Borrowers.

(ii) Borrowers shall deliver to Agent all letters of credit with a value in excess of $500,000 in the aggregate on which any Borrower is the beneficiary and which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to Agent. Borrowers shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner reasonably acceptable to Agent.

(iii) Borrowers shall promptly advise Agent upon any Borrower becoming aware that it has any interests in any filed actions in connection with commercial tort claims with a value in excess of $500,000 in the aggregate that constitute part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrowers shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall reasonably request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(iv) Borrowers shall, on or prior to the Term Loan Tranche 1 Funding Date, for each leased location where (A) any Collateral is stored or located and (B) any Collateral in the possession or control of any warehouse, consignee, bailee or any of Borrowers' agents or processors (except any such location where neither material books and records nor Collateral with a value in excess of $500,000 in the aggregate is stored or located), obtain a warehouse receipt, consignment agreement, landlord waiver, mortgagee agreement or bailee waiver (as applicable), which agreement shall be satisfactory in form and substance to Agent prior to the commencement of such lease or of such possession or control (as applicable). Borrower has notified Agent that Collateral and books and records are currently located at the locations set forth on Schedule 9.2(b) and Borrowers shall give notice to Agent promptly (but in any event not later than the delivery by Borrowers of the next Compliance Certificate required pursuant to Section 4.1 with respect to the last month of a fiscal quarter) of any new business location (except any such location where neither material books and records nor Collateral with a value in excess of $500,000 in the aggregate is stored or located).

(v) Borrowers shall cause all equipment and other tangible personal property constituting Collateral other than Inventory to be maintained and preserved in the same condition, repair and in working order as when new or in the condition acquired by the Borrowers, ordinary wear and tear excepted, and shall in the Ordinary Course of Business promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Upon request of Agent, Borrowers shall promptly deliver to Agent any and all issued certificates of title, applications for title or similar evidence of ownership of all such tangible personal property with a value in excess of $500,000 in the aggregate and shall, upon Agent's request, cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Borrowers shall not permit any such tangible personal property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(vi) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Borrower as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Borrower now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines in its commercially reasonable discretion are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(vii) As of the Closing Date, no Borrower holds, and after the Closing Date Borrowers shall promptly notify Agent in writing upon any Borrower obtaining knowledge of the creation or acquisition by any Borrower of, any Collateral which constitutes a claim in excess of $500,000 in the aggregate against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Borrowers shall take such steps as may be necessary, or that Agent may request, to comply with any such applicable Law.

(viii) Borrowers shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other material information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an "**Event of Default**":

(a) (i) any Credit Party shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document, (ii) there shall occur any default in the performance of or compliance with any of the following sections of this Agreement: Section 4.1 (except Sections 4.1(a) (c) and (h)), Section 4.2(b), Section 4.4(c), Section 4.6, Section 4.14 (except for Sections 4.14 (a) and (b)), Article 5, Article 6 or Section 7.4, or (iii) there shall occur any default in the performance of or compliance with any of the following sections of this Agreement: Sections 4.1(a) (c) and (h), or Sections 4.14 (a) and (b) and such default continues for three (3) Business Days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of a Responsible Officer of any Borrower or any other Credit Party of such default;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within thirty (30) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of a Responsible Officer of any Borrower or any other Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans), if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or to cause, Debt or other liabilities having an individual principal amount in excess of $3,000,000 or having an aggregate principal amount in excess of $3,000,000 to become or be declared due prior to its stated maturity, or (ii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) any Credit Party or any Subsidiary of a Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(f) an involuntary case or other proceeding shall be commenced against any Credit Party or any Subsidiary of a Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days; or an order for relief shall be entered against any Credit Party or any Subsidiary of a Borrower under applicable federal bankruptcy, insolvency or other similar law in respect of (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations, (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations, or (iii) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets of such Credit Party or Subsidiary;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of $1,000,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code or an event occurs that could reasonably be expected to give rise to a Lien under Section 4068 of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Pension Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Pension Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds $1,000,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of $1,000,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby (other than solely as a result of any action or inaction of Agent or Lenders provided that such action or inaction is not caused by a Credit Party's failure to comply with the terms of the Financing Documents), subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party that could reasonably be expected to result in a fine, penalty or other liabilities in excess of $500,000;

(k) a default or event of default occurs under any Guarantee of any portion of the Obligations;

(l) [reserved];

(m) TherapeuticsMD's equity securities fail to remain registered with the SEC and listed for trading on the Nasdaq Stock Market;

(n) the occurrence of any fact, event or circumstance that could reasonably be expected to result in a Material Adverse Effect;

(o) (i) the voluntary withdrawal or institution of any action or proceeding by the FDA or similar Governmental Authority to order the withdrawal of any material Product (including TX-001HR and TX-004HR) or Product class or category from the market or to enjoin Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries from manufacturing, marketing, selling or distributing any Product or Product class or category, (ii) the institution of any action or proceeding by FDA or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Regulatory Required Permit held by Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries which, in each case, has or could reasonably be expected to result in a Material Adverse Effect, (iii) the commencement of any enforcement action against Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries (with respect to the business of Borrower or its Subsidiaries), or any of its Products or manufacturing facilities for the Products by FDA or any other Governmental Authority which has or could reasonably be expected to result in a Material Adverse Effect, or (iv) the occurrence of adverse events or adverse drug reactions in connection with a Product which has or could reasonably be expected to result in a Material Adverse Effect;

(p) (i) any Credit Party materially defaults under or materially breaches (after any applicable grace period contained therein) any Material Contract the termination of which could reasonably be expected to result in a Material Adverse Effect and such default or breach is not effectively and permanently waived by the applicable counterparties to such Material Contract within ten (10) Business Days of a Responsible Officer of Borrower becoming aware of such default or breach, or (ii) such a Material Contract is terminated by a third party or parties party thereto prior to the expiration thereof and, in each case of termination, a substitute agreement of substantially the same or greater value to the Credit Parties is not established promptly (but in any event with ten (10) Business Days) thereafter by such Credit Party;

(q) any of the Operative Documents shall for any reason fail to constitute the valid and binding agreement of any party thereto, or any Credit Party shall so assert, in each case, unless such Operative Document terminates pursuant to the terms and conditions thereof without any breach or default thereunder by any Credit Party thereto; or

(r) the occurrence of a Change in Control.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Term Loan Commitment. Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Term Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Term Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; *provided*, *however*, that in the case of the occurrence and continuance of either of the Events of Default specified in Section 10.1(e) or 10.1(f) above, without any notice to any Borrower or any other act by Agent or the Lenders, the Term Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.

Section 10.3 UCC Remedies.

(a) Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Borrowers' premises and take possession of the Collateral, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Borrowers' original books and records, to obtain access to Borrowers' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Borrowers shall not resist or interfere with such action (if Borrowers' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Borrowers hereby irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Borrowers at Borrowers' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Lender;

(iv) the right to notify postal authorities to change the address for delivery of Borrowers' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Borrowers' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including attorneys' fees, to Borrowers, and (ii) the right, in the name of Agent or any designee of Agent or Borrowers, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Borrowers' compliance with applicable Laws. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Borrowers' affairs, all of which contacts Borrowers hereby irrevocably authorize.

(b) Each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Borrowers. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Borrowers, which right is hereby waived and released. Each Borrower covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Borrowers shall be credited with the proceeds of the sale. Borrowers shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Borrower hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral, upon the occurrence and during the continuance of an Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Borrower and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) In connection with Agent's exercise of its rights under this Article or any Financing Document, Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrowers' labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Article, Borrowers' rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Agent's and each Lender's benefit.

Section 10.4 Reserved.

Section 10.5 Default Rate of Interest. At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, the Loans and other Obligations shall bear interest at rates that are three percent (3.0%) per annum in excess of the rates otherwise payable under this Agreement; *provided, however*, that in the case of any Event of Default specified in Section 10.1(e) or 10.1(f) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights. During the continuance of any Event of Default, each Lender is hereby authorized by each Borrower at any time or from time to time, with reasonably prompt subsequent notice to such Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations; except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Borrower agrees, to the fullest extent permitted by law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of such Borrower or any Guarantor of all or any part of the Obligations, and, as between Borrowers on the one hand and Agent and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent.

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall promptly apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fourth*, to the principal amount of the Obligations outstanding; and *fifth* to any other indebtedness or obligations of Borrowers owing to Agent or any Lender under the Financing Documents. Any balance remaining shall be delivered to Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Borrower may in any way be liable, and hereby ratifies and confirms whatever Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Borrowers to comply with all such requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or Lenders shall remain in full force and effect until Agent or Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrowers and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrowers' obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrowers' obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrowers' obligations under the Financing Documents. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to seek an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof (other than as expressly provided herein). In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. Agent may perform any of its duties hereunder, or under the Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 Agent and Affiliates. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 Action by Agent. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 Indemnification. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Borrowers) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

Section 11.7 Right to Request and Act on Instructions. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), Agent shall have no obligation to take any action if it believes, in its commercially reasonable discretion, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of the Term Loan Commitment and payment in full of all Obligations; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by Agent pursuant to the definition of “Permitted Liens”. Upon request by Agent at any time, Lenders will confirm Agent’s authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent’s security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent’s request therefor, shall deliver such assets to Agent or in accordance with Agent’s instructions or transfer control to Agent in accordance with Agent’s instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, 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 interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Approved Fund, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of the Lenders or Borrowers. Following any such assignment, Agent shall endeavor to give notice to the Lenders and Borrowers. Failure to give such notice shall not affect such assignment in any way or cause the assignment to be ineffective. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent; *provided*, *however*, that if Agent shall notify Borrowers and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article and Section 11.12 shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

Section 11.13 Payment and Sharing of Payment.

(a) Term Loan Payments. Payments of principal, interest and fees in respect of the Term Loans will be settled on the date of receipt if received by Agent on the last Business Day of a month or on the Business Day immediately following the date of receipt if received on any day other than the last Business Day of a month; *provided, however,* that, in the case such Lender is a Defaulted Lender, Agent shall be entitled to set off the funding short-fall against that Defaulted Lender's respective share of all payments received from any Borrower.

(b) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(c) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(d) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided, however,* that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (d) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Borrowers in the amount of such participation). If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (d) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (d) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrowers' expense. Agent is further authorized by Borrowers and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Borrower hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the "**Additional Titled Agents**"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 11.16(b); *provided*, *however*, the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent are affected thereby, by Agent;

provided, however, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(ii)) of principal of any Loan, or of interest on any Loan (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all of the Collateral, authorize any Borrower to sell or otherwise dispose of all or substantially all of the Collateral, release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, or consent to a transfer of any of the Intellectual Property, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Borrower of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Term Loan Commitment, Term Loan Tranche 1 Commitments, Term Loan Tranche 2 Commitments, Term Loan Tranche 3 Commitments, Term Loan Commitment Amount, Term Loan Tranche 1 Commitment Amount, Term Loan Tranche 2 Commitment Amount, Term Loan Tranche 3 Commitment Amount, Term Loan Commitment Percentage, Term Loan Tranche 1 Commitment Percentage, Term Loan Tranche 2 Commitment Percentage, Term Loan Tranche 3 Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan together with all related obligations of such Lender hereunder. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to $1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided, however,* that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of $3,500 to be paid by the assigning Lender; *provided, however,* that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant to the terms hereof (the "**Register**"). The entries in such Register shall be conclusive, absent manifest effort, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Obligations (each, a "Participant Register"). The entries in the Participant Registers shall be conclusive, absent manifest error. Each Participant Register shall be available for inspection by Borrower and Agent at any reasonable time upon reasonable prior notice to the applicable Lender; provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Financing Document) to any Person (including Borrower) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a participant register.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided, however,* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the "**Settlement Service**"). At any time when Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Agent, sell to one or more Persons (other than any Borrower or any Borrower's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided, however*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(h), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a) through (h), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "**Affected Lender**") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement Lender ("**Replacement Lender**") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); *provided, however,* that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) through (h), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the $3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "**Lender**" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 12.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist. So long as Agent has not waived the conditions to the funding of Loans set forth in Section 7.2 or Section 2.1, any Lender may deliver a notice to Agent stating that such Lender not fund the Term Loans due to the non-satisfaction of one or more conditions to funding Loans set forth in Section 7.2 or Section 2.1, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a "**Non-Funding Lender**") for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Term Loans outstanding in excess of Zero Dollars ($0); *provided, however,* that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Lender under clause (c) of the definition of such term, each Non-Funding Lender shall be deemed to have a Term Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Term Loan Commitment Amount of each Non-Funding Lender shall be deemed to be Zero Dollars ($0).

(c) The Term Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Term Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date *plus* (ii) the aggregate principal amount outstanding under the Term Loans of all Non-Funding Lenders as of such date.

ARTICLE 12 - MISCELLANEOUS

Section 12.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents. The provisions of section 2.1(a)(v)(B) and (C), Section 2.8, Section 2.9, Article 11 (other than Sections 11.14 (other than the last sentence thereof) and Sections 11.16 and 11.17), and Section 12.8, Section 12.14 and Section 12.16 (and any other provision herein expressly stated to survive termination) shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.2 No Waivers. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the "continuing" nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an assignment agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; *provided*, *however*, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved from time to time by Agent, *provided*, *however*, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified Agent that it is incapable of receiving notices by electronic communication. Agent or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided*, *however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications 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 (i) of notification that such notice or communication is available and identifying the website address therefor, *provided*, *however*, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other Financing 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 12.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality.

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to Borrowers' advisors and officers on a need-to-know basis or as otherwise may be required by Law) without Agent's prior written consent, (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by Borrowers and obtained by Agent or any Lender pursuant to the requirements hereof in accordance with such Person's customary procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, *provided*, *however*, that any such Persons are bound by obligations of confidentiality, (ii) to prospective transferees or purchasers of any interest in the Loans, Agent or a Lender, *provided*, *however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization *provided*, *however*, that any such Persons are bound by obligations of confidentiality. For the purposes of this Section, "**Securitization**" means (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided*, *however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

Section 12.7 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

(b) EACH PARTY HERETO HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF NEW YORK IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH PARTY HERETO HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PARTY BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH PARTY AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

Section 12.9 **WAIVER OF JURY TRIAL**. EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

Section 12.10 Publication; Advertisement.

(a) Publication. No Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure (provided that the applicable Credit Party is not required to provide Agent with prior written notice in connection with any filings as may be required with the SEC to comply with disclosure obligations), or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, MCF shall provide Borrowers with an opportunity to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 12.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this Agreement, the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 12.14 Expenses; Indemnity.

(a) Borrowers hereby agree to promptly pay (i) all reasonable out-of-pocket costs and expenses of Agent (including, without limitation, the fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Agent (which shall be limited to one firm of counsel, and, if necessary, one firm of local counsel in each appropriate jurisdiction, and one specialist counsel for each appropriate specialty)) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all reasonable out-of-pocket costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all reasonable out-of-pocket costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto. This Section 12.14(a) shall not apply to any Taxes except for Taxes arising from a non-Tax claim.

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of Agent and Lenders (collectively called the "**Indemnitees**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable out-of-pocket fees and disbursements of counsel for such Indemnitee, which shall be limited to one firm of counsel for all similarly situated Indemnitees and if necessary, one firm of local counsel in each appropriate jurisdiction, one specialist counsel for each appropriate specialty and, in the case of an actual conflict of interest, one additional firm of counsel for such affected Indemnitees and one firm of local counsel in each appropriate jurisdiction) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Operative Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans, except that Borrower shall have no obligation hereunder to any Indemnitee with respect to such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever resulting from the gross negligence or willful misconduct of any Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrowers under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE OR CREDIT PARTY SHALL BE RESPONSIBLE OR LIABLE TO ANY PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

Section 12.15 Reserved.

Section 12.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.17 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers and Agent and each Lender and their respective successors and permitted assigns.

Section 12.18 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act.

Section 12.19 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Financing Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Financing Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Financing Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

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IN WITNESS WHEREOF, intending to be legally bound each of the parties have caused this Agreement to be executed the day and year first above mentioned.

BORROWERS:

THERAPEUTICSMD, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer

VITAMEDMD LLC

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer

BOCAGREENMD, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer

VITACARE PRESCRIPTION SERVICES, INC.

By: /s/ Daniel Cartwright
Name: Daniel Cartwright
Title: Chief Financial Officer

Address:

6800 Broken Sound Parkway, NW, Third Floor
Boca Raton, FL 33487
Attn: Daniel Cartwright, Chief Financial Officer
E-Mail: dcartwright@TherapeuticsMD.com

with a copy to:

Greenberg Traurig, P.A.
333 SE 2nd Avenue, Suite 4400
Miami, FL 33131
Attn: Joshua M. Samek, Esq.
E-Mail: samekj@gtlaw.com

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AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for TherapeuticsMD transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

Payment Account Designation:

SunTrust Bank, N.A.
ABA #: 061000104
Account Name: MidCap Financial Trust – Collections
Account #: 1000113400435
Attention: TXMD Credit Facility

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LENDER:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for TherapeuticsMD transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

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LENDER:

MIDCAP FUNDING VI TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for TherapeuticsMD transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

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LENDER:

MIDCAP FUNDING XIII TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for TherapeuticsMD transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

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LENDER:

APOLLO INVESTMENT CORPORATION

By: Apollo Investment Management, L.P., as Advisor

By: ACC Management, LLC, as its General Partner

By: /s/ Tanner Powell
Name: Tanner Powell
Title: Authorized Signatory

Address:

Apollo Investment Corporation
9 West 57th Street, 37th Floor
New York, New York 10019
Attn: Howard Widra
E-mail: hwidra@apolloLP.com

with a copy to:

Apollo Investment Corporation
730 Fifth Avenue, 11th Floor
New York, New York 10019
Attn: Sheriff Ibrahim, Jonathan Krain
Facsimile: 602-680-4108
E-mail: RealEstateOps@apolloLP.com,
16026804108@tls.ldsprod.com

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LENDER:

CION INVESTMENT CORPORATION

By: /s/ Gregg Bresner
Name: Gregg Bresner
Title: Chief Investment Officer

Address:

_____
_____
_____
_____
Attn: _____
Facsimile: _____
E-mail: _____

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LENDER:

FLEXPOINT MCLS HOLDINGS LLC

By: /s/ Daniel Edelman
Name: Daniel Edelman
Title: Vice President

Address:

Flexpoint MCLS Holdings LLC
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for TherapeuticsMD transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

Flexpoint MCLS Holdings LLC
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

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ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

EXHIBITS

SCHEDULES

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Annex A to Credit Agreement (Commitment Annex)

Lender	Term Loan Tranche 1 Commitment Amount	Term Loan Tranche 1 Commitment Percentage	Term Loan Tranche 2 Commitment Amount	Term Loan Tranche 2 Commitment Percentage	Term Loan Tranche 3 Commitment Amount	Term Loan Tranche 3 Commitment Percentage
MidCap Financial Trust	$0.00	0.000000%	$36,562,500.00	48.750000%	$24,375,000.00	48.750000%
MidCap Funding VI Trust	$21,562,500.00	28.750000%	$0.00	0.000000%	$0.00	0.000000%
MidCap Funding XIII Trust	$15,000,000.00	20.000000%	$0.00	0.000000%	$0.00	0.000000%
Apollo Investment Corporation	$22,500,000.00	30.000000%	$22,500,000.00	30.000000%	$15,000,000.00	30.000000%
CION Investment Corporation	$15,000,000.00	20.000000%	$15,000,000.00	20.000000%	$10,000,000.00	20.000000%
Flexpoint MCLS Holdings LLC	$937,500.00	1.250000%	$937,500.00	1.250000%	$625,000.00	1.250000%
TOTALS	$75,000,000.00	100%	$75,000,000.00	100%	$50,000,000.00	100%

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Exhibit A to Credit Agreement (Form of Compliance Certificate)

COMPLIANCE CERTIFICATE

This Compliance Certificate is given by _____, a Responsible Officer of TherapeuticsMD, Inc. (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of May 1, 2018 among the Borrower Representative and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Agent and Lenders that:

(a) [the financial statements delivered with this certificate in accordance with Section 4.1 of the Credit Agreement fairly present in all material respects the results of operations and financial condition of Borrowers and their Consolidated Subsidiaries as of the dates and the accounting period covered by such financial statements;]1

(b) the representations and warranties of each Credit Party contained in the Financing Documents are true, correct and complete in all material respects on and as of the date hereof, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date; provided, however, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof;

(c) I have reviewed the terms of the Credit Agreement and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Borrowers and their Consolidated Subsidiaries during the accounting period covered by such financial statements, and such review has not disclosed the existence during or at the end of such accounting period, and I have no knowledge of the existence as of the date hereof, of any condition or event that constitutes a Default or an Event of Default, except as set forth in **Schedule 1** hereto, which includes a description of the nature and period of existence of such Default or an Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto;

(d) **[**except as noted on **Schedule 2** attached hereto or as Borrowers have previously reported to Agent on any **Schedule 2** to any previous Compliance Certificate delivered by Borrower to Agent, Schedule 3.19 of the Credit Agreement contains a complete and accurate list of all of Borrowers' Registered Intellectual Property and all in-bound license or sublicense agreement, exclusive out-bound license or sublicense agreement and any other agreement with respect to rights in Intellectual Property;

(e) except as noted on **Schedule 3** attached hereto or as Borrowers have previously reported to Agent on any **Schedule 3** to any previous Compliance Certificate delivered by Borrowers to Agent, no Borrower has entered into any new Material Contract or any new material amendment, consent, waiver or other modification to any Material Contract;

1 Subsection (a) only to be included in Compliance Certificates to be delivered for the last month of a fiscal quarter

(f) except as noted on **Schedule 4** attached hereto or as Borrowers have previously reported to Agent on any **Schedule 4** to any previous Compliance Certificate delivered by Borrowers to Agent, Schedule 4.15 of the Credit Agreement contains a complete and accurate list of all Borrowers' material Products and material Regulatory Required Permits;

(g) except as noted on **Schedule 5** attached hereto or as Borrowers have previously reported to Agent on any **Schedule 5** to any previous Compliance Certificate delivered by Borrowers to Agent, Schedule 5.14 to the Credit Agreement contains a complete and accurate statement of all deposit accounts or investment accounts maintained by Borrowers;

(h) except as noted on **Schedule 6** attached hereto or as Borrowers have previously reported to Agent on any **Schedule 6** to any previous Compliance Certificate delivered by Borrower to Agent, Schedule 9.2(b) to the Credit Agreement contains a complete and accurate list of all business locations of Borrowers and Guarantors;

(i) except as noted on **Schedule 7** attached hereto or as Borrowers have previously reported to Agent on any **Schedule7** to any previous Compliance Certificate delivered by Borrowers to Agent, Schedule 9.2(d) of the Credit Agreement contains a complete and accurate list of all Chattel Paper, letter of credit rights, commercial tort claims, Instruments, Documents or Investment Property of the Borrowers;**]2**

(j) The aggregate amount of cash and Cash Equivalents held by Borrowers (on a consolidated basis) as of the date hereof is $[_____]; and

(k) Borrowers and Guarantor are in compliance with the covenants contained in Article 6 of the Credit Agreement, and in any Guarantee constituting a part of the Financing Documents, as demonstrated by the calculation of such covenants below, except as set forth below; in determining such compliance, the following calculations have been made: [See attached worksheets]. Such calculations and the certifications contained therein are true, correct and complete.

The foregoing certifications and computations are made as of _____, 201__ (end of month) and as of _____, 201__.

Sincerely,

[BORROWER REPRESENTATIVE]

By: _____
Name: _____
Title: _____

2 Subsections (d) through (i) only to be included in Compliance Certificates to be delivered for the last month of a fiscal quarter

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Exhibit B to Credit Agreement (Form of Notice of Borrowing)

NOTICE OF BORROWING

This Notice of Borrowing is given by _____, a Responsible Officer of TherapeuticsMD, Inc. (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of May 1, 2018 among the Borrower Representative and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby gives notice to Agent of Borrower Representative's request to borrow $_____ of Term Loans on _____, 201__.

The undersigned officer hereby certifies that, both before and after giving effect to the request above (a) each of the conditions precedent set forth in Section 7.2 have been satisfied, (b) all of the representations and warranties contained in the Credit Agreement and the other Financing Documents are true, correct and complete as of the date hereof, except to the extent such representation or warranty relates to a specific date, in which case such representation or warranty is true, correct and complete as of such earlier date, and (c) no Default or Event of Default has occurred and is continuing on the date hereof.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Notice of Borrowing this ____ day of _____, 201__.

Sincerely,

[BORROWER REPRESENTATIVE]

By: _____
Name: _____
Title: _____

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Exhibit C to Credit Agreement (Form of Payment Notification)

PAYMENT NOTIFICATION

This Payment Notification is given by _____, a Responsible Officer of TherapeuticsMD, Inc. (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of May 1, 2018 among the Borrower Representative, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Please be advised that funds in the amount of $_____ will be wire transferred to Agent on _____, 201_. Such funds shall constitute [an optional] [a mandatory] prepayment of the Term Loans, with such prepayments to be applied in the manner specified in Section 2.1(a)(iv). [Such mandatory prepayment is being made pursuant to Section _____ of the Credit Agreement.]

Fax to MCF Operations 301-941-1450 no later than noon Eastern time.

Note: Funds must be received in the Payment Account by no later than noon Eastern time for same day application.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Payment Notification this ____ day of _____, 201__.

Sincerely,

[BORROWER REPRESENTATIVE]

By: _____
Name: _____
Title: _____

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Exhibit D-1 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

This U.S. Tax Compliance Certificate is given to TherapeuticsMD, Inc. (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of May 1, 2018, among the Borrower Representative, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished Agent and the Borrower Representative with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____

Name: _____

Title: _____

Date: _____, 20[ ]

CONFIDENTIAL TREATMENT HAS BEEN REQUESTED FOR PORTIONS OF THIS EXHIBIT. THE COPY FILED HEREWITH OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST. OMISSIONS ARE DESIGNATED AS [***]. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit D-2 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

This U.S. Tax Compliance Certificate is given to TherapeuticsMD, Inc. (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of May 1, 2018 among the Borrower Representative, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form -8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____

Name: _____

Title: _____

Date: _____, 20[ ]

CONFIDENTIAL TREATMENT HAS BEEN REQUESTED FOR PORTIONS OF THIS EXHIBIT. THE COPY FILED HEREWITH OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST. OMISSIONS ARE DESIGNATED AS [***]. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

Exhibit D-3 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

This U.S. Tax Compliance Certificate is given to TherapeuticsMD, Inc. (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of May 1, 2018 among the Borrower Representative, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____

Name: _____

Title: _____

Date: _____, 20[ ]

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Exhibit D-4 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

This U.S. Tax Compliance Certificate is given to TherapeuticsMD, Inc. (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of May 1, 2018 among the Borrower Representative, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Financing Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished Agent and the Borrower Representative with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____

Name: _____

Title: _____

Date: _____, 20[ ]

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Exhibit E to Credit Agreement

(Closing Checklist)

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Schedule 2.1 - Amortization

Commencing on May 1, 2020 (the "**Initial Amortization Start Date**") and continuing on the first day of each calendar month thereafter, Borrower shall pay to Agent as a principal payment on the Term Loan(s) an amount equal to the total principal amount of the Term Loan(s) made to Borrower *divided by* thirty-six (36), for a thirty-six (36) month straight-line amortization of equal monthly principal payments; *provided*, *however*, Borrower Representative may, on any Business Day during the period beginning on February 15, 2020 and ending on the date that is fifteen (15) days prior to the Initial Amortization Start Date, request in writing that Agent and the Lenders extend the Initial Amortization Start Date (an "**IO Extension Request**") by twelve (12) months, and if the IO Extension Conditions (as defined below) are satisfied to Agent's and each Lender's reasonable satisfaction, then the Initial Amortization Start Date shall be extended to May 1, 2021 and the principal payments to be made in respect of the Term Loan(s) shall be in an amount equal to the total principal amount of the Term Loan(s) made to Borrower *divided by* twenty-four (24), for a twenty-four (24) month straight-line amortization of equal monthly principal payments.

For purposes hereof, the "**IO Extension Conditions**" means the satisfaction of each of the following conditions: (i) the Agent has received evidence reasonably satisfactory to it that the aggregate consolidated Net Revenue of Borrowers attributable solely to the commercial sale of TX-001HR and TX-004HR by December 31, 2019 is equal to or greater than $95,000,000, and (ii) as of the date of the IO Extension Request and the Initial Amortization Start Date (without giving effect to any extension thereof), no Default or Event of Default has occurred and is continuing.

Notwithstanding anything to the contrary contained in the foregoing, the entire remaining outstanding principal balance under the Term Loans shall mature and be due and payable upon the Termination Date.

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Schedule 3.1 – Existence, Organizational ID Numbers, Foreign Qualification, Prior Names

Borrower	Prior Names	Type of Entity / State of Formation	States Qualified	Federal Tax ID Number	Location of Borrower (address)
TherapeuticsMD, Inc.	None	Nevada	All other states	**87-0233535**	**6800 Broken Sound Parkway NW, Suite 300, Boca Raton, FL 33487**
VitaMedMD LLC	None	Delaware	FL	**26-2704476**	**6800 Broken Sound Parkway NW, Suite 300, Boca Raton, FL 33487**
BocaGreenMD, Inc.	None	Nevada	FL	**45-4837581**	**6800 Broken Sound Parkway NW, Suite 300, Boca Raton, FL 33487**
VitaCare Prescription Services, Inc.	None	Florida		**47-4220965**	**6800 Broken Sound Parkway NW, Suite 300, Boca Raton, FL 33487**

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Schedule 3.4 – Capitalization

Issuer	Class of capital Stock Issued or Membership Interest	Holder	Capital Stock/Membership Interest Ownership
VitaMedMD LLC	Membership Interest	**TherapeuticsMD, Inc.**	100%
BocaGreenMD, Inc.	Common Stock	**TherapeuticsMD, Inc.**	100%
VitaCare Prescription Services, Inc.	Common Stock	**TherapeuticsMD, Inc.**	100%

Schedule 3.6 – Litigation

None

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Schedule 3.17 – Material Contracts

None

Schedule 3.18 – Environmental Compliance

None

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Schedule 3.19 – Intellectual Property

PATENTS

Issued/Allowed Patents:

	Patent Number	Title	Grant/ Allowed Date (mm/dd/yy)	Country
1.	[***]	[***]	[***]	[***]
2.	[***]	[***]	[***]	[***]
3.	[***]	[***]	[***]	[***]
4.	[***]	[***]	[***]	[***]
5.	[***]	[***]	[***]	[***]
6.	[***]	[***]	[***]	[***]
7.	[***]	[***]	[***]	[***]
8.	[***]	[***]	[***]	[***]
9.	[***]	[***]	[***]	[***]
10.	[***]	[***]	[***]	[***]
11.	[***]	[***]	[***]	[***]
12.	[***]	[***]	[***]	[***]
13.	[***]	[***]	[***]	[***]
14.	[***]	[***]	[***]	[***]
15.	[***]	[***]	[***]	[***]
16.	[***]	[***]	[***]	[***]
17.	[***]	[***]	[***]	[***]
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20.	[***]	[***]	[***]	[***]
21.	[***]	[***]	[***]	[***]
22.	[***]	[***]	[***]	[***]
23.	[***]	[***]	[***]	[***]
24.	[***]	[***]	[***]	[***]

	Patent Number	Title	Grant/ Allowed Date (mm/dd/yy)	Country
25.	[***]	[***]	[***]	[***]
26.	[***]	[***]	[***]	[***]
27.	[***]	[***]	[***]	[***]
28.	[***]	[***]	[***]	[***]
29.	[***]	[***]	[***]	[***]
30.	[***]	[***]	[***]	[***]
31.	[***]	[***]	[***]	[***]
32.	[***]	[***]	[***]	[***]
33.	[***]	[***]	[***]	[***]
34.	[***]	[***]	[***]	[***]
35.	[***]	[***]	[***]	[***]
36.	[***]	[***]	[***]	[***]
37.	[***]	[***]	[***]	[***]

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Pending Patent Applications:

	Application Number	Title	Application Date	Country
1.	[***]	[***]	[***]	[***]
2.	[***]	[***]	[***]	[***]
3.	[***]	[***]	[***]	[***]
4.	[***]	[***]	[***]	[***]
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9.	[***]	[***]	[***]	[***]
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13.	[***]	[***]	[***]	[***]
14.	[***]	[***]	[***]	[***]
15.	[***]	[***]	[***]	[***]
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18.	[***]	[***]	[***]	[***]
19.	[***]	[***]	[***]	[***]
20.	[***]	[***]	[***]	[***]
21.	[***]	[***]	[***]	[***]
22.	[***]	[***]	[***]	[***]
23.	[***]	[***]	[***]	[***]
24.	[***]	[***]	[***]	[***]
25.	[***]	[***]	[***]	[***]

	Application Number	Title	Application Date	Country
26.	[***]	[***]	[***]	[***]
27.	[***]	[***]	[***]	[***]
28.	[***]	[***]	[***]	[***]
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31.	[***]	[***]	[***]	[***]
32.	[***]	[***]	[***]	[***]
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53.	[***]	[***]	[***]	[***]

	Application Number	Title	Application Date	Country
54.	[***]	[***]	[***]	[***]
55.	[***]	[***]	[***]	[***]
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59.	[***]	[***]	[***]	[***]
60.	[***]	[***]	[***]	[***]
61.	[***]	[***]	[***]	[***]
62.	[***]	[***]	[***]	[***]
63.	[***]	[***]	[***]	[***]
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76.	[***]	[***]	[***]	[***]
77.	[***]	[***]	[***]	[***]
78.	[***]	[***]	[***]	[***]
79.	[***]	[***]	[***]	[***]
80.	[***]	[***]	[***]	[***]
81.	[***]	[***]	[***]	[***]

	Application Number	Title	Application Date	Country
82.	[***]	[***]	[***]	[***]
83.	[***]	[***]	[***]	[***]
84.	[***]	[***]	[***]	[***]
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91.	[***]	[***]	[***]	[***]
92.	[***]	[***]	[***]	[***]
93.	[***]	[***]	[***]	[***]
94.	[***]	[***]	[***]	[***]
95.	[***]	[***]	[***]	[***]
96.	[***]	[***]	[***]	[***]
97.	[***]	[***]	[***]	[***]
98.	[***]	[***]	[***]	[***]
99.	[***]	[***]	[***]	[***]
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103.	[***]	[***]	[***]	[***]
104.	[***]	[***]	[***]	[***]
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107.	[***]	[***]	[***]	[***]
108.	[***]	[***]	[***]	[***]
109.	[***]	[***]	[***]	[***]

	Application Number	Title	Application Date	Country
110.	[***]	[***]	[***]	[***]
111.	[***]	[***]	[***]	[***]
112.	[***]	[***]	[***]	[***]
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117.	[***]	[***]	[***]	[***]
118.	[***]	[***]	[***]	[***]
119.	[***]	[***]	[***]	[***]
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126.	[***]	[***]	[***]	[***]
127.	[***]	[***]	[***]	[***]
128.	[***]	[***]	[***]	[***]
129.	[***]	[***]	[***]	[***]
130.	[***]	[***]	[***]	[***]
131.	[***]	[***]	[***]	[***]

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TRADEMARKS

Registered Trademarks

	Registration Number	Trademark or Design	Registration Date (mm/dd/yy)	Country
1.	[***]	[***]	[***]	[***]
2.	[***]	[***]	[***]	[***]
3.	[***]	[***]	[***]	[***]
4.	[***]	[***]	[***]	[***]
5.	[***]	[***]	[***]	[***]
6.	[***]	[***]	[***]	[***]
7.	[***]	[***]	[***]	[***]
8.	[***]	[***]	[***]	[***]
9.	[***]	[***]	[***]	[***]
10.	[***]	[***]	[***]	[***]
11.	[***]	[***]	[***]	[***]
12.	[***]	[***]	[***]	[***]
13.	[***]	[***]	[***]	[***]
14.	[***]	[***]	[***]	[***]

Pending Trademark Applications or Pending Designs

	Serial Number	Trademark or Design	Filing Date (mm/dd/yy)	Country
1.	[***]	[***]	[***]	[***]
2.	[***]	[***]	[***]	[***]
3.	[***]	[***]	[***]	[***]
4.	[***]	[***]	[***]	[***]
5.	[***]	[***]	[***]	[***]

	Serial Number	Trademark or Design	Filing Date mm/dd/yy)	Country
6.	[***]	[***]	[***]	[***]
7.	[***]	[***]	[***]	[***]
8.	[***]	[***]	[***]	[***]
9.	[***]	[***]	[***]	[***]
10.	[***]	[***]	[***]	[***]
11.	[***]	[***]	[***]	[***]
12.	[***]	[***]	[***]	[***]
13.	[***]	[***]	[***]	[***]
14.	[***]	[***]	[***]	[***]
15.	[***]	[***]	[***]	[***]
16.	[***]	[***]	[***]	[***]

SERVICE MARKS

Registered Service Marks or Designs

	Registration Number	Service Mark or Design	Registration Date (mm/dd/yy)	Country
1.	[***]	[***]	[***]	[***]
2.	[***]	[***]	[***]	[***]

Pending Service Mark Applications or Designs

	Serial Number	Service Mark or Design	Filing Date (mm/dd/yy)	Country
1.	[***]	[***]	[***]	[***]

Schedule 4.1(o) – Litigation, Governmental Proceedings and Other Notice Events

None

CONFIDENTIAL TREATMENT HAS BEEN REQUESTED FOR PORTIONS OF THIS EXHIBIT. THE COPY FILED HEREWITH OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST. OMISSIONS ARE DESIGNATED AS [***]. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

Schedule 4.15 – Products and Regulatory Required Permits

Material Products:

vitaTrue™
vitaPearl™
vitaMedMD One Rx Prenatal Multivitamin
vitaMedMD RediChew® Rx Prenatal Multivitamin
BocaGreenMD Prena1 True
BocaGreenMD Prena1 Pearl
BocaGreenMD Prena1 Chew
TX-001HR
TX-004HR

Material Regulatory Required Permits:

Estradiol plus Progesterone Oral (TX-001HR) [***]
Estradiol Vaginal Insert (TX-004HR) [***]

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Schedule 5.1 – Debt; Contingent Obligations

Pharmaceutical Drug Facility Surety Bond issued by Great American Insurance Company on behalf of TherapeuticsMD in favor of the State of Mississippi for the sum of $100,000.

Schedule 5.2 – Liens

None

Schedule 5.7 – Permitted Investments

None

Schedule 5.8 – Affiliate Transactions

None

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Schedule 5.11 –Business Description

Sale of prescription prenatal vitamins and future sale of pharmaceutical products, if approved.

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Schedule 5.14 – Deposit Accounts and Securities Accounts

Bank Name	Account Number	Account Type	Branch Address	Name of Company/Subsidiary holding Account
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]

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Schedule 6.1(a) – Minimum Net Revenue Prior to Term Loan Tranche 2 Funding Date

Defined Period Ending	Minimum Net Revenue
September 30, 2018	[***]
December 31, 2018	[***]
March 31, 2019	[***]
June 30, 2019	[***]
September 30, 2019	[***]
December 31, 2019	[***]
March 31, 2020	[***]
June 30, 2020	[***]
September 30, 2020	[***]
December 31, 2020	[***]
March 31, 2021	[***]
June 30, 2021	[***]
September 30, 2021	[***]
December 31, 2021	[***]
March 31, 2022	[***]
June 30, 2022	[***]
September 30, 2022	[***]
December 31, 2022	[***]
March 31, 2023 and each Defined Period ending thereafter	[***]

CONFIDENTIAL TREATMENT HAS BEEN REQUESTED FOR PORTIONS OF THIS EXHIBIT. THE COPY FILED HEREWITH OMITS THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST. OMISSIONS ARE DESIGNATED AS [***]. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

Schedule 6.1(b) – Minimum Net Revenue Following Term Loan Tranche 2 Funding Date (TX-001HR First Commercial Sale on or before 03/31/2019)

Defined Period Ending	Minimum Net Revenue
September 30, 2018	[***]
December 31, 2018	[***]
March 31, 2019	[***]
June 30, 2019	[***]
September 30, 2019	[***]
December 31, 2019	[***]
March 31, 2020	[***]
June 30, 2020	[***]
September 30, 2020	[***]
December 31, 2020	[***]
March 31, 2021	[***]
June 30, 2021	[***]
September 30, 2021	[***]
December 31, 2021	[***]
March 31, 2022	[***]
June 30, 2022	[***]
September 30, 2022	[***]
December 31, 2022	[***]
March 31, 2023 and each Defined Period ending thereafter	[***]

Schedule 6.1(c) – Minimum Net Revenue Following Term Loan Tranche 2 Funding Date (TX-001HR First Commercial Sale after 03/31/2019)

Defined Period Ending	Minimum Net Revenue
September 30, 2018	[***]
December 31, 2018	[***]
March 31, 2019	[***]
June 30, 2019	[***]
September 30, 2019	[***]
December 31, 2019	[***]
March 31, 2020	[***]
June 30, 2020	[***]
September 30, 2020	[***]
December 31, 2020	[***]
March 31, 2021	[***]
June 30, 2021	[***]
September 30, 2021	[***]
December 31, 2021	[***]
March 31, 2022	[***]
June 30, 2022	[***]
September 30, 2022	[***]
December 31, 2022	[***]
March 31, 2023 and each Defined Period ending thereafter	[***]

Schedule 7.2 – Term Loan Tranche 1 Funding Deliverables

1. [***]
2. [***]
3. [***]
4. [***]
5. [***]
6. [***]

Schedule 7.4 – Post-Closing Requirements

Borrowers shall satisfy and complete each of the following obligations, or provide Agent each of the items listed below, as applicable, on or before the date indicated below, all to the satisfaction of Agent in its sole and absolute discretion:

1. By the date that is ninety (90) days after the Closing Date, Borrowers shall provide Agent with reasonably satisfactory evidence of the recordation of valid assignments to Borrowers of the patents and patent applications listed in the below table.

PATENT NUMBER	TITLE	GRANT/ ALLOWED DATE (MM/DD/YY)	COUNTRY
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]

APPLICATION NUMBER	TITLE	FILING DATE	COUNTRY
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]

Borrower’s failure to complete and satisfy any of the above obligations on or before the date indicated above, or Borrower’s failure to deliver any of the above listed items on or before the date indicated above, shall constitute an immediate an automatic Event of Default.

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Schedule 9.1 – Collateral

The Collateral consists of all of Borrower's assets, other than Excluded Property, including without limitation, all of Borrower's right, title and interest in and to the following, whether now owned or hereafter created, acquired or arising:

(a) all goods, Accounts (including health-care insurance receivables), equipment, inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims (including each such claim listed on Schedule 9.2(d)), documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, securities accounts, fixtures, letter of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located;

(b) all of Borrowers' books and records relating to any of the foregoing; and

(c) any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

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Schedule 9.2(b) – Collateral Information

The following are all the locations where the Borrowers own, lease, or occupy any real property:

Complete Street and Mailing Address, including County and Zip Code	Borrower
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]

The following are all of the locations where the indicated Borrowers maintain inventory, equipment, or other property:

Complete Address	Borrower
[***]	[***]
[***]	[***]

The following are the names and addresses of all warehousemen, bailees, or other third parties who have possession of any of the Company's inventory or equipment or any of the inventory or equipment of its subsidiaries:

Name	Complete Street and Mailing Address, including County and Zip Code	Company/Subsidiary
[***]	[***]	[***]
[***]	[***]	[***]

Schedule 9.2(d) – Chattel Paper, Letter of Credit Rights, Commercial Tort Claims, Instruments, Documents, Investment Property

Securities Account list in Schedule 5.14

Exhibit 10.3

FOURTH AMENDMENT TO LEASE

THIS FOURTH AMENDMENT TO LEASE (the "Fourth Amendment") is made and entered into as of the Effective Date hereof, by and between 6800 BROKEN SOUND LLC, a Florida limited liability company and its successors or assigns ("Landlord"), and THERAPEUTICSMD, INC., a Nevada corporation authorized to do business in Florida ("Tenant").

RECITALS:

A. Landlord and Tenant have entered into that certain Lease effective as of May 13, 2013 (the "Original Lease") for the Lease of that certain Premises described within the Lease as the entire third floor of the Building located at 6800 Broken Sound Parkway, Boca Raton, Florida ("First Premises").

B. Effective as of February 19, 2015, Landlord and Tenant entered into that certain First Amendment to Lease ("First Amendment"), which, among other things, modified the Premises to also include Suite 100 of the Building (as defined in the Lease) (the "Second Premises").

C. Effective as of April 26, 2016, Landlord and Tenant entered into that certain Second Amendment to Lease ("Second Amendment"), which among other things, modified the Premises to also include Suite 125 of the Building (as defined in the Lease) (the "Third Premises").

D. Thereafter, Landlord and Tenant entered into that certain Third Amendment to Lease effective as of October 4, 2016 ("Third Amendment", and together with the Original Lease, the First Amendment, and the Second Amendment, the "Original Lease"; the Original Lease, as modified by this Third Amendment, is referred to herein as the "Lease"); which among other things, modified the Premises to thereafter include the entire third floor of the Building, Suite 100, Suite 125 and Suite 150 located within the Building, all as further defined and identified therein, and containing approximately 33,124 rentable square feet and constituting 65.19% of the Gross Rentable square footage of the Building (collectively, for purposes hereof, the "Existing Premises").

E. Landlord and Tenant desire to modify and amend the Lease to, among other things, upon the terms and conditions set forth herein: (i) to modify the date upon which the First Premises Rent Maximum Payment Ceiling terminates from October 1, 2018 to April 30, 2018.

F. Landlord and Tenant desire to enter into such other terms, conditions, and amendments to the Lease as are more specifically set forth herein.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and for separate consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties hereto, the Landlord and Tenant do hereby agree as follows:

1.0 Recitals. The above recitals are hereby ratified and confirmed as being true and correct and are incorporated herein in all respects.

2.0 Definitions. All terms defined herein shall have the identical definitions as ascribed to within the Original Lease, except where such definition is expressly modified herein.

3.0 Effective Date. The Effective Date of this Fourth Amendment to Lease shall be the date and time of the last party to fully execute this Fourth Amendment.

4.0 Rent Maximum Payment Ceiling. Notwithstanding anything contained herein or in the Lease to the contrary, the Rent Maximum Payment Ceiling, as referred to in the Lease, shall cease to apply starting May 1, 2018, and any and all references to the Rent Maximum Payment Ceiling shall be void and of no further force or effect from and after May 1, 2018.

5.0 Estoppel. Tenant hereby represents and warrants that Tenant is not in default of any term or condition of the Lease and that the Lease is in full force and effect and is the binding obligation of the Tenant in accordance with all terms and conditions of the Lease, as supplemented or amended herein. Tenant further acknowledges and represents that the Landlord is not in default of any term or condition of the Lease and the Lease is in full force and effect in accordance with its terms.

6.0 Duplicate Counterparts. This Fourth Amendment may be executed by the parties in duplicate counterparts and when taken together the same shall make one complete and binding document. This Fourth Amendment may be executed in full via facsimile transfer or electronic transmission, which facsimile copy or electronic transfer shall be deemed as binding as an original. All parties hereto may rely upon such facsimile copy or electronic transfer as though it were an original.

7.0 Superseding Clause. The terms and conditions of this Fourth Amendment shall supersede, amend and modify all terms and conditions of the Lease. In the event of any conflict between the terms and conditions contained herein and the terms and conditions contained in the Lease, all terms and conditions contained in this Fourth Amendment shall control. In all other respects, all terms and conditions of the Lease shall remain in full force and effect.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have executed this Lease as of the last date set forth below.

WITNESSES:

/s/ Max Kiejdan
Print Name: Max Kiejdan

/s/ A. Percy
Print Name: A. Percy

LANDLORD:

6800 Broken Sound LLC, a Florida limited liability company

By: /s/ Marc Bell
Marc Bell, Manager

Date: May 9, 2018

LANDLORD ACKNOWLEDGMENT

STATE OF Florida)
) ss:
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 9th day of May, 2018 by Marc Bell, as Manager of 6800 Broken Sound LLC, a Florida limited liability company, on behalf of the company. He/she personally appeared before me, is personally known to me or produced _____ as identification.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ Robin J. Powers
Notary Public
Printed Name: Robin J. Powers
My Commission Expires: June 19, 2021
Commission #GG77164; Notary Public
State of Florida

[Tenant Signature Page to Follow]

TENANT:

TherapeuticsMD, Inc., a Nevada corporation authorized to do business in Florida

/s/ Christina Carreras	By:	/s/ Robert Finizio
Print Name: Christina Carreras	Print Name:	Robert Finizio
	Title:	CEO
/s/ Janine Giovanni	Date:	May 9, 2018
Print Name: Janine Giovanni		

TENANT ACKNOWLEDGMENT

STATE OF Florida)
) ss:
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 9th day of May, 2018 by Robert Finizio as CEO of TherapeuticsMD, Inc., a Nevada corporation authorized to do business in Florida, on behalf said _____. He/she personally appeared before me, is personally known to me or produced _____ as identification.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ Giuseppina N. Gamby
Notary Public
Printed Name: Giuseppina N. Gamby
My Commission Expires: 02/27/2021
Commission #GG038089

Exhibit 31.1

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.

July 30, 2018

/s/ Robert G. Finizio

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

Exhibit 31.2

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.

July 30, 2018

/s/ Daniel A. Cartwright

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

Exhibit 32.1

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, 2018 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.

July 30, 2018

/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.

Exhibit 32.2

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, 2018 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.

July 30, 2018

/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.