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

FORM 10-Q

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

FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2023
or

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

For the transition period from to
Commission file number 001-36509

AMPHASTAR PHARMACEUTICALS, INC.
(Exact name of Registrant as specified in its charter)

Delaware	**33-0702205**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
11570 6th Street Rancho Cucamonga, CA	**91730**
(Address of principal executive offices)	**(zip code)**

(909) 980-9484
(Registrant's telephone number, including area code)

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

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

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

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
		Emerging growth company	☐

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.0001 per share	AMPH	The NASDAQ Stock Market LLC

The number of shares outstanding of the registrant's only class of common stock as of August 2, 2023 was 48,855,602.

AMPHASTAR PHARMACEUTICALS, INC.
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FORM 10-Q FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2023

SPECIAL NOTE ABOUT FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q, or Quarterly Report, contains "forward-looking statements" that involve substantial risks and uncertainties. In some cases, you can identify forward-looking statements by the following words: "may," "might," "will," "could," "would," "should," "expect," "intend," "plan," "anticipate," "believe," "estimate," "predict," "project," "potential," "continue," "ongoing" or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these identifying words. Forward-looking statements relate to future events or future financial performance or condition and involve known and unknown risks, uncertainties and other factors that could cause actual results, levels of activity, performance or achievement to differ materially from those expressed or implied by the forward-looking statements. These forward-looking statements include, but are not limited to, statements about:

- our expectations regarding the sales and marketing of our products;
- our expectations regarding our newly acquired product, BAQSIMI®, including with respect to our ability to increase our revenues and derive certain benefits as a result of our acquisition of BAQSIMI®;
- our ability to successfully acquire and integrate assets, including our ability to integrate BAQSIMI®;
- our expectations regarding our manufacturing and production and the integrity of our supply chain for our products, including the risks associated with our single source suppliers;
- our business and operations in general, including: any resurgence of the COVID-19 pandemic, adverse impacts of the Russia-Ukraine conflict and related macroeconomic conditions on our business, financial condition, operations, cash flows and liquidity;
- our ability to attract, hire, and retain highly skilled personnel;
- interruptions to our manufacturing and production as a result of natural catastrophic events or other causes beyond our control such as power disruptions or widespread disease outbreaks, such as any resurgence of the COVID-19 pandemic and the Russia-Ukraine conflict;
- global, national and local economic and market conditions, specifically with respect to geopolitical uncertainty, including the Russia-Ukraine conflict, inflation and rising interest rates;
- the timing and likelihood of U.S. Food and Drug Administration, or FDA, approvals and regulatory actions on our product candidates, manufacturing activities and product marketing activities;
- our ability to advance product candidates in our platforms into successful and completed clinical trials and our subsequent ability to successfully commercialize our product candidates;
- cost and delays resulting from the extensive pharmaceutical regulations to which we are subject;
- our ability to compete in the development and marketing of our products and product candidates;
- our expectations regarding the business of our Chinese subsidiary, Amphastar Nanjing Pharmaceuticals, Ltd., or ANP;
- the potential for adverse application of environmental, health and safety and other laws and regulations on our operations;
- our expectations for market acceptance of our new products and proprietary drug delivery technologies, as well as those of our active pharmaceutical ingredient, or API, customers;
- the effects of reforms in healthcare regulations and reductions in pharmaceutical pricing, reimbursement and coverage;
- our expectations in obtaining insurance coverage and adequate reimbursement for our products from third-party payers;
- the amount of price concessions or exclusion of suppliers adversely affecting our business;
- variations in intellectual property laws, our ability to establish and maintain intellectual property protection for our products and our ability to successfully defend our intellectual property in cases of alleged infringement;
- the implementation of our business strategies, product development strategies and technology utilization;
- the potential for exposure to product liability claims;
- our ability to successfully bid for suitable acquisition targets or licensing opportunities, or to consummate and integrate acquisitions, divestitures or investments, including the anticipated benefits of such acquisitions, divestitures or investments;
- our ability to expand internationally;
- economic and industry trends and trend analysis;
- our ability to remain in compliance with laws and regulations that currently apply or become applicable to our business both in the United States and internationally;
- the impact of trade tariffs, export or import restrictions, or other trade barriers;
- the impact of Patient Protection and Affordable Care Act (as amended) and other legislative and regulatory healthcare reforms in the countries in which we operate including the potential for drug price controls;
- the impact of global and domestic tax reforms;
- the timing for completion and the validation of the new construction at our ANP and Amphastar facilities;
- the timing and extent of share buybacks; and
- our financial performance expectations, including our expectations regarding our backlog, revenue, cost of revenue, gross profit or gross margin, operating expenses, including changes in research and development, sales and marketing and general and administrative expenses, and our ability to achieve and maintain future profitability.

You should read this Quarterly Report and the documents that we reference elsewhere in this Quarterly Report completely and with the understanding that our actual results may differ materially from what we expect as expressed or implied by our forward-looking statements. In light of the significant risks and uncertainties to which our forward-looking statements are subject, you should not place undue reliance on or regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified timeframe, or at all. We discuss many of these risks and uncertainties in greater detail in this Quarterly Report and in our Annual Report on Form 10-K for the year ended December 31, 2022, particularly in Item 1A. “Risk Factors.” These forward-looking statements represent our estimates and assumptions only as of the date of this Quarterly Report regardless of the time of delivery of this Quarterly Report, and such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. Except as required by law, we undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise after the date of this Quarterly Report.

Unless expressly indicated or the context requires otherwise, references in this Quarterly Report to “Amphastar,” “the Company,” “we,” “our,” and “us” refer to Amphastar Pharmaceuticals, Inc. and our subsidiaries.

PART I – FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

AMPHASTAR PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	June 30, 2023 (unaudited)	December 31, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	$ 148,595	$ 156,098
Restricted cash	2,685	235
Short-term investments	14,541	19,664
Restricted short-term investments	2,200	2,200
Accounts receivable, net	104,715	88,804
Inventories	104,617	103,584
Income tax refunds and deposits	1,329	171
Prepaid expenses and other assets	5,872	7,563
Total current assets	384,554	378,319
Property, plant, and equipment, net	278,526	238,266
Finance lease right-of-use assets	657	753
Operating lease right-of-use assets	26,327	25,554
Investment in unconsolidated affiliate	1,462	2,414
Goodwill and intangible assets, net	625,603	37,298
Other assets	20,269	20,856
Deferred tax assets	40,868	38,527
Total assets	$ 1,378,266	$ 741,987
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued liabilities	$ 217,536	$ 84,242
Income taxes payable	17,696	4,571
Current portion of long-term debt	12,920	3,046
Current portion of operating lease liabilities	3,133	3,003
Total current liabilities	251,285	94,862
Long-term reserve for income tax liabilities	7,225	7,225
Long-term debt, net of current portion and unamortized debt issuance costs	488,280	72,839
Long-term operating lease liabilities, net of current portion	24,407	23,694
Deferred tax liabilities	201	144
Other long-term liabilities	17,633	14,565
Total liabilities	789,031	213,329
Commitments and contingencies		
Stockholders' equity:		
Preferred stock: par value $0.0001; 20,000,000 shares authorized; no shares issued and outstanding	—	—
Common stock: par value $0.0001; 300,000,000 shares authorized; 59,068,477 and 48,818,806 shares issued and outstanding as of June 30, 2023 and 58,110,231 and 48,112,069 shares issued and outstanding as of December 31, 2022, respectively	6	6
Additional paid-in capital	471,110	455,077
Retained earnings	323,880	271,723
Accumulated other comprehensive loss	(8,324)	(8,624)
Treasury stock	(197,437)	(189,524)
Total equity	589,235	528,658
Total liabilities and stockholders' equity	$ 1,378,266	$ 741,987

See Accompanying Notes to Condensed Consolidated Financial Statements.

AMPHASTAR PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited; in thousands, except per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net revenues	$ 145,712	$ 123,467	$ 285,734	$ 243,835
Cost of revenues	72,974	60,111	139,156	124,653
Gross profit	72,738	63,356	146,578	119,182
Operating expenses:				
Selling, distribution, and marketing	6,718	5,756	13,827	11,275
General and administrative	12,281	9,979	25,764	22,449
Research and development	16,843	22,798	36,658	39,021
Total operating expenses	35,842	38,533	76,249	72,745
Income from operations	36,896	24,823	70,329	46,437
Non-operating income (expenses):				
Interest income	1,030	229	1,954	410
Interest expense	(3,602)	(397)	(4,000)	(752)
Other income (expenses), net	(1,516)	(1,504)	(1,906)	6,089
Total non-operating income (expenses), net	(4,088)	(1,672)	(3,952)	5,747
Income before income taxes	32,808	23,151	66,377	52,184
Income tax provision	6,383	5,551	13,135	9,628
Income before equity in losses of unconsolidated affiliate	26,425	17,600	53,242	42,556
Equity in losses of unconsolidated affiliate	(301)	(254)	(1,086)	(957)
Net income	$ 26,124	$ 17,346	$ 52,156	$ 41,599
Net income per share:				
Basic	$ 0.54	$ 0.35	$ 1.08	$ 0.86
Diluted	$ 0.49	$ 0.33	$ 0.99	$ 0.79
Weighted-average shares used to compute net income per share:				
Basic	48,404	48,864	48,202	48,501
Diluted	53,102	53,227	52,536	52,603

See Accompanying Notes to Condensed Consolidated Financial Statements.

AMPHASTAR PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(Unaudited; in thousands)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net income	$ 26,124	$ 17,346	$ 52,156	$ 41,599
Other comprehensive income (loss), net of income taxes				
Foreign currency translation adjustment	(56)	(1,464)	300	(1,944)
Total other comprehensive income (loss)	(56)	(1,464)	300	(1,944)
Total comprehensive income	$ 26,068	$ 15,882	$ 52,456	$ 39,655

See Accompanying Notes to Condensed Consolidated Financial Statements.

AMPHASTAR PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited; in thousands, except share data)

	Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive loss	Treasury Stock		Total
	Shares	Amount				Shares	Amount	
Balance as of December 31, 2022	58,110,231	$ 6	$ 455,077	$ 271,723	$ (8,624)	(9,998,162)	$ (189,524)	$ 528,658
Net income	—	—	—	26,032	—	—	—	26,032
Other comprehensive income	—	—	—	—	356	—	—	356
Purchase of treasury stock	—	—	—	—	—	(263,131)	(8,015)	(8,015)
Issuance of common stock in connection with the Company's equity plans	330,300	—	(4,565)	—	—	—	—	(4,565)
Share-based compensation expense	—	—	6,111	—	—	—	—	6,111
Balance as of March 31, 2023	58,440,531	$ 6	$ 456,623	$ 297,755	$ (8,268)	(10,261,293)	$ (197,539)	$ 548,577
Net income	—	—	—	26,124	—	—	—	26,124
Other comprehensive loss	—	—	—	—	(56)	—	—	(56)
Purchase of treasury stock	—	—	—	—	—	(3,585)	(129)	(129)
Issuance of treasury stock in connection with the Company's equity plans	—	—	(231)	—	—	15,207	231	—
Issuance of common stock in connection with the Company's equity plans	627,946	—	9,853	—	—	—	—	9,853
Share-based compensation expense	—	—	4,865	—	—	—	—	4,865
Balance as of June 30, 2023	59,068,477	$ 6	$ 471,110	$ 323,880	$ (8,324)	(10,249,671)	$ (197,437)	$ 589,235

	Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive loss	Treasury Stock		Total
	Shares	Amount				Shares	Amount	
Balance as of December 31, 2021	56,440,202	$ 6	$ 422,423	$ 180,337	$ (6,765)	(8,725,290)	$ (150,479)	$ 445,522
Net income	—	—	—	24,253	—	—	—	24,253
Other comprehensive loss	—	—	—	—	(480)	—	—	(480)
Purchase of treasury stock	—	—	—	—	—	(51,168)	(1,229)	(1,229)
Issuance of treasury stock in connection with the Company's equity plans	—	—	(428)	—	—	33,231	428	—
Issuance of common stock in connection with the Company's equity plans	1,055,200	—	6,437	—	—	—	—	6,437
Share-based compensation expense	—	—	5,022	—	—	—	—	5,022
Balance as of March 31, 2022	57,495,402	$ 6	$ 433,454	$ 204,590	$ (7,245)	(8,743,227)	$ (151,280)	$ 479,525
Net income	—	—	—	17,346	—	—	—	17,346
Other comprehensive loss	—	—	—	—	(1,464)	—	—	(1,464)
Purchase of treasury stock	—	—	—	—	—	(189,840)	(6,118)	(6,118)
Issuance of treasury stock in connection with the Company's equity plans	—	—	(430)	—	—	29,019	430	—
Issuance of common stock in connection with the Company's equity plans	400,935	—	5,783	—	—	—	—	5,783
Share-based compensation expense	—	—	4,235	—	—	—	—	4,235
Balance as of June 30, 2022	57,896,337	$ 6	$ 443,042	$ 221,936	$ (8,709)	(8,904,048)	$ (156,968)	$ 499,307

See Accompanying Notes to Condensed Consolidated Financial Statements.

AMPHASTAR PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited; in thousands)

	Six Months Ended June 30,	
	2023	**2022**
Cash Flows From Operating Activities:		
Net income	$ 52,156	$ 41,599
Reconciliation to net cash provided by operating activities:		
Loss on disposal of assets	7	(58)
Impairment of long-lived assets	2,700	—
Loss (gain) on interest rate swaps and foreign currency transactions, net	2,434	(298)
Depreciation of property, plant, and equipment	12,121	11,411
Amortization of product rights, trademarks, and patents	471	504
Operating lease right-of-use asset amortization	1,825	1,709
Amortization of debt issuance costs and debt modification costs	3,249	192
Equity in losses of unconsolidated affiliate	1,086	957
Share-based compensation expense	10,976	9,257
Changes in operating assets and liabilities:		
Accounts receivable, net	(10,533)	(2,178)
Inventories	(767)	(7,422)
Prepaid expenses and other assets	740	468
Income tax refunds, deposits, and payable, net	11,967	(14,235)
Operating lease liabilities	(1,750)	(1,468)
Accounts payable and accrued liabilities	8,623	13,142
Net cash provided by operating activities	95,305	53,580
Cash Flows From Investing Activities:		
BAQSIMI® acquisition	(500,829)	—
Purchases and construction of property, plant, and equipment	(18,531)	(12,101)
Proceeds from the sale of property, plant and equipment	—	421
Purchase of investments	(19,774)	(12,004)
Maturity of investments	25,151	6,391
Deposits and other assets	(932)	3
Net cash used in investing activities	(514,915)	(17,290)
Cash Flows From Financing Activities:		
Proceeds from equity plans, net of withholding tax payments	5,288	12,220
Purchase of treasury stock	(8,143)	(7,346)
Debt issuance costs	(14,150)	(89)
Proceeds from issuance of long-term debt	500,000	—
Principal payments on long-term debt	(68,432)	(1,131)
Net cash provided by financing activities	414,563	3,654
Effect of exchange rate changes on cash	(6)	(140)
Net (decrease) increase in cash, cash equivalents, and restricted cash	(5,053)	39,804
Cash, cash equivalents, and restricted cash at beginning of period	156,333	126,588
Cash, cash equivalents, and restricted cash at end of period	$ 151,280	$ 166,392
Noncash Investing and Financing Activities:		
Deferred payment for BAQSIMI® acquisition	$ 127,276	$ —
Capital expenditures included in accounts payable	$ 3,681	$ 5,539
Operating lease right-of-use assets in exchange for operating lease liabilities	$ 2,598	$ 1,777
Supplemental Disclosures of Cash Flow Information:		
Interest paid, net of capitalized interest	$ 2,772	$ 1,167
Income taxes paid	$ 1,322	$ 23,964

See Accompanying Notes to Condensed Consolidated Financial Statements.

AMPHASTAR PHARMACEUTICALS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note 1. General

Amphastar Pharmaceuticals, Inc., a Delaware corporation (together with its subsidiaries, hereinafter referred to as the "Company") is a bio-pharmaceutical company that focuses primarily on developing, manufacturing, marketing, and selling technically challenging generic and proprietary injectable, inhalation, and intranasal products, including products with high technical barriers to market entry. Additionally, the Company sells insulin active pharmaceutical ingredient, or API, products. Most of the Company's products are used in hospital or urgent care clinical settings and are primarily contracted and distributed through group purchasing organizations and drug wholesalers. The Company's insulin API products are sold to other pharmaceutical companies for use in their own products and are being used by the Company in the development of injectable finished pharmaceutical products. The Company's inhalation product, Primatene MIST®, is primarily distributed through drug retailers.

The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements of the Company for the year ended December 31, 2022 and the notes thereto as filed with the Securities and Exchange Commission, or SEC, in the Company's Annual Report on Form 10-K for the year ended December 31, 2022. Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with United States generally accepted accounting principles, or GAAP, have been condensed or omitted from the accompanying condensed consolidated financial statements. The accompanying year-end condensed consolidated balance sheet was derived from the audited financial statements. The accompanying interim financial statements are unaudited, but reflect all adjustments which are, in the opinion of management, necessary for a fair statement of the Company's consolidated financial position, results of operations, comprehensive income (loss), stockholders' equity, and cash flows for the periods presented. Unless otherwise noted, all such adjustments are of a normal, recurring nature. The Company's results of operations, comprehensive income (loss) and cash flows for the interim periods are not necessarily indicative of the results of operations and cash flows that it may achieve in future periods.

Note 2. Summary of Significant Accounting Policies

Basis of Presentation

The unaudited condensed consolidated financial statements include the accounts of the Company and its subsidiaries, and are prepared in accordance with GAAP. Certain prior period amounts have been reclassified within the operating activities of the condensed consolidated statements of cash flows to conform to the current period presentation. All intercompany activity has been eliminated in the preparation of the condensed consolidated financial statements. In the opinion of management, the accompanying unaudited condensed consolidated financial statements include all adjustments, which are of a normal recurring nature, necessary to present fairly the consolidated financial position, results of operations, and cash flows of the Company.

The Company's subsidiaries include: (1) International Medication Systems, Limited, or IMS, (2) Armstrong Pharmaceuticals, Inc., or Armstrong, (3) Amphastar Nanjing Pharmaceuticals Inc., or ANP, (4) Amphastar France Pharmaceuticals, S.A.S., or AFP, (5) Amphastar UK Ltd., or AUK, (6) International Medication Systems (UK) Limited, or IMS UK, and (7) Amphastar Medication Co., LLC, or Amphastar Medication.

Investments in Unconsolidated Affiliate

The Company applies the equity method of accounting for investments when it has significant influence, but not controlling interest in the investee. Judgment regarding the level of influence over each equity method investment includes key factors such as ownership interest, representation on the board of directors, participation in policy-making decisions and material intercompany transactions. The Company's proportionate share of the earnings or losses resulting from these investments is reported as "Equity in losses of unconsolidated affiliate" in the accompanying consolidated

AMPHASTAR PHARMACEUTICALS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

statements of operations. Investments accounted for using the equity method may be reported on a lag of up to three months if financial statements of the investee are not available in sufficient time for the investor to apply the equity method as of the current reporting date. The determination of whether an investee's results are recorded on a lag is made on an investment-by-investment basis.

The carrying value of equity method investments is reported as "Investment in unconsolidated affiliate" in the accompanying consolidated balance sheets. The Company's equity method investments are reported at cost and adjusted each period for the Company's share of the investee's earnings or losses and dividends paid, if any.

The Company assesses equity method investments for impairment whenever events or changes in circumstances indicate that the carrying value of an investment may not be recoverable. If the decline in value is considered to be other than temporary, the investment is written down to its estimated fair value, which establishes a new cost basis in the investment. No such impairment was identified for any of the periods presented.

Use of Estimates

The preparation of condensed consolidated financial statements in accordance with GAAP requires management to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and accompanying notes. Actual results could differ from those estimates. The principal accounting estimates include: fair value of acquired assets, determination of allowances for credit losses, fair value of financial instruments, allowance for discounts, provision for chargebacks and rebates, provision for product returns, adjustment of inventory to its net realizable value, impairment of investments, long-lived and intangible assets and goodwill, accrual for workers' compensation liabilities, litigation reserves, stock price volatility for share-based compensation expense, valuation allowances for deferred tax assets, and liabilities for uncertain income tax positions.

Foreign Currency

The functional currency of the Company, its domestic subsidiaries, its Chinese subsidiary ANP, and its U.K. subsidiary, AUK, is the U.S. Dollar, or USD. ANP maintains its books of record in Chinese yuan. These books are remeasured into the functional currency of USD using the current or historical exchange rates. The resulting currency remeasurement adjustments and other transactional foreign currency exchange gains and losses are reflected in the Company's condensed consolidated statements of operations.

The Company's French subsidiary, AFP, maintains its book of record in euros. AUK's subsidiary, IMS UK, maintains its book of record in British pounds. These local currencies have been determined to be the subsidiaries' respective functional currencies. Activities in the statements of operations are translated to USD using average exchange rates during the period. Assets and liabilities are translated at the rate of exchange prevailing on the balance sheet date. Equity is translated at the prevailing rate of exchange at the date of the equity transactions. Translation adjustments are reflected in stockholders' equity and are included as a component of other accumulated comprehensive income (loss). The unrealized gains or losses of intercompany foreign currency transactions that are of a long-term investment nature are reported in other accumulated comprehensive income (loss).

The unrealized gains and losses of intercompany foreign currency transactions that are of a long-term investment nature were a $0.1 million loss and a $0.5 million gain for the three and six months ended June 30, 2023, respectively. For the three and six months ended June 30, 2022, the unrealized gains and losses of intercompany foreign currency transactions that are of a long-term investment nature were a $2.1 million loss and a $2.7 million loss, respectively.

AMPHASTAR PHARMACEUTICALS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Comprehensive Income

The Company's comprehensive income includes its foreign currency translation gains and losses as well as its share of other comprehensive income from its equity method investments.

Acquisitions

The Company evaluates acquisitions and other similar transactions to assess whether or not the transaction should be accounted for as a business combination or asset acquisition by first applying a screen test to determine if substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets. If the screen is met, the transaction is accounted for as an asset acquisition. If the screen is not met, further determination is required as to whether or not the Company has acquired inputs and substantive processes that have the ability to create outputs, which would meet the definition of a business.

Acquisitions meeting the definition of business combinations are accounted for using the acquisition method of accounting, which requires that the purchase price be allocated to the net assets acquired at their respective fair values. In a business combination, any excess of the purchase price over the estimated fair values of the net assets acquired is recorded as goodwill.

For asset acquisitions, a cost accumulation model is used to determine the cost of an asset acquisition. Direct transaction costs are recognized as part of the cost of an asset acquisition. The cost of an asset acquisition, including transaction costs, is allocated to identifiable assets acquired and liabilities assumed based on a relative fair value basis, with the exception of non-qualifying assets. Goodwill is not recognized in an asset acquisition. When a transaction accounted for as an asset acquisition includes an in-process research and development, or IPR&D, asset, the IPR&D asset is only capitalized if it has an alternative future use other than in a particular research and development project. Asset acquisitions may include contingent consideration arrangements that encompass obligations to make future payments to sellers contingent upon the achievement of future financial targets. Contingent consideration, including assumed contingent considerations, is not recognized until all contingencies are resolved and the consideration is paid or becomes payable (unless contingent considerations meets the definition of a derivative, in which case the amount becomes part of the basis in the asset acquired), at which point the consideration is allocated to the assets acquired based on their relative fair values at the acquisition date, with the exception of non-qualifying assets.

Judgments are used in determining estimates of useful lives of long-lived assets. Useful life estimates are based on, among other factors, estimates of expected future net cash flows, the assessment of each asset's life cycle, and the impact of competitive trends on each asset's life cycle and other factors. These judgments can materially impact the estimates used to allocate purchase consideration to assets acquired and liabilities assumed, and the resulting timing and amounts charged to or recognized in current and future operating results. For these and other reasons, actual results may vary significantly from estimated results.

Advertising Expense

Advertising expenses, primarily associated with Primatene MIST®, are recorded as they are incurred, except for expenses related to the development of a major commercial or media campaign, which are expensed in the period in which the commercial or campaign is first presented, and are reflected as a component of selling, distribution and marketing in the Company's condensed consolidated statements of operations. For the three and six months ended June 30, 2023, advertising expenses were $2.9 million and $6.2 million, respectively. For the three and six months ended June 30, 2022, advertising expenses were $2.5 million and $4.9 million, respectively.

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Financial Instruments

The carrying amounts of cash and cash equivalents, short-term investments, restricted cash and short-term investments, accounts receivable, accounts payable, accrued expenses, and short-term borrowings approximate fair value due to the short maturity of these items. The majority of the Company's long-term obligations consist of variable rate debt, and their carrying value approximates fair value as the stated borrowing rates are comparable to rates currently offered to the Company for instruments with similar maturities. The Company at times enters into interest rate swap contracts to manage its exposure to interest rate changes and its overall cost of long-term debt. The Company's interest rate swap contracts exchange the variable interest rates for fixed interest rates.

From time to time, the Company may enter into forward currency contracts to lock in currency exchange rates to manage its foreign currency exchange rate exposure. The Company's interest rate swaps and forward currency contracts have not been designated as hedging instruments and, therefore are recorded at their fair values at the end of each reporting period with changes in fair value recorded in other income (expenses) on the condensed consolidated statements of operations. As of June 30, 2023, the Company did not have any unsettled forward currency contracts to purchase foreign currency. As of December 31, 2022, the Company had an unsettled forward currency contract to purchase foreign currency with a fair value of approximately $0.2 million, based on Level 2 inputs, which was recorded as a liability in the accounts payable and accrued liabilities line in the condensed consolidated balance sheets.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash, money market accounts, certificates of deposit and highly liquid investments with original maturities of three months or less.

Investments

Investments as of June 30, 2023 and December 31, 2022 consisted of certificates of deposit and investment grade corporate and municipal bonds with original maturity dates between three and fifteen months.

Restricted Cash

Restricted cash is collateral required for the Company to guarantee certain vendor payments in France and China. As of June 30, 2023 and December 31, 2022, the restricted cash balance was $2.7 million and $0.2 million, respectively.

Restricted Short-Term Investments

Restricted short-term investments consist of certificates of deposit that are collateral for standby letters of credit to qualify for workers' compensation self-insurance. The certificates of deposit have original maturities greater than three months, but less than one year. As of June 30, 2023 and December 31, 2022, the balance of restricted short-term investments was $2.2 million.

Deferred Income Taxes

The Company utilizes the liability method of accounting for income taxes, under which deferred taxes are determined based on the temporary differences between the financial statements and the tax basis of assets and liabilities using enacted tax rates. A valuation allowance is recorded when it is more likely than not that the deferred tax assets will not be realized.

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Debt Issuance Costs

Debt issuance costs related to non-revolving debt are recognized as a reduction to the related debt balance in the accompanying condensed consolidated balance sheets and amortized to interest expense over the contractual term of the related debt using the effective interest method. Debt issuance costs associated with revolving debt are capitalized within other long-term assets on the condensed consolidated balance sheets and are amortized to interest expense over the term of the related revolving debt.

Impairment of Long Lived Assets, including Identifiable Definite-Lived Intangible Assets

The Company assesses long-term and identifiable definite-lived intangible assets or asset groups for impairment when events or changes in circumstances indicate that the carrying amount of an asset or asset group may not be recoverable. If the sum of the expected future undiscounted cash flows is less than the carrying amount of the asset or an asset group, further impairment analysis is performed. An impairment loss is measured as the amount by which the carrying amount of the asset or asset groups exceeds the fair value (assets to be held and used) or fair value less cost to sell (assets to be disposed of). The Company also assesses the useful lives of its assets periodically to determine whether events and circumstances warrant a revision to the remaining useful life. Changes in the useful life are adjusted prospectively by revising the remaining period over which the asset is amortized.

Litigation, Commitments and Contingencies

Litigation, commitments and contingencies are accrued when management, after considering the facts and circumstances of each matter as then known to management, has determined it is probable a liability will be found to have been incurred and the amount of the loss can be reasonably estimated. When only a range of amounts is reasonably estimable and no amount within the range is more likely than another, the low end of the range is recorded. Legal fees are expensed as incurred. Due to the inherent uncertainties surrounding gain contingencies, the Company generally does not recognize potential gains until they are realized.

Recent Accounting Pronouncements

The Company does not believe that any recently issued effective pronouncements, or pronouncements issued but not yet effective, if adopted, would have a material effect on the accompanying condensed consolidated financial statements.

Note 3. BAQSIMI® Acquisition

On June 30, 2023, the Company completed its acquisition of BAQSIMI® glucagon nasal powder, or BAQSIMI® pursuant to an asset purchase agreement, or the Purchase Agreement, with Eli Lilly & Company, or Lilly, dated April 21, 2023. In connection with the closing of the transaction, or the Closing, the Company paid Lilly $500.0 million in cash. In addition, the Company is required to pay Lilly a $125.0 million guaranteed payment on the first anniversary of the closing. The Company is also required to pay Lilly $4.0 million upon the assignment of certain contracts to the Company after the first anniversary of the Closing, but no later than 18 months after the Closing. The Company may also be required to pay additional contingent consideration of up to $450.0 million to Lilly based on the achievement of certain milestones. In addition, the Company assumed certain contingent consideration of Lilly, which would require the Company to pay up to an aggregate of $125.0 million based on the achievement of annual net sales milestones of $350.0 million, $400.0 million and $600.0 million.

The Purchase Agreement provides that the contingent consideration that may become payable to Lilly would be achieved as follows: (i) a one-time payment of $100.0 million if the Company achieves annual net sales of $175.0 million or more of BAQSIMI® and certain related products, or the Milestone Products, in any one year during the first five years after the Closing; (ii) up to two payments of $100 million each if the Company achieves annual net sales of $200.0 million or

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more of Milestone Products in any one year during the first five years after the Closing; and (iii) a one-time payment of $150.0 million if the Company achieves total cumulative net sales of $950.0 million or more of the Milestone Products for the first five years after the Closing.

The Company has accounted for the BAQSIMI® acquisition as an asset acquisition in accordance with Accounting Standard Codification, or ASC, 805, *Business Combination*s, as substantially all the fair value of the assets acquired is concentrated in a single identifiable asset, BAQSIMI® product rights. The BAQSIMI® product rights include the license for the BAQSIMI® intellectual property, regulatory documentation, marketing authorizations, and domain names, which are considered a single asset as they are inextricably linked. As an asset acquisition, the cost to acquire the group of assets, including transaction costs, is allocated to the individual assets acquired based on their relative fair values, with the exception of non-qualifying assets.

The relative fair values of identifiable assets from the acquisition of BAQSIMI® are based on estimates of fair value using assumptions that the Company believes are reasonable.

Manufacturing Services Agreement

In connection with the Closing, the Company entered into a Manufacturing Services Agreement, or the MSA, with Lilly, pursuant to which Lilly has agreed, for a period of time not to exceed 18 months, to provide certain manufacturing, packaging, labeling and supply services for BAQSIMI® directly or through third-party contractors to the Company in connection with its operation of the development, manufacture, and commercialization of BAQSIMI®. Upon termination of the MSA, the Company will be obligated to purchase all API, components, and finished goods on hand at prices agreed upon in the MSA.

Transition Services Agreement

In connection with the Closing, the Company entered into a Transition Services Agreement, or the TSA, with Lilly pursuant to which Lilly has agreed, for a period of time not to exceed 18 months, to provide certain services to the Company to support the transition of BAQSIMI® operations to the Company, including with respect to the conduct of certain clinical, regulatory, medical affairs, and commercial sales channel activities.

The following table summarizes the aggregate amount paid for the assets acquired by the Company in connection with the acquisition of BAQSIMI®:

	Fair Value (in thousands)
Cash payment	$ 500,000
Fair value of deferred cash payment	121,699
Transaction costs	6,406
Total purchase price	$ 628,105

The total purchase price was allocated to the acquired assets based on their relative fair values, as follow:

	Fair Value (in thousands)
Property, plant, and equipment	$ 34,426
BAQSIMI® product rights	591,338
Deferred tax assets	2,341
Total assets acquired	$ 628,105

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The Company is amortizing the acquired intangible asset on a straight line basis over its estimated useful life of 24 years (See Note 10 for additional information).

The fair value of the deferred cash payment is being accreted to the full $129.0 million amount over a one-year period through interest expense.

Credit Agreement

On June 30, 2023, in conjunction with the Company's acquisition of BAQSIMI®, the Company entered into a $700.0 million syndicated credit agreement, or the Credit Agreement, by and among the Company, certain subsidiaries of the Company, as guarantors, certain lenders, and Wells Fargo Bank, National Association, or Wells Fargo, as Administrative Agent (in such capacity, "Agent").

The Credit Agreement provides for a senior secured term loan in an aggregate principal amount of $500.0 million, or the Term Loan. The Term Loan matures on the June 30, 2028.

The Credit Agreement also provides a senior secured revolving credit facility, or the Revolving Credit Facility, in an aggregate principal amount of $200.0 million, with a $15.0 million letter of credit sublimit and a $15.0 million swingline loan sublimit. The Revolving Credit Facility matures on June 30, 2028. As of June 30, 2023, the Company had no borrowings outstanding under the Revolving Credit Facility.

Proceeds from the Term Loan were used to finance the acquisition of BAQSIMI®.

Note 4. Revenue Recognition

In accordance with ASC 606 *Revenue from Contracts with Customers*, revenue is recognized at the time that the Company's customers obtain control of the promised goods.

Generally, revenue is recognized at the time of product delivery to the Company's customers. In some cases, revenue is recognized at the time of shipment when stipulated by the terms of the sale agreements.

The consideration the Company receives in exchange for its goods or services is only recognized when it is probable that a significant reversal will not occur. The consideration to which the Company expects to be entitled includes a stated list price, less various forms of variable consideration. The Company makes significant estimates for related variable consideration at the point of sale, including chargebacks, rebates, product returns, other discounts and allowances.

The Company's payment terms vary by types and locations of customers and the products or services offered. Payment terms differ by jurisdiction and customers, but payment is generally required in a term ranging from 30 to 75 days from date of shipment or satisfaction of the performance obligation. For certain products or services and certain customer types, the Company may require payment before products are delivered or services are rendered to customers.

Provisions for estimated chargebacks, rebates, discounts, product returns and credit losses are made at the time of sale and are analyzed and adjusted, if necessary, at each balance sheet date.

Revenues derived from contract manufacturing services are recognized when third-party products are shipped to customers.

The Company's accounting policy is to review each agreement involving contract development and manufacturing services to determine if there are multiple revenue-generating activities that constitute more than one unit of accounting.

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Revenues are recognized for each unit of accounting based on revenue recognition criteria relevant to that unit. The Company does not have any revenue arrangements with multiple performance obligations.

Service revenues derived from research and development contracts are recognized over time based on progress toward satisfaction of the performance obligation. For each performance obligation satisfied over time, the Company assesses the proper method to be used for revenue recognition, either an input method to measure progress toward the satisfaction of services or an output method of determining the progress of completion of performance obligation. For the three and six months ended June 30, 2023, revenues from research and development services at ANP were $1.2 million and $1.3 million, respectively. For the three and six months ended June 30, 2022, revenues from research and development services at ANP were $0.7 million and $1.3 million, respectively.

Provision for Chargebacks and Rebates

The provision for chargebacks and rebates is a significant estimate used in the recognition of revenue. Wholesaler chargebacks relate to sales terms under which the Company agrees to reimburse wholesalers for differences between the gross sales prices at which the Company sells its products to wholesalers and the actual prices of such products that wholesalers resell under the Company's various contractual arrangements with third parties such as hospitals and group purchasing organizations in the United States. Rebates include primarily amounts paid to retailers, payers, and providers in the United States, including those paid to state Medicaid programs, and are based on contractual arrangements or statutory requirements. The Company estimates chargebacks and rebates using the expected value method at the time of sale to wholesalers based on wholesaler inventory stocking levels, historic chargeback and rebate rates, and current contract pricing.

The provision for chargebacks and rebates is reflected as a component of net revenues. The following table is an analysis of the chargeback and rebate provision:

	Six Months Ended June 30,	
	2023	2022
	(in thousands)	
Beginning balance	$ 26,606	$ 20,167
Provision for chargebacks and rebates	143,792	96,593
Credits and payments issued to third parties	(141,584)	(94,526)
Ending balance	$ 28,814	$ 22,234

Changes in the provision for chargebacks from period to period are primarily dependent on the Company's sales to its wholesalers, the level of inventory held by wholesalers, and the wholesalers' customer mix. Changes in the provision for rebates from period to period are primarily dependent on retailer's and other indirect customers' purchases. The approach that the Company uses to estimate chargebacks has been consistently applied for all periods presented. Variations in estimates have been historically small. The Company continually monitors the provision for chargebacks and rebates and makes adjustments when it believes that the actual chargebacks and rebates may differ from the estimates. The settlement of chargebacks and rebates generally occurs within 20 days to 60 days after the sale to wholesalers. The provision for chargebacks and rebates is recorded within accounts receivable and/or accounts payable and accrued liabilities depending on whether the Company has the right to offset with the customer.

Of the provision for chargebacks and rebates as of June 30, 2023 and December 31, 2022, $21.8 million and $20.5 million were included as a reduction to accounts receivable, net, on the condensed consolidated balance sheets, respectively. The remaining provision as of June 30, 2023 and December 31, 2022 of $7.0 million and $6.1 million, respectively, which were included in accounts payable and accrued liabilities in the condensed consolidated balance sheets.

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Accrual for Product Returns

The Company offers most customers the right to return qualified excess or expired inventory for partial credit; however, API product sales are generally non-returnable. The Company's product returns primarily consist of the returns of expired products from sales made in prior periods. Returned products cannot be resold. At the time product revenue is recognized, the Company records an accrual for product returns estimated using the expected value method. The accrual is based, in part, upon the historical relationship of product returns to sales and customer contract terms. The Company also assesses other factors that could affect product returns including market conditions, product obsolescence, and new competition. Although these factors do not normally give the Company's customers the right to return products outside of the regular return policy, the Company realizes that such factors could ultimately lead to increased returns. The Company analyzes these situations on a case-by-case basis and makes adjustments to the product return reserve as appropriate.

The provision for product returns is reflected as a component of net revenues. The following table is an analysis of the product return liability:

	Six Months Ended June 30,	
	2023	2022
	(in thousands)	
Beginning balance	$ 19,451	$ 21,677
Provision for product returns	2,160	2,929
Credits issued to third parties	(2,825)	(3,341)
Ending balance	$ 18,786	$ 21,265

Of the provision for product returns as of June 30, 2023 and December 31, 2022, $13.8 million and $14.9 million, were included in accounts payable and accrued liabilities on the condensed consolidated balance sheets, respectively. The remaining provision as of June 30, 2023 and December 31, 2022 of $5.0 million and $4.6 million, were included in other long-term liabilities, respectively. For the six months ended June 30, 2023 and 2022, the Company's aggregate product return rate was 1.2% and 1.6% of qualified sales, respectively.

Note 5. Net Income per Share

Basic net income per share is calculated based upon the weighted-average number of shares outstanding during the period. Diluted net income per share gives effect to all potentially dilutive shares outstanding during the period, such as stock options, non-vested restricted stock units and shares issuable under the Company's Employee Stock Purchase Plan, or ESPP.

For the three and six months ended June 30, 2023, options to purchase 45,464 shares of stock, with a weighted-average exercise price of $46.01 per share, were excluded in the computation of diluted net income per share because the effect would be anti-dilutive.

For the three and six months ended June 30, 2022, options to purchase 12,296 and 706,411 shares of stock, respectively, with a weighted-average exercise price of $37.41 per share and $34.79 per share, respectively, were excluded in the computation of diluted net income per share because the effect would be anti-dilutive.

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The following table provides the calculation of basic and diluted net income per share for each of the periods presented:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands, except per share data)			
Basic and dilutive numerator:				
Net income	$ 26,124	$ 17,346	$ 52,156	$ 41,599
Denominator:				
Weighted-average shares outstanding — basic	48,404	48,864	48,202	48,501
Net effect of dilutive securities:				
Incremental shares from equity awards	4,698	4,363	4,334	4,102
Weighted-average shares outstanding — diluted	53,102	53,227	52,536	52,603
Net income per share — basic	$ 0.54	$ 0.35	$ 1.08	$ 0.86
Net income per share — diluted	$ 0.49	$ 0.33	$ 0.99	$ 0.79

Note 6. Segment Reporting

The Company's business is the development, manufacture, and marketing of pharmaceutical products. The Company has identified two reporting segments that each report to the Chief Operating Decision Maker, or CODM, as defined in ASC 280, Segment Reporting. The Company's performance is assessed and resources are allocated by the CODM based on the following two reportable segments:

- Finished pharmaceutical products
- APIs

The finished pharmaceutical products segment manufactures, markets and distributes Primatene MIST®, glucagon, enoxaparin, naloxone, phytonadione, lidocaine, epinephrine, various critical and non-critical care drugs, as well as certain contract manufacturing and contract research revenues. The API segment manufactures and distributes recombinant human insulin API and porcine insulin API for external customers and internal product development.

BAQSIMI® related revenues and cost of sales will be accounted for as a component of the finished pharmaceutical products segment, but as the transaction closed on June 30, 2023, no amounts were recorded in revenue or cost of sales in the three and six months ended June 30, 2023.

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Selected financial information by reporting segment is presented below:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands)			
Net revenues:				
Finished pharmaceutical products	$ 142,866	$ 120,123	$ 278,876	$ 236,669
API	2,846	3,344	6,858	7,166
Total net revenues	145,712	123,467	285,734	243,835
Gross profit (loss):				
Finished pharmaceutical products	77,067	67,084	153,243	124,023
API	(4,329)	(3,728)	(6,665)	(4,841)
Total gross profit	72,738	63,356	146,578	119,182
Operating expenses	35,842	38,533	76,249	72,745
Income from operations	36,896	24,823	70,329	46,437
Non-operating income	(4,088)	(1,672)	(3,952)	5,747
Income before income taxes	$ 32,808	$ 23,151	$ 66,377	$ 52,184

The Company manages its business segments to the gross profit level and manages its operating and other costs on a company-wide basis. The Company does not identify total assets by segment for internal purposes, as the Company's CODM does not assess performance, make strategic decisions, or allocate resources based on assets.

The amount of net revenues in the finished pharmaceutical product segment is presented below:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands)			
Finished pharmaceutical products net revenues:				
Glucagon	$ 27,276	$ 11,795	$ 52,972	$ 22,779
Primatene MIST®	16,520	18,974	40,003	43,671
Epinephrine	16,714	18,119	36,805	33,275
Lidocaine	14,006	16,042	27,652	26,632
Phytonadione	17,855	13,381	25,568	23,856
Enoxaparin	7,872	9,031	17,739	19,155
Naloxone	5,102	7,193	10,059	14,606
Other finished pharmaceutical products	37,521	25,588	68,078	52,695
Total finished pharmaceutical products net revenues	$ 142,866	$ 120,123	$ 278,876	$ 236,669

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The amount of depreciation and amortization expense included in cost of revenues, by reporting segment, is presented below:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands)			
Depreciation and amortization expense				
Finished pharmaceutical products	$ 2,081	$ 2,059	$ 4,527	$ 3,853
API	982	937	1,935	1,885
Total depreciation and amortization expense	$ 3,063	$ 2,996	$ 6,462	$ 5,738

Net revenues and carrying values of long-lived assets by geographic regions are as follows:

	Net Revenue				Long-Lived Assets	
	Three Months Ended June 30,		Six Months Ended June 30,		June 30,	December 31,
	2023	2022	2023	2022	2023	2022
	(in thousands)					
United States	$ 143,895	$ 120,786	$ 281,853	$ 237,900	$ 768,988	$ 136,328
China	1,182	766	1,309	1,699	89,236	88,647
France	635	1,915	2,572	4,236	38,624	39,598
Total	$ 145,712	$ 123,467	$ 285,734	$ 243,835	$ 896,848	$ 264,573

Note 7. Customer and Supplier Concentration

Customer Concentrations

Three large wholesale drug distributors, AmerisourceBergen Corporation, or AmerisourceBergen, Cardinal Health, Inc., or Cardinal, and McKesson Corporation, or McKesson, are all distributors of the Company's products, as well as suppliers of a broad range of health care products. The Company considers these three customers to be its major customers, as each individually, and these customers collectively, represented a significant percentage of the Company's net revenue for the three and six months ended June 30, 2023 and 2022, and accounts receivable as of June 30, 2023 and December 31, 2022, respectively. The following table provides accounts receivable and net revenue information for these major customers:

	% of Total Accounts Receivable		% of Net Revenue			
			Three Months Ended June 30,		Six Months Ended June 30,	
	June 30, 2023	December 31, 2022	2023	2022	2023	2022
McKesson	40 %	32 %	31 %	22 %	27 %	20 %
AmerisourceBergen	13 %	16 %	21 %	24 %	22 %	23 %
Cardinal Health	17 %	19 %	17 %	17 %	16 %	16 %

Supplier Concentrations

The Company depends on suppliers for raw materials, APIs, and other components that are subject to stringent FDA requirements. Some of these materials may only be available from one or a limited number of sources. Establishing additional or replacement suppliers for these materials may take a substantial period of time, as suppliers must be approved by the FDA. Furthermore, a significant portion of raw materials may only be available from foreign sources. If the Company is unable to secure, on a timely basis, sufficient quantities of the materials it depends on to manufacture

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and market its products, it could have a materially adverse effect on the Company's business, financial condition, and results of operations.

Note 8. Fair Value Measurements

GAAP defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants in the principal or most advantageous market for the asset or liability at the measurement date (an exit price). These standards also establish a hierarchy that prioritizes observable and unobservable inputs used in measuring fair value of an asset or liability, as described below:

- *Level 1* – Inputs to measure fair value are based on quoted prices (unadjusted) in active markets on identical assets or liabilities;
- *Level 2* – Inputs to measure fair value are based on the following: a) quoted prices in active markets on similar assets or liabilities, b) quoted prices for identical or similar instruments in inactive markets, or c) observable (other than quoted prices) or collaborated observable market data used in a pricing model from which the fair value is derived; and
- *Level 3* – Inputs to measure fair value are unobservable and the assets or liabilities have little, if any, market activity; these inputs reflect the Company's own assumptions about the assumptions that market participants would use in pricing the assets or liabilities based on best information available in the circumstances.

As of June 30, 2023, cash equivalents include money market accounts and corporate and municipal bonds with original maturities of less than three months. Investments consist of certificates of deposit as well as investment-grade corporate, agency and municipal bonds with original maturity dates between three and twelve months. The certificates of deposit are carried at amortized cost in the Company's condensed consolidated balance sheets, which approximates their fair value determined based on Level 2 inputs. The corporate, agency and municipal bonds are classified as held-to-maturity and are carried at amortized cost net of allowance for credit losses, which approximates their fair value determined based on Level 2 inputs. The restrictions on restricted cash and investments have an immaterial effect on the fair value of these financial assets.

The fair value of the Company's financial assets and liabilities measured on a recurring basis as of June 30, 2023 and December 31, 2022, are as follows:

	Total	(Level 1)	(Level 2)	(Level 3)
		(in thousands)		
Cash equivalents	$ 92,576	$ 92,576	$ —	$ —
Restricted cash	2,684	2,684	—	—
Restricted short-term investments	2,200	—	2,200	—
Corporate, agency and municipal bonds	14,433	—	14,433	—
Interest rate swaps related to variable rate loans	(1,526)	—	(1,526)	—
Fair value measurement as of June 30, 2023	$ 110,367	$ 95,260	$ 15,107	$ —
Cash equivalents	$ 130,199	$ 130,199	$ —	$ —
Restricted cash	235	235	—	—
Short-term investments	4,600	—	4,600	—
Restricted short-term investments	2,200	—	2,200	—
Corporate, agency and municipal bonds	14,931	—	14,931	—
Interest rate swaps related to variable rate loans	6,048	—	6,048	—
Fair value measurement as of December 31, 2022	$ 158,213	$ 130,434	$ 27,779	$ —

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The Company does not hold any Level 3 instruments that are measured at fair value on a recurring basis.

Nonfinancial assets and liabilities are not measured at fair value on a recurring basis but are subject to fair value adjustments in certain circumstances. These items primarily include investments in unconsolidated affiliates, long-lived assets, goodwill, and intangible assets for which the fair value is determined as part of an impairment test. As of June 30, 2023, and December 31, 2022, there were no significant adjustments to fair value for nonfinancial assets or liabilities.

The Company's deferred compensation plan assets are valued using the cash surrender value of the life insurance policies and are not included in the table above.

Note 9. Investments

A summary of the Company's investments that are classified as held-to-maturity are as follows:

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
		(in thousands)		
Corporate and agency bonds (due within 1 year)	$ 14,239	$ —	$ (11)	$ 14,228
Municipal bonds (due within 1 year)	205	—	—	205
Total investments as of June 30, 2023	$ 14,444	$ —	$ (11)	$ 14,433
Corporate and agency bonds (due within 1 year)	$ 21,612	$ —	$ (60)	$ 21,552
Municipal bonds (due within 1 year)	1,903	—	(2)	1,901
Total investments as of December 31, 2022	$ 23,515	$ —	$ (62)	$ 23,453

At each reporting period, the Company evaluates securities for impairment when the fair value of the investment is less than its amortized cost. The Company evaluated the underlying credit quality and credit ratings of the issuers, identifying neither a significant deterioration since purchase nor any other factors that would indicate a material credit loss.
The Company measures expected credit losses on held-to-maturity investments on a collective basis. All the Company's held-to-maturity investments were considered to be one pool. The estimate for credit losses considers historical loss information that is adjusted for current conditions and reasonable and supportable forecasts. Expected credit losses on held-to-maturity investments were not material to the condensed consolidated financial statements.

Investment in unconsolidated affiliate

The Company accounts for its share of the earnings or losses of its unconsolidated affiliate (Nanjing Hanxin Biomedical Testing Service Co., Ltd., or Hanxin) with a reporting lag of three months, as the financial statements of Hanxin are not completed on a basis that is sufficient for the Company to apply the equity method on a current basis. The Company's share of Hanxin's losses for the three and six months ended June 30, 2023 was $0.3 million and $1.1 million, respectively, which was recorded in the "Equity in losses of unconsolidated affiliate" line on the condensed consolidated statement of operations. The Company's share of Hanxin's losses for the three and six months ended June 30, 2022, was $0.3 million and $1.0 million, respectively, which was recorded in the "Equity in losses of unconsolidated affiliate" line on the condensed consolidated statement of operations.

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Note 10. Goodwill and Intangible Assets

The table below shows the weighted-average life, original cost, accumulated amortization, and net book value by major intangible asset classification:

	Weighted-Average Life (Years)	Original Cost	Accumulated Amortization	Net Book Value
		(in thousands)		
Definite-lived intangible assets				
BAQSIMI® product rights[1]	24	$ 591,338	$ —	$ 591,338
IMS (UK) international product rights[2]	10	8,462	8,462	—
Patents	12	486	369	117
Land-use rights	39	2,540	782	1,758
Subtotal	23	602,826	9,613	593,213
Indefinite-lived intangible assets				
Trademark	*	29,225	—	29,225
Goodwill - Finished pharmaceutical products	*	3,165	—	3,165
Subtotal	*	32,390	—	32,390
As of June 30, 2023	*	$ 635,216	$ 9,613	$ 625,603

	Weighted-Average Life (Years)	Original Cost	Accumulated Amortization	Net Book Value
		(in thousands)		
Definite-lived intangible assets				
IMS (UK) international product rights[2]	10	$ 8,462	$ 5,430	$ 3,032
Patents	12	486	362	124
Land-use rights	39	2,540	749	1,791
Subtotal	11	11,488	6,541	4,947
Indefinite-lived intangible assets				
Trademark	*	29,225	—	29,225
Goodwill - Finished pharmaceutical products	*	3,126	—	3,126
Subtotal	*	32,351	—	32,351
As of December 31, 2022	*	$ 43,839	$ 6,541	$ 37,298

* Intangible assets with indefinite lives have an indeterminable average life.
(1) See Note 3.
(2) In June 2023, the Company recorded an impairment related to its IMS (UK) international product rights in the amount of $2.7 million. The Company recorded the impairment in the cost of revenue line in its condensed consolidated statement of operations for the three and six months ended June 30, 2023

Goodwill

The changes in the carrying amounts of goodwill are as follows:

	June 30, 2023	December 31, 2022
	(in thousands)	
Beginning balance	$ 3,126	$ 3,313
Currency translation	39	(187)
Ending balance	$ 3,165	$ 3,126

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Amortization

As of June 30, 2023, the expected amortization expense for all intangible assets during the next five fiscal years ended December 31 and thereafter is as follows:

	(in thousands)
2023	$ 12,359
2024	24,718
2025	24,718
2026	24,718
2027	24,718
Thereafter	481,982
Total amortizable intangible assets	593,213
Indefinite-lived intangibles	32,390
Total intangibles (net of accumulated amortization)	$ 625,603

Primatene® Trademark

In January 2009, the Company acquired the exclusive rights to the trademark, domain name, website and domestic marketing, distribution and selling rights related to Primatene MIST®, an over-the-counter bronchodilator product, recorded at the allocated fair value of $29.2 million, which is its carrying value as of June 30, 2023.

The trademark was determined to have an indefinite life. In determining its indefinite life, the Company considered the following: the expected use of the intangible; the longevity of the brand; the legal, regulatory and contractual provisions that affect their maximum useful life; the Company's ability to renew or extend the asset's legal or contractual life without substantial costs; effects of the regulatory environment; expected changes in distribution channels; maintenance expenditures required to obtain the expected future cash flows from the asset; and considerations for obsolescence, demand, competition and other economic factors.

BAQSIMI® Product Rights

As discussed in Note 3, in June 2023, the Company acquired the BAQSIMI® product rights. BAQSIMI® is an emergency nasal spray used to treat severe hypoglycemia. The BAQSIMI® product rights intangible asset is amortized over its estimated useful life of 24 years.

In determining the BAQSIMI® product rights' useful life, the Company considered the following: the expected use of the intangible asset; the longevity of the brand; the legal, regulatory and contractual provisions that affect their maximum useful life; the Company's ability to renew or extend the asset's legal or contractual life without substantial costs; effects of the regulatory environment; expected changes in distribution channels; maintenance expenditures required to obtain the expected future cash flows from the asset; and considerations for obsolescence, demand, competition and other economic factors.

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Note 11. Inventories

Inventories consist of the following:

	June 30, 2023	December 31, 2022
	(in thousands)	
Raw materials and supplies	$ 44,630	$ 47,607
Work in process	31,771	37,090
Finished goods	28,216	18,887
Total inventories	$ 104,617	$ 103,584

Charges of $8.3 million and $10.2 million were included in the cost of revenues in the Company's condensed consolidated statements of operations for the three and six months ended June 30, 2023, respectively, to adjust the Company's inventory and related firm purchase commitments to their net realizable value. For the three and six months ended June 30, 2022, charges of $0.6 million and $8.6 million were included in the cost of revenues, respectively, to adjust the Company's inventory and related firm purchase commitments to their net realizable value.

Losses on firm purchase commitments related to raw materials on order as of June 30, 2023 and December 31, 2022 were $4.5 million and $2.7 million, respectively, which are recorded in cost of revenues in the Company's condensed consolidated statement of operations.

Note 12. Property, Plant, and Equipment

Property, plant, and equipment consist of the following:

	June 30, 2023	December 31, 2022
	(in thousands)	
Buildings	$ 131,438	$ 130,726
Leasehold improvements	31,535	31,535
Land	7,465	7,451
Machinery and equipment	257,722	208,068
Furniture, fixtures, and automobiles	30,693	29,674
Construction in progress	52,024	50,842
Total property, plant, and equipment	510,877	458,296
Less accumulated depreciation	(232,351)	(220,030)
Total property, plant, and equipment, net	$ 278,526	$ 238,266

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Note 13. Accounts Payable and Accrued Liabilities

Accounts payable and accrued liabilities consisted of the following:

	June 30, 2023	December 31, 2022
	(in thousands)	
Accrued customer fees and rebates	$ 17,764	$ 14,198
Accrued payroll and related benefits	24,912	22,847
Accrued product returns, current portion	13,845	14,867
Accrued loss on firm purchase commitments	5,187	2,686
Accrued payments for BAQSIMI®	126,760	—
Other accrued liabilities	10,236	9,143
Total accrued liabilities	198,704	63,741
Accounts payable	18,832	20,501
Total accounts payable and accrued liabilities	$ 217,536	$ 84,242

Note 14. Debt

Debt consists of the following:

	June 30, 2023	December 31, 2022
	(in thousands)	
Term Loan		
Wells Fargo Bank Term Loan due June 2028	$ 500,000	$ —
Capital One N.A. Term Loan paid off June 2023	—	68,250
Mortgage Loans		
Mortgage payable with East West Bank due June 2027	8,104	8,188
Other Loans and Payment Obligations		
French government loans due December 2026	212	204
Line of Credit Facilities		
Line of credit facility with China Merchant Bank expired April 2023	—	—
Wells Fargo Bank Revolving line of credit facility due June 2028	—	—
Capital One N.A. Revolving line of credit facility closed in June 2023	—	—
Equipment under Finance Leases	692	790
Total debt	509,008	77,432
Less current portion of long-term debt	12,920	3,046
Less: Loan issuance costs	7,808	1,547
Long-term debt, net of current portion and unamortized debt issuance costs	$ 488,280	$ 72,839

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Credit Agreements

Syndicated Credit Agreement with Wells Fargo Bank, National Association - Due June 2028

In June 2023, in connection with the BAQSIMI® acquisition, the Company entered into a $700.0 million syndicated credit agreement with Wells Fargo acting as administrative agent. Under the terms of the Credit Agreement, the Company borrowed $500.0 million in the form of a term loan, or the Wells Fargo Bank Term Loan. Proceeds from the loan were used to finance the acquisition of BAQSIMI®. The interest rate on the term loan is based on a variable interest rate at the one-month Secured Overnight Financing Rate, or SOFR, rate, plus an applicable margin rate ranging between 0.5% and 2.5%, determined based on the Company's net leverage ratio as defined by the terms of the agreement. The loan matures in June 2028.

The loan requires principal payments of $12.5 million for the first year, which increases to $25.0 million during the second year, and $37.5 million during the third, fourth and fifth years, with the remaining balance due at maturity. The loan is secured by substantially all of the Company's U.S. assets.

The Credit Agreement provides for a $200.0 million revolving credit facility, or the Wells Fargo Bank Revolving line of credit facility, with a $15.0 million letter of credit sublimit and a $15.0 million swingline loan sublimit, which bears the same interest rate as the term loan.

In conjunction with the new credit agreement, the Company entered into an interest rate swap agreement with Wells Fargo, with a notional amount of $250.0 million to exchange the variable interest rate on the new term for a fixed rate of 4.04%. The interest swap agreement had a fair value of $1.8 million loss as of June 30, 2023.

For lenders that were part of the previous credit agreement with Capital One N.A. as well as the new Credit Agreement, the transaction was accounted for as a modification under ASC 470-50, *Debt Modifications and Extinguishments*, based on a comparison of the present value of the cash flows for each lender under the terms of the debt immediately before and after the transaction, which resulted in a change of less than 10%.

The Company incurred approximately $14.3 million in issuance costs in connection with this Credit Agreement, of which $3.0 million represented debt modification costs and were charged to interest expense in the Company's condensed consolidated statement of operations for the three and six months ended June 30, 2023.

Debt issuance costs associated with the Credit Agreement (other than its Revolving Credit Facility component) are presented as a reduction to the carrying value of the related debt, while debt issuance costs associated with the Revolving Credit Facility are capitalized within other long-term assets on the condensed consolidated balance sheets.

Total unamortized debt issuance costs as of June 30, 2023 were $12.5 million which is being amortized over the term of the Credit Agreement using the effective interest rate method.

Syndicated Credit Agreement with Capital One N.A. – Paid off June 2023

In August 2021, the Company entered into a $140.0 million credit agreement with Capital One N.A. acting as a lender and as agent for other lenders. Under the terms of the credit agreement, the Company borrowed $70.0 million in the form of a term loan, or the Capital One N.A. Term Loan. Proceeds from the loan were used to pay down certain of the Company's outstanding loans and revolving lines of credit with Cathay Bank and East West Bank. The interest rate on the term loan was based on a variable interest rate, plus an applicable margin rate ranging between 0.5% and 2.5%, determined based on the Company's net leverage ratio as defined by the terms of the agreement. As a result of the credit agreement that the Company entered into with Wells Fargo in June 2023, the Company repaid all outstanding amounts under this loan.

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Amortization of debt issuance costs totaled $0.1 million and $0.2 million for the three and six months ended June 30, 2023, respectively. Amortization of debt issuance costs totaled $0.1 million and $0.2 million for the three and six months ended June 30, 2022, respectively.

Interest Rate Swap Contracts

As of June 30, 2023, the fair value of the loans listed above approximated their carrying amount. The interest rate used in the fair value estimation was determined to be a Level 2 input. For the mortgage loan with East West Bank, as well as the term loan with Wells Fargo Bank, the Company has entered into fixed interest rate swap contracts to exchange the variable interest rates for fixed interest rates. The interest rate swap contracts are recorded at fair value in the other assets line in the condensed consolidated balance sheets. Changes in the fair values of interest rate swaps were $1.2 million loss and $2.2 million loss for the three and six months ended June 30, 2023, respectively. Changes in the fair values of interest rate swaps were $0.9 million gain and $3.9 million gain for the three and six months ended June 30, 2022, respectively.

Covenants

At June 30, 2023 and December 31, 2022, the Company was in compliance with all of its debt covenants.

Note 15. Income Taxes

The following table sets forth the Company's income tax provision for the periods indicated:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands)			
Income before taxes	$ 32,808	$ 23,151	$ 66,377	$ 52,184
Income tax provision	6,383	5,551	13,135	9,628
Income before equity in losses of unconsolidated affiliate	$ 26,425	$ 17,600	$ 53,242	$ 42,556
Income tax provision as a percentage of income before income taxes	19.5 %	24.0 %	19.8 %	18.5 %

The change in the Company's effective tax rate for the three and six months ended June 30, 2023, was primarily due to differences in pre-tax income positions and timing of discrete tax items.

In connection with the purchase accounting for its acquisition of BAQSIMI®, the Company recorded a deferred tax asset of $2.3 million.

Valuation Allowance

In assessing the need for a valuation allowance, management considers whether it is more likely than not that some portion or all of the deferred income tax assets will be realized. Ultimately, realization depends on the existence of future taxable income. Management considers sources of taxable income such as income in prior carryback periods, future reversal of existing deferred taxable temporary differences, tax-planning strategies, and projected future taxable income.

During the three months ended June 30, 2023, the Company determined its U.K. subsidiaries, AUK and IMS UK, more likely than not would not realize the benefits of their deferred tax assets. Therefore, the Company recorded a valuation allowance expense of an immaterial amount and will discontinue recognizing income tax benefits until sufficient taxable income is generated to realize their deferred tax assets.

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The Company continues to record a full valuation allowance on AFP's net deferred income tax assets and will continue to do so until AFP generates sufficient taxable income to realize its deferred income tax assets.

The Company records a valuation allowance on net deferred income tax assets in states where it files separately and will continue to do so until sufficient taxable income is generated to realize these state deferred income tax assets.

Note 16. Stockholders' Equity

Share Buyback Program

Pursuant to the Company's existing share buyback program, the Company purchased 3,585 and 266,716 shares of its common stock during the three and six months ended June 30, 2023, for total consideration of $0.1 million and $8.1 million, respectively. The Company purchased 189,840 and 241,008 shares of its common stock during the three and six months ended June 30, 2022, for total consideration of $6.1 million and $7.3 million, respectively.

In November 2022, the Company's Board of Directors authorized a $50.0 million increase to the Company's share buyback program, which is expected to continue for an indefinite period of time. Since the inception of the program, the Company's Board of Directors have authorized a total of $235.0 million in the share buyback program. The primary goal of the program is to offset dilution created by the Company's equity compensation programs.

Purchases are made through open market and private block transactions pursuant to Rule 10b5-1 plans, privately negotiated transactions or other means as determined by the Company's management and in accordance with the requirements of the SEC and applicable laws. The timing and actual number of treasury share purchases will depend on a variety of factors including price, corporate and regulatory requirements, and other conditions. These treasury share purchases are accounted for under the cost method and are included as a component of treasury stock in the Company's condensed consolidated balance sheets.

Amended and Restated 2015 Equity Incentive Plan

As of June 30, 2023, the Company reserved an aggregate of 6,774,598 shares of common stock for future issuance under the Amended and Restated 2015 Equity Incentive Plan, or the 2015 Plan, including 1,202,802 shares, which were reserved in January 2023 pursuant to the evergreen provision in the 2015 Plan.

2014 Employee Stock Purchase Plan

As of June 30, 2023, the Company has issued 1,155,478 shares of common stock under the ESPP and 844,522 shares of its common stock remain available for issuance under the ESPP.

In May 2023, the Company issued 65,933 shares at a purchase price of $25.52 per share under the ESPP. For the three and six months ended June 30, 2023, the Company recorded ESPP expense of $0.3 million and $0.6 million, respectively. For the three and six months ended June 30, 2022, the Company recorded ESPP expense of $0.2 million and $0.4 million, respectively.

Share-Based Award Activity and Balances

The Company accounts for share-based compensation payments in accordance with ASC 718, which requires measurement and recognition of compensation expense at fair value for all share-based payment awards made to employees and directors. Under these standards, the fair value of option awards and the option components of the ESPP awards are estimated at the grant date using the Black-Scholes option-pricing model. The fair value of RSUs is estimated at the grant date using the Company's common share price. Compensation cost for all share-based payments granted

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with service-based graded vesting schedules is recognized using the straight-line method over the requisite service period.

The weighted-averages for key assumptions used in determining the fair value of options granted during the three and six months ended June 30, 2023 and 2022, are as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Average volatility	40.2 %	40.5 %	41.4 %	41.0 %
Average risk-free interest rate	3.8 %	3.0 %	4.1 %	2.3 %
Weighted-average expected life in years	4.9	4.8	6.2	6.1
Dividend yield rate	— %	— %	— %	— %

A summary of option activity under all plans for the six months ended June 30, 2023, is presented below:

	Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value[1] (in thousands)
Outstanding as of December 31, 2022	7,929,150	$ 17.66		
Options granted	759,350	35.83		
Options exercised	(642,019)	15.22		
Options forfeited	(4,526)	29.60		
Options expired	(500)	14.66		
Outstanding as of June 30, 2023	8,041,455	$ 19.57	5.02	304,777
Exercisable as of June 30, 2023	5,945,056	$ 16.51	3.78	243,537
Vested and expected to vest as of June 30, 2023	7,814,400	$ 19.27	4.91	298,513

(1) The aggregate intrinsic value is calculated as the difference between the exercise price of the underlying awards and the estimated fair value of the Company's stock for those awards that have an exercise price below the estimated fair value at June 30, 2023.

For the three and six months ended June 30, 2023, the Company recorded expense of $2.3 million and $5.3 million, respectively, related to stock options granted under all plans. For the three and six months ended June 30, 2022, the Company recorded expense of $2.0 million and $4.5 million, respectively, related to stock options granted under all plans.

Information relating to option grants and exercises is as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands, except per share data)			
Weighted-average grant date fair value per option share	$ 17.77	$ 12.13	$ 16.76	$ 14.75
Intrinsic value of options exercised	16,575	6,510	18,916	18,710
Cash received from options exercised	8,350	4,469	9,738	16,919
Total fair value of the options vested during the period	1,136	1,004	8,720	7,990

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A summary of the status of the Company's non-vested options as of June 30, 2023, and changes during the six months ended June 30, 2023, are presented below:

	Options	Weighted-Average Grant Date Fair Value
Non-vested as of December 31, 2022	2,378,453	$ 9.48
Options granted	759,350	16.76
Options vested	(1,036,878)	8.41
Options forfeited	(4,526)	13.40
Non-vested as of June 30, 2023	2,096,399	12.64

As of June 30, 2023, there was $20.6 million of total unrecognized compensation cost, net of forfeitures, related to non-vested stock option based compensation arrangements granted under all plans. The cost is expected to be recognized over a weighted-average period of 2.9 years and will be adjusted for future changes in estimated forfeitures.

Restricted Stock Units

The Company grants restricted stock units, or RSUs, to certain employees and members of the Board of Directors with a vesting period of up to five years. The grantee receives one share of common stock at a specified future date for each RSU awarded. The RSUs may not be sold or otherwise transferred until vested. The RSUs do not have any voting or dividend rights prior to the issuance of certificates of the underlying common stock. The share-based expense associated with these grants was based on the Company's common stock fair value at the time of grant and is amortized over the requisite service period, which generally is the vesting period using the straight-line method. For the three and six months ended June 30, 2023, the Company recorded total expenses of $2.2 million and $5.1 million, respectively, related to RSU awards granted under all plans. For the three and six months ended June 30, 2022, the Company recorded expenses of $2.0 million and $4.4 million, respectively, related to RSU awards granted under all plans.

As of June 30, 2023, there was $21.8 million of total unrecognized compensation cost, net of forfeitures, related to non-vested RSU-based compensation arrangements granted under all plans. The cost is expected to be recognized over a weighted-average period of 2.8 years and will be adjusted for future changes in estimated forfeitures.

Information relating to RSU grants and deliveries is as follows:

	Total RSUs Issued	Total Fair Market Value of RSUs Issued[1] (in thousands)
RSUs outstanding at December 31, 2022	1,007,052	
RSUs granted	355,959	$ 12,715
RSUs forfeited	(2,017)	
RSUs vested[2]	(432,216)	
RSUs outstanding at June 30, 2023	928,778	

(1) The total fair market value is derived from the number of RSUs granted times the current stock price on the date of grant.
(2) Of the vested RSUs, 165,215 shares of common stock were surrendered to fulfill tax withholding obligations.

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Share-based Compensation Expense

The Company recorded share-based compensation expense, which is included in the Company's condensed consolidated statement of operations as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
	(in thousands)			
Cost of revenues	$ 1,158	$ 938	$ 2,864	$ 2,323
Operating expenses:				
Selling, distribution, and marketing	227	194	436	362
General and administrative	2,991	2,718	6,348	5,579
Research and development	489	385	1,328	993
Total share-based compensation	$ 4,865	$ 4,235	$ 10,976	$ 9,257

Note 17. Employee Benefits

401(k) Plan

The Company has a defined contribution 401(k) plan, or the Plan, whereby eligible employees voluntarily contribute up to a defined percentage of their annual compensation. The Company matches contributions at a rate of 50% on the first 6% of employee contributions, and pays the administrative costs of the Plan. Total employer contributions for the three and six months ended June 30, 2023 were approximately $0.6 million and $1.2 million, respectively, compared to the prior year expense of $0.5 million and $1.1 million for the three and six months ended June 30, 2022, respectively.

Defined Benefit Pension Plan

The Company's subsidiary, AFP, has an obligation associated with a defined-benefit plan for its eligible employees. This plan provides benefits to the employees from the date of retirement and is based on the employee's length of time employed by the Company. The calculation is based on a statistical calculation combining a number of factors that include the employee's age, length of service, and AFP employee turnover rate.

The liability under the plan is based on a discount rate of 3.8% as of June 30, 2023 and December 31, 2022. The liability is included in other long-term liabilities in the accompanying condensed consolidated balance sheets. The plan is currently unfunded, and the benefit obligation under the plan was $2.3 million and $2.2 million at June 30, 2023 and December 31, 2022, respectively. The Company recorded an immaterial amount of expense under the plan for each of the three and six months ended June 30, 2023 and 2022.

Non-qualified Deferred Compensation Plan

In December 2019, the Company established a non-qualified deferred compensation plan. The plan allows certain eligible participants to defer a portion of their cash compensation and provides a matching contribution at the discretion of the Company. The plan obligations are payable upon retirement, termination of employment and/or certain other times in a lump-sum distribution or in installments, as elected by the participant in accordance with the plan. Participants can allocate their deferred compensation amongst various investment options with earnings accruing to the participant. The Company has established a Rabbi Trust to fund the plan obligations and to hold the plan assets. Eligible participants began contributing to the plan in January 2020. The plan assets were valued at approximately $5.4 million and $4.5 million as of June 30, 2023 and December 31, 2022, respectively. The plan liabilities were valued at approximately $5.6

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million and $4.6 million as of June 30, 2023, and December 31, 2022, respectively. The plan assets and liabilities are included in other long-term assets and other long-term liabilities, respectively, on the Company's condensed consolidated balance sheets.

Note 18. Commitments and Contingencies

Purchase Commitments

As of June 30, 2023, the Company has entered into commitments to purchase equipment and raw materials for an aggregate amount of approximately $75.2 million.

Note 19. Related Party Transactions

Investment in Hanxin

The Company has a 14% ownership in Hanxin that is accounted for as an equity method investment. The Company maintains a seat on Hanxin's board of directors, and Henry Zhang, the son of Dr. Jack Zhang is an equity holder, the general manager, and the chairman of the board of directors of Hanxin. Additionally, Dr. Mary Luo and Dr. Jack Zhang, have an ownership interest in Hanxin through an affiliated entity. As a result, Hanxin is a related party.

Contract manufacturing agreement with Hanxin

In April 2022, ANP, entered into a contract manufacturing agreement with Hanxin, whereby Hanxin will develop several active pharmaceutical ingredients and finished products for the Chinese market and will engage ANP to manufacture the products on a cost-plus basis. Hanxin will commit to purchase certain quantities from ANP subject to the terms and conditions set forth in the agreement, including Hanxin filing for and obtaining any required marketing authorizations.

During the three and six months ended June 30, 2023, the Company recognized an immaterial amount of revenue from manufacturing services provided to Hanxin. As of June 30, 2023, the Company had an immaterial amount of receivables from Hanxin.

Contract Research Agreement with Hanxin

In July 2022, the Company entered into a three-year contract research agreement with Hanxin, a related party, whereby Hanxin will develop Recombinant Human Insulin Research Cell Banks, or RCBs, for the Company and license the RCBs to the Company subject to a fully paid, exclusive, perpetual, transferable, sub-licensable worldwide license. The RCBs will be used by the Company to make Master Cell Banks for one of its product candidates. Per the terms of the agreement with Hanxin, all title to the RCBs developed, prepared and produced by Hanxin in conducting research and development will belong to the Company. The Company will also own any confidential and proprietary information, technology regarding development and manufacturing of the RCBs, which shall include engineering, scientific and practical information and formula, research data, design, and procedures and others to develop and manufacture the RCBs, in use or developed by Hanxin. The total cost of the agreement to the Company shall not exceed approximately $2.2 million, with payments adjusted based on the then current exchange rates. Any additional work or changes to the scope of work requested by the Company will be charged by Hanxin to the Company on a cost plus basis, plus any applicable taxes.

In March 2023, the Company amended the agreement with Hanxin, whereby Hanxin will perform scale-up manufacturing process development using the RCBs for the Company. Per the terms of the amended agreement the Company will own any confidential and proprietary information and technology produced during the scale-up manufacturing, which shall include engineering, scientific and practical information and formula, research data design and procedures and others to develop and manufacture the RCBs. The amendment agreement will remain in full force

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(Unaudited)

and effect until July 5, 2025. The total cost of the amended agreement to the Company shall not exceed approximately $0.5 million in additional payments beyond the $2.2 million in payments under the contract research agreement, with payments adjusted based on actual currency exchange rates. Any additional work or changes to the scope of work requested by the Company will be charged by Hanxin to the Company on a cost-plus basis, plus any applicable taxes.

During the three and six months ended June 30, 2023, the Company paid $0.4 million and $1.0 million, respectively, under this agreement and has accrued an additional $0.2 million payable to Hanxin as of June 30, 2023.

Supply Agreement with Letop

In November 2022, ANP, entered in to a supply agreement with Nanjing Letop Biotechnology Co., Ltd., or Letop, a subsidiary of Hanxin, whereby Letop will manufacture and deliver chemical intermediates for ANP on a cost-plus basis. The agreement is effective for three years and the total cost of the agreement shall not exceed approximately $1.5 million, with payments adjusted based on the then current exchange rates.

During the three months ended June 30, 2023, ANP paid an immaterial amount under this agreement. During the six months ended June 30, 2023, ANP paid $0.7 million, under this agreement. As of June 30, 2023, the Company did not have any amounts payable to Letop.

Note 20. Litigation

Hatch-Waxman Litigation

Regadenoson (0.4 mg/5 mL, 0.08 mg/mL) Patent Litigation

On February 25, 2020, Astellas US LLC, Astellas Pharma US, Inc., and Gilead Sciences, Inc. (collectively, "Astellas-Gilead") filed a Complaint in the United States District Court for the District of Delaware against IMS for infringement of U.S. Patent Nos. 8,106,183 (the "'183 patent"), RE47,301 (the "'301 patent"), and 8,524,883 (the "'883 patent") (collectively, "Astellas-Gilead Patents") with regard to IMS's ANDA No. 214,252 for approval to manufacture and sell 0.4 mg/5 mL (0.08 mg/mL) intravenous solution of Regadenoson. On January 26, 2022, the Company and Astellas-Gilead reached an agreement to resolve the lawsuit. Under the terms of the agreement, the Company received $5.4 million from Astellas constituting saved litigation expenses. The Company recorded the settlement amount in the other income (expenses) line in its condensed consolidated statement of operations for the six months ended June 30, 2022.

Other Litigation

The Company is also subject to various other claims, arbitrations, investigations, and lawsuits from time to time arising in the ordinary course of business. In addition, third parties may, from time to time, assert claims against the Company in the forms of letters and other communications.

The Company records a provision for contingent losses when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In the opinion of management, the ultimate resolution of any such matters is not expected to have a material adverse effect on its financial position, results of operations, or cash flows; however, the results of litigation and claims are inherently unpredictable and the Company's view of these matters may change in the future. Regardless of the outcome, litigation can have an adverse impact on the Company because of defense and settlement costs, diversion of management resources, and other factors.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following is a discussion and analysis of the consolidated operating results, financial condition, liquidity and cash flows of our company as of and for the periods presented below. The following discussion and analysis should be read in conjunction with the "Condensed Consolidated Financial Statements" and the related notes thereto included in this Quarterly Report on Form 10-Q, or Quarterly Report. This discussion contains forward-looking statements that are based on the beliefs of our management, as well as assumptions made by, and information currently available to, our management. Actual results could differ materially from those discussed in or implied by forward-looking statements. These risks, uncertainties, and other factors include, among others, those identified under the "Special Note About Forward-Looking Statements," above and described in greater detail elsewhere in this Quarterly Report and in our Annual Report on Form 10-K for the year ended December 31, 2022, particularly in Item 1A. "Risk Factors".

Overview

We are a bio-pharmaceutical company focusing primarily on developing, manufacturing, marketing and selling technically challenging generic and proprietary injectable, inhalation, and intranasal products, as well as insulin API products. We currently manufacture and sell over 20 products.

Our largest products by net revenues currently include Primatene MIST®, glucagon, epinephrine, lidocaine, enoxaparin sodium, and phytonadione. In April 2022, the FDA approved our ganirelix acetate injection 250mg/0.5mL prefilled syringe, which we launched in June 2022. In July 2022, the FDA approved our vasopressin injection, USP 20 Units/mL, 1 mL single-dose vial, which we launched in August 2022. In May 2022, the FDA approved our regadenoson injection, 0.08mg/mL, 5mL, single-dose prefilled syringe, which we launched in April 2023.

In March 2023, the FDA approved our naloxone hydrochloride nasal spray 4mg, which we plan to launch in the second half of 2023.

We are currently developing a portfolio of generic abbreviated new drug applications, or ANDAs, biosimilar insulin product candidates and proprietary product candidates, which are in various stages of development and target a variety of indications. Three of the ANDAs are currently on file with the FDA.

To complement our internal growth and expertise, we have made several strategic acquisitions of companies, products and technologies. These acquisitions collectively have strengthened our core injectable and inhalation product technology infrastructure by providing additional manufacturing, marketing, and research and development capabilities, including the ability to manufacture raw materials, API, and other components for our products.

Macroeconomic Trends and Uncertainties

The Russia-Ukraine conflict and resulting sanctions and other actions against Russia have led to uncertainty and disruption in the global economy. Although the conflict has not had a direct material adverse impact on our revenues or other financial results, one of our insulin API customers in Western Europe, that previously bought our product and resold it into Russia, did not purchase API from us in 2022 and has not purchased from us in 2023. We are closely monitoring the events of the Russia-Ukraine conflict and its impact on Europe and throughout the rest of the world. It is not clear at this time how long the conflict will endure, or if it will escalate further, which could further compound the adverse impact to the global economy and consequently affect our results of operations.

Certain other worldwide events and macroeconomic factors, such as international trade relations, new legislation and regulations, taxation or monetary policy changes, political and civil unrest, supply chain disruptions, inflationary pressures, and rising interest rates, among other factors, also increase volatility in the global economy. For example, the United States has recently experienced historically high levels of inflation. The existence of inflation in the United States, and global economy has and may continue to result in higher interest rates and capital costs, increased costs of labor, weakening exchange rates and other similar effects.

See the "Risk Factors" section for further discussion of the possible impact of the Russia-Ukraine conflict and other macroeconomic factors on our business.

Recent Developments

BAQSIMI® Acquisition

On June 30, 2023, we completed our acquisition of BAQSIMI® glucagon nasal powder, or BAQSIMI® pursuant to an Asset Purchase Agreement, or the Purchase Agreement, with Eli Lilly & Company, or Lilly, and Amphastar Medication Co., LLC, a wholly owned subsidiary of Amphastar, dated April 21, 2023. In connection with the closing of the transaction, or the Closing, we paid Lilly $500.0 million in cash. In addition, we are required to pay Lilly a $125.0 million guaranteed payment on the first anniversary of the closing. We may also be required to pay additional contingent consideration of up to $450.0 million to Lilly based on the achievement of certain milestones.

On June 30, 2023, in conjunction with our acquisition of BAQSIMI®, we entered into a Credit Agreement, or the Credit Agreement with Wells Fargo Bank, National Association, as Administrative Agent, in such capacity, Agent.

The Credit Agreement provides for a senior secured term loan in an aggregate principal amount of $500.0 million, or the Term Loan. The Term Loan matures on June 30, 2028. The Term Loan was fully funded on June 30, 2023.

The Credit Agreement provides for a senior secured revolving credit facility, or the Revolving Credit Facility, in an aggregate principal amount of $200.0 million, with a $15.0 million letter of credit sublimit and a $15.0 million swingline loan sublimit. The Revolving Credit Facility matures on June 30, 2028. As of June 30, 2023, we had no borrowings outstanding under the Revolving Credit Facility.

For more information regarding our acquisition of BAQSIMI®, see "Part I – Item 1. Financial Statements – Notes to Condensed Consolidated Financial Statements – Note 3. BAQSIMI® Acquisition."

Business Segments

As of June 30, 2023, our performance is assessed and resources are allocated based on the following two reportable segments: (1) finished pharmaceutical products and (2) API products. The finished pharmaceutical products segment manufactures, markets and distributes Primatene MIST®, epinephrine, glucagon, phytonadione, lidocaine, enoxaparin, naloxone, as well as various other critical and non-critical care drugs. The API segment manufactures and distributes RHI API and porcine insulin API for external customers and internal product development. Information reported herein is consistent with how it is reviewed and evaluated by our chief operating decision maker. Factors used to identify our segments include markets, customers and products.

For more information regarding our segments, see "Part I – Item 1. Financial Statements – Notes to Condensed Consolidated Financial Statements – Note 6. Segment Reporting."

Results of Operations

Three Months Ended June 30, 2023 Compared to Three Months Ended June 30, 2022

Net revenues

	Three Months Ended June 30,		Change	
	2023	2022	Dollars	%
	(in thousands)			
Net revenues				
Finished pharmaceutical products	$ 142,866	$ 120,123	$ 22,743	19 %
API	2,846	3,344	(498)	(15)%
Total net revenues	$ 145,712	$ 123,467	$ 22,245	18 %
Cost of revenues				
Finished pharmaceutical products	$ 65,799	$ 53,039	$ 12,760	24 %
API	7,175	7,072	103	1 %
Total cost of revenues	$ 72,974	$ 60,111	$ 12,863	21 %
Gross profit	$ 72,738	$ 63,356	$ 9,382	15 %
as % of net revenues	*50 %*	*51 %*		

The increase in net revenues of the finished pharmaceutical products for the three months ended June 30, 2023 was due to the following changes:

	Three Months Ended June 30,		Change	
	2023	2022	Dollars	%
	(in thousands)			
Finished pharmaceutical products net revenues				
Glucagon	$ 27,276	$ 11,795	$ 15,481	131 %
Phytonadione	17,855	13,381	4,474	33 %
Epinephrine	16,714	18,119	(1,405)	(8)%
Primatene MIST®	16,520	18,974	(2,454)	(13)%
Lidocaine	14,006	16,042	(2,036)	(13)%
Enoxaparin	7,872	9,031	(1,159)	(13)%
Naloxone	5,102	7,193	(2,091)	(29)%
Other finished pharmaceutical products	37,521	25,588	11,933	47 %
Total finished pharmaceutical products net revenues	$ 142,866	$ 120,123	$ 22,743	19 %

The increase in sales of glucagon was primarily due to an increase in unit volumes, as a result of two suppliers discontinuing their glucagon injection products at the end of 2022. The increase in sales of phytonadione was due to an increase in unit volumes, as a result of supplier shortages. Primatene MIST® sales decreased due to a decrease in unit volumes, as a result of inventory drawdowns by retailers. The decrease in sales of epinephrine and lidocaine was primarily due to a decrease in unit volumes, due to suppliers returning to their historical distribution levels. The decrease in sales of enoxaparin and naloxone was primarily due to a decrease in unit volumes. The increase in other finished pharmaceutical products was primarily due to higher unit volumes of dextrose, atropine, calcium chloride, and sodium bicarbonate, due to increased demand caused by supplier shortages during the quarter, as well as a full quarter of sales for ganirelix and vasopressin, which were launched in June 2022 and August 2022, respectively, and the launch of regadenoson in April 2023.

We anticipate that sales of naloxone and enoxaparin will continue to fluctuate in the future due to competitive dynamics. We also anticipate that sales of epinephrine and other finished pharmaceutical products will continue to fluctuate depending on the ability of our competitors to supply market demands. Sales of medroxyprogesterone will temporarily be halted in the third quarter as our API supplier has discontinued making this product. We are currently in the process of

qualifying our subsidiary ANP to make this API. However, we do not know when the Drug Master File, or DMF, to approve this as our new API supply will be approved by the FDA. Therefore, we are not sure when we will be able to return to selling this product. Sales of medroxyprogesterone totaled $4.6 million in the three months ended June 30, 2023.

Sales of API primarily depend on the timing of customer purchases.

A significant portion of our customer shipments in any period relate to orders received and shipped in the same period, generally resulting in low product backlog relative to total shipments at any time. However, as of June 30, 2023, we experienced a backlog of approximately $6.5 million for various products, partially as a result of competitor shortages and supplier constraints. Historically, our backlog has not been a meaningful indicator in any given period of our ability to achieve any particular level of overall revenue or financial performance.

Gross margins

The increase in sales of glucagon and epinephrine, which are higher-margin products, the sales of ganirelix and vasopressin, both of which we launched last year, as well as the sales of regadenoson, which we launched in April 2023, helped increase our gross margins for the three months ended June 30, 2023. These increases in gross margins were partially offset by an impairment charge of $2.7 million related to the impairment of the IMS (UK) international product rights, as well as charges included in cost of revenues to adjust our inventory and related purchase commitments to their net realizable value.

We are experiencing increased costs for labor and certain purchased components. Additionally, the cost of heparin may fluctuate, which could put downward pressure on our gross margins. However, we believe that this trend will be offset by increased sales of our higher-margin products, including glucagon, vasopressin, ganirelix, regadenoson and new products we anticipate launching in 2023.

Selling, distribution and marketing, and general and administrative

	Three Months Ended June 30,		Change	
	2023	2022	Dollars	%
	(in thousands)			
Selling, distribution, and marketing	$ 6,718	$ 5,756	$ 962	17 %
General and administrative	$ 12,281	$ 9,979	$ 2,302	23 %

The increase in selling, distribution and marketing expenses was primarily due to an increase in advertising spending for Primatene MIST®. The increase in general and administrative expense was primarily due to an increase in salary and personnel-related expenses, as well as costs related to the acquisition of BAQSIMI®.

Legal fees may fluctuate from period to period due to the timing of patent challenges and other litigation matters.

Research and development

	Three Months Ended June 30,		Change	
	2023	2022	Dollars	%
	(in thousands)			
Salaries and personnel-related expenses	$ 6,918	$ 6,066	$ 852	14 %
Clinical trials	1,483	1,074	409	38 %
FDA fees	72	28	44	157 %
Materials and supplies	3,735	11,129	(7,394)	(66)%
Depreciation	2,388	2,548	(160)	(6)%
Other expenses	2,247	1,953	294	15 %
Total research and development expenses	$ 16,843	$ 22,798	$ (5,955)	(26)%

The decrease in research and development expenses is primarily due to a decrease in materials and supply expense, as a result of a ramp-up of expense in 2022 for AMP-018 and our insulin pipeline products. This was partially offset by an increase in salary and personnel-related expenses, as well as, an increase in clinical trial expense related to our insulin and inhalation product pipeline.
Research and development costs consist primarily of costs associated with the research and development of our product candidates including the cost of developing APIs. We expense research and development costs as incurred.

We have made, and expect to continue to make, substantial investments in research and development to expand our product portfolio and grow our business. We expect that research and development expenses will increase on an annual basis due to increased clinical trial costs related to our insulin and inhalation product candidates. These expenditures will include costs of APIs developed internally as well as APIs purchased externally, the cost of purchasing reference listed drugs and the costs of performing the clinical trials. As we undertake new and challenging research and development projects, we anticipate that the associated costs will increase significantly over the next several quarters and years. Over the past year, some of our ongoing clinical trials experienced short term interruptions in the recruitment of patients due to the COVID-19 pandemic, as trial sites changed their operating protocols to protect participants from COVID-19. These conditions may occur in the future which may increase the costs of clinical trials and also delay spending and results of these trials.

Other income (expenses), net

	Three Months Ended June 30,		Change	
	2023	2022	Dollars	%
	(in thousands)			
Other income (expenses), net	$ (1,516)	$ (1,504)	$ (12)	1 %

Other income (expenses), net is primarily a result of foreign currency fluctuation, as well as the mark-to-market adjustments relating to our interest rate swap contracts during the three months ended June 30, 2023.

Income tax provision

	Three Months Ended June 30,		Change	
	2023	2022	Dollars	%
	(in thousands)			
Income tax provision	$ 6,383	$ 5,551	$ 832	15 %
Effective tax rate	*19 %*	*24 %*		

Our effective tax rate for the three months ended June 30, 2023 decreased in comparison to the three months ended June 30, 2022, primarily due to differences in pre-tax income positions and timing of discrete tax items. For more information regarding our income taxes, see “Part I – Item 1. Financial Statements – Notes to Condensed Consolidated Financial Statements – Note 15. Income Taxes”.

Six Months Ended June 30, 2023 Compared to Six Months Ended June 30, 2022

Net revenues

	Six Months Ended June 30,		Change	
	2023	2022	Dollars	%
	(in thousands)			
Net revenues				
Finished pharmaceutical products	$ 278,876	$ 236,669	$ 42,207	18 %
API	6,858	7,166	(308)	(4)%
Total net revenues	$ 285,734	$ 243,835	$ 41,899	17 %
Cost of revenues				
Finished pharmaceutical products	$ 125,633	$ 112,646	$ 12,987	12 %
API	13,523	12,007	1,516	13 %
Total cost of revenues	$ 139,156	$ 124,653	$ 14,503	12 %
Gross profit	$ 146,578	$ 119,182	$ 27,396	23 %
as % of net revenues	*51 %*	*49 %*		

The increase in net revenues of the finished pharmaceutical products for the six months ended June 30, 2023, was due to the following changes:

	Six Months Ended June 30,		Change	
	2023	2022	Dollars	%
	(in thousands)			
Finished pharmaceutical products net revenues				
Glucagon	$ 52,972	$ 22,779	$ 30,193	133 %
Primatene MIST®	40,003	43,671	(3,668)	(8)%
Epinephrine	36,805	33,275	3,530	11 %
Lidocaine	27,652	26,632	1,020	4 %
Phytonadione	25,568	23,856	1,712	7 %
Enoxaparin	17,739	19,155	(1,416)	(7)%
Naloxone	10,059	14,606	(4,547)	(31)%
Other finished pharmaceutical products	68,078	52,695	15,383	29 %
Total finished pharmaceutical products net revenues	$ 278,876	$ 236,669	$ 42,207	18 %

The increase in sales of glucagon was primarily due to an increase in unit volumes, as a result of two suppliers discontinuing their glucagon injection products at the end of 2022. Primatene MIST® sales decreased due to reduced unit volume, as a result of inventory drawdowns by retailers, amounting to $6.5 million, which was partially offset by an increase in average selling price contributing $2.8 million. The increase in sales of epinephrine was primarily due to an increase in unit volumes, due to an increase in demand caused by supplier shortages. The increase in sales of phytonadione was due to an increase in unit volumes, as a result of supplier shortages. The decrease in sales of enoxaparin was primarily due to a decrease in unit volumes. The decrease in sales of naloxone was due to both a decrease in unit volumes, as well as a lower average selling price. The increase in other finished pharmaceutical products was primarily due to higher unit volumes of dextrose and atropine, due to increased demand caused by supplier shortages, as well as a full period of sales for ganirelix and vasopressin, which were launched in June 2022 and August 2022, respectively, and the launch of regadenoson in April 2023.

We anticipate that sales of naloxone and enoxaparin will continue to fluctuate in the future due to competitive dynamics. We also anticipate that sales of epinephrine and other finished pharmaceutical products will continue to fluctuate depending on the ability of our competitors to supply market demands. Sales of medroxyprogesterone will temporarily be halted in the third quarter as our API supplier has discontinued making this product. We are currently in the process of qualifying our subsidiary ANP to make this API. However, we do not know when the Drug Master File, or DMF, to

approve this as our new API supply will be approved by the FDA. Therefore, we are not sure when we will be able to return to selling this product. Sales of medroxyprogesterone totaled $10.0 million in the six months ended June 30, 2023.

Sales of API primarily depend on the timing of customer purchases.

A significant portion of our customer shipments in any period relate to orders received and shipped in the same period, generally resulting in low product backlog relative to total shipments at any time. However, as of June 30, 2023, we experienced a backlog of approximately $6.5 million for various products, partially as a result of competitor shortages and supplier constraints. Historically, our backlog has not been a meaningful indicator in any given period of our ability to achieve any particular level of overall revenue or financial performance.

Gross margins

The increase in sales of glucagon and epinephrine, which are higher-margin products, the sales of ganirelix and vasopressin, both of which we launched last year, as well as the sales of regadenoson, which we launched in April 2023, helped increase our gross margins for the six months ended June 30, 2023. These increases in gross margins were partially offset by an impairment charge of $2.7 million related to the impairment of the IMS (UK) international product rights, as well as charges included in cost of revenue to adjust our inventory and related purchase commitments to their net realizable value.

We are experiencing increased costs for labor and certain purchased components. Additionally, the cost of heparin may fluctuate, which could put downward pressure on our gross margins. However, we believe that this trend will be offset by increased sales of our higher-margin products, including glucagon, vasopressin, ganirelix, regadenoson and new products we anticipate launching in 2023.

Selling, distribution and marketing, and general and administrative

	Six Months Ended June 30,		Change	
	2023	2022	Dollars	%
	(in thousands)			
Selling, distribution, and marketing	$ 13,827	$ 11,275	$ 2,552	23 %
General and administrative	$ 25,764	$ 22,449	$ 3,315	15 %

The increase in selling, distribution and marketing expenses was primarily due to an increase in advertising spending for Primatene MIST®. The increase in general and administrative expense was primarily due to an increase in salary and personnel-related expenses, as well as costs related to the acquisition of BAQSIMI®.

We expect that selling, distribution and marketing expenses will continue to increase due to the increase in marketing expenditures for Primatene MIST®. Legal fees may fluctuate from period to period due to the timing of patent challenges and other litigation matters.

Research and development

	Six Months Ended June 30,		Change	
	2023	2022	Dollars	%
	(in thousands)			
Salaries and personnel-related expenses	$ 14,646	$ 12,550	$ 2,096	17 %
Clinical trials	2,757	1,179	1,578	134 %
FDA fees	97	57	40	70 %
Materials and supplies	9,892	16,530	(6,638)	(40)%
Depreciation	4,830	5,174	(344)	(7)%
Other expenses	4,436	3,531	905	26 %
Total research and development expenses	$ 36,658	$ 39,021	$ (2,363)	(6)%

The decrease in research and development expenses is primarily due to a decrease in materials and supply expense, as a result of a ramp-up of expenses in 2022 for AMP-018 and other insulin pipeline products. This was partially offset by an increase in salary and personnel-related expenses, as well as, an increase in clinical trial expense related to our insulin and inhalation product pipeline.

Research and development costs consist primarily of costs associated with the research and development of our product candidates including the cost of developing APIs. We expense research and development costs as incurred.

We have made, and expect to continue to make, substantial investments in research and development to expand our product portfolio and grow our business. We expect that research and development expenses will increase on an annual basis due to increased clinical trial costs related to our insulin and inhalation product candidates. These expenditures will include costs of APIs developed internally as well as APIs purchased externally, the cost of purchasing reference listed drugs and the costs of performing the clinical trials. As we undertake new and challenging research and development projects, we anticipate that the associated costs will increase significantly over the next several quarters and years. Over the past year, some of our ongoing clinical trials experienced short term interruptions in the recruitment of patients due to the COVID-19 pandemic, as trial sites changed their operating protocols to protect participants from COVID-19. These conditions may occur in the future which may increase the costs of clinical trials and also delay spending and results of these trials.

Other income (expenses), net

	Six Months Ended June 30,		Change	
	2023	2022	Dollars	%
	(in thousands)			
Other income (expenses), net	$ (1,906)	$ 6,089	$ (7,995)	NM

Other income (expenses), net is primarily a result of foreign currency fluctuation, as well as the mark-to-market adjustments relating to our interest rate swap contracts during the six months ended June 30, 2023. For the six months ended June 30, 2023, we received a settlement of $5.4 million in connection with the Regadenoson patent litigation. For more information regarding our litigation matters, see “Part I – Item 1. Financial Statements – Notes to Condensed Consolidated Financial Statements – Note 20. Litigation”.

Income tax provision

	Six Months Ended June 30,		Change	
	2023	2022	Dollars	%
	(in thousands)			
Income tax provision	$ 13,135	$ 9,628	$ 3,507	36 %
Effective tax rate	*20 %*	*18 %*		

Our effective tax rate for the six months ended June 30, 2023 increased in comparison to the six months ended June 30, 2022, primarily due to differences in pre-tax income positions. For more information regarding our income taxes, see “Part I – Item 1. Financial Statements – Notes to Condensed Consolidated Financial Statements – Note 15. Income Taxes”.

Liquidity and Capital Resources

Cash Requirements and Sources

We need capital resources to maintain and expand our business. We expect our cash requirements to increase significantly in the foreseeable future as we sponsor clinical trials for, seek regulatory approvals of, and develop, manufacture and market our current development stage product candidates and pursue strategic acquisitions of

businesses or assets. Our future capital expenditures include projects to upgrade, expand, and improve our manufacturing facilities in the United States and China, including a significant increase in capital expenditures over the next few years. We plan to fund this facility expansion with cash flows from operations. Our cash obligations include the principal and interest payments due on our existing loans and lease payments, as described below and throughout this Quarterly Report.

As of June 30, 2023, our foreign subsidiaries collectively held $11.9 million in cash and cash equivalents. Cash or cash equivalents held at foreign subsidiaries are not available to fund the parent company's operations in the United States. We believe that our cash reserves, operating cash flows, and borrowing availability under our credit facilities will be sufficient to fund our operations for at least the next 12 months from the date of filing of this Quarterly Report on Form 10-Q. We expect additional cash flows to be generated in the longer term from future product introductions, including from sales of BAQSIMI®, although there can be no assurance as to the receipt of regulatory approval for any product candidates that we are developing or the timing of any product introductions, which could be lengthy or ultimately unsuccessful.

We maintain a shelf registration statement on Form S-3 pursuant to which we may, from time to time, sell up to an aggregate of $250 million of our common stock, preferred stock, debt securities, depositary shares, warrants, subscription rights, purchase contracts, or units. If we require or elect to seek additional capital through debt or equity financing in the future, we may not be able to raise capital on terms acceptable to us or at all. To the extent we raise additional capital through the sale of equity or convertible debt securities, the issuance of such securities will result in dilution to our stockholders. If we are required and unable to raise additional capital when desired, our business, operating results and financial condition may be adversely affected.

Working capital decreased by $150.2 million to $133.3 million at June 30, 2023, compared to $283.5 million at December 31, 2022.

Cash Flows from Operations

The following table summarizes our cash flows used in operating, investing, and financing activities for the six months ended June 30, 2023 and 2022:

	Six Months Ended June 30,	
	2023	2022
	(in thousands)	
Statement of Cash Flow Data:		
Net cash provided by (used in)		
Operating activities	$ 95,305	$ 53,580
Investing activities	(514,915)	(17,290)
Financing activities	414,563	3,654
Effect of exchange rate changes on cash	(6)	(140)
Net increase in cash, cash equivalents, and restricted cash	$ (5,053)	$ 39,804

Sources and Use of Cash

Operating Activities

Net cash provided by operating activities was $95.3 million for the six months ended June 30, 2023, which included net income of $52.2 million. Non-cash items comprised primarily of $14.4 million of depreciation and amortization, $11.0 million of share-based compensation expense, and an impairment charge of $2.7 million relating to the impairment of the IMS (UK) international product rights.

Additionally, for the six months ended June 30, 2023, there was a net cash inflow from changes in operating assets and liabilities of $8.3 million, which resulted from an increase in accounts payable and accrued liabilities, which was

partially offset by an increase in accounts receivables. Accounts payable and accrued liabilities increased primarily due to the timing of payments. The increase in accounts receivables was due to both increases in sales and timing of sales.

Net cash provided by operating activities was $53.6 million for the six months ended June 30, 2022, which included net income of $41.6 million. Non-cash items comprised primarily of $13.8 million of depreciation and amortization and $9.3 million of share-based compensation expense. Additionally, for the six months ended June 30, 2022, there was a net cash outflow from changes in operating assets and liabilities of $11.7 million, which resulted from an increase in accounts receivables as well as an increase in inventories, which was partially offset by an increase in accounts payable and accrued liabilities. Accounts payable and accrued liabilities increased primarily due to the timing of payments. The increase in accounts receivable was due to both increases in sales and the timing of sales.

Investing Activities

Net cash used in investing activities was $514.9 million for the six months ended June 30, 2023, primarily as a result of $500.8 million relating to the BAQSIMI® acquisition, $18.5 million in purchases of property, plant, and equipment, which included $13.5 million incurred in the United States, $0.6 million in France, and $4.4 million in China. This was partially offset by a net cash inflows from purchases and sales of short-term investments during the period of $5.4 million.

Net cash used in investing activities was $17.3 million for the six months ended June 30, 2022, primarily as a result of $12.1 million in purchases of property, plant, and equipment, which included $8.4 million incurred in the United States, $0.6 million in France, and $3.1 million in China. Additionally, cash outflow from short-term investing activities during the period was $5.6 million.

Financing Activities

Net cash provided by financing activities was $414.6 million for the six months ended June 30, 2023, primarily due to our entry into the Credit Agreement, which was partially offset by $68.4 million in principal payments of our long-term debt and $14.2 million in debt issuance cost. Additionally, we received $5.3 million in net proceeds from the settlement of share-based compensation awards under our equity plan, which was partially offset by the $8.1 million used to purchase treasury stock.

Net cash provided by financing activities was $3.7 million for the six months ended June 30, 2022, primarily as a result of $12.2 million in net proceeds from the settlement of share-based compensation awards under our equity plan, which was partially offset by the use of $7.3 million to purchase treasury stock. Additionally, we also made $1.1 million in principal payments on our long-term debt.

Indebtedness

For more information regarding our outstanding indebtedness, see “Part I – Item 1. Financial Statements – Notes to Condensed Consolidated Financial Statements – Note 14. Debt”.

Critical Accounting Policies

The preparation of our condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and notes to the financial statements. Some of those judgments can be subjective and complex, and therefore, actual results could differ materially from those estimates under different assumptions or conditions. A summary of our critical accounting policies is presented in Part II, Item 7, of our Annual Report on Form 10-K for the year ended December 31, 2022. There have been no material changes to our critical accounting policies as compared to the critical accounting policies as described in our Annual Report on Form 10-K for the year ended December 31, 2022.

Recent Accounting Pronouncements

For information regarding recent accounting pronouncements, see "Part I – Item 1. Financial Statements – Notes to Condensed Consolidated Financial Statements – Note 2. Summary of Significant Accounting Policies".

Government Regulation

Our products and facilities are subject to regulation by a number of federal and state governmental agencies. The FDA, in particular, maintains oversight of the formulation, manufacture, distribution, packaging, and labeling of all of our products. The Drug Enforcement Administration, or DEA, maintains oversight over our products that are considered controlled substances.

From February 6 through February 16, 2023, our IMS facility in South El Monte, California was subject to pre-approval inspection by the FDA. The inspection included a review of compliance with FDA regulations to support one of our pending applications. The inspection resulted in two observations on Form 483. We responded to those observations. We believe that our response to the observations will satisfy the requirements of the FDA and that no significant further actions will be necessary.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK

Except for the broad, ongoing macroeconomic challenges facing the global economy and financial markets, there have been no material changes in market risk from the information provided in our Annual Report on Form 10-K for the year ended December 31, 2022. We are exposed to market risk in the ordinary course of business. Market risk represents the potential loss arising from adverse changes in the value of financial instruments. The risk of loss is assessed based on the likelihood of adverse changes in fair values, cash flows or future earnings. We are exposed to market risk for changes in the market values of our investments (Investment Risk), the impact of interest rate changes (Interest Rate Risk), and the impact of foreign currency exchange changes (Foreign Currency Exchange Risk).

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, under the supervision and with the participation of our Chief Executive Officer and our Chief Financial Officer, our principal executive and principal financial officers, respectively, conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act of 1934, as amended, as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that our disclosure controls and procedures were effective (a) to ensure that information that we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and (b) to include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in reports filed or submitted under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control Over Financial Reporting

There have been no changes in our internal control over financial reporting that occurred during the quarter ended June 30, 2023, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act).

Inherent Limitations of Internal Controls

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

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

For information regarding legal proceedings, see "Part I – Item 1. Financial Statements – Notes to Condensed Consolidated Financial Statements – Note 20. Litigation."

ITEM 1A. RISK FACTORS

Except as noted below, there were no material changes from the risk factors previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2022, filed with the Securities and Exchange Commission on March 1, 2023.

Our actual financial and operating results could differ materially from any expectations or guidance provided by us concerning future results with respect to the Acquisition.

Although we currently expect to realize increased revenues as a result of our Acquisition, the expectations and guidance we have provided, with respect to the potential financial impact of the Acquisition, are subject to numerous assumptions including assumptions derived from our diligence efforts concerning the status of and prospects for BAQSIMI® business, which we did not control at the time such assumptions were made, and assumptions relating to the near-term prospects for glucagon products generally and the markets for BAQSIMI® in particular. Additional assumptions we have made relate to numerous matters, including (without limitation) the following:

- projections of BAQSIMI®'s future revenues;
- the amount of intangibles that will result from the Acquisition;
- certain other purchase accounting adjustments that we expect to record in our financial statements in connection with the Acquisition;
- Acquisition costs, including transaction costs payable to our financial, legal, and accounting advisors;
- our ability to maintain, develop, and deepen relationships with BAQSIMI® customers and suppliers;
- other financial and strategic risks of the Acquisition, including the possible impact of our reduced liquidity resulting from deal-related cash outlays, the credit risk associated from the debt facility described below, and continued uncertainty arising from the global economic downturn; and
- the FDA approval process is time-consuming and complicated, and we may not obtain the FDA approval required for a product within the timeline we desire, or at all.

We cannot provide any assurances with respect to the accuracy of our assumptions, including our assumptions with respect to future revenues or revenue growth rates, if any, of BAQSIMI®, and we cannot provide assurances with respect to our ability to realize the cost savings that we currently anticipate. There are a variety of risks and uncertainties, some of which are outside of our control, which could cause our actual financial and operating results to differ materially from any expectations or guidance provided by us, concerning our future results with respect to the Acquisition.

We may fail to realize the projected revenue and other benefits expected from the Acquisition, which could adversely affect the value of our common stock.

Our ability to realize the projected revenue and other benefits from the Acquisition will depend, in part, on our ability to integrate BAQSIMI® into our current business. If we are not able to achieve the projected revenue or other benefits within the anticipated time frame, or at all, or if the projected revenue or other benefits take longer to realize than expected, then the value of our common stock may be adversely affected.

It is possible that the integration process following the Acquisition could result in the disruption of our business or ongoing business associated with BAQSIMI®. We may also identify inconsistencies in standards, controls, procedures and policies between the two businesses that could adversely affect our ability to maintain relationships with our customers, suppliers, distributors, creditors, lessors, clinical trial investigators or managers or to achieve the anticipated benefits of BAQSIMI®.

Specifically, in order to realize the anticipated benefits of the Acquisition, we will:

- rely on Lilly for manufacturing services and transition services, including for performance of clinical and commercial activities, relating to BAQSIMI® and transfer of the corresponding activities to Amphastar;
- be required to enter into our own arrangements with certain suppliers/manufacturers in the supply chain;
- be required to set up distribution and sales arrangements for BAQSIMI® including payor and other agreements; and
- transfer regulatory approvals relating to BAQSIMI® to us following the closing of the Acquisition.

Integration efforts between us and the business associated with BAQSIMI® will also divert management attention and resources. In addition, the actual integration of BAQSIMI® may result in additional and unforeseen expenses or liabilities (including those that may be assumed in connection with the Acquisition), and any anticipated benefits of the integration plan may not be realized. If we are not able to adequately address these challenges, we may be unable to successfully integrate BAQSIMI® into our business, or to realize some or any of the anticipated benefits of the Acquisition.

Delays encountered in the integration process could have a material adverse effect on our revenues, expenses, operating results and financial condition. Although we expect significant benefits, such as increased sales revenues, from the Acquisition, there can be no assurance that we will realize these or any other anticipated benefits.

The Debt Financing and the use of a portion of our cash resources in connection with the Acquisition has resulted in a material increase to our indebtedness, which has and may continue to adversely affect our operating results and cash flows.

The Acquisition was financed with the Debt Financing, which provides for funding for term loan and revolving credit facilities in an aggregate principal amount of up to $700.0 million. The material increase in our indebtedness as a result of the Debt Financing has and may continue to adversely affect our operating results, cash-flows and our ability to use cash generated from operations as we satisfy our materially increased underlying interest and principal payment obligations and our operating expenses under the term loan facility and revolving credit facility, as applicable.

Specifically, our materially increased indebtedness could have important consequences to investors in our common stock, including any or all of the following:

- we could be subject to substantial variable interest rate risk because our interest rate under term loans typically vary based on a fixed margin over an indexed rate or an adjusted base rate. If interest rates were to further increase substantially, particularly with respect to our debt associated with the Acquisition, it would have a material adverse effect our operating results and could affect our ability to service the indebtedness;
- our ability to obtain any necessary financing in the future for working capital, capital expenditures, debt service requirements, or other purposes may be limited or financing may be unavailable;
- a substantial portion of our cash flows must be dedicated to the payment of principal and interest on our indebtedness and other obligations and will not be available for use in our business;
- our level of indebtedness could limit our flexibility in planning for, or reacting to, changes in our business and

the markets in which we operate; and

- our high degree of indebtedness will make us more vulnerable to changes in general economic conditions and/or a downturn in our business, thereby making it more difficult for us to satisfy our obligations.

Our ability to make scheduled payments of the principal and interest when due, or to refinance our borrowings under the Debt Financing, will depend on our future performance, which is subject to economic, financial, competitive and other factors beyond our control.

Our business may not continue to generate cash flow from operations in the future sufficient to satisfy our obligations under our indebtedness, and any future indebtedness we may incur and to make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as reducing or delaying investments or capital expenditures, selling assets, refinancing or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our existing or future indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on the Debt Financing or future indebtedness.

If we fail to make required debt payments we would be in default under the terms of these agreements. Subject to customary cure rights, any default would permit the holders of the indebtedness to accelerate repayment of this debt and could cause defaults under other indebtedness that we have, any of which could have a material adverse effect on the trading price of our common stock.

Our outstanding loan agreements contain restrictive covenants that may limit our operating flexibility.

Our loan agreements are collateralized by substantially all of our presently existing and subsequently acquired personal property assets and subject us to certain affirmative and negative covenants, including limitations on our ability to transfer or dispose of assets, merge with or acquire other companies, make investments, pay dividends, incur additional indebtedness and liens and conduct transactions with affiliates. For example, the definitive documentation governing the Debt Financing contains financial and operational covenants that may adversely affect our operational freedom or ability to pursue strategic transactions that we would otherwise consider to be in the best interests of stockholders, including obtaining additional indebtedness to finance such transactions.

We are also subject to certain covenants that require us to maintain certain financial ratios and are required under certain conditions to make mandatory prepayments of outstanding principal. As a result of these covenants and ratios, we have certain limitations on the manner in which we can conduct our business, and we may be restricted from engaging in favorable business activities or financing future operations or capital needs until our current debt obligations are paid in full or we obtain the consent of our lenders, which we may not be able to obtain. For example, the definitive documentation governing the Debt Financing contains financial and operational covenants that may adversely affect our ability to engage in certain activities, including certain financing and acquisition transactions, stock repurchases, guarantees, and similar transactions, without obtaining the consent of the lenders, which may or may not be forthcoming including without limitation, covenants requiring compliance with a maximum consolidated net leverage ratio test and a minimum consolidated interest coverage ratio test.

We may not be able to generate sufficient cash flow or revenue to meet the financial covenants or pay the principal and interest on our debt. In addition, upon the occurrence of an event of default, our lenders, among other things, can declare all indebtedness due and payable immediately, which would adversely impact our liquidity and reduce the availability of our cash flows to fund working capital needs, capital expenditures and other general corporate purposes. An event of default includes our failure to pay any amount due and payable under the loan agreements, the occurrence of a material adverse change in our business as defined in the loan agreements, our breach of any covenant in the loan agreements, or an involuntary insolvency proceeding. Additionally, a lender could exercise its lien on substantially all of our assets and our future working capital, borrowings or equity financing may not be available to repay or refinance any such debt.

Our business relationships, including customer relationships, and those of the business related to BAQSIMI® may be subject to disruption due to uncertainty associated with the Acquisition.

Suppliers, vendors, and other third parties with whom we or the business related to BAQSIMI® do business or otherwise have relationships may experience uncertainty associated with the Acquisition, and this uncertainty could materially affect their decisions with respect to existing or future business relationships with us. As a result, we are currently unable to predict the effect of the Acquisition on certain assumed contractual rights and obligations, including intellectual property rights.

Contracts, agreements, licenses, permits, authorizations and other arrangements related to the BAQSIMI® business that contain provisions giving counterparties certain rights (including, in some cases, termination rights) in the event of an "assignment" of such agreement or a "change in control" of Lilly or its subsidiaries. The definitions of "assignment" and "change in control" vary from contract to contract and, in some cases, the "assignment" or "change in control" provisions may be implicated by the Acquisition. If an "assignment" or "change in control" occurs, a counterparty may be permitted to terminate its contract with respect to BAQSIMI®.

We cannot predict the effects, if any, if the Acquisition is deemed to constitute an assignment or change in control under certain of the contracts and other arrangements related to BAQSIMI®, including the extent to which cancellation rights or other rights would be exercised, if at all, or the effect on our financial condition, results of operations or cash flows.

Our business may be adversely affected by resurgence of COVID-19 cases or other public health outbreaks that result in business disruptions or related challenging macroeconomic conditions globally.

While the U.S. government ended the COVID-19 public health emergency on May 11, 2023, any resurgence of COVID-19 cases or other public health outbreaks or disruptions could continue to impact worldwide economic activity and financial markets and present challenges to our business. Mass and rapid production of the vaccines, for example, has placed increased pressure on the availability of supplies that are also used in our products, such as glass vials and needles. Such outbreaks may also disrupt the operations of our customers, suppliers and partners for an indefinite period of time, including as a result of travel restrictions and/or business shutdowns, all of which could negatively impact our business and results of operations, including cash flows. Disruptions to our manufacturing partners and suppliers could result in disruption to the production of our products and failure to satisfy demand. More generally, any extended public health outbreaks or emergencies could adversely affect economies and financial markets globally and nationally, including inflationary pressures and changes in interest rates, which have and could continue to decrease spending and adversely affect demand for our products and harm our business and results of operations. To the extent macroeconomic uncertainty persists or if a resurgence of COVID-19 cases or macroeconomic conditions worsen, we may experience a continuing adverse effect on the demand for some of our products. The degree of impact of any pandemic and the related challenging macroeconomic conditions globally on our business will depend on several factors, such as the duration and the extent of the pandemic, as well as actions taken by governments, businesses, and consumers in response to the pandemic and the challenging macroeconomic conditions globally, all of which continue to evolve and remain uncertain at this time.

During the COVID-19 pandemic, FDA has issued various COVID-19 related guidance documents applicable to biopharmaceutical manufacturers and clinical trial sponsors many of which have expired or were withdrawn with the expiration of the COVID-19 public health emergency declaration in May 2023, although some COVID-19 related guidance documents continue in effect. These and future guidance documents and regulatory requirements, including future legislation, have and may continue to require us to develop and implement new policies and procedures, make significant adjustments to our clinical trials, or increase the amount time and resources needed for regulatory compliance, which may impact our clinical development plans and timelines.

Some of our ongoing clinical trials have experienced short term interruptions in the recruitment of patients due to the COVID-19 pandemic, as hospitals prioritized their resources toward the COVID-19 pandemic and governments imposed travel restrictions. Additionally, protocols at certain clinical sites have changed, which could slow down the pace of clinical trials while also increasing their cost. These conditions may in turn delay spending and delay the results of these trials. Additionally, certain suppliers delayed shipments to us in 2022. These delays may have been caused by

manufacturing disruptions due to the COVID-19 pandemic. For example, in the first quarter of 2022, increases in COVID-19 cases in Shanghai, China, led to shutdowns and delays at the ports in Shanghai, which led to temporary delays in shipping certain APIs and starting materials. Future shutdowns could have an adverse impact on our operations.

Any of the negative impacts of any ongoing pandemic, including any resurgence of COVID-19 cases, and the related challenging macroeconomic conditions, including, among others, those described above, alone or in combination with others, may have a material adverse effect on our business and operations, results of operations, financial condition, and cash flows. It is not possible at this time to estimate the complete impact that the COVID-19 pandemic and the related challenging economic conditions could have on our business, as the impact will depend on future developments, which are highly uncertain and cannot be predicted.

Macroeconomic conditions may continue to worsen leading to changes in monetary policy and other responses from governmental bodies, infections may resurge or become more widespread and the limitation on our ability to travel and timely sell and distribute our products, as well as any closures or supply disruptions, may be enacted or extended for longer periods of time, each of which alone or in combination with others, would have a negative impact on our business, financial condition and operating results. We will continue to monitor the impact of the COVID-19 pandemic, any resurgence of COVID-19 cases, and related challenging macroeconomic conditions on all aspects of our business.

Because a portion of our manufacturing takes place in China, a significant disruption in the construction or operation of our manufacturing facility in China, political unrest in China, tariffs, impact of outbreaks of health epidemics, such as the COVID-19 pandemic, or changes in social, political, trade, health, economic, environmental, or climate-related conditions or in laws, regulations and policies governing foreign trade could materially and adversely affect our business, financial condition and results of operations.

We currently manufacture the starting material for Amphadase® and enoxaparin as well as the APIs for isoproterenol and nitroprusside at our manufacturing facility in China, and we plan to use this facility to manufacture several of the APIs for products in our pipeline. Additionally, we intend to continue to invest in the expansion of this manufacturing facility. Our manufacturing facility and operations in China involve significant risks, including:

- disruptions in the construction of the manufacturing facility;
- interruptions to our operations in China or the inability of our manufacturing facility to produce adequate quantities of raw materials or APIs to meet our needs as a result of natural catastrophic events or other causes beyond our control such as power disruptions or widespread disease outbreaks, including the recent outbreaks that impact animal-derived products, such as the importation of pig-derived crude heparin from countries impacted by the African swine flu, and the ongoing COVID-19 pandemic, which has resulted in and may in the future result in, business closures, transportation restrictions, import and export complications, and otherwise cause shortages in the supply of raw materials or cause disruptions in our manufacturing capability;
- product supply disruptions and increased costs as a result of heightened exposure to changes in the policies of the Chinese government, political unrest or unstable economic conditions in China, including China's policies with respect to COVID-19;
- the imposition of additional tariffs, export controls or other trade barriers as a result of changes in social, political, and economic conditions or in laws, regulations, and policies governing foreign trade, including U.S. and foreign export controls such as U.S. controls preventing the export of a wide-range of items to Russia, new controls impacting the ability to send certain products and technology, specifically related to semi-conductor manufacturing and supercomputing to China without an export license, and the addition of new China-based entities to certain U.S. restricted party lists including the Entity List and Unverified List, trade sanctions and import laws and regulations, the tariffs previously implemented and additional tariffs that have been proposed by the U.S. government on various imports from China and by the Chinese government on certain U.S. goods, the scope and duration of which, if implemented, remain uncertain;
- the nationalization or other expropriation of private enterprises or intellectual property by the Chinese government, which could result in the total loss of our investment in China; and

- interruptions to our manufacturing or business operations resulting from geo-political actions, including war and terrorism such as the war in Ukraine, natural disasters including earthquakes, typhoons, floods, and fires, or outbreaks of health epidemics or outbreaks in livestock or animals that impact or restrict importation, use, or distribution of animal-derived products.

Any of these matters could materially and adversely affect our business and results of operations. These interruptions or failures could impair our ability to operate our business, impede the commercialization of our product candidates or delay the introduction of new products, impact our product quality, or impair our competitive position.

We are actively monitoring and assessing the ongoing impact of the COVID-19 pandemic on our business. This includes evaluating the impact on our employees, suppliers, and logistics providers as well as evaluating governmental actions being taken to curtail the spread of the virus. For example, in the first quarter of 2022, increases in COVID-19 cases in Shanghai, China, led to shutdowns and delays at the ports in Shanghai. However, the extent of any future shutdown or delay is highly uncertain and difficult to predict. Any material adverse effect on our employees, suppliers, and logistics providers could have a material adverse effect on our manufacturing operations in China or the supply of raw materials or APIs originating from China.

The FDA approval process for changes to existing products (such as change of components or API supplier) is time-consuming and complicated, and we may not obtain the FDA approval required for a such changes within the timeline we desire, or at all.

The development, testing, manufacturing, marketing and sale of generic and proprietary pharmaceutical products and biological products are subject to extensive federal, state and local regulation in the U.S. and other countries. Satisfaction of all regulatory requirements, which typically takes years for drugs that require regulatory approval in ANDAs, NDAs, biological license applications, or BLAs, or biosimilar applications is dependent upon the type, complexity and novelty of the product candidate and requires the expenditure of substantial resources for research (including qualification of suppliers and their supplied materials), development, in vitro and in vivo (including nonclinical and clinical trials) studies, manufacturing process development and commercial scale up. Some of our products are drug-device combination products that are regulated as drug products by the FDA, with consultation from the FDA's Center for Device and Radiological Health. These combination products require the submission of drug applications to the FDA. All of our products are subject to compliance with the FFDCA and/or the Public Health Service Act, or PHSA, and with the FDA's implementing regulations. Failure to adhere to applicable statutory or regulatory requirements by us or our business partners would have a material adverse effect on our operations and financial condition. In addition, in the event we are successful in developing product candidates for distribution and sale in other countries, we would become subject to regulation in such countries. Such foreign regulations and product approval requirements are expected to be time consuming and expensive as well.

We may encounter delays or agency rejections during any stage of the regulatory review and approval process based upon a variety of factors, including without limitation the failure to provide clinical data demonstrating compliance with the FDA's requirements for safety, efficacy and quality. Those requirements may become more stringent prior to submission of our applications for approval or during the review of our applications due to changes in the law or changes in FDA policy or the adoption of new regulations. After submission of an application, the FDA may refuse to file the application, deny approval of the application or require additional testing or data. The FDA can convene an Advisory Committee to assist the FDA in examining specific issues related to the application. For example, we initially filed an NDA, for our Primatene MIST® product in July 2013, but FDA approval was not granted until November 2018 due to delays caused by the FDA's requirement that we provide additional non-clinical information, label revision and follow-up studies (including label comprehension and behavioral/human factor studies), and that we make packaging and label revisions. Additionally, we received Complete Response Letters, or CRLs, from the FDA asking for more information before they could approve the ANDA for our epinephrine vial product. These CRLs have delayed the approval of this product.

Under various user fee enactments, the FDA has committed to timelines for its review of NDAs, ANDAs, BLAs and biosimilar applications. However, the FDA's timelines described in its guidance on these statutes are flexible and subject to changes based on workload and other potential review issues that may delay the FDA's review of an application.

Further, the terms of approval of any applications may be more restrictive than our expectations and could affect the marketability of our products.

The FDA also has the authority to revoke or suspend approvals of previously approved products for cause, to debar companies and individuals from participating in the approval process for ANDAs, to request recalls of allegedly violative products, to seize allegedly violative products, to obtain injunctions that may, among other things, close manufacturing plants that are not operating in conformity with cGMP and stop shipments of potentially violative products and to prosecute companies and individuals for violations of the FFDCA.

We were informed that one of our API suppliers has discontinued manufacturing an API included in one of our commercial products. We are currently in the process of qualifying one of our subsidiaries to supply the necessary API, and are required to obtain FDA approval of our new API supply. In the event the FDA does not grant approval or any additional approvals for the new API supply are delayed, such actions would temporarily force us to stop manufacturing our impacted commercial product, potentially for a considerable period of time. If we are forced to stop manufacturing this commercial product or any of our commercial products in the future, for any length of time, it could have a material effect on our operating results and financial condition.

Our business may be affected by new sanctions and export controls targeting Russia and other responses to Russia's invasion of Ukraine.

As a result of Russia's invasion of Ukraine, the U.S., the U.K. and the EU governments, among others, have developed coordinated sanctions and export-control measure packages.

Based on the public statements to date, these packages include:

- comprehensive financial sanctions against major Russian banks (including SWIFT cut off);
- designations of individuals and entities involved in Russian military activities;
- additional designations of Russian individuals including but not limited to those with significant business interests and government connections; and
- enhanced export controls and trade sanctions targeting Russia's imports of a wide range of goods as a whole, including potentially tighter controls on exports and reexports of items previously subject to only a low level of control, stricter licensing policy with respect to issuing export licenses, and/or increased use of "end-use" controls to block or impose licensing requirements on exports.

Prior to Russia's invasion of Ukraine, we sold APIs indirectly to Russian customers. The imposition of enhanced export controls and economic sanctions on transactions with Russia and Russian entities by the U.S., the U.K., and/or the EU could prevent us from selling our products to Russian customers. In addition, even if a Russian entity is not formally subject to sanctions, customers of such Russian entity may decide to reevaluate, or cancel projects with such entity, and such actions could have a similar impact on us as if sanctions were applied directly as described above. Depending on the extent and breadth of new sanctions or export controls that may be imposed against Russia, it is possible that our business, results of operations and financial condition could be adversely affected.

The Affordable Care Act and certain legislation and regulatory proposals may increase our costs of compliance and negatively impact our profitability over time.

In March 2010, former President Barack Obama signed the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act, which we refer to collectively as the Affordable Care Act. The Affordable Care Act made extensive changes to the delivery of health care in the United States. We expect that the rebates, discounts, taxes and other costs resulting from the Affordable Care Act over time will have a negative effect on our expenses and profitability in the future. Furthermore, the Independent Payment Advisory Board created by the Affordable Care Act to reduce the per capita rate of growth in Medicare spending could potentially limit access to certain

treatments or mandate price controls for our products. Moreover, expanded government investigative authority and increased disclosure obligations may increase the cost of compliance with new regulations and programs.

Since its enactment, there have been judicial and Congressional challenges to certain aspects of the Affordable Care Act, or ACA. In June 2021, the United States Supreme Court held that Texas and other challengers had no legal standing to challenge the ACA, dismissing the case without specifically ruling on the constitutionality of the ACA. Accordingly, the ACA remains in effect in its current form. It is unclear how this Supreme Court decision, future litigation, or healthcare measures promulgated by the Biden administration will impact our business, financial condition and results of operations. Complying with any new legislation or changes in healthcare regulation could be time-intensive and expensive, resulting in material adverse effect on our business.

In addition, there have been a number of other legislative and regulatory proposals aimed at changing the pharmaceutical industry. For example, in November 2013, Congress passed the Drug Quality and Security Act, or the DQSA. The DQSA establishes federal pedigree tracking standards requiring drugs to be labeled and tracked at the lot level, preempts state drug pedigree requirements, and will eventually require all supply-chain stakeholders to participate in an electronic, interoperable prescription drug track and trace system. The DQSA also establishes new requirements for drug wholesale distributors and third-party logistics providers, including licensing requirements in states that had not previously licensed such entities. As a result of these and other new proposals, we may determine to change our current manner of operation, provide additional benefits or change our contract arrangements, any of which could have a material adverse effect on our business, financial condition and results of operations.

Former President Barack Obama also signed into law the Food and Drug Administration Safety and Innovation Act. The law and related agreements make several significant changes to the FFDCA and FDA's processes for reviewing marketing applications that could have a significant impact on the pharmaceutical industry, including, among other things, the following:

- reauthorizes the Prescription Drug User Fee Act, which increases the amount of associated user fees, and, for certain types of applications, increases the expected time frame for FDA review of new drug applications, or NDAs;
- permanently reauthorizes and makes some revisions to the Best Pharmaceuticals for Children Act and the Pediatric Research Equity Act, which provide for pediatric exclusivity and mandated pediatric assessments for certain types of applications, respectively;
- revises certain standards and requirements for FDA inspections of manufacturing facilities and the importation of drug products from foreign countries;
- creates incentives for the development of certain antibiotic drug products;
- modifies the standards for accelerated approval of certain new medical treatments;
- expands the reporting requirements for potential and actual drug shortages;
- requires the FDA to issue a report on, among other things, ensuring the safety of prescription drugs that have the potential for abuse;
- requires the FDA to hold a public meeting regarding the potential rescheduling of drug products containing hydrocodone, which was held in October 2012; and
- requires electronic submission of certain marketing applications following the issuance of final FDA regulations.

The full impact of new laws and regulations and changes to any existing regulations by the Biden administration is uncertain; however, we anticipate that it will have an adverse effect on our results of operations.

There has been heightened governmental scrutiny recently over the manner in which drug manufacturers set prices for their marketed products, which has resulted in several congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for drug products. For example, under the American Rescue Plan Act of 2021, effective January 1, 2024, the statutory cap on Medicaid Drug Rebate Program rebates that manufacturers pay to state Medicaid programs will be eliminated. Elimination of this cap may require pharmaceutical manufacturers to pay more in rebates than it receives on the sale of products, which could have a material impact on our business. In July 2021, the Biden administration released an executive order, "Promoting Competition in the American Economy," with multiple provisions aimed at increasing competition for prescription drugs. In August 2022, Congress passed the Inflation Reduction Act of 2022, which includes prescription drug provisions that have significant implications for the pharmaceutical industry and Medicare beneficiaries, including allowing the federal government to negotiate a maximum fair price for certain high-priced single source Medicare drugs, imposing penalties and excise tax for manufacturers that fail to comply with the drug price negotiation requirements, requiring inflation rebates for all Medicare Part B and Part D drugs, with limited exceptions, if their drug prices increase faster than inflation, and redesigning Medicare Part D to reduce out-of-pocket prescription drug costs for beneficiaries, among other changes. Various industry stakeholders, including pharmaceutical companies, the U.S. Chamber of Commerce, the National Infusion Center Association, the Global Colon Cancer Association, and the Pharmaceutical Research and Manufactures of America, have initiated lawsuits against the federal government asserting that the price negotiation provision of the Inflation Reduction Act are unconstitutional. The impact of these judicial challenges, legislative, executive, and administrative actions and any future healthcare measures and agency rules implemented by the government on us and the pharmaceutical industry as a whole is unclear. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability, or commercialize our approved products.

At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing. For example, in September 2020, the Governor of California signed legislation that brings California one step closer to establishing its own generic drug label, which could have significant impact on the generic drug industry and generic drug pricing. A number of states are also considering or have recently enacted state drug price transparency and reporting laws that could substantially increase our compliance burdens and expose us to greater liability under such state laws.

Additionally, we encounter similar regulatory and legislative issues in most other countries. In the European Union, or EU, and some other international markets, the government provides health care at low cost to consumers and regulates pharmaceutical prices, patient eligibility or reimbursement levels to control costs for the government-sponsored health care system. This international system of price regulations may lead to inconsistent prices.

If significant additional reforms are made to the U.S. health care system, or to the health care systems of other markets in which we operate, those reforms could have a material adverse effect on our business, financial position and results of operations and could cause the market value of our common stock to decline.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES, USE OF PROCEEDS, AND ISSUER PURCHASE OF EQUITY SECURITIES

(c) Issuer Purchases of Equity Securities

The table below provides information with respect to repurchases of our common stock.

Period	Total Number of Shares Purchased [1]	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs
April 1 – April 30, 2023	—	$ —	—	—
May 1 – May 31, 2023	3,585	35.95	3,585	—
June 1 – June 31, 2023	—	—	—	—

[1] On November 7, 2022, we announced that our Board of Directors authorized an increase of $50.0 million to our share buyback program. As of June 30, 2023, $35.5 million remained available for repurchase under such program. The share buyback program does not have an expiration date.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not applicable.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

Securities Trading Plans of Directors and Executive Officers

During our last fiscal quarter, the following directors and officers, as defined in Rule 16a-1(f), adopted a Rule 10b5-1 trading arrangement, as defined in Regulation S-K Item 408, as follows:

On May 19, 2023, Jacob Liawatidewi, our Executive Vice President of Sales and Marketing and Corporate Administration Center, President of Amphastar France Pharmaceuticals, S.A.S., Corporate Secretary, and Director, adopted a Rule 10b5-1 trading arrangement providing for the sale from time to time of an aggregate of up to 28,816 shares of our common stock. The trading arrangement is intended to satisfy the affirmative defense in Rule 10b5-1(c). The duration of the trading arrangement is until August 29, 2024, or earlier if all transactions under the trading arrangement are completed.

On June 5, 2023, William J. Peters, our Chief Financial Officer, Executive Vice President of Finance, and Treasurer, President of International Medication Systems, Limited, and Director, adopted a Rule 10b5-1 trading arrangement providing for the sale from time to time of an aggregate of up to 138,129 shares of our common stock. The trading arrangement is intended to satisfy the affirmative defense in Rule 10b5-1(c). The duration of the trading arrangement is until August 15, 2024, or earlier if all transactions under the trading arrangement are completed.

On June 9, 2023, Mary Z. Luo, our Chief Operating Officer, Chief Scientist and Chairman of the Board of Directors, adopted a Rule 10b5-1 trading arrangement providing for the sale from time to time of an aggregate of up to 351,186 shares of our common stock. The trading arrangement is intended to satisfy the affirmative defense in Rule 10b5-1(c). The duration of the trading arrangement is until June 9, 2024, or earlier if all transactions under the trading arrangement are completed.

On June 13, 2023, Floyd F. Petersen, a member of our Board of Directors, adopted a Rule 10b5-1 trading arrangement providing for the sale from time to time of an aggregate of up to 4,500 shares of our common stock. The trading

arrangement is intended to satisfy the affirmative defense in Rule 10b5-1(c). The duration of the trading arrangement is until June 4, 2024, or earlier if all transactions under the trading arrangement are completed.

No other officers or directors, as defined in Rule 16a-1(f), adopted or terminated a Rule 10b5-1 trading arrangement as defined in Regulation S-K Item 408, during the last fiscal quarter.

ITEM 6. EXHIBITS

Exhibit No.	Description
10.1*	Asset Purchase Agreement by and among Amphastar Pharmaceuticals, Inc., Amphastar Medication Co., LLC, and Eli Lilly and Company, dated April 21, 2023
10.2*	Manufacturing Service Agreement by and between Amphastar Pharmaceuticals, Inc., and Eli Lilly and Company, dated June 30, 2023
10.3*	Transition Service Agreement by and between Amphastar Pharmaceuticals, Inc., and Eli Lilly and Company, dated June 30, 2023
10.4	Credit Agreement dated June 30, 2023, by and between Amphastar Pharmaceuticals, Inc., and Wells Fargo Bank, National Association in the original sum of $700,000,000
31.1	Certification pursuant to Rule 13a-14(a) or 15d-14a of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of pursuant to Rule 13a-14(a) or 15d-14a of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1#	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2#	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document - The instance document does not appear in the interactive data file because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definitions Linkbase Document
104	Cover Page Interactive File (Formatted as Inline XBRL and contained in Exhibit 101)

The information in Exhibits 32.1 and 32.2 shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall they be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act (including this Report), unless the Registrant specifically incorporates the foregoing information into those documents by reference.

* Certain confidential information contained in this Exhibit was omitted by means of marking such portions with brackets because the identified confidential information (i) is not material and (ii) would be competitively harmful if publicly disclosed.

SIGNATURES

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

AMPHASTAR PHARMACEUTICALS, INC.
(Registrant)
By: **/s/ JACK Y. ZHANG**
Jack Y. Zhang
Chief Executive Officer
(Principal Executive Officer)

Date: August 9, 2023

AMPHASTAR PHARMACEUTICALS, INC.
(Registrant)
By: **/s/ WILLIAM J. PETERS**
William J. Peters
Chief Financial Officer
(Principal Financial and Accounting Officer)

Date: August 9, 2023

Exhibit 10.1

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS ([***]), HAS BEEN OMITTED BECAUSE THE INFORMATION (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED

ASSET PURCHASE AGREEMENT

BY AND AMONG

ELI LILLY AND COMPANY,

AMPHASTAR MEDICATION CO., LLC,

AND

AMPHASTAR PHARMACEUTICALS, INC.

DATED AS OF

APRIL 21, 2023

TABLE OF CONTENTS

EXHIBITS

ASSET PURCHASE AGREEMENT

THIS **ASSET PURCHASE AGREEMENT** (this "Agreement"), dated as of April 21, 2023, is made by and among Amphastar Medication Co., LLC, a Delaware limited liability company ("Buyer"), Eli Lilly and Company, an Indiana corporation ("Seller"), and, solely for the purpose of Section 7.6 and Section 12.15 (and any provision of Article I or Article XII to give effect thereto), Amphastar Pharmaceuticals, Inc., a Delaware corporation ("Buyer Guarantor").

WHEREAS, Seller sells the pharmaceutical product that currently is marketed for sale to consumers under the trademark BAQSIMI®, and in connection therewith, operates the Business; and

WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller the Transferred Assets and assume the Assumed Liabilities, in each case, upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms have the meanings set forth below:

"Accounting Firm" has the meaning set forth in Section 3.2(k).

"Affiliate" means, with respect to any Person, any other Person that controls, is controlled by or is under common control with such Person (and for this purpose, the term control means the power to direct the management and policies of a Person (directly or indirectly), whether through ownership of voting securities, by Contract or otherwise (and the terms controlling and controlled have meanings correlative to the foregoing)).

"Aggregate Net Sales Earnout" has the meaning set forth in Section 3.2(c).

"Aggregate Net Sales Milestone" has the meaning set forth in Section 3.2(c).

"Agreement" has the meaning set forth in the preamble.

"Allocation" means an allocation of the Purchase Price and the absolute value of the Assumed Liabilities among the Transferred Assets prepared by Seller in accordance with Section 1060 of the Code and the Treasury Regulations thereunder.

"Allocation Statement" has the meaning set forth in Section 3.4(a).

"Ancillary Agreements" means the Bill of Sale and Assignment and Assumption Agreement, the IP Assignment Agreement, the Manufacturing Services Agreement, the Locemia

Assumption Agreement, the Transition Services Agreement, the Confidentiality Agreement, the Intellectual Property License Agreement and the other documents, instruments, exhibits, annexes, schedules or certificates contemplated hereby and thereby.

"Annual Net Sales Earnout" has the meaning set forth in Section 3.2(b).

"Annual Net Sales Milestone" has the meaning set forth in Section 3.2(b).

"Anti-Corruption Laws" means the United States Foreign Corrupt Practices Act and similar anti-corruption or anti-bribery laws of any other jurisdiction (national, state or local) where Seller operates concerning or relating to public sector or private sector bribery or corruption and applicable to the Historical Business or the Product.

"Assumed Liabilities" has the meaning set forth in Section 2.3(a).

"Audit" has the meaning set forth in Section 8.8(a).

"Audit Firm" has the meaning set forth in Section 8.8(a).

"Bill of Sale and Assignment and Assumption Agreement" means the Bill of Sale and Assignment and Assumption Agreement, in the form attached hereto as Exhibit A.

"Business" means any and all of the following activities as conducted by Seller or any of its Subsidiaries, as of the date hereof or as of the Closing Date, with respect to the Product: development, manufacturing, researching (including non-clinical and clinical research), testing, and commercialization (including marketing, promotion, pricing, selling, importing and exporting).

"Business Counterparties" has the meaning set forth in Section 7.3.

"Business Day" means any day other than a Saturday, Sunday or other day on which banks in New York City, New York or Indianapolis, Indiana are permitted or required to close by applicable Law.

"Business Financials" has the meaning set forth in Section 5.6.

"Business Sale" has the meaning set forth in Section 12.7.

"Buyer" has the meaning set forth in the preamble.

"Buyer Business" means any and all of the following activities as conducted by or on behalf of Buyer or any of its Affiliates, following the Closing, with respect to the Product: development, manufacturing, researching (including non-clinical and clinical research), testing, and commercialization (including marketing, promotion, pricing, selling, importing and exporting).

"Buyer Credit Agreement" has the meaning set forth in Section 3.2(l).

"Buyer Fundamental Representations" means the representations and warranties made in Section 6.1 (*Buyer's Organization; Good Standing*), Section 6.2 (*Authority; Enforceability*) and Section 6.7 (*Brokers*).

"Buyer Guarantor" has the meaning set forth in the preamble.

"Buyer Indemnified Parties" has the meaning set forth in Section 11.2.

"Buyer Officer's Certificate" has the meaning set forth in Section 9.3(c).

"Closing" and "Closing Date" have the respective meanings set forth in Section 4.1.

"Closing Payment" has the meaning set forth in Section 3.1.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Commercially Reasonable Efforts" means, with respect to performance by or on behalf of Buyer or any of its Affiliates of any applicable activities hereunder with respect to the Product or any other Milestone Product, the expenditure of efforts and resources consistent with those expended by a similarly situated pharmaceutical company (taken as a whole and after giving effect to the transactions contemplated by this Agreement) to develop, manufacture, commercialize, sell and otherwise exploit pharmaceutical products owned by such company or to which such company has exclusive rights and that are at a similar stage of development or product life and with similar market potential taking into account issues of safety and efficacy, the competitiveness of third-party products in development and in the marketplace, the proprietary position of the product (including with respect to patent or regulatory exclusivity), the regulatory approval status and the profitability of the applicable product, and other relevant legal, medical or commercial factors, in each case, without taking into account the requirement to make any payment under this Agreement with respect to the Earnout Consideration. Commercially Reasonable Efforts does not require that Buyer or any of its Affiliates develop, manufacture, commercialize, or sell Buyer Guarantor's injectable glucagon product in an identical manner as the Product, so long as the efforts used and employed to develop, manufacture, commercialize, sell and otherwise exploit the Product is at least comparable in the aggregate to the efforts used with respect to Buyer Guarantor's injectable glucagon product, taking into account the factors set forth in the preceding sentence.

"Commitment Letter" has the meaning set forth in Section 6.10(a).

"Confidentiality Agreement" has the meaning set forth in Section 7.4.

"Contract" means any legally binding contract, agreement, instrument, license, lease, or understanding of any kind to which a Person is a party to or by which a Person or its assets is bound, whether oral or written, together with amendments, supplements and other modifications thereto.

"Contract Year" means the twelve (12) consecutive calendar months period starting on the first day of the first calendar month following the Closing Date (unless the Closing Date occurs on the first day of a calendar month, in which case the twelve (12) consecutive calendar months period

shall start on the Closing Date) and each subsequent twelve (12) consecutive calendar month period commencing on the anniversary of such date.

"Control" means, with respect to any asset or property, including Intellectual Property, a Person's possession, whether by ownership, license, or otherwise, of the legal right to grant the right to access or use, or to grant a license or a sublicense to, such asset or property, including Intellectual Property, without violating the rights of any Third Party or any terms of any Contract between such Person (or any of its Affiliates) and any Third Party, or any applicable Law.

"Controlling Party" has the meaning set forth in Section 11.5(b).

"Copyright" means rights in works of authorship (including advertisements and publications), copyrights (including in software), and database rights.

"Covered Material Contracts" has the meaning set forth in Section 5.19(b).

"COVID-19" means COVID-19 or SARS-COV-2, including any future resurgence, evolutions, mutations or variants thereof and/or any related or associated disease outbreaks, epidemics and/or pandemics.

"COVID-19 Measures" means any quarantine, "shelter in place," "stay at home," workforce reduction, social distancing, shut down, closure, safety or similar Law, binding directive or guidelines promulgated by any Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to COVID-19, including any Law passed by any Governmental Authority in response to COVID-19.

"Data Room" means the electronic data room entitled "Brockhouse", hosted by Datasite and located at https://datasite.com.

"De Minimis Threshold" has the meaning set forth in Section 11.4(e).

"Debt Commitment Letter" has the meaning set forth in Section 6.10(a).

"Debt Financing Parties" has the meaning set forth in Section 8.9(a).

"Deductible" has the meaning set forth in Section 11.4(e).

"Deferred Payment" has the meaning set forth in Section 3.3(a).

"Definitive Financing Agreements" has the meaning set forth in Section 8.9(a).

"Demo Version" means the demonstration version of the device relating to the Product that is provided by Seller or any of its Subsidiaries to Third Parties for training purposes.

"Direct Claim" has the meaning set forth in Section 11.5(d).

"Earnout Consideration" means the Annual Net Sales Earnouts and the Aggregate Net Sales Earnout.

"Earnout Consideration Dispute Notice" has the meaning set forth in Section 3.2(j).

"Earnout Dispute Period" has the meaning set forth in Section 3.2(j).

"Earnout Expiration Date" has the meaning set forth in Section 3.2(a).

"Employee" means any current or former employee, consultant or director of Seller or any of its Subsidiaries.

"Employee Benefit Plan" means any plan, program, policy, practice, contract, agreement or other arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written or unwritten or otherwise, funded or unfunded, including each "employee benefit plan," within the meaning of Section 3(3) of ERISA which is maintained, contributed to, or required to be contributed to, by Seller or any of its Subsidiaries for the benefit of any Employee, or with respect to which Seller or any of its Subsidiaries has any liability or obligation, and, in each case, other than any such plan or arrangement maintained or to which contributions are required by any Governmental Authority.

"Employment Agreement" means each management, employment, severance, consulting, relocation, repatriation, expatriation, visa, work permit or other agreement, contract or understanding between Seller or any of its Subsidiaries and any Employee.

"Employment Liabilities" means any and all Liabilities of any kind relating to any Employee Benefit Plan, Employment Agreement or otherwise relating to an Employee and his or her employment with Seller or any of its Subsidiaries.

"Encumbrance" means any mortgage, charge, lien, license, claim, option, right of first refusal, first offer or first negotiation, security interest, easement, right of way, pledge or encumbrance of any kind or character whatsoever.

"Enforceability Exceptions" has the meaning set forth in Section 5.2.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Excluded Actions" has the meaning set forth in Section 2.2(b)(xii).

"Excluded Assets" has the meaning set forth in Section 2.2(b).

"Excluded Liabilities" has the meaning set forth in Section 2.3(b).

"Excluded Taxes" means without duplication, (a) all Taxes of Seller and its Subsidiaries for any Tax period, (b) all Taxes relating to the Historical Business, the Transferred Assets or the Assumed Liabilities for any Pre-Closing Tax Period (determined in the case of a Proration Period in accordance with Section 8.4(b)) and (c) Seller's allocable share of Transfer Taxes pursuant to Section 8.4(a).

"Exhibits" means, collectively, the Exhibits referred to throughout this Agreement.

"Expiration Date" has the meaning set forth in Section 11.1.

"FDA" means the U.S. Food and Drug Administration.

"Fee Letters" has the meaning set forth in Section 6.10(a).

"Financing" means the debt financing incurred or intended to be incurred pursuant to the Commitment Letter, including the borrowing of loans contemplated by the Commitment Letter.

"Financing Conditions" has the meaning set forth in Section 6.10(a).

"Financing Sources" means the agents, arrangers, lenders and other entities that have committed to provide or arrange the Financing, including the parties to the Commitment Letter or any related engagement letter in respect of the Financing or to any joinder agreements, credit agreements, indentures, notes, purchase agreements or other agreements entered pursuant thereto, together with their Affiliates' and their and their Affiliates' current, former or future officers, directors, employees, partners, trustees, shareholders, equityholders, managers, members, limited partners, controlling persons, agents and Representatives of each of them and the successors and assigns of the foregoing Persons (but in each case excluding Buyer and any of its Affiliates), in each case, in their capacities as such.

"Fraud" means an act, committed by a Party in relation to this Agreement or the transactions contemplated by this Agreement, with intent to deceive another Party, or to induce such other Party to enter into this Agreement and requires: (a) a false representation in Article V or Article VI of this Agreement, (b) actual knowledge that such representation is false or the Person making such representation believes it is false, (c) the intention to induce the other Person to whom such representation is made to enter into this Agreement or otherwise act or refrain from acting in reliance upon it, (d) causing that other Person, in reliance upon such false representation to enter into this Agreement or otherwise take or refrain from taking action and (e) causing such other Person to suffer damage by reason of such reliance. For the avoidance of doubt, "Fraud" does not include, and no claim may be made by any Person in relation to this Agreement or the transactions contemplated by this Agreement for, constructive fraud or other claims based on constructive knowledge, negligence, recklessness, misrepresentation, equitable fraud or similar theories.

"General Cap" has the meaning set forth in Section 11.4(a)(i).

"Governmental Authority" means any supra-national, federal, foreign, national, state, county, local, municipal or other governmental, regulatory or administrative authority, agency, commission or other instrumentality, any court, tribunal or arbitral body with competent jurisdiction.

"Governmental Official" means any (a) officer, agent, or employee of a Governmental Authority, (b) person acting in an official capacity for or on behalf of a Governmental Authority, (c) candidate for government or political office, (d) director, officer, employee or agent of a government-owned or mixed-capital company or (e) member of a royal family.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by any Governmental Authority.

"Guaranteed Obligations" has the meaning set forth in Section 12.15.

"Health Care Laws" means all health care Laws applicable to the Product or the Historical Business, including research (including non-clinical and clinical research), development, testing, production, processing, manufacture, packaging, transfer, storage, distribution, approval, labeling, marketing, promotion, pricing, selling, importing, or exporting of the Product or any drug substance, active ingredient, delivery device or component thereof, including licensing, accreditation, and certification, establishment registration, product listing, good manufacturing practices, record-keeping, adverse event reporting, reporting of corrections, removals, and recalls, reimbursement and sale of Product, including: the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); any criminal laws relating to health care fraud and abuse, including to 18 U.S.C. Sections 286 and 287 and the health care fraud criminal provisions under HIPAA; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a and 1320a-7b; the Exclusion Statute, 42 U.S.C. § 1320a-7; HIPAA; the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq. and applicable implementing regulations and final guidance issued by the FDA (collectively, the "FDCA"), including those requirements relating to current good manufacturing practices, good laboratory practices, good clinical practices and investigational use; the Public Health Service Act, 42 U.S.C. §§ 201 et seq.; the Federal Trade Commission Act; the Controlled Substances Act; the Patient Protection and Affordable Care Act, Pub. L. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152; Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (Medicare); Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-5 (Medicaid); 10 U.S.C. § 1071 et seq (TRICARE); the Sunshine Act, 42 U.S.C. § 1320a-7h, and similar state and foreign laws related to transparency and reporting of payments and transfers of value to healthcare professionals and teaching hospitals; all implementing rules and regulations promulgated pursuant to the foregoing laws; and similar foreign, federal, state and local laws and regulations.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009), as the same may be amended, modified or supplemented from time to time and any successor statute thereto, and together with any and all Laws promulgated from time to time thereunder.

"Historical Business" means any and all of the following activities as conducted by Seller or any of its Subsidiaries historically, as of the date hereof or as of the Closing (unless the relevant provision of this Agreement expressly refers to the conduct of the Historical Business at some other specific time, in which case "Historical Business" shall refer to such business as conducted by Seller or any of its Subsidiaries at such time), with respect to the Product: development, manufacturing, researching (including non-clinical and clinical research), testing, and commercialization (including marketing, promotion, pricing, selling, importing and exporting).

"Historical Business Financials" has the meaning set forth in Section 8.8(a).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

"IND" means an investigational new drug application or clinical trial application filed in accordance with 21 C.F.R. Part 312, as amended, with the FDA or any comparable foreign Governmental Authority, including all documents, data and other information concerning the applicable drug that are contained in such application.

"Indemnified Party" has the meaning set forth in Section 11.5(a).

"Indemnifying Party" has the meaning set forth in Section 11.5(a).

"Industry Codes" means all applicable rules of non-governmental bodies such as pharmaceutical industry trade associations and self-regulatory organizations that are generally accepted as "good practice" within the research based pharmaceutical industry, including those relating to good marketing practices and the relationship of pharmaceutical companies with health care providers and patients.

"Intellectual Property" means (a) Patents; (b) Know-How; (c) Trademarks and Domain Names and (d) Copyrights.

"Intellectual Property License Agreement" means the Intellectual Property License Agreement, in the form attached hereto as Exhibit B.

"Internal Compliance Codes" means Seller's internal policies and procedures intended to ensure that the Seller complies with applicable Laws, Industry Codes, and Seller's internal ethical, medical and similar standards.

"IP Assignment Agreement" means the IP assignment agreement, in the form attached hereto as Exhibit C.

"Know-How" means all technical information, know-how and data, including inventions (whether patentable or not), patent disclosures, discoveries, trade secrets, specifications, instructions, processes and formulae, including all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical, safety, quality control, preclinical and clinical data.

"Knowledge" of Seller means all such facts, circumstances or other information of which the applicable Person set forth on Section 1.1(a) of the Seller Schedules is actually aware after having performed a reasonable inquiry of such Person's direct reports.

"Law" means any applicable law, judgment, order, decree, statute, ordinance, rule, code, regulation, directive or other requirement or rule of law enacted, issued or promulgated by any Governmental Authority.

"Liability" means any debt, liability, claim, expense, commitment, duty, cost, fee, loss, damage, guarantee, endorsement or obligation of whatever kind, whether direct or indirect, accrued or fixed, absolute or contingent, matured or not, known or unknown, asserted or unasserted, liquidated or unliquidated, incurred or consequential, due or to become due, on or off balance sheet or determined or determinable (including liabilities as guarantor or otherwise with respect to obligations of others, and contingent liabilities, regardless of whether claims in respect

thereof have been asserted), including those arising under any Contract, applicable Law or Proceeding, accounts payable and royalties payable.

"Locemia Assumption Agreement" means the Locemia Assumption Agreement, in the form attached hereto as Exhibit E.

"Locemia Purchase Agreement" means that certain Asset Purchase Agreement, dated as of October 9, 2015, by and between Locemia Solutions ULC and Seller, including any amendments, supplements and other modifications thereto.

"Losses" means any and all damages, losses, liabilities, judgments, Taxes, penalties, costs and expenses (including reasonable out-of-pocket legal fees and expenses incurred in investigating, defending against, settling and/or prosecuting any of the foregoing); provided, that "Losses" shall not include (i) any diminution in value, punitive or exemplary damages, in each case except to the extent such damages are determined to be payable to a Third Party in a final non-appealable judgment by a Governmental Authority made with respect to such Third Party's claim, or (ii) damages calculated on multiples of earnings or other similar metric approaches.

"Manufacturing Services Agreement" means that Manufacturing Services Agreement to be entered into at the Closing, substantially in the form attached hereto as Exhibit D, with such changes as may be mutually agreed upon between the parties hereto.

"Material Adverse Effect" means any event, development, occurrence, change or effect that, individually or in the aggregate, has had, or would reasonably be expected to have, a material adverse effect on the Transferred Assets or the financial condition, assets, liabilities or results of operations of the Business, taken as a whole; provided, however, that any event, development, change or effect arising out of, resulting from or attributable to (a) any event, development, occurrence or change or series of events, developments, occurrences or changes affecting (i) the U.S. (or any other country or jurisdiction in which the Business operates or in which products or services of the Business are used or distributed) economy or the global economy generally or capital, financial, banking, credit or securities markets generally, including changes in interest or exchange rates, (ii) political conditions generally of the U.S. or any other country or jurisdiction in which the Business operates or in which products or services of the Business are used or distributed or (iii) any industry generally in which the Business operates or in which products or services of the Business are used or distributed, (b) the negotiation, pendency, announcement or consummation of the transactions contemplated by, or the performance of obligations under, this Agreement or any other Transaction Agreement, including adverse effects related to (i) the identity of Buyer or its Affiliates, (ii) threatened or actual loss of, or disruption in, any customer, employee or landlord relationships or (iii) loss of any personnel, (c) any changes in applicable Law or U.S. GAAP, or accounting principles, practices or policies that Seller required to adopt, or the enforcement or interpretation thereof, (d) actions taken or omitted following the date hereof at the written request or with the written consent of Buyer, or taken by Buyer or its Affiliates with respect to the transactions contemplated hereby, (e) the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including any strike, labor dispute, civil disturbance, embargo, pandemic (including the COVID-19 pandemic, and any future resurgence, or evolutions or mutations, of COVID-19 or related disease outbreaks, epidemics or pandemics), natural disaster, fire, flood, hurricane, tornado, or other similar weather event, (f) any hostilities,

acts of war (whether or not declared), sabotage, terrorism, military actions, cyber-attacks or malware attacks or any escalation or worsening of any such hostilities, act of war, sabotage, terrorism, military actions, or cyber-attacks or malware attacks, (g) any failure to meet internal or published projections, estimates or forecasts of revenues, earnings, or other measures of financial or operating performance for any period (provided, that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded) or (h) Excluded Assets or Excluded Liabilities shall not, in any such case, either alone or in combination constitute or be deemed to contribute to a Material Adverse Effect, and otherwise shall not be taken into account in determining whether a Material Adverse Effect has occurred or would be reasonably likely to occur; provided, further, that, in the case of clauses (a), (c), (e) or (f), the event, development, occurrence, change or effect referred to therein does not disproportionately adversely affect the Transferred Assets or the Business, taken as a whole, as compared to other comparable companies in the industries in which the Business operates (in which case only the incremental disproportionate adverse effect may be taken into account in determining whether a Material Adverse Effect has occurred).

"Material Business Contracts" has the meaning set forth in Section 5.19(a).

"Milestone Event" means an Annual Net Sales Milestone or the Aggregate Net Sales Milestone.

"Milestone Payment Date" has the meaning set forth in Section 3.2(d).

"Milestone Product" means (a) any product consisting of a formulation containing glucagon for nasal administration (including the Product), (b) any reformulation, improvement, enhancement, combination, refinement, supplement, or modification of or to any of the foregoing products in (a) (including any change, modification, or improvement to or replacement of the delivery device) ((a) and (b), collectively, the "Nasal Glucagon Products"), in each case of this clause (b) containing glucagon for nasal administration, and (c), solely for determining Net Sales with respect to the Earnout Consideration, any Other Milestone Product.

"NDA" means a new drug application for a drug submitted in accordance with 505(b) of the FDCA and 21 C.F.R. Part 314, and all amendments and supplements, including all documents, non-clinical and clinical data, chemistry, manufacturing and control information, reports, submissions, communications with any Regulatory Authority, and other information concerning the applicable drug and contained within or referenced by the new drug application in the U.S., and any comparable marketing application submitted to any comparable foreign Governmental Authority, and all amendments and supplements thereto.

"Net Sales" means the gross amount invoiced by a Product Party to any other Person for a Milestone Product (or a combination product containing a Milestone Product) in the Territory less the following items (but only to the extent attributable to a Milestone Product and to the extent actually incurred, given, accrued or specifically allocated for): (a) trade, quantity and cash discounts allowed; (b) discounts, refunds, rebates, chargebacks, retroactive price adjustments (including adjustments arising from consumer discount programs or other similar programs), and any other similar allowances or adjustments which effectively reduce the net selling price of a Milestone Product, (c) Milestone Product returns and allowances, (d) wholesaler distribution fees,

and (e) any other customary adjustments in accordance with U.S. GAAP as generally and consistently applied by Buyer Guarantor in the preparation of its financial statements filed with the SEC to determine "net sales."

With respect to a particular country and reporting period, if any Milestone Product is sold as part of a combination product with any other active ingredient(s), then the Parties will determine in good faith the appropriate allocation percentage of Net Sales of the combination product to the applicable Milestone Product (by determining the relative value of the Milestone Product to the combination product) for the purposes of calculating any Earnout Consideration (and agreement to such determination will not be unreasonably withheld by either Party). For greater certainty, (x) the combination of the Product with any device(s) or other functional component(s) shall not be deemed a sale of a combination product and (y) the Product is not a combination product.

Such amounts shall be determined from the books and records of the Product Parties maintained in accordance with U.S. GAAP consistently applied. Buyer further agrees in determining such amounts, it will use Buyer's then-current standard procedures and methodology, including Buyer's then-current standard exchange rate methodology for the translation of foreign currency sales into U.S. Dollars. Notwithstanding the foregoing, for any Product Party that is not Buyer or its Affiliates, such books and records may be maintained in accordance with the accounting standards, consistently applied, of such Product Party, and Buyer's determinations of such amounts may be made based on reports provided by such Product Party to Buyer.

Sales or commercial dispositions of Milestone Products between or among Product Parties and their Affiliates shall be excluded from the computation of Net Sales (except where such Product Parties or Affiliates are end users of a Milestone Product), but Net Sales shall include the subsequent final sales to Third Parties by Product Parties or their Affiliates. Notwithstanding the foregoing, if a Milestone Product is sold or otherwise commercially disposed of for consideration other than cash or in a transaction that is not at arm's length between buyer and seller, then the gross amount to be included in the calculation of Net Sales shall be the amount that would have been invoiced had the transaction been conducted at arm's length and for cash. Such amount that would have been invoiced shall be determined, wherever possible, by reference to the average selling price of a Milestone Product in arm's length transactions in the relevant country. For the avoidance of doubt, (i) any royalties owed by the Product Parties to Third Parties resulting from sales of Milestone Products shall not be a deduction from the gross amount invoiced in the calculation of Net Sales as described in the first sentence of this definition (and for the further avoidance of doubt, Seller shall not be required to share with or reimburse Buyer for any royalties or other payments payable by the Product Parties to Third Parties, which shall be borne entirely by Buyer) and (ii) costs and Liabilities associated with any claim that a Milestone Product does not comply with all applicable Laws with respect to all Milestone Products sold after the Closing Date shall not be a deduction from the gross amount invoiced in the calculation of Net Sales as described in the first sentence of this definition. In no event shall any particular amount of deduction identified above be deducted more than once in calculating Net Sales (i.e., no "double counting" of deductions).

Without limiting the foregoing, the definition of "Net Sales" shall also include, for purposes of this Agreement, the "Net Sales" (as defined in Exhibit B (Net Economic Benefit) to

the Transition Services Agreement) of Seller or any of its Affiliates or any contractor or agent acting on behalf of Seller or any of its Affiliates.

"Non-Controlling Party" has the meaning set forth in Section 11.5(b).

"Non-Transferable Asset" has the meaning set forth in Section 2.4(a).

"Other Milestone Product" means any product (other than a Nasal Glucagon Product) that (a) infringes a valid claim of a Patent included in the definition of Seller Product Intellectual Property or (b) is manufactured using any Restricted Manufacturing Know-How. The Parties agree that none of Buyer's products as of the Closing Date, whether in clinical development or commercialization stage, are Other Milestone Products until and unless such product infringes a valid claim of a Buyer Licensed Patent (as defined in the Intellectual Property License Agreement) or is manufactured using the Restricted Manufacturing Know-How.

"Outside Date" has the meaning set forth in Section 10.1(d).

"Party" or "Parties" means Buyer and Seller, and solely for the purpose of Section 7.6 and Section 12.15 (and any provision of Article I or Article XII to give effect thereto), Buyer Guarantor.

"Patents" means patents and patent applications, including any utility models and design patents, and any continuations, continuations-in-part, divisionals, substitutions, reexaminations, reissues, registrations, corrections, additions, confirmation patents, revivals, or any similar modifications of any such patents, and any extensions or restorations of such patents, and any equivalent rights, whether domestic, international, or foreign.

"Permits" means all consents, approvals, authorizations, certificates, filings, notices, permits, concessions, registrations, franchises, licenses or rights of or issued by any Regulatory Authority or other Governmental Authority, including Regulatory Approvals.

"Permitted Business Transfer" has the meaning set forth in Section 3.2(m).

"Permitted Encumbrances" means: (a) Encumbrances for Taxes, assessments and charges or levies of any Governmental Authority not yet due and payable or that may thereafter be paid without penalty or that are being contested in good faith; (b) Encumbrances imposed by statutory or common law materialmen's, mechanics', carriers', workmens' and repairmen's liens and transfer restrictions imposed by national, federal or state securities laws; (c) Encumbrances imposed in the ordinary course of business that are not yet due and payable or that may thereafter be paid without penalty or that are being contested in good faith; (d) pledges or deposits to secure obligations under applicable Law to secure public or statutory obligations; (e) liens, title retention arrangements or deposits to secure the performance of bids, trade contracts (other than for borrowed money), conditional sales contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (f) non-exclusive licenses of Intellectual Property granted by Seller or its Subsidiaries to a service provider or supplier in the ordinary course of business and (g) other Encumbrances that do not impair, and are not reasonably expected to impair, the continued use and operation of the

assets to which they relate in the conduct of the Business or the Buyer Business in any material respect.

"Permitted License" has the meaning set forth in Section 3.2(m).

"Permitted Licensee" has the meaning set forth in Section 3.2(m).

"Permitted Transferee" has the meaning set forth in Section 3.2(m).

"Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, business association, organization, Governmental Authority or other entity.

"Personal Information" means, in addition to any definition for any similar term (*e.g.*, "personal data" or "personally identifiable information") provided by applicable Laws, all information that identifies, could be used to identify or is otherwise associated with an individual person (including employees), whether or not such information is directly associated with an identified individual person. For the avoidance of doubt, the definition of "Personal Information" does not include "protected health information," as defined in HIPAA (as defined herein).

"Post-Closing Audit" has the meaning set forth in Section 8.8(b).

"Post-Closing Business Financials" has the meaning set forth in Section 8.8(b).

"Pre-Closing Tax Period" means (a) any taxable period ending on or before the Closing Date and (b) with respect to any Straddle Period, the portion of such taxable period ending on and including the Closing Date.

"Pricing and Tender Agreements" means the Contracts listed on Section 1.1(e) of the Seller Schedules.

"Proceeding" means any civil, criminal, judicial, administrative or arbitral action, suit, hearing, litigation, proceeding (public or private), claim, cause of action, complaint, audit, mediation, arbitration, investigation or other similar dispute, in each case, by or before any Governmental Authority.

"Product" means any powdered formulation containing glucagon for nasal administration and the related unit dose system for powder marketed for sale (a) by or under the authority of Seller or any of its Subsidiaries to consumers, or (b) for which an application for Regulatory Approval has been submitted to a Regulatory Authority by or under the authority of Seller or any of its Subsidiaries, including the formulation and dose system marketed for sale by or under the authority of Seller of any of its Subsidiaries to consumers as of the date hereof as BAQSIMI®.

"Product Copyrights" means Copyrights Controlled by Seller or its Affiliates as of the date hereof and primarily related to the Product or the Demo Version.

"Product Intellectual Property" means (a) Product Patents, (b) Product Trademark and Domain Names, (c) Product Copyrights and (d) Product Know-How; provided, that Intellectual

Property owned by the Persons listed in Section 1.1(b) of the Seller Schedules will not be deemed to be Controlled by Seller or any of its Subsidiaries for the purposes of this definition.

"Product Know-How" means Know-How Controlled by Seller or its Affiliates as of the date hereof or the Closing and primarily related to the Product or the Demo Version.

"Product Liabilities" means all claims, Liabilities and Proceedings related to or arising from actual or alleged harm, injury, damage or death to Persons, or damage to property or businesses, including the Historical Business, irrespective of the legal theory asserted, and resulting from or alleged to result from the use, sale or manufacture of any of the Product.

"Product Parties" means collectively, Buyer, its Affiliates or its or their respective assignees or successors-in-interest with respect to a Milestone Product or Product Intellectual Property or any Third Party to whom any of the foregoing has granted a license or sublicense or other rights to commercialize, market or sell any Milestone Product, including any Permitted Transferee or Permitted Licensee, and each, a "Product Party."

"Product Patents" means (a) the Patents listed in Section 1.1(c) of the Seller Schedules; (b) any continuations, continuations-in-part, divisionals, or other patent applications that claim priority to any of the patent applications or patents referenced in clause (a) or that share a common claim of priority therewith and any foreign counterparts of the foregoing; (c) any patents issuing on any such patent applications (of either clause (a) or clause (b)); (d) any substitutions, reexaminations, reissues, registrations, corrections, additions, confirmation patents, revivals, and/or any similar modifications of any such patents referenced in clauses (a)-(c); and (e) any extensions (including pediatric exclusivity, patent term extension, and supplementary patent certificate extensions), or restorations of such patents (referenced in clauses (a)-(d)), in each case, whether domestic or foreign, including all rights of priority, rights to file and prosecute, and the like.

"Product Trademark and Domain Names" means Trademark and Domain Names on Section 1.1(c) of the Seller Schedules.

"Promotional Materials" has the meaning set forth in Section 2.2(a)(vi).

"Proration Period" has the meaning set forth in Section 8.4(b).

"Purchase Price" has the meaning set forth in Section 3.1.

"Purchaser Termination Fee" has the meaning set forth in Section 10.3(b).

"Records" has the meaning set forth in Section 2.2(a)(i).

"Registered Intellectual Property" has the meaning set forth in Section 5.17(a).

"Regulatory Actions" has the meaning set forth in Section 7.6(d).

"Regulatory Approvals" means with respect to the Product in the applicable regulatory jurisdiction, all permits, licenses, certificates, approvals, clearances, or other authorizations of or

recognized by the applicable Regulatory Authority necessary to conduct clinical trials of, manufacture, distribute, market, sell or use such Product in such regulatory jurisdiction in accordance with applicable Law (including NDAs or other equivalent applications in the United States or any other jurisdiction, INDs or their foreign equivalents, and pricing and reimbursement approvals, and all supplements and amendments to any of the foregoing).

"Regulatory Authority" means any applicable supranational, federal, foreign, national, regional, state, provincial, local or municipal regulatory agencies, departments, bureaus, commissions, councils, notified body, competent authority, institutional review board or ethics committee, or other Governmental Authority (including the FDA, Federal Trade Commission, Office of Inspector General, Centers for Medicare & Medicaid Services, and similar authorities in any state or foreign jurisdiction) regulating or otherwise exercising authority with respect to the Product.

"Regulatory Laws" shall mean, collectively, any Laws that are designed or intended to prohibit, restrict or regulate actions with respect to a Product or having the purpose or effect of monopolization or lessening of competition through merger or acquisition or restraint of trade or that affect foreign investment, national security or national interest of any jurisdiction.

"Related Party" means any officer or director of Seller or any of its Subsidiaries (or any immediate family member of any of such Person, or any trust, partnership or corporation in which any such Person has or has had an interest).

"Representatives" means the directors, officers, employees, agents, Subsidiaries or advisors (including attorneys, accountants, investment bankers, financial advisers and other consultants and advisors) of the specified Party and such specified Party's Affiliates.

"Required Business Financials" has the meaning set forth in Section 8.8(a).

"Restricted Business" means the initiation or conduct of a phase 3 clinical trial for, the submission of an NDA for, or the commercialization of a nasal glucagon product for the treatment of hypoglycemia.

"Restricted Business Acquisition" means the ownership, license or obtaining by Seller or any of its Subsidiaries of an interest or right otherwise prohibited by Section 7.9 if (a) no more than 20% of such Person's revenues were derived from a Restricted Business (measured by the most current annual financial statements published or prepared by the acquired Person in the ordinary course of business) or (b) more than 20% of such Person's revenues were derived from a Restricted Business (measured by the most current annual financial statements published or prepared by the acquired Person in the ordinary course of business) and within eighteen months after the closing of such acquisition Seller or its Subsidiaries discontinues or enters into a definitive agreement to divest a portion of such Restricted Business such that Seller would otherwise be in compliance with clause (a) of this definition.

"Restricted Manufacturing Know-How" has the meaning set forth in the Intellectual Property License Agreement.

"Right of Reference or Use" means a "Right of Reference or Use" as such term is defined in 21 C.F.R. §314.3(b), and any non-United States equivalents.

"Schedules" means the Seller Schedules.

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

"Seller" has the meaning set forth in the preamble.

"Seller Fundamental Representations" means the representations and warranties of Seller set forth in Section 5.1 (*Seller Organization; Good Standing*), Section 5.2 (*Authority; Enforceability*), Section 5.5(a) (*Title to Transferred Assets*) and Section 5.14 (*Brokers*).

"Seller Indemnified Parties" has the meaning set forth in Section 11.3.

"Seller IP Sufficiency Representations" means the representations and warranties of Seller set forth in Section 5.17(b).

"Seller Licensed Intellectual Property" has the meaning set forth in the Intellectual Property License Agreement.

"Seller Officer's Certificate" has the meaning set forth in Section 9.2(d).

"Seller Product Intellectual Property" means all Product Intellectual Property that is owned by Seller or any of its Affiliates as of the date hereof.

"Seller Schedules" means, collectively, the disclosure schedules, dated as of the date hereof, delivered by Seller to Buyer, as amended in accordance with this Agreement, which forms a part of this Agreement.

"Seller SEC Document" means each report, schedule, form, statement, prospectus, registration or other document filed with or furnished to the SEC by Seller during the period beginning on January 1, 2022 and ending as of the date hereof.

"Significant Customer" has the meaning set forth in Section 5.20(a).

"Significant Supplier" has the meaning set forth in Section 5.20(b).

"Specified Letter" means a pre-consummation letter from the Federal Trade Commission in similar form to that set forth in its blog post dated August 3, 2021 and posted at this link: https://www.ftc.gov/system/files/attachments/blog_posts/Adjusting%20merger%20review%20to%20deal%20with%2 consummation_warning_letter.pdf.

"Straddle Period" means any taxable period that begins on or before and ends after the Closing Date.

"Subsidiary" shall mean, with respect to any Person, any corporation, limited liability company, partnership, association, trust or other entity or organization, of which (a) such first

Person directly or indirectly owns or controls at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions or (b) such first Person is the general partner or managing member.

"Substitute Debt Financing" has the meaning set forth in Section 8.9(b).

"Tax Contest" means any audit, examination, voluntary disclosure or other administrative or judicial proceeding, contest, assessment, notice of deficiency, or other adjustment or proposed adjustment with respect to Taxes of Seller, or its operation of the Historical Business or the Transferred Assets.

"Tax Return" means any report, return, information statement, election, and other forms and documents (including all amendments thereof) relating to and filed or required to be filed with a taxing authority in connection with any Taxes.

"Tax(es)" means (a) all U.S. federal, state, local and non-U.S. taxes, including income, gross receipts, license, excise, sales, use, transfer, registration, value added, severance, stamp, environmental, customs duties, franchise, profits, withholding, escheat, unclaimed property, real property, personal property or other taxes of any kind whatsoever that may be imposed by any Governmental Authority together with all interest, penalties, fines, additions to tax or additional amounts or charges imposed by any Governmental Authority in connection therewith, (b) any Liability for the payment of any amounts of the type described in clause (a) of this definition as a result of being or having been a member of an affiliated, consolidated, combined, unitary or similar group for any period (including any arrangement for group or consortium relief or similar arrangement), and (c) any Liability for the payment of any amounts of the type described in clauses (a) or (b) of this definition as a transferee or successor or as a result of any express or implied obligation to indemnify any other Person or as a result of any obligation under any agreement or arrangement with any other Person with respect to such amounts and including any Liability for taxes of a predecessor or transferor or otherwise by operation of Law.

"Third Party" means any Person, other than the Parties and their respective Affiliates.

"Third Party Claim" has the meaning set forth in Section 11.5(a).

"Third Party Consents" has the meaning set forth in Section 7.7.

"Trademarks and Domain Names" means all trademarks, service marks, trade names, certification marks, service names, industrial designs, brand marks, trade dress rights, identifying symbols, logos, emblems, signs, insignia and domain names and other indicia of origin, all applications and registrations for any of the foregoing, and all goodwill associated therewith.

"Transaction Agreements" means this Agreement and the Ancillary Agreements.

"Transaction Amounts" has the meaning set forth in Section 6.10(d).

"Transaction Dispute" has the meaning set forth in Section 12.11(a).

"Transfer Taxes" has the meaning set forth in Section 8.4(a).

"Transferred Actions" has the meaning set forth in Section 2.2(a)(viii).

"Transferred Assets" has the meaning set forth in Section 2.2(a).

"Transferred Contracts" has the meaning set forth in Section 2.2(a)(ix).

"Transferred Personal Property" has the meaning set forth in Section 2.2(a)(v).

"Transferred Records" has the meaning set forth in Section 2.2(a)(i).

"Transferred Regulatory Documentation" has the meaning set forth in Section 2.2(a)(ii).

"Transition Services Agreement" means the Transition Services Agreement, in the form attached hereto as Exhibit F.

"U.S." means the United States of America.

"U.S. GAAP" means U. S. Generally Accepted Accounting Principles.

"Update Report" has the meaning set forth in Section 3.2(j).

"Willful Breach" means, with respect to any breaches or failures by a Party to perform any of the covenants or other agreements contained in this Agreement, a deliberate and intentional act or a deliberate and intentional failure to act, which act or failure to act constitutes in and of itself a material breach of this Agreement inasmuch as the resulting material breach was the conscious object of the act or failure to act.

ARTICLE II

SALE AND PURCHASE OF TRANSFERRED ASSETS

Section 2.1 Purchase and Sale of Assets. Upon the terms and subject to the conditions of this Agreement, including Section 2.4, at the Closing (or such alternate date as provided for in Section 2.4), Seller shall (and shall cause its applicable Subsidiaries to) sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller (or any such applicable Subsidiary), all right, title and interest of Seller and such applicable Subsidiary in, to and under the Transferred Assets, free and clear of all Encumbrances, other than Permitted Encumbrances.

Section 2.2 Transferred Assets; Excluded Assets.

(a) The term "Transferred Assets" means the following assets, rights or interests of Seller or any of its Subsidiaries:

(i) to the extent in the possession and Control of Seller or its Subsidiaries, copies of (and a right to use) all books and records, including customer, payor, insurer, distributor, supplier and consultant lists, account lists, distribution lists, sales history, development plans (except for brand plans) and life cycle management data, non-clinical, research and/or development-related notes,

studies, records, reports and other documents or data (collectively, "Records"), primarily related to the Product, any Demo Version, or the Historical Business (including such Records primarily related to Seller's or any of its Affiliate's formulation containing glucagon for nasal administration or the related unit dose system for powder, in each case to the extent comprising a component of the Product or a development program for such component of the Product) (collectively, the "Transferred Records"), along with copies of the Transferred Contracts and contact information for each customer, payor, insurer, distributor, supplier and consultant primarily related to the Product or used in the Business, in each case excluding such items to the extent not related to the Product, the Demo Version, the Business or the Historical Business;

(ii) all (A) applications, submissions, registrations, or notifications submitted to a Regulatory Authority with a view to the obtaining, updating or maintaining of any Regulatory Approval (collectively, the "Transferred Regulatory Approvals"), in each case including any investigational medicinal product dossier primarily relating to the Product, the Demo Version, or the Historical Business, (B) records or other documents related to the regulatory documentation in foregoing clause (A) to the extent such records or other documents have not been submitted to a Regulatory Authority, (C) records contained in the pharmacovigilance and study databases, all adverse drug experience or reaction reports and associated documents, investigations of adverse drug experience or reaction reports, and any other information relevant to the assessment of safety or benefit-risk ratios primarily relating to the Product or Demo Version and on an as-is basis without any further update, modification, reformatting or translation, (D) non-clinical, clinical and other files, writings, notes, studies, study protocols and amendments, chemistry, manufacturing and control information, reports, inspections and audit reports with respect to the Product or Demo Version, meeting minutes, and other documents or data contained or referenced in or supporting any of the foregoing, in each case, that were acquired, developed, compiled, collected or generated by Seller or any of its Subsidiaries or by any Third Party on behalf of Seller or any of its Subsidiaries, and in each case, primarily related to the Product or Demo Version and on an as-is basis without any further update, modification, reformatting or translation, (E) retained samples, stability samples and stability program primarily relating to the Product or collected in connection with the development, manufacture, or commercialization of the Product, and (F) Regulatory Approvals for the Product, in each of the foregoing clauses (A) through (F), to the extent in the possession and Control of Seller or its Subsidiaries (the "Transferred Regulatory Documentation");

(iii) all Permits other than Regulatory Approvals exclusively used or held for use in the conduct of the Business or the Product, to the extent transferable in compliance with applicable Law;

(iv) the Seller Product Intellectual Property;

(v) manufacturing equipment (including any and all molds and assembly equipment), instruments, leasehold improvements and other personal property as provided on Section 2.2(a)(v) of the Seller Schedules (the "Transferred Personal Property");

(vi) to the extent owned by and in the possession and Control of Seller or its Subsidiaries and approved for use or used by the Business as of the date hereof or as of the Closing, (A) all final labeling, advertising, marketing, sales and promotional materials (including television, radio and print content and materials), point of sale materials and web-based content, (B) all consumer and end-user information, (C) all final materials used for medical education activities and medical informational services in use or intended for use by the Business' sales force for healthcare providers and pharmacists, (D) all final training materials for the Business' sales force and (E) all healthcare provider, payor and consumer market research materials (collectively, "Promotional Materials"), in each of the foregoing clauses (A) through (E), (x) primarily related to the Product or Demo Version and (y) transferable in compliance with applicable Law;

(vii) Demo Version inventory;

(viii) all causes of action and enforcement rights available to or being pursued by Seller or any of its Subsidiaries to the extent arising after the Closing and exclusively related to any of the Transferred Assets, including all such rights to pursue damages, injunctive relief and other remedies for infringement, misappropriation or violation of any of the foregoing (except to the extent otherwise set forth in the Intellectual Property License Agreement, in which case the terms of the Intellectual Property License Agreement controls) (the "Transferred Actions");

(ix) all Contracts listed on Section 2.2(a)(ix) of the Seller Schedules related to the Product, as such schedule may be updated from time to time pursuant to Section 2.5 (the "Transferred Contracts"); and

(x) assets set forth on Section 2.2(a)(x) of the Seller Schedules.

(b) Seller and Buyer expressly agree and acknowledge that the Transferred Assets will not include any assets of any kind, nature, character or description (whether real, personal or mixed, whether tangible or intangible, whether absolute, accrued, contingent, fixed or otherwise, and wherever situated) that is not expressly included in the definition of "Transferred Assets" in Section 2.2(a). For clarity, the "Transferred Assets" do not include the following assets, rights or interests of Seller (collectively, the "Excluded Assets"):

(i) all personal property or personal productivity equipment (including laptops, personal computers, tablets, printers and mobile devices) used by any employees of Seller in the conduct of the Business, except the Transferred Personal Property;

(ii) the following Records: (A) personnel records; (B) all Records (other than the Transferred Records or Transferred Regulatory Documentation); (C) Records to the extent relating to any Excluded Asset or Excluded Liability; (D) Records (including accounting Records and Tax Returns) relating to (1) Taxes paid or payable by Seller and all financial and Tax Records relating to the conduct of the Business that form part of Seller's general ledger or otherwise constitute accounting Records or (2) any Tax refund, deposit, prepayment, credit, attribute, or other Tax asset of or with respect to Seller; (E) file copies of the Records retained by Seller; (F) sales representative call notes, (G) headquarter personnel notes; (H) all privileged materials; (I) reports and financial statements prepared or received by Seller or its Subsidiaries relating to the financial condition or results of operations of the Business, including disaggregated unit-level cost of product sold information (other than copies of (and a right to use) the Required Business Financials); and (J) customer relationship management data.

(iii) all accounts receivable of Seller relating to sales of the Product made prior to the Closing;

(iv) all cash and cash equivalents;

(v) any Contracts or other arrangements related to employees or employment matters, including any and all proprietary materials used for Seller's human resource program and supporting documentation thereto, and all cash and other assets of or relating to any employee benefit plan, program or arrangement or related trust (including any pension and savings plan assets) in which any employees of Seller participate;

(vi) all rights of Seller under this Agreement and the other Transaction Agreements;

(vii) all insurance policies and binders and all claims, refunds and credits from insurance policies or binders due or to become due with respect to such policies or binders;

(viii) all electronic mail;

(ix) all Contracts (except the Transferred Contracts);

(x) all claims, rights or interests of Seller in or to any Tax refund, deposit, prepayment, credit, attribute or other Tax asset attributable to Excluded Taxes or otherwise attributable to a Pre-Closing Tax Period;

(xi) (A) all records and reports prepared or received by Seller in connection with the sale of the Business and the transactions contemplated hereby, including all analyses, financial statements, including balance sheets and projections relating to the Business or Buyer so prepared or received (other than the Transferred Records or Transferred Regulatory Documentation), (B) all confidentiality agreements with prospective purchasers of the Business or any

portion thereof and (C) all bids and expressions of interest received from Third Parties with respect to the Business;

(xii) any claims, causes of action, lawsuits, judgments, privileges, counterclaims, defenses, demands, right of recovery, rights of set-off, rights of subrogation and all other rights of any kind, in each case to the extent relating to the Excluded Assets or the Excluded Liabilities, other than the Transferred Actions (the "Excluded Actions");

(xiii) all Intellectual Property Controlled by Seller or its Subsidiaries other than the Seller Product Intellectual Property, including Intellectual Property set forth on Section 2.2(b)(xiii) of the Seller Schedules; and

(xiv) all information technology systems, computer hardware (including all desktops, smartphones, tablets, laptops, printers, fax/scan machines) and software (whether in source code or object code) of Seller and all related license, maintenance and service Contracts and related documentation, and all related technology, data, databases, database rights, designs, processes, methods, networks, and other Know-How (other than to the extent expressly included in the Seller Product Intellectual Property or the Transferred Records) Controlled by Seller or its Subsidiaries.

Section 2.3 Assumption of Certain Liabilities and Obligations.

(a) On the terms and subject to the conditions set forth in this Agreement and subject to Section 2.3(b)(v), effective as of the Closing, Buyer shall assume, become responsible for, and thereafter timely pay, perform and otherwise discharge, in accordance with their respective terms, the following Liabilities of Seller and its Subsidiaries in clauses (i) through (viii) of this Section 2.3(a) (collectively, the "Assumed Liabilities"):

(i) all Liabilities of Seller (including, for the avoidance of doubt, any withholding Taxes arising in connection with the payment of such Liabilities) under the Locemia Purchase Agreement that arise at or following the Closing on the terms set forth in the Locemia Assumption Agreement;

(ii) all Liabilities arising from any patent infringement claim or Proceeding brought by any Third Party, including any Governmental Authority, at or after the Closing solely to the extent arising out of the Buyer Business or any activities of Buyer or any of its Affiliates with respect to the Buyer Business, Product or any Transferred Asset;

(iii) all Liabilities arising from any Governmental Authority action or notification filed by a Governmental Authority, in each case, at or after the Closing solely to the extent arising out of the Buyer Business, or any activities of Buyer or any of its Affiliates with respect to the Buyer Business, the Product or any Transferred Asset;

(iv) all Liabilities arising out of the Product made or sold at or after the Closing, including all Liabilities for product warranty claims or Product Liabilities arising after the Closing relating to such Products;

(v) all Liabilities for Taxes to the extent arising out of Buyer's or any of its Affiliates' conduct of the Buyer Business for all taxable periods (or portions thereof) beginning on or after the Closing Date (determined in the case of a Proration Period in accordance with Section 8.4(b));

(vi) any Liability relating to the Transferred Regulatory Documentation solely to the extent arising out of the Buyer Business or any activities of Buyer or any of its Affiliates with respect to the Buyer Business, the Product or any Transferred Asset;

(vii) any Liability of Buyer under the Manufacturing Services Agreement or Transition Services Agreement (including in the event such Liability falls within one or more of the categories of Excluded Liabilities set forth in Section 2.3(b)); and

(viii) any other Liability occurring at or after the Closing solely to the extent arising out of the Buyer Business or any activities of Buyer or any of its Affiliates with respect to the Buyer Business, the Product or any Transferred Asset.

For the avoidance of doubt and notwithstanding anything to the contrary in this Section 2.3(a), in no event shall any Liability of Seller under the Manufacturing Services Agreement or Transition Services Agreement be considered an Assumed Liability.

(b) Except to the extent expressly included in the Assumed Liabilities, Buyer will not assume or be responsible or liable for any Liabilities of Seller or any of its Affiliates (collectively, the "Excluded Liabilities"), including the following:

(i) all Liabilities for Excluded Taxes;

(ii) any Liabilities to the extent related to any Excluded Asset;

(iii) any Employment Liabilities;

(iv) any obligations of Seller under this Agreement and the Transaction Agreements (other than the Manufacturing Services Agreement or Transition Services Agreement, which is addressed by (viii) below);

(v) any Liability occurring prior to the Closing solely to the extent relating to the Business, the Product or any Transferred Asset or any activities of Seller or any of its Affiliates with respect to the Business, the Product or any Transferred Asset;

(vi) any deferred revenue of Seller and its Affiliates;

(vii) any excise taxes, duties, other government taxes or charges on the sales and any other allowances or adjustments for Product sold by Seller or any of its Subsidiaries prior to Closing; and

(viii) any Liability of Seller under the Manufacturing Services Agreement or Transition Services Agreement (including in the event such Liability falls within one or more of the categories of Assumed Liabilities set forth in Section 2.3(a)).

Section 2.4 Assignment of Certain Transferred Assets.

(a) Notwithstanding any other provision of this Agreement to the contrary, but without limiting Section 2.4(d), Section 7.7 and Section 8.3, Seller shall not be required to sell, convey, assign, transfer or deliver to Buyer at Closing any Transferred Asset, and Buyer shall not be required to purchase, acquire, or receive any such Transferred Asset, to the extent an attempted sale, conveyance, assignment, transfer or delivery thereof, without the consent, authorization or approval of a Third Party (including any Governmental Authority), would constitute a breach or other contravention of the Contract governing such Transferred Asset. Subject to Section 7.7 and Section 8.3, Seller shall use its commercially reasonable efforts, without additional consideration, to obtain any such consent, authorization or approval as promptly as practicable after the date hereof, and Buyer shall, and shall cause each of its applicable Affiliates to, use its commercially reasonable efforts to cooperate with Seller to obtain any such consent, authorization or approval necessary for the sale, conveyance, assignment, transfer or delivery of any such Transferred Asset, claim, right or benefit to Buyer and its Affiliates. For clarity, any asset that would otherwise constitute a Transferred Asset, that is not assignable or transferable as contemplated in this Section 2.4(a) (each, a "Non-Transferable Asset") shall not be sold, assigned, transferred, conveyed and delivered at Closing by Seller to Buyer; provided however, following Seller's receipt of the relevant consent, authorization or approval, as applicable, the Non-Transferable Asset shall automatically be deemed sold, assigned, transferred, conveyed and delivered, for purposes of this Agreement (and Seller shall promptly take commercially reasonable actions necessary to document such assignment and transfer to Buyer).

(b) If, on the Closing Date, any such consent, authorization or approval is not obtained, or if an attempted sale, conveyance, assignment, transfer or delivery thereof would constitute a breach or other contravention or a violation of applicable Law, subject to Section 2.4(d), Section 7.7 and Section 8.3, Seller will, on and after the Closing, use commercially reasonable efforts to sell, assign, transfer, convey and deliver such Non-Transferable Asset to Buyer; provided, neither Party, nor any of its Subsidiaries, will be obligated to pay any amounts, provide other consideration or otherwise grant any accommodations in connection with obtaining or seeking to obtain any consent, authorization or approval to sell, assign, transfer, convey and deliver any such Non-Transferable Asset to Buyer, unless Buyer agrees to be responsible for any such amounts, consideration, or other accommodation.

(c) The obligations of Seller under Section 2.4(a) and Section 2.4(b) with respect to a Non-Transferable Asset shall terminate upon the earliest of (i) receipt of

the requisite consent, authorization or approval (in which event the applicable Transferred Asset shall be sold, conveyed, assigned, transferred and delivered to Buyer (and/or its Affiliates)), (ii) such time as Buyer enters into its own arrangement with respect to such Non-Transferable Asset that provide rights to Buyer that are at least commensurate in scope as the rights held by Seller as of the date hereof and (iii) the date that is nine months after the Closing Date for all other Non-Transferable Assets. For each Non-Transferable Asset, during the period beginning on the Closing Date and continuing until the earlier of foregoing clauses (i), (ii) or (iii), Section 2.4(b) shall apply.

(d) Notwithstanding anything to the contrary herein, the date of the sale, assignment, transfer, conveyance and delivery to Buyer of the following Transferred Assets shall occur in the timing set forth in and in accordance with: (i) with respect to any CMO Supply Agreement (as defined in the Manufacturing Services Agreement), Section 4.1(e) of the Manufacturing Services Agreement; (ii) with respect to any Marketing Authorization or Pending Application (each as defined in the Manufacturing Services Agreement), Section 4.3 of the Manufacturing Services Agreement; and (iii) with respect to any Pricing and Tender Agreement, Exhibit A of the Transition Services Agreement. For clarity, any CMO Supply Agreement, Marketing Authorization, Pending Application or Pricing and Tender Agreement shall not be sold, assigned, transferred, conveyed or delivered to Buyer at Closing.

Section 2.5 Additional Transferred Contracts. Prior to the Closing, Seller shall be entitled to update Section 2.2(a)(ix) of the Seller Schedules from time to time upon written notice to Buyer to include any customer or payor Contract that primarily relates to the Product or the Business entered into by Seller or any of its Subsidiaries after the date hereof in the ordinary course of business and consistent with past practice.

ARTICLE III

PURCHASE PRICE

Section 3.1 Purchase Price. The consideration for the Transferred Assets shall be (a) an aggregate cash amount equal to the sum of (i) $500,000,000 (the "Closing Payment") in accordance with Section 4.3(a), *plus* (ii) the Deferred Payment in accordance with Section 3.3, *plus* (iii) any Earnout Consideration payable upon the achievement of the Milestone Event corresponding such Earnout Consideration in accordance with Section 3.2 (such sum, the "Purchase Price") and (b) Buyer's assumption of the Assumed Liabilities.

Section 3.2 Earnout Consideration.

(a) As additional consideration for the Transferred Assets, Buyer shall pay the Earnout Consideration to Seller on the terms and conditions set forth in this Section 3.2. Following the Closing Date and until the last day of the fifth Contract Year after the Closing (the "Earnout Expiration Date"), Buyer shall, and shall cause each Product Party to, use Commercially Reasonable Efforts to (i) commercialize, manufacture, market and sell Milestone Products and (ii) achieve all of the Milestone Events by the Earnout Expiration Date. Without limiting the generality of the foregoing, Buyer shall not, and shall cause each Product Party not to, (A) take or authorize any action designed to avoid or

circumvent the achievement of any Milestone Event, including engaging in any program, activity or other action (which would include, for the avoidance of doubt, the diversion of sales of a Milestone Product to a different glucagon product that is not a Milestone Product) with the intent of reducing or delaying the amount of Net Sales in any Contract Year to avoid payment of any Earnout Consideration in any manner inconsistent with Commercially Reasonable Efforts or (B) provide customers or payors with price reductions on a Milestone Product in exchange for price increases or price stability or other benefits with respect to any product that is not a Milestone Product. Buyer's obligation to use Commercially Reasonable Efforts does not require that Buyer or any Product Party (1) develop any Milestone Product other than the Product or (2) solely during the term of the Manufacturing Services Agreement, develop, manufacture, market, or sell any Milestone Product outside of the Supply Territory (as defined in the Manufacturing Services Agreement). Buyer will not be in breach of this Section 3.2(a) if and solely to the extent that (x) Seller's material breach of the Manufacturing Services Agreement or Transition Services Agreement directly causes such breach and (y) Buyer is not then in material breach of the Manufacturing Services Agreement or Transition Services Agreement.

(b) If, in any Contract Year prior to and including the Earnout Expiration Date, Net Sales are equal to or exceed an amount set forth in the table below under the heading Annual Net Sales Milestone (each, an "Annual Net Sales Milestone") then, for each such Contract Year, Buyer shall pay Seller $100,000,000 (each, an "Annual Net Sales Earnout") in accordance with Section 3.2(d) and Section 3.2(e). For purposes of calculating Net Sales, the Net Sales of all Milestone Products sold in such Contract Year will be aggregated. Annual Net Sales Milestones may be met only once, are not sequential, and need not be met in consecutive Contract Years. Only one Annual Net Sales Earnout may become due for a given Contract Year. In any Contract Year prior to the Earnout Expiration Date where Net Sales are equal to or exceed any Annual Net Sales Milestone, the highest Annual Net Sales Milestone remaining to be met will be deemed to be met in such Contract Year. For example (and without limitation), (x) if Net Sales are $205,000,000 in the first Contract Year following the Closing, then only one (1) of the two (2) $200,000,000 Annual Net Sales Milestones will be deemed to have been met and the corresponding Annual Net Sales Earnout payable for such Contract Year and neither the $175,000,000 Annual Net Sales Milestone nor the second $200,000,000 Annual Net Sales Milestone will be deemed to have been met for such Contract Year; (y) if Net Sales are $200,000,000 in each of the first two (2) Contract Years following the Closing and Net Sales are $175,000,000 in the third Contract Year, then all three (3) Annual Net Sale Milestones will be deemed to have been met over such three (3) Contract Year period; and (z) if Net Sales are $200,000,000 in the first Contract Year following the Closing Date and Net Sales are $175,000,000 in the second Contract Year, then two (2) of the three (3) Annual Net Sale Milestones will be deemed to have been met over such two (2) Contract Year period.

Annual Net Sales Milestone
$175,000,000
$200,000,000
$200,000,000

(c) If at any time on or prior to the Earnout Expiration Date, Net Sales are equal to or exceed, in the aggregate from and after the Closing Date, $950,000,000 (the "Aggregate Net Sales Milestone"), then Buyer shall pay Seller $150,000,000 (the "Aggregate Net Sales Earnout") in accordance with Section 3.2(d) and Section 3.2(e). For the avoidance of doubt, for purposes of calculating Net Sales, the Net Sales of all Milestone Products sold in such period shall be aggregated. The Aggregate Net Sales Earnout is payable when met, regardless of whether or not an Annual Net Sales Earnout is also payable at the same time or during the same Contract Year.

(d) Buyer shall, no later than twenty (20) days after the end of any calendar quarter during which a Milestone Event occurs, notify Seller in writing that such Milestone Event has been achieved and, no later than fifty (50) days after the end of the applicable period, pay, or cause to be paid the corresponding Earnout Consideration in accordance with this Section 3.2 (a "Milestone Payment Date").

(e) All payments to be made by Buyer under this Section 3.2 shall be made in U.S. dollars by wire transfer of immediately available funds into an account (or accounts) designated in advance by Seller. The maximum total Earnout Consideration that may, if applicable, be payable under this Section 3.2 is $450,000,000. Notwithstanding anything to the contrary in the foregoing, if Buyer, based on preliminary estimates of Net Sales for a calendar quarter, believes it will achieve a Milestone Event prior to the end of such calendar quarter, then Buyer shall notify Seller in writing of that preliminary estimation that it believes that such Milestone Event will or has been achieved prior to the end of such calendar quarter no later than five (5) Business Days following the end of such calendar quarter; provided, payment for any such achievement shall be made in accordance with Section 3.2(d) and this Section 3.2(e) only if it is finally determined that such Milestone Event has been achieved.

(f) If Buyer fails to pay any Earnout Consideration on the applicable Milestone Payment Date, then such payment shall accrue interest for the period commencing on the Milestone Payment Date at a rate equal to the lesser of: (i) five (5) percentage points above the 1 Month Secured Overnight Financing Rate (SOFR), as published by the Wall Street Journal (U.S. Internet edition), at 12:01 a.m. on the first day in which such payments are overdue or (ii) the maximum rate permitted by applicable Law, in each case calculated on the number of days such payment is delinquent, compounded monthly. In addition, if Buyer fails to pay the Earnout Consideration when due, then Buyer shall pay to Seller all of Seller's reasonable out-of-pocket costs and expenses (including attorneys' fees) in connection with efforts to collect such Earnout Consideration.

(g) Notwithstanding anything set forth in this Agreement to the contrary, Seller's right to receive the Earnout Consideration shall be subject to the set-off

rights provided for in Section 11.8. If Buyer is entitled to and elects to exercise its set-off rights in accordance with Section 11.8, the cash amount payable by Buyer under this Section 3.2 shall be reduced by the amount Buyer is entitled to set-off pursuant to Section 11.8.

(h) Seller acknowledges and agrees that after the Closing, nothing contained in this Agreement shall in any way limit Buyer's and any of its Affiliates' right to operate Buyer's or its Affiliates' businesses, including the Buyer Business, in any way that Buyer or such Affiliate deems appropriate in its good faith discretion; provided, that Buyer shall comply with its obligations under Section 3.2(a). Seller further acknowledges and agrees that: (i) the amounts of the Earnout Consideration payable are speculative and subject to numerous factors outside the control of Buyer and its Affiliates; (ii) there is no assurance that Seller will receive any Earnout Consideration and Buyer and its Affiliates have not promised or projected any Earnout Consideration; (iii) without limiting Buyer's obligations under this Article III (including Section 3.2), Buyer and its Affiliates owe no express or implied fiduciary duty to Seller with respect to the achievement of the Earnout Consideration; and (iv) the Parties intend the express provisions of this Section 3.2 to govern their contractual relationship with respect to the Earnout Consideration.

(i) For each Contract Year prior to and including the Earnout Expiration Date, Buyer shall, and shall cause each Product Party, if any, and its or their Affiliates to, keep complete and accurate books and records with respect to the Net Sales of any Milestone Product by Buyer, its Affiliates or such other Product Party in sufficient detail to calculate the amounts payable under Section 3.2(b) and Section 3.2(c). Such books and records shall be retained by Buyer and its Affiliates for no less than three (3) years after the Earnout Expiration Date.

(j) Buyer shall provide Seller with quarterly reports, no later than sixty (60) days after the end of each consecutive three (3) month period during each Contract Year prior to the Earnout Expiration Date (each such report, an "Update Report"). Each Update Report shall (i) describe in reasonable detail the Product Parties' progress towards achievement of the Milestone Events and (ii) include Net Sales for the Milestone Products in such three (3) month period made by any Product Party, with reasonable explanation and documentation in support of such calculations. If Seller disagrees with or has questions regarding any Update Report or any content therein, then Seller may, no later than thirty (30) days after delivery of an Update Report (the "Earnout Dispute Period"), deliver a written notice (an "Earnout Consideration Dispute Notice") to Buyer and request a meeting with Buyer to discuss such Update Report with a view to resolving their disagreement over any disputed items. Upon receipt of any Earnout Consideration Dispute Notice, Buyer shall make available in person or by phone for such a meeting appropriate representative(s) involved (including employees of Buyer or its Affiliates who are responsible for managing the business related to the Product) with representatives of Seller. Unless otherwise agreed by Seller, any such meeting shall occur with fifteen (15) days of receipt of the Earnout Consideration Dispute Notice. If Seller and Buyer fail to resolve their differences over any disputed items in the Update Report within thirty (30) days, then Seller may exercise its rights under Section 3.2(k) and (A) the determination of the Accounting Firm will be final and binding upon the parties hereto with respect to any

disputed items and (B) the Earnout Dispute Period will be extended until the Accounting Firm completes the audit described in Section 3.2(k).

(k) At the reasonable request of Seller, Buyer shall permit an independent public accounting firm of nationally recognized standing designated by Seller and reasonably acceptable to Buyer (the "Accounting Firm"), at reasonable times during normal business hours and upon reasonable notice, to audit the books and records maintained pursuant to Section 3.2(i) to ensure the accuracy of all payments owed under this Section 3.2. Such audit may not (i) be conducted for any Contract Year more than two (2) years after the end of such Contract Year, (ii) be conducted more than once in any Contract Year or (iii) be repeated for any Contract Year that has already been the subject of an audit hereunder. The Accounting Firm shall disclose to Seller whether the applicable payments are correct and any discrepancies (with a level of detail sufficient for Seller to understand any such discrepancies). Except as provided below, the cost of the audit shall be borne by Seller, unless the audit reveals a variance of greater than five percent (5%) of Net Sales reported by Buyer for the applicable Contract Year(s), in which case Buyer shall bear the cost of the audit. If such audit concludes that an Earnout Consideration was owed by Buyer but not paid or there was an underpayment of the Earnout Consideration for the applicable Contract Year, Buyer shall pay such Earnout Consideration or the amount of such underpayment of the Earnout Consideration for such Contract Year within thirty (30) days after the date on which such audit is completed, *plus* the interest set forth in Section 3.2(f). Seller will treat all information disclosed by the Accounting Firm pursuant to this Section 3.2(k) as "Confidential Information" of Buyer (as defined in the Confidentiality Agreement), and will cause the Accounting Firm to do the same.

(l) Buyer represents and warrants that, as of the Closing, the payment of the Earnout Consideration and the timing of any such payment will not be restricted or limited (in whole or in part) by the terms of any agreement or contractual restriction to which Buyer or any of its Affiliates is subject as of the Closing (collectively, a "Buyer Credit Agreement"). In order that Buyer be able to pay, when due, all Earnout Consideration that may become due to Seller, Buyer covenants to Seller that Buyer shall not (and shall cause its Affiliates not to) enter into any new (or amend or modify any existing) agreement or contractual restriction that would, pursuant to its express terms, restrict, limit or delay Buyer from timely paying any Earnout Consideration.

(m) Prior to the Earnout Expiration Date, without the prior written consent of Seller, neither Buyer nor any of its Affiliates shall, directly or indirectly, transfer, sell, license or assign (excluding, in each case, for the avoidance of doubt, the granting of a security interest or other similar Encumbrance and any exercise of remedies in connection therewith) to any Person (which shall include any merger, consolidation or other business combination involving Buyer in which Buyer Guarantor and its Affiliates own less than 50% of Buyer's voting power immediately after the transaction, but for the avoidance of doubt shall not include any other merger, consolidation or other business combination involving Buyer Guarantor) a majority or a material portion of the assets, equity or rights pertaining to the Business, the Product or the Product Intellectual Property, other than to a Person: (A) who (i) together with its Subsidiaries has capabilities and experience related to the pharmaceutical products; (ii) (x) has market capitalization (or

whose ultimate parent has market capitalization) or fair market value, together with its Affiliates, exceeding five billion dollars ($5,000,000,000); or (y) has net worth of $500,000,000 or more and annual sales of pharmaceutical products, together with its Affiliates, exceeding one billion dollars $1,000,000,000), each of (x) and (y), at the end of the fiscal year prior to the effective date of the proposed transaction with said Person; and (iii) is reasonably acceptable to Seller (a "Permitted Business Transfer" and such Person, a "Permitted Transferee") or (B) in a license, collaboration or other similar arrangement (excluding distribution arrangements) for the marketing or sale of a Milestone Product in any jurisdiction outside of the United States, Canada or the European Union (the party to such arrangement, a "Permitted License" and the Person granted such rights, a "Permitted Licensee"). Buyer shall promptly notify Seller upon the execution of any definitive agreement relating to a Permitted Business Transfer or Permitted License, including the identity of any such Permitted Transferee or Permitted Licensee, as applicable. In the case of a Permitted Business Transfer, Buyer shall require the Permitted Transferee to assume, by written agreement (a copy of which Buyer shall provide to Seller), all of Buyer's obligations under this Agreement. In the case of a Permitted Licensee, Buyer shall remain fully responsible and liable to Seller for all obligations under this Agreement, including with respect to causing the Permitted Licensee to comply with all applicable obligations under this Agreement.

(n) Seller and Buyer agree to treat any payment made pursuant to this Section 3.2 as an adjustment to the Purchase Price for U.S. federal, state, local and non-U.S. income Tax purposes to the extent permitted by applicable Law.

Section 3.3 Deferred Payment.

(a) As additional consideration for the Transferred Assets, Buyer shall, prior to five (5) Business Days after the date that is the one (1) year anniversary of the Closing Date, make a one-time payment to Seller in the amount of $125,000,000 (the "Deferred Payment").

(b) The Deferred Payment shall be made by Buyer in U.S. dollars by wire transfer of immediately available funds into an account (or accounts) designated in advance by Seller.

(c) If Buyer fails to pay the Deferred Payment by the date required by Section 3.3(a), then such payment shall accrue interest for the period commencing on the one (1) year anniversary of the Closing Date at a rate equal to the lesser of: (i) five (5) percentage points above the 1 Month Secured Overnight Financing Rate (SOFR), as published by the Wall Street Journal (U.S. Internet edition), at 12:01 a.m. on the first day in which such payments are overdue or (ii) the maximum rate permitted by applicable Law, in each case calculated on the number of days such payment is delinquent, compounded monthly. In addition, if Buyer fails to pay the Deferred Payment when due, Buyer shall pay to Seller all of Seller's reasonable out-of-pocket costs and expenses (including attorneys' fees) in connection with efforts to collect such Deferred Payment.

(d) Buyer represents and warrants that, as of the Closing, the payment of the Deferred Payment and the timing of any such payment is not restricted or limited (in whole or in part) by the terms of a Buyer Credit Agreement. In order that Buyer be able to pay to Seller, when due, the Deferred Payment, Buyer covenants to Seller that Buyer shall not (and shall cause its Affiliates not to) enter into any agreement or contractual restriction that, pursuant to its express terms, would restrict, limit or delay Buyer from timely paying the Deferred Payment.

(e) Seller's right to receive the Deferred Payment shall be subject to the set-off rights provided for in Section 11.8. If Buyer is entitled to, and elects to exercise its set-off rights in accordance with Section 11.8, the cash amount payable by Buyer under this Section 3.3 shall be reduced by the amount Buyer is entitled to set-off pursuant to Section 11.8.

(f) Notwithstanding anything to the contrary herein, if any of the following events occur prior to Buyer's payment of the Deferred Payment, the Deferred Payment will become immediately due and payable: (i) Buyer or any of its Affiliates commences any proceeding in bankruptcy or for dissolution, liquidation, winding-up, or other relief under state or federal bankruptcy Laws; (ii) any such proceeding is commenced against Buyer or any of its Affiliates or a receiver or trustee is appointed for Buyer or any of its Affiliates or a substantial part of its respective property, and such proceeding or appointment is not dismissed or discharged within thirty (30) days after its commencement; or (iii) Buyer or any of its Affiliates (A) makes an assignment for the benefit of creditors, (B) petitions or applies to any tribunal for the appointment of a custodian, receiver or trustee for all or substantially all of its assets, (C) has a receiver, custodian or trustee appointed for all or substantially all of its assets and such receiver, custodian or trustee is not discharged within thirty (30) days thereafter or (D) becomes unable to, or admits its inability to, pay its debts when they become due.

(g) Seller and Buyer agree to treat any payment made pursuant to this Section 3.3 as an adjustment to the Purchase Price for U.S. federal, state, local and non-U.S. income Tax purposes to the extent permitted by applicable Law.

Section 3.4 Allocation of Purchase Price.

(a) Seller shall prepare, and deliver to Buyer within one hundred and twenty (120) days following the Closing Date, a schedule setting forth the Allocation of the Purchase Price (along with any other relevant amounts for U.S. federal income Tax purposes, including the Assumed Liabilities) among the classes of the Transferred Assets in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (the "Allocation Statement"). From time to time, Seller shall send to Buyer an updated Allocation Statement to reflect any adjustments to the Purchase Price (including as a result of the payment of the Deferred Payment and any payment of Earnout Consideration pursuant to this Agreement). Buyer shall have a period of sixty (60) days to submit comments on such Allocation Statement (or updated Allocation Statement) and to the extent that Buyer and Seller are unable to agree with respect to the Allocation Statement

(or updated Allocation Statement), the Parties shall endeavor in good faith to resolve such disagreement for a period of twenty (20) days.

(b) If Seller and Buyer resolve such differences, such Allocation Statement shall become agreed upon and final. In the event the Parties agree upon the Allocation Statement, the Parties shall (i) allocate the Purchase Price (along with any other relevant amounts for U.S. federal income tax purposes, including the Assumed Liabilities) in accordance with the Allocation Statement, (ii) unless otherwise required a final "determination" as defined under Section 1313(a) of the Code (or similar provision of applicable Law), prepare and file, or cause to be prepared and filed, all Tax Returns (including IRS Form 8594 and any amendments thereto) and reports in a manner consistent with the Allocation Statement and (iii) not take any position (whether in audits, Tax Returns, or otherwise) that is inconsistent with such allocation, unless required by a final "determination" as defined under Section 1313(a) of the Code (or similar provision of applicable Law). If the values set forth on the Allocation Statement are disputed by any tax authority, the Party receiving notice of such dispute shall make reasonable efforts to notify the other Party concerning the existence of such dispute and the Parties shall, where and when practicable, consult with each other with respect to all issues related to the Allocation Statement in connection with such dispute. Any adjustments to the consideration payable pursuant to this Agreement shall be allocated in a manner consistent with the Allocation Statement.

(c) If the Parties are unable to resolve any dispute with respect to the Allocation Statement each Party may adopt its own Allocation Statement and shall have no further obligation pursuant to this Section 3.4.

Section 3.5 Withholding Taxes.

(a) Buyer and its Affiliates shall be entitled to deduct and withhold from any consideration payable pursuant to this Agreement such amounts as are required to be deducted or withheld therefrom under any applicable Law. To the extent such amounts are so deducted or withheld and paid over to the applicable Governmental Authority, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid. Buyer shall provide Seller a notice of its intention to make such deduction or withholding at least ten (10) Business Days prior to making such deduction or withholding and shall (i) cooperate in good faith with Seller to reduce or eliminate the deduction or withholding of such amount and (ii) provide Seller a reasonable opportunity to deliver forms or other documentation that would exempt such amounts from withholding.

(b) In the event that Buyer assigns its rights under this Agreement and, solely by reason of such assignment, Buyer is required to deduct or withhold in respect of payments made hereunder to Seller under applicable Law, then Section 3.5(a) shall not apply and all payments to Seller shall be made in full, without any set-off, counterclaim, deduction or withholding, regardless of any requirement under applicable Law or otherwise.

ARTICLE IV

THE CLOSING

Section 4.1 Closing Date. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place remotely via the electronic exchange of documents and signature pages (or such other location as shall be mutually agreed upon by Seller and Buyer) commencing at 10:00 am Los Angeles time on a date (the "Closing Date") that is the third (3rd) Business Day following the date on which all of the conditions to the obligations of Seller and Buyer to consummate the transactions contemplated hereby set forth in Article IX (other than conditions that by their nature are to be satisfied at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Seller and Buyer prior thereto; provided, however, that unless otherwise agreed to in writing by Seller and Buyer, in no event shall the Closing Date be earlier than forty-five (45) days following the date hereof. For purposes of this Agreement and the transactions contemplated hereby, the Closing shall be deemed to occur and be effective as of 11:59 p.m. New York time on the calendar day immediately preceding the Closing Date.

Section 4.2 Closing Deliveries by Seller. At the Closing, Seller shall deliver or cause to be delivered to Buyer:

(a) a counterpart of the Bill of Sale and Assignment and Assumption Agreement, duly executed by Seller;

(b) a counterpart of the IP Assignment Agreement, duly executed by Seller;

(c) a counterpart of the Manufacturing Services Agreement, duly executed by Seller;

(d) a counterpart of the Transition Services Agreement, duly executed by Seller;

(e) a counterpart of the Intellectual Property License Agreement, duly executed by Seller;

(f) a duly executed IRS Form W-9 by Seller; and

(g) a counterpart of the Locemia Assumption Agreement, duly executed by Seller.

Section 4.3 Closing Deliveries by Buyer. At the Closing, Buyer shall deliver to Seller:

(a) the Closing Payment, in U.S. dollars by wire transfer of immediately available funds into an account (or accounts) designated in advance by Seller;

(b) a counterpart of the Bill of Sale and Assignment and Assumption Agreement, duly executed by Buyer;

(c) a counterpart of the IP Assignment Agreement, duly executed by Buyer;

(d) a counterpart of the Manufacturing Services Agreement, duly executed by Buyer;

(e) a counterpart of the Transition Services Agreement, duly executed by Buyer;

(f) a counterpart of the Intellectual Property License Agreement, duly executed by Buyer; and

(g) a counterpart of the Locemia Assumption Agreement, duly executed by Buyer.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as of the date hereof and as of the Closing Date (other than any representations and warranties made as of a specific date, which representations and warranties shall be as of such date) that, except as set forth in the Seller Schedules or as expressly disclosed in any Seller SEC Document (other than any cautionary or forward-looking information contained in the "Risk Factors" or "Forward-Looking Statements" of any such Seller SEC Documents) to the extent that such disclosure references BAQSIMI or the relevance of such disclosure would be apparent on its face to a reader of such Seller SEC Document:

Section 5.1 Seller Organization; Good Standing.

(a) Seller is duly incorporated and validly existing under the laws of Indiana.

(b) Seller has the requisite power and authority to operate its business as now conducted, is duly qualified to conduct business as a foreign corporation and, to the extent legally applicable, is in good standing in each jurisdiction where the nature of the business conducted by it makes such qualification necessary, except where the failure to so qualify or be in good standing would not, individually or in the aggregate, have a Material Adverse Effect or reasonably be expected to materially delay the ability of Seller to consummate the transactions contemplated hereby, or to perform its obligations under, any of the Transaction Agreements.

Section 5.2 Authority; Enforceability. Seller has the requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the other Transaction Agreements by Seller and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized. This Agreement has been duly executed and delivered by Seller, and upon execution and delivery thereof, the other Transaction Agreements will have been duly executed and delivered

by Seller, and assuming the due authorization, execution and delivery of this Agreement by Buyer, this Agreement constitutes, and upon the due authorization, execution and delivery thereof by Buyer, the other Transaction Agreements will constitute the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with the terms hereof, subject to the effect of any applicable Laws relating to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar applicable Laws relating to or affecting creditors' rights generally from time to time in effect and to general principles of equity, regardless of whether considered in a Proceeding in equity or at law (the "Enforceability Exceptions").

Section 5.3 No Conflicts. Provided that all consents, approvals, authorizations and other actions described in Section 5.4 have been obtained or taken, except as may result from any facts or circumstances relating to Buyer or its Subsidiaries, the execution, delivery and performance by Seller of the Transaction Agreements and the consummation by Seller of the transactions contemplated hereby and thereby do not, and will not (a) conflict with or violate any Law or Governmental Order applicable to Seller or the Business, (b) conflict with or violate, in any material respect, any provision of the articles of incorporation or by-laws (or similar organizational document) of Seller, (c) result in any breach of, or constitute a default under, or give to any Person any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any of the Transferred Assets pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument to which Seller is a party (with respect to the Transferred Assets, the Product or the Business) or by which any Transferred Asset is bound, except, with respect to the foregoing clauses (a) and (c), for such breaches, violations, conflicts, defaults, terminations, amendments, accelerations, cancellations or creations of Encumbrances which would not, individually or in the aggregate, (i) have a Material Adverse Effect or (ii) prevent or materially delay the ability of Seller to consummate the transactions contemplated by, or perform its obligations under, any of the Transaction Agreements.

Section 5.4 Consents and Approvals. The execution, delivery and performance by Seller of the Transaction Agreements and the consummation by Seller of the transactions contemplated hereby and thereby do not and will not require any material consent, approval, authorization or other action by, or any material filing with or notification to, any Governmental Authority by Seller, except (a) in connection, or in compliance, with the notification and waiting period requirements of the HSR Act and applicable filings or approvals under non-U.S. antitrust and competition Laws, (b) where the failure to obtain such consent, approval, authorization, or action or to make such filing or notification would not, individually or in the aggregate, (i) have a Material Adverse Effect or (ii) prevent or materially delay the ability of Seller to consummate the transactions contemplated by, or perform its obligations under, any of the Transaction Agreements or (c) filings required for the transfer of any Regulatory Approvals to Buyer or its Affiliates.

Section 5.5 Title to Transferred Assets.

(a) Seller and its Subsidiaries, as applicable, are the sole and exclusive owner of, and have good, exclusive and, subject to Section 2.4(a), Section 2.4(d) and the terms of the Manufacturing Services Agreement regarding the transfer of the CMO Supply Agreements, transferable title to, all of the material tangible Transferred Assets and have the power to sell, assign, transfer, convey and deliver such material tangible Transferred

Assets pursuant to this Agreement and the Ancillary Agreements, in each case, free and clear of all Encumbrances (other than Permitted Encumbrances).

(b) The Transferred Assets (other than the Seller Product Intellectual Property) to be transferred to Buyer at the Closing (subject to Section 2.4(a), Section 2.4(d) and the terms of the Manufacturing Services Agreement regarding the transfer of the CMO Supply Agreements), together with the rights and services to be provided under the Transition Services Agreement and the Manufacturing Services Agreement, will constitute, at Closing, all of the material rights (other than Intellectual Property), and all of the equipment owned by Seller necessary for Buyer to have the Product manufactured for it in the same manner, in all material respects, as the Product is manufactured for Seller as of the date hereof, except for the Withdrawal Territories (as defined in the Manufacturing Services Agreement).

(c) This Section 5.5 does not relate to Intellectual Property matters, such items being addressed solely by Section 5.17.

Section 5.6 Business Financials. Section 5.6 of the Seller Schedules sets forth Seller's unaudited estimates of revenue, unit cost of goods sold, gross profits, selling general and administrative expenses, research and development costs, operating expenses, and earnings before interest and taxes, for the twelve (12) month period ended December 31, 2021, the six (6) month period ended June 30, 2022, the nine (9) month period ended September 30, 2022 and the twelve (12) month period ended December 31, 2022, in each case, with respect to the Business (collectively, the "Business Financials"). The Business Financials (a) have been derived from the accounting books and records of Seller, which books and records have been prepared in all material respects in accordance with applicable legal and accounting requirements (including U.S. GAAP) and (b) are based on Seller's management's reasonable assumptions as of and for the periods indicated therein; provided, that the Business Financials and the foregoing representations and warranties are qualified by the fact that, among other things, (i) the Business has not operated on a separate stand-alone basis, (ii) the Business Financials are not stand-alone financial statements prepared in accordance with U.S. GAAP, (iii) the Business Financials are not indicative of what the results of operations, financial position and cash flows of the Business will be in the future and (iv) the Business Financials are subject to, among other things, (A) the absence of normal and reoccurring year-end adjustments and (B) the absence of notes.

Section 5.7 Litigation. There is, and for the past three (3) years there has been, no Proceeding pending or, to the Knowledge of Seller, threatened, against Seller or any of its Subsidiaries (with respect to the Historical Business, any Transferred Asset or the Product) that has resulted in or would reasonably be expected to result in (a) damages to the Historical Business in excess of $1,000,000 or (b) any injunctive, declaratory, or other equitable relief or remedy affecting the ownership right of or in any Transferred Asset or that involves an investigation or suit by any Governmental Authority relating to the Product, any Transferred Asset or the Historical Business, except in the case of this clause (b) as would not, individually or in the aggregate, be material to the Business as a whole.

Section 5.8 Compliance with Laws. Seller or any of its Subsidiaries (with respect to the Historical Business, any Transferred Asset or the Product) is not, and has not been in the past three

(3) years, in violation in any material respect of any Laws or Governmental Orders applicable to the conduct of the Historical Business, any Transferred Asset or the Product except, in each case, as would not, individually or in the aggregate, be material to the Business as a whole.

Section 5.9 Absence of Certain Developments. Except as expressly contemplated by this Agreement or any Ancillary Agreement or as set forth on Section 5.9 of the Seller Schedule, since September 30, 2022 until the date hereof (a) Seller has conducted the Historical Business in the ordinary course of business consistent with past practice in all material respects, (b) there has not been any Material Adverse Effect that is continuing and (c) neither Seller nor its Subsidiaries has sold, transferred, licensed, sublicensed or otherwise disposed of any material assets or rights that would constitute Transferred Assets outside of the sale of inventory of the Product in the ordinary course of business or non-exclusive licensing of Intellectual Property in the ordinary course of business. Since January 1, 2023, neither Seller nor any of its Subsidiaries has, with respect to the Historical Business, any Transferred Asset or the Product, engaged in the practice of "channel stuff" in any material respects.

Section 5.10 Regulatory Approvals.

(a) Seller and its Subsidiaries are the registered or beneficial holders of each of the NDAs and any other material Regulatory Approvals, including all of the Transferred Regulatory Documentation. All Regulatory Approvals held by Seller and its Subsidiaries are in full force and effect except where the failure to so be in full force and effect would not, individually or in the aggregate, be material to the Business, taken as a whole. The Transferred Regulatory Documentation includes in all material respects all of the applications, submissions, registrations, and notifications in the possession and Control of Seller that have been submitted to a Regulatory Authority for the purpose of obtaining, updating, or maintaining any IND, NDA or foreign equivalent for the Product (for clarity, other than those relating solely to countries in which an NDA is being withdrawn by Seller or any of its Subsidiaries).

(b) Neither Seller nor its Subsidiaries have received any written or, to the Knowledge of Seller, oral notice that any Governmental Authority with jurisdiction over the Historical Business has commenced or will commence any action to enjoin or limit production, marketing or sale of the Product or require a material change in the label or labeling of the Product, except, in each case, where such action would not, individually or in the aggregate, be material to the Historical Business, taken as a whole.

Section 5.11 Compliance with Health Care Laws.

(a) With respect to the Product, Seller and each its Subsidiaries is, and for the past three (3) years has been, in compliance with all Health Care Laws, except, in each case, where such noncompliance would not, individually or in the aggregate, be material to the Historical Business, taken as a whole. During the past three (3) years, neither Seller nor any of its Subsidiaries nor any of its or their directors, officers or employees, nor to the Knowledge of Seller, any agents acting on behalf of Seller or any of its Subsidiaries has received any written or, to the Knowledge of Seller, oral notification from a Governmental Authority or other third party asserting that Seller or any of its

Subsidiaries is, or is suspected of, alleged to be or under investigation for being, not in compliance with any Health Care Laws, Regulatory Approvals or Permits, with respect to the Historical Business, any of the Transferred Assets or the Product, except, in each case, where such noncompliance would not, individually or in the aggregate, be material to the Historical Business, taken as a whole.

(b) During the past three (3) years, and except as would not, individually or in the aggregate, be material to the Historical Business, taken as a whole: (i) no Product distributed or sold by or on behalf of Seller or any of its Subsidiaries has been seized, withdrawn, recalled, detained or subject to a suspension of manufacturing or marketing, (ii) no proceedings in the U.S. or any other jurisdiction seeking the withdrawal, recall, correction, removal, suspension, import detention, seizure or similar action of any such product are, to the Knowledge of Seller, pending or threatened in writing against Seller or any of its Subsidiaries and (iii) neither Seller nor any of its Subsidiaries has received any written (or to the Knowledge of Seller, oral) notice from the FDA or any Governmental Authority that any Product distributed or sold by or on behalf of Seller or any of its Subsidiaries is adulterated, misbranded, or cannot be developed, tested, investigated, produced, manufactured, labeled, distributed, marketed, stored, sold, imported or exported substantially in the manner presently performed or contemplated by or on behalf of Seller or any of its Subsidiaries.

(c) During the past three (3) years, and except as would not, individually or in the aggregate, be material to the Historical Business, taken as a whole: (i) Seller has timely filed with the applicable Governmental Authority all documents, declarations, listings, registrations, reports, statements, amendments, supplements or submissions for the Product, including adverse event reports, as required to be filed and maintained under the applicable Health Care Laws for the Product, (ii) to the Knowledge of Seller and all such filings were true and correct (or timely corrected), did not contain any material omission or false information, and were in material compliance with applicable Health Care Laws when filed, and no material deficiencies have been asserted by any applicable Governmental Authority with respect to any such filings and (iii) all such filings have been maintained in material compliance with all applicable Health Care Laws.

(d) During the past three (3) years, and except as would not, individually or in the aggregate, be material to the Historical Business, taken as a whole: (i) all preclinical and clinical studies, trials and investigations sponsored or conducted by or on behalf of Seller or any of its Subsidiaries with respect to the Product have been and are being conducted in compliance with all Health Care Laws, (ii) no clinical trial sponsored or conducted by or on behalf of Seller or any of its Subsidiaries with respect to the Product has been terminated, materially delayed, limited, suspended or placed on clinical hold prior to completion by the FDA, any other applicable Governmental Authority, or any institutional review board or other ethics committee that has or has had jurisdiction over such clinical trial, and neither the FDA nor any other applicable Governmental Authority, nor any institutional review board or other ethics committee that has or has had jurisdiction over a clinical trial conducted or sponsored by or on behalf of Seller or any of its Subsidiaries with respect to the Product, has ordered or commenced, or threatened in writing to initiate, any action to place a clinical hold order on, or otherwise terminate,

materially delay, limit, modify or suspend, any proposed or ongoing clinical trial conducted or proposed to be conducted by or on behalf of Seller or any of its Subsidiaries with respect to the Product or, to the Knowledge of Seller, alleged any violation of the FDCA in connection with any such clinical trial and (iii) to the Knowledge of Seller, no clinical investigator or clinical site director who has conducted or, if still pending, is conducting any clinical trial sponsored by or on behalf of Seller or any of its Subsidiaries with respect to the Product has been disqualified by the FDA or any other foreign, federal, state or local Governmental Authority or received any written notice from the FDA or any other foreign, federal, state or local Governmental Authority of an intent to initiate such disqualification or any other disciplinary action or proceeding.

(e) During the past three (3) years, and except as would not, individually or in the aggregate, be material to the Historical Business, taken as a whole, with respect to Product: (i) there are no Proceedings pending or threatened in writing by or on behalf of the FDA or any Governmental Authority that has jurisdiction over the operations and marketing of Seller or any of its Subsidiaries, (ii) neither Seller nor any of its Affiliates has received any Form FDA-483, notice of adverse finding, FDA warning letter, notice of violation or "untitled letter", notice of FDA action for import detention or refusal, or any other written notice from the FDA or other Governmental Authority alleging or asserting noncompliance with any Health Care Law or Regulatory Approvals, (iii) neither Seller nor any of its Subsidiaries is or has been subject to any obligation arising under an enforcement action, FDA inspection, FDA warning letter, notice of violation letter from the FDA or any comparable Governmental Authority and (iv) Seller has made all material notifications, submissions, responses and reports required by the FDCA or any other Laws, including any such obligation arising under any administrative, enforcement or regulatory action, FDA inspection, FDA warning letter, FDA notice of violation letter, or other notice, response, or commitment made to or with the FDA or any comparable Governmental Authority and all such notifications, submissions and reports were materially correct and complete as of the date of submission to the FDA or any comparable Governmental Authority.

(f) During the past three (3) years, and except as would not, individually or in the aggregate, be material to the Historical Business, taken as a whole, with respect to the Product, neither Seller nor any of its Subsidiaries nor any of its or their employees, directors, officers, nor to Knowledge of Seller, any of its contractors or agents acting on behalf of Seller or any of its Subsidiaries, has committed any act, made any statement or failed to make any statement that would reasonably be expected to provide a basis for the FDA or any other Governmental Authority to invoke its policy with respect to "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" or any such similar policies set forth in any applicable Laws.

(g) During the past three (3) years, and except as would not, individually or in the aggregate, be material to the Historical Business, taken as a whole, with respect to the Product, neither Seller nor any of its Subsidiaries nor any of its directors, officers, managing employees (as such term is defined in 42 U.S.C. § 1320a-5(b)), nor to Knowledge of Seller, any contractors or agents acting on behalf of Seller or any of its Subsidiaries, has been or is currently suspended, excluded or debarred from, or threatened

with or currently subject to an investigation or proceeding that could result in suspension, exclusion or debarment under federal or state law or regulations, or assessed or threatened with assessment of civil monetary penalties regarding any federal health care program, or convicted of any crime regarding health care products or services, or, engaged in any conduct that would reasonably be expected to result in any such debarment, exclusion, suspension, or ineligibility, including: (i) debarment under 21 U.S.C. Section 335a or any similar law; (ii) exclusion under 42 U.S.C. Section 1320a-7 or any similar law or regulation or (iii) exclusion under 48 CFR Subpart Section 9.4, the System for Award Management Nonprocurement Common Rule. With respect to the Product, neither Seller any of its Subsidiaries nor any of its or their current or former directors, officers, or managing employees (as such term is defined in 42 U.S.C. § 1320a-5(b)) has, during the past three (3) years, been subject to any consent decree of, or criminal or civil fine or penalty imposed by, any governmental authority related to Fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, or obstruction of an investigation of controlled substances.

(h) During the past three (3) years, and except as would not, individually or in the aggregate, be material to the Historical Business, taken as a whole, with respect to the Product, neither Seller nor any of its Subsidiaries: (i) is a party to, or subject to the terms of, any corporate integrity agreement or similar agreement or consent order of any governmental authority; (ii) has reporting obligations pursuant to any settlement agreement entered into with any governmental authority; (iii) has been the subject of any investigation conducted by any federal or state enforcement agency; (iv) has been a defendant in any qui tam or False Claims Act litigation; (v) has been served with or received any search warrant, subpoena, civil investigation demand or by or from any federal or state enforcement agency regarding a violation of Health Care Law or (vi) has received any written complaints or other legal claim from any employees, contractors, vendors, providers, patients, study participants that could reasonably be considered to indicate that Seller or any of its applicable Subsidiaries has violated, or is currently in violation of, any Health Care Law.

(i) Except as would not, individually or in the aggregate, be material to the Business, taken as a whole, with respect to the Product and all data relating to the Product, Seller and each of its Subsidiaries is in compliance with applicable provisions of HIPAA and applicable clinical trial protocols or contractual obligations relating to the use of "protected health information" as defined by 45 CFR § 160.103.

Section 5.12 Product Liability. There are not presently pending or, to the Knowledge of Seller, threatened any material civil, criminal or administrative actions, suits, demands, claims, hearings, notices of violation, investigations, proceedings or demand letters relating to any alleged material hazard or alleged material defect in design, manufacture, materials or workmanship, including any failure to warn or alleged breach of express or implied warranty or representation, relating to the Product or the Historical Business, except for any actions, suits, demands, claims, hearings, notices, investigations, proceedings or demand letters as would not, individually or in the aggregate, be material to the Historical Business, taken as a whole.

Section 5.13 Anti-Corruption Laws. With respect to the Transferred Assets and the operations or conduct of the Business and except as would not, individually or in the aggregate, be material to the Historical Business, taken as a whole, in the past three (3) years:

(a) neither Seller nor its Subsidiaries nor, to Seller's Knowledge, any of its or their directors, officers, employees, agents or other Persons acting on behalf of Seller or its Subsidiaries, in each case in its capacity as such, has provided, offered, promised or authorized the provision of anything of value, directly or indirectly, to any Governmental Official or any other Person, in either case, for the purpose of securing any improper advantage in material violation of the Anti-Corruption Laws;

(b) Seller has not (i) received any written (or to Seller's Knowledge, oral) allegation, (ii) conducted any internal or government-initiated investigation or (iii) made a voluntary, directed or involuntary disclosure to any Governmental Authority or similar agency, in each case, with respect to the Anti-Corruption Laws.

Section 5.14 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission for which Buyer would be responsible in connection with the transactions contemplated by this Agreement or any other Transaction Agreement based on arrangements made between Seller or any of its Subsidiaries.

Section 5.15 Permits. Seller holds or has the right to use all Permits required for the conduct of the Business and ownership of the Transferred Assets. Each Permit material to and exclusively for use in the conduct of the Business, including each Regulatory Approval exclusively relating to the development, manufacture or commercialization of the Product, is listed on Section 5.15 of the Seller Schedules. Seller is not in default under, or violating, any of the Permits, except for such defaults or violations as would not, individually or in the aggregate, have a Material Adverse Effect, prevent or materially impact or delay the ability of Seller to consummate the transactions contemplated by, or perform any of its obligations under, the Transaction Agreements.

Section 5.16 Taxes.

(a) Seller has timely filed or caused to be timely filed all material Tax Returns relating to the Historical Business or the Transferred Assets that are required to be filed and all such Tax Returns were true, correct and complete in all material respects and prepared in compliance with applicable Laws. Seller has timely paid or caused to be timely paid all material amounts of Taxes that relate to the Historical Business or the Transferred Assets.

(b) No deficiency has been assessed by a Governmental Authority in writing against Seller with respect to a material amount of Taxes exclusively relating to the Historical Business or the Transferred Assets, nor is there any material Tax deficiency outstanding, assessed or proposed against Seller that relate to the Historical Business or the Transferred Assets, nor has Seller executed any outstanding waiver of any statute of limitations on or extension of the period for the assessment or collection of any material Tax that relates to the Historical Business or the Transferred Assets.

(c) There are no Encumbrances for Taxes upon any of the Transferred Assets, other than Encumbrances for Taxes that are Permitted Encumbrances.

(d) No written claim has been made by a Governmental Authority in a jurisdiction where Seller does not file Tax Returns that, with respect to the Historical Business or Transferred Assets, it is, or may be, required to file a Tax Return in, or that it is or may be subject to taxation by, that jurisdiction.

(e) There is (i) no audit or other examination of any material Tax Return of Seller with respect to the Historical Business or Transferred Assets presently in progress, nor has the Seller been notified of any request for such an audit or other examination and (ii) no adjustment relating to any material Tax Return filed by Seller with respect to the Historical Business or Transferred Assets has been proposed by any Governmental Authority to Seller or any representative thereof.

Section 5.17 Intellectual Property.

(a) Section 5.17(a) of the Seller Schedules sets forth, as of the date hereof, a list of all Seller Product Intellectual Property, and to the Knowledge of Seller, all material Seller Licensed Intellectual Property that is owned by a Third Party, in each case, that is registered or for which an application for registration has been filed under the authority of any Governmental Authority (collectively, the "Registered Intellectual Property"), including (i) the jurisdiction in which such item of Registered Intellectual Property has been registered or filed and the applicable registration, issuance, application, or serial number, and the expiration date thereof and (ii) the current owner thereof.

(b) Subject to Section 2.4(a) and Section 2.4(d), the Seller Product Intellectual Property and the Seller Licensed Intellectual Property together include all material Intellectual Property (other than the Seller's or its Affiliates' names and related trademarks and logos) that is necessary for, or actually used by, Seller in the manufacture and sale (which, for clarity, does not include distribution, promotion or other commercialization activities) of the Product as of the date hereof. The foregoing representation will not be deemed a representation of non-infringement of Intellectual Property, which is addressed solely by Section 5.17(f).

(c) (i) Seller or its Subsidiaries solely and exclusively own all right, title and interest in the Seller Product Intellectual Property, free and clear of Encumbrances other than Permitted Encumbrances, (ii) as of the date hereof, to the Knowledge of Seller, the Seller Product Intellectual Property is valid and enforceable, (iii) neither Seller nor any of its Subsidiaries has, other than in the ordinary course of business, abandoned, canceled or forfeited any Seller Product Intellectual Property (including by failing to pay any filing or renewals fees) and (iv) Seller and its Subsidiaries have not, to the Knowledge of Seller, taken any actions that would render a Product Patent owned by Seller or its Subsidiaries invalid or unenforceable.

(d) To the Knowledge of Seller, and except as would not, individually or in the aggregate, be material to the Business, taken as a whole, Seller and its Subsidiaries

have accurately and completely disclosed to the U.S. Patent and Trademark Office all references or other evidence that Seller or its Subsidiaries is obligated to disclose to comply with the duty of candor with respect to the Product Patents owned by Seller or its Subsidiaries.

(e) No Third Party, except a patent examiner or patent authority in the ordinary course of patent prosecution of an application for a Patent, has notified Seller in writing, or to the Knowledge of Seller, otherwise alleged, that any claim of a Product Patent owned by Seller or its Subsidiaries is invalid, unpatentable, or unenforceable. Seller has not received any written notice (or, to the Knowledge of Seller, oral notice) from any Third Party challenging the validity, enforceability or ownership of any material Product Intellectual Property that has not been resolved.

(f) For the past three (3) years, there has been no material judicial, administrative or arbitral action, suit, hearing, inquiry, investigation or other Proceeding (public or private) before any Governmental Authority alleging that the development, use, sale, offer for sale, import, making, having made or commercialization of the Product or any Demo Version constitutes infringement, misappropriation or other violation of any Intellectual Property of any Third Party in any material respect, and Seller has not received any written notice (or, to the Knowledge of Seller, oral notice) from any Third Party making any such allegation. To the Knowledge of Seller and except as would not, individually or in the aggregate, be material to the Business, taken as a whole, (i) no Third Party is infringing, misappropriating or otherwise violating any of the Product Intellectual Property and (ii) no Third Party has, in the past three (3) years, infringed, misappropriated or otherwise violated any of the Product Intellectual Property. This Section 5.17(f) constitutes the sole representation and warranty of Seller under this Agreement with respect to any actual or alleged infringement, misappropriation or other violation of Intellectual Property.

(g) None of Seller or any of its Subsidiaries has granted any material outbound licenses under the Seller Product Intellectual Property or Seller Licensed Intellectual Property, other than non-exclusive licenses granted in the ordinary course of business where such license is not the primary purpose of the Contract.

(h) All Persons named as inventors on any Product Patents included in the Seller Product Intellectual Property and invented by or on behalf of Seller or its Subsidiaries or, to the Knowledge of Seller, who should have been listed as such in accordance with applicable Law, have executed and delivered to Seller or its Subsidiary, as applicable, a Contract providing for the present assignment by such Person to Seller or its Subsidiary, as applicable, of all rights in such Product Patents.

(i) Neither the execution, delivery, or performance of this Agreement by Seller, nor the consummation by Buyer of this Agreement, will contravene, violate, conflict with, or result in any material limitation in or modification to Seller's right, title, or interest in, to or under any Seller Product Intellectual Property.

(j) To the Knowledge of Seller, Seller has not manufactured or commercialized any nasally administered glucagon product other than the Product or manufactured or commercialized any demonstration version of the device relating to the Product other than the Demo Version.

(k) Notwithstanding anything to the contrary set forth in this Agreement, this Section 5.17 contains all of the representations and warranties provided by the Seller with respect to matters related to Intellectual Property and no other representations or warranties contained in this Agreement shall be construed to cover any matter involving Intellectual Property.

Section 5.18 Privacy; Data Processing; Security. There has been no material complaint or Proceeding against or to the Historical Business or Seller or any of its Subsidiaries with respect to the Historical Business in the past three (3) years relating to the privacy, data protection, security, or the confidentiality, availability, or integrity of any Personal Information contained in the Transferred Assets.

Section 5.19 Material Business Contracts.

(a) Section 5.19(a) of the Seller Schedules lists, as of the date hereof, the following Contracts to which Seller or any of its Subsidiaries is a party or any of the Transferred Assets is bound and which primarily relate to the Historical Business, Demo Version, or Product (collectively, the "Material Business Contracts") as of the date hereof:

(i) the Locemia Purchase Agreement and any Contract for the acquisition or disposition of any material assets used in the Historical Business in the prior three (3) years, other than acquisitions or dispositions of inventory of the Product, components thereof or equipment, in each case, in the ordinary course of business;

(ii) any Contract providing for the creation of any Encumbrance on any Transferred Asset, Product or Demo Version;

(iii) any Contract with any Significant Supplier;

(iv) any Contract with any Significant Customer;

(v) any Contract not covered by Section 5.19(a) relating to the manufacturing of the Product or Demo Version or the procurement of any raw materials or components of the Product or Demo Version, other than purchase orders or work orders entered in the ordinary course of business;

(vi) any Transferred Contract imposing any material restriction on the right or ability of Seller or any of its Subsidiaries: (A) to compete with any other Person or to engage in any line of business or geographic area or to sell, license, manufacture or otherwise distribute the Product in any geographic area or during any period of time or (B) to acquire any product, property or other asset (tangible or intangible), or any services, from any other Person or to sell any

product or other asset to or perform any services for any other Person, in each case, with respect to the Business, any Transferred Asset, Demo Version, or the Product;

(vii) any Transferred Contract that provides any Person a right of first notice, negotiation, offer or refusal, or last matching right, with respect to any of the Transferred Assets, Demo Version or the Products;

(viii) any Contract providing for the grant of a license under any Product Intellectual Property, excluding any Contract that includes only a non-exclusive license to Intellectual Property where such license is not the primary purpose of the Contract;

(ix) any Transferred Contract related to the Business, any Transferred Asset, Demo Version, or the Product that requires Seller or its Subsidiaries to purchase or sell a minimum quantity of goods, supplies or services for the operation of the Business or the manufacturing of the Demo Version or Product;

(x) any Transferred Contract that requires Seller or its Subsidiaries to provide favored or preferential pricing or supply terms with respect to the Business, Demo Version or the Product;

(xi) any Transferred Contract that provides for exclusivity in favor of Seller or any of its Subsidiaries, on the one hand, or the counterparty to such Contract, on the other hand;

(xii) any Contract relating to the settlement of any Proceeding involving the Historical Business, any Transferred Asset, Demo Version, or the Product entered into in the prior three (3) years;

(xiii) any Contract for services provided to Seller in connection with any ongoing clinical trials for the Product;

(xiv) any Contract involving the purchase or sale of any Product or other asset used in the Business by or to, or the performance of any services by or for, any Related Party;

(xv) any Contract related to the Business, any Transferred Asset, Demo Versions, or the Product involving the purchase, lease, or sale of any equipment or capital asset that is material to the Business; and

(xvi) any Contract providing for license or reservation fees, royalty, contingent, milestone or earnout payments or creating or relating to any partnership or joint venture or any sharing of revenues, profits, losses, costs or liabilities.

(b) Except as would not, individually or in the aggregate, be material to the Business, taken as a whole, each Material Business Contract that is a Transferred Asset

(the "Covered Material Contracts") is, as of the date hereof, valid and in full force and effect and is enforceable by Seller in accordance with its terms, subject to the Enforceability Exceptions. Except as would not, individually or in the aggregate, be material to the Business, taken as a whole, neither Seller nor any of its Subsidiaries is in violation or breach in any material respect, or is in material default under, any Covered Material Contract and, to the Knowledge of Seller, no other Person that is party to a Covered Material Contract is in violation or breach in any material respect, or is in material default under, such Covered Material Contract. To Seller's Knowledge, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will or could reasonably be expected to: (i) result in a material violation or breach of any of the provisions of any Covered Material Contract; (ii) give any Person the right to declare a default or exercise any remedy under any Covered Material Contract; (iii) give any Person the right to accelerate the maturity or performance of any Covered Material Contract; or (iv) give any Person the right to cancel, terminate or modify any Covered Material Contract. Except as would not, individually or in the aggregate, be material to the Business, taken as a whole, Seller has not received any notice (in writing or, to Seller's Knowledge, orally) regarding any actual or alleged material violation or material breach of, or material default under, any Covered Material Contract. No Person has threatened in writing to terminate or refuse to perform its obligations under any Covered Material Contract. Except as would not, individually or in the aggregate, be material to the Business, taken as a whole, to Seller's Knowledge, no Person is renegotiating any amount paid or payable to Seller under any Covered Material Contract or any other material term or provision of any Covered Material Contract. Neither Seller nor any of its Subsidiaries are bound by any Contract providing for royalty, milestone or earnout payments based on sales of the Product other than the Locemia Purchase Agreement.

Section 5.20 Customers and Suppliers.

(a) Section 5.20(a) of the Seller Schedules sets forth true and complete lists of each of the top five (5) customers (including wholesalers and distributors) of each of the Product and Demo Version (each such Person, a "Significant Customer"), based on (and sorted by) rebates generated for the twelve (12) month period ended on December 31, 2022. As of the date hereof, to Seller's Knowledge, Seller has not received written notice that any Significant Customer (x) has, or intends to, substantially reduce or will substantially reduce the purchase of the Products, or (y) intends to cancel, terminate, or otherwise materially and adversely modify its relationship or Contract with Seller as it relates to the Product (whether related to payment, price or otherwise) for any reason, except in the ordinary course of business or as would not, individually or in the aggregate, be material to the Business, taken as a whole.

(b) Section 5.20(b) of the Seller Schedules sets forth a true and complete list of (i) the single source suppliers that are material to the Business with respect to the Product and Demo Version as of the date hereof and (ii) the top five (5) suppliers of products or service to the Business (including for each of the Products and Demo Version) for the twelve (12) month period ended on December 31, 2022 (each such Person, a "Significant Supplier"). As of the date hereof, to Seller's Knowledge, no Significant Supplier has ceased or materially and adversely reduced, or has provided written notice

that such Significant Supplier intends to cease or materially and adversely reduce the distribution of raw materials, supplies, services, merchandise and other goods to Seller whether before or after the Closing, except as would not, individually or in the aggregate, be material to the Business, taken as a whole.

Section 5.21 Employee Matters. Except, in each case, as would not individually or in the aggregate, have a Material Adverse Effect, with respect to any employee who works or has worked on the Transferred Assets or in the conduct of the Historical Business, Seller and its Subsidiaries are in compliance with applicable Laws with respect to employment (including any applicable Laws, rules and regulations regarding wage and hour requirements, immigration status, discrimination or harassment in employment, employee health and safety, terms and conditions of employment, termination of employment, employment practices, labor laws and collective bargaining).

Section 5.22 Inventory. Except in the ordinary course of business, in connection with changes in demand for the Product or as would not, individually or in the aggregate, be material to the Business, taken as a whole, since June 30, 2022, Seller has not made changes or adjustments to its management of the levels of inventory of the Product and Demo Versions maintained for the Historical Business.

Section 5.23 Complete Copies of Materials. True and complete copies of each Covered Material Contract in effect as of the date hereof have been made available to Buyer in Data Room, except that such Contracts may be redacted to exclude information not related to the Historical Business.

Section 5.24 Transferred Personal Property. The Transferred Personal Property is, in all material respects, in good working condition, reasonable wear and tear excepted, except as would not, individually or in the aggregate, be material to the Business, taken as a whole.

Section 5.25 Restrictions on Business Activities. There is no Covered Material Contract (non-competition or otherwise) to which Seller or any of its Affiliates is a party or otherwise bound which by its terms (a) prohibits or materially impairs the conduct of any activities with respect to the operation of the Business (including developing, manufacturing or commercializing the Product or Demo Version) or any acquisition of property and assets (including tangible and intangible property and assets) by Seller or any such Affiliate with respect to the Business or the Product or Demo Version, (b) otherwise limits the freedom of Seller or any of its Affiliates to engage in any line of business or to compete with any Person with respect to the Business or the Product (or that would reasonably be expected to limit the freedom of the Buyer or its Affiliates following the Closing), or (c) provides any exclusive right to any Person with respect to the development, manufacturing or commercialization of the Product or Demo Version (including the procurement of any raw materials or components incorporated in, or used in the manufacturing of, the Product, any other glucagon product for nasal administration or Demo Version) except, in each case, as would not, individually or in the aggregate, be material to the Business, taken as a whole.

Section 5.26 No Other Representations. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THIS ARTICLE V (AS MODIFIED BY THE SELLER SCHEDULES, IF APPLICABLE) AND THE ANCILLARY AGREEMENTS,

NEITHER SELLER NOR ANY OTHER PERSON MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLER OR ITS AFFILIATES, THE BUSINESS OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS AND ANY RIGHTS OR OBLIGATIONS (INCLUDING THE ASSUMED LIABILITIES) TO BE TRANSFERRED HEREUNDER AND THEREUNDER OR PURSUANT HERETO OR THERETO, AND SELLER DISCLAIMS (ON BEHALF OF ITSELF AND ITS AFFILIATES) ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY SELLER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THIS ARTICLE V (AS MODIFIED BY THE SELLER SCHEDULES) AND THE ANCILLARY AGREEMENTS, SELLER HEREBY DISCLAIMS (ON BEHALF OF ITSELF AND ITS AFFILIATES) ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO BUYER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION, OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO BUYER BY ANY REPRESENTATIVE OF SELLER OR ANY OF ITS AFFILIATES). WITHOUT LIMITING THE FOREGOING, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES TO BUYER REGARDING THE PROBABLE SUCCESS, VALUE OR PROFITABILITY OF THE PRODUCT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 5.26 OR ANY OTHER TERM HEREIN OR IN ANY ANCILLARY AGREEMENT, NOTHING IN THIS SECTION 5.26 OR IN ANY SUCH TERM SHALL LIMIT ANY RECOURSE SELLER OR ANY OF ITS AFFILIATES WOULD HAVE IN THE CASE OF FRAUD.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows as of the date hereof and as of the Closing Date (other than any representations and warranties made as of a specific date, which representations and warranties shall be as of such date):

Section 6.1 Buyer's Organization; Good Standing.

(a) Buyer is duly incorporated, validly existing and, to the extent legally applicable, in good standing under the laws of Delaware and has the requisite power and authority to operate its business as now conducted.

(b) Buyer is duly qualified to conduct business as a foreign corporation and is in good standing in every jurisdiction where the nature of the business conducted by it makes such qualification necessary, except where the failure to so qualify or be in good standing would not, individually or in the aggregate, reasonably be expected to prevent or materially delay its ability to consummate the transactions contemplated by, or to perform its obligations under, the Transaction Agreements.

Section 6.2 Authority; Enforceability. Buyer has the requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the other Transaction Agreements by Buyer and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized. This Agreement has been duly executed and delivered by Buyer, and upon execution and delivery thereof, the other Transaction Agreements will have been duly executed and delivered by Buyer, and assuming the due authorization, execution and delivery of this Agreement by Seller, this Agreement constitutes, and upon the due authorization, execution and delivery thereof by Seller, the other Transaction Agreements will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof, subject to the Enforceability Exceptions.

Section 6.3 No Conflicts. Provided that all consents, approvals, authorizations and other actions described in Section 6.4 have been obtained or taken, except as may result from any facts or circumstances relating to Seller or its Subsidiaries, the execution, delivery and performance by Buyer of the Transaction Agreements and the consummation by Buyer of the transactions contemplated hereby and thereby do not, and will not (a) conflict with or violate any Law or Governmental Order applicable to Buyer, (b) conflict with or violate, in any material respect, any provision of the articles of incorporation or by-laws (or similar organizational document) of Buyer or (c) result in any breach of, or constitute a default under, or give to any Person any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other material instrument to which Buyer is a party, except, with respect to the foregoing clauses (a) and (c), for such violations or conflicts which would not, individually or in the aggregate, reasonably be expected to prevent or materially delay its ability to consummate the transactions contemplated by, or to perform its obligations under, any of the Transaction Agreements.

Section 6.4 Consents and Approvals. The execution, delivery and performance by Buyer of the Transaction Agreements and the consummation by Buyer of the transactions contemplated hereby and thereby do not and will not require any material consent, approval, authorization or other action by, or any material filing with or notification to, any Governmental Authority by Buyer or any of its Affiliates, except (a) in connection, or in compliance, with the notification and waiting period requirements of the HSR Act and applicable filings or approvals under non-U.S. antitrust and competition Laws or (b) where the failure to obtain such consent, approval, authorization, or action or to make such filing or notification would not, individually or in the aggregate, reasonably be expected to prevent or materially delay its ability to consummate the transactions contemplated by, or to perform its obligations under, any of the Transaction Agreements.

Section 6.5 Compliance with Laws. Neither Buyer nor any of its Affiliates that are or will be party to any Transaction Agreements are in violation of any Laws or Governmental Orders applicable to them or by which any of their respective material assets is bound or affected, except for violations the existence of which would not, individually or in the aggregate, reasonably be expected to prevent or materially delay or impact their ability to consummate the transactions contemplated by, or to perform their respective obligations under, any of the Transaction Agreements.

Section 6.6 Litigation. There is no Proceeding pending or, to the Knowledge of Buyer, threatened against Buyer or any of its Affiliates which, if adversely determined, would reasonably be expected to prevent or materially delay or impact their ability to consummate the transactions contemplated by, or to perform their respective obligations under, any of the Transaction Agreements.

Section 6.7 Brokers. Buyer will be solely responsible for any commission, finder's fee or other fees and expenses for services rendered by any broker, finder, financial advisor or investment bank in connection with the transactions contemplated hereby or any other Transaction Agreement based on arrangements made by Buyer or any of its Affiliates.

Section 6.8 Solvency. Immediately after giving effect to the consummation of the transactions contemplated by this Agreement (including the Financing and any other financings being entered into in connection therewith):

(a) the fair saleable value (determined on a going concern basis) of the assets of Buyer Guarantor will be greater than the total amount of its Liabilities (including all Liabilities, whether or not reflected in a balance sheet prepared in accordance with U.S. GAAP, and whether direct or indirect, fixed or contingent, secured or unsecured, disputed or undisputed);

(b) Buyer Guarantor will be able to pay its debts and obligations in the ordinary course of business as they become due; and

(c) Buyer Guarantor will have adequate capital to carry on the Buyer Business.

Section 6.9 Reserved.

Section 6.10 Financing.

(a) As of the date hereof, Buyer has delivered to Seller a true, complete and correct copy of the fully executed debt commitment letter dated as of the date of this Agreement by and among Buyer Guarantor and the Financing Sources party thereto (together with all exhibits, schedules, annexes and joinders thereto, as the same may be amended, modified, supplemented, extended or replaced from time to time in compliance with the terms of this Agreement, the "Debt Commitment Letter") and any related fee letters entered into in connection therewith (together with all exhibits, schedules, annexes and joinders thereto, as the same may be amended, modified, supplemented, extended or replaced from time to time in compliance with the terms of this Agreement, the "Fee Letters", and together with the Debt Commitment Letter, the "Commitment Letter") (except that fee amounts, economic flex, and other economic terms may be redacted in a customary manner (none of which could reasonably be expected to adversely affect the conditionality, enforceability or termination provisions of the Debt Commitment Letter or reduce the aggregate principal amount of the Financing)), pursuant to which, upon the terms and subject to the conditions set forth therein, the Financing Sources party thereto have agreed, severally but not jointly, subject to the terms of the Commitment Letter, to provide or cause to be provided the amounts set forth therein in connection with the

transactions contemplated by this Agreement. The Commitment Letter is, as of the date hereof, in full force and effect and constitutes the valid, binding and enforceable obligation of Buyer Guarantor and, to the Knowledge of Buyer, the other parties thereto, enforceable in accordance with their terms, in each case, subject to the Enforceability Exceptions. As of the date hereof, there are no conditions precedent related to the funding of the full amount of the Financing contemplated by the Commitment Letter, other than the conditions precedent set forth in the Commitment Letter (such conditions precedent, the "Financing Conditions") and there are no other written agreements that permit the imposition of new or additional conditions precedent to the funding of the Financing or the expansion of any existing conditions precedent to the funding of the Financing.

(b) As of the date hereof, the Commitment Letter has not been amended or modified in any manner, and the respective commitments contained therein have not been terminated, reduced, withdrawn or rescinded in any respect, and, as of the date hereof, no such termination, reduction, withdrawal or rescission is contemplated other than for any amendment, modification or supplementation to the Commitment Letter solely to add lead arrangers, bookrunners, syndication agents or similar entities which had not executed the Commitment Letter as of the date hereof to the extent permitted under Section 8.9. As of the date hereof, assuming the conditions set forth in Section 9.1, Section 9.2 and Section 9.3 hereof will be satisfied, Buyer has no reason to believe that (i) any of the Financing Conditions will not be satisfied on or prior to the Closing Date or (ii) the Financing contemplated by the Commitment Letter will not be available to Buyer Guarantor on the Closing Date.

(c) As of the date hereof, neither Buyer Guarantor nor any of its Affiliates is in default or breach under the terms and conditions of the Commitment Letter. There are no side letters, understandings or other agreements or arrangements relating to funding of the full amount of the Financing to which Buyer Guarantor (or an Affiliate thereof) is a party, other than those set forth in the Commitment Letter. Buyer Guarantor (or an Affiliate thereof) has fully paid any and all commitment or other fees and amounts required by the Commitment Letter to be paid on or prior to the date hereof.

(d) Assuming that (i) the parties to the Commitment Letter (other than Buyer Guarantor or any of its Affiliates) perform their obligations in accordance with the terms of the Commitment Letter and (ii) the satisfaction or waiver of the conditions set forth in Section 9.2(a), Buyer will have at the Closing sufficient available funds to satisfy all of Buyer's obligations under this Agreement and under the Commitment Letter to be satisfied at the Closing, including the payment in full of the Closing Payment and all other amounts to be paid pursuant to this Agreement on the Closing Date (such amounts, collectively, the "Transaction Amounts"). As of the date hereof, Buyer has no reason to believe that the representation contained in the immediately preceding sentence will not be true at and as of the Closing. In no event shall the receipt or availability of any funds or financing (including the Financing contemplated by the Commitment Letter) by or to Buyer or any of its Affiliates or any other financing transaction be a condition to any of the obligations of Buyer hereunder.

Section 6.11 Investigation. BUYER ACKNOWLEDGES AND AGREES THAT IT HAS MADE ITS OWN INQUIRY AND INVESTIGATION INTO, AND, BASED THEREON, HAS FORMED AN INDEPENDENT JUDGMENT CONCERNING THE BUSINESS AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS AND ANY OTHER ASSETS, RIGHTS OR OBLIGATIONS (INCLUDING THE ASSUMED LIABILITIES) TO BE TRANSFERRED HEREUNDER OR THEREUNDER OR PURSUANT HERETO OR THERETO. EXCEPT FOR THE SPECIFIC REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE BY SELLER IN ARTICLE V AND THE ANCILLARY AGREEMENTS, (a) BUYER ACKNOWLEDGES AND AGREES THAT (i) SELLER IS NOT MAKING AND HAS NOT MADE ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF THE BUSINESS OR THE TRANSFERRED ASSETS, OR SELLER'S OR ITS AFFILIATES' RESPECTIVE BUSINESSES, ASSETS, LIABILITIES, OPERATIONS, PROSPECTS, OR CONDITION (FINANCIAL OR OTHERWISE), INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY TRANSFERRED ASSETS, THE NATURE OR EXTENT OF ANY ASSUMED LIABILITIES, THE PROSPECTS OF THE BUSINESS, THE EFFECTIVENESS OR THE SUCCESS OF ANY OPERATIONS, OR THE ACCURACY OR COMPLETENESS OF ANY CONFIDENTIAL INFORMATION MEMORANDA, MANAGEMENT PRESENTATION, DOCUMENTS, PROJECTIONS, MATERIAL OR OTHER INFORMATION (FINANCIAL OR OTHERWISE) REGARDING THE BUSINESS, THE TRANSFERRED ASSETS OR ASSUMED LIABILITIES, OR SELLER OR ITS AFFILIATES FURNISHED TO BUYER OR ITS REPRESENTATIVES OR MADE AVAILABLE TO BUYER AND ITS REPRESENTATIVES IN ANY "DATA ROOMS," "VIRTUAL DATA ROOMS," MANAGEMENT PRESENTATIONS OR IN ANY OTHER FORM IN EXPECTATION OF, OR IN CONNECTION WITH, THE TRANSACTIONS CONTEMPLATED HEREBY, OR IN RESPECT OF ANY OTHER MATTER WHATSOEVER AND (ii) NO OFFICER, AGENT, REPRESENTATIVE OR EMPLOYEE OF THE BUSINESS HAS ANY AUTHORITY, EXPRESS OR IMPLIED, TO MAKE ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT AND SUBJECT TO THE LIMITED REMEDIES HEREIN PROVIDED; (b) BUYER SPECIFICALLY DISCLAIMS THAT IT IS RELYING UPON OR HAS RELIED UPON ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES THAT MAY HAVE BEEN MADE BY ANY PERSON, AND ACKNOWLEDGES AND AGREES THAT SELLER HAS SPECIFICALLY DISCLAIMED AND DO HEREBY SPECIFICALLY DISCLAIM ANY SUCH OTHER REPRESENTATION OR WARRANTY MADE BY ANY PERSON AND (c) BUYER IS ACQUIRING THE TRANSFERRED ASSETS AND THE ASSUMED LIABILITIES IN "AS IS" CONDITION AND ON A "WHERE IS" BASIS, SUBJECT ONLY TO THE SPECIFIC REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE V (AS MODIFIED BY THE SELLER SCHEDULES) AND THE ANCILLARY AGREEMENTS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 6.11 OR ANY OTHER TERM HEREIN OR IN ANY ANCILLARY AGREEMENT, NOTHING IN THIS SECTION 6.11 OR IN ANY SUCH TERM SHALL LIMIT ANY RECOURSE BUYER OR ANY OF ITS AFFILIATES WOULD HAVE IN THE CASE OF FRAUD.

Section 6.12 Disclaimer of Other Representations and Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THIS

ARTICLE VI, SECTION 3.2(L), SECTION 3.3(D) AND SECTION 12.15 HEREOF AND THE ANCILLARY AGREEMENTS, NEITHER BUYER NOR ANY OTHER PERSON MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO BUYER OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS AND BUYER DISCLAIMS (ON BEHALF OF ITSELF AND ITS AFFILIATES) ANY OTHER REPRESENTATIONS AND WARRANTIES, WHETHER MADE BY BUYER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES.

ARTICLE VII

CERTAIN COVENANTS AND AGREEMENTS

Section 7.1 Conduct of Business Prior to the Closing.

(a) Except as (i) required by applicable Law or a Governmental Authority, (ii) expressly contemplated by any of the Transaction Agreements, (iii) set forth in Section 7.1 of the Seller Schedules or (iv) consented to in writing by Buyer in advance (which consent shall not be unreasonably withheld, conditioned or delayed), from the date of this Agreement through the Closing (or until earlier termination of this Agreement in accordance with its terms) Seller will, and will cause its Subsidiaries to, solely with respect to the Business and the Transferred Assets, use commercially reasonable efforts to comply with all applicable Laws, preserve intact the Business and the Transferred Assets and conduct the Business in the ordinary course of business consistent with past practice; provided, that no action by Seller or any of its Subsidiaries to the extent expressly permitted by Section 7.1(b) will be a breach of this Section 7.1(a).

(b) Except as (i) required by applicable Law or a Governmental Authority, (ii) expressly contemplated by any of the Transaction Agreements, (iii) set forth in Section 7.1 of the Seller Schedules or (iv) consented to in writing by Buyer in advance (which consent shall not be unreasonably withheld, conditioned or delayed), from the date of this Agreement through the Closing (or until earlier termination of this Agreement in accordance with its terms) Seller shall not, and shall cause its Subsidiaries not to, solely with respect to the Business or any Transferred Assets, take any of the following actions:

(i) sell, transfer, lease, sublease, license, sublicense, or otherwise dispose of any Transferred Assets or any Seller Licensed Intellectual Property other than (A) the sale of inventory or granting of non-exclusive licenses to Intellectual Property, each in the ordinary course of business consistent with past practices; (B) as necessary to comply with any Contract in effect as of the date hereof to which Seller or an Affiliate thereof is a party and has been disclosed on the Seller Schedules; or (C) the expiration of Product Intellectual Property in accordance with its statutory term;

(ii) acquire any material properties or material tangible assets primarily related to the Business outside of the ordinary course of business consistent with past practices;

(iii) fail to satisfy when due any material Assumed Liability related to the Historical Business or any Transferred Asset if it would reasonably be expected to materially impair Buyer's ability to conduct the Buyer Business following the Closing in substantially the same manner as the Business was conducted by Seller immediately prior to the date hereof and the Closing;

(iv) enter into any settlement or release with respect to any Proceeding relating to the Historical Business or any Transferred Asset that would reasonably be expected to materially impair Buyer's ability to conduct the Buyer Business following the Closing in substantially the same manner as the Business was conducted by Seller immediately prior to the date hereof and the Closing or impose any material non-monetary restrictions, liabilities or obligations on the Business or the Buyer Business or will be an Assumed Liability, or otherwise compromise, settle or waive any material claims or rights of the Historical Business or any of the Transferred Assets, other than with respect to such rights or claims which would have constituted Excluded Assets;

(v) other than in the ordinary course of business consistent with past practice, knowingly defer payment of any accounts payable relating to the Historical Business or any Transferred Asset in any material respect;

(vi) knowingly subject to any Encumbrance any of the Transferred Assets (whether tangible or intangible), except for (A) Permitted Encumbrances or (B) Encumbrances that will be extinguished, released and terminated in full at or in connection with the Closing;

(vii) terminate, enter into or materially modify the terms of any Contract primarily relating to the Business or any Transferred Asset that would (A) result in any Transferred Asset being a Non-Transferable Asset at Closing, (B) prevent or materially delay or impair the ability of Seller to consummate the transactions contemplated by, or perform its obligations under, any of the Transaction Agreements or (C) materially impair Buyer's ability to conduct the Buyer Business following the Closing in substantially the same manner as the Business was conducted by Seller immediately prior to the date hereof and the Closing; or

(viii) agree to or enter into any commitment with respect to any of the foregoing.

(c) Notwithstanding anything to the contrary herein, including the provisions of Section 7.1(a), (i) nothing shall prohibit or otherwise restrict in any way the operation of the business of Seller or any of its Subsidiaries, except solely with respect to the conduct of the Business, any Transferred Assets or any Assumed Liability as expressly set forth herein, (ii) nothing contained herein shall give Buyer any right to manage, control, direct or be involved in the management of Seller or any of its Affiliates at any time or the Business prior to the Closing and (iii) Seller may take reasonable actions in compliance with applicable Law with respect to any operational emergencies (including any restoration measures in response to any hurricane, strong winds, ice event, fire, tornado, tsunami, flood, earthquake or other natural disaster or severe weather-related event, circumstance or

development), equipment failures, outages or an immediate and material threat to the health or safety of natural Persons (including any reasonable good faith action taken to address an event stemming from or arising out of the COVID-19 pandemic, including any action by Seller reasonably necessary to comply with any binding guidelines, advice or decree of any Governmental Authority in connection with or related to COVID-19 (including COVID-19 Measures) and any action taken by Seller in the operation of the Business in its reasonable discretion in connection with or related to COVID-19 or similar pandemic); provided, that Seller shall provide Buyer with written notice of any such action that would have a material impact with respect to the Business, the Transferred Assets, the Assumed Liabilities or the Transaction Agreements as soon as reasonable practicable thereafter (and in no event more than five (5) Business Days after such action is taken).

Section 7.2 Access to Information.

(a) From the date of this Agreement until the Closing Date (or until earlier termination of this Agreement in accordance with its terms), upon reasonable prior notice and subject to applicable restrictions or limitations as a result of COVID-19 or any COVID-19 Measures, and except as determined in good faith by Seller to be appropriate to ensure compliance with any applicable Laws and subject to any applicable privileges (including the attorney-client privilege) and contractual confidentiality obligations, Seller shall (i) afford the Representatives of Buyer reasonable access, during normal business hours, to the books and records that will be Transferred Records and Transferred Regulatory Documentation and (ii) furnish to the Representatives of Buyer such additional information primarily related to the Business, the Transferred Assets, the Assumed Liabilities or the Product as reasonably requested from Buyer from time to time for purposes of consummating the transactions contemplated by this Agreement and preparing to operate the Buyer Business following Closing or the expiration of the Manufacturing Services Agreement or the Transition Services Agreement; provided, however, that the provision of such access and such data and information shall be conducted in a manner as to not (i) jeopardize the health and safety of any employee of Seller, including in light of COVID-19 (taking into account any COVID-19 Measures) or (ii) unreasonably interfere with any of the businesses, personnel or operations of Seller, including Internal Compliance Codes; provided, further, however, subject to Section 8.8, that the auditors and accountants of Seller or its Subsidiaries, as applicable, shall not be obliged to make any work papers available to any Person except in accordance with such auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants. From the date of this Agreement until the earlier of the Closing or the termination of this Agreement in accordance with its terms, except as provided in Section 7.3, in the ordinary course of business consistent with past practice or for such parties for whom Seller provides prior written consent (not to be unreasonably withheld, conditioned or delayed), neither Buyer, its Affiliates nor any of their respective Representatives shall contact any employees of, suppliers to, or customers of, Seller or any of its Affiliates in connection with or with respect to this Agreement, any other Transaction Agreement or the transactions contemplated hereby and thereby, or to otherwise discuss the business or operations of the Business; provided, however, that neither Buyer, its Affiliates nor any of their respective Representatives shall have any

contact or discussion with any party with respect to the Business (including any such party for whom Seller has otherwise provided prior written consent) during the referenced period without first consulting Seller and its Subsidiaries, and the applicable Representatives of Seller and its Subsidiaries shall be copied on all written correspondence and, if requested by Seller in writing, present for all oral communications and meetings.

(b) Notwithstanding anything in this Agreement to the contrary, Seller shall not be required, prior to the Closing, to disclose, or cause or seek to cause the disclosure, to Buyer or its Affiliates or Representatives (or provide access to any properties, books or records of Seller that would reasonably be expected to result in the disclosure to such Persons or others) of (i) any competitively sensitive information (including disaggregated unit-level cost of product sold information) or any confidential information relating to Intellectual Property applications or product development, or pricing and marketing plans, nor shall Seller be required to permit or cause or seek to cause others to permit Buyer or its Affiliates or Representatives to have access to or to copy or remove from the properties of Seller any documents, drawings or other materials that might reveal any such confidential information, in each case, other than to members of the "Recipient Clean Team" (as defined in the Initial Clean Team Confidentiality Agreement, dated as of August 25, 2022, between Seller and Buyer Guarantor), (ii) any Personal Information of any data subjects for which any necessary notices and/or consents have not been received or (iii) any information, the disclosure of which would, in Seller's reasonable judgment, (A) violate any applicable Laws, (B) jeopardize attorney/client privilege or other established legal privilege or (C) disclose any trade secrets of Seller (to the extent not included in the Transferred Assets).

Section 7.3 Customers, Payors, Insurers, Distributors, Manufacturers, Licensors and Suppliers. Prior to the Closing (or until earlier termination of this Agreement in accordance with its terms), at the request of Buyer, Seller shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to make introductions to customers, payors, insurers, distributors, manufacturers, licensors, suppliers, and other commercial counterparties of the Business (the "Business Counterparties") to the extent that existing Contracts with such counterparties relating to the operation of the Business are not Transferred Assets. Without limiting the foregoing, if requested by Buyer prior to the Closing, Seller shall provide a letter to any Business Counterparty with whom Seller has an exclusive arrangement or other rights, in each case, primarily relating to the Product that would continue following the Closing with respect to the Business, the Buyer Business or the Product that authorizes Buyer (or any of its Affiliates) and such Business Counterparty to negotiate an arrangement that, subject to the occurrence of the Closing, would provide Buyer or one of its Affiliates with rights that would otherwise be subject to such exclusive or any other arrangement with Seller or any of its Affiliates that would restrict Buyer or any of its Affiliates from doing so; provided, that Seller will be provided an opportunity to participate in any discussions or negotiations.

Section 7.4 Confidentiality. The terms of that certain confidential disclosure agreement dated May 17, 2022 (as amended, the "Confidentiality Agreement") between Seller and Buyer Guarantor are incorporated into this Agreement by reference and shall continue in full force and effect (and the confidentiality obligations thereunder shall be binding upon Buyer and Seller and their respective Affiliates and their respective Representatives) until the Closing, at which time the

confidentiality obligations under the Confidentiality Agreement shall terminate; provided, however, that Buyer's confidentiality obligations shall terminate only in respect of that portion of the "Confidential Information" (as defined in the Confidentiality Agreement) exclusively relating to the Historical Business or otherwise constituting a Transferred Asset, and for all other "Confidential Information", the Confidentiality Agreement shall continue in full force and effect in accordance with its terms. If, for any reason, the Closing does not occur, then the Confidentiality Agreement shall continue in full force and effect following the termination of this Agreement in accordance with its terms. Upon Closing, all Confidential Information to the extent it constitutes Transferred Assets shall solely and exclusively vest with Buyer and notwithstanding any conflicting provision of the Confidentiality Agreement, except in connection with the performance of Seller's obligations under any of the Transaction Agreements, Seller and its Subsidiaries and their respective Representatives will be obligated to maintain the confidentiality of such Confidential Information and to not use such Confidential Information after the Closing without the express written consent of Buyer for a period of seven (7) years after the Closing; provided, that, with respect to any such Confidential Information that constitutes a trade secret under applicable Law such confidentiality obligations shall continue so long as the Confidential Information maintains its status as a trade secret. Notwithstanding anything to the contrary in the Confidentiality Agreement, the terms of this Agreement shall be deemed the "Confidential Information" of both Parties, and each Party shall maintain the confidentiality of such information in accordance with the terms of the Confidentiality Agreement and this Section 7.4. Notwithstanding anything in this Section 7.4 to the contrary, each Party shall have the right to disclose Confidential Information or the terms of this Agreement or any other Transaction Agreement (a) as may be required by Law (including any disclosure obligations under the federal securities Laws or applicable accounting principles), the rules and regulations of any national securities exchange upon which the securities of Seller, Buyer or their respective Affiliates are listed or to any Governmental Authority (including federal, state, or foreign taxing authorities) with jurisdiction over such Party upon request by such Governmental Authority or (b) to any bona fide potential or actual investor, acquiror, merger partner, or other financial or commercial partner for the sole purpose of evaluating or carrying out an actual or potential investment, acquisition or other business relationship, in each case, involving the Product, the Transferred Assets or the Assumed Liabilities; provided, that in connection with such disclosure, such Party shall inform each disclosee of the confidential nature of such information and require each disclosee to execute a customary non-disclosure agreement pursuant to which such disclosee agrees to treat such information as confidential.

Section 7.5 Insurance. Buyer acknowledges and agrees that, upon Closing, all insurance coverage provided under Seller's insurance policies or otherwise in relation to the Transferred Assets pursuant to policies, risk funding programs or arrangements maintained by Seller or by any Affiliate of Seller (whether such policies are maintained in whole or in part with Third Party insurers or with Seller or its Subsidiaries and including any captive policies or fronting arrangements, and including any "occurrence" based insurance policies provided in relation to Seller and its Affiliates with respect to any occurrences prior to Closing) shall cease, and no further coverage shall be available in respect of any Transferred Asset or Assumed Liability under any such policies, programs or arrangements; provided, that, if a material Transferred Asset suffers a casualty loss prior to the Closing Date that is covered by insurance maintained by Seller or its Subsidiaries, Seller shall cause any insurance proceeds actually received in respect of such casualty

loss, net of any expenses (including any deductibles retained by Seller) incurred in connection with the receipt of such proceeds, to be applied to restore or replace such Transferred Asset.

Section 7.6 Regulatory and Other Authorizations; Consents.

(a) Prior to the Closing, each of Buyer Guarantor, Buyer and Seller shall use reasonable best efforts to take, or cause to be taken, all actions, and do, or cause to be done, all things necessary, proper or advisable under any Regulatory Laws to consummate the Closing in an expeditious manner, including (i) the preparation and filing of all forms, registrations and notices required to be filed to consummate the sale of the Transferred Assets and the other transactions contemplated by this Agreement and (ii) obtaining (and cooperating with each other in obtaining) any approval under any Regulatory Laws (which actions shall include furnishing all information required under any Regulatory Laws) required to be obtained or made by Buyer or Seller or any of their respective Affiliates in connection with the Closing. Additionally, Buyer Guarantor and Buyer shall take, or cause to be taken, all actions, and do, or cause to be done, all things necessary, proper or advisable under any applicable Laws to fulfill all conditions precedent to this Agreement and shall not (and shall cause each of their respective Affiliates and Representatives not to) take any action after the date of this Agreement that would reasonably be expected to (A) prevent, delay or impede the obtaining of, or result in not obtaining, any approval under any Regulatory Laws required to be obtained or made by Buyer or Seller or any of their respective Affiliates in connection with the sale of the Transferred Assets and the other transactions contemplated by this Agreement or (B) otherwise cause any of the conditions set forth in Article IX of this Agreement to fail to be satisfied or prevent, delay or impede the consummation of the sale of the Transferred Assets or any other transaction contemplated by this Agreement. Buyer Guarantor and Buyer shall not directly or indirectly extend any waiting period under the HSR Act or enter into any agreement with a Governmental Authority not to consummate, or to delay consummation of, the transactions contemplated by this Agreement except with the prior written consent of Seller (which consent shall not be unreasonably withheld, delayed or conditioned).

(b) Prior to the Closing, to the extent not prohibited by applicable Law, Buyer Guarantor and Buyer, on the one hand, and Seller, on the other hand, shall each keep the other apprised of the status of matters relating to the completion of the sale of the Transferred Assets and the other transactions contemplated by this Agreement and work cooperatively in connection with obtaining all required approvals under any Regulatory Laws. In that regard, prior to the Closing, subject to the Confidentiality Agreement and Section 7.4, to the extent not prohibited by applicable Law, each of Seller, on the one hand, and Buyer and Buyer Guarantor, on the other hand, shall cooperate in all respects and promptly consult with the other Party to provide any necessary information with respect to all filings made by such Party with any Governmental Authority or any other information supplied by such Party to, or correspondence with, a Governmental Authority in connection with this Agreement, the sale of the Transferred Assets and the other transactions contemplated by this Agreement. Subject to the Confidentiality Agreement and Section 7.4, to the extent not prohibited by applicable Law, each Party shall promptly inform the other Party, and if in writing, furnish the other Party with copies of (or, in the case of oral communications, advise the other Party of) any communication from any

Governmental Authority in connection with this Agreement or sale of the Transferred Assets, or with any other Person in connection with any Proceeding by a private Party relating to any Regulatory Laws in connection with this Agreement or sale of the Transferred Assets or the other transactions contemplated by this Agreement, and permit the other Party to review and discuss reasonably in advance, and consider in good faith the views of the other Party in connection with, any proposed written or oral communication, correspondence or submission with or to any such Governmental Authority or other such Person. Buyer Guarantor, Buyer or their respective Representatives, on one hand, and Seller or its Representatives, on the other hand, shall not participate in any meeting (including telephone conversation, video conference, or other discussion) with any Governmental Authority in connection with this Agreement or sale of the Transferred Assets, or with any other Person in connection with any Proceeding by a private party relating to any Regulatory Laws in connection with this Agreement or sale of the Transferred Assets, or make oral submissions at meetings or in telephone or other conversations, unless it consults with the other Party reasonably in advance and, to the extent not prohibited by such Governmental Authority, gives the other Party the opportunity to attend and participate thereat. For the avoidance of doubt, Buyer Guarantor, Buyer and Seller shall jointly develop, and each Party shall consult and cooperate in all respects with one another, and consider in good faith the views of one another, in connection with the form and content of any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any Party, hereto in connection with obtaining all required approvals under Regulatory Laws. Buyer Guarantor, Buyer and Seller may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other Party under this Agreement as "outside counsel/in-house counsel only." Such designated materials and any materials provided by Buyer Guarantor and Buyer to Seller or by Seller to Buyer and Buyer Guarantor pursuant to this Section 7.6, and the information contained therein, shall be given only to the outside legal counsel and in-house counsel of the recipient and shall not be disclosed by such outside counsel and in-house counsel to employees (other than in-house counsel), officers or directors of the recipient, unless express permission is obtained in advance from the source of the materials (Buyer Guarantor, Buyer or Seller, as the case may be) or its legal counsel; it being understood that materials provided pursuant to this Agreement may be redacted (i) to remove references concerning the valuation of the Business, (ii) as necessary to comply with contractual obligations and (iii) as necessary to protect privileged attorney-client communications or attorney work product.

(c) Buyer Guarantor, Buyer and Seller shall file or cause to be filed (i) all notifications under the HSR Act as promptly as practicable, but in any event no later than ten (10) Business Days after the date of this Agreement and (ii) any other required filings and/or notifications under applicable Regulatory Laws as soon as reasonably practicable after the date of this Agreement. Each of Buyer Guarantor, Buyer and Seller will (and will cause each of its respective representatives to) use its reasonable best efforts to (A) supply (or cause to be supplied) any additional information or documentary material that may be requested by a Governmental Authority in connection the sale of the Transferred Assets (or the other transactions contemplated by this Agreement or any Ancillary Agreement) or with obtaining any approval under Regulatory Laws, (B) take actions that are necessary to, as promptly as practicable (and in any event prior to the

Outside Date), cause the expiration or termination of the applicable waiting periods pursuant to the HSR Act and any other Regulatory Laws applicable to the acquisition of the Transferred Assets and other transactions contemplated by this Agreement and (C) obtain any required approvals, consents, and clearances pursuant to any Regulatory Laws as may be necessary, proper, or advisable to effectuate the transactions contemplated by this Agreement. Buyer Guarantor, Buyer and Seller further agree that, subject to advance consent from Seller (which consent shall not be unreasonably withheld, conditioned or delayed), Buyer Guarantor will withdraw and refile its HSR Act notification form pursuant to 16 C.F.R. § 803.12 if necessary to avoid the issuance of a request for additional information or documentary material pursuant to 18 U.S.C. § 18a(e)(1) and 16 C.F.R. § 803.20.

(d) Notwithstanding anything to contrary contained herein, in no event shall Buyer or Buyer Guarantor be obligated to, and Seller shall not without prior written consent of Buyer Guarantor, (A) propose, negotiate, commit to, effect and agree to, by consent decree, hold separate order, or otherwise, the sale, divestiture, license, hold separate, and other disposition of the Transferred Assets or any entities, operations, assets, divisions, businesses, product lines, customers or facilities of Buyer, Buyer Guarantor or their respective Subsidiaries, (B) create, terminate, amend or assign existing relationships, ventures, contractual rights, or obligations of the Transferred Assets, the Business, the Buyer Business, Buyer, Buyer Guarantor or their respective Subsidiaries, (C) amend, assign, or terminate existing licenses or other agreements (and enter into such new licenses or other agreements), (D) otherwise take or commit to any action that would limit Buyer's, Buyer Guarantor's or their respective Subsidiaries' freedom of action with respect to, or its ability to retain or hold, directly or indirectly, the Transferred Assets, the Business or the Buyer Business, or any businesses, assets, products, or equity interests of Buyer, Buyer Guarantor or their respective Subsidiaries, and (E) enter into any order, consent decree or other agreement with any Governmental Authority to effectuate any of the foregoing (the "Regulatory Actions"). Nothing herein shall require Buyer, Buyer Guarantor, or Seller, to litigate with any Governmental Authority.

(e) Notwithstanding any other provision of this Agreement, nothing in this Section 7.6 shall require Seller or its Affiliates to take or agree to take any action with respect to its businesses other than the Transferred Assets.

(f) Whether or not the Closing is consummated, Buyer shall be responsible for (i) the filing fees for filings made under the HSR Act and (ii) the filing fees made in connection with any other approval under Regulatory Laws. Each Party will otherwise bear its own costs of preparing its own filings and related fees and expenses incurred to obtain any required any approval under Regulatory Laws, including the HSR Act.

Section 7.7 Third Party Consents. Each of Buyer and Seller agrees to cooperate and use commercially reasonable efforts to obtain any consents and approvals from any third Person other than a Governmental Authority that may be required in connection with the transactions contemplated by the Transaction Agreements (collectively, the "Third Party Consents"). Notwithstanding anything in this Agreement to the contrary, neither Buyer nor Seller shall be

required to compensate any Third Party, commence or participate in any Proceeding or offer or grant any accommodation (financial or otherwise, including any accommodation or arrangement to remain secondarily liable or contingently liable for any Assumed Liability) to any Third Party (a) to obtain any Third Party Consent or (b) in connection with Seller's or Buyer's obligations under Section 2.4 or Section 8.1.

Section 7.8 Non-Solicitation; Non-Hire. Commencing on the Closing Date and continuing until the second (2nd) anniversary thereof, without Seller's prior written consent, Buyer shall not, and shall cause its Affiliates not to, directly or indirectly, solicit for employment or services (whether as an employee, consultant, independent contractor or otherwise), offer to hire or engage, hire, engage or enter into any employment or consulting agreement or arrangement with any of the employees of Seller or its Subsidiaries who are involved in the Business or have responsibilities related to the Business or the Product; provided, that these prohibitions shall not apply to (a) solicitations of any such individual whose employment with Seller or any of its Subsidiaries has ended at least twelve (12) months prior to the time such solicitation is first made, (b) solicitations made to the public or the industry generally through advertising or electronic listing which are not targeted at employees of Seller or any of its Subsidiaries or (c) hiring any person in connection with solicitations permitted under clause (a) or (b) and who was not otherwise solicited in breach of this Section 7.8.

Section 7.9 Seller Non-Competition.

(a) Commencing on the Closing Date and continuing until the third (3rd) anniversary thereof, without Buyer's prior written consent, Seller shall not, and shall cause its Subsidiaries not to, directly or indirectly, engage in, or acquire any interest in any Person that is engaging in a Restricted Business in any jurisdiction where (x) the Business is conducted by Seller as of the Closing and (y) the Buyer Business is conducted by Buyer as of such date (including on its behalf as contemplated by the Manufacturing Services Agreement or the Transition Services Agreement), in each case other than in performance of Seller's obligations under this Agreement or other Transaction Agreement or intentionally interfere with the relationship between any Person that is, to Seller's knowledge, a material supplier or vendor to or has a similar business relation with the Business to induce such Person to cease doing business with, or materially reduce such business with, Buyer or any of its Affiliates in respect of the Buyer Business following the Closing; provided, that it shall not be a breach of this Section 7.9(a) for Seller and its Subsidiaries (i) to perform their respective obligations under any Transaction Agreement, (ii) to continue to commercialize Seller's Glucagon Emergency Kit, (iii) to own (or acquire) less than fifteen percent (15%) of the outstanding stock of any class of stock of a Person that is engaged, directly or indirectly, in a Restricted Business, (iv) to own (or acquire) any interest in a Person engaged, directly or indirectly, in a Restricted Business as a result of passive investments by Seller in a mutual funds, exchange traded funds, venture capital funds and private equity funds or other investment funds or vehicles; (v) to make donations of the Product or fulfill their respective obligations under patient affordability programs in accordance with the terms of the Manufacturing Services Agreement or Transition Services Agreement; or (vi) to effect a Restricted Business Acquisition.

(b) Seller acknowledges that the covenants of Seller set forth in this Section 7.9 are an essential element of this Agreement. Seller has independently consulted with its counsel and after such consultation agrees that the covenants set forth in this Section 7.9 are reasonable and proper to protect the legitimate interest of Buyer.

(c) If the character, duration or geographical scope of any of the provisions of Section 7.9(a) is held invalid, illegal or incapable of being enforced under any applicable Law, all other terms and provisions of Section 7.9(a) shall nevertheless remain in full force and effect. If the final judgment of a court of competent jurisdiction or other Governmental Authority declares that any term or other provision of Section 7.9(a) is invalid, illegal or unenforceable, Seller and Buyer agree that the court making such determination will have the power to reduce the scope, duration, area or applicability of the term or provision of Section 7.9(a), or to delete specific words or phrases, in each case, in order to narrow the scope or duration of any such provision in a manner that is valid, legal and enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable term or provision.

ARTICLE VIII

ADDITIONAL COVENANTS AND AGREEMENTS

Section 8.1 Access. From and after the Closing Date, to the extent reasonably requested and necessary or appropriate in connection with any claims against a Party by a Third Party relating to Excluded Liabilities or any Proceeding (other than any Proceeding between the Parties) relating to the Historical Business to which a Party or any of its Affiliates is a party, upon reasonable prior notice, and except as determined in good faith by the other Party to be reasonably necessary to (a) ensure compliance with any applicable Law, (b) preserve any applicable privilege (including the attorney-client privilege), (c) comply with any contractual confidentiality obligations or (d) protect commercially sensitive data or information (including disaggregated unit-level cost of product sold information), the other Party shall, and shall cause each of its Affiliates and Representatives to (i) afford the Representatives of the Party and its Affiliates reasonable access, during normal business hours, to the properties, electronically stored data and information and books and records of the other Party and its Affiliates to the extent relating to the Historical Business, the Transferred Assets (and related liabilities), the Demo Version, or the Product, and permit copies of such materials to be made for the Party and its Affiliates solely for use in connection with the purposes described above in this paragraph and (ii) use commercially reasonable efforts to assist in providing or obtaining any necessary notice or consent for disclosure of Personal Information relating to the Historical Business where required; provided, however, that the provision or such access and such data and information shall not unreasonably interfere with the business or operations of the other Party or any of its Affiliates; provided, further, that the auditors and accountants of the other Party or its Affiliates shall not be obligated to make any work papers available to any Person except in accordance with such auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants.

Section 8.2 Books and Records. Seller and its Subsidiaries shall have the right to retain copies of all Transferred Records relating to periods ending on or prior to the Closing Date. For a period of six (6) years after the Closing, Buyer shall: (a) retain the Transferred Records and all other books and records to the extent related to the Transferred Assets held by Buyer or any of its Affiliates and (b) upon Seller's reasonable notice to Buyer and during normal business hours, cooperate with and provide Seller, any of Seller's Affiliates, and the officers, employees, agents and Representatives of Seller and Seller's Affiliates reasonable access (including the right to make copies at Seller's expense or the expense of any Affiliate of Seller) to such Transferred Records (including as may be necessary for the preparation of financial statements, regulatory filings, Tax Returns, or in connection with any Proceedings). Seller and its Subsidiaries shall be entitled, at their expense and subject to reasonable and customary confidentiality undertakings, to make copies of the books and records to which they are entitled access pursuant to this Section 8.2. For the sake of clarity, any "Confidential Information" (as defined in the Confidentiality Agreement) in the Transferred Records or otherwise in the Transferred Assets shall become Buyer's "Confidential Information" upon Closing.

Section 8.3 Transfer and Assumption of Regulatory Approvals. As further described and subject to the terms and conditions set forth in the Transition Services Agreement and the Manufacturing Services Agreement, including the Exhibits attached to either of the foregoing Ancillary Agreement (including the Marketing Authorization Transfer Plan), from and after the Closing Date, Buyer will assume control of, and responsibility for, all costs and Liabilities arising from or related to any Transferred Regulatory Documentation, including any commitments or obligations to any Governmental Authority involving the Products, in each case to the extent they are Assumed Liabilities. Seller and Buyer acknowledge that the transfer of Regulatory Approvals to Buyer may be subject to (a) the terms and conditions set forth in the Transition Services Agreement and the Manufacturing Services Agreement, including the Exhibits attached to either of the foregoing Ancillary Agreement (including the Marketing Authorization Transfer Plan) and (b) the approval of applicable Governmental Authorities, and that, notwithstanding anything in this Agreement to the contrary, each Regulatory Approval shall continue to be held by Seller from and after the Closing Date until the date upon which the relevant Governmental Authority approves the Regulatory Approval naming Buyer or one of its Affiliates as the holder of such Regulatory Approval in the relevant country or territory covered by such Regulatory Approval. Each of Buyer and Seller shall cooperate to transfer to Buyer the Transferred Regulatory Documentation as promptly as reasonably possible following the Closing in accordance with the Transition Services Agreement. Promptly after the transfer of any Transferred Regulatory Documentation to Buyer, Buyer shall grant Seller a Right of Reference or Use to such Transferred Regulatory Documentation (including all data contained or referenced therein) as necessary or useful for the development, manufacture, or commercialization of Seller products other than a nasal glucagon product (but subject to the non-compete obligations of Seller set forth in Section 7.9).

Section 8.4 Certain Tax Matters.

(a) Transfer Taxes. All stamp, documentary, filing, recording, registration, sales, use, transfer, value added, and other non-income or non-capital gains Taxes and all fees, duties, assessments and governmental charges imposed under applicable Law in connection with the transactions contemplated hereby (collectively, "Transfer Taxes") shall be paid fifty percent (50%) by Buyer and fifty percent (50%) by Seller. The

Party required by Law to file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes shall prepare and file such Tax Returns and other documentation and, if required by applicable Law, the non-filing Party will join in the execution of any such Tax Returns and other documentation. Buyer and Seller will reasonably cooperate to reduce or eliminate Transfer Taxes to the extent permitted by applicable Law.

(b) Tax Apportionment. Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Transferred Assets (including real estate Taxes, personal property Taxes and similar Taxes) for the tax period in which the Closing occurs (the "Proration Period") will be apportioned and prorated between Seller and Buyer as of the Closing Date with Buyer bearing the expense of Buyer's proportionate share of such Taxes which shall be (i) in the case of property, ad valorem, and other similar Taxes, equal to the product obtained by multiplying (A) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the Proration Period, *multiplied by* (B) the number of days in the Proration Period following the Closing Date, and Seller shall bear the remaining portion of such Taxes and (ii) in the case of other Taxes, computed as if the applicable tax period ended at the close of business on the Closing Date. If the precise amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the tax period immediately preceding the Proration Period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the Proration Period. When the actual amounts become known, such proration shall be recalculated by Buyer and Seller, and Buyer or Seller, as the case may be, promptly (but not later than fifteen (15) days after notice of payment due and delivery of reasonable supporting documentation with respect to such amounts) shall make any additional payment or refund so that the correct prorated amount is paid by each of Buyer and Seller.

(c) Tax Refunds. Seller shall be entitled to receive from Buyer all refunds (or credits for overpayments) of Taxes, including any interest paid thereon by a Governmental Authority, that are Excluded Assets by a Governmental Authority, attributable to any tax period ending on or prior to the Closing Date or the portion of any Proration Period ending on and including the Closing Date, net of any costs, fees, expenses or Taxes incurred in obtaining such refunds (or credits). Buyer and Seller shall reasonably cooperate as may be necessary to obtain the Tax refunds (or credits) contemplated by this Section 8.4(c). Buyer shall pay any such Tax refund (or the amount of any such credit) to Seller within fifteen (15) calendar days after Buyer receives such Tax refund from a Governmental Authority or files a Tax Return claiming such credit.

(d) Cooperation. To the extent relevant to the Historical Business, the Buyer Business or the Transferred Assets, each Party shall (i) provide the other with such assistance as may reasonably be required in connection with the preparation of any Tax Return and the conduct of any Tax Contest by any taxing authority or in connection with any Tax Contest relating to any liability for Taxes and (ii) retain and provide the other with all records or other information that may be relevant to the preparation of any Tax Returns, or the conduct of any audit or examination, or other proceeding relating to Taxes. Seller shall retain all documents, including prior years' Tax Returns, supporting work schedules

and other records or information with respect to all sales, use and employment Tax Returns and shall not destroy or otherwise dispose of any such records for six (6) years after the Closing.

Section 8.5 Further Assurances.

(a) From time to time following the Closing, Seller and Buyer shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all reasonable further conveyances, notices, assumptions, releases and acquittances and instruments, and shall take such reasonable actions as may be reasonably necessary or appropriate, to make effective the transactions contemplated hereby as may be reasonably requested by the other Party (including (i) transferring back to Seller or its designated Affiliates (and having Seller or its Affiliate assume) any asset or liability not contemplated by this Agreement to be a Transferred Asset or an Assumed Liability, respectively, which asset or liability was transferred to Buyer or its Affiliates at or after the Closing and (ii) transferring to Buyer or its designated Affiliates (and having Buyer or its Affiliate assume) any asset or liability contemplated by this Agreement to be a Transferred Asset or an Assumed Liability, respectively, which was not transferred to or assumed by Buyer or its Affiliates at the Closing).

(b) In the event that, notwithstanding the provisions of this Agreement, any Third Party attempts to collect an Assumed Liability from Seller or its Affiliates, or an Excluded Liability from Buyer or its Affiliates and (i) any claim or demand is made by such Third Party in respect of any such liability against Seller or its Affiliates or Buyer or its Affiliates, respectively, or (ii) any investigation, suit or Proceeding is commenced against Seller or its Affiliates or Buyer or its Affiliates, respectively, in respect of any such liability, then, in each such case, (A) the Party receiving such claim or demand, or notice of such investigation, suit or Proceeding, shall promptly notify the other Party in writing and send such Party any relevant documentation received in connection therewith and (B) the Party who was intended to assume or retain such liability hereunder (*e.g.*, if such liability was contemplated by this Agreement to be an Assumed Liability, then Buyer, or if such liability was contemplated by this Agreement to be an Excluded Liability, then Seller) shall, subject to the terms in Section 11.5, assume the defense and control of any such claim, demand, investigation, suit or Proceeding, and the other Party shall provide reasonably requested necessary support in connection therewith. For the avoidance of doubt, any consent to a settlement of, or the entry of any judgment arising from, any Assumed Liability or Excluded Liability, as applicable, shall be subject to the terms in Section 11.5.

Section 8.6 No Setoff. Unless otherwise provided herein to the contrary, all payments to be made under this Agreement shall be made at the time and in the amounts provided for in this Agreement without set-off or deduction.

Section 8.7 Payments.

(a) Seller shall, or shall cause its applicable Affiliates to, promptly pay or deliver to Buyer any monies or checks received by Seller or any of its Affiliates

following the Closing to the extent they are (or represent the proceeds of) a Transferred Asset.

(b) Buyer shall, or shall cause its applicable Affiliates to, promptly pay or deliver to Seller any monies or checks that have been received by Buyer or any of its Affiliates following the Closing to the extent they are (or represent the proceeds of) an Excluded Asset.

Section 8.8 Required Business Financials.

(a) (i) Prior to Closing, Seller will use its reasonable best efforts to prepare and to cause Ernst & Young Global Limited (or, if Ernst & Young Global Limited is unwilling or unable, another accounting firm mutually selected by the Parties) (the "Audit Firm") to audit or review, as applicable, abbreviated financial statements for the Business in accordance with Rule 3-05(e)(2) of Regulation S-X for the periods (including any annual and quarterly periods) required to be filed by Buyer with the SEC as of the Closing Date under Rule 3-05 of Regulation S-X pursuant to Item 9.01 of Form 8-K (the "Historical Business Financials") and (ii) prior to and after Closing, Buyer, with commercially reasonable efforts from Seller, will prepare pro forma financial information required pursuant to Article 11 of Regulation S-X (together with the Historical Business Financials, the "Required Business Financials"), in each case solely for the periods and to the extent required to be filed by Buyer with the SEC as of the Closing Date pursuant to Item 9.01 of Form 8-K. Seller shall deliver to Buyer preliminary drafts of the Historical Business Financials for review by Buyer at least fifteen (15) days prior to the delivery of the Historical Business Financials. Seller will deliver the Historical Business Financials on or prior to Closing. Historical Business Financials, when delivered, must be in a form that complies with the applicable requirements of Rule 3-05(e)(2) of Regulation S-X. The Historical Business Financials shall be prepared by Seller and shall be audited or reviewed, as applicable, by the Audit Firm in accordance with Rule 3-05(e)(2) of Regulation S-X promulgated by the SEC (the "Audit"). Seller will use reasonable best efforts to provide such cooperation as is reasonably requested by the Audit Firm in connection with the Audit, including by providing access to appropriate books, records, systems and personnel, and shall keep Buyer reasonably apprised as to the progress of the Audit. Buyer shall reimburse Seller for the documented costs of the Audit Firm for the Audit and any documented out-of-pocket costs of Seller incurred in connection with preparation of the Required Business Financials. For the avoidance of doubt, nothing in this Section 8.8 shall require Seller to provide disaggregated unit-level cost of product sold information.

(b) Following the Closing until the date that is 90 days after the Closing Date, upon Buyer's written request, and solely to the extent required to be filed by Buyer with the SEC under Rule 3-05 of Regulation S-X, Seller will use its commercially reasonable efforts to prepare and to cause the Audit Firm to audit or review, as applicable ("Post-Closing Audit"), abbreviated financial statements for the Business ("Post-Closing Business Financials") in accordance with Rule 3-05(e)(2) of Regulation S-X for the quarterly period completed immediately prior to Closing, if such financial statements have not already been provided to Buyer. Buyer shall reimburse Seller for the documented costs

of the Audit Firm for the Post-Closing Audit and any documented out-of-pocket costs of Seller incurred in connection with preparation of the Post-Closing Business Financials.

(c) Following the Closing until the date that is 90 days after the Closing Date, and solely to the extent applicable, Seller will, upon Buyer's written request, use its commercially reasonable efforts, at Buyer's sole cost and expense, to provide such information and records of the Business in possession of Seller that Buyer may reasonably request, for purpose of preparing its consolidated financials statements to be filed with the SEC, in relation to the period from the end of the quarterly period completed immediately prior to Closing to the date of Closing.

Section 8.9 Financing and Financing Cooperation.

(a) Buyer shall, and shall cause its Affiliates to, use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to arrange, obtain and consummate the Financing or any Substitute Debt Financing no later than the time at which the Closing is required to occur pursuant to Section 4.1, including using its commercially reasonable efforts to (i)(A) maintain in effect the Commitment Letter and comply with all of their respective covenants and obligations thereunder, (B) negotiate and, assuming all conditions to Closing set forth in Article IX hereof have been satisfied or waived, enter into and deliver definitive agreements with respect to the Financing (the "Definitive Financing Agreements") reflecting the terms and conditions contained in the Commitment Letter and (C) enforce their rights under the Commitment Letter and (ii) satisfy on a timely basis (or obtain the waiver of) all the conditions to the Financing and the definitive agreements related thereto that are in Buyer's (or its Affiliates') control. In the event that all conditions set forth in Article IX have been satisfied or waived or, upon funding shall be satisfied or waived, and the Closing should otherwise occur pursuant to Section 4.1, Buyer and its Affiliates shall use their commercially reasonable efforts to cause the Persons providing the Financing (the "Debt Financing Parties") to fund the Financing at the Closing.

(b) Buyer shall keep Seller reasonably informed of the status of the Financing and material developments with respect thereto and provide Seller promptly with copies of any material definitive agreements executed to amend or modify the Commitment Letter. Without limiting the foregoing, Buyer shall promptly after obtaining knowledge thereof, give Seller written notice (i) of any material breach or default by Buyer, its Affiliates, any Debt Financing Party or any other party to the Commitment Letter or Definitive Financing Agreement (or any event or circumstance, with or without notice, lapse of time, or both, would give rise to any breach or default), (ii) of any threatened in writing or actual withdrawal, repudiation, expiration, intention not to fund or termination of or relating to the Commitment Letter or the Financing, or (iii) if for any reason Buyer in good faith no longer believes Buyer Guarantor will be able to obtain all or any portion of the Financing. Buyer Guarantor may amend, modify, terminate, assign or agree to any waiver under the Commitment Letter without the prior written approval of Seller; provided, that Buyer Guarantor shall not, without Seller's prior written consent, permit any such amendment, modification, assignment, termination or waiver to be made to, or consent to or agree to any waiver of, any provision of or remedy under the Commitment Letter which

would (A) reduce the aggregate amount of the Financing (including by increasing the amount of fees to be paid or original issue discount) below the amount required to consummate the purchase of the Transferred Assets (taking into account other sources of funding) or (B) impose new or additional conditions to the Financing or otherwise expand, amend or modify any of the conditions to the Financing, in each case, in a manner that would reasonably be expected to (x) delay, prevent or make less likely in any material respect the consummation of the transactions contemplated thereby or the funding of the Financing (or satisfaction of the conditions to the Financing) at the Closing, (y) adversely impact in any material respect the ability of Buyer Guarantor to enforce its rights against the Debt Financing Parties or any other parties to the Commitment Letter or the definitive agreements with respect thereto or (z) make the timely funding of the Financing or the satisfaction of the conditions to obtaining the Financing, materially less likely to occur; provided, further, that notwithstanding the foregoing, Buyer Guarantor and its Affiliates may (1) amend the Commitment Letter to add additional Financing Sources who had not executed the Commitment Letter as of the date hereof, (2) make or permit assignments and replacements of an individual lender under the Commitment Letter in connection with the syndication of the Financing, and/or (3) terminate or reduce the aggregate amount of the commitments under the Commitment Letter (and enter into any amendments, modifications of supplements of the Commitment Letter in connection therewith) if Buyer and its Affiliates have a sufficient amount of available cash on hand from other sources to make the representation set forth in Section 6.10(d) as though made at the time of the effectuation of such amendment, supplement or modification. In the event that new commitment letters and/or fee letters are entered into in accordance with any amendment, replacement, supplement or other modification of the Commitment Letter permitted pursuant to the preceding sentence of this Section 8.9(b), such new commitment letters and/or fee letters shall be deemed to be a part of the "Financing" and references herein to the "Commitment Letter" and/or "Fee Letter" shall be deemed to include such documents as amended, replaced, supplemented or otherwise modified in compliance with this Section 8.9(b) for all purposes of this Agreement. Buyer shall promptly deliver to Seller true, correct and complete copies of any termination, amendment, modification or replacement of the Commitment Letter and/or Fee Letter. If funds in the amounts set forth in the Commitment Letter, or any portion thereof, become unavailable, Buyer shall, unless offset by any other then available financial resources of Buyer, including its cash and cash equivalents, as promptly as practicable following the occurrence of such event, to (I) notify Seller in writing thereof, (II) use their respective reasonable best efforts to obtain substitute financing in an amount sufficient to replace such unavailable amount to enable Buyer to consummate the payment of the aggregate Purchase Price (including payment of any other Transaction Amounts) in accordance with the terms hereof (the "Substitute Debt Financing") and (III) use their respective reasonable best efforts to obtain a new financing commitment letter that provides for such Substitute Debt Financing and, promptly after execution thereof, deliver to Seller true, complete and correct copies of the new commitment letter and the related fee letters and any related definitive financing documents with respect to such Substitute Debt Financing. Upon obtaining any commitment for any such Substitute Debt Financing, such financing shall be deemed to be a part of the "Financing" and any commitment letter for such Substitute Debt Financing shall be deemed the "Commitment Letter" for all purposes of this Agreement.

(c) Buyer Guarantor shall pay, or cause to be paid, as the same shall become due and payable, all fees and other amounts that become due and payable under the Commitment Letter.

(d) Notwithstanding anything contained in this Agreement to the contrary, Buyer expressly acknowledges and agrees that Buyer's obligations hereunder are not conditioned in any manner upon Buyer Guarantor obtaining the Financing, any Substitute Debt Financing or any other financing.

(e) Prior to the Closing, Seller shall use its commercially reasonable efforts to, and to cause its Representatives to use commercially reasonable efforts to, provide to Buyer Guarantor such customary cooperation as may be reasonably requested by Buyer to assist Buyer Guarantor in obtaining the Financing, by using commercially reasonable efforts to:

(i) furnish to Buyer Guarantor such pertinent information regarding the Product and the Historical Business to the extent reasonably requested by Buyer and to the extent such information is available to Seller without undue effort or expense and without delay in the consummation of the transactions contemplated hereby;

(ii) facilitate (1) the granting of a security interest (and perfection thereof) in collateral to the extent required by the Commitment Letter (provided that the effectiveness thereof shall be conditioned upon the occurrence of the Closing Date) and (2) the procurement of customary lien release and termination documentation; and

(iii) furnish, at least three (3) Business Days prior to the Closing Date, all documentation and other information requested by Buyer in order to comply with applicable "know your customer", anti-money-laundering and other similar rules and regulations, including the PATRIOT Act, in each case, that has been requested in writing at least ten (10) Business Days prior to the Closing Date and solely as relating to the Product and the Historical Business.

(f) Notwithstanding the foregoing, in no event shall Seller be required to take or cause the taking of any action pursuant to Section 8.9(e) to the extent that it would: (i) require Seller to take any action that in the good faith judgment of Seller unreasonably interferes with the ongoing business or operations of Seller and/or its Subsidiaries; (ii) require Seller to incur any fee, expense or other liability prior to the Closing for which it is not promptly reimbursed or indemnified by Buyer; (iii) cause any representation or warranty of Seller in this Agreement to be breached; (iv) cause any condition to Closing to fail to be satisfied or otherwise cause any breach of this Agreement by Seller; (v) require Seller to prepare any financial statements or information that are not readily available to it and prepared in the ordinary course of financial reporting practice for Seller or the Historical Business other than the Historical Business Financials; (vi) be reasonably expected to cause any director, officer, employee or shareholder of Seller to incur any personal liability; (vii) require Seller or any of its Affiliates, or persons who are

officers or directors of such entities, to enter into, execute, or approve any agreement, resolution, consent or other documentation prior to the Closing, agree to any change or modification of any existing agreement or other documentation that would be effective prior to or is not conditioned on the Closing; (viii) conflict with the organizational documents of Seller or any of its Affiliates or any Law; (ix) reasonably be expected to result in a material violation or breach of, or a default (with or without notice, lapse of time, or both) under, any material Contract to which Seller is or any of its Affiliates is a party; (x) provide access to or disclose information that Seller reasonably determines would jeopardize any attorney-client privilege or other confidentiality arrangement of Seller; (xi) be required to become subject to any obligations or liabilities with respect to agreements or documents in connection with any Financing; or (xii) require Seller to provide disaggregated unit-level cost of product sold information. Nothing contained in this Section 8.9(f) or otherwise shall require Seller or any of its Affiliates to be an issuer or other obligor with respect to the Financing. Buyer shall, promptly on request by Seller, reimburse Seller for all reasonable and documented out-of-pocket costs incurred by Seller or its Representatives in connection with the Financing or with any such cooperation, and shall and indemnify and hold harmless Seller and its Representatives from and against any and all losses suffered or incurred by them in connection with the Financing, any action taken by them at the request of Buyer or its Representatives pursuant to this Section 8.9, and any information used in connection therewith.

(g) The Parties acknowledge and agree that the provisions contained in Section 8.9 represent the sole obligations of Seller with respect to cooperation in connection with the arrangement of any financing (including the Financing) to be obtained by Buyer Guarantor, and no other provision of this Agreement (including the Exhibits and Schedules hereto) shall be deemed to expand or modify such obligations. In no event shall the receipt or availability of any funds or financing (including the Financing) by Buyer or any of its Affiliates be a condition to any of Buyer's obligations under this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the condition set forth in Section 9.2, as applied to Seller's obligations under Section 8.9(e), shall be deemed to be satisfied unless the Financing has not been obtained as the primary result of Seller's breach of its obligations under Section 8.9(g) and such breach was a proximate cause in Buyer Guarantor not being able to obtain the Financing. Nothing in this Section 8.9 shall be deemed to expand the scope of Seller's obligations under Section 8.8.

(h) Seller hereby consents to the use of the names and logos of Seller and its Subsidiaries or the Product or the Historical Business in connection with the Financing so long as such names and/or logos (i) are used solely in a manner that is not intended to and would not reasonably be expected to harm or disparage Seller or any of its Affiliates or the reputation or goodwill of Seller or any of its Affiliates and (ii) are used solely in connection with a description of Seller, the Product or the Historical Business, or the transactions contemplated by this Agreement (and not in a trademark-like manner).

(i) All non-public or other confidential information provided by Seller or any of its Affiliates or any of their representatives pursuant to this Agreement will be kept confidential in accordance with, and will otherwise comply with, Section 7.4, except that Buyer or any of its Affiliates will be permitted to disclose such information to any

Financing Sources or prospective financing sources and other financial institutions that are or may become parties to the Financing (and, in each case, to their respective counsel and auditors) so long as such Persons are subject to confidentiality undertakings no less favorable in the aggregate to the Seller than those contained in Section 7.4 or Seller has otherwise provided its consent pursuant to the Confidentiality Agreement to so disclose such information.

ARTICLE IX

CONDITIONS PRECEDENT

Section 9.1 Conditions to Each Party's Obligations. The obligation of Buyer to consummate the transactions contemplated by this Agreement and the obligations of Seller to consummate the transactions contemplated by this Agreement will be subject to the satisfaction (or waiver) at or prior to the Closing of the following conditions. For the avoidance of doubt, the receipt of a Specified Letter by Seller or Buyer shall not be a basis for concluding that any closing condition is not satisfied for purposes of this Section 9.1.

(a) Governmental Approvals. Any applicable waiting period under the HSR Act (and any extensions thereof, including any agreement with any Governmental Authority to delay consummation of the transactions contemplated by the Transaction Agreements) shall have expired or been terminated.

(b) No Governmental Order. (i) There shall be no Governmental Order in existence in any of the jurisdictions set forth on Schedule 9.1(b) that prohibits or prevents the sale of the Transferred Assets or the assumption of the Assumed Liabilities or any other transactions contemplated by the Transaction Agreements, and there shall be no Proceeding pending seeking such a Governmental Order by a Governmental Authority in any such jurisdiction and (ii) no Law shall have been adopted or be in effect in any of the jurisdictions set forth on Schedule 9.1(b) that prohibits or prevents the consummation of any of the transactions contemplated by the Transaction Agreements.

Section 9.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction at or prior to the Closing of each of the following additional conditions:

(a) Representations and Warranties. (i) Each of the representations and warranties of Seller contained in Article V (other than as set forth in clauses (ii), (iii) and (iv) of this Section 9.2(a)) shall be true and correct (without giving effect to any "materiality" or "Material Adverse Effect" qualifiers therein) as of the date hereof and as of the Closing Date as though made on the Closing Date, except to the extent that any failure to be so true and correct would not, individually or in the aggregate, have a Material Adverse Effect (other than any representations and warranties made as of a specific date, which representations and warranties shall have been true and correct as of such date, except to the extent that any failure to be so true and correct would not, individually or in the aggregate, have a Material Adverse Effect as of such date); (ii) each of the Seller Fundamental Representations (other than as set forth in clause (iv) of this Section 9.2(a)) shall be true and correct in all material respects (without giving effect to any "materiality"

or "Material Adverse Effect" qualifiers therein) as of the date hereof and as of the Closing Date as though made on the Closing Date (other than any representations and warranties made as of a specific date, which representations and warranties shall have been true and correct in all material respects as of such date); (iii) the representations and warranties contained in Section 5.9(b) shall be true and correct in all respects as of the date hereof and (iv) each of the Seller Fundamental Representations in Section 5.2 and, solely with respect to the Product Patents, Section 5.17(c)(i), and the Transferred Regulatory Approvals, Section 5.5(a) shall be true and correct in all respects other than *de minimis* inaccuracies as of the date hereof and as of the Closing Date as though made on the Closing Date, other than any such Seller Fundamental Representations made as of a specific date, which representations and warranties shall have been true and correct in all respects other than *de minimis* inaccuracies as of such date.

(b) Performance of Obligations by Seller. Seller shall have performed and complied in all material respects with all covenants, agreements and obligations of this Agreement required to be performed and complied with by it at or prior to the Closing.

(c) No Material Adverse Effect. No Material Adverse Effect shall have occurred since the date of this Agreement and be continuing.

(d) Seller Officer's Certificate. Buyer shall have received a certificate signed by an authorized officer of Seller, dated as of the Closing Date, with respect to the matters set forth in the foregoing clauses (a), (b) and (c) (such certificate, the "Seller Officer's Certificate").

(e) Historical Business Financials. Buyer shall have received the Historical Business Financials prepared in accordance with Section 8.8, including an opinion by the Audit Firm, as applicable.

(f) Deliveries. Seller shall have duly executed and delivered to Buyer each of the items required under Section 4.2.

Section 9.3 Conditions to the Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction at or prior to the Closing of each of the following additional conditions:

(a) Representations and Warranties. (i) Each of the representations and warranties of Buyer contained in Article VI (other than as set forth in clause (ii) of this Section 9.3(a)) shall be true and correct (without giving effect to any "materiality" or "Material Adverse Effect" qualifiers therein) as of the date hereof and as of the Closing as if made on the Closing Date, other than representations and warranties made as of a specific date, which representations and warranties shall have been true and correct as of such date, except to the extent that any failure to be so true and correct would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Buyer to perform its obligations under this Agreement and any other Transaction Agreement to which it or any of its Affiliates is a party or to consummate the transactions contemplated hereby or thereby and (ii) each of the Buyer Fundamental Representations shall be true and

correct in all material respects (without giving effect to any "materiality" or "Material Adverse Effect" qualifiers therein) as of the date hereof and as of the Closing Date as though made on the Closing Date, other than any such Buyer Fundamental Representation made as of a specific date, which representations and warranties shall have been true and correct in all material respects (without giving effect to any "materiality" or "Material Adverse Effect" qualifiers therein) as of such date.

(b) Performance of Obligations by Buyer. Buyer shall have performed and complied in all material respects with all of the covenants and obligations of this Agreement required to be performed and complied with by it at or prior to the Closing.

(c) Buyer Officer's Certificate. Seller shall have received a certificate signed by an authorized officer of Buyer, dated as of the Closing Date, with respect to the matters set forth in the foregoing clauses (a) and (b) (such certificate, the "Buyer Officer's Certificate").

(d) Deliveries. Buyer shall have duly executed and delivered to Seller each of the items required under Section 4.3.

Section 9.4 Frustration of Closing Conditions. Neither Seller nor Buyer may rely on the failure of any condition set forth in this Article IX to be satisfied if such failure was caused by such Party's breach of the provisions of this Agreement, including Section 7.6.

ARTICLE X

TERMINATION, AMENDMENT AND WAIVER

Section 10.1 Termination. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

(a) by mutual written consent of Seller and Buyer;

(b) by Seller, if Buyer shall have breached any of its representations or warranties under this Agreement or failed to, or failed to cause its Affiliates to, comply with any covenant or agreement applicable to Buyer and/or its Affiliates that would cause any of the conditions set forth in Section 9.3 not to be satisfied, and such condition is incapable of being satisfied by the Outside Date; provided, however, that Seller is not then in material breach of its obligations under this Agreement;

(c) by Buyer, if Seller shall have breached any of its representations or warranties under this Agreement or failed to comply with any covenant or agreement applicable to Seller that would cause any of the conditions set forth in Section 9.2 not to be satisfied, and such condition is incapable of being satisfied by the Outside Date; provided, however, that Buyer is not then in material breach of its obligations under this Agreement;

(d) by either Seller or Buyer if the Closing shall not have occurred on or before the date that is six (6) months following the date hereof (the "Outside Date");

provided, however, that the right to terminate this Agreement under this Section 10.1(d) shall not be available to any Party whose breach of this Agreement has been the cause of, or has resulted in, the failure of the Closing to occur prior to such Outside Date; or

(e) by either Seller or Buyer in the event that any Governmental Authority of competent jurisdiction in the jurisdictions set forth on Schedule 9.1(b) shall have issued a final, non-appealable Governmental Order permanently restraining or prohibiting the transactions contemplated by this Agreement; provided, however, that the right to terminate this Agreement under this Section 10.1(e) shall not be available to any party whose breach of this Agreement has been the cause of, or has resulted in, the issuance of such Governmental Order.

Section 10.2 Notice of Termination. Any Party desiring to terminate this Agreement pursuant to this Article X shall give written notice of such termination to the other Party.

Section 10.3 Effect of Termination.

(a) In the event this Agreement is terminated pursuant to this Article X, this Agreement shall forthwith become null and void and be of no further force and effect and there shall be no liability on the part of any Party, except that this Section 10.3, Section 7.4, the last sentence of Section 8.9(f), Section 10.1 and Article XII shall survive any such termination in accordance with their terms and shall be enforceable hereunder. If this Agreement is validly terminated pursuant to this Article X, no Party shall have any remedy or right to recover for any Liabilities resulting from any breach of any representation or warranty contained herein unless such breach was a Willful Breach committed by the breaching Party.

(b) The Parties hereto agree that (A) in the event this Agreement is terminated by either Seller or Buyer pursuant to Section 10.1(d) or Section 10.1(e), and (B) at the time of such termination, all the conditions set forth in Article IX other than Section 9.1(a) or Section 9.1(b) (to the extent such Governmental Order or Law relates, in whole or in part, to any Regulatory Law) have been satisfied or are capable of being satisfied prior to the Closing (other than conditions that by their nature can only be satisfied on the Closing Date), or waived by the applicable Party as of the date of such termination, then Buyer shall promptly, but in no event later than five (5) Business Days after the date of such termination, pay or cause to be paid to Seller (or its designee(s)) by wire transfer of same day funds an amount equal to $5,000,000 (the "Purchaser Termination Fee"). Buyer acknowledges that the agreements contained in this Section 10.3(b) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Seller would not enter into this Agreement, and that the Purchaser Termination Fee is not a penalty and instead constitutes liquidated damages. Accordingly, if Buyer fails to promptly pay the amounts due pursuant to this Section 10.3(b) and, to obtain such payment, Seller commences a suit or other enforcement action that results in a judgment against Buyer for the Purchaser Termination Fee or any portion thereof, Buyer shall pay to Seller its costs and expenses (including attorneys' fees) in connection with such suit or enforcement action, plus interest on the amount of the Purchaser Termination Fee or portion thereof from the date any such payment should have otherwise been made pursuant

to this Agreement at a rate of five (5) percentage points above the 1 Month Secured Overnight Financing Rate (SOFR), as published by the Wall Street Journal (U.S. Internet edition), at 12:01 a.m. on the first day in which such payments should have otherwise been made through the date of the payment.

Section 10.4 Event of Termination. If the transactions contemplated by this Agreement are terminated as provided herein:

(a) Buyer will return to Seller or destroy all documents and other material received from Seller relating to the Products or the Transferred Assets, whether so obtained before or after the execution hereof; and

(b) all Confidential Information received by Buyer with respect to Seller, the Products or the Transferred Assets will be treated in accordance with the Confidentiality Agreement as modified by this Agreement, which will remain in full force and effect in accordance with its terms notwithstanding the termination of this Agreement.

ARTICLE XI

INDEMNIFICATION

Section 11.1 Survival. (a) The representations and warranties of Seller set forth in this Agreement (other than the Seller Fundamental Representations) and the Seller IP Sufficiency Representations) shall survive until 11:59 p.m. (Prevailing Eastern Time) on the date that is twelve (12) months following the Closing Date (the date of expiration of such period, the "Expiration Date"); (b) the Seller Fundamental Representations (other than Section 5.5(a), which shall survive until the Expiration Date) (and any corresponding indemnification) shall survive until 11:59 p.m. (Prevailing Eastern Time) on December 31, 2027; (c) the Seller IP Sufficiency Representations (and corresponding indemnification) shall survive until 24 months following the Closing Date; (d) the representations and warranties of Buyer set forth in this Agreement (other than the Buyer Fundamental Representations) shall survive until 11:59 p.m. (Prevailing Eastern Time) on the Expiration Date; (e) the Buyer Fundamental Representations (and any corresponding indemnification) shall survive until 11:59 p.m. (Prevailing Eastern Time) on December 31, 2027; (f) the representations and warranties of Buyer set forth in the Manufacturing Services Agreement and Transition Services Agreement (and any corresponding indemnification) shall survive until six (6) months following expiration of the applicable agreement; (g) the indemnities set forth in Sections 11.2(e) and 11.3(d) shall survive until 11:59 p.m. (Prevailing Eastern Time) on December 31, 2027; and (h) the indemnities set forth in Sections 11.2(f) and 11.3(e) shall survive until the expiration of the applicable statute of limitations; provided, further, that all representations and warranties of Seller or Buyer shall survive beyond the Expiration Date or other survival periods specified above with respect to any inaccuracy therein or breach thereof if a claim is made hereunder prior to the expiration of the applicable survival period for such representation and warranty, in which case such representation and warranty shall survive as to such claim until such claim has been finally resolved. Notwithstanding the foregoing, (i) each covenant of Seller or Buyer contained herein which, by its terms, is required to be performed prior to the Closing shall terminate at the Closing and (ii) each covenant of Seller or Buyer contained herein which, by its

terms, is required to be performed after the Closing shall survive the Closing and will remain in full force and effect thereafter until fully performed.

Section 11.2 Indemnification by Seller. Subject to Section 11.4, Seller hereby agrees that, from and after the Closing Date, Seller shall indemnify Buyer and its Affiliates and their respective successors, permitted assigns, directors, officers and employees (the "Buyer Indemnified Parties") against, and hold them harmless from, and pay and reimburse such parties for, any Losses, without duplication, to the extent such Losses result or arise from or in connection with:

(a) any breach of any representation or warranty of Seller contained in this Agreement (other than the Seller Fundamental Representations, the Seller IP Sufficiency Representations and any representations or warranty set forth in Section 5.19 (except to the extent relating to a Covered Material Contract) or Section 5.25);

(b) any breach of any Seller Fundamental Representation (other than Section 5.5(a), which shall be subject to Section 11.2(a));

(c) any breach of any Seller IP Sufficiency Representations;

(d) a breach of, default in, or failure to perform, any of the covenants given or made by Seller in this Agreement, the IP Assignment Agreement or the Bill of Sale and Assignment and Assumption Agreement which, by their terms, are required to be performed at or after the Closing;

(e) any and all Excluded Liabilities; or

(f) any Fraud.

Section 11.3 Indemnification by Buyer. Subject to Section 11.4, Buyer hereby agrees that, from and after the Closing Date, Buyer shall indemnify Seller and its Affiliates and their respective successors, permitted assigns, directors, officers and employees (the "Seller Indemnified Parties") against, and hold them harmless from, and pay and reimburse such parties for, any Losses, without duplication, to the extent such Losses arise from or in connection with:

(a) any breach of any representation or warranty of Buyer contained in this Agreement (other than the Buyer Fundamental Representations);

(b) any breach of any Buyer Fundamental Representation;

(c) a breach of, default in, or failure to perform, any of the covenants given or made by Buyer in this Agreement, the IP Assignment Agreement or the Bill of Sale and Assignment and Assumption Agreement which, by their terms, are required to be performed at or after the Closing;

(d) any and all Assumed Liabilities; or

(e) any Fraud.

Section 11.4 Limitations.

(a) Limitations on Buyer Indemnified Parties.

(i) Subject to the last sentence of Section 11.4(d), the aggregate amount the Buyer Indemnified Parties, as a group, may recover under Section 11.2(a) shall be limited, in the aggregate, to a dollar amount equal to ten percent (10%) of the Closing Payment, which amount shall be reduced on a dollar-for-dollar basis for any amounts recovered by any Buyer Indemnified Party under Section 11.2(c) (the "General Cap").

(ii) Subject to the last sentence of Section 11.4(d), the aggregate amount the Buyer Indemnified Parties, as a group, may recover under Section 11.2(c) shall be limited, in the aggregate, to an amount equal to $75,000,000 minus any amounts recovered by any Buyer Indemnified Party under Section 11.2(a).

(iii) Subject to the last sentence of Section 11.4(d), the aggregate amount the Buyer Indemnified Parties, as a group, may recover under Section 11.2(a), Section 11.2(b), Section 11.2(c), Section 11.2(d) and Section 11.2(e) shall be limited, in the aggregate together with all claims under Section 11.2(a), to a dollar amount equal to the Purchase Price actually paid (or due hereunder) from time to time.

(b) Limitations on Seller Indemnified Parties.

(i) Subject to the last sentence of Section 11.4(d), the aggregate amount the Seller Indemnified Parties, as a group, may recover under Section 11.3(a) shall be limited, in the aggregate, to a dollar amount equal to the General Cap.

(ii) Subject to the last sentence of Section 11.4(d), the aggregate amount the Seller Indemnified Parties, as a group, may recover under Section 11.3(b), Section 11.3(c) and Section 11.3(d) shall be limited, in the aggregate together with all claims under Section 11.3(a), to a dollar amount equal to the Purchase Price actually paid (or due hereunder) from time to time.

(c) The amount of any Losses for which either Seller or Buyer, as the case may be, is liable under this Article XI shall be reduced by any amounts an Indemnified Party is entitled (whether by reason of a contractual right, a right to take or bring a Proceeding, availability of insurance, or a right to require a payment discount or otherwise) to recover from any Third Party (whether before or after the Indemnifying Party shall have made a payment to any Indemnified Party hereunder), and the Indemnified Party shall promptly notify the Indemnifying Party and provide such information as the Indemnifying Party may require relating to any such right of recovery and the steps taken or to be taken by the Indemnified Party in connection therewith. In any case where an Indemnified Party recovers any amount contemplated by the immediately preceding sentence in respect of a matter for which such Indemnified Party was indemnified pursuant to this Article XI, in

each case to the extent not already taken into account pursuant to this Section 11.4, such Indemnified Party shall promptly (and in any event within ten (10) Business Days after receipt) pay over to the applicable Indemnifying Party the amount so recovered (net of any costs of recovery and increased premiums), but not in excess of the sum of any amount previously so paid to or on behalf of such Indemnified Party in respect of such matter.

(d) Subject to the last sentence of this Section 11.4(d), from and after the Closing, the rights of the Buyer Indemnified Parties and the Seller Indemnified Parties under this Article XI shall be the sole and exclusive monetary remedy of the Buyer Indemnified Parties and the Seller Indemnified Parties, as the case may be, with respect to the matters covered by this Agreement, and each Party hereby waives any other monetary rights with respect to this Agreement. Notwithstanding anything in this Agreement to the contrary, (i) nothing in this Agreement shall limit the liability of, and this Article XI shall not be the sole and exclusive remedy of, any Person in connection with any claim of Fraud or Willful Breach and (ii) nothing in this Agreement shall be deemed a waiver by any Party of, or any limitation on, any right to specific performance or injunctive relief or any right or permitted claim under the Transition Services Agreement, the Manufacturing Services Agreement or the Intellectual Property License Agreement.

(e) Notwithstanding anything contained in this Agreement to the contrary but subject to the last sentence of Section 11.4(d), no Indemnifying Party shall be obligated to indemnify any Indemnified Party with respect to claims under Section 11.2(a) or Section 11.3(a) unless and until the aggregate amount of Losses from all claims under Section 11.2(a) or Section 11.3(a), as applicable, exceeds $5,000,000 in the aggregate (the "Deductible"), and then only to the extent such aggregate amount exceeds the Deductible. In addition, no Indemnified Party shall be entitled to recover for any Losses under Section 11.2(a) or Section 11.2(b) or Section 11.3(a) or Section 11.3(b) that arises from any individual item, occurrence, circumstance, act or omission unless and until the amount of all Losses resulting from such individual item, occurrence, circumstance, act or omission exceeds $75,000 (the "De Minimis Threshold"), but any Losses covered by the De Minimis Threshold shall be taken into account for purposes of determining whether the Deductible has been exceeded.

(f) Neither the Buyer Indemnified Parties nor the Seller Indemnified Parties shall be entitled to recover for the same Loss more than once under this Article XI or otherwise under this Agreement (or any other Transaction Agreement) even if a claim for indemnification or otherwise in respect of such Loss has been made as a result of a breach of more than one covenant, agreement or representation or warranty contained in this Agreement (or any other Transaction Agreement).

(g) For purposes of this Article XI only, when determining the amount of Losses suffered by an Indemnified Party as a result of or arising from any breach of a representation or warranty that is qualified or limited in scope as to materiality or Material Adverse Effect or similar qualification, such representation or warranty shall be deemed to be made without such qualification or limitation solely for the purposes of calculating the amount of Losses subject to indemnification hereunder (and not, for the sake of clarity, for purposes of the determination of whether or not such breach has occurred); provided,

however, that, notwithstanding the foregoing, the words materiality, Material Adverse Effect or similar qualification shall not be ignored with respect to (A) the representations and warranties set forth in Section 5.9(b) or (B) with respect to the word "Material" in the defined term "Material Business Contracts."

Section 11.5 Procedure.

(a) Any Person seeking indemnification provided for under this Article XI (an "Indemnified Party") in respect of, arising out of or involving a claim made by any Person (other than a Party) against an Indemnified Party (a "Third Party Claim"), shall promptly notify the Party obligated to indemnify such Indemnified Party (such notified party, an "Indemnifying Party") in writing of the Third Party Claim stating the amount of the Loss claimed, if known, and method of computation thereof, the facts and circumstances giving rise to such claim in reasonable detail, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed to arise within ten (10) Business Days after receipt by such Indemnified Party of written notice of the Third Party Claim (or sooner, to the extent the nature of the Third Party Claim requires a response in a shorter period of time); provided, that failure to give such notice shall not affect the right to indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, as promptly as reasonably practicable following such Indemnified Party's receipt thereof, copies of all written notices and documents (including any court papers) received by such Indemnified Party relating to the Third Party Claim.

(b) If a Third Party Claim is made against an Indemnified Party, the Indemnifying Party shall be entitled at its election and its cost to assume the defense of such Third Party Claim with counsel selected by the Indemnifying Party; provided, however, that the Indemnifying Party shall not be entitled to assume the defense if such Third Party Claim (i) involves criminal liability or any admission of wrongdoing of the Indemnified Party, (ii) seeks injunctive relief or specific performance that cannot (upon advice of the Indemnified Party's external counsel) be reasonably separated from any non-equitable remedy or (iii) involves a claim that, if successful, would reasonably be expected to require the payment of monetary damages to the third party claimant in excess of the applicable limitations contained in Section 11.4(a) or Section 11.4(b), as applicable; provided, further, that, if Seller is the Indemnifying Party, Seller shall not be entitled to assume the defense (1) for Third Party Claims for matters relating to Intellectual Property matters to the extent defense of such Third Party Claim would be controlled by the Buyer pursuant to the Intellectual Property License Agreement or (2) if the defense of such Third Party Claim by Seller would be reasonably be expected to adversely affect the Buyer Business' relationship with its material customers or suppliers; provided; further, that, if, following any such election, the Indemnifying Party determines that it will contest its obligation to indemnify the Indemnified Party, it may do so only if the cessation of its control of the defense can be effected in a manner that does not materially prejudice the Indemnified Party's ability to conduct a defense of such matter (the party that conducts the defense and prosecution of any such Third Party Claim, the "Controlling Party", and the other party, the "Non-Controlling Party"). The Non-Controlling Party shall have the right

to receive copies of all pleadings, notices and communications with respect to any Third Party Claim to the extent that receipt of such documents does not affect any privilege relating to the Controlling Party, subject to the execution of a standard non-disclosure agreement, and shall be entitled to participate in (at its expense) the defense of such Third Party Claim. If the Indemnifying Party assumes such defense, the Indemnified Party shall nonetheless have the right to employ counsel separate from the counsel employed by the Indemnifying Party; provided, that the Indemnifying Party shall not be liable to such Indemnified Party for any fees of such separate counsel with respect to the defense of such Third Party Claim, unless the employment and reimbursement of such separate counsel is authorized by the Indemnifying Party in writing. If the Indemnifying Party does not assume such defense, and for any period during which the Indemnifying Party has not assumed such defense, the Indemnifying Party shall be liable for the reasonable fees and expenses of one (1) single counsel (in addition to reasonable fees and expenses of local counsel required in jurisdictions not central to the Third Party Claim) employed (and reasonably acceptable to the Indemnifying Party) by such Indemnified Party (which reasonable fees and expenses shall be considered Losses for purposes of this Agreement). If the Indemnifying Party chooses to defend a Third Party Claim or prosecute a claim in connection therewith, each Indemnified Party shall provide all cooperation as is reasonably requested by the Indemnifying Party in such defense or prosecution.

(c) Notwithstanding anything to the contrary in this Section 11.5, the Controlling Party may not settle, compromise or discharge (and in doing so, make any reasonable admission of liability with respect to) such Third Party Claim other than for money damages only without the prior written consent (not to be unreasonably withheld, conditioned or delayed) of the Non-Controlling Party, subject to such Controlling Party paying or causing to be paid all amounts arising out of such settlement or obtaining and delivering to such Non-Controlling Party, prior to the execution of such settlement, a general release prepared and executed by all Persons bringing such Third Party Claim.

(d) In the event an Indemnified Party has a claim against an Indemnifying Party under Sections 11.2 or 11.3 that does not involve a Third Party Claim (a "Direct Claim"), such Indemnified Party shall deliver notice of such claim to the Indemnifying Party stating the amount of the Loss, if known, and method of computation thereof, the facts and circumstances giving rise to such claim in reasonable detail and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed to arise, as promptly as practicable after becoming aware of the facts or circumstances giving rise to such claim; provided, that failure to give such notice shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure. The Indemnified Party and the Indemnifying Party shall, for a period of not less than twenty (20) Business Days following receipt by the Indemnifying Party of the notice of such claim, negotiate, in good faith, to resolve the claim, and such Indemnified Party shall not commence Proceedings with respect to such claim prior to the end of such period in accordance with this Agreement.

(e) Within five (5) Business Days after final determination that an Indemnified Party has suffered Losses and is entitled to indemnification from an

Indemnifying Party pursuant to this Article XI, the amount of such Losses shall be paid by the Indemnifying Party, in cash by wire transfer of immediately available funds, to such Indemnified Party.

Section 11.6 Tax Treatment of Indemnification Payments. Seller and Buyer agree to treat any indemnification payment made pursuant to this Article XI as an adjustment to the Purchase Price for U.S. federal, state, local and non-U.S. income Tax purposes to the extent permitted by applicable Law.

Section 11.7 Mitigation. Each Party shall, and shall cause its applicable Affiliates and Representatives to, take commercially reasonable efforts to mitigate their respective Losses upon and after becoming aware of any fact, event, circumstance or condition that has given rise to or would reasonably be expected to give rise to, any Losses for which it would have the right to seek indemnification hereunder.

Section 11.8 Right to Satisfy Indemnification Claims. Subject to the applicable limitations in Section 11.4, Buyer is expressly authorized to withhold and set-off an amount of cash equal to any Losses for which any Buyer Indemnified Party is finally determined to be entitled to indemnification hereunder pursuant to a final, non-appealable order of a court of competent jurisdiction against any amounts payable pursuant to Section 3.2 or Section 3.3, without duplication. Any amounts withheld and set-off shall be deemed to be in satisfaction of Seller's obligations under Section 11.3 for purposes of this Agreement and shall reduce the applicable thresholds set forth in Section 11.4(a) accordingly.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1 Expenses. Except as may be otherwise specified in the Transaction Agreements, all costs and expenses, including fees and disbursements of counsel, financial advisers and accountants, incurred in connection with the Transaction Agreements and the transactions contemplated thereby shall be paid by the Party incurring such costs and expenses (or the Party on whose behalf such costs and expenses have been incurred), irrespective of when incurred or whether or not the Closing occurs or this Agreement is terminated.

Section 12.2 Notices. All notices and other communications under or by reason of the Transaction Agreements shall be in writing and shall be deemed to have been effectively given or made (a) when personally delivered, (b) when sent by registered or certified mail (with proof of delivery), (c) when delivered by e-mail transmission with receipt confirmed or (d) upon delivery by overnight courier service (with proof of delivery), in each case to the addresses and attention Parties indicated below (or such other address, e-mail address or attention Party as the recipient Party has specified by prior notice given to the sending Party in accordance with this Section 12.2):

if to Seller, to:

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, Indiana 46285
Telephone: (317) 276-2000
Attention: Senior Vice President and Head of Corporate Business Development

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

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
Telephone: (317) 276-2000
Email: [***]
Attention: Senior Vice President - Transactions and Contracting

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

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-4800
Attention:
[***]
[***]
Email: [***]
[***]

if to Buyer, to:

Amphastar Pharmaceuticals, Inc.
11570 Sixth Street
Rancho Cucamonga, CA 91730
Telephone: (800) 423-4136
Email: [***]
Attention: Chief Financial Officer

with a copy to:

Amphastar Pharmaceuticals, Inc.
11570 Sixth Street
Rancho Cucamonga, CA 91730
Telephone: (800) 423-4136
Email: [***]
Attention: EVP Corporate Administration Center

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

Wilson Sonsini Goodrich & Rosati
One Market Plaza
Spear Tower, Suite 3300
San Francisco, CA 94105
Attention: [***]
[***]
Email: [***]
[***]

Section 12.3 Public Announcements. The press release regarding this Agreement shall be a press release mutually acceptable to each of Seller and Buyer. Following the release of such aforementioned press release, neither Seller nor Buyer (nor any of their respective Affiliates) shall issue any other press release or make any other public announcement with respect to any of the Transaction Agreements without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed), except as may be required by Law (including any disclosure obligations under the federal securities Laws or applicable accounting principles) or the rules and regulations of any national securities exchange upon which the securities of Seller, Buyer or their respective Affiliates are listed, in which case the Party proposing or required to issue such press release or make such public announcement shall use its commercially reasonable efforts to consult in good faith with the other Party before making any such public announcements; provided, that neither Seller nor Buyer will be required to obtain the prior approval of or consult with the other Party in connection with any such press release or public announcement if such press release or public announcement consists solely of information previously disclosed in all material respects in a previously distributed press release or public announcement (to the extent such previously distributed press release or public announcement is still accurate at such time).

Section 12.4 Severability. If any term or other provision of this Agreement is held invalid, illegal or incapable of being enforced under any applicable Law or as a matter of public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party.

Section 12.5 Counterparts. This Agreement may be executed in one or more counterparts, and signature pages may be delivered by facsimile, portable document format (PDF), DocuSign or any other electronic signature complying with the U.S. federal ESIGN Act of 2000 or the Electronic Signatures and Records Act of the State of New York, each of which shall be deemed an original, but all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart.

Section 12.6 Entire Agreement. This Agreement (including the Schedules) and the other Transaction Agreements (and all exhibits, appendices, annexes and schedules hereto and thereto) and the Confidentiality Agreement collectively constitute and contain the entire agreement and

understanding of Seller and Buyer with respect to the subject matter hereof and thereof and supersede all prior negotiations, correspondence, understandings, agreements and contracts, whether written or oral, among the Parties and thereto respecting the subject matter hereof and thereof.

Section 12.7 Assignment. This Agreement shall not be assigned by (a) Buyer, without the prior written consent of Seller, and (b) Seller, without the prior written consent of Buyer, except that (i) Seller may, at or following the Closing, assign this Agreement and any or all of its rights, obligations and interests under this Agreement, without the consent of Buyer (but following written notification to Buyer), to an Affiliate of Seller (provided, that any such assignment shall not relieve Seller of its obligations hereunder) and (ii) Buyer may, at or following the Closing, assign this Agreement and any or all of its rights, obligations and interests under this Agreement, without the consent of Seller (but following written notification to Seller), (A) to the Financing Sources solely as collateral security for its obligations under any of its secured debt financing arrangements (including the Financing), (B) to an Affiliate (provided, that any such assignment shall not relieve Buyer or the Buyer Guarantor of its obligations hereunder), (C) to a Permitted Transferee in accordance with Section 3.2(m) or (D) following the Earnout Expiration Date, to a successor to all or substantially all of the assets or business with respect to the Product (a "Business Sale"), whether by merger, sale, operation of law, or otherwise. Any attempted assignment in violation of this Section 12.7 shall be void ab initio. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the Parties and their permitted successors and assigns.

Section 12.8 No Third-Party Beneficiaries; Financing Source Liability. Except as provided for herein, this Agreement is for the sole benefit of the Persons specifically named in the preamble to this Agreement as Parties and their permitted successors and assigns, no Party is acting as an agent for any other Person not named herein as a Party, and nothing in this Agreement or any other Transaction Agreements, express or implied, is intended to or shall confer upon any other Person, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Notwithstanding anything to the contrary set forth above, the Financing Sources shall be a third-party beneficiary of this Section 12.8, Section 12.7, Section 12.9, Section 12.11(b), Section 12.11(d), Section 12.11(f), Section 12.12(b), and Section 12.16.

Section 12.9 Amendment; Waiver. No provision of this Agreement or any other Transaction Agreement (except to the extent otherwise provided for in such Transaction Agreement) may be amended, supplemented or modified, including any Exhibits or Schedules thereto, except by a written instrument making specific reference hereto or thereto signed by all the parties to such agreement. No consent from any Indemnified Party under Section 11.5 (in each case other than the Parties) shall be required to amend this Agreement. At any time before the Closing, either Seller or Buyer may (a) extend the time for the performance of any obligation or other acts of the other Person, (b) waive any breaches or inaccuracies in the representations and warranties of the other Person contained in this Agreement or in any document delivered pursuant to this Agreement or (c) waive compliance with any covenant, agreement or condition contained in this Agreement, but such waiver of compliance with any such covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Any such waiver shall be in a written instrument duly executed by the waiving Party. No failure on the part of either Person to exercise, and no delay in exercising, any right, power or remedy under any

Transaction Agreement except as expressly set forth in this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Person preclude any other or further exercise thereof or the exercise of any other right, power or remedy. Notwithstanding anything to the contrary set forth above, this Section 12.9, Section 12.7, Section 12.8, Section 12.11(b), Section 12.11(d), Section 12.11(f), Section 12.12(b) and Section 12.16 (and any provision of this Agreement to the extent an amendment, modification, waiver or termination of such provision would modify the substance of any such section, and any related definitions insofar as they affect such sections) shall not be amended, waived or otherwise modified in a manner that is adverse to the interests of any Financing Source without the prior written consent of such Financing Source.

Section 12.10 Schedules. Any disclosure with respect to a Section of this Agreement, including any Section of the Schedules, shall be deemed to be disclosed for purposes of other Sections of this Agreement, including any Section of the Schedules, to the extent that the relevance of such disclosure would be reasonably apparent on its face to a reader of this Agreement and such disclosure. Matters reflected in any Section of the Schedules are not necessarily limited to matters required by this Agreement to be so reflected and such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature. No reference to or disclosure of any item or other matter in any Section of this Agreement, including any Section of the Schedules, shall be construed as an admission of Liability or an indication that such item or other matter is material or that such item or other matter is required to be referred to or disclosed in this Agreement. Without limiting the foregoing, no such reference to or disclosure of a possible breach or violation of any contract, Law or Governmental Order shall be construed as an admission or indication that breach or violation exists or has actually occurred.

Section 12.11 Governing Law; Submission to Jurisdiction.

(a) This Agreement and each other Transaction Agreement and all Proceedings (whether at Law, in contract, tort or otherwise, or in equity) that may be based upon, arise out of or relate to this Agreement, or any other Transaction Agreement or the negotiation, execution or performance of this Agreement or any other Transaction Agreement or the inducement of any party to enter into any Transaction Agreement, whether for breach of contract, tortious conduct or otherwise, and whether now existing or hereafter arising (each, a "Transaction Dispute"), shall be governed by and enforced in accordance with the internal laws of the State of Delaware applicable to contracts made and performed in such State without giving effect to any Law or rule that would cause the Laws of any jurisdiction other than the State of Delaware to be applied.

(b) The Parties hereby irrevocably submit to the exclusive jurisdiction personal jurisdiction of the Delaware Court of Chancery, any other court of the State of Delaware or any federal court sitting in the State of Delaware, and the appellate courts having jurisdiction of appeals in such courts, in each case, over any Transaction Dispute and each Party hereby irrevocably agrees that all claims in respect of any Transaction Dispute shall be heard and determined in such courts. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such Transaction Dispute brought in such court or any defense of inconvenient forum for the maintenance of such Transaction

Dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Notwithstanding anything to the contrary in this Agreement, including this Section 12.11(b), each of the Parties hereby agrees that it will not bring or support any Transaction Dispute or any other Proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, including, any Proceeding arising out of or relating in any way to the Financing, the Commitment Letter or any related agreements or the performance thereof, against any Financing Source, in any forum other than the Supreme Court of the State of New York, County of New York, or, if under applicable Law exclusive jurisdiction is vested in the federal courts, the United States District Court for the Southern District of New York (and appellate courts thereof), and each of the Parties hereby irrevocably submits to the exclusive personal jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such Transaction Dispute or other Proceeding and irrevocably waives, to the fullest extent permitted by applicable Law, any objection which it may now or hereafter have to the laying of venue of any such Transaction Dispute or other Proceeding brought in such court or any defense of inconvenient forum for the maintenance of such Transaction Dispute or other Proceeding.

(c) Each of the Parties hereby consents to process being served by any Party in any Proceeding by the delivery of a copy thereof in accordance with the provisions of Section 12.2.

(d) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY TRANSACTION DISPUTE OR ANY PROCEEDING (WHETHER AT LAW, IN CONTRACT, TORT OR OTHERWISE, OR IN EQUITY) THAT MAY BE BASED UPON, ARISE OUT OF OR RELATE TO THE FINANCING OR THE TRANSACTIONS CONTEMPLATED THEREBY. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF A DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER TRANSACTION AGREEMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.11(D).

(e) The foregoing consent to jurisdiction will not constitute submission to jurisdiction or general consent to service of process in the State of Delaware for any purpose except with respect to any Transaction Dispute.

(f) Notwithstanding anything herein to the contrary, any action, cause of action, claim, cross-claim or third-party claim of any kind or description, whether at law or in equity, whether in contract or in tort or otherwise, against any Financing Source in any way relating to this Agreement or any of the transactions contemplated hereby, or any dispute arising out of or relating in any way to the Financing, the Commitment Letter, the

performance thereof or the transactions contemplated thereby shall be governed by, and construed in accordance with, the Laws of the State of New York.

Section 12.12 Specific Performance.

(a) Each Party acknowledges and agrees that irreparable damage would occur, damages would be difficult to determine and would be an insufficient remedy and no adequate remedy other than specific performance would exist at law or in equity in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached (or any Party threatens such a breach). Therefore, it is agreed that each Party shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which it may be entitled, at Law or in equity, without proof of actual damages or the requirement of posting or securing any bond or other security. Such remedies shall, however, be cumulative with and not exclusive of and shall be in addition to any other remedies which any Party may have under this Agreement, or at Law or in equity or otherwise, and the exercise by a Party of any one remedy shall not preclude the exercise of any other remedy. The Parties further agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to applicable Law or inequitable for any reason, and not to assert that a remedy of monetary damages would provide an adequate remedy for any such breach or that Seller or Buyer otherwise have an adequate remedy at Law. If any Party brings any claim to enforce specifically the performance of the terms and provisions of this Agreement, in accordance with the terms of this Agreement, then, notwithstanding anything to the contrary contained herein, the Outside Date shall automatically be extended by the period of time between the commencement of such claim and the date on which such claim is fully and finally resolved.

(b) Notwithstanding the foregoing and subject to the rights of the parties to the Commitment Letter under the terms thereof, neither Seller nor any of its Subsidiaries or Affiliates nor any of its and their respective direct and indirect shareholders shall have any rights or claims (whether in contract or in tort or otherwise) against any Financing Source in connection with this Agreement, the Commitment Letter or the Financing.

Section 12.13 Rules of Construction. Interpretation of this Agreement (except as specifically provided in this Agreement, in which case such specified rules of construction shall govern with respect to this Agreement) shall be governed by the following rules of construction: (a) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (b) references to the terms Article, Section, paragraph and Exhibit are references to the Articles, Sections, paragraphs and Exhibits to this Agreement unless otherwise specified; (c) the terms "hereof", "herein", "hereby", "hereto" and derivative or similar words refer to this entire Agreement, including the Schedules and Exhibits hereto; (d) references to "$" shall mean U.S. dollars; (e) the word "including" and words of similar import shall mean "including without limitation," unless otherwise specified; (f) the word "or" shall not be exclusive unless clearly indicated and the occasional inclusion of "and/or" will not change this interpretation; (g) references to "written" or "in writing" include in electronic form; (h) provisions shall apply, when appropriate, to successive events and transactions; (i) the

headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement; (j) Seller and Buyer have each participated in the negotiation and drafting of this Agreement and if an ambiguity or question of interpretation should arise, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or burdening any Party by virtue of the authorship of any of the provisions in this Agreement; (k) a reference to any Person includes such Person's permitted successors and permitted assigns; (l) any reference to "days" means calendar days unless Business Days are expressly specified; (m) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded and, if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; (n) prior drafts of this Agreement or the other Transaction Agreements or the fact that any clauses have been added, deleted or otherwise modified from any prior drafts of this Agreement or any of the other Transaction Agreements shall not be used as an aid of construction or otherwise constitute evidence of the intent of the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of such prior drafts and (o) "will" and "shall" are to be interpreted to have the same meaning.

Section 12.14 Privilege. Buyer, for itself and its Affiliates, and its and its Affiliates' respective successors and assigns, hereby irrevocably and unconditionally acknowledges and agrees that all attorney-client privileged communications between Seller and its respective current or former Affiliates or Representatives and their counsel, including Kirkland & Ellis LLP, made before the Closing Date in connection with the negotiation, preparation, execution, delivery and Closing under any Transaction Agreement, any Transaction Dispute or, before the Closing, any other matter, shall continue after the Closing to be privileged communications with such counsel and neither Buyer nor any of its former or current Affiliates or Representatives nor any Person purporting to act on behalf of or through Buyer or any of its current of former Affiliates or Representatives, shall seek to obtain the same by any process on the grounds that the privilege attaching to such communications belongs to Buyer or the Buyer Business or on any other grounds.

Section 12.15 Guarantee. As consideration for the benefits that Buyer Guarantor will receive as a result of Seller executing this Agreement, from the date hereof until the earlier of the closing of (i) a Permitted Business Transfer or (ii) a Business Sale (after the expiration of the Earnout Expiration Date), Buyer Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Seller, as primary obligor and not as surety merely, the due and punctual payment in full of any payments (including of any Purchase Price) required hereunder or under any other Transaction Agreement, indemnification obligations of Buyer hereunder or under any other Transaction Agreement and the payment and performance of any other covenants, obligations and undertakings of Buyer hereunder or under any other Transaction Agreement (the "Guaranteed Obligations"), as and when due and payable pursuant to any provision of this Agreement or any other Transaction Agreement. Following the earlier of the closing of (i) a Permitted Business Transfer or (ii) a Business Sale (after the expiration of the Earnout Expiration Date), this Section 12.15 shall terminate and be of no further force and effect. For the avoidance of doubt and notwithstanding anything to the contrary herein, in no way shall this Section 12.15 expand the scope of the Guaranteed Obligations or otherwise alter the terms set forth herein. Until the earlier of the closing of (i) a Permitted Business Transfer or (ii) a Business Sale (after the expiration of the Earnout Expiration Date), Buyer Guarantor hereby agrees that Seller may, in its sole discretion,

at any time and from time to time, without notice to or further consent of Buyer Guarantor, reduce or waive any of the Guaranteed Obligations, and may also make any agreement with Buyer for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, without in any way impairing or affecting Buyer Guarantor's obligations under this Section 12.15 or affecting the validity or enforceability of this Section 12.15 (except to the extent the Guaranteed Obligations are increased thereby). Buyer Guarantor hereby agrees that the obligations of Buyer Guarantor hereunder shall not be released or discharged, in whole or in part, in each case, or otherwise affected by: (a) the failure or delay on the part of Seller to assert any claim or demand or to enforce any right or remedy against Buyer or Buyer Guarantor; (b) any change in the time, place or manner of payment of any of the Guaranteed Obligations, or any rescission, waiver, compromise, consolidation or other amendment or modification of any of the terms or provisions of this Agreement or any other agreement entered in connection with the Guaranteed Obligations or (c) any insolvency, bankruptcy, reorganization or other similar proceeding instituted by or against Buyer or any other Person now or hereafter liable with respect to the Guaranteed Obligations. Buyer Guarantor hereby waives promptness, diligence, presentment, demand for payment, notice of non-performance, default, dishonor and protest, notice of any Guaranteed Obligations incurred and all other notices of any kind, all defenses which may be available by virtue of any stay, moratorium or other similar law now or hereafter in effect or any right to require the marshaling of assets of Buyer or any other Person now or hereafter liable with respect to the Guaranteed Obligations. To the fullest extent permitted by Law, Buyer Guarantor hereby irrevocably and unconditionally waives any and all rights or defenses arising by reason of any Law which would otherwise require any election of remedies by Seller. Buyer Guarantor represents and warrants to Seller that the guarantee hereunder constitutes the legal, valid and binding agreement of Buyer Guarantor enforceable against Buyer Guarantor in accordance with the terms of this Section 12.15, subject to the Enforceability Exceptions. Buyer Guarantor is a legal entity duly organized, validly existing and in good standing under the laws of Delaware. Buyer Guarantor has the requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Buyer Guarantor has taken all actions or proceedings required to be taken by or on the part of Buyer Guarantor to authorize and permit the execution and delivery by Buyer Guarantor of this Agreement and the performance by Buyer Guarantor of its obligations hereunder. This Agreement has been duly executed and delivered by Buyer Guarantor. Assuming that (i) the parties to the Commitment Letter (other than Buyer or any of its Affiliates) perform their obligations in accordance with the terms of the Commitment Letter and (ii) the satisfaction or waiver of the conditions set forth in Section 9.2(a), Buyer Guarantor will have at the Closing sufficient funds to satisfy all of Buyer's obligations under this Agreement to be satisfied at the Closing, including the payment in full of the Closing Payment and all other amounts to be paid by Buyer pursuant to this Agreement on the Closing Date.

Section 12.16 Non-Recourse to Financing Sources. Notwithstanding anything herein to the contrary, and without limiting the generality of Section 12.7, Section 12.8, Section 12.9, Section 12.11(b), Section 12.11(d), Section 12.11(f) and Section 12.12(b), Seller, Buyer and each other party hereto (in each case on behalf of itself and each of its Affiliates and each of its and its Affiliates' respective shareholders, partners, members, directors, officers, employees, agents, trustees, advisors, administrators, managers, representatives and successors and assigns) shall not have and hereby waives any rights or claims against any Financing Source in connection with this Agreement, the Financing or the Commitment Letter, whether at law or equity, in contract, in tort or otherwise, and Seller, Buyer and each other party hereto (in each case on behalf of itself and

each of its Affiliates and each of its and its Affiliates' respective shareholders, partners, members, directors, officers, employees, agents, trustees, advisors, administrators, managers, representatives and successors and assigns) agrees not to commence (and if commenced agrees to dismiss or otherwise terminate) any Proceeding against any Financing Source in connection with this Agreement, the Financing, the Commitment Letter or any transaction contemplated hereby or thereby (including any Proceeding relating to the Financing or the Commitment Letter). In furtherance of and not in limitation of the foregoing waiver, it is agreed that no Financing Source shall have any liability for any claims, losses, settlements, liabilities, damages, costs, expenses, fines or penalties to Seller (or any of its Affiliates or any of its or its Affiliates' respective shareholders, partners, members, directors, officers, employees, agents, trustees, advisors, administrators, managers, representatives and successors and assigns) in connection with this Agreement or any transaction contemplated hereby or thereby (including any Proceeding relating to the Financing or the Commitment Letter). Nothing in this Section 12.16 shall in any way limit or qualify the rights of Buyer in respect of the Financing under the express terms of the Commitment Letter. Without limiting the foregoing, no Financing Source shall be subject to any special, consequential, punitive or indirect damages or damages of a tortious nature to Seller (or any of its Affiliates or any of its or its Affiliates' respective its shareholders, partners, members, directors, officers, employees, agents, trustees, advisors, administrators, managers, representatives and successors and assigns).

[*signature page follows*]

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be signed by their respective representatives thereunto duly authorized, all as of the date first written above.

ELI LILLY AND COMPANY

By: **/s/ David A. Ricks**
Name: David A. Ricks
Title: Chair and Chief Executive Officer

AMPHASTAR MEDICATION CO., LLC

By: **/s/ Jacob Liawatidewi**
Name: Jacob Liawatidewi-Amph
Title: Authorized Signatory

AMPHASTAR PHARMACEUTICALS, INC.,
solely for the purpose of Section 7.6 and Section 12.15 (and any provision of Article I or Article XII to give effect thereto)

By: **/s/ Bill Peters**
Name: Bill Peters
Title: Authorized Signatory

Exhibit 10.2

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS ([***]), HAS BEEN OMITTED BECAUSE THE INFORMATION (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED

MANUFACTURING SERVICES AGREEMENT

BETWEEN

ELI LILLY AND COMPANY

AND

AMPHASTAR PHARMACEUTICALS, INC.

DATED AS OF

June 30, 2023

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EXHIBITS

MANUFACTURING SERVICES AGREEMENT

THIS MANUFACTURING SERVICES AGREEMENT (this "Agreement") is made on June 30, 2023 (the "Closing Date"), by and between Eli Lilly and Company, an Indiana corporation ("Lilly"); and Amphastar Pharmaceuticals, Inc., a Delaware corporation ("Buyer"). Lilly and Buyer are hereinafter collectively referred to as the "Parties" and individually referred to as a "Party".

WHEREAS, Lilly and Buyer have entered into that certain Asset Purchase Agreement dated April 21, 2023 (the "Asset Purchase Agreement"), and Lilly and Buyer have entered into that certain Transition Services Agreement effective as of the Closing Date (the "Transition Services Agreement"), pursuant to which Buyer is obtaining certain transitional services related to the Product (as defined below).

WHEREAS, in connection with the transactions contemplated under the Asset Purchase Agreement, the Parties have agreed to enter into this Agreement for the manufacture and supply of commercial Product during the Term, as more fully set forth herein.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE 1
DEFINITIONS; INTERPRETATION

1.1. Definitions. Capitalized terms used in this Agreement have the meanings given below.

"Adverse Event and Other Reportable Events" has the meaning given in the Pharmacovigilance Agreement attached hereto as Exhibit I (*Pharmacovigilance Agreement*).

"Affiliate" means, with respect to a Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such first Person. For purposes of this definition, "control" and, with correlative meanings, the terms "controlled by" and "under common control with" mean (a) the possession, directly or indirectly, of the power to direct the management or policies of a business entity, whether through the ownership of voting securities, by contract relating to voting rights or corporate governance, or otherwise or (b) the ownership, directly or indirectly, of more than 50% of the voting securities or other ownership interest of a business entity (or, with respect to a limited partnership or other similar entity, its general partner or controlling entity).

"Agreement" has the meaning as defined in the preamble.

"Ancillary Agreement(s)" has the meaning set forth in the Asset Purchase Agreement.

"API" means the active pharmaceutical ingredient of the Product, *i.e.*, glucagon.

"Applicable Laws" means any domestic or foreign, federal, state or local statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate, judgment, decree, injunction, writ, order, subpoena, or like action of a Governmental Authority, including the U.S. Foreign Corrupt Practices Act of 1977, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.), the Anti-Kickback Statute (42 U.S.C. § 1320a-7b), Civil Monetary

Penalty Statute (42 U.S.C. § 1320a-7a), the False Claims Act (31 U.S.C. § 3729 et seq.), any and all applicable privacy and security laws inclusive (as applicable) of Regulation (EU) 2016/679 of the European Parliament and of the Council of the European Union (the "General Data Protection Regulation") and any implementing, derivative or related national legislation, rule, or regulation enacted thereunder by any EU Member State subject to its jurisdiction; the California Consumer Privacy Act of 2018 ("CCPA") and the Personal Information Protection Law of the People's Republic of China, comparable state statutes, the regulations promulgated under all such statutes, each as amended and any laws enacted to implement the Organization of Economic Cooperation and Development Convention on Combating Bribery of Foreign Officials in International Business Transactions, Industry Codes dealing with government procurement, conflicts of interest, corruption or bribery, cGMP, GDP and GSP.

"Asset Purchase Agreement" has the meaning given in the recitals.

"Assigned Manufacturing Know-How" has the meaning given in the Intellectual Property License Agreement.

"Background Intellectual Property Rights" means, with respect to a Party, all Intellectual Property Rights owned or controlled by such Party either (a) prior to the Closing Date or (b) at any time after the Closing Date if such Intellectual Property Rights are invented, conceived, discovered, created, developed, or otherwise obtained or acquired outside of the scope of activities contemplated by this Agreement. For clarity, Buyer's Background Intellectual Property Rights include the Intellectual Property Rights assigned to Buyer under the Asset Purchase Agreement.

"Binding Forecast" has the meaning given in Section 2.2(a).

"Business Day" means any Day other than Saturday, Sunday or a Day on which banking institutions in New York, New York or Indianapolis, Indiana are permitted or obligated by Applicable Law to remain closed.

"Buyer" has the meaning as defined in the preamble.

"Buyer Indemnified Party(ies)" has the meaning given in Section 6.4(b).

"Buyer Labeled Products" has the meaning given in Section 4.2(a).

"Buyer NDC Number" has the meaning given in Section 4.3(f).

"Buyer Transitional Trademark License" has the meaning given in Section 8.2.

"Buyer's Supply Chain Transfer Completion" has the meaning given in Exhibit N.

[***]

[***]

"Clinical Study" means any clinical study (for clarity, including any clinical trial, post-approval study or post-marketing surveillance study) with respect to the Product for which Lilly or its Affiliate(s) remains the sponsor following the Closing Date.

"Closing Date" has the meaning given in the preamble.

"CMO Supply Agreement" means any contract manufacturing and services agreement listed on Exhibit L (*CMO Supply Agreements*) hereto.

"CMO Supply Agreement Assignment Date" has the meaning set forth in Section 4.1(e).

"Commercially Reasonable Efforts" means with respect to the performance by or on behalf of Lilly or any of its Affiliates of any applicable manufacturing and supply activities hereunder with respect to the Product, or with respect to either Party in performing other activities as set forth under this Agreement, the carrying out of such activities using efforts and resources comparable to the efforts and resources commonly used by such Party for products with similar market potential for use in the Supply Territory, at a similar stage in their development or product life, taking into account issues of safety and efficacy, the competitiveness of Third Party products in development and in the marketplace, supply chain management considerations, the proprietary position of the compound, product or therapy (including with respect to patent or regulatory exclusivity), the regulatory structure involved, the profitability of the applicable compound, product or therapy (including pricing and reimbursement status achieved), and other relevant technical, legal, commercial, scientific or medical factors.

"Compliance Requirements" means the relevant compliance requirements to be met by Buyer (including its Affiliates, licensees and sublicensees, and their respective contractors and subcontractors) in performing under this Agreement or the Transition Services Agreement (as applicable) as further specified in Exhibit G (*Compliance Requirements*) hereto.

"Confidential Information" has the meaning as defined in Section 9.1.

"Current Good Manufacturing Practices" or "cGMP" means the applicable current standards for conducting manufacturing activities for pharmaceutical products (or active pharmaceutical ingredients), medical devices, and combination products, as applicable, as are required by any applicable Governmental Authority in the Supply Territory.

"Current Practices" means substantially the same level of effort and quality, with respect to the manufacture of Product, as was exercised by or on behalf of Lilly in the [***] period immediately prior to the Closing Date.

"Day" means a calendar day, unless otherwise specified.

"Delivery" means the delivery of the Product to the designated delivery location in accordance with Section 2.9(b), and the terms "Deliver," "Delivery" and "Delivered" will be construed accordingly.

"Demo Version" has the meaning set forth in the Asset Purchase Agreement. Buyer acknowledges that this Agreement does not cover manufacturing, supply or other services with respect to the Demo Version.

"Detail" or "Detailing" means, in relation to a Product, to disseminate scientific and medical information about such Product in a person-to-person meeting between a medical representative and a health care provider ("HCP") or other appropriate professionals during which a presentation on approved medical uses, efficacy, safety, or costs is made in order to promote the use of the Product for appropriate patients.

"Dispute" has the meaning given in Section 12.4(a).

"Distribute" means importing, selling, reselling, distributing, exporting, taking or transferring title to, handling, storing, or transporting the Product in the Supply Territory, and other activities associated with the foregoing listed activities, including inventory management and control, warehousing and distribution, invoicing, collection of sales proceeds, and the handling of returns. "Distribution" or "Distribution" will be construed accordingly.

"Educational Materials" means all informational materials, developed in the scope of this Agreement, the intent of which is to educate HCPs or patients regarding the Product. This includes materials used for Scientific Exchange with HCPs.

"Equipment" means any equipment that Buyer acquired under the Asset Purchase Agreement and that is being used by [***] in connection with the manufacture and supply of Product under this Agreement.

"Equipment Transfer Date" has the meaning given in Section 4.1(d).

"Excess Percentage" has the meaning set forth in Exhibit Q (*Additional Definitions*) hereto.

"Excess Purchase Order" has the meaning given in Section 2.2(c).

"Excluded Territory" means any country specified in Exhibit A (*Supply Territory*) hereto as an "Excluded Territory."

"FDA" has the meaning set forth in the Asset Purchase Agreement.

"Fee" has the meaning set forth in Exhibit Q (*Additional Definitions*) hereto.

"Force Majeure" has the meaning given in Section 12.1.

"Forecast" has the meaning given in Section 2.2(a).

"Foreign Affiliate" has the meaning set forth in Exhibit Q (*Additional Definitions*) hereto.

"Global Patient Safety Database" has the meaning given in the Pharmacovigilance Agreement attached hereto as Exhibit I (*Pharmacovigilance Agreement*).

"Good Distribution Practices" or "Good Supply Practices" ("GDP" or "GSP") means all applicable current Good Distribution or Supply Practices including, as applicable, WHO TRS 957 Annex 5 and the equivalent Applicable Laws and Industry Codes in any relevant country, each as may be amended and applicable from time to time.

"Governmental Authority" means any international, regional, national, federal, state, or local government entity, authority, agency, instrumentality, court, tribunal, regulatory commission or other body, either foreign or domestic, whether legislative, judicial, administrative or executive.

"Indirect Tax" means any value added, goods and services, sales, use, consumption, service, or similar tax of any kind whatsoever, including VAT, imposed by any Governmental Authority in any country at any level.

"Industry Codes" means all applicable rules of non-governmental bodies such as pharmaceutical industry trade associations and self-regulatory organizations that are generally accepted as "good practice" within the research based pharmaceutical industry, including those relating to good marketing practices (e.g., cGMP, GDP and GSP) and the relationship of pharmaceutical companies with health care providers and patients (e.g., dealing with government procurement, conflicts of interest and corruption or bribery).

"Initial Term" has the meaning given in Section 11.1.

"Inspection" has the meaning given in Section 2.11(c).

"Intellectual Property Rights" means all trademarks, patents, trade dress, service marks, domain names, business names, copyrights (or rights in any of the foregoing, as applicable) and any other intangible property, and all applications and registrations therefor, and all inventions, know-how, trade secrets, and other intellectual property and proprietary rights arising under any jurisdiction.

"Interest Rate" has the meaning set forth in Exhibit Q (*Additional Definitions*) hereto.

"Internal Compliance Codes" means a Party's internal policies and procedures intended to ensure that a Party complies with Applicable Laws, Industry Codes, Party Specific Regulations, and such Party's internal ethical, medical and similar standards.

"Inventories" has the meaning given in Section 11.3(b).

"Lead Time" mean the minimum lead time for a Product set forth on Exhibit E (*Lilly Contractors, Lead Time and Lilly Facilities*) hereto.

"Liability" has the meaning set forth in the Asset Purchase Agreement.

"Liability Cap" has the meaning set forth in Exhibit Q (*Additional Definitions*) hereto.

"Lilly" has the meaning given in the preamble.

"Lilly Agreement" has the meaning given in Section 2.1(b).

"Lilly Contractor" means each Third Party listed in Section 1 of Exhibit E (*Lilly Contractors, Lead Time and Lilly Facilities*) hereto.

"Lilly Facility" mean the facilities set forth in Section 3 of Exhibit E (*Lilly Contractors, Lead Time and Lilly Facilities*) hereto.

"Lilly Indemnified Party(ies)" has the meaning given in Section 6.4(a).

"Lilly Initial Forecast" means Lilly's good faith estimate of Product required to meet demand for the [***] months following the Closing Date, on a month-by-month and SKU-by-SKU basis, as set forth on Exhibit D (*Lilly Initial Forecast*) hereto, which Exhibit may be updated by Lilly prior to or on the Closing Date and, after the Closing Date, may be modified by mutual agreement of the Project Leaders in writing (including by electronic transmission such as email) in accordance with Section 7.13.

"Lilly Labeled Products" has the meaning given in Section 4.2(a).

"Lilly MSA License" has the meaning given in Section 8.3.

"Local Net End Selling Price" has the meaning set forth in Exhibit Q (*Additional Definitions*) hereto.

"Management Representative(s)" has the meaning giving in Section 12.4(a).

"Manufacturing Technology Transfer Plan" has the meaning given in Section 4.1(a) and as set forth in Exhibit B (*Manufacturing Technology Transfer Plan*) hereto.

"Marketing Authorization" means the licenses for pharmaceutical products or medical device products issued by the relevant Governmental Authority and any supplements or amendments to such government authorizations in a country or jurisdiction that authorize the holder of such licenses to manufacture or import (as the case may be), market, sell, or Distribute the Product in such country or jurisdiction.

"Marketing Authorization Transfer Plan" has the meaning given in Section 4.3(b) and as set forth in Exhibit C (*Marketing Authorization Transfer Plan*) hereto.

"Minimum Order Quantity" has the meaning set forth in Exhibit Q (*Additional Definitions*) hereto.

"Minor Excess Purchase Order" has the meaning given in Section 2.2(c).

"MSA Product Intellectual Property Rights" has the meaning set forth in Exhibit Q (*Additional Definitions*) hereto.

"NDC" means a national drug code as issued by the FDA.

"Nonconforming Product" means a Product received by Buyer from Lilly that does not conform to the Product Warranties.

"Non-Performing Party" has the meaning given in Section 12.2.

"Party" or "Parties" has the meaning given in the preamble.

"Party Specific Regulations" means all judgments, decrees, orders or similar decisions issued by any Governmental Authority specific to a Party; and all consent decrees, corporate integrity agreements, or other agreements or undertakings of any kind by a Party with any Governmental Authority, in each case as the same may be in effect from time to time and applicable to a Party's activities contemplated by this Agreement.

"Pending Application" means any pending applications for Marketing Authorization that have been submitted by Lilly or its Affiliate to, but not been approved by, the applicable Governmental Authority in a country or jurisdiction (and that have not been withdrawn) as of the Closing Date.

"Percentage Cap" has the meaning set forth in Exhibit Q (*Additional Definitions*) hereto.

"Percentage Range" has the meaning set forth in Exhibit Q (*Additional Definitions*) hereto.

"Permitted Buyer Label Change" has the meaning set forth in Section 2.8(a).

"Performance Records" has the meaning given in Section 7.5(a).

"Person" means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, corporation, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, or any other legal entity, including a Governmental Authority.

"Pharmacovigilance Agreement" means that certain Pharmacovigilance Agreement consistent with the terms of this Agreement to outline the responsibilities for safety and regulatory management for the Products including exchange of safety information, labeling responsibilities, safety surveillance, signal detection and reporting to Governmental Authorities, attached hereto as Exhibit I (*Pharmacovigilance Agreement*), executed as of the Closing Date, as may be amended or updated by the Parties from time to time independently from this Agreement in accordance with the terms and conditions set forth therein.

"Post-Marketing Authorization Period" means, on a country-by-country basis, the period starting upon the transfer of the applicable Marketing Authorization to Buyer or its designated Affiliate until the expiration of the Term.

"Pre-Marketing Authorization Period" means, on a country-by-country basis for the applicable Marketing Authorization, the period starting on the Closing Date until the earlier of (a) the transfer of the applicable Marketing Authorization to Buyer or its designated Affiliate, and (b) the expiration of the Term.

"Product" means the powdered formulation containing glucagon for nasal administration and the related unit dose system for powder marketed for sale to consumers as of the Closing Date as BAQSIMI®. As of the Closing Date, the Product is available in the form of a one-pack Product or, in the case of the United States of America and Germany only, optionally a two-pack Product. For clarity, the Demo Version does not constitute the Product. Lilly's SKUs and corresponding descriptions for the Product are set forth in Exhibit M (*Product SKUs and Description*) hereto.

"Product Complaint" has the meaning given in the Quality Agreement.

"Product Supply Price" means, with respect to the applicable Product or Inventory, the price set forth in Exhibit F (*Product Supply Price*) hereto, as may be updated pursuant to this Agreement (including any permitted price increases in accordance with Section 2.4 or Section 2.8(a)).

"Product Warranties" has the meaning given in Section 2.12.

"Project Leader" has the meaning given in Section 7.13.

"Promote" means any activity undertaken, organized or sponsored by Buyer in the Supply Territory directed at HCPs, patients, (or any other subject, always in compliance with the prevailing Applicable Laws) to promote the prescription, recommendation, supply, administration, or consumption of the Product in the Supply Territory through all methods of communications, including the internet or social media, including: (a) conducting Promotional Activities; and (b) organizing promotional meetings for HCPs on proper uses of the Product. "Promoting" and "Promotion" will have their correlative meanings.

"Promotional Activities" means all informational and persuasive activities, including Detailing and distribution of select Promotional Materials and Educational Materials, the intent of which is to encourage (a) the prescribing or dispensing of Product by HCPs to patients, (b) the supply, purchase, or use of Product to or by an institution or government customer, or (c) patients to request a specific Product (where acceptable under Applicable Law).

"Promotional Materials" means all informational and persuasive materials, including materials for Detailing, developed in the scope of this Agreement, the intent of which is to (a) encourage the prescribing or dispensing of Product by healthcare professionals to patients, (b) encourage the supply, purchase, or use of Product by an institution or government customer, or (c) encourage patients to request a specific Product (where acceptable under Applicable Law).

"PV Countries" has the meaning set forth in Exhibit Q (*Additional Definitions*) hereto.

"Quality Agreement" means that certain Quality Agreement attached hereto as Exhibit J (*Quality Agreement*), executed as of the Closing Date.

"Recall" means the recovery from the market of any lot or batch of a known or suspected defective Product that has any issues as to safety and efficacy or as otherwise required by Applicable Laws or Governmental Authorities in the Supply Territory.

"Regulatory Approval(s)" has the meaning given in Section 2.15(a).

"Regulatory Transfer Date" has the meaning given in Section 4.3(d).

"Renewal Term" has the meaning given in Section 11.1.

"Requirements" has the meaning set forth in Exhibit Q (*Additional Definitions*) hereto.

"Restricted Person" has the meaning given in Section 7.4(b).

"Sanctioned Person" has the meaning given in Section 7.4(b).

"Sanctioned Territory" has the meaning given in Section 7.4(b).

"Scientific Exchange" means scientific and educational activities not intended to promote any product or service, including but not limited to educational grants, the provision

of accurate and balanced medical information in response to unsolicited inquiries from HCP with respect to the Product, non-promotional scientific press releases, and non-branded and non-promotional disease awareness communications.

"Services Agreement" has the meaning given in Exhibit N.

"SKU" means a stock-keeping unit or other similar alphanumeric identification of Product. The Parties acknowledge that there may be more than one unique SKU for a Product.

"Specifications" has the meaning given in the Quality Agreement.

"Supply Territory" means those countries and jurisdictions in which Lilly holds a Marketing Authorization for the Product and has commercially launched the Product as of the Closing Date. The Supply Territory includes the countries set forth on Exhibit A (*Supply Territory*) hereto. For clarity, the Supply Territory does not include any Excluded Territory.

"Support and Reimbursement Activities" means (a) providing support services to patients, and (b) obtaining hospital, community health center, or retail pharmacy listings, managing pricing, bidding, and reimbursement activities.

"Tax" means all taxes, levies, duties, imposts, charges and withholdings of any nature whatsoever together with all penalties, charges and interest relating to any of them or to any failure to file any return required for the purposes of any of them.

"Term" has the meaning given in Section 11.1.

"Transition Services Agreement" has the meaning given in the recitals.

"VAT" means value-added Tax.

"Wind-Down Period" has the meaning given in Section 4.2(a).

"Withdrawal Territory" means each of Australia, Qatar, Lebanon, Kuwait and Taiwan.

ARTICLE 2
LILLY'S SALES TO BUYER OF PRODUCT

2.1. General Sales Terms and Conditions.

(a) *Manufacture and Purchase of Product.* On a country-by-country basis in the Supply Territory during the Term, subject to the terms and conditions of this Agreement, Buyer, by itself or through its Affiliates, shall have the right to purchase from Lilly, for the Product Supply Price (subject to Section 2.5 and Section 11.3(c)), the Product (as more fully set forth in Section 2.2 (Forecasting, Ordering and Supply of Product)), and Lilly, by itself or through its Affiliates, shall sell such Product to Buyer or its designated Affiliate.

(b) *Contractors.* The Lilly Contractors used by Lilly or its Affiliates for the manufacturing, packaging, labelling, or supply of the Product as of the Closing Date are set forth on Exhibit E (*Lilly Contractors, Lead Time and Lilly Facilities*) hereto. The Lilly Contractors and their applicable subcontractors and Affiliates will be deemed to have been

approved by Buyer for the scope of activity set forth in Exhibit E hereto with respect to the manufacturing, packaging, labelling, or supply of the Product. Additional contractors and subcontractors may be added by Lilly to Exhibit E hereto, subject to prior written consent by Buyer (such approval not to be unreasonably withheld, conditioned, or delayed). Once agreed by Buyer, such additional contractor will automatically be deemed a "Lilly Contractor" hereunder. Lilly shall not use any Third Party in the manufacture, packaging, labelling, or supply of the Product other than Lilly Contractors or Affiliates of such entities without consent of Buyer. During the Term, Lilly shall, at cost and expense to Buyer, take all actions reasonably necessary to maintain and keep in full force and effect all of its agreements with Lilly Contractors with respect to the Product to the extent necessary for Lilly to fulfill its obligations under this Agreement (each such agreement, a "Lilly Agreement"), including without limitation, the timely exercise of any rights or obligations to renew the term or, if applicable, exclusivity obligations, of such Lilly Agreement, in each case to the extent required for Lilly to perform its obligations during the Term under and in accordance with this Agreement, and otherwise to the extent requested by Buyer pursuant to the following sentence to exercise any rights under each such Lilly Agreement in connection with the Product. Without limiting the last sentence of Section 2.1(c), in the event of any breach of this Agreement or breach of any Lilly Agreement arising from the act or omission of a Lilly Contractor under a Lilly Agreement, the Parties shall, at Buyer's reasonable written request, promptly initiate good faith discussions, and in any case within [***] Days following Buyer's request, to discuss to what extent and in what manner to pursue any reasonably available remedies for such breach under relevant Lilly's agreement with such Lilly Contractor. At Buyer's reasonable written request and expense, Lilly shall exercise its rights under any such Lilly Agreement with respect to such breach and pass through to Buyer any remedies (after deducting any reimbursement owed by Buyer) able to be secured thereunder. For clarity, without limiting any financial obligations of Buyer hereunder, Buyer agrees and shall be responsible for any and all costs and expenses incurred by Lilly in carrying out Lilly's actions contemplated in this Section 2.1(b), including maintaining or renewing (i) any applicable Lilly Agreement or (ii) any applicable rights of Lilly or obligations of a Lilly Contractor under any applicable Lilly Agreement, in each case to the extent necessary for Lilly to fulfill its obligations under this Agreement.

(c) *Standard of Care.* During the Term, Lilly shall (and shall cause its Affiliates to, and shall use Commercially Reasonable Efforts to cause the Lilly Contractors to) manufacture the Product in accordance with the Specifications, Applicable Laws, cGMP, the Quality Agreement, and the terms and conditions of this Agreement, in each case in a manner consistent in all material respects with Current Practices. Buyer acknowledges that the Lilly Contractors perform certain manufacturing activities relating to the Product, and Lilly shall require, and use Commercially Reasonable Efforts to cause, the Lilly Contractors to continue to manufacture and supply Product during the Term in accordance with Current Practices, but in any event Lilly shall be responsible for acts or omissions of the Lilly Contractors as if such acts were performed by Lilly under this Agreement. Lilly and its applicable Affiliates shall be entitled, in the ordinary course of business, to manage any of their respective agreements with a Lilly Contractor that exist as of the Closing Date; *provided* that Lilly and its applicable Affiliates shall obtain Buyer's prior written consent before (i) amending or modifying any material right in a materially adverse manner any of such agreements with a Lilly Contractor in a manner that adversely impacts the manufacture of the Product for Buyer in any material manner or (ii) entering into a new agreement with a Lilly Contractor for the performance of activities under this Agreement on terms materially different from terms utilized by Lilly and its Affiliates prior to the Closing Date to procure such activities for itself.

2.2. Forecasting, Ordering and Supply of Product.

(a) *Forecasts.* The Lilly Initial Forecast, prepared in good faith by Lilly based on Lilly's then-current historical demand and estimated future demand for the Product in the Supply Territory, is set forth in Exhibit D (*Lilly Initial Forecast*) hereto, as may be updated by Lilly prior to or on the Closing Date and, after the Closing Date, may be modified by mutual agreement of the Project Leaders in writing (including by electronic transmission such as email) in accordance with Section 7.13. After the Closing Date and during the Term on a [***] basis, Buyer shall provide to Lilly a [***]-month, written forecast for Buyer's purchase requirements of the Product under this Agreement (such forecast and the Lilly Initial Forecast, each a "Forecast"), subject to the Lead Time and Minimum Order Quantity. The first [***] months of each Forecast (for clarity, including the Lilly Initial Forecast which constitutes the first Forecast under this Agreement) will be binding on Buyer and Lilly for purposes of supplying the Product under this Agreement and subject to Section 2.8 of the Transition Services Agreement, supplying the Lilly Sold Product thereunder (for clarity, not binding with respect to any of the services that Lilly may provide under the Transition Services Agreement with respect to Lilly's sale of the Product to customers), in each case, on a country-by-country, month-by-month and SKU-by-SKU basis ("Binding Forecast"); *provided* that, with respect to the non-binding portion of each Forecast (for clarity, including the Lilly Initial Forecast), Buyer shall not, in any subsequent Forecast, change the non-binding estimate for such month by more than the Excess Percentage from the corresponding initial estimate when such month first appeared on any Forecast. The Lilly Initial Forecast is a good faith estimate and shall not be used by Buyer to allege that Lilly has failed to fulfill its obligations hereunder or under the Transition Services Agreement with respect to sales of the Product to customers. For avoidance of doubt, the Forecast includes Product that will be sold by Lilly or its Affiliates under the Transition Services Agreement and Product that will be sold by or on behalf of Buyer outside of the Transition Services Agreement, and the available Product will be allocated for such purposes pursuant to mutual agreement by the Parties.

(b) *Purchase Orders.* Any purchase order issued by Buyer to Lilly for the Product will include the SKU number(s), the quantity of Product ordered, the unit of measure, unit price, Delivery date, the applicable Lilly Facility as set forth on Exhibit E hereto and the address to which the shipment is being transported by Buyer and any other detail the Parties may agree after the Closing Date, and in compliance with the Lead Time and Minimum Order Quantity. Any changes to the Minimum Order Quantity or Lead Time shall be subject to mutual agreement by the Parties. Lilly shall acknowledge receipt of the purchase order within [***] Business Days and shall accept purchase orders that are in accordance with the then-current Forecast, Minimum Order Quantity and Lead Time. Subject to the last sentence of Section 2.9(b) (Delivery), if Lilly believes it will not be able to meet the requested Delivery date for any accepted purchase order, Lilly shall provide Buyer with an expected Delivery date for Product ordered in any such accepted purchase order.

(c) *Excess Purchase Orders.* If a purchase order, or any accumulated purchase order quantity for a given period, exceeds the quantities for the same period set forth in the Forecast (any such purchase order, an "Excess Purchase Order"), then Lilly may accept or reject such Excess Purchase Order in its sole discretion, *provided* that Lilly shall use Commercially Reasonable Efforts to accept Excess Purchase Orders that are up to the Excess Percentage in excess of the quantities specified in Buyer's Forecast for the applicable period (each such Excess Purchase Order, a "Minor Excess Purchase Order") on the same terms and conditions as set forth in Section 2.2(b) above. If Lilly accepts an Excess Purchase Order but

is unable to meet the requested Delivery date listed on the purchase order, then any failure to meet such requested Delivery date will not be a breach of this Agreement by Lilly. Subject to the last sentence of Section 2.9(b) (Delivery), if Lilly believes it will not be able to meet the requested Delivery date for any Excess Purchase Order, Lilly shall use Commercially Reasonable Efforts to provide Buyer with an expected Delivery date for Product ordered in any such accepted Excess Purchase Order. For clarity, except to the extent subject to Section 2.4 or Section 2.8(a), for any Excess Purchase Order, the Product Supply Price will not be subject to change.

(d) *Firm Orders*. Unless otherwise expressly set forth in this Agreement, all purchase orders submitted by Buyer and accepted by Lilly under this Agreement will be firm and are non-cancellable, non-refundable, and non-returnable.

(e) *Suspensions*. If production or Delivery is suspended due to any non-Force Majeure regulatory requirements in all or any part of the Supply Territory (including a renewal or change to Regulatory Approvals or the need to obtain new Regulatory Approvals which are necessary or desirable for the performance of this Agreement) due to no fault of either Party, and which causes or is reasonably expected to cause an interruption to the supply of the Product, then Lilly shall promptly notify Buyer and Buyer and Lilly shall discuss in good faith the management of such interruption.

(f) *No Other Terms*. The terms and conditions of this Agreement apply to all purchase orders for Product submitted by Buyer to Lilly during the Term, whether or not this Agreement or its terms and conditions are expressly referenced in such order. This Agreement supersedes all terms contained in any order, acceptance, acknowledgement, packing slip, invoice or other purchase or sales form used by either Party in connection with the purchase and sale of Product under this Agreement, and neither Party will be bound by, and each Party specifically objects to as a material alteration to this Agreement, any term, condition or other provision contained in any such form that is different from or in addition to the provisions of this Agreement other than the information required by this Agreement to be set forth in a purchase order for the Product (including the quantity and Delivery date therefor), unless the Party receiving such form specifically agrees to such provision in a writing signed by it.

2.3. Exclusive Purchase and Supply. Except as set forth in Section 3.9 (Lilly's Reserved Rights), during the Term, Lilly shall (itself or through its Affiliates or the Lilly Contractors) manufacture and sell the Product on an exclusive basis to Buyer in the Supply Territory (except as needed by Lilly to conduct its activities under this Agreement), and, prior to the commencement of performance under any Services Agreement to the extent mutually agreed by the Parties in accordance with Exhibit N, Buyer shall purchase its entire requirement of the Product from Lilly and no other Person under and in accordance with this Agreement. Except with Buyer's advance written approval, Lilly shall not manufacture or sell the Product for any Third Party or for any territory outside of the Supply Territory, except to the extent set forth in Section 3.9 or provided for in the Transition Services Agreement as Lilly's donations, sponsorships or gifts. Notwithstanding the foregoing, during the Term for so long as a Clinical Study is managed by or on behalf of Lilly or its Affiliate, Lilly shall have the right to provide Product (*i.e.*, packaged for use in such Clinical Study) to itself or such Affiliate, or any Third Party managing such Clinical Study on behalf of Lilly or such Affiliate, in each case in the performance of the Transition Services Agreement in accordance with the terms thereof. Lilly shall amend or modify its agreements with Lilly Contractors, if necessary, to allow Buyer to

negotiate and enter into its own agreements with Lilly Contractors after the Closing Date; *provided* that Buyer shall, in accordance with the Transition Services Agreement, be responsible for all costs and expenses (including for FTEs) incurred by Lilly or any of its Affiliates or the Lilly Contractors in assisting Buyer pursuant to the foregoing, subject to the limitations and conditions with respect to the Service Charge as set forth in the Transition Services Agreement.

2.4. [***]. Subject to the rest of this Section 2.4 and any of Section 2.8(a) and Section 2.5, the Product Supply Price with respect to the applicable Product or Inventory, as set forth on Exhibit F (*Product Supply Price*) hereto, (a) [***] If Buyer objects to the increase of the Product Supply Price, then the matter shall be resolved in accordance with Section 12.4(a) (except the last sentence). If the matter is not resolved through the procedures described in Section 12.4(a) (except the last sentence) within [***] Days after such matter is referred to the Parties' senior officers, then the Parties shall agree to arbitration to resolve the matter, and Lilly shall have no obligation to continue to supply the Product until the Parties reach an agreement upon an updated Product Supply Price. Notwithstanding the foregoing, in no circumstance will the Product Supply Price exceed the Percentage Cap.

2.5. [***].

2.6. Taxes. The Product Supply Price is exclusive of, and Buyer shall be solely responsible for and shall pay, all applicable Indirect Taxes required to be paid with respect to the Product upon receipt of a valid invoice reflecting any such Indirect Tax.

2.7. Payment Terms.

Invoices and Payment. For Product that will be sold by or on behalf of Buyer (and not by Lilly under the Transition Services Agreement), Lilly shall issue invoices to Buyer upon Lilly's shipping of the Product for amounts payable (including any VAT, if applicable) for such Product, and Buyer shall make payments in U.S. Dollars to Lilly via wire transfer in no later than [***] Days from the date of the invoice. For avoidance of doubt, certain of the Parties' respective financial rights and obligations with respect to Product sold by Lilly or its Affiliates for the benefit of Buyer under the Transition Services Agreement, such as Service Charges for the distribution or sales of such Product and payments for recalls of such Product, shall be governed by the terms thereof, including Exhibit B (*Net Economic Benefit*) thereto.

(a) *Fee*. Buyer agrees to pay a non-refundable, non-creditable amount of $4,000,000 to Lilly in consideration for the assignment of [***].

(b) *Late Payments.* If Buyer fails to make any payment for any invoiced amount within [***] Days of the date such payment was due to Lilly, and such amount is not disputed in good faith within [***] Days of Buyer receiving an invoice for such amount, then Buyer shall pay to Lilly a finance charge at a rate equal to the Interest Rate. In addition, Buyer shall indemnify Lilly for its costs, including reasonable attorneys' fees and disbursements, incurred to collect any such unpaid amount.

2.8. Change Requests and Changes.

(a) *Written Materials.* During the Term, with respect to a SKU, other than an initial, one-time, label and printed material change as required for Buyer to commence marketing and sale of such SKU during the applicable Post-Marketing Authorization Period in

a country in the Supply Territory (which change shall be made solely to the extent such change is within Lilly's then-current capabilities) ("Permitted Buyer Label Change"), neither of the Parties shall be required to make any changes to written material such as technical information, packaging materials (including labeling, package inserts, cartons or other written material of a technical nature), the Specifications, analytical methods, or manufacturing process used to manufacture the Product (including the standard operating procedures incorporated into the Product, Specifications, methods or processes), unless such changes (i) were not known or reasonably expected to be known to the Parties at the time of the Permitted Buyer Label Change, and are required to do so by Applicable Laws or mandated by a Governmental Authority in the Supply Territory or (ii) mutually agreed by the Parties. Unless and only to the extent that any Permitted Buyer Label Changes are required to occur during the Term for any applicable country or otherwise mutually agreed to by the Parties, Lilly and Buyer shall cooperate in good faith to minimize the need to make Permitted Buyer Label Changes during the Term with respect to the applicable country; and Buyer shall, in accordance with the Transition Services Agreement, be responsible for all incremental costs (including for Full Time Equivalent ("FTEs")) of making any Permitted Buyer Label Changes and if the change increases Lilly's per unit costs (including the FTEs, subject to the limitations and conditions with respect to the Service Charge as set forth in the Transition Services Agreement), then the Parties shall agree in good faith on an appropriate increase to the Product Supply Price to account for such increased costs.

(b) *Packaging and Specifications*. Except as expressly set forth in this Agreement, Lilly shall not, without the prior written consent of Buyer, change the Specifications, appearance, or packaging configuration, or be required to make such changes.

(c) *Changes*. During the Term, Lilly shall not make any changes to the manufacturing process for the Product or activities under this Agreement unless a change is required to comply with Applicable Law or a Governmental Authority. Without limiting Buyer's obligations under Section 2.1(b) and Section 2.1(c), Buyer acknowledges that certain minor changes (*i.e.*, those that are not Major Changes, as defined in the Quality Agreement) may be required for Lilly to supply Product under this Agreement and that some changes may not be within Lilly's control. In the event that any changes take place, Lilly shall solely manage all changes according to Lilly's then-current quality policies and procedures; *provided* that (i) Lilly shall provide reasonable prior written notice to Buyer where a change is required by Applicable Law or a Governmental Authority, is expected to impact Product in the market, or is expected to require regulatory reporting by Buyer, and (ii) Lilly shall cooperate with Buyer to minimize any supply disruption as a result of such a change prior to any amended Regulatory Approval being obtained. In all cases, Lilly shall permit Buyer an opportunity to participate in decisions regarding, and the implementation of, any remedial action to address changes. Where applicable during the Pre-Marketing Authorization Period, Buyer shall accept and handle regulatory submissions following Lilly's instructions (to the extent compatible with Applicable Laws), in the event of any such required changes.

(d) During the Pre-Marketing Authorization Period, Lilly will, or will continue to, implement and manage the CMC changes as set forth in Exhibit O (*CMC Changes*) hereto; and during the post-Marketing Authorization Period, Buyer will continue to implement such CMC changes to the extent not completed at the time of transfer of applicable Marketing Authorizations.

2.9. Delivery of Product and Delivery Location.

(a) *Title and Risk of Loss.* Lilly shall (itself or through its Affiliates or the Lilly Contractors) be responsible for manufacturing, quality release, packaging, handling, and transportation of Product prior to Delivery of the Product, in each case in accordance with this Agreement and the Quality Agreement. On and after Delivery, Buyer shall be responsible for all handling, storage, and transportation of Product, in each case in accordance with this Agreement and the Quality Agreement. Title and risk of loss for Product transfer to Buyer upon Delivery.

(b) *Delivery.* Lilly shall fulfill all Deliveries under this Agreement [***] (Incoterms 2020) at the applicable Lilly Facility as set forth on Exhibit E hereto within [***] Business Days of the Delivery date set forth in the purchase order. Notwithstanding anything herein to the contrary, Lilly shall be deemed to have satisfied its obligations with respect to any requested Delivery date if the applicable actual Delivery date occurs not more than [***] Business Days after such requested delivery date (with such number of Business Days to be deemed to be reasonably extended in the event of a critical deviation or other quality issue with respect to the applicable Product outside the control of Lilly or its Affiliates, provided that Lilly notifies Buyer promptly after its awareness of such delay) and not more than [***] Days before such requested delivery date. Lilly will be deemed to have fulfilled any order so long as, on a SKU-by-SKU basis, the quantity of Product Delivered is between the Percentage Range (inclusive) of the quantity specified in such order, and Lilly may ship to Buyer, and Buyer shall purchase, such quantity, including any lesser quantity, in full satisfaction of such order, upon revision of the applicable invoice to reflect such actual quantity of Product.

(c) *Unavoidable Delays.* For the avoidance of doubt, notwithstanding anything to the contrary herein, any delay or interruption in the supply of Product due to a Force Majeure or due to Buyer's gross negligence, willful misconduct or breach of this Agreement will not constitute a breach of this Agreement by Lilly.

2.10. Inspection of Product.

(a) *Inspection and Acceptance.* For each shipment, Buyer shall examine the quantity, batch number, outside packaging, documents accompanying the shipment and temperature of the Product immediately following receipt, but in no event later than [***] Business Days following the date of receipt of the shipment. If the Delivered quantity does not meet the agreed quantity pursuant to the relevant purchase order (subject to Section 2.9), if the shipment of Product materially differs from the information in the shipping documents, or if any Product is visibly damaged or defective, Buyer shall notify Lilly of such fact in writing within [***] Business Days of the date of receipt of the shipment and provide to Lilly evidence including documents and photos of the damaged Product. Unless Lilly receives such notice, the applicable Product will be deemed accepted, subject to the Quality Agreement.

(b) *Disputes.* Lilly shall have [***] Days within which to reject Buyer's claim of having received a Nonconforming Product. Notwithstanding Section 12.4 (Dispute Resolution), in the event of a Dispute between the Parties as to whether any Product are Nonconforming Product that is not resolved during such [***]-Day period, such Dispute will be resolved based on a set of criteria mutually agreed upon (in addition to conformance to the Product Warranties), and by an approved and qualified independent laboratory selected mutually, by Buyer and Lilly; and the Parties shall, within [***] Business Days after the expiry

of the above [***]-Day period, determine such set of additional criteria and appoint such laboratory. Such laboratory shall examine, based on such predetermined set of criteria and the Product Warranties, representative samples of such Product taken from Lilly and Buyer, and the Parties will make a reasonable determination as to whether such Product is a Nonconforming Product based on the examination results by such laboratory in relation to such predetermined set of criteria and the Product Warranties. The fees and expenses of the laboratory will be paid by the Party against whom such laboratory findings are made.

(c) *Destruction of Nonconforming Product.* Lilly shall be responsible for Buyer's reasonable costs incurred in connection with the destruction of Nonconforming Product within [***] Days after such Product have either been mutually agreed to be Nonconforming Product or the date on which such Product have been finally determined to be Nonconforming Product pursuant to Section 2.10(b). Buyer shall destroy and dispose of such Product (i) in accordance with Applicable Laws and (ii) during the Pre-Marketing Authorization Period, following Lilly's instructions.

(d) *Limitations.* Lilly will not be liable for any claims for any loss, shortage or damage to the Product for which Lilly is not properly notified pursuant to this Section 2.10. Following the Delivery of the Product, Buyer is solely responsible for losses arising from any partial or complete damage or deterioration of the Product due to improper storage conditions or improper handling of the Product by Buyer, its designated importer(s) or its distributors. Remedies set forth in this Section 2.10 will be the sole and exclusive remedy for Nonconforming Product, except to the extent expressly stated otherwise in this Agreement.

2.11. Storage and Distribution; Rights of Inspection.

(a) *Storage and Distribution.* Buyer and Lilly shall maintain stocks of Product under proper storage and security conditions. The Parties shall store their respective inventories of Product, and Buyer shall Distribute Product, each in accordance with all Applicable Laws, including cGMP and the GDPs/GSPs, and the Quality Agreement.

(b) *Right of Inspection by Lilly.* During the applicable Pre-Marketing Authorization Period, Buyer shall, or shall cause its designated importer or distributor to, permit Lilly representatives upon request, and at all reasonable business hours at a mutually agreed date and time, to have access to the facilities used to store and Distribute Product supplied under this Agreement and all stock records relating thereto for the purposes of inspection or audit (to ensure appropriate inventory tracking/documentation, dates of rotation, proper storage, transportation and security conditions, and compliance with all Applicable Laws, including cGMP and GDPs/GSPs, and the Quality Agreement), and shall provide (or cause to be provided) all necessary assistance and cooperation to Lilly or its designee for the performance of such inspection or audit. Such audits may not occur more than once in every [***] period during the Term, unless Lilly has cause to make additional inspections or audits. Each Party shall be responsible for its own cost or expense in carrying out the foregoing.

(c) [***].

2.12. Product Warranty. Lilly represents and warrants to Buyer that the Product will (a) conform to the Specifications and the Quality Agreement upon Delivery, (b) be manufactured, processed, tested, handled, packaged, labeled, and stored by Lilly in accordance with the Specifications, Quality Agreement, the applicable batch records, cGMP requirements, Section 2.11(a), and Applicable Laws, (c) be free from defects in materials and workmanship,

(d) conform to the Requirements, (e) have been manufactured at facilities using equipment that, in each case, meet all applicable regulatory requirements, and (f) be supplied to Buyer free and clear of any security interest, lien, or other encumbrance (collectively, the "Product Warranties").

2.13. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY OPERATION OF LAW, STATUTE, OR OTHERWISE, WITH RESPECT TO THIS AGREEMENT OR THE PRODUCT OR FUTURE SALES, AND HEREBY SPECIFICALLY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, OR ANY WARRANTIES ARISING OUT OF A COURSE OF DEALING OR USAGE OF TRADE.

2.14. Product Returns. Any returns of Product sold after the Closing Date that are not Nonconforming Product will be the sole responsibility of Buyer, and Lilly will have no obligation to accept such returns or provide any replacement or refund for such Product returns. Any returns of Product that were sold prior to the Closing Date will, as between the Parties, be the sole responsibility of Lilly (and Lilly may accept or reject such returns in its sole discretion).

2.15. Regulatory Approvals.

(a) *Marketing Authorizations.* During the applicable Pre-Marketing Authorization Period, subject to Section 4.3(d) (Transfer of Marketing Authorizations and Pending Applications) and except as otherwise provided in the Marketing Authorization Transfer Plan (attached hereto as Exhibit C), Lilly shall, at Buyer's cost, maintain in force and renew all Marketing Authorizations (that are in the possession or control of Lilly as of the Closing Date and identified on Exhibit A (*Supply Territory*) hereto) necessary for the importation and sale of the Product in the Supply Territory (Marketing Authorizations and any other regulatory approvals, the "Regulatory Approvals"), including all governmental permits, licenses, approvals and authorizations held by or on behalf of Lilly that are necessary for Lilly to fulfill its obligations under this Agreement. During the applicable Post-Marketing Authorization Period, Buyer shall have the exclusive right (subject to Buyer's obligations under Section 3.5 (Buyer's Licenses)) to maintain in force and renew, at its own cost, Regulatory Approvals for importation and sale of the Product in the Supply Territory. Subject to Section 4.3, Buyer shall have the exclusive right to maintain in force and renew, at its own cost, Regulatory Approvals for importation and sale of the Product in any country or jurisdiction outside of the Supply Territory, and Lilly shall not pursue any Regulatory Approvals for Product in any country or jurisdiction outside of the Supply Territory, except to the extent such activity is agreed by the Parties for Lilly to conduct under the Transition Services Agreement.

(b) *Communications with Governmental Authorities*. Except to the extent covered by other Ancillary Agreements, the holder of the applicable Marketing Authorization will be solely responsible for all contacts and communications with applicable Governmental Authorities with respect to all matters relating to the Product or any regulatory filings relating to the Product for such Marketing Authorization. The other Party shall advise the holder of the applicable Marketing Authorization of any material inquiry, contact or communication that such other Party receives from any Governmental Authority that directly or indirectly relates in any material respect to the Product or any of the holder of the applicable Marketing

Authorization's regulatory filings relating to the Product within [***] Business Days after such other Party's receipt of such material inquiry, contact or communication, and shall provide a written summary of such inquiry, contact or communication to the holder of the applicable Marketing Authorization within [***] Business Days after its receipt. Unless required by Applicable Law or a Governmental Authority, neither Party will have contact or communication regarding the Product with any Governmental Authority in a country or jurisdiction where the other Party (or its designee) is the holder of the applicable Marketing Authorization or Pending Application, without the prior written consent of such other Party. If Lilly is notified that any Product or the Lilly Facility, or any facility of a Lilly Contractor used for the manufacture of Product, will be subject to an inspection specific to the Product by any Governmental Authority, Lilly shall promptly advise Buyer of such investigation and will cooperate with and allow any such inspection to the extent required by Applicable Laws.

ARTICLE 3
DISTRIBUTION BY BUYER OF PRODUCT

3.1. Authorization. Subject to Section 3.9 (Lilly's Reserved Rights), Lilly (and its relevant Affiliates) hereby authorize and appoint Buyer, to perform Promotion, Support and Reimbursement Activities, and Distribution for the Product in the Supply Territory during the applicable Pre-Marketing Authorization Period, which shall be exclusive except for activities to be performed by Lilly under the Transition Services Agreement or otherwise as needed by Lilly to conduct its activities under this Agreement. Subject to the Transition Services Agreement, during the Pre-Marketing Authorization Period, Lilly shall not appoint any Third Party to perform any Promotion, Support and Reimbursement Activities, or Distribution of the Product without consent of Buyer; *provided* that Lilly may continue to retain any Third Party subcontractors that have been engaged prior to the Closing Date to continue to perform such activities pursuant to Lilly's agreement with such Third Party subcontractors as of the Closing Date solely to perform activities under this Agreement or the Transition Services Agreement, for clarity including all Exhibits to either of the foregoing Ancillary Agreements. For the avoidance of doubt, except to the extent provided in Section 3.9 (Lilly's Reserved Rights) or under the Transition Services Agreement, neither Lilly nor its Affiliates will sell or transfer the Product to any Third Party in or outside the Supply Territory either by itself or through any Affiliate, except to Buyer or Buyer's Affiliate, subcontractor or sublicensee as set forth under this Agreement or otherwise as agreed by the Parties in writing. Without limiting Section 7.12, during the applicable Pre-Market Authorization Period in a country, Buyer shall not subcontract or sublicense any of its rights granted under this Section 3.1 without consent of Lilly, except that Buyer may subcontract or sublicense its rights under this Section 3.1 to its Affiliates (during the time that an Affiliate remains an Affiliate of Buyer). During the Term, neither Party shall Distribute, Promote, or perform any Support and Reimbursement Activities for Product in any territory outside of the Supply Territory, unless specifically approved by the other Party in writing in advance (including as specified in the Transition Services Agreement).

3.2. Buyer Rights and Obligations. Subject to Section 3.9 (Lilly's Reserved Rights), during the Term: (a) Buyer shall have the exclusive right to Distribute Product; (b) Buyer shall Distribute, Promote, and perform Support and Reimbursement Activities for the Product in compliance with all Applicable Laws and Industry Codes (including cGMP, GDP and GSP) and Compliance Requirements as set forth in Exhibit G (*Compliance Requirements*) hereto; (c) Buyer shall keep reasonably detailed records of all Product Distributed, including the retail destinations and quantities; and (d) Buyer shall maintain a reasonable system of stock control.

3.3. Buyer's Covenants to Continue to Distribute Product. Without limiting Section 3.2 or the last sentence of Section 4.3(d), following the transfer of the applicable Marketing Authorizations from Lilly to Buyer or its designated Affiliate under this Agreement including the Marketing Authorization Transfer Plan attached hereto as Exhibit C, Buyer shall, for whichever of the following is the longer time period: (a) continue to Distribute the Product (i) in each country in the Supply Territory until the [***] anniversary of the Closing Date except (ii) in the case of [***], until [***] months following the Closing Date, or (b) to the extent Applicable Law requires, maintain the Distribution of the Product in applicable countries [***], at a level and for a period of time that is required by Applicable Law.

3.4. Product Sales. Subject to Section 3.9 (Lilly's Reserved Rights), Buyer shall, itself or through its Affiliates, have the right to invoice and book sales, and independently establish the terms of sale (including pricing and discounts), which shall be exclusive except that Lilly may invoice or book sales of Product on behalf of Buyer, if mutually agreed by the Parties for the performance of activities under the Transition Services Agreement, in accordance with the Transition Services Agreement, including all Exhibits thereto.

3.5. Buyer's Licenses. Except for those Marketing Authorizations held by Lilly until their transfer to Buyer, Buyer shall maintain at all times all relevant governmental permits, licenses, approvals and authorizations to the extent required by Applicable Laws for Buyer to (a) perform the Promotion, Support and Reimbursement Activities, and Distribution (including importation) of the Product in the Supply Territory and (b) purchase the Product from Lilly, in each case, by the time such activities will be performed by Buyer under this Agreement. Upon Lilly's reasonable written request, Buyer will, within [***] Business Days, provide proof of such valid license to Lilly. Lilly may withhold the Delivery of any Product if Buyer fails to provide such proof as set forth above.

3.6. Promotion of Product. Subject to Section 3.9 (Lilly's Reserved Rights), on a country-by-country basis, Buyer shall have the exclusive right, at its own costs, to conduct Promotional Activities, except for those activities agreed by the Parties to be performed by Lilly under the Transition Services Agreement. During the Pre-Marketing Authorization Period, Buyer shall, at Lilly's reasonable request, provide a refreshed roster of its relevant sales force in order to enable Lilly, as the Marketing Authorization holder, to fulfill its obligations with respect to the registration and management of medical representatives under relevant medical representatives' registration requirements in such country. From and after the date on which Buyer becomes the Marketing Authorization holder in a country, Buyer shall be responsible for the registration and management of medical representatives under relevant medical representatives' registration requirements in such country.

3.7. Promotional Materials and Educational Materials. On a country-by-country basis, Buyer shall be responsible for preparing Promotional Materials and Educational Materials relating to its performance under this Agreement. During the Pre-Marketing Authorization Period and, for so long as Buyer is selling Lilly Labeled Product, any applicable Wind-Down Period, unless Lilly specifies otherwise by written notice to Buyer, Buyer shall seek Lilly's or Lilly's designee's prior written approval (not to be unreasonably withheld or delayed) of all Promotional Materials and Educational Materials (including materials used by the sales force for HCPs, pharmacists, and pharmacy staff, materials intended to be posted on Third Party platform/e-Commerce sites, and slides developed by or for HCPs hired to deliver peer-to-peer promotional or educational lectures) that Buyer proposes to use for the Promotion of the Product in the Supply Territory. Lilly shall have the right to review and approve such

Promotional Materials and Educational Materials for accuracy and completeness of Product-related information and the appropriate use of Lilly's name, brand and trademarks on the Promotional Materials and Educational Materials. Buyer will not be required to obtain Lilly's or Lilly's designee's approval of the same Promotional Materials and Educational Materials for any subsequent usage of approved Promotional Materials and Educational Materials. Buyer may include its own trademarks, trade names and logo in the Promotional Materials and Educational Materials, subject, during the Pre-Marketing Authorization Period and for so long as Buyer is selling Lilly Labeled Products, any applicable Wind-Down Period, to Lilly's consent to the final format, which will not be unreasonably withheld or delayed.

3.8. Compliance with Applicable Laws. Buyer shall donate, market, distribute and sell any of the Product, in each case, only in accordance with Applicable Laws.

3.9. Lilly's Reserved Rights. Lilly (by itself or through its Affiliates) shall have the right and hereby reserves the right, at its sole cost and liability and subject to the Transition Services Agreement, (a) to make donations, sponsorships or gifts of Product and (b) to provide or allow access to Product under any compassionate use programs, any special license sales programs or any affordability programs, in each case ((a) and (b)), in performance of such programs as are provided for in the Transition Services Agreement, regardless of whether the reserved rights are exercised after the applicable licenses, permits, or authorizations for the relevant Product have been transferred to Buyer. Lilly shall have the right to manufacture and distribute Product for conducting any Clinical Studies of Product that the Parties agree for Lilly to perform under the Transition Services Agreement.

ARTICLE 4
SUPPLY CHAIN AND REGULATORY TRANSFERS

4.1. Migration of Supply Chain.

(a) *Manufacturing Technology Transfer Plan*. The plan for the one-time technology transfer plan for the Product from Lilly to Buyer (or its designated manufacturer), is attached hereto as Exhibit B (*Manufacturing Technology Transfer Plan*).

(b) *Manufacturing Technology Transfer Working Group.* Lilly and Buyer shall form a working group consisting of at least two members with each Party having equal representation to oversee the timelines and progress of the Manufacturing Technology Transfer Plan. The working group will be responsible for managing the day-to-day implementation of the Manufacturing Technology Transfer Plan, and will dissolve upon the completion of all of the activities under the Manufacturing Technology Transfer Plan.

(c) *Implementation of Manufacturing Technology Transfer Plan*. Each Party shall implement and perform all respective actions that are specified in, and allocated to such Party under, the Manufacturing Technology Transfer Plan as promptly as possible, and in any event in accordance with the timelines set forth in the Manufacturing Technology Transfer Plan, with the goal of (i) enabling Buyer's execution of an agreement with each of the Lilly Contractors for the applicable scope of activities, (ii) enabling Buyer's execution of agreements with Third Parties for packaging, labelling, and finishing or Product (as applicable), and (iii) enabling Buyer's performance of all other required aspects of a supply chain for Product. For clarity, except for the Assigned Manufacturing Know-How (as defined in and subject to the Intellectual Property License Agreement) or as specifically set forth in an Ancillary Agreement (including any Exhibits thereto), in no event will Lilly be obligated under this Agreement or

the Transition Services Agreement to transfer any of Lilly's or Lilly Contractor's internal policies, standards, procedures, or guidelines or other internal documents or systems, including without limitation Lilly's SOPs, Lilly Contractor's SOPs, Lilly's quality procedures, policies or standards, or Lilly's facility or equipment documents (such as drawings, qualifications, floor plans). The Parties shall reasonably update and coordinate with each other in connection with such process. Lilly shall provide reasonable cooperation and support to Buyer in connection with Lilly's deliverables under the Manufacturing Technology Transfer Plan and Lilly's performance of activities under the "*Manufacturing and Product-related Know-How*" section of Exhibit A1 (*Services*) of the Transition Services Agreement; *provided* that such consultation or other support rendered by Lilly in implementing the Manufacturing Technology Transfer Plan shall constitute Services under the Transition Services Agreement and be subject to the terms and conditions thereof (including the Exhibits thereto) with respect to the provision and receipt of Services, for clarity, including the maximum FTE hours set forth on such Exhibit A1 for the applicable Services and the available format (*i.e.*, electronic copy) of Know-How that is subject to transfer. For the avoidance of doubt, Lilly may consider additional requests (if not specified in this Agreement or under the heading "*Manufacturing and Product-related Know-How*" of Exhibit A1 (*Services*) to the Transition Services Agreement) that are reasonably made by Buyer and may agree to provide the requested services as additional Services in accordance with the Transition Services Agreement under the heading "*Additional Services*" of such Exhibit A1. Each Party shall bear its own costs and expense in connection with implementation of the Manufacture Technology Transfer Plan; *provided* that Buyer shall, in accordance with the Transition Services Agreement, be responsible for all costs and expenses (including for FTEs at an FTE rate reasonably established by Lilly) incurred by Lilly or any of its Affiliates or the Lilly Contractors in providing consultation or other support (for clarity, including any additional Services) to Buyer in connection with the Manufacturing Technology Transfer Plan, subject to the limitations and conditions set forth in the Transition Services Agreement (including the Exhibits thereto).

(d) *Equipment*. During the Term and only for so long before the assignment of the [***] Agreement to Buyer or its designated Affiliate(s) pursuant to Section 4.1(e) below or termination of Lilly's obligations under the [***] Agreement with respect to the Equipment as mutually agreed by Lilly, [***], and Buyer (the date of such assignment or termination, the "Equipment Transfer Date"), [***] shall be responsible for maintenance of the Equipment, subject to the limitations and conditions with respect to the Service Charge as set forth in the Transition Services Agreement. Except for as set forth in the foregoing and subject to the following, [***] shall not be responsible for any costs or expenses relating to any Equipment following the Equipment Transfer Date, and [***] shall be responsible for all costs and expenses relating to any Equipment, in accordance with the Transition Services Agreement, and shall reimburse [***] for any costs or expenses incurred by [***] after the Equipment Transfer Date. During the period of the Term when [***] is responsible for the maintenance of the Equipment, [***] shall not remove any Equipment from any [***] facility, and if for any reason the Equipment is removed by [***] from [***] facility during such period, [***] shall be responsible and fully liable for all amounts [***] may be required to pay [***] pursuant to the [***] Agreement in connection with the removal of the Equipment and any damages caused to [***] facility arising therefrom; and, immediately following such removal of the Equipment, [***] shall be released from its maintenance obligation under this Section 4.1(d). [***] shall maintain commercially reasonable levels of insurance with respect to the Equipment during the Term. Subject to [***] maintenance obligations under this Section 4.1(d), [***] will have no liability to [***] nor be in breach under this Agreement for any reason to the extent any breach results from any act or omission of [***] with respect to the Equipment.

(e) *Assignment of Certain CMO Supply Agreements*. As promptly as practical following the Closing Date, the Parties shall each use Commercially Reasonable Efforts, and shall each use Commercially Reasonable Efforts to cause its respective applicable Affiliates, to effect the assignment of each CMO Supply Agreement (as set forth on Exhibit L (*CMO Supply Agreement*) hereto) to Buyer or its designated Affiliate(s) as set forth in the Manufacturing Technology Transfer Plan or, with respect to any CMO Supply Agreement required for Lilly to perform its obligations hereunder or under the Transition Services Agreement, at such time as Lilly no longer requires such agreement to perform its obligations hereunder or thereunder or, if earlier, as mutually agreed to by the Parties or upon Buyer's Supply Chain Transfer Completion (the date of such assignment, if any, for each such CMO Supply Agreement, the "CMO Supply Agreement Assignment Date"). Lilly hereby assigns to Buyer, contingent upon receipt of all requisite consents of any Third Party to effect such assignment, each CMO Supply Agreement effective as of the applicable CMO Supply Agreement Assignment Date. Notwithstanding anything to the contrary in this Agreement or the Asset Purchase Agreement, to the extent any CMO Supply Agreements are assigned to Buyer or its designated Affiliate(s) under this Section 4.1(e), (A) each such CMO Supply Agreement shall be a Transferred Asset for all purposes under the Asset Purchase Agreement, (B) the assignment of such CMO Supply Agreement shall not occur at the Closing Date and shall instead occur on the CMO Supply Agreement Assignment Date for such CMO Supply Agreement, (C) any Liabilities of Lilly or any of its Affiliates arising under such CMO Supply Agreement at or prior to such CMO Supply Agreement Assignment Date (including any accounts payable) or relating to breaches that occurred, or events, circumstances or conditions that existed or occurred, at or prior to the CMO Supply Agreement Assignment Date, shall remain Excluded Liabilities under the Asset Purchase Agreement and (D) any Liability of Lilly arising under such CMO Supply Agreement following the CMO Supply Agreement Assignment Date (excluding any of the Liabilities contemplated by clause (C) of this sentence) shall thereafter automatically be Assumed Liabilities under the Asset Purchase Agreement. Prior to the CMO Supply Agreement Assignment Date, if any, for each such CMO Supply Agreement, and to the extent reasonably requested by Buyer and reasonably acceptable to Lilly, Lilly shall (i) exercise its rights pertaining to exclusivity of activities by the applicable Third Party or with respect to prosecution or enforcement of patents owned by such Third Party under such CMO Supply Agreement, and (ii) provide a written notice to the applicable Third Party and Buyer, releasing such Third Party from such exclusivity obligation or such obligations with respect to patent prosecution or enforcement to Lilly or its Affiliate with the effect of terminating such rights granted to Lilly and its Affiliates, in each case (i) and (ii), to the extent such CMO Supply Agreement provides for such rights.

4.2. Sale of Lilly Labeled Products.

(a) *Lilly Labeled Products*. Buyer shall (i) cooperate in good faith with Lilly to exhaust Lilly's inventory of Lilly labeled Products supplied hereunder to Buyer or transferred under the Asset Purchase Agreement (if applicable) ("Lilly Labeled Products") prior to the selling of Lilly-supplied Products that designate Buyer as the Marketing Authorization holder ("Buyer Labeled Products") and (ii) subject to existing Product inventory, shelf life, and Applicable Laws, sell and phase out any Lilly Labeled Products present in the Supply Territory to the extent permitted by Product inventory, shelf life, and Applicable Laws after the Pre-Marketing Authorization Period has ended during such period as the Parties agree, in compliance with Applicable Law in the relevant country or jurisdiction (the "Wind-Down Period"). On a country-by-country basis, immediately upon the expiration of the applicable Pre-Marketing Authorization Period and any applicable Wind-Down Period, Buyer shall

immediately cease selling any Lilly Labeled Products, and shall have no right to sell Product containing any Lilly trademark, logo, or trade dress in connection with the Distribution or Promotion of the Product in the applicable country (other than to the extent permitted under Section 4.2(c)). Buyer or its Affiliates shall not make any changes to the packaging or labeling of any Lilly Labeled Products, including, for the avoidance of doubt, any Lilly-owned or Lilly-controlled trademark contained in or displayed on any Lilly Labeled Products.

(b) *Destruction of Lilly Labeled Products*. On a country-by-country basis, each Party shall promptly destroy and dispose of any quantity of Lilly Labeled Products left in such Party's stock after the expiration of the applicable Pre-Marketing Authorization Period and any applicable Wind-Down Period, in accordance with Applicable Laws and at such Party's cost, without any compensation or reimbursement by the other Party for such destroyed Product. Within [***] Business Days after such destruction occurs, each Party shall provide the other Party with written documentation attesting that the unsold Lilly Labeled Products have been appropriately destroyed and disposed of.

(c) *Buyer Labeled Products.* As promptly as practical after the end of the Pre-Marketing Transfer Period, and in no event exceeding the applicable Wind-Down Period, Buyer shall cease to market Lilly Labeled Products and shall solely market Buyer Labeled Products. Buyer Labeled Products may not make any reference to Lilly on applicable packaging materials, Promotional Materials and Educational Materials or any other written materials, in each case except as (i) required by Applicable Law (such as manufacturer information), in which case, Buyer shall provide Lilly with written notice as promptly as practicable (and in any event within [***] Business Days) upon Buyer's knowledge of such requirement or (ii) approved by Lilly in writing, which consent will not be unreasonably withheld.

4.3. Transfers of Marketing Authorizations.

(a) *Withdrawal Territory*. The Parties agree that all Marketing Authorizations and Pending Applications (in each case, in the possession or control of Lilly as of the Closing Date) with respect to the Withdrawal Territory are not subject to the transfer under this Section 4.3 and, promptly after the Closing Date, Lilly shall, at its sole cost and discretion, take actions necessary to de-register or withdraw such Marketing Authorizations and Pending Applications.

(b) *Marketing Authorization Transfer Plan*. The plan for the marketing authorization transfer for the Product from Lilly to Buyer, is attached hereto as Exhibit C (the "Marketing Authorization Transfer Plan").

(c) *Marketing Authorization Working Group*. Lilly and Buyer shall form a working group consisting of at least two members with each Party having equal representation to oversee the timelines and progress of the Marketing Authorization Transfer Plan. The working group will be responsible for managing the day-to-day implementation of the Marketing Authorization Transfer Plan, and will dissolve upon the completion of all of the activities under the Marketing Authorization Transfer Plan.

(d) *Transfer of Marketing Authorizations and Pending Applications.* During the periods set forth in the Marketing Authorization Transfer Plan, outside of the Withdrawal Territory, Lilly and Buyer shall cooperate in good faith and in accordance with the Marketing Authorization Transfer Plan on the transfer of Marketing Authorizations and Pending

Applications (as applicable) (in each case, in the possession or control of Lilly as of the Closing Date) and all applicable responsibilities, to Buyer or its designated Affiliate, including by Lilly providing support for the foregoing activities as set forth in the Transition Services Agreement and subject to the limitations and conditions as set forth therein (the date of any such transfer for each such Marketing Authorization and Pending Application, the "Regulatory Transfer Date"). Notwithstanding anything to the contrary in the Asset Purchase Agreement, and subject to the terms and conditions of this Agreement and the Transition Services Agreement, for clarity including the Exhibits to either of the foregoing Ancillary Agreements, (A) each Marketing Authorization and Pending Application shall be a Transferred Asset for all purposes under the Asset Purchase Agreement, (B) the assignment of each such Marketing Authorization and Pending Application shall not occur at the Closing and shall instead automatically occur on the applicable Regulatory Transfer Date, (C) any Liabilities of Lilly or any of its Affiliates arising under such Marketing Authorization or Pending Application at or prior to such Regulatory Transfer Date or relating to events, circumstances or conditions that existed or occurred, at or prior to the Regulatory Transfer Date, shall remain Excluded Liabilities under the Asset Purchase Agreement and (D) any Liability of Lilly arising under such Marketing Authorization or Pending Application following the Regulatory Transfer Date (excluding any of the Liabilities contemplated by clause (C) of this sentence) shall thereafter automatically be Assumed Liabilities under the Asset Purchase Agreement. Notwithstanding anything to the contrary in this Agreement or in the Marketing Authorization Transfer Plan, with respect to a country identified in the Marketing Authorization Transfer Plan, (i) if Buyer fails to notify Lilly, at least [***] Days prior to the applicable deadline to submit all required Marketing Authorization transfer documentations to the applicable Regulatory Authority, to initiate a transfer to Buyer or its designated Affiliate or (ii) for the [***], if a transfer initiated pursuant to the Marketing Authorization Transfer Plan is not approved, or otherwise fails to become effective, within such period as provided in the Marketing Authorization Transfer Plan for reasons beyond Lilly's control, then Lilly may, at its option, de-register or withdraw such Marketing Authorization or Pending Application; *provided* that Lilly may not de-register or withdraw any such Marketing Authorization or Pending Application without first providing Buyer with at least [***] Days' advance written notice thereof and permitting Buyer an opportunity to initiate a transfer to Buyer or its designated Affiliate if Lilly reasonably believes such transfer may be completed within the period specified in the Marketing Authorization Transfer Plan or to discuss plans to complete a transfer that has been initiated. Following the transfer of a Marketing Authorization or Pending Application from Lilly to Buyer (or its designated Affiliate) pursuant to this Section 4.3 or otherwise in accordance with the Marketing Authorization Transfer Plan, Buyer shall not de-register or withdraw any such transferred Marketing Authorization and shall continue to Distribute the Product in the applicable country(ies) in the Supply Territory during the Term for so long as Lilly continues to manufacture and supply the required quantities of the Product for the relevant country(ies) under this Agreement.

(e) *Correspondence from Governmental Entities*. Until the end of the Pre-Marketing Authorization Period, on a country-by-country basis, each Party shall provide to the other Party a copy of all relevant correspondence with any Governmental Authority relating to the applicable Marketing Authorization promptly, but in no event later than [***] Business Days from such Party's receipt or sending of such correspondence.

(f) *NDC Number*. As soon as practicable following the Closing Date and within such period as provided in the Marketing Authorization Transfer Plan, Buyer shall obtain its own NDC number relating to the Product (the "Buyer NDC Number"). For Product

sold under the Buyer NDC Number, Buyer shall assume any and all reporting obligations arising from or related to the Buyer NDC Number, including any required reporting calculations to a Governmental Authority.

ARTICLE 5
ADVERSE EVENTS AND OTHER REPORTABLE EVENTS

5.1. Pharmacovigilance Agreement. The Parties shall abide by the terms of the Pharmacovigilance Agreement, attached hereto as Exhibit I.

5.2. Pharmacovigilance. The handling of safety information, including Adverse Event and Other Reportable Events, will be in accordance with the requirements set forth in the Pharmacovigilance Agreement. Lilly shall maintain the Global Patient Safety Database for the Product until transfer of the Marketing Authorizations to Buyer in each of the PV Countries. Until such transfer to Buyer, Lilly shall provide Buyer with access to such data from the Global Patient Safety Database for the Product, solely as further set forth in the Pharmacovigilance Agreement or the Transition Services Agreement (including the Exhibits thereto). Without limiting Buyer's obligations under the Transition Services Agreement (including the Exhibits thereto), following the transfer of the Global Patient Safety Database, Buyer shall be responsible for pharmacovigilance, worldwide, and meeting regulatory requirements as the Global Safety Database holder. In the event of any inconsistency between this Agreement, the Asset Purchase Agreement, or any other Ancillary Agreement with respect to safety matters, the Pharmacovigilance Agreement will prevail and control.

ARTICLE 6
GENERAL PERFORMANCE REQUIREMENTS

6.1. Product Form. During the applicable Pre-Marketing Authorization Period and for so long as Buyer is selling any Lilly Labeled Product, any applicable Wind-Down Period, Buyer shall not alter in any way the packaging of the Product, except as required by Applicable Laws or approved by Lilly in writing.

6.2. Quality Agreement. The Parties shall abide by the terms of the Quality Agreement, attached hereto as Exhibit J (*Quality Agreement*). In the event of any inconsistency between this Agreement, the Asset Purchase Agreement, or any other Ancillary Agreement with respect to quality matters, the Quality Agreement will prevail and control.

6.3. Product Recall.

[***]. To the extent the Recall is caused by (a) breach of the Transition Services Agreement or this Agreement or an agreement with a Lilly Contractor, or (b) gross negligence or willful misconduct, in each case ((a) or (b)), by Lilly, its Affiliate or a Lilly Contractor, Lilly shall be responsible for all costs and expenses of any such Recall. Lilly and Buyer shall consult and cooperate on any Recall decision in accordance with the Quality Agreement. For the avoidance of doubt, the financial liability of either Party to the other with respect to any Recalls for Product sold by Lilly or its Affiliates under the Transition Services Agreement shall be governed by the terms thereof.

6.4. Indemnity.

(a) *By Buyer*. Buyer shall indemnify, defend and hold harmless Lilly, its Affiliates, and their respective directors, officers, employees and agents (each, a "Lilly Indemnified Party," and, collectively, the "Lilly Indemnified Parties") from and against all Losses (as defined in the Asset Purchase Agreement) incurred by any Lilly Indemnified Parties in connection with any Third Party Claim (as defined in the Asset Purchase Agreement) to the extent arising from or related to (i) any material breach by Buyer of any of its representations and warranties under this Agreement, or material violation of its covenants under this Agreement, (ii) Buyer's or any of its Affiliates', or licensees' or sublicensees', or their respective sub-contractors' actions (or omissions) in the performance of Promotion, Distribution, and Support and Reimbursement Activities, or other exploitation, including development, of the Product, or handling of the Product, including strict product liability claims arising from the administration by or on behalf of Buyer or its Affiliates of the Product to patients, (iii) gross negligence or willful misconduct of Buyer or any of its Affiliates' or licensees or sublicensees or subcontractors in the performance of obligations of Buyer or the exercise of rights of Buyer under this Agreement, (iv) the infringement, misappropriation, or other violation of a Third Party's Intellectual Property Rights with respect to the Product manufactured under this Agreement for Buyer, (v) any material breach by Buyer of Section 7.1(g) (Personal Information), or (vi) any material breach by Buyer of Section 5.2 (Pharmacovigilance), in each case, excluding to the extent arising from any (A) material breach of a representation, warranty, or covenant of Lilly or its Affiliate contained in any Transaction Agreement, (B) gross negligence, willful misconduct, or material violation of Applicable Law by Lilly, its Affiliates, or any of their respective licensees or sublicensees or contractors, in the performance of obligations of Lilly or the exercise of rights of Lilly under any Transaction Agreement, or (C) material breach of a representation, warranty, or covenant of a Lilly Contractor of an agreement between Lilly or its Affiliate and such Lilly Contractor. For purposes of the foregoing, Lilly and its Affiliates and their licensees and contractors shall not be considered to be a licensee, sublicensee or sub-contractor of Buyer or Buyer's Affiliate.

(b) *By Lilly*. Lilly shall indemnify, defend and hold harmless Buyer, its Affiliates, and their respective directors, officers, employees and agents (each, a "Buyer Indemnified Party," and, collectively, the "Buyer Indemnified Parties") from and against all Losses incurred by any Buyer Indemnified Parties in connection with any Third Party Claims to the extent arising from or related to (i) any material breach by Lilly of any of its representations and warranties under this Agreement, or violation of its covenants under this Agreement or (ii) gross negligence, willful misconduct, or material violation of Applicable Law by Lilly, its Affiliates, or any of their respective licensees or sublicensees or contractors, in the performance of obligations of Lilly or the exercise of rights of Lilly under this Agreement, in each case excluding to the extent arising from any (A) material breach of a representation, warranty, or covenant of Buyer or its Affiliate contained in any Transaction Agreement, (B) gross negligence, willful misconduct, or material violation of Applicable Law by Buyer, its Affiliates, or any of their respective licensees or sublicensees or contractors, in the performance of obligations of Buyer or the exercise of rights of Buyer under any Transaction Agreement or (C) subject matter described in Section 6.4(a) (other than the exclusions).

(c) *Procedures*. The indemnification procedure set forth in Section 11.5 of the Asset Purchase Agreement will apply to the indemnification obligations under this agreement, *mutatis mutandi*s.

6.5. Insurance. Without limiting its obligations under this Agreement, Buyer shall effect and maintain, at its own expense, with reputable insurance companies, a Third Party and a product liability insurance policy with a limit of liability not lower than [***] USD for any one occurrence or series of occurrences arising out of any event or series of events; the policy shall be extended to product recalls with a sublimit not lower than [***] USD. Any deductibles, policy exclusions or uncovered risks will remain at sole cost and expenses of Buyer. Buyer shall maintain such coverage in force during the Term and, thereafter, for a minimum of [***] years after the expiration or termination of this Agreement. Upon request, Buyer shall provide Lilly with a certificate of insurance, issued by the insurer or by the broker, which shall include the details of its insurance policies, including, at least, the name of the insurer, the insured business activity, the policy number, the effective date, the expiration date and the limits of liability applied.

ARTICLE 7
LEGAL COMPLIANCE

7.1. Compliance with Applicable Laws.

(a) *Compliance with Law.* In connection with this Agreement, each Party shall comply with all Applicable Laws and Industry Codes. In addition, Buyer (including its Affiliates, licensees and sublicensees, and their respective contractors or subcontractors) shall comply with all Compliance Requirements as set forth in Exhibit G (*Compliance Requirements*) hereto, Buyer's compliance obligations as set forth in Section 3.2 (Buyer's Rights and Obligations), as well as the Information Security Standard as set forth in Exhibit H (*Information Security Standards*) hereto. In case of conflict between the terms of the Compliance Requirements and any other compliance policies and procedures that Buyer follows, the Compliance Requirements would prevail and apply to activities performed in relation to the Product.

(b) *Debarment.* With respect to the Product, each Party represents and warrants that neither Party nor any of its Affiliates, nor any of their respective directors, officers, or managing employees (as such term is defined in 42 U.S.C. § 1320a-5(b)), nor to knowledge of such Party, any contractors or subcontractors performing or involved with the performance on behalf of such Party or any of its Affiliates under this Agreement, has been or is currently "debarred" by the FDA or a Governmental Authority in any jurisdiction, nor have debarment proceedings against any such Person or any of its directors, officers, or managing employees (as such term is defined in 42 U.S.C. § 1320a-5(b)) been commenced. Each Party will promptly notify the other Party in writing if, with respect to the Product, any such proceedings have commenced or any such Persons or any of its directors, officers, or managing employees (as such term is defined in 42 U.S.C. § 1320a-5(b)) are debarred by the FDA or a Governmental Authority.

(c) *Transparency Requirements*. With respect to the Product, each Party hereby represents, warrants and covenants that it has implemented and will at all times during the Term maintain reasonably adequate systems, policies, and procedures for ensuring compliance with the relevant federal and state transparency requirements related to the reporting of payments, gifts, or other transfers of value each Party provides to health care practitioners, including Section 1128G, as amended. of the Social Security Act (*i.e.*, the Physician Payment Sunshine Law).

(d) *Representatives*. Each Party shall be legally responsible and liable for the actions, omissions and conduct of their respective representatives (including any employees, agents, sublicensees or independent contractors) performing activities hereunder, *provided* that Lilly shall not be considered to be a representative or sublicensee of Buyer for purposes of this sentence. Each Party shall ensure that all Persons for whom they have legal responsibility and liability in accordance with the foregoing sentence comply with all Applicable Laws and all requirements of this Agreement, and shall implement and maintain policies and procedures to ensure such compliance.

(e) *Payments.* Each Party represents that any funds paid to the other pursuant to this Agreement are not proceeds of any illegal activity.

(f) *Permits and Authorizations.* Buyer hereby represents and warrants that, as of the Closing Date, it possesses or will possess all licenses, permits, authorizations or certificates required under Applicable Laws within the Supply Territory to Promote, Distribute, and perform Support and Reimbursement Activities for the Product in the Supply Territory by the time such activities will be performed by Buyer (except for those licenses, permits, authorizations or certificates to be transferred to Buyer by Lilly or its Affiliates after the Closing Date in accordance with the Asset Purchase Agreement or any other governmental permits, licenses, approvals and authorizations that are held by Lilly or any of its Affiliates or Lilly Contractors for their performance of activities under this Agreement that will not be transferred to Buyer).

(g) *Personal Information*. Buyer (including its Affiliates, licensees and sublicensees, and their respective contractors or subcontractors) shall comply with Applicable Laws and Exhibit K (*Supplier Privacy Standard*) hereto with respect to the collection of or access to, use, storage, or other processing of, or protection and disclosure of personal information.

7.2. Compliance with Anti-Corruption Laws.

(a) *Violation of Laws.* Neither Party shall knowingly commit any act or omission that may cause the other Party to violate Applicable Laws.

(b) *Anti-Bribery Laws.* Each Party shall respectively provide, on a regular basis and at its own cost, relevant personnel trainings relating to anti-bribery and anti-corruption compliance to its personnel.

7.3. Prohibited Conduct. In connection with this Agreement, each Party represents and warrants that it has not made, offered, given, promised to give, or authorized, and will not make, offer, give, promise to give, or authorize, any bribe, kickback, payment or transfer of anything of value, directly or indirectly, to any person or to any government or public official for the purpose of: (a) improperly influencing any act or decision of the person or government or public official; (b) inducing the person or government or public official to do or omit to do an act in violation of a lawful or otherwise required duty; (c) securing any improper advantage; or (d) inducing the person or government or public official to improperly influence the act or decision of any organization, including any government or government instrumentality, in order to assist Buyer or Lilly in obtaining or retaining business.

7.4. Compliance with Trade Sanctions Laws.

(a) *Trade Sanctions and Export Control Laws*. Each Party shall comply with all applicable trade sanctions and export control laws and regulations, including where applicable the U.S. trade sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control (31 C.F.R. Part 501 *et seq.*), the U.S. Export Administration Regulations (15 C.F.R. Part 734 *et seq.*), and European Union trade sanctions and export laws (including Council Regulation (EC) No. 428/2009 (as amended)).

(b) *Sanctioned Persons*. Each Party represents and warrants that neither it, its directors, executive officers, agents, nor any person having a controlling interest in such Party are (i) a person targeted by trade or financial sanctions under the laws and regulations of the United Nations, the United States of America, the European Union and its Member States, the United Kingdom or any other jurisdiction that is applicable to the services to be provided under this Agreement, including any person designated on the U.S. Department of the Treasury, Office of Foreign Assets Control's List of Specially Designated Nationals and Other Blocked Persons and Consolidated Sanctions List, the U.S. State Department's Non-proliferation Sanctions Lists, the UN Financial Sanctions Lists, the EU's Consolidated List of Persons, Groups and Entities Subject to EU Financial Sanctions, and the UK HM Treasury Consolidated Lists of Financial Sanctions Targets (each, a "Sanctioned Person"), or (ii) a business entity (A) incorporated or headquartered in, or organized under the laws of, a territory subject to comprehensive U.S. sanctions (each, a "Sanctioned Territory") or (B) directly or indirectly owned or controlled by such Sanctioned Person (such Sanctioned Person described in clause (i) and such business entity described in clause (ii) together, "Restricted Person"). Each Party further represents and warrants that it shall notify the other Party in writing immediately if it or any of its directors, executive officers, agents or any person having a controlling interest in it becomes a Restricted Person or if it becomes directly or indirectly owned or controlled by one or more Restricted Persons.

(c) Each Party hereby represents, warrants and covenants, on its own behalf and on behalf of its Affiliates, (sub)licensees, (sub)contractors and distributors, that such Party (and its Affiliates, (sub)licensees or (sub)contractors) shall not make any Product available, directly or indirectly, to or for the benefit of a Sanctioned Territory or Restricted Person (for the avoidance of doubt, including that Buyer (and its Affiliates, (sub)licensees or (sub)contractors) shall not (i) manufacture any Products in a Sanctioned Territory or through an arrangement with or for the benefit of a Restricted Person, nor (ii) sell, export, reexport or transfer any Product to a Sanctioned Territory or Restricted Person), unless, in each case, in compliance with all applicable trade sanctions and export control laws and regulations.

7.5. Performance Records.

(a) *Records.* Each Party shall maintain accurate and complete documents, in either hard copy or electronic form, in relation to its activities under this Agreement (the "Performance Records"). Each Party shall devise and maintain a system of internal controls sufficient to provide reasonable assurances that its activities under the Agreement are in compliance with all Applicable Laws.

(b) *Compliance.* Buyer agrees and undertakes that its compliance team will meet as needed, upon written request of either Party, with Lilly's or its designated Affiliate's compliance team to review Buyer's monitoring, communication, training, and other oversight efforts relating to compliance during the Term or, if earlier, when the Pre-Marketing Authorization Period and any applicable Wind-Down Period expires.

7.6. Disclosure Rights. At any time and to the extent required by Applicable Laws or regulatory authorities, and with prior written notice to the other Party, either Party may disclose information relating to a possible violation of Applicable Laws, or the existence of the terms of this Agreement, including the compensation provisions, to a government or government agency.

7.7. Requests for Information. Each Party shall make all reasonable efforts to comply with requests for disclosure of information, including answering questionnaires and narrowly tailored audit inquiries, to enable the other Party to ensure compliance with all Applicable Laws, including anti-corruption laws, and this Agreement.

7.8. Books and Records. For a period of [***] years from the Closing Date or such longer period as required by Applicable Laws, each Party shall keep (and shall cause its Affiliates, distributors, sub-distributors, hospitals and pharmacies (if applicable) to keep) complete and accurate books and records (paper or electronic) that are necessary to ascertain and verify the payments owed hereunder and the quantity of Product stocks held by such Party.

7.9. Compliance with Internal Compliance Codes. All Internal Compliance Codes will apply only to the Party to which they relate. The Parties shall cooperate with each other to help each Party comply with the substance of its respective Internal Compliance Codes, unless those Internal Compliance Codes are less restrictive that the Compliance Requirements.

7.10. Compliance Violations. Each Party will follow its own internal compliance reporting and investigation processes regarding any potential violations of law or deviations from their respective established compliance policies, standards, procedures, or processes. If either Party learns of potential misconduct by the other Party relating to activities undertaken as part of this Agreement, the discovering Party, within [***] Days of knowledge, shall report this information to the other Party, and the Party who received the report shall address such report in accordance with its internal procedures.

7.11. Compliance Audit. Without limiting any of Section 2.11(b) (Right of Inspection by Lilly) and Section 6.2 (Quality Agreement):

(a) During the Pre-Marketing Authorization Period and for the [***]-month period thereafter, Lilly or its designee shall have the right to audit Buyer (including Buyer's Affiliates and (sub)contractors) not more than once in every [***]-month period solely in connection with Buyer's conformance to the regulatory compliance obligations under this Agreement, for clarity, including Section 7.1(a) (Compliance with Law), Exhibit G (*Compliance Requirements*) hereto and Section 7.1(f) (Permits and Authorizations), specifically and exclusively in regards to the performance of or on behalf of Buyer under this Agreement during the Pre-Marketing Authorization Period, including inspecting Buyer's Performance Records.

(b) During the Term, if Lilly becomes aware or has a reasonable suspicion that Buyer or its Affiliates or (sub)contractors have violated any regulatory compliance obligations of Buyer under this Agreement, for clarity, including Section 7.1(a) (Compliance with Law), Exhibit G (*Compliance Requirements*) hereto and Section 7.1(f) (Permits and Authorizations), Lilly or its designee shall have the right, upon written request to Buyer, to conduct ad-hoc audits of Buyer's (including its applicable Affiliates') records for the purpose of determining whether the violation has occurred.

(c) For the avoidance of doubt, each of the audit rights set forth in Section 7.11(a) and Section 7.11(b) are independent from and without prejudice to one another, and Lilly's exercise of its audit rights under one clause shall not affect or hinder its rights to conduct an audit pursuant to another clause.

(d) Lilly shall conduct such audits under this Section 7.11, (i) at its own cost (unless otherwise provided below), (ii) upon reasonable prior notice to Buyer and its applicable Affiliates and (iii) within normal business hours, *provided* that Buyer and its Affiliates being audited shall not be obliged to disclose any Confidential Information that does not relate to the performance by or on behalf of Buyer or such Affiliates of Buyer under this Agreement or, in the case of an audit conducted pursuant to Section 7.11(b), Confidential Information that does not relate to the purported reason for the ad-hoc audit. Lilly shall at all times maintain any such Confidential Information no less securely and with no less security measures than it applies to its own information of a similar character, and all such Confidential Information shall furthermore remain subject to Lilly's obligations under Article 9 (Confidential Information) at all times.

(e) Lilly shall keep, and shall (if applicable) procure that the independent audit firm keeps, confidential any information obtained during such inspection. If the independent audit firm has determined deviation from any compliance-related clauses of this Agreement including Section 7.1(a) (Compliance with Law), Exhibit G (*Compliance Requirements*) hereto and Section 7.1(f) (Permits and Authorizations), Buyer and its applicable Affiliates will take immediate action to redress the deviation in accordance with Section 10.1(a) of this Agreement.

7.12. Subcontractors and Agents. Except as stated otherwise in this Agreement, during the Pre-Marketing Authorization Period, Buyer shall not retain any (a) third-party subcontractors, vendors or agent who may interact with a Governmental Authority or government officials on behalf of Lilly in the course of performing its services, (b) custom clearing agent or (c) third-party distributors, in each case in connection with the performance of this Agreement without the prior written approval of Lilly. Each Party agrees that (i) all subcontractors, representatives, or agents of such Party, including any custom clearing agents, will enter into a written agreement with such Party wherein such subcontractor, representative, or agent including custom clearing agent shall certify that it has complied and will comply with all Applicable Laws, including anti-corruption laws, and the obligations set forth in this Article 7 prior to any involvement in connection with this Agreement, and (ii) each Party shall be liable to the other Party for any violation by any of its subcontractor, representative or agent of any Applicable Laws, including anti-corruption laws, or any obligations set forth in this Agreement. Lilly shall have the right to subcontract or delegate any of its obligations under this Agreement to any of its Affiliates or to any Lilly Contractors for the applicable scope of activity set forth in Exhibit E (*Lilly Contractors, Lead Time and Lilly Facilities*) hereto, to the extent not already qualified and audited and subject to completion of customary qualification and audit of such subcontractor.

7.13. Project Leaders. Each Party will designate a representative of such Party (who is suitably qualified and has the requisite authority) to act as its project leader under this Agreement (each, a "Project Leader"). Each Party will notify the other Party of its Project Leader within [***] Business Days of the Closing Date and may replace its Project Leader at any time upon prior written notice to the other Party. The Project Leaders will manage their respective Party's internal activities and coordinate communication between the Parties for the

activities contemplated by this Agreement. The Project Leaders will (a) review, consider for modification, and if so agreed, modify any Exhibits hereto in writing (including by electronic transmission such as email) during the Term and (b) serve as the primary contact points for the resolution of any issues or potential disputes that may arise during the performance of this Agreement, with the intent of avoiding the need for the escalation of such issues or potential disputes. The Project Leaders may refer matters that may arise during the performance of this Agreement to the Transition Steering Committee pursuant to Section 2.14 of the Transition Services Agreement. A Project Leader shall not serve, at the same time, on the Transition Steering Committee or as a Transition Manager.

ARTICLE 8
INTELLECTUAL PROPERTY RIGHTS

8.1. Ownership

. The Parties acknowledge that no MSA Product Intellectual Property Rights are expected to be invented, developed, or created by Lilly in connection with this Agreement, other than those with respect to data and information generated under this Agreement. To the extent Lilly does invent, develop, or create MSA Product Intellectual Property Rights during the Term in connection with performing its obligations under this Agreement, then all right, title, and interest in and to such MSA Product Intellectual Property Rights shall be owned by and the sole and exclusive property of Buyer. Lilly shall and hereby does assign all right, title, and interest in and to such MSA Product Intellectual Property Rights to Buyer. For clarity, all right, title, and interest in and to any Intellectual Property Rights invented, developed, or created by Provider that do not constitute MSA Product Intellectual Property Rights will be owned by and the sole and exclusive property of Lilly. Such Intellectual Property Rights, in each case, subject to the licenses granted to Lilly and Buyer under the Intellectual Property License Agreement between Lilly and Buyer ("IP License Agreement").

(a) Each Party hereby acknowledges and agrees that any and all of Lilly's or any of its Affiliates' Background Intellectual Property Rights are and shall be, as between the Parties, the sole and exclusive property of Lilly, and Lilly will be responsible, at its cost and in its sole judgment, for all matters related to intellectual property prosecution, maintenance and assertion against infringers (for clarity, the foregoing shall not be construed to limit the Background Intellectual Property Rights that are licensed to Buyer under the IP License Agreement);

(b) Each Party hereby acknowledges and agrees that any and all of Buyer's or any of its Affiliates' Background Intellectual Property Rights are and shall be, as between the Parties, the sole and exclusive property of Buyer, and Buyer will be responsible, at their cost and in their sole judgment, for all matters related to intellectual property prosecution, maintenance and assertion against infringers;

(c) Except and solely with respect to the MSA Product Intellectual Property, neither Party shall acquire any ownership interest or right in any of the other Party's Background Intellectual Property Rights under this Agreement, whether by implication, estoppel, or otherwise; and

(d) any goodwill derived from either Party's use of the other Party's Intellectual Property Rights shall inure to the benefit of the Party which owns such Intellectual Property Rights.

8.2. Transitional Trademark License to Buyer. Lilly hereby grants, on behalf of itself and its Affiliates, and shall cause its Affiliates to grant, to Buyer and its Affiliates a limited, royalty-free, non-transferrable (subject to Section 12.5 (Assignment)), non-exclusive right and license to use Trademarks set forth on Exhibit P (*Lilly Retained Names and Marks*) hereto, solely for the purpose of selling or distributing Products during the Pre-Market Authorization Period and any applicable Wind-Down Period (the "Buyer Transitional Trademark License"). Buyer and its Affiliates may grant sublicenses, through multiple tiers, under the Buyer Transitional License to any subcontractor or partner engaged by Buyer or any of its Affiliates in accordance with this Agreement, solely to the extent necessary or reasonably required for such subcontractor or partner to sell or distribute Product on behalf of Buyer or its Affiliates. On a country-by-country basis, the Buyer Transitional Trademark License and any sublicenses granted pursuant hereto shall automatically terminate upon the expiration of the Pre-Market Authorization Period and any applicable Wind-Down Period. Buyer shall not, and shall cause its Affiliates and any permitted sublicensees not to, make any changes to the use, look, placement, or other aspect of the Trademarks licensed hereunder and may only use such Trademarks in the form provided by Lilly. Buyer shall promptly comply, and shall cause its Affiliates and any permitted sublicensees to promptly comply, with any instructions from Lilly regarding the use of the Trademarks licensed hereunder.

8.3. Limited Non-Exclusive License to Lilly. Buyer hereby grants, on behalf of itself and its Affiliates, and shall cause its Affiliates to grant, to Lilly and its Affiliates a limited, royalty-free, non-transferrable (subject to Section 12.5 (Assignment)), non-exclusive, sublicensable (as set forth in this Section 8.3) right and license to use any Intellectual Property Rights owned or controlled by Buyer or any of its Affiliates, to the extent necessary or reasonably required for use by Lilly or any of its Affiliates to fulfill or perform Lilly's obligations under this Agreement, including with respect to the manufacture, inspection, testing, packaging, storage or supply of any Product as set forth hereunder (the "Lilly MSA License"). Lilly and its Affiliates may grant sublicenses, through multiple tiers, under the Lilly MSA License to any Lilly Contractor engaged by Lilly or any of its Affiliates to perform activities under this Agreement, to the extent necessary or reasonably required for such Lilly Contractor to act on behalf of Lilly or its Affiliates under this Agreement. The Lilly MSA License and any sublicenses granted pursuant hereto shall automatically terminate upon the expiration or earlier termination of this Agreement.

ARTICLE 9
CONFIDENTIAL INFORMATION

9.1. Obligation of Confidentiality. Buyer and Lilly acknowledge that during the Term either Party may acquire, either from the other Party or otherwise during the performance of this Agreement, Confidential Information. The terms of this Agreement will be deemed Confidential Information of both Parties. For the purposes of this Agreement, "Confidential Information" means all nonpublic information regarding or belonging to a Party, including (i) know-how, data, documents, techniques, processes, materials, product samples, business plans or other information disclosed directly or indirectly; (ii) information furnished by any representative of the Party; (iii) information acquired by observation or otherwise, during a visit to a Party's facilities; (iv) information or other work product developed in connection with this Agreement; and (v) information which a Party is under an obligation to Third Parties to maintain as confidential. Such disclosures will be subject to the following obligations of confidentiality and non-use:

(a) the receiving Party shall hold in strict confidence Confidential Information received from the disclosing Party, and shall not distribute, disclose or disseminate Confidential Information to any Third Party, or anyone not authorized hereunder;

(b) the receiving Party shall not use the disclosing Party's Confidential Information for any purpose other than to facilitate the authorized purpose of this Agreement; and

(c) the receiving Party shall restrict use of the disclosing Party's Confidential Information to those of its or its Affiliates' directors, officers, employees, contractors or subcontractors, agents or advisors who have a definable need to know in order to facilitate the authorized purpose of this Agreement. The receiving Party shall be responsible to the disclosing Party for any improper disclosure or use of Confidential Information by such persons.

Notwithstanding anything in this Agreement to the contrary, to the extent any of Lilly's Confidential Information is included in any MSA Product Intellectual Property Rights, Buyer and its Affiliates and (sub)licensees shall have the right to retain, disclose, and use such Confidential Information for the purposes of exercising Buyer's rights and licenses with respect to the MSA Product Intellectual Property Rights, the operation of the Business (as defined in the Asset Purchase Agreement), and the development, manufacture, and commercialization of Milestone Products (as defined in the Asset Purchase Agreement), including after termination or expiration of this Agreement; *provided*, *however*, that Buyer shall maintain the confidentiality of all such information in a manner consistent with how Buyer protects its own Confidential Information and shall not disclose such information to Third Parties except under reasonable obligations of confidentiality appropriate for the nature of such disclosure (*i.e.*, without first entering into a binding non-disclosure agreement containing reasonable protections for such Confidential Information where appropriate). For clarity, no such agreement shall be required for a disclosure to a Regulatory Authority.

9.2. Employee and Agent Confidentiality. Buyer and Lilly will each require that each of its employees and agents to whom Confidential Information is imparted will not disclose such information, during or subsequent to his or her employment or engagement by Buyer or Lilly, as the case may be, to any Person who is not entitled to have access to such information.

9.3. Return or Destruction of Confidential Information. Upon expiry or termination of this Agreement, howsoever caused, upon request, Buyer and Lilly shall each immediately destroy or return to the other, as specified in the request, any physical manifestations of the other Party's Confidential Information then or thereafter in its possession or control, but may retain one copy of the other Party's Confidential Information as required to be held by such Party under Applicable Law and shall not be required to return or destroy any computer-generated backups maintained for archival purposes.

9.4. Term of Covenant not to Disclose. These obligations of confidentiality and non-use will expire 10 years from the termination or expiration of this Agreement. Notwithstanding anything to the contrary in this Article 9, the receiving Party will not violate its obligations under this Article 9 to the extent a disclosure is required by Applicable Law, an order of a court of competent jurisdiction, the rules of any public stock exchange, or to make filings or any disclosure requested by any U.S., state, foreign, provincial, or local tax authority that a Party

determines are necessary or desirable to such Party and its Affiliates, *provided* that, in the case of a disclosure required under Applicable Law or court order, the receiving Party shall promptly notify the disclosing Party of such requirement (to the extent permitted under Applicable Law or court order) and shall cooperate with the disclosing Party, upon the request of the disclosing Party, to obtain a protective order or to otherwise prevent or limit the required disclosure. Confidential Information will not include information that the receiving Party can demonstrate:

(a) was known to the receiving Party prior to its receipt from the disclosing Party, as demonstrated by written records;

(b) was known to the general public prior to its receipt from the disclosing Party or subsequently became known to the public through no breach of this Agreement by the receiving Party; or

(c) is obtained by the receiving Party from a Third Party who is not under an obligation of confidentiality and has a lawful right to make such disclosure.

ARTICLE 10
BREACH OF AGREEMENT

10.1. General Terms Relating to Breach.

(a) If either Buyer or Lilly (*i.e.*, a defaulting Party) breaches any of the material terms and conditions of this Agreement, the other Party (*i.e.*, the non-defaulting Party) may give notice of the breach to the defaulting Party. Subject to Section 10.2, the defaulting Party shall cure the breach no later than [***] Days after receiving notice of such breach, *provided* that the breach is curable. If the defaulting Party fails to cure the breach within such [***]-Day period, then the non-defaulting Party may terminate this Agreement with notice to the defaulting Party upon the expiration of such [***]-Day period.

(b) Unless otherwise specified in this Agreement, any breach of provisions of this Agreement will be without prejudice to the non-breaching Party's available remedies under Applicable Law, including claims for damages or indemnification for the losses incurred by reason of such breach of this Agreement.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, EXCEPT IN THE EVENT OF WILLFUL MISCONDUCT OR FRAUD OF LILLY, NEITHER LILLY NOR ANY OF ITS AFFILIATES WILL BE LIABLE IN CONTRACT, TORT, NEGLIGENCE, BREACH OF STATUTORY DUTY OR OTHERWISE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR FOR LOSS OF PROFITS SUFFERED BY BUYER. NOTHING IN THIS SECTION 10.1(c) WILL LIMIT OR EXCLUDE ANY DAMAGES TO THE EXTENT (X) ARISING OUT OF A BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT, (Y) RESULTING FROM LILLY'S OR ITS AFFILIATE'S GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, OR (Z) SUCH DAMAGES ARE DIRECT DAMAGES.

(d) IN NO EVENT SHALL LILLY'S TOTAL LIABILITY TO BUYER ARISING UNDER THIS AGREEMENT EXCEED THE LIABILITY CAP.

10.2. Specific Breaches and Remedies. Without prejudice to Section 10.1, the following circumstances will constitute a specific breach of this Agreement and the non-

defaulting Party may terminate this Agreement upon notice to the defaulting Party of such breach if such breach remains uncured for [***]-Days following such notice, with immediate effect:

(a) the other Party's act or omission violates any Applicable Law or constitutes a breach of the Compliance Requirements set forth in Exhibit G (*Compliance Requirements*) hereto or Section 7.2 (Compliance with Anti-Corruption Laws) or Section 7.3 (Prohibited Conduct) regarding anti-corruption law and regulations;

(b) to the extent permissible under Applicable Law, the other Party is deemed to become insolvent or bankrupt in accordance with Section 11.2; or

(c) Buyer materially fails to fully and timely satisfy its obligation to pay any required amount in accordance with Section 2.7 (Payment Terms).

ARTICLE 11
TERM AND TERMINATION

11.1. Term of Agreement. This Agreement will commence on the Closing Date and, unless earlier terminated in accordance with the terms of this Agreement, including pursuant to Section 10.1(a) and Section 10.2, will remain in effect for an initial term of [***] (each, a "Renewal Term") (the Initial Term and any successive Renewal Terms, collectively the "Term"); *provided* that each time Buyer elects to exercise its option pursuant to the foregoing, Buyer shall deliver to Lilly a written notice of request for renewal at least [***] Days prior to the expiration of the then-current Term.

11.2. Insolvency of a Party. If either Party becomes the subject of proceedings involving bankruptcy, insolvency, moratorium of payment, reorganization or liquidation, and such proceeding is not dismissed or discharged within [***] days after its commencement or if either Party makes any assignment for the benefit of its creditors, then such Party will be deemed to have materially breached this Agreement.

11.3. Effect of Termination or Expiration. Termination or expiration of this Agreement will not operate to release any Party from any obligation or liability incurred under the terms of this Agreement prior to or upon termination or expiration hereof. Termination of this Agreement for any reason will be without prejudice to the rights and remedies of any Party with respect to any material breach of this Agreement. In addition:

(a) If this Agreement is terminated or expired, then notwithstanding anything herein to the contrary, Lilly shall have the right, but not the obligation, to complete any purchase orders for any Product accepted prior to the date of receipt of notice of such termination and Buyer shall be required to accept delivery and make payment for such Product in accordance with the terms and conditions of this Agreement. Except to the extent that Lilly exercises its right to complete purchase orders pursuant to the preceding sentence, at the end of the Term, all purchase orders shall automatically be deemed cancelled.

Upon any termination or expiration of this Agreement, Buyer shall purchase, in accordance with this Section 11.3(b), from Lilly (i) all finished Product (in any form), (ii) all inventory of APIs and (iii) all inventory of device components, in each case of (ii) and (iii), that are specific to the manufacture of the Product then in the possession of Lilly or any of its Affiliates, or any Lilly Contractor or in transit, in each case that do not bear any Lilly trademark or name (all the

foregoing Product and inventories, collectively, "Inventories"), at the applicable Product Supply Price for finished Product and for all other Inventories, *provided* that the Inventories were purchased or produced and maintained by Lilly in accordance with its ordinary practices not inconsistent with the most recent Forecasts (based on the then-applicable Lead Time) and was reasonably expected to be utilized to meet such Forecasts. With respect to any intermediates or work-in-progress (WIP) inventories that are in the possession of Lilly, its Affiliate(s) or Lilly Contractor(s) or in transit at the time of termination or expiration of this Agreement and have been prepared, processed or produced by Lilly, its Affiliate(s) or Lilly

Contractor(s) in reasonable expectation to be utilized to meet the most recent Forecasts (based on the then-applicable Lead Time), Lilly shall have the right to finish, or cause to be finished, the production activities with respect to such inventories into finished Product; and Buyer shall purchase all such Product pursuant to the first sentence of this Section 11.3(b). Within [***] Days of such expiration or termination, Lilly shall provide Buyer with an invoice for the amount determined in accordance with this Section 11.3(b), and Buyer shall pay such amount in accordance with Section 2.7 (Payment Terms).

(b) Upon the expiration or termination of this Agreement, Lilly shall credit or refund to Buyer any then-outstanding overpayment, with respect to any finished Product that Buyer has purchased in accordance with Section 2.5, based on the differential from the applicable Product Supply Price for such Product.

(c) If this Agreement is terminated by Lilly under Section 10.1(a) or Section 10.2, Buyer shall reimburse Lilly for the fee required to be paid under the [***] Agreement (as set forth in Section 11.3 of the [***] Agreement as of the date of the Asset Purchase Agreement), to the extent paid by Lilly and not assumed by Buyer by assignment of the [***] Agreement to Buyer.

(d) Each Party shall destroy or return to the other Party, pursuant to Section 9.3, the other Party's Confidential Information received under this Agreement to which such Party does not otherwise retain rights under this Agreement, the Asset Purchase Agreement, or any other Ancillary Agreement.

11.4. Option. Buyer shall have the rights described in Exhibit N (Option) hereto.

ARTICLE 12
MISCELLANEOUS

12.1. Force Majeure. Neither Party to this Agreement will be liable for failure to perform if the failure is attributable to any cause which is reasonably beyond the Party's control ("Force Majeure"), including the following to the extent beyond such Party's control:

(a) terrorism, war (declared or undeclared), riot, political insurrection, rebellion or revolution, civil disturbances;

(b) acts or orders of expropriation by any government (whether *de facto* or *de jure*) prohibiting the import or export of the Product or imposing rationing;

(c) quarantine restrictions or business closure directives mandated by a Governmental Authority having jurisdiction in any territory for which a Party is obligated to perform under this Agreement, that, in each case, are in effect as of the Closing Date;

(d) strike, lockout, or other labor troubles which significantly interfere with the manufacturing, sale or transportation of the Product or with the supply of raw materials necessary for the production of the Product; or

(e) fire, flood, explosion, epidemic, pandemic (including the COVID-19 pandemic, and any future resurgence, or evolutions or mutations, of COVID-19 or related disease outbreaks, epidemics or pandemics), earthquake, hurricanes, tornadoes or other natural events.

Notwithstanding the foregoing, under no circumstance will an event of Force Majeure excuse a Party's obligations to make payments when due under this Agreement.

12.2. Notification. If a Party incurs Force Majeure conditions that will result in its non-performance it will immediately notify the other Party in writing of the existence of such conditions and the anticipated period of non-performance. If the actual period of non-performance by either Party (the "Non-Performing Party") because of Force Majeure conditions exceeds [***] Days from the date of such written notice of Force Majeure conditions, the Parties shall use their Commercially Reasonable Efforts to explore in good faith alternative options of reinstating performance or otherwise agree on measures to mitigate the effect of such Force Majeure or its duration in order to achieve as nearly as possible the same objectives as the objectives provided for by the express provisions of this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that the obligations set forth in this Section 12.2 shall in no event have the effect of extending the Term. In the event that the expiration of the Term, in accordance with Section 11.1, falls during a period of non-performance because of Force Majeure conditions, this Agreement shall expire on such expiration date with no extensions. Neither Party will owe to the other Party any damages, reimbursement, or indemnification as a result of such termination and Buyer hereby acknowledges that these arrangements are transitional in nature and waives any rights, including rights to receive compensation, it may have under law due to its status as an agent or distributor.

12.3. Governing Law. The rights and obligations of the Parties will be governed by, and this Agreement will be interpreted, construed and enforced in accordance with, the laws of the State of Delaware, excluding its conflict of laws rules to the extent such rules would apply the law of another jurisdiction.

12.4. Dispute Resolution.

(a) *Management Representatives.* Any dispute, controversy or claim arising out of or relating to this Agreement (each, a "Dispute") will be referred to an officer of Buyer and Lilly (each, a "Management Representative," and, collectively, the "Management Representatives"), who will meet in person or by telephone to attempt in good faith to achieve a resolution of such Dispute. If such Management Representatives (or their designees) are unable to resolve such Dispute within [***] Days of the first presentation of such Dispute to such Management Representatives, such Dispute will be referred to an appropriately senior officer of Buyer and Lilly who will use their good faith efforts to mutually agree upon the proper course of action to resolve the Dispute. If any Dispute is not resolved by these

individuals (or their designees) within [***] Days after such Dispute is referred to them, then a Party may file a claim with the competent courts of the State of Delaware, as further described in Section 12.4(b) below.

(b) *Jurisdiction.* The Parties hereby irrevocably submit to the exclusive jurisdiction personal jurisdiction of the Delaware Court of Chancery, any other court of the State of Delaware or any federal court sitting in the State of Delaware (where federal jurisdiction does not exist), and the appellate courts having jurisdiction of appeals in such courts, in each case, over any Dispute not resolved through the procedures described in Section 12.4(a) above, and each Party hereby irrevocably agrees that all claims in respect of any such Dispute shall be heard and determined in such courts. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such Dispute brought in such court or any defense of inconvenient forum for the maintenance of such Dispute. Either Party may, at any time and without waiving any remedy under this Agreement, seek from any court having jurisdiction any temporary injunctive or provisional relief necessary to protect the rights or property of that Party. Any final judgment resolving a dispute hereunder may be enforced by either Party in any court having appropriate jurisdiction.

(c) *Service of Process*. Each of the Parties hereby consents to process being served by any Party in any Proceeding by the delivery of a copy thereof in accordance with the provisions of Section 12.2.

(d) *Performance.* During the course of the court's adjudication of the Dispute, this Agreement will continue to be performed except with respect to the part in dispute and under adjudication.

(e) *Injunctive Relief.* Notwithstanding the foregoing in this Section 12.4, the Parties agree that each Party will have the right, without posting any bond, to seek preliminary injunction, temporary restraining order or other temporary relief from any court of competent jurisdiction.

(f) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE OR ANY ACTION, PROCEEDING OR CLAIM (WHETHER AT LAW, IN CONTRACT, TORT OR OTHERWISE, OR IN EQUITY) THAT MAY BE BASED UPON, ARISE OUT OF OR RELATE TO THIS AGREEMENT OR ANY TRANSACTIONS CONTEMPLATED THEREBY. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF A DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.4(f).

(g) The foregoing consent to jurisdiction will not constitute submission to jurisdiction or general consent to service of process in the State of Delaware for any purpose except with respect to any Dispute.

12.5. Assignment. Neither this Agreement nor any Party's rights or obligations hereunder may be assigned or delegated (except as expressly set forth herein) by such Party without the prior written consent of the other Party, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by any Party without the prior written consent of the other Party will be void and of no effect; *provided*, *however*, that either Party may assign any and all of its rights or obligations hereunder (a) to an Affiliate without the prior consent of the other Party; *provided* that the assigning Party will not be released from its obligations hereunder by reason of such assignment, or (b) along with an assignment of the Asset Purchase Agreement made in accordance with the terms of the Asset Purchase Agreement. Lilly may perform any or all of its obligations under this Agreement through one or more of its Affiliates. If either Party transfers (whether by way of legal or equitable assignment, declaration of trust, novation or otherwise) the benefit in whole or in part of this Agreement or, after the Closing Date, changes its tax residence or the permanent establishment to which the rights under this Agreement are allocated and a payment under this Agreement is subject to withholding Tax where the payment would not have been subject to withholding Tax or would have been subject to a lower rate of withholding Tax in the absence of such transfer, change in tax residence or permanent establishment, then the paying party or its assignee (as the case may be) shall be obliged to pay to the recipient such sum as will after such deduction or withholding has been made leave the recipient with the same amount as it would have been entitled to receive had no transfer, change in tax residence or permanent establishment taken place.

12.6. No Third Party Beneficiaries. A Person who is not a Party will have no right to enforce any of its terms. This Agreement may be varied in any way and at any time by agreement between Lilly and Buyer, without the consent of any Third Party or any Affiliate of a Party.

12.7. Relationship of the Parties. This Agreement will not constitute or give rise to a partnership between the Parties or any co-employment or joint employer relationship between the Parties. All activities performed by Lilly hereunder will be carried on by or on behalf of Lilly as an independent contractor and not as an agent for Buyer. Neither Party will bind the other Party to any obligation without the express written consent of the other Party.

12.8. Amendments. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by both Parties hereto; *provided*, *however*, that the Project Leaders may modify, or approve modifications to, any Exhibits to this Agreement pursuant to Section 7.13 and such modifications to such Exhibits made or approved by the Project Leaders in writing (including by electronic transmission such as email) will be effective without such execution and delivery.

12.9. Further Assurance. Each Party agrees to execute such further papers, agreements, documents, instruments and the like as may be reasonably necessary or desirable to effect the purpose of this Agreement and to carry out its provisions.

12.10. Notices. All notices and other communications hereunder will be in writing and will be deemed to have been duly given if delivered personally, mailed by certified mail (return receipt requested) or sent by overnight courier (upon telephone or electronic mail confirmation of receipt) to the Parties at the following addresses or at such other addresses as will be specified by the Parties by like notice:

if to Lilly, to:

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, Indiana 46285
Telephone: (317) 276-2000
Attention: Senior Vice President and Head of Corporate Business Development

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

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
Telephone: (317) 276-2000

Attention: Senior Vice President - Transactions and Contracting

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

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-4800
Attention: [***]
[***]
Email: [***]
[***]

if to Buyer, to:

Amphastar Pharmaceuticals, Inc.
11570 Sixth Street
Rancho Cucamonga, CA 91730
Attention: Jacob Liawatidewi
EVP Corporate Administration Center
Email: ***

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

Wilson Sonsini Goodrich & Rosati
One Market Plaza
Spear Tower, Suite 3300
San Francisco, CA 94105
Attention: [***]
[***]
Email: [***]
[***]

Notice so given will (in the case of notice so given by mail) be deemed to be given when received and (in the case of notice so given by courier or hand delivery) on the date of actual transmission or (as the case may be) personal delivery.

12.11. Survival. Termination or expiration of this Agreement shall not relieve a Party from obligations that are expressly indicated to survive the termination or expiration of this Agreement and shall be without prejudice to any rights that shall have accrued to the benefit of a Party prior to such termination or expiration. Without limiting the foregoing, the Parties' respective rights and obligations under Section 2.6 (Taxes), Section 2.9 (Delivery of Product and Delivery Location) (to the extent of any surviving obligations to Deliver Product), Section 2.10 (Inspection of Product) (solely for any Product or Inventories to be Delivered or provided after termination or expiration of this Agreement), Section 2.12 (Product Warranty), Section 2.13 (Disclaimer), Section 3.3 (Buyer's Covenant to Continue to Distribute Product), Section 6.3 (Product Recall), Section 6.4 (Indemnity), Section 6.5 (Insurance), Section 7.5 (Performance Records) (for the time period such records are required to be maintained for compliance with Applicable Laws), Section 7.6 (Disclosure Rights), Section 7.7 (Requests for Information), Section 7.8 (Books and Records), Section 7.10 (Compliance Violations), Section 7.11 (Compliance Audit), Section 7.12 (Subcontractors and Agents) (only the second and third sentences thereof), Section 8.2 (Transition Trademark License to Buyer) (solely for the Pre-Market Authorization Period and any applicable Wind-Down Period), Section 8.3 (with respect to Lilly's obligations that survive expiration or termination), Article 9 (Confidential Information), Section 10.1 (General Terms Relating to Breach), Section 11.3 (Effect of Termination or Expiration) and this Article 12 (Miscellaneous) will survive the expiration or termination of this Agreement. Section 2.7 (Payment Terms) will survive with respect to any activities performed by Lilly or any of its Affiliates during the Term or pursuant to Section 11.3 and until Lilly is paid all amounts owed with respect thereto.

12.12. Incorporation from Asset Purchase Agreement. Each of Section 11.5 (Procedure), Section 12.1 (Expenses), Section 12.4 (Severability), Section 12.5 (Counterparts), Section 12.6 (Entire Agreement), Section 12.13 (Rules of Construction) and Section 12.14 (Privilege) of the Asset Purchase Agreement is hereby incorporated by reference into this Agreement, *mutatis mutandis*.

[Signature Page Follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the Closing Date.

ELI LILLY AND COMPANY

By: **/s/ Edgardo Hernandez**
Name: Edgardo Hernandez
Title: Executive Vice President and
President, Manufacturing Operations

AMPHASTAR PHARMACEUTICALS, INC.

By: **/s/ Bill Peters**
Name: Bill Peters
Title: Authorized Signatory

[Signature Page to Manufacturing Services Agreement]

Exhibit A
Supply Territory

[***]

Exhibit B
BAQSIMI® Manufactuirng Technology Transfer Plan

[***]

Exhibit C
Marketing Authorization Transfer Plan

[***]

Exhibit D
Lilly Initital Forecast

[***]

Exhibit E
Lilly Contractors, Lead Time and Lilly Facilities

[***]

Exhibit F
Product Supply Price

Subject to the terms and conditions of this Agreement and of any other Ancillary Agreements, including (i) any [***] in accordance with Section 2.4 and Section 2.8(a), (ii) any payment to Lilly's Affiliate in [***] in accordance with Section 2.5 and Buyer's receipt of [***] under this Agreement and (iii) the requirement that all deliveries be made [***] (Incoterms 2020) at the applicable Lilly Facility in accordance with Section 2.9(b), the per unit supply price is $[***] USD for a one-pack Product or $[***] USD for a two-pack Product, [***].

In the event of the sale of Inventory upon any termination or expiration of this Agreement pursuant to Section 11.3(b) or at Buyer's request pursuant to Exhibit N upon Buyer's Supply Chain Transfer Completion, the supply price in the case of API is $[***] USD [***] for sale from Lilly to Buyer or any of its Affiliates or sublicensees.

Subject to the terms and conditions of this Agreement, in the event of the sale of Inventory upon any termination or expiration of this Agreement pursuant to Section 11.3(b) or at Buyer's request pursuant to Exhibit N upon Buyer's Supply Chain Transfer Completion, the supply price in the case of device components is $[***] USD per set for sale from Lilly to Buyer or any of its Affiliates or sublicensees.

Exhibit G
Compliance Requirements

[***]

Exhibit H
Information Security Standards

[***]

Exhibit I
Pharmacovigilance Agreement

[***]

Exhibit J
Quality Agreement

[***]

Exhibit K
Supplier Privacy Standard

[***]

Exhibit L
CMO Supply Agreements

[***]

Exhibit M
Product SKUs and Description

[***]

Exhibit N
Option

[***]

Exhibit O
CMC Changes

[***]

Exhibit P
Lilly Retained Names and Marks

[***]

Exhibit Q
Additional Definitions

[***]

Excess Percentage Definition

"Excess Percentage" means [***].

Foreign Affiliate Definition

"Foreign Affiliate" means Lilly's Affiliate in [***] (*i.e.*, Eli Lilly [***]). The country of the Foreign Affiliate is [***].

[***]

[***]

Local Net End Selling Price Definition

"Local Net End Selling Price" means the selling price at which Lilly's Affiliate in [***] would sell the Product to local [***] customers at the time of delivery.

Minimum Order Quantity Definition

"Minimum Order Quantity" means, for each SKU, [***] units (*i.e.*, a [***]-pack Product or, in the case of the [***] and [***] only, optionally, a [***]-pack Product) of finished Product (where a different label constitutes a different SKU).

MSA Product Intellectual Property Rights Definition

"MSA Product Intellectual Property Rights" means all Intellectual Property Rights primarily related to the Product, excluding all trademarks, trade dress, service marks, domain names, business names, or other sources of indicia or origin, that are generated in connection with activities under this Agreement by either Party, solely or jointly with others.

Percentage Cap Definition

"Percentage Cap" means [***]% of the amounts set forth in Exhibit F hereto.

Percentage Range Definition

"Percentage Range" means [***]% to [***]%.

PV Countries Definition

"PV Countries" means the [***].

Requirements Definition

"Requirements" means having a remaining shelf-life, at the time of such Delivery, of [***] months or at least [***]% of the approved shelf-life then applicable in the Supply Territory, whichever is greater.

Exhibit 10.3

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS ([***]), HAS BEEN OMITTED BECAUSE THE INFORMATION (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED

TRANSITION SERVICES AGREEMENT

BETWEEN

ELI LILLY AND COMPANY

AND

AMPHASTAR PHARMACEUTICALS, INC.

DATED AS OF

June 30, 2023

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EXHIBITS

TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT (this "Agreement"), dated as of June 30, 2023 (the "Closing Date"), is by and between Eli Lilly and Company, an Indiana corporation ("Lilly"), and Amphastar Pharmaceuticals, Inc., a Delaware corporation ("Recipient"). Each of Lilly and Recipient may be referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, Lilly and Recipient have entered into that certain Asset Purchase Agreement dated as of April 21, 2023 (the "Asset Purchase Agreement"); and

WHEREAS, following the consummation of the transactions contemplated by the Asset Purchase Agreement, as an accommodation to Recipient, Lilly has agreed to perform (and where applicable, procure the performance of) certain Services (as defined below) for the benefit of Recipient, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I
DEFINED TERMS

Capitalized terms used but not defined herein will have the meanings set forth in the Asset Purchase Agreement, as applicable. In addition to those terms defined above and elsewhere in this Agreement, for purposes of this Agreement, the following terms will have the meanings set forth below.

"Confidential Information" means all nonpublic information or materials received or otherwise obtained or observed by or on behalf of a Party or its Affiliates ("Receiving Party") by or on behalf of the other Party or its Affiliates ("Disclosing Party") in connection with this Agreement, including technical and non-technical data, know-how, methods, operational information, procedures, and processes, in each case regardless of whether such information is identified as confidential, but excluding any information that is (i) generally available to and known by the public, other than as a result of a breach of this Agreement by the Receiving Party, (ii) the Receiving Party acquires from a Third Party without any duty of confidentiality to the Disclosing Party, (iii) is independently developed or acquired, without reference to or use of the Disclosing Party's Confidential Information, or (iv) is already known by the Receiving Party at the time of disclosure, without duty of confidentiality to the Disclosing Party.

"Disability" has the meaning set forth in Section 2.19.

"Dispute" has the meaning set forth in Section 12.3.1.

"Distribution End Date" means, with respect to each country in the Supply Territory, the date set forth for such country on Exhibit D (*Distribution End Date*) hereto, as such date may be modified by the Transition Managers in accordance with Section 2.13.

"Distribution Period" means, with respect to each country in the Supply Territory, the period that commences on the Closing Date and ends on the applicable Distribution End Date for such country.

"Entity" means any corporation (including any nonprofit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust or company (including any limited liability company or joint stock company) or other similar entity.

"Excluded Services" means any services of the nature described in Exhibit A2 (*Excluded Services*) hereto.

"Good Industry Practice" means the exercise of reasonable skill, care, prudence, efficiency, foresight and timeliness which would be expected from a prudent and experienced Person providing services in the nature of the relevant Services.

"Intellectual Property Rights" means all trademarks, patents, trade dress, service marks, domain names, business names, copyrights (or rights in any of the foregoing, as applicable) and any other intangible property, and all applications and registrations therefor, and all inventions, know-how, trade secrets, and other intellectual property and proprietary rights arising under any jurisdiction.

"Interest Rate" has the meaning set forth in Exhibit E (*Additional Definitions*) hereto.

"Internal Compliance Codes" means a Party's internal policies and procedures intended to ensure that a Party complies with applicable Laws and such Party's internal ethical, medical, and similar standards.

"IT Systems" means Recipient's IT Systems or Lilly's IT Systems, as the context requires.

"Liability Cap" has the meaning set forth in Exhibit E (*Additional Definitions*) hereto.

"Lilly Indemnified Party(ies)" has the meaning set forth in Section 11.4.1.

"Lilly Sold Product" has the meaning set forth in Section 2.8.

"Lilly TSA License" has the meaning set forth in Section 8.2.

"Lilly's IT Systems" means all communication systems and computer systems used by Lilly (or any of Lilly's Affiliates) including all hardware and software and elements of the systems that are used (or shared) by Lilly or its Affiliates, but excluding networks generally available to the public.

"Management Representative(s)" has the meaning set forth in Section 12.3.1.

"Marketing Authorization" has the meaning set forth in the Manufacturing Services Agreement.

"Marketing Authorization Transfer Date" means, on a country-by-country basis, the effective date of transfer of the applicable Marketing Authorization(s) as specified in Exhibit C (*Marketing Authorization Transfer Plan*) to the Manufacturing Services Agreement, with respect to Product for the applicable country, to Recipient or its designated Affiliate.

"Payment Currency" means United States Dollars or U.S. Dollars.

"Person" means any individual, Entity or Governmental Authority.

"Proceeding" means any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation that is, has been or may in the future be commenced, brought, conducted or heard at law or in equity or before any Governmental Authority.

"Product" means a powdered formulation (containing glucagon for nasal administration and the related unit dose system for powder) marketed for sale to consumers as of the Closing Date as BAQSIMI® of a SKU set forth on Exhibit M (*Product SKUs and Description*) to the Manufacturing Services Agreement. For clarity, the Demo Version (as defined in the Asset Purchase Agreement) does not constitute Product.

"Recall Adjustment" has the meaning set forth in Section 3.1.

"Recipient Dependent Element" has the meaning set forth in Section 2.16.1.

"Recipient Indemnified Party(ies)" has the meaning set forth in Section 11.4.2.

"Recipient's IT Systems" means all communication systems and computer systems used by Recipient (or any of Recipient's Affiliates) including all hardware, software and websites and elements of the systems that are used (or shared) by Recipient or its Affiliates, but excluding networks generally available to the public.

"Regulatory Services" has the meaning set forth in Section 2.11.1.

"Sales Taxes" has the meaning set forth in Section 6.2.

"Service Charge(s)" means the service charge(s) set forth in respect of each Service or group of Services set forth on any Exhibit (including Exhibit A1 (*Services*) hereto), for clarity, which may include hourly fees (such as FTE fees), flat fees (such as monthly fixed fee), percentage of Net Sales fees, or out of pocket pass-through of direct costs, as applicable.

"Services" means the transitional services to be provided by Lilly, whether itself or through its Affiliates, under this Agreement (including Exhibit A1 (*Services*) hereto) including the arrangements set forth on Exhibit A1 hereto, which Exhibit may be modified by mutual agreement of the Transition Managers in accordance with Section 2.13, but in all cases excluding the Excluded Services.

"Services Standard" has the meaning set forth in Section 2.2.

"Subpoena" has the meaning set forth in Section 10.2.1.

"Supply Territory" has the meaning set forth in the Manufacturing Services Agreement.

"Tax" means all taxes, levies, duties, imposts, charges and withholdings of any nature whatsoever together with all penalties, charges and interest relating to any of them or to any failure to file any return required for the purposes of any of them.

"Tax Authority" means any taxing or other authority competent to impose any liability in respect of Tax or responsible for the administration or collection of Tax or enforcement of any law in relation to Tax.

"Third Party Agreement" means any Third Party agreement or license, which Lilly or any of its Affiliates is a party to or has the benefit of, and which is required to enable Lilly to deliver, or is otherwise used by Lilly in the delivery of, the Services.

"Third Party Consent" has the meaning set forth in Section 2.4.1.

"Third Party Dependent Element" has the meaning set forth in Section 2.4.2.

"Transition Manager" has the meaning set forth in Section 2.13.

"Transition Period" has the meaning set forth in Section 5.1, as may be extended, on a Service-by-Service basis, in accordance with Section 5.2.

"Transition Steering Committee" or "TSC" has the meaning set forth in Section 2.14.

"TSA Product Intellectual Property Rights" means all Intellectual Property Rights primarily related to the Product, excluding all trademarks, trade dress, service marks, domain names, business names, or other sources of indicia or origin, that are generated in connection with activities under this Agreement by either Party, solely or jointly with others.

"VAT" means value-added Tax.

"Withholding Agent" has the meaning set forth in Section 7.2.

ARTICLE II
SERVICES

2.1. Provision of Services. Subject to the terms and conditions contained in this Agreement (including all Exhibits hereto), for clarity, including Recipient's obligations under Section 2.16 herein and Exhibit A1 (*Services*) hereto, on a Service-by-Service basis, during the applicable Transition Period, Lilly (whether itself or through its Affiliates) will provide or cause to be provided to Recipient the Services. For the avoidance of doubt, Lilly shall have no obligation to provide or cause to be provided to Recipient any services other than Services as specified in this Agreement (including Exhibit A1 hereto) or otherwise agreed to in writing (including by electronic transmission such as email) by Lilly and Recipient. Notwithstanding anything to the contrary herein, neither Lilly nor any of its Affiliates will be required to perform or to cause to be performed any of the Services for the benefit of any Person other than Recipient and its Affiliates, nor to provide any Excluded Services. Lilly shall have no obligation to provide or cause to be provided to Recipient any Services in excess of the applicable maximum FTE hours set forth on Exhibit A1 hereto for the applicable Service during the applicable Transition Period; *provided* that, in accordance with this Agreement including Exhibit A1 hereto (including under the heading "*Additional Services*"), the Transition Managers may, on behalf of the respective Parties, agree in writing (including by electronic transmission such as email) in accordance with Section 2.13 to the provision and receipt of additional Services for a Service Charge that may be different from the corresponding Service Charge set forth in Exhibit A1 hereto for the applicable Services during the applicable Transition Period. If there is any inconsistency between the terms of Exhibit A1 hereto and the terms of this Agreement, the terms of this Agreement shall govern.

2.2. Standard of Performance. Subject to the terms and conditions of this Agreement including Exhibit A1 (which sets forth certain limitations and conditions with respect to the applicable Services) hereto, Lilly will provide, whether itself or through its Affiliates or subcontractors, the Services: (i) in accordance with applicable Law; (ii) in accordance with this Agreement, including Exhibit A1 hereto; (iii) in accordance with Good Industry Practice; (iv) using, in all material respects, the same degree of skill, quality and care utilized by Lilly or its Affiliates or their subcontractors in performing such activities for Lilly with respect to the Business in the [***]-month period prior to the signing of the Asset Purchase Agreement, (v) where applicable, to a standard that is not lower than the standard to which Lilly supplies the relevant Service to itself and (vi) in compliance with its Internal Compliance Codes (the foregoing clauses (i) through (vi) collectively, the "Services Standard"). Under no circumstances will Lilly, its Affiliates or their subcontractors be held accountable to a greater standard of care or skill than the Services Standard in performing the Services. NEITHER LILLY NOR RECIPIENT NOR ANY OF THEIR AFFILIATES MAKE ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR TITLE, OR ANY WARRANTY THAT MAY ARISE AS A COURSE OF DEALING OR USAGE OF TRADE, WITH RESPECT TO THE SERVICES, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

2.3. Third Party Services. Recipient acknowledges and agrees that certain of the Services may have been provided and will continue to be provided to Recipient through Third Parties designated by Lilly. Lilly will have the right to subcontract or outsource any of its obligations and the performance of any Services hereunder to any of its Affiliates or to any Third Party, *provided* that Lilly shall obtain Recipient's consent prior to engaging any such Third Party that was not engaged by Lilly (or any of Lilly's Affiliates) in the Business for such activity prior to the Closing (which consent shall not be unreasonably withheld).

2.4. Third Party Consents

2.4.1. To the extent that any permit, agreement or consent is required from a Third Party, whether under a Third Party Agreement or otherwise, in order for Lilly or its Affiliates (as applicable) to provide any of the Services (a "Third Party Consent"), then Lilly will (at the cost of Recipient, including Third Party costs) use commercially reasonable efforts to obtain such Third Party Consent; *provided*, *however*, that under no circumstances will Lilly be obligated to provide a Service if: (i) Lilly is unable to obtain necessary consents, licenses and approvals relating to such Service on commercially reasonable terms or (ii) in order to provide such Service, Lilly will have an obligation to make any payments to any Third Party or incur any obligations in respect of any such consents, licenses or approvals, which payments or other obligations are not fully borne by Recipient. Lilly represents and warrants that, to the knowledge of Lilly, as of the Closing Date, there are no Third Party Consents or as disclosed in Section 5.3 (No Conflicts) of the Disclosure Schedule to the Asset Purchase Agreement. Lilly shall promptly notify Recipient of any Third Party Consent after its awareness of any such Third Party Consent.

2.4.2. Where a Third Party Consent or Third Party Agreement is required in order for Lilly to provide any element of the Services ("Third Party Dependent Element") and: (i) that Third Party Consent either has not been obtained (notwithstanding compliance by Lilly with Section 2.4.1), or has expired or been terminated or been revoked; or (ii) that Third Party Agreement terminates or expires; then Lilly will not be obliged to provide the Third Party

Dependent Element, *provided* that Lilly shall continue to use commercially reasonable efforts to obtain such Third Party Consent or renewal or extension of such Third Party Agreement, or an equivalent thereof.

2.4.3. Subject to Section 2.5, where Lilly is not obliged to provide a Third Party Dependent Element or perform an obligation under this Agreement pursuant to Section 2.4.2, Lilly shall use commercially reasonable efforts (acting reasonably and in good faith) to source and agree to a reasonable interim solution with an alternative supplier. The costs relating to any such solution will be borne by Recipient, subject to that solution and the costs having been approved in writing (including by electronic transmission such as email) by Recipient in advance. If Recipient does not accept the reasonable interim solution with an alternative supplier which is proposed by Lilly, then Lilly will have no further obligation to provide the Third Party Dependent Element or any alternative service hereunder.

2.5. Transitional Nature of Services. Recipient acknowledges and agrees that Lilly is not in the business of providing services to Third Parties and that the Services are intended only to be transitional in nature, and will be furnished by Lilly only during the applicable Transition Period solely for the purpose of accommodating Recipient in connection with the transactions contemplated by the Transaction Agreements. Recipient acknowledges that the Services are being furnished in support of Recipient's personnel and, without limiting Lilly's obligations to perform the Services, under no circumstances will Lilly be required to fulfill or serve as a substitute for any personnel role of Recipient. Recipient will use commercially reasonable efforts to transition the Services to its own internal organization or obtain alternate third-party sources to provide such services and end its reliance on Services as provided hereunder. Recipient acknowledges and agrees that Lilly (whether itself or through its Affiliates) may make changes from time to time in the manner of performing the Services if Lilly is making or would make similar changes in performing similar services for Lilly itself or its applicable Affiliates; *provided* that such changes do not materially adversely affect the Services provided under this Agreement.

2.6. Personnel. Lilly will have the sole authority to select, employ, supervise, direct and terminate all personnel providing the Services hereunder. Lilly does not guarantee any specific employees being available to provide any Services and shall have the sole authority to replace any employee providers with respect to any Services. Under no circumstances will Recipient be deemed a joint employer or co-employer of any of Lilly's employees, if any, who are providing Services under this Agreement.

2.7. Location of Services Provided; Travel Expenses. Lilly (whether itself or through its Affiliates) will provide the Services to Recipient from locations of Lilly's choice in its sole discretion, unless (a) the applicable Services are required to be performed at a specific location identified in Exhibit A1 (*Services*) hereto or (b) the Parties otherwise mutually agreed in writing (including by electronic transmission such as email) on an mutually agreed location. Should the provision of Services require any personnel of Lilly to travel from his or her employment location, Recipient will reimburse Lilly for all reasonable travel-related costs, to the extent such travel and travel expenses have been pre-approved in writing (including by electronic transmission such as email) by Recipient.

2.8. Supply of Lilly Sold Product. On a country-by-country basis, during the applicable Distribution Period for a country in the Supply Territory, Lilly shall manufacture and supply or procure the manufacture and supply of finished Product for distribution by Lilly or its Affiliate, distributor or (sub)contractor hereunder in such country for the benefit of

Recipient (such Product, "Lilly Sold Product"), subject to the terms of this Section 2.8 and Section 9.3.2.

2.8.1. All Lilly Sold Product will be Lilly Labeled Product unless otherwise agreed by the Parties in writing. Recipient shall not have any right hereunder to request changes to the product labeling for Lilly Sold Product (but, for clarity, this is not intended to limit Section 2.8(a) of the Manufacturing Service Agreement as it relates to Product supplied thereunder), and notwithstanding anything to the contrary in this Agreement, Lilly shall not have any obligation hereunder to supply any SKU unless such SKU is listed on Exhibit M (*Product SKUs and Description*) to the Manufacturing Services Agreement or supply Product for any country outside of the Supply Territory.

2.8.2. Lilly shall supply and manufacture Lilly Sold Product consistent with the allocation of Lilly Sold Product under the Forecast, including the Lilly Initial Forecast (set forth on Exhibit D to the Manufacturing Services Agreement), for the countries in the Supply Territory (such allocation to be mutually agreed by the Parties pursuant to Section 2.2(a) of the Manufacturing Services Agreement), on a country-by-country basis, prior to the applicable Distribution End Date. Portions of such Lilly Initial Forecast with respect to Product to be sold by Lilly under this Agreement may be updated by Lilly prior to or on the Closing Date and, after the Closing Date, may be modified by mutual written agreement of the Project Leaders (as defined in the Manufacturing Services Agreement) in accordance with Section 7.13 of the Manufacturing Services Agreement. The Lilly Initial Forecast shall be prepared by Lilly in good faith based on Lilly's then-current historical demand and estimated future demand for the Product in the Supply Territory in accordance with the Manufacturing Services Agreement.

2.8.3. Section 2.12 (Product Warranty) of the Manufacturing Services Agreement, the Quality Agreement, and the Pharmacovigilance Agreement are hereby incorporated by reference with respect to Lilly Sold Product, *mutatis mutandis*.

2.8.4. After the applicable Distribution End Date for a country, Lilly's responsibilities, if any, to manufacture and supply Product for such country shall be solely as set forth in the Manufacturing Services Agreement.

2.9. Distribution

2.9.1. Recipient, for itself and on behalf of its applicable Affiliates, hereby designates Lilly and its applicable Affiliates as Recipient's distributor of the finished Product in each country in the Supply Territory and Lilly, for itself and on behalf of its applicable Affiliates, hereby accepts such designation. Lilly or its designated Affiliate(s) acting as appointee of Lilly, on behalf of Recipient, shall, subject to the Services Standard set forth in Section 2.2, distribute and sell the finished Product in each country in the Supply Territory until the applicable Distribution End Date. If the Marketing Authorization Transfer Date occurs prior to the Distribution End Date for a country in the Supply Territory, Recipient or its applicable Affiliate or other designee shall make any filings with Governmental Authorities in such country required under applicable Law for Lilly or its Affiliate or such other designee to distribute finished Product on behalf of Recipient in such country until the Distribution End Date therefor. For countries in which a Third Party distributes the Product on behalf of Lilly or its Affiliates, Lilly will use commercially reasonable efforts to align the removal of the Product from any Third Party distribution Contracts (or the termination of such Contracts, as applicable), and Recipient will assist in the same as reasonably requested by Lilly or any of its

applicable Affiliates, as closely as reasonably practicable with the anticipated applicable Distribution End Date for the applicable country.

2.9.2. Unless otherwise agreed by the Transition Managers in accordance with Section 2.13, Recipient shall not, and shall cause its Affiliates, licensees and sublicensees not to, distribute or sell finished Product in any country in the Supply Territory prior to the applicable Distribution End Date for such country. Recipient shall assume responsibility for distribution and sale of Product on a country-by-country basis from and after the applicable Distribution End Date for each country in the Supply Territory.

2.9.3. The Parties agree to the terms set forth in Exhibit F.

2.10. Distribution Activities. During the applicable Distribution Period for each country in the Supply Territory, Lilly shall, subject to the Services Standard set forth in Section 2.2, continue to process customer orders (including billing and collection) for the finished Product in such country and prepare and ship inventory of such finished Product in such country, in each case, solely as set forth under the heading "*Commercial Operations*" in Exhibit A1 (*Services*) hereto. For the avoidance of doubt, Lilly's sole financial payment obligation to Recipient with respect to amounts earned by Lilly on the sale of a Lilly Sold Product shall be to make the Net Economic Benefit payment in accordance with Exhibit B (*Net Economic Benefit*) hereto.

2.11. Regulatory

2.11.1. For clarity, under and in accordance with Section 2.3 and Section 8.3 of the Asset Purchase Agreement, Recipient shall assume all regulatory and compliance responsibilities with respect to the Product from and after the applicable Marketing Authorization Transfer Date for such country. Prior to such assumption of responsibility by Recipient for countries in the Supply Territory for which Lilly or its Affiliate holds the applicable Marketing Authorization prior to the applicable Distribution End Date, on a country-by-country basis during the applicable Transition Period, Lilly shall continue to be responsible for the regulatory and compliance Services identified under the heading "*Regulatory*" in Exhibit A1 (*Services*) hereto (such Services, the "Regulatory Services"). In connection with performing the Regulatory Services, Lilly and its Affiliates may, but shall not be obligated to, generate any data that did not exist as of the Closing Date other than such data generated in the course of Lilly's conduct of the Clinical Studies (as defined in the Manufacturing Services Agreement)that Lilly is required to conduct. For the sake of clarity and notwithstanding the foregoing, except as expressly set forth under the heading "*Regulatory*" in Exhibit A1 hereto or in the Asset Purchase Agreement, nothing contained herein or in Exhibit A1 hereto shall require Lilly or any of its Affiliates to, at any time, (a) prepare, maintain or obtain any licenses, registrations or governmental authorizations necessary for the exploitation or manufacture of the Product by Recipient or any of its Affiliates from and after the Closing Date or (b) assist or otherwise participate in the amendment or supplementation of any Marketing Authorizations or otherwise participate in any filings or other activities relating to the Marketing Authorizations other than as necessary to effect the transfer thereof to Recipient pursuant to Section 4.3 of the Manufacturing Services Agreement and the Marketing Authorization Transfer Plan.

2.11.2. As between the Parties, neither Lilly nor any of its Affiliates shall be required to perform any Regulatory Services for (a) any country in the Supply Territory following the applicable Distribution End Date for such country, except in connection with the

performance of support for the U.S. Pediatric Study and the transfer of the U.S. IND, in each case referenced in Exhibit A1 hereto, or (b) any Withdrawal Territory (as defined in the Manufacturing Services Agreement).

2.12. Promotion; Marketing and Promotional Materials

2.12.1. Marketing or Promotional Activities. Recipient, for itself and on behalf of its applicable Affiliates, hereby authorizes and appoints Lilly to conduct, whether itself or through its Affiliates, any marketing or promotional activities with respect to the Product (a) in the Supply Territory until the applicable Distribution End Date with respect to such country and (b) after the applicable Distribution End Date, in each case ((a) or (b)), solely as set forth under the heading "*Sales and Marketing*" in Exhibit A1 (*Services*) hereto. For clarity, nothing in this Agreement shall require Lilly or any of its Affiliates to conduct any marketing or promotional activities with respect to the Product outside of the Supply Territory at any time from and after the Closing Date.

2.12.2. Recipient's Covenants. Recipient shall not, and shall cause its Affiliates, licensees, sublicensees and distributors not to, (a) create any new marketing or promotional materials (including without limitation any payor materials, medical affairs materials, labeling, packaging or other written materials, educational materials, sales materials, promotional materials or other marketing materials) or derivative works of Lilly's or any of its Affiliates' marketing or promotional materials, in either case, that contain any Lilly Retained Names and Marks (as set forth on Exhibit P to the Manufacturing Services Agreement); (b) adopt, use, register or seek to register any Trademark and Domain Names or any social media identifier that contains a term, that is substantially similar to, confusingly similar to or dilutive of any of Lilly Retained Names and Marks (together with all variations, translations, transliterations and acronyms thereof); or (c) except pursuant to a Transaction Agreement, use any Lilly Retained Names and Marks in connection with the Product. On a country-by-country basis, in no event later than the applicable Distribution End Date for each country in the Supply Territory unless, and solely in the case of the packaging and labeling of Product supplied by Lilly (for clarity, not including any promotional materials), the end of the Wind-Down Period as contemplated under Section 4.2(a) of the Manufacturing Services Agreement, Recipient shall (i) cease or cause to cease all uses of Lilly Retained Names and Marks on any marketing or promotional materials with respect to the Product and (ii) remove or obliterate, or cause the removal or obliteration of, all Lilly Retained Names and Marks from any existing stocks of marketing or promotional materials with respect to the Product. On a country-by-country basis, as promptly after the Closing Date as is reasonably practicable, but in no event later than the applicable Marketing Authorization Transfer Date for each country in the Supply Territory, Recipient shall use commercially reasonable efforts to create and use new marketing and promotional materials for the Product that do not contain any Lilly Retained Names and Marks. For clarity, nothing contained in this Agreement shall be deemed to require Lilly or any of its Affiliates to assist Recipient or any of its Affiliates in any respect with the preparation of Recipient's or its Affiliates' marketing or promotional materials with respect to the Product.

2.13. Transition Managers. Each Party will designate a representative of such Party (who is suitably qualified and has the requisite authority) to act as its transition manager under this Agreement (each, a "Transition Manager"). Each Party will notify the other Party of its Transition Manager within [***] Business Days of the Closing Date and may replace its Transition Manager at any time upon prior written notice to the other Party. The Transition Managers will manage their respective Party's internal activities and coordinate communication between the Parties for the activities contemplated by this Agreement

(including all Exhibits hereto). The Transition Managers will (a) review, consider for modification, and if so agreed, modify any Exhibits hereto, in writing (including by electronic transmission such as email), during the term of this Agreement and (b) serve as the primary contact points for the resolution of any issues or potential disputes that may arise during the performance of this Agreement, with the intent of averting the escalation of such issues or potential disputes. The Transition Managers will meet at least monthly during the term of this Agreement in person or virtually in order to discuss the quality of the Services and the status of the transition and to manage open issues. These meetings may take place in person, by telephone, via a web-based meeting service, or otherwise as agreed by the Parties. For the avoidance of doubt, pursuant to the terms of this Agreement including its Exhibits, the Transition Managers may, on behalf of the respective Parties, agree in writing (including by electronic transmission such as email) in accordance with Section 2.13 to the provision and receipt of additional or extended Services for a Service Charge that may be different from the corresponding Service Charge set forth on Exhibit A1 (*Services*) hereto for the applicable Services during the applicable Transition Period. The Transition Managers may have additional responsibilities as mutually agreed to by the Parties.

2.14. Transition Steering Committee. No later than [***] days following the Closing Date, the Parties will establish a transition steering committee (the "Transition Steering Committee" or "TSC") that shall consist of an equal number (at least two) of representatives from each Party. Unless agreed by the Parties otherwise, the TSC will meet at least monthly during the first [***] months following the Closing Date and thereafter upon request by either Party through its Transition Manager. The TSC will (a) discuss in good faith any matter referenced to it by the Transition Mangers or the Project Leaders (as set forth in the Manufacturing Services Agreement) and (b) discuss the allocation of appropriate resourcing to fulfill either Party's obligations hereunder. The TSC may have additional responsibilities as mutually agreed to by the Parties.

2.15. Data Privacy. Each Party will, in connection with receiving or providing the Services, as applicable, comply with all applicable Laws relating to the privacy or security of personal information. The Parties will cooperate during the applicable Transition Period with respect to such compliance (*provided* that each Party is responsible for its own compliance with such applicable Laws) and comply with reasonable requests of the other Party in connection with any such compliance obligation.

2.16. Dependence on Recipient

2.16.1. Recipient is obligated to (i) provide access to all assets, systems and personnel that the Parties agree are necessary for Lilly to provide, or procure the provision of, any element of the Services (a "Recipient Dependent Element") and (ii) procure that the appropriate member(s) of Recipient and its Affiliates provides assistance in connection thereof.

2.16.2. When the Parties agree that Lilly requires assistance from any member of Recipient or its Affiliates in order for Lilly to provide, or procure the provision of, a Recipient Dependent Element, but a member of Recipient or its Affiliates failed to perform, or procure the performance of, any of their obligations (including any dependencies) under this Agreement, then Lilly will not be obliged to provide, or procure the provision of, the Recipient Dependent Element. Lilly will be excused from performing any obligation under this Agreement to the extent Recipient's failure to perform its obligations under this Agreement, including providing cooperation as set forth in Section 2.17 hinders or prevents Lilly's performance of such obligation.

2.17. Cooperation. Recipient and Lilly will (each acting in good faith) use commercially reasonable efforts to cooperate with each other in all matters relating to the provision and receipt of Services. Without limiting the generality of the foregoing sentence, such cooperation will include prompt notification to Recipient from Lilly in the event that Lilly becomes aware of any circumstances under which it is reasonably likely that the delivery of a Service will be materially impaired or delayed, or in the event that delivery of a Service is materially impaired or delayed. Recipient and Lilly will work together in good faith to identify and implement steps to mitigate such circumstances or remove such impairment as soon as practicable.

2.18. Exclusions. Notwithstanding the foregoing or anything herein to the contrary, in no event will Lilly or any of its Affiliates be: (i) obligated to provide any Services that would be unlawful for Lilly to provide or that would require Lilly to violate applicable Law or Internal Compliance Codes; (ii) obligated to provide any Services that in Lilly's reasonable determination could create deficiencies in Lilly's controls over financial information or adversely affect the maintenance of Lilly's financial books and records or the preparation of its financial statements, *provided* that Lilly shall notify Recipient thereof within [***] business days of such determination by Lilly and in any event at least [***] days in advance of ceasing or not commencing any such Service; (iii) obligated to hire any additional employees or maintain the employment of any specific employee to perform the Services; (iv) obligated to hire replacements for employees that resign, retire or are terminated; (v) obligated to enter into retention agreements with employees or otherwise provide any incentive beyond payment of regular salary and benefits; (vi) obligated to provide any Excluded Service, (vii) prevented from determining, in its sole discretion, the individual employees who will provide Services; (viii) obligated to purchase, lease or license any additional equipment or software other than as provided for in this Agreement; (ix) obligated to create or supply any documentation or information not currently existing or reasonably available; (x) obligated to enter into new or additional contracts with Third Parties or change the scope of current agreements with Third Parties or take any actions that would result in the breach of any Third Party Agreements of Lilly (unless explicitly provided for in this Agreement); or (xi) obligated to provide any Service to the extent and for so long as the performance of such Service becomes impracticable as a result of a cause or causes outside the reasonable control of Lilly. In the event that one or more of the exclusions set forth in this paragraph arise, the Parties will collaborate in good faith with the aim to find a workaround; *provided* that any extra costs are to be borne by Recipient. In addition, Recipient acknowledges that the Services do not include the exercise of business judgment or general management for Recipient.

2.19. Force Majeure. A Party will be excused from performing its obligations (except with respect to any monetary obligations, including as set forth in Article VI) under this Agreement if its performance is delayed or prevented by acts of God, fire, explosion, flood, drought, outbreaks of disease, epidemic, pandemic, war, terrorism, riot, civil disorders, acts of aggression, sabotage, embargo, strikes, management lockouts or other labor disturbances or disputes, unavailability of necessary utilities, or a similar occurrence, in each case, if beyond such Party's reasonable control ("Disability"). Performance will be excused only to the extent of and during the reasonable continuance of a Disability. Any deadline or time for performance that falls due during the occurrence of any Disability will be automatically extended for a period of time equal to the period of such Disability; if the Disability affects a deadline or time for performance that occurs after the Disability, the Parties will collaborate in good faith to agree on a practical deadline or time of performance. Lilly will promptly notify Recipient if, by reason of a Disability, Lilly is unable to meet any deadline or time for performance. If any

part of the Services required under this Agreement is rendered invalid as a result of such Disability, then Lilly will, upon written request from Recipient, and at Recipient's expense, use commercially reasonable efforts to repeat that part of the Services affected by the Disability as soon as reasonably practicable in light of the existence of such Disability.

ARTICLE III
RECALLS

3.1. Recalls. The Parties' respective rights and obligations with respect to recalls or withdrawals of any Lilly Sold Product hereunder are governed by Section 6.3 of the Manufacturing Services Agreement, which is hereby incorporated by reference in this Agreement, *mutatis mutandis*. For the sake of clarity, except to the extent a recall or withdrawal is caused by (a) breach of this Agreement or the Manufacturing Services Agreement or an agreement with Lilly's subcontractor, or (b) gross negligence or willful misconduct, in each case ((a) or (b)), by Lilly, Lilly's Affiliate or Lilly's subcontractor (in which case, Lilly shall be responsible for all costs and expenses of such recall or withdrawal), Recipient shall be responsible for all costs and expenses of any recall or withdrawal hereunder. The financial liability of either Party to the other under this Section 3.1 shall be settled by adjustment (the "Recall Adjustment") to the Net Economic Benefit or, if the Net Economic Benefit is no longer payable, by payment within [***] days after receipt of an invoice therefor in accordance with Section 6.4.2.

ARTICLE IV
IT SYSTEMS

4.1. No Transfer of IT Systems. Except as set forth in Exhibit A1 (*Services*) hereto, in no event will Lilly nor any of its Affiliates be obligated to provide, nor will any of the Services include, any use, transfer, or rental of any of Lilly's IT Systems, including operating systems, computer or network hardware or peripherals, or recordable storage devices (e.g., hard drives in business computers, servers, printers, etc.). Recipient will be solely responsible for procuring, installing, operating, and maintaining all of Recipient's IT Systems.

ARTICLE V
TERM

5.1. Transition Period. Subject to Article IX, Lilly's obligation to perform the Services will begin on the Closing Date and will extend with respect to any particular Service for the period set forth on Exhibit A1 (*Services*) hereto (such applicable period with respect to such applicable Service, as it may be amended as set forth herein, the "Transition Period"). Unless specifically set forth under the heading "*Pharmacovigilance and Global Patient Safety*" in Exhibit A1 hereto with respect to relevant Services, and notwithstanding anything else to the contrary in this Agreement and the Exhibits referred to herein, this Agreement with respect to all Services provided by Lilly hereunder will not in any event extend longer than 18 months following the Closing Date.

5.2. Request for Extension of Services. Lilly will not be obligated to provide or cause to be provided to Recipient any Service after the expiration of the applicable Transition Period as set forth on Exhibit A1 (*Services*) hereto. On a Service-by-Service basis, Lilly will consider in good faith any reasonable request by Recipient for an extension to the applicable Transition Period; *provided* that the Transition Managers may, on behalf of the respective Parties, agree in writing (including by electronic transmission such as email) in accordance with Section 2.13 to the provision and receipt of extended Services for a Service Charge that

may be different from the corresponding Service Charge set forth on Exhibit A1 hereto for the applicable Services during the applicable Transition Period. If Lilly agrees (pursuant to this Section 5.2) to provide such Service for any extended Transition Period, then such Service will remain a Service and be subject in all respects to the provisions of this Agreement during the extended Transition Period, and the extended Transition Period will be deemed the Transition Period for purposes of this Agreement.

ARTICLE VI
CONSIDERATION AND PAYMENT

6.1. Service Charges

6.1.1. Pursuant to the terms and subject to the conditions of this Agreement (including Section 6.4.1), for each calendar month during the term of this Agreement (for clarity, including any Transition Period and, if agreed to by the Parties pursuant to Section 5.2, any extended Transition Period), an amount equal to the applicable Service Charges will accrue and become payable by Recipient to Lilly as consideration for the Services rendered in the applicable calendar month by Lilly and any of its applicable Affiliates in accordance with this Agreement, including Exhibit A1 (*Services*) hereto. The Parties acknowledge and agree that in the case in which Lilly is only required to provide a certain number of FTE hours or specifies a certain number of FTE hours before Recipient will be charged or that Lilly will charge on an FTE hour basis, any such Lilly's FTE hours performed prior to the Closing Date will be treated the same as Lilly's FTE hours performed under this Agreement for purposes of determining any applicable Service Charge and whether any cap on hours has been met.

6.1.2. Notwithstanding anything to the contrary in the foregoing, at no time will Lilly be required to provide any Service at a loss. If at any time Lilly reasonably determines that providing a Service for the Service Charge will result in a loss to Lilly, then Lilly shall notify Recipient of the cause of such potential loss, and shall use commercially reasonable efforts to mitigate such cause, and Lilly may increase the Service Charge, upon notice to Recipient, to an amount that reasonably compensates Lilly for the Service at an amount comparable to that as of the Closing Date.

6.2. Sales Taxes. The Service Charge(s) will be exclusive of any VAT, sales taxes or similar taxes, charges, duties, fees, levies or other assessments (collectively, "Sales Taxes") properly chargeable in respect of the transactions hereunder as required by applicable Law and an amount equal to such Sales Taxes will be paid by Recipient to Lilly in addition to the Service Charge.

6.3. Statement of Services Charges and Reimbursable Costs. On a [***] basis, not later than [***] days after each [***], Lilly will deliver to Recipient a written statement of amounts (and the calculations thereof) reflecting the Service Charge for any Service provided by Lilly, and any reimbursable expenses incurred by Lilly, during such [***]; *provided* that any Service Charge for deduction from the Net Economic Benefit as part of the Additional Costs will be included in Lilly's monthly statements in accordance with Exhibit B (*Net Economic Benefit*) hereto. Each statement will also include the amount of any charges, costs and Sales Tax or VAT to be paid by Recipient to Lilly in addition to the Service Charge, and will be stated in the Payment Currency, with due date noted. Notwithstanding anything to the contrary herein, with respect to any Service for which the Service Charge is a monthly fixed fee, to the extent that Lilly ceases providing such Service during (but not at the end of) a calendar month, Recipient shall be responsible for paying to Lilly a prorated (on a per business

day basis) monthly Service Charge for such partial calendar month (for clarity, which proration will be based on the actual number of business days in the calendar month for which Lilly was providing the applicable Service relative to the total number of business days in such calendar month).

6.4. Payments

6.4.1. In accordance with Section 2.1 of Exhibit B (*Net Economic Benefit*) hereto, Lilly shall make [***] payments to Recipient in the amount of the Net Economic Benefit set forth in the applicable [***] statements for each applicable [***]; *provided* that if the applicable Net Economic Benefit with respect to any [***] is less than $0 U.S. Dollar, Recipient shall pay Lilly such Net Economic Benefit (adjusted to be a positive and not a negative number) within such [***] period. For the avoidance of doubt, the Service Charges will be deducted from the Net Economic Benefit calculation in accordance with the terms of Exhibit B (*Net Economic Benefit*) hereto, until the Net Economic Benefit is no longer payable. Thereafter, the Service Charge will be payable by Recipient to Lilly in accordance with Section 6.4.2. If Recipient fails to pay any undisputed amount payable under this Section 6.4.1 within [***] following the due date for such payment, Lilly shall be entitled to suspend any of its obligations under this Agreement (including all Exhibits hereto) until such time as any such unpaid amounts have been paid in full.

6.4.2. For amounts that will not be paid by Recipient through the calculation of Net Economic Benefit under Exhibit B (*Net Economic Benefit*) hereto, which Lilly will notify Recipient thereof in the applicable invoice, Recipient will pay such invoices in the Payment Currency promptly, and in any event, within [***] after receipt of such invoice hereunder by Recipient. All payments under this Agreement will be made by electronic transfer of the Payment Currency in the requisite amount to one or more bank accounts as Lilly may from time to time designate by notice to Recipient. Lilly may elect by notice to have any of its Affiliates receive payments hereunder on Lilly's behalf or for Lilly's account. For the purpose of calculating Service Charges expressed in currencies other than the Payment Currency, Lilly will convert any amount expressed in a foreign currency into Payment Currency equivalents using Lilly's or any of its Affiliates' standard conversion methodology. Recipient will have no right to offset or set off any amounts Lilly owes to Recipient from or against any amounts due to Lilly hereunder.

6.5. Interest on Late Payments. Any payments under this Agreement that are not made on or before the applicable due date will bear interest (before and after any judgment) at the Interest Rate. Such interest shall be computed on the basis of a year of 360 days for the actual number of days payment is delinquent, not to exceed the maximum permitted by law. Any such overdue payments when made shall be accompanied by all interest so accrued. Said interest and the payment and acceptance thereof will not preclude Lilly from exercising any other rights it may have as a consequence of the lateness of any payment. In addition, if Recipient fails to meet its payment obligation in due time under this Agreement, Recipient shall be responsible for paying to Lilly all of Lilly's reasonable out-of-pocket costs and expenses (including attorneys' fees) in connection with Lilly's efforts to collect such payment due hereunder.

6.6. Supporting Information. From time to time, upon written request by Recipient, Lilly will as soon as reasonably possible provide to Recipient such information with respect to invoices pertaining to Services provided by or on behalf of Lilly as Recipient may reasonably request for the purpose of supporting the fees and expenses represented by such invoices and

will make its personnel available upon reasonable advance notice and during normal business hours to answer such questions as Recipient may reasonably ask for such purpose.

ARTICLE VII
WITHHOLDING AND VAT

7.1. General. Without limiting Recipient's obligations with respect to Sales Taxes under Section 6.2, Recipient shall be responsible for all Taxes imposed in connection with this Agreement; *provided however*, that Lilly shall be responsible for any income taxes related to income earned by Lilly in providing the Services to Recipient in connection with this Agreement.

7.2. Withholding. All sums payable under this Agreement will be paid free and clear of all deductions, withholdings, set-offs or counterclaims whatsoever for Taxes, save only as may be required by applicable Law. If one Party (or its Affiliate) (the "Withholding Agent") is required to deduct or withhold any Tax from any payment hereunder to the other Party (or its Affiliates), then the Withholding Agent shall withhold any such Taxes in accordance with the applicable Laws and timely remit the amount withheld to the applicable Governmental Authority and shall remit the net amount payable to the receiving Party. The Withholding Agent shall secure and send to the other Party (or its applicable Affiliate) within a reasonable period of time proof of any such Taxes paid or required to be withheld by such Withholding Agent for the benefit of the other Party (or its applicable Affiliate). The Parties shall, and shall cause their respective applicable Affiliates to, cooperate reasonably with each other to ensure that any amounts required to be withheld by either Party or its Affiliates are reduced to the fullest extent permitted by applicable Law. If a Party is entitled under any applicable income tax treaty to a reduction of the rate of, or the elimination of, applicable withholding Tax, such Party shall deliver to the Withholding Agent or the appropriate Governmental Authority (with the assistance of the Withholding Agent to the extent that this is reasonably required and is requested in writing) the prescribed forms necessary to reduce the applicable rate of withholding or to relieve Withholding Agent of its obligation to withhold such Tax. Such forms shall be delivered at least [***] business days prior to payment of any such applicable Tax. The Withholding Agent shall transfer to the other Party within [***] days of receipt any Taxes deducted or withheld under this Section 7.2 to the extent such Taxes are refunded to the Withholding Agent by the applicable Governmental Authority or other fiscal authority, plus any interest paid by such authority on such Taxes refunded to the Withholding Agent. [***].

7.3. VAT

7.3.1. All amounts payable under or provided for in this Agreement will be exclusive of any amount in respect of VAT. If VAT is chargeable on any Services under this Agreement, then Recipient will pay, or account for, an amount equal to VAT on such Services; provided it has first received a valid VAT invoice for such Services.

7.3.2. Adjustments to any amounts payable pursuant to this Agreement will also be calculated on a VAT-exclusive basis, and the Party paying the adjustment will pay any corresponding amount due in respect of VAT on paying the adjustment or, if later, promptly following receipt of a valid VAT invoice or credit or debit note for such adjustment, as the case may be, in a form that is valid for VAT purposes.

7.3.3. So far as required by applicable Law, Lilly will promptly provide valid VAT invoices or credit or debit notes which are consistent with applicable Law, addressed to Recipient.

7.3.4. Where a Party is required pursuant to the terms of this Agreement to reimburse or indemnify the other Party for any fees, costs or expenses, or in respect of any liabilities, the payment will include an amount equal to any VAT thereon (save to the extent that the recipient is entitled to any credit or repayment in respect of such VAT from the relevant Taxing Authority).

7.3.5. To the extent that a Party makes any recovery of VAT attributable to supplies, fees, costs, expenses or liabilities for which VAT it has been reimbursed or indemnified by the other Party, the first mentioned Party will repay to the other Party an amount representing such recovered VAT (other than to the extent that such recovery has already been taken into account in determining the amount payable to the first mentioned Party).

ARTICLE VIII
OWNERSHIP OF ASSETS; INTELLECTUAL PROPERTY

8.1. Ownership; Delivery. The Parties acknowledge that no TSA Product Intellectual Property Rights are expected to be invented, developed, or created by Lilly in connection with this Agreement, other than those with respect to data and know-how generated under this Agreement. To the extent Lilly does invent, develop, or create TSA Product Intellectual Property Rights during the Term in connection with performing its obligations under this Agreement, then all right, title, and interest in and to such TSA Product Intellectual Property Rights shall be owned by and the sole and exclusive property of Recipient. Lilly shall and hereby does assign all right, title, and interest in and to such TSA Product Intellectual Property Rights to Recipient. For clarity, all right, title, and interest in and to any Intellectual Property Rights invented, developed, or created by Lilly that do not constitute TSA Product Intellectual Property Rights will be owned by and the sole and exclusive property of Lilly. Such Intellectual Property Rights, in each case, subject to the licenses granted to Lilly and Recipient under the Intellectual Property License Agreement between Lilly and Recipient. For clarity, copies of any records, documents, or data that are generated in performance of the Services that are included within the Transferred Records or Transferred Regulatory Documentation, even if generated after the Closing Date, shall be provided promptly to Recipient at Recipient's reasonable request.

8.2. Limited License to Lilly. Recipient hereby grants, on behalf of itself and its Affiliates, and shall cause its Affiliates to grant, to Lilly and its Affiliates a limited, royalty-free, non-transferrable (subject to Section 12.4 (Assignment)), non-exclusive, sublicensable (as set forth in this Section 8.2) right and license to use any Intellectual Property Rights owned or controlled by Recipient or any of its Affiliates, to the extent necessary or reasonably required for use by Lilly or any of its Affiliates to fulfill or perform Lilly's obligations under this Agreement (the "Lilly TSA License"). Lilly and its Affiliates may grant sublicenses, through multiple tiers, under the Lilly TSA License to any Third Party contractor engaged by Lilly or any of its Affiliates to perform activities under this Agreement, to the extent necessary or reasonably required for such contractor to act on behalf of Lilly or its Affiliates under this Agreement. The Lilly TSA License and any sublicenses granted pursuant hereto shall automatically terminate upon the expiration or earlier termination of this Agreement.

ARTICLE IX
TERMINATION

9.1. Termination of Services. Without prejudice to Section 9.2, with respect to any Service for which the Service Charge is calculated on an hourly, daily or monthly basis (as opposed to a fixed fee basis), Recipient may at any time prior to the end of the Transition Period and upon [***] days' prior written notice to Lilly, terminate this Agreement with respect to such Service without cause, whereupon, from and after the date of termination specified in such written notice, Lilly's obligation to provide such Service to Recipient will cease and Recipient will have no obligation to pay the Service Charge for such Service (other than relating to Services performed, noncancellable commitments, or reimbursable expenses incurred prior to termination); *provided* that if the termination of any Service prevents or materially hinders Lilly's ability to provide any other Service, then Lilly shall notify Recipient thereof and Recipient shall have the right to retract such termination. If Recipient does not retract such termination, then at Lilly's sole discretion, Lilly's obligation to provide such other Service to Recipient will cease and Recipient will have no obligation to pay Lilly for such other Service (other than relating to Services performed, noncancellable commitments, or reimbursable expenses incurred prior to termination). Without prejudice to Section 9.2, with respect to any Service for which the Service Charge is calculated on a fixed fee basis (expressly identified as such in the Exhibit A1 (*Services*) hereto), Recipient may not, prior to the end of the Transition Period, terminate this Agreement without cause, with respect to such Service, unless Recipient has paid in full the Service Charge for such Service; *provided* that if the termination of any such Service prevents or materially hinders Lilly's ability to provide any other Service, then Lilly shall notify Recipient thereof and Recipient shall have the right to retract such termination. If Recipient does not retract such termination, then at Lilly's sole discretion, Lilly's obligation to provide such other Service to Recipient will cease and Recipient will have no obligation to pay Lilly for such other Service (other than relating to Services performed, noncancellable commitments, or reimbursable expenses incurred prior to termination). All obligations of Lilly to provide to Recipient any Services under this Agreement will cease at the end of the Transition Period. This Agreement may be terminated upon the mutual written agreement of Recipient and Lilly at any time, and in this instance, from and after the agreed date of termination, Lilly's obligation to provide all Services to Recipient will cease and Recipient will have no obligation to pay the Service Charges for any Services (other than relating to Services performed, noncancellable commitments, or reimbursable expenses incurred prior to termination).

9.2. Termination Events. Each Party may terminate this Agreement at any time by written notice with immediate effect to the other Party: (i) in the event that the other Party or any of its Affiliates commits a material breach of this Agreement and such breach is incapable of remedy, or the breaching Party fails to remedy such breach (where capable of remedy) within [***] days of receipt of a written notice from the nonbreaching Party specifying the breach; or (ii) upon the liquidation, dissolution, winding up, insolvency, bankruptcy or filing of any petition therefor, appointment of a receiver, custodian or trustee or any other similar proceeding, by or of the other Party, and such proceeding is not dismissed or discharged within [***] days after its commencement. In the event of any termination under this Section 9.2 by Recipient, Recipient will have no obligation to pay the Service Charges for any Services after the date of termination (other than relating to Services performed or reimbursable expenses incurred prior to termination).

9.3. Rights and Duties of Parties Upon Termination or Expiration. Upon the expiration of the Transition Period or the termination of this Agreement or any Service for any

reason in accordance with the terms hereof, the Parties will cooperate in the orderly termination of the relevant Service(s) hereunder, including Section 9.3.1 and Section 9.3.2:

9.3.1. If this Agreement is terminated, for countries in the Supply Territory where the applicable Distribution Period has not ended as of the date of receipt of notice of such termination, Lilly shall have the right, but not the obligation, to complete any customer orders, in accordance with Section 2.10, for finished Product accepted prior to such date of receipt of such termination notice. Except to the extent that Lilly exercises its right to complete customer orders pursuant to the preceding sentence, at the end of the term of this Agreement, Recipient shall automatically assume, and hereby assumes, Lilly's responsibilities under all customer orders that are outstanding as of such date of receipt of termination notice.

9.3.2. Upon the termination or expiration of this Agreement, Lilly and Recipient shall have the respective rights and obligations with respect to the finished Product and other inventories (that are specific to the manufacture of the Product) as provided for in the Manufacturing Services Agreement.

ARTICLE X
CONFIDENTIALITY

10.1. Confidentiality. The Receiving Party may use Confidential Information of the Disclosing Party solely in connection with performing its obligations or exercising its rights under this Agreement or any Transaction Agreement. The Receiving Party will limit access to the Disclosing Party's Confidential Information to only those of its employees, contractors, collaborators, subcontractors, officers, directors, or agents who need to know such Confidential Information and who are otherwise bound by written confidentiality obligations at least as restrictive as those contained herein. Except as expressly stated in the foregoing sentence, the Receiving Party will not disclose the Disclosing Party's Confidential Information to any Third Party. The Receiving Party will use at least the same degree of care to protect the Disclosing Party's Confidential Information as the Receiving Party uses of its own confidential information of like nature, and at least a reasonable degree of care. Notwithstanding anything in this Agreement to the contrary, to the extent any of Lilly's Confidential Information is included in any TSA Product Intellectual Property Rights, Recipient and its Affiliates and (sub)licensees shall have the right to retain, disclose, and use such Confidential Information for the purposes of exercising Recipient's rights and licenses with respect to the TSA Product Intellectual Property Rights, the operation of the Business (as defined in the Asset Purchase Agreement), and the development, manufacture, and commercialization of Milestone Products (as defined in the Asset Purchase Agreement), including after termination or expiration of this Agreement; *provided*, *however*, that Recipient shall maintain the confidentiality of all such information in a manner not inconsistent with how Recipient protects its own Confidential Information and shall not disclose such information to Third Parties except on a need-to-know basis and under reasonable obligations of confidentiality. For clarity, no such agreement shall be required for a disclosure to a Regulatory Authority.

10.2. Permitted Disclosures. Notwithstanding any other provision in this Agreement:

10.2.1. If Receiving Party is compelled by applicable Law or stock exchange rule or pursuant to a subpoena or other validly issued administrative or judicial process, order or government process demanding Confidential Information of the other Party ("Subpoena"), Receiving Party will (i) promptly inform the party or entity compelling such disclosure or issuing such Subpoena of the existence of this Agreement; (ii) to the extent permissible by such

requirement and reasonably practicable and not prohibited under applicable Law, promptly notify the Disclosing Party of the disclosure requirement (which will include a copy of any applicable Subpoena or documentation); (iii) to the extent permissible by such requirement and reasonably practicable and not prohibited under applicable Law, afford the Disclosing Party a reasonable opportunity to oppose, limit or secure confidential treatment of such Confidential Information for the required disclosure at the Disclosing Party's expense; and (iv) not oppose any effort by the Disclosing Party to quash any such Subpoena. If the Disclosing Party fails to intervene after being given notice and a reasonable opportunity to do so or waives the compliance by the Receiving Party with its obligations under this Section 10.2, or if such motion is denied by a court of competent jurisdiction, the Receiving Party will then disclose only that portion of the Confidential Information that the Receiving Party is required to disclose, in the opinion of its legal counsel. In the event that any Confidential Information is ordered produced in an action or proceeding, it shall not lose its confidential status through such production, and Receiving Party shall take all reasonable and necessary steps to protect its confidentiality.

10.2.2. The Receiving Party may disclose the Confidential Information of the Disclosing Party in response to a valid request by a U.S., state, foreign, provincial, or local tax authority and, except where impracticable, the Receiving Party will give the Disclosing Party reasonable advance notice of such disclosure and reasonably cooperate with the Disclosing Party to obtain confidential treatment for such Confidential Information.

ARTICLE XI
LIMITATION OF LIABILITY; INDEMNIFICATION

11.1. Liability Cap. IN NO EVENT SHALL LILLY'S TOTAL LIABILITY TO RECIPIENT ARISING UNDER THIS AGREEMENT EXCEED THE LIABILITY CAP.

11.2. Limitation on Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LILLY BE LIABLE UNDER THIS AGREEMENT FOR SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, FOR LOST OR ANTICIPATED PROFITS, REVENUES, INCOME OR OPPORTUNITIES, DIMINUTION IN VALUE OR BUSINESS INTERRUPTION, OR FOR ANY DAMAGES CALCULATED BY REFERENCE TO A MULTIPLIER OF REVENUE, PROFITS, INCOME, EBITDA OR SIMILAR METHODOLOGY, IN EACH CASE EXCEPT IF SUCH DAMAGES ARE DIRECT DAMAGES, WHETHER OR NOT FORESEEABLE AT THE CLOSING DATE, CAUSED BY OR RESULTING FROM THE ACTIONS OF LILLY UNDER THIS AGREEMENT OR THE BREACH OF ITS COVENANTS, AGREEMENTS, REPRESENTATIONS OR WARRANTIES UNDER THIS AGREEMENT AND WHETHER OR NOT BASED ON OR IN WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE. NOTHING IN THIS SECTION 11.2 WILL LIMIT OR EXCLUDE ANY DAMAGES TO THE EXTENT (X) ARISING OUT OF A BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT, (Y) RESULTING FROM LILLY'S OR ITS AFFILIATE'S GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, OR (Z) SUCH DAMAGES ARE DIRECT DAMAGES.

11.3. Legal Remedies. Unless otherwise specified in this Agreement, any breach of provisions of this Agreement will be without prejudice to the non-breaching Party's available

remedies under applicable Law, including claims for damages or indemnification for the losses incurred by reason of such breach of this Agreement.

11.4. Indemnity

11.4.1. By Recipient. Recipient shall indemnify, defend and hold harmless Lilly, its Affiliates, and their respective directors, officers, employees and agents (each, a "Lilly Indemnified Party," and, collectively, the "Lilly Indemnified Parties") from and against all Losses (as defined in the Asset Purchase Agreement) incurred by any Lilly Indemnified Parties in connection with any Third Party Claims (as defined in the Asset Purchase Agreement) to the extent arising from or related to (i) any material breach by Recipient of any of its representations and warranties under this Agreement, or material violation of its covenants under this Agreement, (ii) Recipient's or any of its Affiliates', or licensees' or sublicensees', or their respective sub-contractors' actions (or omissions) in the performance of promotion, distribution, support and reimbursement activities (including any pricing (including any price increases) of the Product to be sold to Third Parties that is established by Recipient and related reporting therefor (including provision of any inaccurate data or miscalculatoin by Recipient) and Recipient's activities under Exhibit C (*Rebates, Chargebacks and Other Financial Matters*) hereto), or other exploitation, including development, of the Product, or handling of the Product, including strict product liability claims arising from the administration by Recipient or its Affiliates of the Product to patients, (iii) gross negligence or willful misconduct of Recipient or any of its Affiliates' or licensees or sublicensees or subcontractors in the performance of obligations of Recipient or the exercise of rights of Recipient under this Agreement, or (iv) any material breach by Recipient or its Affiliates of Section 2.12.2, in each case ((i) through (iv)), excluding to the extent arising from any (A) material breach of a representation, warranty, or covenant of Lilly or its Affiliate contained in any Transaction Agreement, (B) gross negligence, willful misconduct, or material violation of applicable Law by Lilly, its Affiliates, or any of their respective licensees or sublicensees or contractors, in the performance of obligations of Lilly or the exercise of rights of Lilly under any Transaction Agreement, or (C) material breach of a representation, warranty, or covenant of a Lilly contractor of an agreement between Lilly or its Affiliate and such Lilly contractor. For purposes of the foregoing, Lilly and its Affiliates and their licensees and contractors shall not be considered to be a licensee, licensee, or sub-contractor of Recipient or Recipient's Affiliate.

11.4.2. By Lilly. Lilly shall indemnify, defend and hold harmless Recipient, its Affiliates, and their respective directors, officers, employees and agents (each, a "Recipient Indemnified Party," and, collectively, the "Recipient Indemnified Parties") from and against all Losses incurred by any Recipient Indemnified Parties in connection with any Third Party Claims to the extent arising from or related to (i) any material breach by Lilly of any of its representations and warranties under this Agreement, or material violation of its covenants under this Agreement or (ii) gross negligence, willful misconduct, or material violation of applicable Law by Lilly, its Affiliates, or any of their respective licensees or sublicensees or contractors, in the performance of obligations of Lilly or the exercise of rights of Lilly under this Agreement, in each case excluding to the extent arising from any (A) material breach of a representation, warranty, or covenant of Recipient or its Affiliate contained in any Transaction Agreement, (B) gross negligence, willful misconduct, or material violation of applicable Law by Recipient, its Affiliates, or any of their respective licensees or sublicensees or contractors, in the performance of obligations of Recipient or the exercise of rights of Recipient under any Transaction Agreement, or (C) subject matter described in Section 11.4.1 (other than the exclusions).

11.4.3. Procedures. The indemnification procedure set forth in Section 11.5 of the Asset Purchase Agreement will apply to the indemnification obligations under this agreement, *mutatis mutandis*.

11.4.4. No Double Recovery. In accordance with Section 11.4(f) of the Asset Purchase Agreement, neither the Recipient Indemnified Parties nor the Lilly Indemnified Parties shall be entitled to recover for the same Loss more than once under this Section 11.4 or otherwise hereunder or under any other Transaction Agreement even if a claim for indemnification or otherwise in respect of such Loss has been made as a result of a breach of more than one representation, warranty, or covenant contained in this Agreement or any other Transaction Agreement.

ARTICLE XII
OTHER PROVISIONS

12.1. Governing Law. The rights and obligations of the Parties will be governed by, and this Agreement will be interpreted, construed and enforced in accordance with, the laws of the State of Delaware, excluding its conflict of laws rules to the extent such rules would apply the law of another jurisdiction.

12.2. Compliance. Each Party's compliance obligations shall be governed by Sections 7.1 through 7.12 of the Manufacturing Services Agreement, each of which is hereby incorporated by reference in this Agreement, *mutatis mutandis*.

12.3. Dispute Resolution

12.3.1. Any dispute, controversy or claim arising out of or relating to this Agreement (each, a "Dispute") will be referred to an officer of Recipient and Lilly (or their designees) (each, a "Management Representative," and, collectively, the "Management Representatives"), who will meet in person or by telephone to attempt in good faith to achieve a resolution of such Dispute. If such Management Representatives are unable to resolve such Dispute within [***] days of the first presentation of such Dispute to such Management Representatives, such Dispute will be referred to an appropriately senior officer of Recipient and Lilly who will use their good faith efforts to mutually agree upon the proper course of action to resolve the Dispute. If any Dispute is not resolved by these individuals (or their designees) within [***] days after such Dispute is referred to them, then a Party may file a claim with the competent courts of the State of Delaware, as further described in Section 12.3.2 below.

12.3.2. The Federal and state courts located in the State of Delaware shall have exclusive jurisdiction over, and shall be the exclusive venue for resolution of, any Dispute not resolved through the procedures described in Section 12.3.1 above. Either Party may, at any time and without waiving any remedy under this Agreement, seek from any court having jurisdiction any temporary injunctive or provisional relief necessary to protect the rights or property of that Party. Any final judgment resolving a dispute hereunder may be enforced by either Party in any court having appropriate jurisdiction.

12.3.3. During the course of the court's adjudication of the Dispute, this Agreement will continue to be performed except with respect to the part in dispute and under adjudication.

12.3.4. Notwithstanding the foregoing in this Section 12.3, the Parties agree that each Party will have the right, without posting any bond, to seek preliminary injunction, temporary restraining order or other temporary relief from any court of competent jurisdiction.

12.3.5. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION, PROCEEDING OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

12.4. Assignment. Neither this Agreement nor any Party's rights or obligations hereunder may be assigned or delegated (subject to Section 2.3 and Section 12.7) by such Party without the prior written consent of the other Party, and any attempted assignment or delegation of this Agreement or any of such rights or obligations by any Party without the prior written consent of the other Party will be void and of no effect; *provided*, *however*, that either Party may assign any and all of its rights or obligations hereunder (a) to an Affiliate without the prior consent of the other Party; *provided* that the assigning Party will not be released from its obligations hereunder by reason of such assignment, or (b) along with an assignment of the Asset Purchase Agreement made in accordance with the terms of the Asset Purchase Agreement.

12.5. No Third Party Beneficiaries. A Person who is not a Party to this Agreement will have no right to enforce any of its terms. This Agreement may be varied in any way and at any time by agreement between Recipient and Lilly, without the consent of any Third Party or any Affiliate of a Party.

12.6. Relationship of the Parties. This Agreement will not constitute or give rise to a fiduciary relationship, partnership, joint venture, employee-employer relationship, relationships or trust or agency, or co-employer or joint employer between the Parties. All activities performed by Lilly hereunder will be carried on by or on behalf of Lilly as an independent contractor and not as an agent for Recipient. Neither Party will bind the other Party to any obligation without the express written consent of the other Party.

12.7. Performance by Affiliates. To the extent that this Agreement purports to impose obligations on the Affiliates of a Party, such Party agrees to cause its Affiliates to perform such obligations. Lilly may use any of its Affiliates to exercise its rights or perform its obligations or duties hereunder; *provided*, *however*, that, in each case Lilly will remain liable hereunder for the performance of all of its obligations hereunder.

12.8. Amendments. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by both Parties hereto; *provided*, *however*, that the Transition Managers may modify, or approve modifications to, any Exhibits to this Agreement pursuant to Section 2.13 and such modifications to such Exhibits made or approved by the Transition Managers in writing (including by electronic transmission such as email) will be effective without such execution and delivery.

12.9. Notices. All notices and other communications hereunder will be in writing and will be deemed to have been effectively given if delivered personally, mailed by registered or certified mail (return receipt requested) or sent by overnight courier (upon telephone or electronic mail confirmation of receipt) to the Parties at the following addresses or at such other addresses as will be specified by the Parties by like notice:

12.9.1. if to Lilly:

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
Attention: Vice President, Corporate Business Development

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

Eli Lilly and Company
Lilly Corporate Center
Indianapolis, IN 46285
Attention: General Counsel

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

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: [***]
[***]
[***]

12.9.2. if to Recipient:

Amphastar Pharmaceuticals, Inc.
11570 Sixth Street
Rancho Cucamonga, CA 91730
Attention: Jacob Liawatidewi
EVP Corporate Administration Center
Email: [***]

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

Wilson Sonsini Goodrich & Rosati
One Market Plaza
Spear Tower, Suite 3300
San Francisco, CA 94105
Attention: [***]
[***]
Email: [***]
[***]

Notice so given will (in the case of notice so given by mail) be deemed to be given when received and (in the case of notice so given by courier or hand delivery) on the date of actual transmission or (as the case may be) personal delivery.

12.10. Survival. Termination or expiration of this Agreement shall not relieve a Party from obligations that are expressly indicated to survive the termination or expiration of this

Agreement and shall be without prejudice to any rights that shall have accrued to the benefit of a Party prior to such termination or expiration. Notwithstanding anything to the contrary in this Agreement, the Parties' respective obligations under Section 2.8.3 (with respect to Lilly Sold Product), Section 2.10 (Distribution Activities) (to the extent of any surviving obligations to process customer order and distribute finished Product), Section 2.15 (Data Privacy), Section 2.19 (Force Majeure), Section 3.1 (Recalls), Section 6.5 (Interest on Late Payments), Section 9.3 (Rights and Duties of Parties Upon Termination or Expiration), Article VII (Withholding and VAT), Article VIII (Ownership of Assets; Intellectual Property), Article X (Confidentiality), Article XI (Limitation of Liability; Indemnification) and Article XII (Other Provisions) and under the heading "*Pharmacovigilance and Global Patient Safety*" of Exhibit A1 (*Services*) hereto, and Recipient's obligations under Section 2.11 (Regulatory) and Section 2.12.2 (Recipient's Covenants) and under the headings "*Commercial Operations*," "*Sales and Marketing*" and "*Medical Affairs*" of Exhibit A1 (*Services*) hereto will survive the expiration or termination of this Agreement. Section 6.1.1, Section 6.2 (Sales Taxes), Section 6.3 (Statement of Services Charges and Reimbursable Costs) and Section 6.4 (Payments) and Section 2 of Exhibit B (*Net Economic Benefit*) hereto will survive to the extent of any unpaid amounts due thereunder or any payments made or other activities conducted in accordance with the surviving provisions hereof.

12.11. Incorporation from Asset Purchase Agreement. Each of Section 11.5 (Procedure), Section 12.1 (Expenses), Section 12.4 (Severability), Section 12.5 (Counterparts), Section 12.6 (Entire Agreement), Section 12.13 (Rules of Construction) and Section 12.14 (Privilege) of the Asset Purchase Agreement is hereby incorporated by reference into this Agreement, *mutatis mutandis*.

[*The remainder of this page is intentionally blank.*]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the Closing Date.

ELI LILLY AND COMPANY

By: **/s/ Michael B. Mason**
Name: Michael B. Mason
Title: Executive Vice President and President,
Lilly Diabetes and Obesity

AMPHASTAR PHARMACEUTICALS, INC.

By: **/s/ Bill Peters**
Name: Bill Peters
Title: Authorized Signatory

[Signature Page to Manufacturing Services Agreement]

Exhibit A1
SERVICES

Service Charge:

The Monthly Fee is [***] Percent ([***]%) of the Net Sales (as defined in Exhibit B (*Net Economic Benefit*) to the Transition Services Agreement) for each calendar month during the term of the Transition Services Agreement, which Monthly Fee (with respect to the applicable calendar month) will include the applicable Services as provided in this Exhibit below as subject to the Monthly Fee, unless otherwise agreed by the Parties in writing.

For Services included within the Monthly Fee, no additional amounts will be due unless, and except to the extent that, for any Services, Recipient agrees to and shall be responsible for other Service Charge(s) as specifically set forth below for the applicable Service(s); *provided* that, for Services that are subject to a cap on the number of hours included in the Monthly Fee, any Services in excess of the applicable cap set forth below will be charged as FTE Fees at the applicable rate set forth below.

For Services not included within the Monthly Fee, the applicable Service Charges are specified below in this Exhibit.

The FTE Fees, unless otherwise specified in this Exhibit or agreed by the Parties in writing, shall be billed at $[***] U.S. Dollars per FTE hour. With respect to any Services relating to [***], the FTE Fees shall be billed at $[***] U.S. Dollars per FTE hour with a monthly cap of [***] hours for the aggregate of applicable Services. [***].

[***]

Exhibit B
NET ECONOMIC BENEFIT

[***]

Exhibit C
Rebates, Chargebacks and Other Financial Matters

[***]

Exhibit D
DISTRIBTUTION END DATE

[***]

Exhibit E
ADDITIONAL DEFINITIONS

[***]

Exhibit F
PRICE MECHANICS

[***]

Exhibit 10.4

CREDIT AGREEMENT

dated as of June 30, 2023

among

AMPHASTAR PHARMACEUTICALS, INC.,
as Borrower,

The Subsidiaries of Borrower Party Hereto,
as Guarantors,

The Financial Institutions Party Hereto,
as Lenders,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent, Swing Line Lender and L/C Issuer

WELLS FARGO SECURITIES, LLC,
CAPITAL ONE, NATIONAL ASSOCIATION,
JPMORGAN CHASE BANK, N.A.,
EAST WEST BANK,
CATHAY BANK
and
FIFTH THIRD BANK, NATIONAL ASSOCIATION,
as Joint Lead Arrangers and Joint Bookrunners
CAPITAL ONE, NATIONAL ASSOCIATION
and
JPMORGAN CHASE BANK, N.A.,
as a Syndication Agent
CIBC BANK USA,
as Senior Managing Agent

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SCHEDULES

EXHIBITS

CREDIT AGREEMENT

This CREDIT AGREEMENT (this "Agreement"), dated as of June 30, 2023, is entered among AMPHASTAR PHARMACEUTICALS, INC., a Delaware corporation, as borrower ("Borrower"), the Guarantors party hereto (including for the purposes of Section 10.15), the several financial institutions party to this Agreement as Lenders, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, in its separate capacities as Swing Line Lender and L/C Issuer and as Administrative Agent, for the benefit of the Credit Parties.

RECITALS

A. Borrower has requested that the Lending Parties make certain Credit Extensions available to Borrower, for Borrower's benefit and for the benefit of each of the other Loan Parties.

B. The Lending Parties have agreed to make such Credit Extensions available to Borrower, for Borrower's benefit and for the benefit of each of the other Loan Parties, each of which is a direct or indirect wholly-owned Subsidiary of Borrower, but only on the terms and provisions, subject to the conditions and in reliance on the representations and warranties set forth below.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

AGREEMENT

ARTICLE I
CERTAIN DEFINED TERMS; CERTAIN RULES OF CONSTRUCTION

Section 1.01 Certain Defined Terms. As used in this Agreement, the following terms will mean the following:

"Acquisition" means any transaction or series of related transactions resulting, directly or indirectly, in (a) the acquisition by any Loan Party or any Subsidiary of any Loan Party of (i) all or substantially all of the assets of another Person or (ii) any business unit or division of another Person, (b) the acquisition by any Loan Party or any Subsidiary of any Loan Party of the Equity Interests of another Person resulting in the acquiring Person having the ability to Control the acquired Person, or otherwise causing any other Person to become a Subsidiary of such Person or (c) a merger or consolidation, or any other combination, of any Loan Party or any Subsidiary of any Loan Party with another Person (other than a Person that is a wholly-owned Subsidiary) in which any Loan Party or any Subsidiary of a Loan Party is the surviving Person.

"Acquisition Consideration" has the meaning given such term in clause (e)(i) of the definition of "Permitted Acquisition" set forth in this Section 1.01.

"Additional Commitment Documentation" has the meaning given such term in Section 2.14(d).

"Additional Commitments Effective Date" has the meaning given such term in Section 2.14(b).

"Additional Revolving Credit Commitment" means the commitment of an Additional Revolving Credit Lender to make Additional Revolving Credit Loans pursuant to Section 2.14.

"Additional Revolving Credit Lender" means, at any time, any lender providing an Additional Revolving Credit Commitment, other than any such Person that thereafter ceases to be a party hereto pursuant to an Assignment and Assumption.

"Additional Revolving Credit Loans" means any loans made in respect of Additional Revolving Credit Commitments.

"Adjusted Term SOFR" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) 0.10%; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

"Administrative Agent" means, at any time, the administrative agent for the Credit Parties under the Loan Documents as appointed pursuant to Article IX (which, initially, will be Wells Fargo).

"Administrative Agent's Office" means Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as Administrative Agent may from time to time notify Borrower and each Lending Party.

"Administrative Detail Form" means an administrative detail form in a form supplied by, or otherwise acceptable to, Administrative Agent.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified (excluding any trustee under, or any committee with responsibility for administering, any Employee Benefit Plan).

"Aggregate Commitments" means, at any time, the sum of: (a) the Aggregate Revolving Credit Commitments plus (b) the Aggregate Initial Term Loan Commitments plus (c) if applicable, the Aggregate Incremental Term Loan Commitments.

"Aggregate Incremental Term Loan Commitments" means, at any time, the combined Incremental Term Loan Commitments of all Incremental Term Loan Lenders.

"Aggregate Initial Term Loan Commitments" means at any time, the combined Initial Term Loan Commitments of all Lenders. As of the Closing Date, the Aggregate Initial Term Loan Commitments of all Lenders is $500,000,000.

"Aggregate Revolving Credit Commitments" means, at any time, the combined Revolving Credit Commitments of all Lenders. As of the Closing Date, the Aggregate Revolving Credit Commitments of all Lenders is $200,000,000.

"Agreement" has the meaning given such term in the Preamble.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder and the U.K. Bribery Act 2010 and the rules and regulations thereunder.

"Anti-Money Laundering Laws" means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules applicable to Borrower or its Subsidiaries related to terrorism financing, money laundering, any predicate crime to money laundering or any financial record keeping, including any applicable provision of the PATRIOT Act and The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act," 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

"Applicable Margin" means, at any time with respect to, and as included in the computation of the rate of interest for Term SOFR Loans or Base Rate Loans, or in the computation of Letter of Credit Fees, or in the computation of Revolving Credit Facility Fees, as the context requires and as otherwise provided in this Agreement, the applicable rate percentage per annum set forth in the applicable grid below, each such percentage being based, subject to Section 2.08(d), upon the corresponding Consolidated Net Leverage Ratio maintained by Borrower, measured as of the end of the most recent Fiscal Period for which Borrower has furnished a Compliance Certificate to Administrative Agent and the Lenders pursuant to Section 6.01(c):

Pricing Level (Tier)	Consolidated Net Leverage Ratio	Applicable Margin for Term SOFR Loans	Applicable Margin for Base Rate Loans	Applicable Margin for Revolving Credit Facility Fee
I	Less than 1.50:1.00	1.50%	0.50%	0.15%
II	Equal to or greater than 1.50:1.00 and less than 2.00:1.00	1.75%	0.75%	0.20%
III	Equal to or greater than 2.00:1.00 and less than 2.50:1.00	2.00%	1.00%	0.25%
IV	Equal to or greater than 2.50:1.00 and less than 3.00:1.00	2.25%	1.25%	0.30%
V	Equal to or greater than 3.00:1.00	2.50%	1.50%	0.35%

The Applicable Margin with respect to any Incremental Term Loans shall be the rate per annum set forth in the relevant Additional Commitment Documentation.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Margin for any period and at any time will be subject to the provisions of Section 2.08(d).

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arrangers" means, collectively, the Left Lead Arranger, Capital One, National Association, JPMorgan Chase Bank, N.A., East West Bank, Cathay Bank and Fifth Third Bank, National Association, as the joint lead arrangers for the transactions contemplated by the Loan Documents.

"Assignment and Assumption" means an assignment and assumption entered into by a Lending Party and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by Administrative Agent, in substantially the form of Exhibit A or any other form approved by Administrative Agent.

"Attributable Debt" means, on any date of determination, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP and (b) in respect of any Synthetic Lease Obligation, the

capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capitalized Lease.

"Automatic Extension Letter of Credit" means a Letter of Credit that has automatic extension provisions.

"Availability Period" means the period from the Closing Date to the date that is (a) for Revolving Credit Loans, five (5) Business Days, and (b) for Swing Line Loans, one Business Day, in each case prior to the Revolving Credit Maturity Date.

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, (a) if the then-current Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining the length of an Interest Period pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 3.03(c)(iv).

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

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

"Bankruptcy Code" means the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. Sections 101 et seq.), and the Bankruptcy Rules promulgated thereunder.

"Base Rate" means, for any day, the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate for such day plus one half of one percent (0.50%) or (c) Adjusted Term SOFR for a one-month Interest Period in effect on such day plus one percent (1.00%); each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate, or Adjusted Term SOFR, as the case may be (provided that the foregoing clause (c) shall not be applicable during any period in which Adjusted Term SOFR is unavailable or unascertainable). Notwithstanding the foregoing, in no event shall the Base Rate be less than one percent (1.0%).

"Base Rate Loan" means a Loan that bears interest based upon the Base Rate.

"Benchmark" means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means, with respect to such Obligations, interest, fees, commissions or other amounts, the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.03(c)(i).

"Benchmark Replacement" means with respect to any Benchmark Transition Event for any then-current Benchmark, the sum of: (a) the alternate benchmark rate that has been selected by Administrative Agent and Borrower as the replacement for such Benchmark giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor (if applicable), the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors (if applicable) of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor (if applicable) of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, if the applicable then-current Benchmark has any Available Tenors, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors (if applicable) of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such

statement or publication, there is no successor administrator that will continue to provide any Available Tenor (if applicable) of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the FRB, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors (if applicable) of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor (if applicable) of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors (if applicable) of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, if the applicable then-current Benchmark has any Available Tenors, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Start Date" means, in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the ninetieth (90^{th}) day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than ninety (90) days after such statement or publication, the date of such statement or publication).

"Benchmark Unavailability Period" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date with respect to such Benchmark has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03(c)(i) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03(c)(i).

"Beneficial Ownership Certification" means a certification regarding beneficial ownership of Borrower as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 CFR § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Board of Directors" means, as to any Person, the board of directors (or comparable managers), members or similar governing body of such Person, or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers), members or similar governing body.

"Borrower" has the meaning given such term in the Preamble.

"Borrowing" means a Revolving Credit Borrowing, a Swing Line Borrowing, an Initial Term Loan Borrowing or an Incremental Term Loan Borrowing, as the context may require.

"Business Day" means any day other than (a) a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed and (b) a day on which commercial banks in New York, New York or San Francisco, California are closed.

"Capitalized Leases" means, subject in all respects to Section 1.02(i)(ii), all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

"Cash" means money, currency or a credit balance in a deposit account.

"Cash Collateralize" means to pledge and deposit with or deliver to Administrative Agent, for the benefit of Administrative Agent or L/C Issuer (as applicable) and the Lenders, as collateral for Letter of Credit Obligations, Obligations or obligations of Lenders to fund participations in respect of either thereof (as the context may require), Cash or, if L/C Issuer (in the case of Letter of Credit Obligations) will agree in its sole discretion, other credit support, in each case to be received and held or maintained under the control and dominion of Administrative Agent within the United States pursuant to documentation in form and substance satisfactory to (a) Administrative Agent and (b) L/C Issuer (as applicable). "Cash Collateral" will have a meaning correlative to the foregoing and will include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" means, as to any Person, any of the following: (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof; (b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's; (c) investments in certificates of deposit, banker's acceptances, money market deposits and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any state thereof which has a combined capital and surplus and undivided profits of not less than $250,000,000; (d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; (e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $4,000,000,000; (f) other short-term investments utilized by Borrower and its Subsidiaries organized under the laws of a jurisdiction outside the United States in accordance with normal investment practices for cash management in investments of a type analogous to the foregoing; (g) other investments made in compliance with Borrower's investment policy in effect as of the Closing Date and delivered to the Administrative Agent; (h) cash balances in bank accounts deposited in the United States maintained with any Lender, which cash balances are (i) invested overnight in an account maintained by a branch or affiliate of such financial institution located outside of the United States, and (ii) returned to such account at the start of business each Business Day; and (i) solely with respect to any Subsidiary domiciled outside the

United States, substantially equivalent investments to those outlined in clauses (a) through (f) above which are reasonably comparable in tenor and credit quality (taking into account the jurisdiction where such Subsidiary conducts business) and customarily used in the ordinary course of business by similar companies for cash management purposes in any jurisdictions in which such Person conducts business (it being understood that such investments may be denominated in the currency of any jurisdiction in which such Person conducts business).

"Cash Management Agreement" means any agreement to provide cash management services, including credit, debit and purchase cards and the processing thereof, treasury, depository and overdraft services, electronic funds transfers (including Automated Clearing House processing thereof through the direct Federal Reserve Fedline system) and other cash management services and arrangements.

"Cash Management Bank" means any Person that, (a) with respect to any Cash Management Agreement in effect on the Closing Date, is (i) a Lender, (ii) the Administrative Agent or (iii) an Affiliate of a Lender or the Administrative Agent, in its capacity as a party to such Cash Management Agreement and (b) with respect to any Cash Management Agreement entered into after the Closing Date, at the time it enters into such Cash Management Agreement, is (i) a Lender, (ii) the Administrative Agent or (iii) an Affiliate of a Lender or the Administrative Agent, in its capacity as a party to such Cash Management Agreement.

"Cash Management Obligations" means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by any Loan Party or any of its Subsidiaries to any Cash Management Bank pursuant to or evidenced by a Cash Management Agreement, irrespective of whether for the payment of money, direct or indirect, absolute or contingent, due or to become due.

"Casualty Event" means the receipt by any Loan Party or any of its Subsidiaries of any cash insurance proceeds or condemnation award payable by reason of theft, loss, physical destruction or damage, taking or similar event with respect to any of their respective property.

"CFC" means a Foreign Subsidiary that is a "controlled foreign corporation" under Section 957 of the Code and any Subsidiary owned directly or indirectly by such Foreign Subsidiary.

"CFC Holdco" means a Subsidiary substantially all the assets of which consist of Equity Interests in Foreign Subsidiaries that each constitute a CFC and/or Indebtedness or accounts receivable owed by Foreign Subsidiaries that each constitute a CFC or are treated as owed by any such Foreign Subsidiaries for U.S. federal income tax purposes.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof and (ii) all requests, rules, guidelines, requirements 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 Law", regardless of the date enacted, adopted, implemented or issued.

"Change of Control" means any of the following occurs:

(a) any "person" or "group" (within the meaning of Sections 13(d) and 14(d) of the Exchange Act) becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 35% or more of the Equity Interests of Borrower entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board of Directors of Borrower;

(b) during any period of twelve (12) consecutive months, a majority of the members of the Board of Directors of Borrower cease to be composed of individuals (i) who were members of that Board of Directors on the first day of such period, (ii) whose election or nomination to that Board of Directors was approved by individuals referred to in the preceding clause (i) constituting at the time of such election or nomination at least a majority of that Board of Directors or (iii) whose election or nomination to that Board of Directors was approved by individuals referred to in the preceding clauses (i) and (ii) (inclusive of, in the case of clause (ii), any such members of the Board of Directors who themselves were also previously approved in accordance with the preceding clause (ii)) constituting at the time of such election or nomination at least a majority of that Board of Directors; or

(c) except to the extent permitted hereunder, Borrower fails to own and control, directly or indirectly, 100% of the Equity Interests of each other Loan Party (other than directors' qualifying shares or other nominal shares required by law to be owned by a resident of the relevant jurisdiction).

"Class" means, when used in reference to any Loan, whether such Loan is a Revolving Credit Loan, Extended Revolving Credit Loan, Swing Line Loan, Initial Term Loan, Extended Term Loan or an Incremental Term Loan.

"Closing Date" means the date of this Agreement.

"Closing Date Acquisition" means the acquisition by Borrower of certain assets pursuant to the Closing Date Acquisition Agreement.

"Closing Date Acquisition Agreement" means the Asset Purchase Agreement, dated as of April 21, 2023, among Amphastar Medication Co., LLC, Borrower and Seller, including all exhibits and schedules thereto, as assigned by Amphastar Medication Co., LLC to Borrower pursuant to that certain Assignment Agreement dated as of June 30, 2023, by and between Amphastar Medication Co., LLC and Borrower.

"Closing Date Acquisition Closing Date" means the date on which the Closing Date Acquisition is consummated.

"Code" means the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder.

"Collateral" means the collateral security for the Obligations pledged or granted pursuant to the Security Documents.

"Collateral Agreement" means the Collateral Agreement of even date herewith, executed by the Loan Parties in favor of Administrative Agent for the ratable benefit of the Credit Parties.

"Commitment" means, as to any Lender, such Lender's Revolving Credit Commitment, Additional Revolving Credit Commitment, Initial Term Loan Commitment or Incremental Term Loan Commitment, as applicable.

"Communications" means any Specified Materials distributed to Administrative Agent or any Lending Party by means of electronic communications pursuant to Section 10.02(b), including through a Platform.

"Compliance Certificate" means a certificate substantially in the form of Exhibit B.

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate", the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.03 and other technical, administrative or operational matters) that the Administrative Agent decides, in its Reasonable Discretion and in consultation with Borrower, may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated" refers, with respect to any Person, to the consolidation of accounts of such Person and its Subsidiaries in accordance with GAAP.

"Consolidated EBITDA" means, as calculated in accordance with GAAP for Borrower and its Subsidiaries on a Consolidated basis for any period, Consolidated Net Income for such period, plus

(a) the following to the extent deducted (and not added back) in calculating such Consolidated Net Income (other than as set forth in clause (a)(x)) for such period (without duplication), all

(i) Consolidated Interest Expense (net of interest income),

(ii) provisions for taxes (including Federal, state, local and foreign taxes on or measured by income, profits, revenue or capital accrued during such period by Borrower and its Consolidated Subsidiaries paid or accrued during such period,

(iii) amortization of intangibles (including goodwill) and organization costs,

(iv) amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness,

(v) depreciation and other amortization expense,

(vi) extraordinary, unusual or non-recurring expenses or losses; provided that the aggregate amount added pursuant to this clause (vi) taken together with the aggregate amount added pursuant to clauses (ix), (x) and (xi) below for any four quarter period shall in no event exceed thirty percent

(30%) of Consolidated EBITDA for such period (calculated prior to any such add-backs pursuant to clauses (vi), (ix), (x) and (xi)),

(vii) other charges (including goodwill impairment charges, but excluding any non-cash expense relating to a write-down, write-off or reserve with respect to accounts receivable or inventory) of Borrower and its Consolidated Subsidiaries reducing such Consolidated Net Income which do not represent a Cash item in such period or any future period,

(viii) all transaction fees, charges and other amounts related to this Agreement, the Closing Date Acquisition and any amendment, consent, supplement or other modification to, or the administration of, the Loan Documents, in each case to the extent paid within twelve (12) months of the Closing Date or the effectiveness or attempted consummation of such amendment, consent, supplement or other modification,

(ix) all transaction fees, charges and other amounts (including any financing fees, merger and acquisition fees, legal fees and expenses, due diligence fees or any other fees and expenses in connection therewith) in connection with any Permitted Acquisition, Investment, Disposition, issuance or repurchase of Equity Interests, or the incurrence, amendment or waiver of Indebtedness permitted under this Agreement (other than those related to the Transactions or with respect to any amendment or modification of the Loan Documents), whether or not consummated and all fees, charges and other amounts in connection with any potential synergies, operating expense reduction or other cost saving or integration cost activities, in each case to the extent paid within twelve (12) months of the Closing Date or the effectiveness of, or attempted consummation of, such transaction; provided that the aggregate amount added pursuant to this clause (ix) taken together with the aggregate amount added pursuant to clause (vi) above and clauses (x) and (xi) below for any four quarter period shall in no event exceed thirty percent (30%) of Consolidated EBITDA for such period (calculated prior to any such add-backs pursuant to clauses (vi), (ix), (x) and (xi)),

(x) the amount of any "run rate" synergies, operating expense reductions and other net cost savings and integration costs, in each case projected by the Borrower in connection with any Permitted Acquisition, Investment, Disposition (including the termination or discontinuance of activities constituting such business) and/or other operating improvement, restructuring, cost savings initiative or other similar initiative taken after the Closing Date that have been consummated during the applicable period (calculated on a pro forma basis as though such synergies, expense reductions and cost savings had been realized on the first day of the period for which Consolidated EBITDA is being determined), net of the amount of actual benefits realized during such period from such actions; provided that (A) such synergies, expense reductions and cost savings are reasonably identifiable, factually supportable, expected to have a continuing impact on the operations of the Borrower and its subsidiaries and have been determined by the Borrower in good faith to be reasonably anticipated to be realizable within eighteen (18) months following any such action as set forth in reasonable detail on a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent, (B) no such amounts shall be added pursuant to this clause (x) to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment pursuant to Section 1.02(i) or otherwise and (C) the aggregate amount added pursuant to this clause (x) taken together with the aggregate amount added pursuant to clauses (vi) and (ix) above and clause (xi) below for any four quarter period shall in no event exceed thirty percent (30%) of Consolidated EBITDA for such period (calculated prior to any such addbacks pursuant to clauses (vi), (ix),
(x) and (xi)),

(xi) the amount of board or director fees and other compensation paid to independent board members; provided that the aggregate amount added pursuant to this clause (xi) taken together with the aggregate amount added pursuant to clauses (vi), (ix) and (x) above for any four quarter period shall in

no event exceed thirty percent (30%) of Consolidated EBITDA for such period (calculated prior to any such add-backs pursuant to clauses (vi), (ix), (x) and (xi)),

(xii) the amount of expense incurred in respect of (i) earnout obligations incurred in connection with (including adjustments thereto) any acquisitions and Investments, whether consummated prior to or after the Closing Date and (ii) the Specified Guaranteed Payment; and minus

(b) the following to the extent included in calculating such Consolidated Net Income for such period (without duplication), all (1) extraordinary, unusual or non-recurring income or gains and (2) other income of Borrower and its Consolidated Subsidiaries increasing such Consolidated Net Income which does not represent a Cash item in such period or any future period (or the recognition of a Cash item from any prior period).

"Consolidated Funded Debt" means, as calculated in accordance with GAAP for Borrower and its Subsidiaries on a Consolidated basis as of any date of determination, the sum of (without duplication) the outstanding amount of (i) all Indebtedness of a type described in clauses (a) (other than deposits or advances received or held), (b), (f), (g) and (h) of the definition of "Indebtedness" (and all Guaranties of such Indebtedness), (ii) the Specified Guaranteed Payment, (iii) all earnout payments arising under the Closing Date Acquisition Agreement, to the extent such amounts have not been paid within ten (10) Business Days following the date such amounts become due and payable pursuant to the Closing Date Acquisition Agreement, (iv) solely to the extent drawn and unreimbursed, all Indebtedness of a type described in clauses (c) and (d) of the definition of "Indebtedness" (and all Guaranties of such Indebtedness) and (v) solely to the extent such obligations have not been paid within ten (10) Business Days following the date such amounts become due and payable, all Indebtedness of a type described in clause (e) of the definition of "Indebtedness" (and all Guaranties of such Indebtedness).

"Consolidated Interest Coverage Ratio" means, as determined as of the last day of any Test Period, calculated for Borrower and its Subsidiaries on a Consolidated basis for such Test Period, the ratio of (a) Consolidated EBITDA for such Test Period to (b) Consolidated Interest Expense (other than any bank and/or letter of credit fees, letter of guarantee and/or bankers' acceptance fees and costs of surety bonds) paid in Cash for such Test Period.

"Consolidated Interest Expense" means, as calculated in accordance with GAAP for Borrower and its Subsidiaries on a Consolidated basis for any period, the sum of (without duplication) (a) all interest in respect of Indebtedness (including the interest component of any payments in respect of Capitalized Leases), plus (b) cash dividends paid during such period in respect of Disqualified Equity Interests, plus (c) bank and letter of credit fees, letter of guarantee and bankers' acceptance fees and costs of surety bonds in connection with financing activities, plus (d) all accrued losses paid or payable to an applicable counterparty under interest rate Swap Contracts during such period (other than in connection with the early termination thereof) to the extent not included in clause (a) of this definition, minus (e) all accrued gains received or receivable from an applicable counterparty under interest rate Swap Contracts during such period (other than in connection with the early termination thereof).

"Consolidated Net Income" means, as calculated in accordance with GAAP for Borrower and its Subsidiaries on a Consolidated basis for any period, the sum of net income (or loss) for such period, but excluding, without duplication, (a) any income of any Person if such Person is not a Subsidiary, except that Borrower's direct or indirect equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of Cash actually distributed by such Person during such period to Borrower or any Subsidiary as a dividend or other distribution, (b) the income of any Subsidiary that is not a Loan Party to the extent that the declaration or payment of dividends or similar distributions by the Subsidiary of that income is prohibited by operation of the terms of its charter or any

agreement, instrument, judgment, decree, statute, rule or governmental regulation applicable to such Subsidiary, (c) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case in accordance with GAAP, (d) any gain (loss) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business), (e) effects of adjustments (including the effects of such adjustments pushed down to any Subsidiary) related to the application of recapitalization accounting or purchase accounting (including in the inventory, property and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items), (f) income (loss) from the early extinguishment or conversion of (i) Indebtedness, (ii) Hedging Obligations or (iii) other derivative instruments, (g) any impairment charges or asset write-off or write-down in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP, (h) any non-cash gain (loss) attributable to the mark to market movement in the valuation of Hedging Obligations or other derivative instruments pursuant to FASB Accounting Standards Codification Topic 815—*Derivatives and Hedging* or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification Topic 825—*Financial Instruments*, and (i) any net realized or unrealized gain or loss (after any offset) resulting in such period from currency transaction or translation gains or losses, including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from (i) Hedging Obligations for currency exchange risk and (ii) resulting from intercompany indebtedness) and any other foreign currency transaction or translation gains and losses.

"Consolidated Net Leverage Ratio" means, as determined as of the last day of any Test Period, calculated for Borrower and its Subsidiaries on a Consolidated basis, the ratio of (a) (i) Consolidated Funded Debt as of such date of determination minus (ii) all Unrestricted Cash and Cash Equivalents on such date to (b) Consolidated EBITDA for such Test Period.

"Consolidated Total Assets" means, as calculated as of any date of determination in accordance with GAAP, total assets of Borrower and its Consolidated Subsidiaries.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlled" has the meaning correlative thereto.

"Covered Entity" means any of the following:

(a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Credit Extension" means each of the following: (a) a Borrowing, (b) a continuation of any Term SOFR Loan (or portion thereof) into a new Term SOFR Loan of a new Interest Period, (c) a conversion of any Base Rate Loan (or portion thereof) into a Term SOFR Loan of a new Interest Period or a conversion of any Term SOFR Loan (or portion thereof) into a Base Rate Loan or (d) an L/C Credit Extension.

"Credit Parties" means, collectively, Administrative Agent, the Lending Parties, the Hedge Banks and the Cash Management Banks.

"Debt Issuance" means the issuance of any Indebtedness for borrowed money by any Loan Party or any of its Subsidiaries.

"Debtor Relief Laws" means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition that, with the giving of notice, the passage of time, or both, would (unless cured or waived in accordance with this Agreement) constitute an Event of Default.

"Default Rate" means (a) when used with respect to Obligations other than Letter of Credit Fees, a per annum interest rate equal to the sum of (i) the Base Rate, plus (ii) the Applicable Margin, if any, applicable to Base Rate Loans, plus (iii) 2.0% per annum; provided that, with respect to a Term SOFR Loan, the Default Rate will be a per annum interest rate equal to the sum of (A) the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus (B) 2.0%; and (b) when used with respect to Letter of Credit Fees, a per annum interest rate equal to the sum of (1) the Applicable Margin plus (2) 2.0% per annum.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means, subject to Section 3.07(b), any Lender that (a) has failed to (i) fund all or any portion of its funding obligations hereunder, including in respect of its Loans or participations in respect of Letters of Credit, within two (2) Business Days of the date any such funding obligation was required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower in writing that such failure is the result of such Lender's reasonable, good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent or any Lending Party any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two (2) Business Days of the date when due, (b) has notified Borrower, Administrative Agent or any Lending Party in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's reasonable, good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by Administrative Agent or Borrower, to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent and Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender will not be deemed a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any

determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above will be conclusive and binding absent manifest error, and such Lender will be deemed to be a Defaulting Lender (subject to Section 3.07(b)) upon delivery of written notice of such determination to Borrower and each Lending Party.

"Deferred Purchase Price Obligations" means obligations of a Loan Party or any of its Subsidiaries to a seller or its designee in connection with an Acquisition for the payment of (a) obligations evidenced by a seller note, (b) non-contingent installment payments of part or all of the purchase price after the closing of the Acquisition, and (c) amounts determined by reference to the operational results of a Target after the closing of the Acquisition, in each case solely to the extent such obligations are included or characterized as indebtedness or a liability in accordance with GAAP.

"Disclosure Letter" means the disclosure letter, dated as of the Closing Date, as may be supplemented from time to time by Borrower in accordance with the terms of this Agreement and the other Loan Documents, delivered by Borrower and the other Loan Parties to Administrative Agent for the benefit of the Lenders.

"Disposition" means the sale, assignment, transfer, conveyance, license (other than on a non-exclusive basis), lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer, conveyance or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith. The term "Dispose" has a meaning correlative thereto. For purposes of clarification, the issuance, sale, assignment, transfer or other disposition by any Person of Equity Interests in itself (or rights with respect thereto) will not be deemed a Disposition by such Person. For the avoidance of doubt, none of (w) the issuance or sale of any Permitted Convertible Indebtedness by Borrower, (x) the sale of any Permitted Warrant Transaction by Borrower, (y) the purchase or early termination or unwind (whether pursuant to its terms or otherwise) of any Permitted Bond Hedge Transaction nor (z) the performance by Borrower and/or any Subsidiary thereof of Borrower's or such Subsidiary's obligations under any Permitted Convertible Indebtedness, any Permitted Warrant Transaction or any Permitted Bond Hedge Transaction, shall constitute a "Disposition".

"Disqualified Equity Interest" means any Equity Interest of any Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof) or upon the happening of any event (a) matures or is mandatorily redeemable at the option of the holder in Cash (other than cash in lieu of fractional shares) pursuant to a sinking fund obligation or otherwise, (b) is redeemable in Cash at the option of the holder thereof, or (c) requires or mandates the purchase, redemption, retirement, defeasance or other similar payment (other than dividends and/or distributions) for Cash (other than cash in lieu of fractional shares), in each case (A) on or prior to the Revolving Credit Maturity Date and the Initial Term Loan Maturity Date then in effect, and (B) except as a result of a change of control, asset sale, fundamental change or other similar event; provided that only the portion of Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Equity Interests. The term "Disqualified Equity Interest" will also include any options, warrants or other rights that are convertible into any Disqualified Equity Interest or that are redeemable at the option of the holder, or required to be redeemed, prior to the Revolving Credit Maturity Date and the Initial Term Loan Maturity Date then in effect (except as a result of a change of control, asset sale, fundamental change or other similar event). Notwithstanding the foregoing: (i) any Equity Interests issued to any employee or to any plan for the benefit of employees of the Borrower or any of its Subsidiaries or by any such plan to such employees shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employees' termination, death or disability and (ii) any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by

delivery of Equity Interests (other than Disqualified Equity Interests) shall not be deemed to be Disqualified Equity Interests.

"Dollar" and "$" mean lawful money of the United States.

"Domestic Subsidiary" means a Subsidiary incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

"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 credit institution or investment firm established in any EEA Member Country.

"Electronic Record" has the meaning given such term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

"Electronic Signature" has the meaning given such term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

"Employee Benefit Plan" means any employee benefit plan, as defined in Section 3(1) of ERISA, that is maintained for the employees of any Person or any ERISA Affiliate of such Person.

"Environmental Claims" means all written claims, complaints, notices or inquiries, however asserted, by any Governmental Authority or other Person alleging Environmental Liabilities.

"Environmental Laws" means any and all Laws relating to the protection of human health (with respect to exposure to Hazardous Materials) or the environment, including all Laws regulating or relating to the presence, use, production, generation, distribution, use, storage, labeling, testing, processing, treatment, transport, recycling, reporting, disposal, Release or threatened Release ("Release" being herein defined to mean the release, spill, emission, leaking, pumping pouring, injection, deposit, discharge, disposal, dispersal, leaching, or migration into the indoor or outdoor environment, of any Hazardous Materials into or through the soil, surface or subsurface water or indoor or outdoor air), investigation, control, removal, remediation or cleanup of, or exposure to, any Hazardous Materials.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Loan Party or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law,

(b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the actual or alleged presence of or release or threatened release of any Hazardous Materials into the environment on or from any property owned or operated by any Loan Party or any of its Subsidiaries or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination; provided that no Permitted Convertible Indebtedness, nor any Permitted Bond Hedge Transaction or Permitted Warrant Transaction, in each case, shall constitute Equity Interests of Borrower or any of its Subsidiaries.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with any Loan Party within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such Person was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (h) the imposition of any liability under Title IV of ERISA, other than for required, timely-made plan contributions and PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate; or (i) any Foreign Benefit Event.

"Erroneous Payment" has the meaning given such term in Section 9.13(a).

"Erroneous Payment Deficiency Assignment" has the meaning given such term in Section 9.13(d).

"Erroneous Payment Impacted Class" has the meaning given such term in Section 9.13(d).

"Erroneous Payment Return Deficiency" has the meaning given such term in Section 9.13(d).

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

"Event of Default" has the meaning given such term in Section 8.01.

"Exchange Act" means the Securities Exchange Act of 1934.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Revolving Credit Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Revolving Credit Commitment (other than pursuant to an assignment request by Borrower under Section 3.08) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(f) and (d) any Taxes imposed under FATCA.

"Extended Revolving Credit Commitment" means any Class of Revolving Credit Commitments the maturity of which shall have been extended pursuant to Section 2.16.

"Extended Revolving Credit Loans" means any Revolving Credit Loans made pursuant to the Extended Revolving Credit Commitments.

"Extended Term Loans" means any Class of Term Loans the maturity of which shall have been extended pursuant to Section 2.16.

"Extension" has the meaning assigned thereto in Section 2.16(a).

"Extension Amendment" means an amendment to this Agreement (which may, at the option of Administrative Agent and Borrower, be in the form of an amendment and restatement of this Agreement) among the Loan Parties, the applicable extending Lenders, Administrative Agent and, to the extent required by Section 2.16, the L/C Issuer and/or the Swing Line Lender implementing an Extension in accordance with Section 2.16.

"Extension Offer" has the meaning assigned thereto in Section 2.16(a).

"Facility" means the Revolving Credit Facility, Initial Term Loan Facility or any Incremental Term Loan Facility, as the context requires.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

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

"FDA" means the United States Food and Drug Administration and any successor thereto.

"Federal Funds Rate" means, for any day, the rate per annum 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 that, if such rate is not so published for any day which is a Business Day, the Federal Funds Rate for such day shall be the average of the quotation for such day on such transactions received by Administrative Agent from three (3) federal funds brokers of recognized standing selected by Administrative Agent. Notwithstanding the foregoing, if the Federal Funds Rate shall be less than zero percent (0%), such rate shall be deemed to be zero percent (0%) for purposes of this Agreement.

"Fee Letters" means, collectively, (a) the letter agreement dated April 21, 2023 among Borrower, the Left Lead Arranger and Wells Fargo and (b) each letter agreement dated April 21, 2023 between Borrower and each Arranger or senior managing agent, as applicable, in each case, regarding certain fees to be paid by Borrower in connection with the transactions contemplated by the Loan Documents.

"First Tier Foreign Subsidiary" means any Foreign Subsidiary, the Equity Interests of which are owned directly by one or more Loan Parties.

"Fiscal Period" means, as of any date of determination with respect to Borrower or any Subsidiary thereof, each fiscal quarter of Borrower ending on March 31, June 30, September 30 and December 31 of each applicable Fiscal Year.

"Fiscal Year" means each fiscal year of Borrower ending December 31 of each calendar year.

"Floor" means a rate of interest equal to 0.00%.

"Foreign Benefit Event" means, with respect to any Foreign Pension Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority or other Person authorized to grant a waiver, (b) the failure to make the required contributions or payments, under any applicable law, on or before the due date for such contributions or payments, (c) the receipt of a notice by a Governmental Authority relating to the intention to terminate any such Foreign Pension Plan or to appoint a trustee or similar official to administer any such Foreign Pension Plan, or alleging the insolvency of any such Foreign Pension Plan and (d) the incurrence of any liability in excess of the Threshold Amount by Borrower or any of its Subsidiaries under applicable Law on account of the complete or partial termination of such Foreign Pension Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any transaction that is prohibited under any applicable law and could reasonably be expected to result in the incurrence of any liability by Borrower or any of its Subsidiaries, or the imposition on Borrower or any of its Subsidiaries of any fine, excise tax or penalty resulting from any noncompliance with any applicable law, in each case in excess of the Threshold Amount.

"Foreign Lender" means a Lender that is not a U.S. Person.

"Foreign Pension Plan" means any benefit plan that is maintained or is contributed to outside the jurisdiction of the United States by Borrower or any of its Subsidiaries and which under applicable law is required to be funded through a trust or other funding vehicle other than a trust or funding vehicle maintained exclusively by a Governmental Authority.

"Foreign Subsidiary" means any Subsidiary of Borrower that is not a Domestic Subsidiary.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to L/C Issuer, such Defaulting Lender's Revolving Credit Percentage Share of the outstanding Letter of Credit Obligations other than Letter of Credit Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to Swing Line Lender, such Defaulting Lender's Revolving Credit Percentage Share of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles in the United States set forth 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 such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank). Governmental Authority shall include the FDA, European Medicines Agency, any other competent authority or notified body, and any comparable state or foreign government entities or authorities or entity with defined authority to oversee Regulatory Matters.

"Guaranteed Obligations" has the meaning given such term in Section 10.15(a).

"Guarantor Applicable Insolvency Laws" has the meaning given such term in Section 10.15(c)(i)(a).

"Guarantor Specified Lien" has the meaning given such term in Section 10.15(c)(i)(b).

"Guarantor Subordinated Indebtedness" has the meaning given such term in Section 10.15(k).

"Guarantor Subordinated Indebtedness Payments" has the meaning given such term in Section 10.15(j).

"Guarantors" means, collectively, (a) (i) Borrower (with respect to Obligations of Subsidiaries of Borrower), Amphastar Medication Co., LLC, International Medication Systems, Limited, and Armstrong Pharmaceuticals, Inc., as of the Closing Date, and (ii) each other Person that is party to this Agreement and named herein as a Guarantor for the purposes of Section 10.15 (including each Subsidiary of Borrower that at a date subsequent to the Closing Date executes a Joinder Agreement following the date hereof pursuant to Section 6.10 in order to become a Guarantor hereunder for purposes of Section 10.15 following the date hereof) and (b) each other Person who, at a date subsequent to the Closing Date, becomes a guarantor of all or any portion of the Obligations.

"Guaranty" means, as to any Person, any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and

including any obligation of such Person, direct or indirect: (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation; (b) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation; (c) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation; or (d) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), and will include the guaranty set forth in Section 10.15. The amount of any Guaranty will be deemed to be the amount recognized as a guaranty and shown on the guaranteeing Person's financial statements in accordance with GAAP; provided that if such financial statements of the guaranteeing Person are not reasonably available to Administrative Agent at its reasonable request, the amount of such Guaranty will be deemed to be the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Hazardous Materials" means any chemical, substance, compound or material (i) which is defined as or included in the definition(s) of "hazardous materials," "hazardous substances," "hazardous wastes," "toxic substances," "toxic wastes" or words of similar meaning or import under any applicable Environmental Laws, including any petroleum, petroleum products, derivatives or wastes, radioactive materials, asbestos or asbestos-containing materials, infectious or medical wastes, radon gas, and electrical transformers or other equipment containing polychlorinated biphenyls, or (ii) the use, handling, storage and disposal of, or exposure to which, is regulated or prohibited pursuant to any Environmental Law.

"Hedge Bank" means any Person that, (a) with respect to any Swap Contract permitted under Section 7.03(e) and in effect on the Closing Date, is (i) a Lender, (ii) the Administrative Agent or (iii) an Affiliate of a Lender or the Administrative Agent, in its capacity as a counterparty under such Swap Contract and (b) with respect to any Swap Contract permitted under Section 7.03(e) and entered into after the Closing Date, at the time it enters into such Swap Contract, (i) a Lender, (ii) the Administrative Agent or (iii) an Affiliate of a Lender or the Administrative Agent, in its capacity as a counterparty under such Swap Contract.

"Hedging Obligations" means, with respect to the Loan Parties and their Subsidiaries, all liabilities of any Loan Party under Swap Contracts entered into with any Hedge Bank and permitted under Section 7.03(e); provided that (a) such liabilities under any Swap Contract with Hedge Bank that is an Affiliate of a Lender will not constitute "Hedging Obligations" hereunder unless and until such liabilities are certified as such in writing to Administrative Agent by the Lender or its Affiliate as is the counterparty under such Swap Contract and (b) liabilities resulting from the purchase of Equity Interests or Indebtedness (including securities convertible into Equity Interests) of the Borrower pursuant to delayed delivery contracts, accelerated stock repurchase agreements, prepaid put options, forward contracts or other similar agreements will not constitute "Hedging Obligations" hereunder.

"Honor Date" means, with respect to any Letter of Credit, the date of any payment by L/C Issuer in respect of any draw thereunder.

"Incremental Cap" means, as of any date of determination, the amount equal to the sum of:

(a) (i) the greater of (A) $250,000,000 and (B) an amount equal to 100% of Consolidated EBITDA, as calculated on a pro forma basis for the most recently ended Test Period, after giving effect to the Borrowing of the full amount of any Additional Revolving Credit Commitment or Incremental Term Loan Commitment requested pursuant to Section 2.14 and any Incremental Equivalent Debt then

outstanding and other appropriate pro forma adjustment events in accordance with Section 1.02(i), including Acquisitions and Dispositions, occurring or consummated after the end of the relevant Test Period but prior to or substantially concurrently with the Borrowing of such Additional Revolving Credit Commitment, Incremental Term Loan Commitment or Incremental Equivalent Debt, as applicable, plus (ii) an amount equal to the aggregate amount of all voluntary prepayments of the Initial Term Loans, Incremental Term Loans, Revolving Credit Loans (solely to the extent accompanied by a corresponding dollar-for-dollar permanent reduction in related commitments), or Incremental Equivalent Debt made on or prior to the date of any such incurrence, in each case, except to the extent financed with the proceeds of long-term Indebtedness (other than revolving Indebtedness), minus (iii) the amount of all prior Additional Revolving Credit Commitments, Incremental Term Loan Commitments (including any Incremental Term Loans made thereunder), and Incremental Equivalent Debt incurred under this clause (a) prior to such date; plus

(b) an amount which, after giving pro forma effect to the incurrence of such Additional Revolving Credit Commitments, Incremental Term Loan Commitment (including any Incremental Term Loans made thereunder), or Incremental Equivalent Debt for the most recently ended Test Period, after giving effect to the Borrowing of the full amount of any Additional Revolving Credit Commitment or Incremental Term Loan Commitment requested pursuant to Section 2.14 or Incremental Equivalent Debt then outstanding and other appropriate pro forma adjustment events in accordance with Section 1.02(i), including Acquisitions and Dispositions, occurring or consummated after the end of the relevant Test Period but prior to or substantially concurrently with the Borrowing of such Additional Revolving Credit Commitment, Incremental Term Loan Commitment or Incremental Equivalent Debt, as applicable, would not cause the Consolidated Net Leverage Ratio to exceed a ratio that is 0.50 to 1.00 inside the maximum Consolidated Net Leverage Ratio level required pursuant to Section 7.14(a).

Unless the Borrower otherwise notifies the Administrative Agent, if all or any portion of any Additional Revolving Credit Commitment, Incremental Term Loan Commitment or Incremental Equivalent Debt would be permitted under clause (b) above on the applicable date of incurrence, such Additional Revolving Credit Commitment, Incremental Term Loan Commitment or Incremental Equivalent Debt (or the relevant portion thereof) shall be deemed to have been incurred in reliance on clause (b) above prior to the utilization of any amount available under clause (a) above. In the event the basket in clause (a) is intended to be utilized together with the basket in clause (b) in a single transaction or series of related transactions, compliance with or satisfaction of the Consolidated Net Leverage Ratio under clause (b) shall first be calculated without giving effect to amounts being incurred pursuant to the basket in clause (a), and thereafter incurrence of the portion of such Indebtedness to be incurred in such single transaction or series of related transactions pursuant to the basket in clause (a) shall be calculated; provided that any Indebtedness originally designated as incurred pursuant to clause (a) shall be automatically reclassified as incurred under clause (b) at such time as the Borrower would meet the applicable leverage or coverage-based incurrence test at such time on a pro forma basis, unless otherwise elected by the Borrower.

"Incremental Equivalent Debt" means Indebtedness issued, incurred or otherwise obtained by any Loan Party in respect of one or more series of notes (in each case issued in a public offering, Rule 144A or other private placement in lieu of the foregoing), bridge financings or loans that, in each case, if secured, will be secured by Liens on the Collateral on a junior priority or pari passu basis to the Liens on Collateral securing the Obligations, and that are issued or made in lieu of Incremental Term Loans; provided that:

(a) the aggregate principal amount of all Incremental Equivalent Debt at the time of issuance or incurrence shall not exceed the Incremental Cap at such time;

(b) no Default or Event of Default will exist immediately before or immediately after giving effect to such Incremental Equivalent Debt (provided, however, that if and to the extent such Incremental

Equivalent Debt will be incurred, in whole or in part, for the purpose of funding, in whole or in part, the Acquisition Consideration of a Limited Condition Transaction (including any portion which repays, redeems or otherwise discharges any Indebtedness of the Target or any of its Subsidiaries or other Affiliates being acquired as part of such Limited Condition Transaction) and/or fees and expenses incurred by Borrower or its Subsidiaries in connection therewith, the condition precedent of this clause (b) will be limited solely to Specified Events of Default);

(c) as of the date of the making of such Incremental Equivalent Debt (based on the Consolidated financial statements of Borrower and its Subsidiaries for the most recent Test Period), Borrower will be in compliance with the financial covenants set forth in Section 7.14 after giving pro forma effect to the funding in full of such Incremental Equivalent Debt and other appropriate pro forma adjustment events, including any Acquisitions or Dispositions after the end of the relevant Test Period but prior to or substantially concurrently with the Borrowing of such Incremental Equivalent Debt (provided, however, that if and to the extent such Incremental Equivalent Debt will be incurred, in whole or part, for the purpose of funding, in whole or in part, the Acquisition Consideration of a Limited Condition Transaction (including any portion which repays, redeems or otherwise discharges any Indebtedness of the Target or any of its Subsidiaries or other Affiliates being acquired as part of such Limited Condition Transaction) and/or fees and expenses incurred by Borrower or its Subsidiaries in connection therewith, the condition precedent of this clause (c) requiring that Borrower be in compliance with the financial covenants set forth in Section 7.14 after giving pro forma effect to the making of such Incremental Equivalent Debt as of the date of making such Incremental Equivalent Debt will instead be tested as of the LCT Test Date for such Limited Condition Transaction);

(d) such Incremental Equivalent Debt shall not be subject to any guarantee by any Person other than a Loan Party;

(e) in the case of Incremental Equivalent Debt that is secured, the obligations in respect thereof shall not be secured by any Lien on any asset of any Person other than any asset constituting Collateral;

(f) if such Incremental Equivalent Debt is secured, such Incremental Equivalent Debt shall be subject to a Permitted First Lien Intercreditor Agreement or a Permitted Junior Intercreditor Agreement, as applicable;

(g) no such Incremental Equivalent Debt shall have mandatory prepayment provisions allowing any such Incremental Equivalent Debt to be prepaid on a greater than pro rata basis than the Term Loans hereunder; provided, that customary prepayment, redemption, repurchase or defeasance obligations in connection with a change of control, asset sale, fundamental change or other similar event or the exercise of remedies after an event of default (in each case as determined by Borrower in good faith) shall not disqualify such Indebtedness from satisfying the requirements of this clause (g);

(h) at the time of incurrence, such Incremental Equivalent Debt has a final maturity date equal to or later than 91 days after the Revolving Credit Maturity Date and the Initial Term Loan Maturity Date then in effect, and has a Weighted Average Life to Maturity equal to or longer than, the Weighted Average Life to Maturity of the Initial Term Loans or any Incremental Term Loans with the then longest Weighted Average Life to Maturity; provided, that for purposes of determining whether Permitted Convertible Indebtedness meets the foregoing requirements for such Incremental Equivalent Debt, neither any settlement upon conversion of such Permitted Convertible Indebtedness (whether in cash, stock or other property) nor any required redemption or repurchase thereof upon a "fundamental change"(as customarily defined for such Permitted Convertible Indebtedness) shall disqualify such Permitted Convertible Indebtedness from satisfying the requirements of this clause (h) notwithstanding a possible occurrence prior to the final maturity date of such Permitted Convertible Indebtedness; and

(i) the terms of such Incremental Equivalent Debt either (i) reflect market terms (taken as a whole) at the time of issuance or (ii) when taken as a whole, are not materially more restrictive (in each case, as determined by Borrower in good faith) on Borrower and its Subsidiaries than the terms and conditions of this Agreement (other than pricing, fees, rate floors, premiums and optional prepayment or redemption provisions), taken as a whole (except for covenants or other provisions applicable only to periods after the Revolving Credit Maturity Date and the Initial Term Loan Maturity Date or which are added for the benefit of the Revolving Credit Facility, Initial Term Loan Facility and any Incremental Term Loan Facility).

"Incremental Term Loan" has the meaning given such term in Section 2.01(c).

"Incremental Term Loan Borrowing" means a borrowing consisting of simultaneous Incremental Term Loans of the same Type and, in the case of Term SOFR Loans, having the same Interest Period made by each Incremental Term Loan Lender pursuant to Section 2.01(c).

"Incremental Term Loan Commitments" means the commitment of an Incremental Term Loan Lender to make Incremental Term Loans pursuant to Section 2.14.

"Incremental Term Loan Facility" means, at any time, the aggregate principal amount of the Incremental Term Loans of all Incremental Term Loan Lenders outstanding at such time.

"Incremental Term Loan Lender" means, at any time, a lender providing Incremental Term Loans, other than any such Person that thereafter ceases to be a party hereto pursuant to an Assignment and Assumption.

"Incremental Term Loan Maturity Date" means the earlier of (a) the Incremental Term Loan Stated Maturity Date and (b) the acceleration of the Incremental Term Loans pursuant to Section 8.03; provided, that the date set forth in clause (a) above applicable to Extended Term Loans shall be the final maturity date specified in the relevant documentation for such Extended Term Loans.

"Incremental Term Loan Percentage Share" means as to any Incremental Term Loan Lender at any time, the percentage (expressed as a decimal carried out to the ninth decimal place) of (a) on or prior to the Additional Commitment Effective Date of any Incremental Term Loans, the Aggregate Incremental Term Loan Commitments represented by such Incremental Term Loan Lender's Incremental Term Loan Commitment, subject to adjustment as provided in Section 3.07; (b) following the Additional Commitment Effective Date of any Incremental Term Loans so long as any Incremental Term Loans are outstanding, the Outstanding Amount of all Incremental Term Loans represented by the Outstanding Amount of all Incremental Term Loans owing to such Incremental Term Loan Lender; and (c) following the Additional Commitment Effective Date of any Incremental Term Loans if all Incremental Term Loans have been repaid in full, the Outstanding Amount of all Incremental Term Loans represented by the Outstanding Amount of all Incremental Term Loans owing to such Incremental Term Loan Lender immediately prior to such repayment in full, giving effect to any subsequent assignments. The Incremental Term Loan Percentage Share of each Incremental Term Loan Lender will be set forth in the Additional Commitment Documentation or the Assignment and Assumption pursuant to which such Incremental Term Loan Lender became a party hereto, as applicable.

"Incremental Term Loan Stated Maturity Date" means the maturity date specified for Incremental Term Loans pursuant to the applicable Additional Commitment Documentation.

"Indebtedness" means, as to any Person as of any date of determination, without duplication, all of the following, whether or not included or characterized as indebtedness or a liability in accordance with

GAAP: (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind received or held by such Person; (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (c) all direct or contingent obligations of such Person arising under letters of credit, bank undertakings, letters of guaranty, surety bonds and similar instruments (including, for each of the foregoing, the stated or available amount that is undrawn or that has been drawn but is unreimbursed); (d) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances; (e) all obligations of such Person to pay the deferred purchase price of property or services (including Deferred Purchase Price Obligations); (f) Indebtedness (excluding prepaid interest thereon) of a third Person secured by a Lien on property owned or being purchased by such first Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such Indebtedness will have been assumed by such Person or is limited in recourse; provided that the amount of such Indebtedness will be the lesser of (i) the fair market value of such assets at the date of determination and (ii) the amount of such Indebtedness of such third Person; (g) all Attributable Debt in respect of all Capitalized Leases and Synthetic Lease Obligations of such Person; (h) all obligations of such Person to purchase, redeem, retire, defease or make other similar payments (other than dividends) in respect of Disqualified Equity Interests in Cash valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (i) all Guarantees of such Person in respect of any of the foregoing; and (j) the Swap Termination Value under all Swap Contracts to which such Person is a party. The Indebtedness of any Person will include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. Notwithstanding the foregoing, none of the following will constitute Indebtedness for purposes of this Agreement: (i) trade or other accounts payable incurred in the ordinary course of such Person's business, (ii) bonuses or other deferred compensation arrangements with respect to officers, directors, employees or agents of such Person, (iii) customer accounts and deposits, accrued employee compensation and other liabilities in the nature of employee compensation accrued, (iv) rebates, credits for returned products, discounts, refunds, allowances for customers and credits against receivables, in each case in this clause (iv) in the ordinary course of such Person's business, and (v) earn-outs and other deferred payment obligations incurred in connection with an Acquisition to the extent not constituting Deferred Purchase Price Obligations.

Notwithstanding the foregoing, the obligations of Borrower under any Permitted Warrant Transaction shall not constitute Indebtedness so long as the terms of such Permitted Warrant Transaction provide for "net share settlement" (or substantially equivalent term) as the default "settlement method" (or substantially equivalent term) thereunder. For purposes hereof, the amount of any Permitted Convertible Indebtedness shall be the aggregate stated principal amount thereof without giving effect to any obligation to pay cash or deliver shares with value in excess of such principal amount, and without giving effect to any integration thereof with any Permitted Bond Hedge Transaction pursuant to U.S. Treasury Regulation § 1.1275-6.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in the preceding clause (a), Other Taxes.

"Indemnitees" means, collectively, Administrative Agent (and any sub-agent thereof), each Arranger, each Lending Party and each Related Party of any of the foregoing Persons.

"Information" has the meaning given such term in Section 10.07.

"Initial Term Loan Borrowing" means the borrowing of the Initial Term Loans pursuant to Section 2.01(b).

"Initial Term Loan Commitment" means, as to each Initial Term Loan Lender at any time, its obligation to make a portion of the Initial Term Loan to Borrower hereunder on the Closing Date; all in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender became a party hereto, as such amount may be adjusted from time to time in accordance with this Agreement.

"Initial Term Loan Facility" means the term loan facility established pursuant to Section 2.01(b).

"Initial Term Loan Lender" means any Lender with an Initial Term Loan Commitment and/or outstanding Initial Term Loans.

"Initial Term Loan Maturity Date" means the earliest of (a) June 30, 2028 and (b) the date of the acceleration of the Initial Term Loans pursuant to Section 8.03; provided, that the date set forth in clause (a) above applicable to Extended Term Loans shall be the final maturity date specified in the relevant documentation for such Extended Term Loans.

"Initial Term Loan Percentage Share" means as to any Initial Term Loan Lender at any time, the percentage (expressed as a decimal carried out to the ninth decimal place) of the total outstanding principal balance of the Initial Term Loans represented by the outstanding principal balance of such Initial Term Loan Lender's Initial Term Loans. The Initial Term Loan Percentage Share of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender became a party hereto, as applicable.

"Initial Term Loans" has the meaning given such term in Section 2.01(b).

"Insolvency Proceeding" means (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors, in the cases of each of the foregoing clauses (a) and (b) undertaken under Federal, state or foreign Law, including the Bankruptcy Code.

"Intercompany Note" means that certain Intercompany Note dated as of the Closing Date by and among the Borrower and the Subsidiaries of Borrower party thereto from time to time.

"Interest Payment Date" means (a) with respect to (i) any Term SOFR Loan, the last day of each Interest Period applicable thereto and, in the case of a Term SOFR Loan with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period, (ii) any Base Rate Loan (other than a Swing Line Loan), the last Business Day of each calendar month, and (iii) any Swing Line Loan, the last Business Day of each calendar month; and (b) (i) in the case of Revolving Credit Loans and Swing Line Loans, the Revolving Credit Maturity Date, (ii) in the case of Initial Term Loans, the Initial Term Loan Maturity Date and (iii) in the case of Incremental Term Loans, the applicable Incremental Term Loan Maturity Date.

"Interest Period" means, as to each Term SOFR Loan, the period commencing on the date such Term SOFR Loan is disbursed or converted to or continued as a Term SOFR Loan, and ending on the date

one, three or six months thereafter, as selected by Borrower in the related Loan Notice; provided that (a) any Interest Period that would otherwise end on a day that is not a Business Day will be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period will end on the next preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) will end on the last Business Day of the calendar month at the end of such Interest Period; and (c) no Interest Period for (i) any Revolving Credit Loan will extend beyond the Revolving Credit Stated Maturity Date, (ii) any Initial Term Loan will extend beyond the Initial Term Loan Maturity Date and (iii) any Incremental Term Loan will extend beyond the applicable Incremental Term Loan Stated Maturity Date. No tenor that has been removed from this definition pursuant to Section 3.03(c)(iv) shall be available for specification in any notice for a Borrowing, conversion or continuation of a Term SOFR Loan pursuant to Section 2.02(a).

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person in another Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or limited liability company interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitutes a business unit, or all or a substantial part of the business of, such Person. For purposes of calculating compliance with Section 7.02, the amount of any Investment will be the original principal or capital amount thereof without adjustment for subsequent increases or decreases in the value of such Investment, but less all returns of principal or equity thereon and distributions or dividends thereon, and will, if made by the transfer or exchange of property other than Cash, be deemed to have been made in an original principal or capital amount equal to the fair market value of such property.

"IRS" means the United States Internal Revenue Service.

"ISP" means, with respect to any standby Letter of Credit, the "International Standby Practices 1998" (exclusive of Rule 3.14 thereof) published by the Institute of International Banking Law & Practice (or, if L/C Issuer agrees at the time of issuance, such later version thereof as may be in effect at the time of issuance of such Letter of Credit).

"Issuer Documents" means, with respect to any Letter of Credit, the Letter of Credit Application relating thereto and any other document entered into by L/C Issuer and Borrower as account party or its permitted designee or otherwise delivered by Borrower or its permitted designee to or for the benefit of L/C Issuer, in each case relating to such Letter of Credit.

"Joinder Agreement" means an agreement entered into by a Subsidiary of Borrower following the date hereof to join in the Guaranty set forth in Section 10.15, in substantially the form of Exhibit C or any other form approved by Administrative Agent.

"Joint Venture" means a joint venture, partnership, alliance, consortium or similar arrangement, whether in corporate, partnership or other legal form; provided that, as to any such arrangement in corporate form, such corporation will not, as to any Person of which such corporation is a subsidiary, be considered to be a Joint Venture to which such Person is a party.

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, regulations, ordinances, codes and binding administrative or judicial precedents or authorities, including the binding interpretation or administration thereof by any Governmental Authority charged with

the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, concessions, grants, franchises, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case having the force of law, and including all Debtor Relief Laws, Environmental Laws and anti-terrorism Laws.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof, the extension of the expiry date thereof or the increase of the amount thereof.

"L/C Issuer" means Wells Fargo, Capital One, National Association, JPMorgan Chase Bank, N.A., East West Bank, Cathay Bank and CIBC Bank USA, each in its capacity as issuer of Letters of Credit hereunder, or such other Lender as Borrower may from time to time select as an L/C Issuer hereunder pursuant to Section 2.03; provided that such Lender has agreed to be an L/C Issuer.

"LCT Test Date" has the meaning given such term in Section 1.02(s)(i).

"Left Lead Arranger" means Wells Fargo Securities, LLC as the left lead arranger and bookrunner for the transactions contemplated by the Loan Documents.

"Lender" means, collectively, (a) initially, each Person designated on Schedule 2.01 as a "Lender" and (b) each Person that assumes a Revolving Credit Commitment, an Additional Revolving Credit Commitment, an Initial Term Loan Commitment and/or an Incremental Term Loan Commitment pursuant to an Assignment and Assumption or pursuant to the applicable Additional Commitment Documentation or which otherwise holds a Revolving Credit Commitment, a Revolving Credit Loan, an Additional Revolving Credit Commitment, an Additional Revolving Credit Loan, an Initial Term Loan Commitment, the Initial Term Loan, an Incremental Term Loan Commitment, an Incremental Term Loan, a risk participation in a Swing Line Loan or a participation in a Letter of Credit or a Letter of Credit Borrowing (in each case, for so long as such Person holds Commitments or Loans).

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Detail Form, or such other office or offices as a Lender may from time to time notify Borrower, Administrative Agent and the Lending Parties.

"Lending Parties" means, collectively, Lenders, Swing Line Lender and L/C Issuer.

"Letter of Credit" means any standby or commercial letter of credit issued hereunder. Letters of Credit shall be issued in Dollars.

"Letter of Credit Advance" means a Lender's funding of its participation in a Letter of Credit Borrowing in accordance with its Revolving Credit Percentage Share.

"Letter of Credit Application" means an application and agreement (including any related reimbursement agreement) for the issuance or amendment of a Letter of Credit in the form from time to time in use by L/C Issuer.

"Letter of Credit Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit that has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing. All Letter of Credit Borrowings will be denominated in Dollars.

"Letter of Credit Expiration Date" means the day that is five (5) Business Days prior to the Revolving Credit Stated Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" has the meaning given such term in Section 2.03(i).

"Letter of Credit Obligations" means, as determined at any time, the sum of (a) the aggregate amount available to be drawn under all outstanding Letters of Credit and (b) the aggregate of all Unreimbursed Amounts, including all Letter of Credit Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit will be determined in accordance with Section 1.02(j).

"Letter of Credit Sublimit" means an amount equal to $15,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Credit Commitments.

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any easement, right of way or other encumbrance on title to real property).

"Limited Condition Transaction" means any Acquisition or similar Investment (including the repayment, redemption or other discharge of any Indebtedness of the Target or any of its Subsidiaries or other Affiliates being acquired as part of such Acquisition or similar Investment), unconditional and irrevocable permitted repayment or redemption of, or offer to purchase, any Indebtedness or Restricted Payment (including the incurrence of any Indebtedness in connection with any of the foregoing) that Borrower or any one or more of its Subsidiaries is contractually committed to consummate (it being understood that such commitment may be subject to conditions precedent, which conditions precedent may be amended, satisfied or waived in accordance with the terms of the applicable agreement) whose consummation is not conditioned upon the availability of, or on obtaining, third-party financing.

"Loan" means any Revolving Credit Loan, Swing Line Loan, Additional Revolving Credit Loan or Incremental Term Loan or Initial Term Loans.

"Loan Documents" means this Agreement, the Disclosure Letter, the Notes, the Security Documents, the Letters of Credit and related Issuer Documents, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.15, the Fee Letters and any and all other agreements, documents and instruments executed and/or delivered by or on behalf of or in support of any Loan Party to Administrative Agent or any Credit Party or their respective authorized designee evidencing or otherwise relating to the Loans or the Letter of Credit Borrowings made or the Letters of Credit issued hereunder.

"Loan Notice" means a notice, pursuant to Section 2.02(a), of (a) a borrowing of Loans, (b) a conversion of Loans from one Type to the other or (c) a continuation of Term SOFR Loans, which notice, if in writing, will be substantially in the form of Exhibit D.

"Loan Parties" means, collectively, Borrower and all Guarantors.

"Margin Stock" means "margin stock" as defined in Regulation U adopted by the FRB (12 C.F.R. Part 221).

"Material Adverse Effect" means any of the following: (a) a material adverse change in, or material adverse effect upon, the business, assets, operations or financial condition either of Borrower individually or the Loan Parties, taken as a whole; (b) a material impairment of the ability of Borrower or any other Loan Party to perform any of its payment or other obligations under this Agreement or any other Loan

Document; or (c) a material adverse effect upon the rights or benefits or remedies available to Administrative Agent or any Lending Party under or in respect of this Agreement or any other Loan Document.

"Material Contract" means any written contract, license or other written arrangement to which any Loan Party is a party (other than the Loan Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have or result in a Material Adverse Effect.

"Material Subsidiary" means as at any date of determination, any Domestic Subsidiary of Borrower which either (a) owns assets with a book value of 5% or more of the book value of the Consolidated Total Assets of Borrower and its Subsidiaries or (b) generates revenues of 5% or more of the net revenue as calculated on a Consolidated basis for Borrower and its Subsidiaries, in each case as measured on a pro forma basis for the most recent Test Period; provided that, if at any time, Domestic Subsidiaries that are not Material Subsidiaries have, in the aggregate (i) assets with a book value of 10% or more of the book value of the Consolidated Total Assets of Borrower and its Subsidiaries or (ii) revenues of 10% or more of the net revenue as calculated on a Consolidated basis for Borrower and its Subsidiaries, in each case as measured on a pro forma basis for the most recent Test Period, then Borrower shall, on the date on which financial statements for such Test Period are delivered pursuant to this Agreement, designate in writing to the Administrative Agent one or more of such Subsidiaries as "Material Subsidiaries". For purposes of this definition of "Material Subsidiary," measurement on a pro forma basis will mean that credit will be given for a Domestic Subsidiary's unconsolidated portion of Consolidated Total Assets or gross revenue, as the case may be, as if owned on the first day of the applicable Test Period.

"Minimum Collateral Amount" means, at any time, (a) with respect to Cash Collateral consisting of Cash, an amount equal to 105% of the Fronting Exposure of L/C Issuer with respect to Letters of Credit issued and outstanding at such time and (b) otherwise, an amount determined by Administrative Agent and L/C Issuer in their sole discretion.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including any Loan Party or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

"Net Cash Proceeds" means, as applicable, (a) with respect to any Disposition or Casualty Event, all cash and Cash Equivalents received by any Loan Party or any of its Subsidiaries therefrom (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when received) less the sum of (i) all income taxes and other taxes assessed by, or reasonably estimated to be payable to, a Governmental Authority as a result of such transaction, (ii) all reasonable and customary out-of-pocket fees and expenses incurred in connection with such transaction or event (including with respect to legal, investment banking, brokerage, advisor and accounting and other professional fees, sales commissions and disbursements, survey costs, title insurance premiums and related search and recording charges, transfer taxes and deed or mortgage recording taxes or following a Casualty Event, restoration costs), (iii) the principal amount of, premium, if any, and interest

on any Indebtedness (other than Indebtedness under the Loan Documents) secured by a Lien on the asset (or a portion thereof) disposed of, which Indebtedness is required to be repaid in connection with such transaction or event, (iv) in the case of any Disposition or Casualty Event by a non-wholly-owned Subsidiary, the pro rata portion of the Net Cash Proceeds thereof attributable to minority interests and not available for distribution to or for the account of Borrower as a result thereof and (v) all amounts that are set aside as a reserve (A) for adjustments in respect of the purchase price of such assets, (B) for any liabilities associated with such sale or casualty, to the extent such reserve is required by GAAP or as otherwise required pursuant to the documentation with respect to such Disposition or Casualty Event, (C) for the payment of unassumed liabilities relating to the assets sold or otherwise disposed of at the time of, or within 30 days after, the date of such sale or other disposition and (D) for the payment of indemnification obligations; provided that, to the extent and at the time any such amounts are released from such reserve and received by such Loan Party or any of its Subsidiaries, such amounts shall constitute Net Cash Proceeds, and (b) with respect to any Debt Issuance, the gross cash proceeds received by any Loan Party or any of its Subsidiaries therefrom less all reasonable and customary out-of-pocket legal, underwriting and other fees and expenses (including, without limitation, taxes) incurred in connection therewith.

"Net Stock Repurchases" means, for any period, the aggregate consideration paid by any Loan Party during such period to purchase Equity Interests of Borrower, minus the net cash proceeds received by any Loan Party during such period from employee stock compensation plans of Borrower (excluding amounts constituting withholding tax payments).

"Non-Consenting Lender" means any Lender that does not (as determined by Administrative Agent in its Reasonable Discretion) approve any consent, waiver or amendment that (a) requires the approval of all affected Lenders in accordance with the terms of Section 10.01 and (b) has been approved by Required Lenders (to the extent such consent, waiver or amendment requires the approval of all Lenders) or Required Revolving Credit Lenders or Required Initial Term Loan Lenders or Required Incremental Term Loan Lenders (to the extent such consent, waiver or amendment requires the consent of all Revolving Credit Lenders, Initial Term Loan Lenders or Incremental Term Loan Lenders, as applicable).

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Note" means a Revolving Credit Note, a Swing Line Note or a Term Loan Note.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit or constituting Hedging Obligations or Cash Management Obligations, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. For the avoidance of doubt, any obligation under any Permitted Bond Hedge Transaction or any Permitted Warrant Transaction shall not constitute Obligations.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Organizational Documents" means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-United States jurisdiction) of such Person; (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement of such Person; and (c) with

respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization of such Person and any agreement, instrument, filing or notice with respect thereto filed in connection with such Person's formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such Person.

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

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.08).

"Outstanding Amount" means, as determined as of any date, (a) with respect to any Loans, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and prepayments or repayments of such Loans, as the case may be, occurring on such date; and (b) with respect to any Letter of Credit Obligations on any date, the amount of such Letter of Credit Obligations after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the Letter of Credit Obligations as of such date, including as a result of any reimbursements by Borrower of Unreimbursed Amounts.

"Overnight Rate" means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by Administrative Agent (or to the extent payable to an L/C Issuer, such L/C Issuer, as applicable, in each case, with notice to Administrative Agent) to be customary in the place of disbursement or payment for the settlement of banking transactions.

"Participant" has the meaning given to such term in Section 10.06(d).

"PATRIOT Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"Payment Recipient" has the meaning given such term in Section 9.13(a).

"PBGC" means the Pension Benefit Guaranty Corporation.

"Pension Act" means the Pension Protection Act of 2006.

"Pension Funding Rules" means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

"Pension Plan" means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by any Loan Party and any ERISA Affiliate

and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

"Percentage Share" means, as to any Lender, its Revolving Credit Percentage Share, Initial Term Loan Percentage Share or Incremental Term Loan Percentage Share, as applicable.

"Permits" means, with respect to any Person, any permit, approval, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, including all Regulatory Permits.

"Permitted Acquisition" means (a) the Acquisition by Borrower or any Subsidiary of (i) all or substantially all of the assets of another Person, (ii) an identifiable business unit or division of another Person or (iii) Equity Interests of another Person resulting in the acquiring Person having the ability to Control the acquired Person or otherwise causing another Person to become a Subsidiary of such Person, or (b) the Acquisition of another Person or an identifiable business unit or division of another Person by Borrower or any Subsidiary in a merger, consolidation, amalgamation, reorganization or other similar transaction (in each case, the Person or identifiable business unit or division being so acquired is referred to as the "Target"); provided that, subject to Section 1.02(s) with respect to any Limited Condition Transaction:

(a) no Event of Default has occurred and is continuing on the date of, or will result after giving effect to, any such Acquisition (actually and on a pro forma basis);

(b) the Target is in the same or a similar or a related line of business (as reasonably determined in good faith by Borrower's Board of Directors or by Borrower's chief executive officer or chief financial officer) as the business conducted by Borrower or any of its Subsidiaries or any business that is complementary, incidental or reasonably related thereto;

(c) the Acquisition is completed as a result of an arm's length negotiation and on a non-hostile basis;

(d) the Acquisition is consummated, in all material respects, in accordance with all applicable laws and all applicable authorizations, permits and approvals of Governmental Authorities;

(e) if the financial statements of the Target (or, in the case of the Acquisition of assets constituting less than all of the assets of a Target, the equivalent of financial statements with respect to such assets) to the extent available, but in no event for less than the immediately preceding most recent twelve month period for which financial statements are reasonably available from the Target ("Historical Target Financial Statements") demonstrate, as determined in good faith by Borrower, that such Target's adjusted earnings before interest, taxes, depreciation and amortization (calculated in the same manner (and with the same adjustments) as Consolidated EBITDA) is:

(i) less than zero, and the consideration paid or payable in Cash or other property (excluding common stock of the Borrower) (with the value of such other property determined as of the closing date of such Acquisition) in connection with such Acquisition or series of related Acquisitions (such consideration, including any deferred portion thereof constituting Deferred Purchase Price Obligations, "Acquisition Consideration") is in excess of $25,000,000; or

(ii) zero or greater, and the Acquisition Consideration is in excess of $75,000,000,

then in the case of clauses (e)(i) and (ii) above, Borrower has delivered to Administrative Agent, on or before the earlier to occur of (A) the fifteenth (15th) calendar day following the execution of the definitive acquisition (or similar) agreement for such Acquisition (or if such day is not a Business Day, the next succeeding Business Day) and (B) ten (10) calendar days preceding the closing of the Acquisition (or if such day is not a Business Day, the immediately preceding Business Day) (or, in each case, such later date as agreed to by the Administrative Agent in its sole discretion), each of the following:

(x) the Historical Target Financial Statements; and

(y) pro forma financial statements, reflecting the combined performance of the Loan Parties as of the last day of the most recent Test Period, and of the Target for the most recent twelve month period immediately preceding the consummation of such transaction for which Historical Target Financial Statements are available (or such other appropriate recent twelve month period as may be selected by Borrower and approved by Administrative Agent in its Reasonable Discretion), certified to Administrative Agent and the Lending Parties as being the good faith pro forma financial statements prepared by Borrower, in form and detail acceptable to Administrative Agent in its Reasonable Discretion, which pro forma financial statements shall show that such Acquisition would not result in the occurrence of any Event of Default hereunder;

(f) Borrower is in compliance with the financial covenants set forth in Section 7.14 on a pro forma basis after giving effect to the Acquisition of the Target, as calculated for the Loan Parties as of the last day of the most recent Test Period and for the Target for the most recent twelve month period immediately preceding the consummation of such transaction for which Historical Target Financial Statements are available (or such other appropriate recent twelve month period as may be selected by Borrower and approved by Administrative Agent in its Reasonable Discretion), and, if the Acquisition meets the threshold in clause (e) above requiring Borrower to deliver financial statements as required in clause (e) above, Borrower will have delivered to Administrative Agent, concurrently with delivery of the financial statements under clause (e) above, a completed Schedule 2 to the Compliance Certificate (i) demonstrating such pro forma compliance, calculated in compliance with GAAP, subject to such qualifications as described in accompanying notes thereto, in a manner reasonably acceptable to Administrative Agent and (ii) certified by a Responsible Officer or the chief executive officer of Borrower as to the matters in paragraphs 1 through 5 of the Compliance Certificate;

(g) if the Target (or any of its Subsidiaries) is to remain a separate Subsidiary and as such would become a Material Subsidiary, all action required under Section 6.10 will be completed in accordance with such Section (and, for the avoidance of doubt, in accordance with the timeframes set forth therein) and such Target (and such additional Subsidiaries, if applicable) will be made a party to this Agreement as a Guarantor in accordance with such Section (and, for the avoidance of doubt, in accordance with the timeframes set forth therein) by executing and delivering to Administrative Agent a Joinder Agreement substantially in the form of Exhibit C and otherwise complying with the terms of Section 6.10; and

(h) upon the consummation of any such Acquisition as to which the Acquisition Consideration paid or payable by Borrower and its Subsidiaries is greater than $15,000,000, a Responsible Officer of Borrower will deliver a certificate to Administrative Agent confirming that each of the applicable conditions set forth in clauses (a) through (g), inclusive, of this definition to the qualification of such Acquisition as a "Permitted Acquisition" has been or, in the case of the conditions set forth in clause (g) thereof, are being timely satisfied.

"Permitted Bond Hedge Transaction" means any bond hedge, call or capped call option (or substantively equivalent derivative transaction) relating to Borrower's common stock (or other securities or property following a merger event, reclassification or other change of the common stock of Borrower) purchased by Borrower or a Subsidiary thereof in connection with the issuance of any Permitted Convertible Indebtedness and settled in common stock of Borrower (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of Borrower's common stock or such other securities or property), and cash in lieu of fractional shares of common stock of Borrower, including as may be amended or replaced from time to time, including through a novation of the counterparty thereto; provided that the purchase of any such Permitted Bond Hedge Transaction is made with, and the purchase price thereof less the proceeds received by Borrower from the sale of any substantially concurrently executed Permitted Warrant Transaction, does not exceed, the net proceeds received by Borrower or a Subsidiary thereof in connection with the issuance of any Permitted Convertible Indebtedness; provided further that the other terms, conditions and covenants of each such transaction shall be such as are customary for transactions of such type (as determined by Borrower in good faith).

"Permitted Convertible Indebtedness" means (a) unsecured Indebtedness of Borrower or a Subsidiary thereof that (i) as of the date of issuance thereof contains customary conversion or exchange rights and customary offer to repurchase rights for transactions of such type (in each case, as determined by Borrower in good faith) and (ii) is convertible into or exchangeable for shares of common stock of Borrower (or other securities or property following a merger event, reclassification or other change of the common stock of Borrower), cash or a combination thereof (such amount of cash determined by reference to the price of Borrower common stock or such other securities or property), and cash in lieu of fractional shares of common stock of Borrower and (b) any unsecured guarantee by any Loan Party of Indebtedness of Borrower or a Subsidiary thereof described in clause (a); provided that such Indebtedness is permitted to be incurred under Section 7.03(a)(ii) or (o).

"Permitted Encumbrances" means any Cash Collateral or other credit support provided to L/C Issuer in respect of a Defaulting Lender pursuant to clause (D) of Section 2.03(a)(iv).

"Permitted First Lien Intercreditor Agreement" means, with respect to any Liens on Collateral that are intended to be equal in right of priority to the Liens securing the Obligations, one or more intercreditor agreements, each of which shall be on terms which are consistent with market terms governing security arrangements for the sharing of liens on a pari passu basis at the time such intercreditor agreement is proposed to be established, as determined by the Borrower and the Administrative Agent in the exercise of reasonable judgment, and reasonably satisfactory to the Borrower and the Administrative Agent.

"Permitted Junior Intercreditor Agreement" means, with respect to any Liens on Collateral that are intended to be junior to any Liens securing the Obligations, one or more intercreditor agreements, each of which shall be on terms which are consistent with market terms governing security arrangements for the sharing of liens on a junior basis at the time such intercreditor agreement is proposed to be established, as determined by the Borrower and the Administrative Agent in the exercise of reasonable judgment, and reasonably satisfactory to the Borrower and the Administrative Agent.

"Permitted Liens" has the meaning given such term in Section 7.01.

"Permitted Warrant Transaction" means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to Borrower's common stock (or other securities or property following a merger event, reclassification or other change of the common stock of Borrower) sold by Borrower substantially concurrently with any purchase by Borrower of a Permitted Bond Hedge Transaction and settled in common stock of Borrower (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of Borrower's common

stock or such other securities or property), and cash in lieu of fractional shares of common stock of Borrower; provided that the terms, conditions and covenants of each such transaction shall be such as are customary for transactions of such type (as determined by Borrower in good faith).

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Pharma Laws" means all applicable Law relating to the procurement, development, manufacture, production, clinical testing, distribution, dispensing, importation, exportation, use, handling, quality, sale, or promotion of any drug, medical device, or other medical products (including, without limitation, any ingredient or component of the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.) and similar state and foreign laws, controlled substances laws, pharmacy laws, or consumer product safety laws.

"Plan" means any "employee benefit plan" within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of any Loan Party or any ERISA Affiliate or any such Plan to which any Loan Party or any ERISA Affiliate is required to contribute on behalf of any of its employees.

"Platform" means Debt Domain, Intralinks, SyndTrak or a substantially similar electronic transmission system.

"Prime Rate" means, at any time, the rate of interest per annum publicly announced from time to time by Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

"pro forma" and "pro forma basis" shall, in each case, mean, with respect to compliance with any test, covenant, calculation or ratio hereunder, the determination of such test, covenant, calculation or ratio in accordance with Section 1.02(i) of this Agreement.

"Proceeding" has the meaning given such term in Section 6.03(b).

"Products" means any medical product or product candidate of the Loan Parties or any of their Subsidiaries that are subject to regulation under Pharma Laws.

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"Qualified ECP Guarantor" means, in respect of any Hedging Obligation, each Loan Party that has total assets exceeding $10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Hedging Obligation or such other Person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Reasonable Discretion" means, as to any Person, a determination or judgment made by such Person in the exercise of such Person's reasonable (from the perspective of a commercial lender) business judgment.

"Recipient" means (a) Administrative Agent and (b) any Lending Party, as applicable.

"Record" means information that is inscribed on a tangible medium or which is stored on an electronic or other medium and is retrievable in perceived form.

"Register" means a register for the recordation of the names and addresses of Lenders and, as applicable, the Revolving Credit Commitments and Outstanding Amounts (including the principal amounts and stated interest) of the Loans and Letter of Credit Obligations owing to each Lender pursuant to the terms hereof from time to time.

"Regulatory Matters" means, collectively, activities and Products that are subject to Pharma Laws and Regulatory Permits.

"Regulatory Permits" means all Permits and exemptions pertaining to a Regulatory Matter and issued or allowed by any Governmental Authority (including but not limited to new drug applications, abbreviated new drug applications, biologics license applications, investigational new drug applications, over-the-counter drug monograph, device premarket approval applications, device pre-market notifications, investigational device exemptions, product recertifications, manufacturing approvals and authorizations, CE Marks, pricing and reimbursement approvals, labeling approvals or their foreign equivalent, controlled substance registrations, and wholesale distributor permits) to any Loan Party or any of its Subsidiaries, that are required for the research, development, manufacture, distribution, marketing, storage, transportation, use and sale of the Products that are subject to Pharma Laws.

"Related Business" means any business that is the same, similar or otherwise reasonably related, ancillary or complementary to the businesses of the Loan Parties or, to the extent that the Closing Date Acquisition Closing Date occurs, the Target (as determined in good faith by Borrower's Board of Directors) on the Closing Date.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, members, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates, and specifically includes, in the case of (a) Wells Fargo, Wells Fargo in its separate capacities as Administrative Agent, as Swing Line Lender and as L/C Issuer, and (b) Wells Fargo Securities, LLC, in its capacity as the Left Lead Arranger.

"Relevant Governmental Body" means the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB or the Federal Reserve Bank of New York, or any successor thereto.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty-day notice period has been waived.

"Request for Credit Extension" means (a) with respect to a Borrowing of Revolving Credit Loans, Initial Term Loans or Incremental Term Loans, a Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

"Required Incremental Term Loan Lenders" means, as determined at any time, Lenders comprising Incremental Term Loan Lenders holding in excess of 50.0% of the Outstanding Amount of all Incremental

Term Loans and Incremental Term Loan Commitments; provided that each determination of Required Incremental Term Loan Lenders will disregard the Outstanding Amount of all Incremental Term Loans and Incremental Term Loan Commitments held by any then Defaulting Lender.

"Required Initial Term Loan Lenders" means, as determined at any time, Lenders comprising Initial Term Loan Lenders holding in excess of 50.0% of the Outstanding Amount of all Initial Term Loans and Initial Term Loan Commitments; provided that each determination of Required Initial Term Loan Lenders will disregard the Outstanding Amount of all Initial Term Loans and Initial Term Loan Commitments held by any then Defaulting Lender.

"Required Lenders" means, as determined at any time, Lenders comprising Lenders holding in excess of 50.0% of the sum of (a) (i) the Revolving Credit Commitments then in effect or (ii) if the Aggregate Revolving Credit Commitments have been terminated in full, the Total Revolving Credit Outstandings at such time, plus (b) the Outstanding Amount of all Initial Term Loans and Initial Term Loan Commitments at such time plus (c) the Outstanding Amount of all Incremental Term Loans and Incremental Term Loan Commitments at such time; provided that each determination of Required Lenders will disregard the Revolving Credit Commitment of, the portion of the Total Revolving Credit Outstandings and the Outstanding Amount of all Initial Term Loans, Initial Term Loan Commitments, Incremental Term Loans and Incremental Term Loan Commitments, as the case may be, of any then Defaulting Lender.

"Required Revolving Credit Lenders" means, as determined at any time, (a) Lenders comprising Revolving Credit Lenders holding in excess of 50.0% of the Revolving Credit Commitments then in effect or (b) if the Aggregate Revolving Credit Commitments have been terminated following the occurrence of an Event of Default, Revolving Credit Lenders holding in excess of 50.0% of the Total Revolving Credit Outstandings at such time; provided that each determination of Required Revolving Credit Lenders will disregard the Revolving Credit Commitment of, and the portion of the Total Revolving Credit Outstandings held or deemed held, by any then Defaulting Lender.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means (a) with respect to Borrower in connection with any Request for Credit Extension to be delivered by Borrower hereunder, the chief executive officer, president, chief financial officer, treasurer or controller of Borrower; (b) with respect to Borrower in connection with any Compliance Certificate or any other certificate or notice pertaining to any financial information required to be delivery by Borrower hereunder or under any other Loan Document, the chief financial officer, treasurer, controller or other officer having primary responsibility for the financial affairs of such Person; and (c) otherwise, with respect to Borrower or any other Loan Party, the chief executive officer, president, chief operating officer, chief financial officer, treasurer or controller of such Person.

"Restricted Payment" means, as to any Person, (a) any dividend or other distribution by such Person (whether in Cash, securities and/or other property) with respect to any Equity Interest of such Person, (b) any payment (whether in Cash, securities and/or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of such Equity Interest or on account of any return of capital to any holder of any such Person's Equity Interests, (c) the acquisition for value by such Person of any Equity Interests issued by such Person or any other Person that Controls such Person, and (d) with respect to the foregoing clauses (a) through (c) of this definition, any transaction that has a substantially similar effect. For the avoidance of doubt none of (x) any payments of cash and/or deliveries in shares of Equity Interests (or other securities and/or property following a merger event, reclassification or other change of the Equity Interests) (and cash in lieu of fractional shares) pursuant to the terms of, or otherwise in performance of its obligations under, or any

repurchase and/or exchange of, any Permitted Convertible Indebtedness (including, without limitation, making payments of interest, principal or premium thereon, making payments due upon required repurchase thereof and/or making payments and deliveries upon conversion or settlement thereof), (y) the purchase of any Permitted Bond Hedge Transaction or any payment according to its terms or (z) any payments of cash and/or deliveries of Equity Interests (or other securities or property following a merger event, reclassification or other change of the Equity Interests) (and cash in lieu of fractional shares) in connection with any Permitted Warrant Transaction (including in connection with any exercise and/or early unwind or settlement thereof whether according to the terms of such Permitted Warrant Transaction or otherwise) shall constitute a "Restricted Payment".

"Revolving Credit Borrowing" means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Term SOFR Loans, having the same Interest Period made by each Lender pursuant to Section 2.01(a).

"Revolving Credit Commitment" means, as to each Lender at any time, its obligation to do the following pursuant to the terms hereof: (a) make Revolving Credit Loans to Borrower; (b) purchase participations in Letter of Credit Obligations; and (c) purchase participations in Swing Line Loans; all in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender became a party hereto or pursuant to the applicable Additional Commitment Documentation, as such amount may be adjusted from time to time in accordance with this Agreement. The Revolving Credit Commitment of any Revolving Credit Lender shall include the Extended Revolving Credit Commitment of such Revolving Credit Lender.

"Revolving Credit Exposure" means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Credit Loans and such Lender's participation in Letter of Credit Obligations and Swing Line Loans at such time.

"Revolving Credit Facility" means, at any time, the aggregate amount of the Lenders' Revolving Credit Commitments at such time.

"Revolving Credit Facility Fee" has the meaning given such term in Section 2.09(a).

"Revolving Credit Lender" means, collectively, (a) initially, each Lender designated on Schedule 2.01 as a Lender having a Revolving Credit Commitment as of the Closing Date and (b) each Lender that assumes a Revolving Credit Commitment pursuant to an Assignment and Assumption or pursuant to the applicable Additional Commitment Documentation or which otherwise holds a Revolving Credit Commitment, a Revolving Credit Loan, a risk participation in a Swing Line Loan or a participation in a Letter of Credit or a Letter of Credit Borrowing, other than any such Person that ceases to be a party hereto or ceases to hold any Revolving Credit Commitments or Revolving Credit Loans nor any such risk participations pursuant to an Assignment and Assumption.

"Revolving Credit Loan" has the meaning given such term in Section 2.01(a).

"Revolving Credit Maturity Date" means the earliest of (a) the Revolving Credit Stated Maturity Date, (b) the date of the termination of the Aggregate Revolving Credit Commitments pursuant to Section 2.06 and (c) the date of the termination of the Aggregate Revolving Credit Commitments and of the obligation of L/C Issuer to make L/C Credit Extensions and the acceleration of the Revolving Credit Loans pursuant to Section 8.03; provided, that the date set forth in clause (a) above applicable to Extended Revolving Credit Commitments shall be the final maturity date specified in the relevant documentation for such Extended Revolving Credit Commitments.

"Revolving Credit Percentage Share" means as to any Revolving Credit Lender at any time, the percentage (expressed as a decimal carried out to the ninth decimal place) of the Aggregate Revolving Credit Commitments represented by such Lender's Revolving Credit Commitment at such time, subject to adjustment as provided in Section 3.07; provided that, if the commitment of each Lender to make Revolving Credit Loans and the obligation of L/C Issuer to issue L/C Credit Extensions have been terminated pursuant to Section 8.03 or if the Aggregate Revolving Credit Commitments have expired, then the Revolving Credit Percentage Share of each Lender will be determined based upon such Lender's Revolving Credit Percentage Share most recently in effect, giving effect to any subsequent assignments. The initial Revolving Credit Percentage Share of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption or pursuant to the applicable Additional Commitment Documentation pursuant to which such Lender became a party hereto, as applicable.

"Revolving Credit Stated Maturity Date" means June 30, 2028.

"S&P" means Standard & Poor's Ratings Services, a division of S&P Global Inc. and any successor thereto.

"Sanctioned Country" means at any time, a country, region or territory which is itself (or whose government is) the subject or target of any Sanctions (including, as of the Closing Date, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, the Crimea, Zaporizhzhia and Kherson Regions of Ukraine, Cuba, Iran, North Korea and Syria (for the avoidance of doubt, the preceding list is intended to be illustrative only as of the Closing Date; the comprehensive list of Sanctioned Countries is subject to change from time to time in accordance with the Sanctions then in effect)).

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including OFAC's Specially Designated Nationals and Blocked Persons List and OFAC's Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, any European member state, His Majesty's Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any such Person or Persons described in the preceding clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Person(s) or (d) any Person otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

"Sanctions" means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions and anti-terrorism laws, including but not limited to those imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, any European member state, His Majesty's Treasury, the Office of the Superintendent of Financial Institutions (Canada) or other relevant sanctions authority in any jurisdiction in which (a) Borrower or any of its Subsidiaries or Affiliates is located or conducts business, (b) in which any of the proceeds of the Credit Extensions will be used, or (c) from which repayment of the Credit Extensions will be derived.

"SEC" means the Securities and Exchange Commission and any successor thereto.

"Security Documents" means the collective reference to the Collateral Agreement, and each other agreement or writing pursuant to which any Loan Party pledges or grants a security interest in any property or assets securing the Obligations.

"Seller" means Eli Lilly and Company.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"Solvent" means, as to any Person at any time, that (a) the fair value of the property of such Person on a going concern basis is greater than the amount of such Person's liabilities (including contingent liabilities), as such value is established and such liabilities are evaluated for purposes of Section 101(32) of the Bankruptcy Code and, in the alternative, for purposes of the Uniform Fraudulent Transfer Act or any similar state statute applicable to Borrower or any Subsidiary thereof; (b) the present fair salable value of the property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to realize upon its property and pay its debts and other liabilities (including contingent liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital. For the purposes of the foregoing, the amount of contingent liabilities at any time will be computed as the amount that, in light of all facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Specified Event of Default" means any Event of Default occurring under Section 8.01(a) or, in the case of Borrower only, Sections 8.01 (f) or (g).

"Specified Guaranteed Payment" means the obligation of the Borrower to make the $125,000,000 guaranteed payment required to be paid on the first anniversary of the Closing Date pursuant to the Closing Date Acquisition Agreement.

"Specified Lender" means, at any time, any Lender that (a) has (i) requested compensation under Section 3.04 and has not rescinded such request within five (5) Business Days of the making thereof or (ii) to whom Borrower must pay an additional amount (or on whose behalf Borrower must pay an additional amount to a Governmental Authority) pursuant to Section 3.01, and in the case of either of clauses (i) or (ii), such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.06(a); (b) gives a notice pursuant to Section 3.02; (c) is a Defaulting Lender; or (d) is a Non-Consenting Lender.

"Specified Materials" means, collectively, all notices, demands, communications, documents and other materials or information provided by or on behalf of Borrower or any other Loan Party or any of their respective Subsidiaries or Affiliates, as well as documents and other written materials relating to Borrower or any other Loan Party or any of their respective Subsidiaries or Affiliates or any other materials or matters relating to this Agreement or any of the other Loan Documents (including any amendments or waivers of the terms thereof or supplements thereto) or the transactions contemplated herein or therein.

"Specified Representations" means the representations and warranties of Borrower and, to the extent applicable, the other Loan Parties set forth in Section 5.01(a), Section 5.02(a) (with respect to entering into and performance of the Loan Documents), Section 5.01(b)(ii), Section 5.03(b) (solely with respect to the PATRIOT Act), Section 5.05, Section 5.13, Section 5.17, and Section 5.18(d) (solely with respect to Section 7.09(a)(i), (ii) and (iii) and (b)) of this Agreement and Section 3.1(a), (b) and (e) (in the case of Section 3.1(e), solely with respect to delivery original stock certificates or other certificates

evidencing the certificated Equity Interests of Domestic Subsidiaries pledged pursuant to the Security Documents) of the Collateral Agreement.

"Specified Transaction" means, with respect to any period, any Investment, Disposition of assets, incurrence or repayment of Indebtedness, Restricted Payment, subsidiary designation or other event that by the terms of this Agreement requires "pro forma" compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a "pro forma basis" or after giving "pro forma" effect thereto.

"Subordinated Debt" means any unsecured Indebtedness of Borrower or any Subsidiary that (a) is subordinated by its terms in right of payment to the Loans pursuant to provisions reasonably acceptable to the Administrative Agent, (b) is subject to such financial and other covenants and events of defaults as may be reasonably acceptable to the Administrative Agent and (c) is subject to such customary interest blockage and delayed acceleration provisions as may be reasonably acceptable to the Administrative Agent.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Equity Interests having ordinary voting power for the election of directors or other governing body (other than Equity Interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise Controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" will refer to a Subsidiary or Subsidiaries of Borrower.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, interest rate or foreign exchange cap or floor or collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement; and (b) any and all transactions of any kind, and the related confirmations, that are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement including any such obligations or liabilities under any such master agreement (in each case, together with any related schedules); provided that neither any Permitted Bond Hedge Transaction nor any Permitted Warrant Transaction shall be deemed a Swap Contract.

"Swap Termination Value" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a) of this definition, the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Swing Line" means the revolving credit facility made available by Swing Line Lender pursuant to Section 2.04.

"Swing Line Borrowing" means a borrowing of a Swing Line Loan pursuant to Section 2.04.

"Swing Line Lender" means, at any time, the provider of the Swing Line hereunder (which, initially, will be Wells Fargo).

"Swing Line Loan" has the meaning given such term in Section 2.04(a).

"Swing Line Loan Notice" means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, will be substantially in the form of Exhibit F.

"Swing Line Sublimit" means, as determined as of any date, an amount equal to the lesser of (a) $15,000,000 and (b) the Aggregate Revolving Credit Commitments. The Swing Line Sublimit is a part of, but is not in addition to, the Aggregate Revolving Credit Commitments.

"Synthetic Lease Obligation" means the principal balance outstanding under any lease, funding agreement or other arrangement with respect to any real or personal property pursuant to which the lessor is treated as the owner of such property for accounting purposes and the lessee is treated as the owner of such property for federal income tax purposes, or any tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product to which such Person is a party, where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an operating lease in accordance with GAAP.

"Target" has the meaning given such term in the first sentence of the definition of "Permitted Acquisition" set forth in this Section 1.01.

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

"Term Loans" means the Initial Term Loans and, if applicable, the Incremental Term Loans and "Term Loan" means any of such Term Loan.

"Term SOFR" means,

(a) for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided that if as of 5:00 p.m. (Eastern time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "Base Rate Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided that if as of 5:00 p.m. (Eastern time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference

Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day;

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its Reasonable Discretion).

"Term SOFR Loan" means any Loan that bears interest at a rate based on Adjusted Term SOFR.

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Test Period" means each period of four consecutive Fiscal Periods then last ended, in each case taken as one accounting period, in respect of which Consolidated financial statements of Borrower and its Subsidiaries have most recently been filed with the SEC or delivered (or were required to be delivered) to Administrative Agent pursuant to Section 6.01(a) or (b), as the case may be.

"Threshold Amount" means $35,000,000.

"Total Revolving Credit Outstandings" means, as determined as at any time, the sum of (a) the aggregate Outstanding Amount of all Revolving Credit Loans, plus (b) the Outstanding Amount of all Letter of Credit Obligations and plus (c) the Outstanding Amount of all Swing Line Loans.

"Transactions" means collectively, the Closing Date Acquisition, the funding of the Initial Term Loan and the payment of fees, commissions and expenses in connection with each of the foregoing.

"Type" means, with respect to any Loan, its character as a Base Rate Loan or a Term SOFR Loan.

"UCC" means the Uniform Commercial Code as in effect in the State of New York.

"UCP" means, with respect to any commercial Letter of Credit, the Uniform Customs and Practice for Documentary Credits 2007 Revision, UCP 600, published by the International Chamber of Commerce (or, if L/C Issuer will agree at the time of issuance, such later version thereof as may be in effect immediately prior to the issuance of such Letters of Credit, the extension of the expiry date thereof or any increase of the amount thereof).

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

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement, excluding the related Benchmark Replacement Adjustment.

"Unreimbursed Amount" means, with respect to any Letter of Credit, any amount drawn thereunder that Borrower has failed to reimburse to L/C Issuer by 11:00 a.m. on the related Honor Date.

"Unrestricted Cash and Cash Equivalents" means, as determined as of any date, an amount equal to the lesser of (a) $100,000,000 and (b) 100% of all cash and Cash Equivalents of Borrower and its Domestic Subsidiaries that are held in bank accounts or securities accounts located in the United States, in each case that (i) would not appear as "restricted" on the Consolidated balance sheet of the Borrower and its Subsidiaries (other than any restriction resulting from this Agreement or the other Loan Documents (or the Liens created thereunder)) and (ii) is not subject to any Lien (other than Liens permitted under Sections 7.01(c), (n), (q) and (w)); provided that for the purpose of the calculating the Consolidated Net Leverage Ratio as of any date of determination, Unrestricted Cash and Cash Equivalents as calculated for such date shall specifically exclude the proceeds of any Consolidated Funded Debt incurred substantially concurrently therewith other than any proceeds that will be used within thirty (30) days following such date solely to refinance or otherwise satisfy (in whole or in part) other Consolidated Funded Debt included in the numerator of such calculation of the Consolidated Net Leverage Ratio.

"U.S. Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements in Sections 2.02(a) and 2.05(b), in each case, such day is also a Business Day.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning assigned to such term in Section 3.01(f).

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness, in each case of clauses (a) and (b), without giving effect to the application of any prior prepayment to such installment, sinking fund, serial maturity or other required payment of principal.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"Withholding Agent" means any Loan Party and the Administrative Agent.

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

under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Certain Rules of Construction.

(a) General Rules.

(i) Unless the context otherwise clearly requires, the meaning of a defined term is applicable equally to the singular and plural forms thereof.

(ii) The words "hereof," "herein," "hereunder" and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement.

(iii) The word "documents" includes instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(iv) The words "include" and "including" are not limiting and the word "or" is not exclusive.

(v) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding" and the word "through" means "to and including."

(vi) Unless the context otherwise clearly requires, the words "property," "properties," "asset" and "assets" refer to both personal property (whether tangible or intangible, including Cash, securities, accounts and contract rights) and real property.

(vii) Whenever a representation or warranty is made to any Person's knowledge or awareness or with a similar qualification, knowledge or awareness means the actual knowledge of the Responsible Officers, after such investigation into the applicable matter as is customary for the Responsible Officers in the ordinary course of their conduct of the applicable Person's business.

(viii) Whenever this Agreement refers to any "wholly-owned" Subsidiary of any Person, such reference will be deemed to include any Foreign Subsidiary of such Person in which a nominal amount of Equity Interests are held by residents of the jurisdiction in which such Subsidiary is organized in order to comply with requirements of local Law.

(ix) Any reference to a Person will be construed to include such Person's successors and assigns.

(x) Unless the context otherwise clearly requires, (A) Article, Section, subsection, clause, Schedule and Exhibit references are to this Agreement; (B) references to documents (including this Agreement) will be deemed to include all subsequent amendments, renewals, extensions, replacements, restatements and other modifications thereto, but only to the extent such amendments, renewals, extensions, replacements, restatements and other modifications are not prohibited by the terms of any Loan Document; and (C) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(b) Time References. Unless the context requires otherwise, all references herein to times of day will be references to California time (daylight or standard, as applicable).

(c) Captions. The captions and headings of this Agreement are for convenience of reference only and will not affect the interpretation of this Agreement.

(d) Cumulative Nature of Certain Provisions. This Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and will be performed in accordance with their respective terms.

(e) No Construction Against Any Party. This Agreement and the other Loan Documents are the result of negotiations among, and have been reviewed by counsel to, the Loan Parties, Administrative Agent and the Lending Parties and are the products of all parties. Accordingly, they will not be construed against Administrative Agent or any Lending Party merely because of the involvement of any or all of the preceding Persons in their preparation.

(f) Paid in Full. Any reference in this Agreement or in any other Loan Document to the satisfaction or repayment in full of the Obligations means the repayment in full in Cash (or, in the case of (i) Letters of Credit, (ii) Cash Management Obligations or (iii) Hedging Obligations, the cash collateralization or support by a standby letter of credit in accordance with the terms hereof) of all Obligations other than unasserted contingent indemnification obligations and other than any Cash Management Obligations or Hedging Obligations described in the parenthetical above that, at such time, are allowed by the applicable Cash Management Bank or Hedge Bank to remain outstanding and not be repaid or cash collateralized.

(g) GAAP. Unless the context otherwise clearly requires, all accounting terms not expressly defined herein will be construed, and all financial computations required under this Agreement will be made, in accordance with GAAP. If at any time any change in GAAP or any changes in accounting principles or practices from those used in the preparation of the financial statements are hereafter occasioned by the promulgation of rules, regulations, pronouncements and opinions by or required by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or any successor thereto or agencies with similar functions) or other regulatory body with jurisdiction over GAAP or any financial reporting by Borrower, that results in a material change in the method of accounting in the financial statements required to be furnished to Administrative Agent hereunder or in the calculation of financial covenants, standards or terms contained in this Agreement, and either Borrower or Required Lenders will so request, Administrative Agent, the Lending Parties and Borrower will 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 Required Lenders); provided that, until so amended: (i) such ratio or requirement will continue to be computed in accordance with GAAP prior to such change therein; and (ii) Borrower will provide to Administrative Agent and the Lending Parties financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. For the avoidance of doubt, and without limitation of the foregoing, outstanding Permitted Convertible Indebtedness shall be the full stated aggregate principal amount thereof and shall not include any reduction or appreciation in value of the shares and/or cash deliverable upon conversion thereof (or exchange therefor, as the case may be).

(h) Rounding. Any financial ratios required to be maintained by the Loan Parties or any of them pursuant to the Loan Documents will be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number using the common – or symmetric arithmetic – method of rounding (in other words, rounding-up if there is no nearest number).

(i) Computations of Certain Covenants.

(i) [reserved].

(ii) For the purposes of computing the Consolidated Net Leverage Ratio and the Consolidated Interest Coverage Ratio as of any date, to the extent that any Joint Venture is included in Borrower's Consolidated financial statements, such calculations will disregard the ratable portion of such Joint Venture attributable to the ownership of any Joint Venture by any Person who is not a Loan Party or a Subsidiary of a Loan Party.

(iii) Notwithstanding anything to the contrary herein, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, (A) Indebtedness of Borrower and its Subsidiaries will be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB 470-20 for purposes of the calculation of, and compliance with, financial covenants will be disregarded, and (B) that (1) the definition of "Indebtedness" and "Consolidated Funded Debt", all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the effectiveness of FASB ASC 842 shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with FASB ASC 842 (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Leases in the financial statements and (2) all financial statements delivered to Administrative Agent hereunder shall contain a schedule showing the modifications necessary to reconcile the adjustments made pursuant to the preceding clause (1) with such financial statements.

(iv) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Consolidated Net Leverage Ratio and the Consolidated Interest Coverage Ratio shall be calculated in the manner prescribed by this Section 1.02(i)(iv).

(A) For purposes of calculating any financial ratio or test (or Consolidated EBITDA or Consolidated Total Assets), Specified Transactions (and, subject to clause (B) below, the incurrence or repayment of any Indebtedness in connection therewith) that have been made (1) during the applicable Test Period (or other applicable period) or (2) subsequent to such Test Period (or other applicable period) and prior to or substantially simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a pro forma basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period or other applicable period.

(B) In the event that the Borrower or any Subsidiary incurs (including by assumption or guarantees), issues or repays (including by redemption, repurchase, repayment, retirement, discharge, defeasance or extinguishment) any Indebtedness (other than Indebtedness repaid under any revolving credit facility or line of credit unless such Indebtedness and the revolving commitments in respect thereof have been permanently repaid and terminated (and not replaced)), then such financial ratio or test shall be calculated giving pro forma effect to such incurrence, issuance, repayment or redemption of Indebtedness, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the Consolidated Interest Coverage Ratio, in which case such incurrence, issuance, repayment or redemption of Indebtedness

will be given effect, as if the same had occurred on the first day of the applicable Test Period and any such Indebtedness that is incurred (including by assumption or guarantee) that has a floating or formula rate of interest shall have an implied rate of interest for the applicable period determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as of the relevant date of determination).

(j) Calculations with Respect to Letters of Credit. Unless otherwise specified herein, the amount of a Letter of Credit at any time will be deemed to be the stated amount of such Letter of Credit in effect at such time; provided that, with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit will be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

(k) Documents Executed by Responsible Officers. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party will be conclusively presumed to have been authorized by all necessary corporate or other organizational action on the part of such Loan Party and such Responsible Officer will be conclusively presumed to have acted on behalf of such Loan Party.

(l) [reserved].

(m) [reserved].

(n) [reserved].

(o) Currency of Account. Dollars are the currency of account and payment for each and every sum at any time due from Borrower hereunder.

(p) [reserved].

(q) Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (i) the continuation of, administration of, submission of, calculation of or any other matter related to SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or any other Benchmark, any component definition thereof or rates referenced in the definition thereof or with respect to any alternative, successor or replacement rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 3.03(c), will be similar to, or produce the same value or economic equivalence of SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or any other Benchmark, or have the same volume or liquidity as did SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (ii) the effect, implementation or composition of any Conforming Changes. Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of a Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to Borrower. Administrative Agent may select information sources or services in its Reasonable Discretion to ascertain any Benchmark, any component definition thereof or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

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

(s) Limited Condition Transactions. In the event that Borrower notifies Administrative Agent in writing that any proposed transaction is a Limited Condition Transaction and that Borrower wishes to test the conditions to such transaction and any Indebtedness (including any requested Incremental Term Loan, but excluding Revolving Credit Loans or Additional Revolving Credit Loans) to be incurred hereunder for the express purpose of funding, in whole or in part, such Limited Condition Transaction in accordance with this Section 1.02(s), then the following provisions shall apply:

(i) Notwithstanding anything in this Agreement to the contrary (except as otherwise provided in this Section 1.02(s)), when (A) calculating any applicable ratio (including compliance with the financial covenants set forth in Section 7.14), (B) determining the amount or availability of the Incremental Cap, (C) testing availability under baskets set forth in this Agreement (including baskets measured as a percentage of Consolidated EBITDA) or (D) determining other compliance with this Agreement, in each case, in connection with a transaction undertaken in connection with the consummation of a Limited Condition Transaction, the date of determination of such ratio, the amount or availability of the Incremental Cap, the availability of such baskets and/or other applicable covenant shall be deemed to be the date the definitive agreement for such Limited Condition Transaction is entered into (the "LCT Test Date") and, if applicable, based on the most recent Test Period, and if, after such ratios and other provisions are measured on a pro forma basis after giving effect to such Limited Condition Transaction and the other Specified Transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they occurred at the beginning of the applicable Test Period ending prior to the LCT Test Date, the Borrower could have taken such action on the relevant LCT Test Date in compliance with such ratios, provisions, requirements or conditions, such provisions shall be deemed to have been complied with. Such ratios and other provisions shall not be tested at the time of consummation of such Limited Condition Transaction or related Specified Transactions and, in connection with any subsequent calculation of any ratio or other provision with respect to any other related Specified Transaction on or following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such ratio or basket shall be calculated on a pro forma basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of any such Indebtedness and the use of proceeds thereof) have been consummated. Notwithstanding the foregoing, any calculation of a ratio in connection with determining the Applicable Margin shall be calculated assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of any such Indebtedness and the use of proceeds thereof) have not been consummated.

(ii) Any condition to such Limited Condition Transaction or any such Indebtedness that requires that no Default or Event of Default shall have occurred and be continuing shall be satisfied if (x) no Event of Default shall have occurred and be continuing as of the LCT Test Date and (y) no Specified Event of Default shall have occurred and be continuing both immediately before and immediately after giving effect to the consummation of such Limited Condition Transaction and other transactions in connection therewith (including the incurrence of any such Indebtedness and the use of proceeds thereof).

(iii) Any condition to such Limited Condition Transaction or any such Indebtedness that requires that the representations and warranties in this Agreement and the other Loan Documents shall be true and correct at the time of consummation of such Limited Condition Transaction or the incurrence of any such Indebtedness shall be deemed satisfied if each of the Specified Representations will be true and correct in all material respects (except that such materiality qualifier will not be applicable to any portion of any representation and warranty that is already qualified or modified by materiality in the text thereof) as of the date of consummation of such Limited Condition Transaction and incurrence of such Indebtedness.

ARTICLE II
CREDIT EXTENSIONS

Section 2.01 Revolving Credit Loans; Initial Term Loan; Incremental Term Loans.

(a) Revolving Credit Loans. Upon the terms, subject to the conditions and in reliance upon the representations and warranties of Borrower and each other Loan Party set forth in this Agreement and in the other Loan Documents, each Lender having a Revolving Credit Commitment severally (but not jointly) agrees to make loans (each such loan, a "Revolving Credit Loan") of immediately available funds to Borrower, on a revolving basis from time to time on any Business Day during the Availability Period, in an aggregate principal amount outstanding not to exceed at any time such Lender's Revolving Credit Commitment as then in effect; provided that, and notwithstanding the foregoing, after giving effect to any Revolving Credit Borrowing, (i) (A) on the Closing Date, the Total Revolving Credit Outstandings shall not exceed $5,000,000 and (B) after the Closing Date, the Total Revolving Credit Outstandings will not exceed the Aggregate Revolving Credit Commitments, and (ii) the sum of (A) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender plus (B) such Lender's Revolving Credit Percentage Share multiplied by the Outstanding Amount of all Letter of Credit Obligations plus (C) such Lender's Revolving Credit Percentage Share multiplied by the Outstanding Amount of all Swing Line Loans will not exceed such Lender's Revolving Credit Commitment, and so long as any such circumstance exists the Lenders will not be obligated to fund any Revolving Credit Loans. Each Revolving Credit Loan will be denominated in Dollars. Within the limits of each Lender's Revolving Credit Commitment, and subject to the other terms and conditions hereof, Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Revolving Credit Loans may be requested and made as Base Rate Loans or Term SOFR Loans, as further provided herein.

(b) Initial Term Loans. Upon the terms, subject to the conditions and in reliance upon the representations and warranties of Borrower and each other Loan Party set forth in this Agreement and in the other Loan Documents, each Initial Term Loan Lender severally (but not jointly) agrees to make term loans (each such loan, an "Initial Term Loan") of immediately available funds to Borrower, in Dollars on the Closing Date in a principal amount equal to such Initial Term Loan Lender's Initial Term Loan Commitment as of the Closing Date. Notwithstanding the foregoing, if the total Initial Term Loan Commitment as of the Closing Date is not drawn on the Closing Date, the undrawn amount shall automatically be cancelled. Initial Term Loans may be requested and made as Base Rate Loans or Term SOFR Loans, as further provided herein. Amounts borrowed as Initial Term Loans that are repaid or prepaid by Borrower may not be reborrowed.

(c) Incremental Term Loans. Upon the terms, subject to the conditions and in reliance upon the representations and warranties of Borrower and each other Loan Party set forth in this Agreement and in the other Loan Documents, each Incremental Term Loan Lender severally (but not jointly) agrees to make a loan in immediately available funds to Borrower (each such loan, an "Incremental Term Loan") on the date specified in the applicable Additional Commitment Documentation in the principal amount of such Lender's Incremental Term Loan Commitment. Immediately upon the making of an Incremental Term

Loan by any Lender having an Incremental Term Loan Commitment, such Lender's Incremental Term Loan Commitment will be permanently reduced to zero. Each Incremental Term Loan will be denominated in Dollars and no Incremental Term Loan Lender will be obligated to make any Incremental Term Loan if the requested Incremental Term Loan is to be denominated in a currency other than Dollars. Incremental Term Loans may be requested and made as Base Rate Loans or Term SOFR Loans, as further provided herein. Amounts borrowed as Incremental Term Loans that are repaid or prepaid by Borrower may not be reborrowed.

(d) Loans Generally. Each Loan will be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Revolving Credit Commitments, Initial Term Loan Commitments or Incremental Term Loan Commitments, as applicable; provided, however, that the failure of any Lender to make any Loan will not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender will be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender).

Section 2.02 Procedures for Borrowing.

(a) Notices of Borrowing, Conversion and Continuation. Each Borrowing (other than a Swing Line Borrowing), each conversion of Loans from one Type to the other and each continuation of Term SOFR Loans will be made upon Borrower's irrevocable notice to Administrative Agent, which may, subject to the provisions of Section 10.02, be given by telephone or by approved electronic communication. Each such notice must be received by Administrative Agent not later than 11:00 a.m.: (i) on the requested date (which must be a Business Day) of any Swing Line Borrowing; (ii) one Business Day prior to the requested date of any Borrowing (other than a Swing Line Borrowing) of Base Rate Loans; and (iii) in the case of a Term SOFR Loan, at least three (3) U.S. Government Securities Business Days prior to the requested date of any Borrowing or continuation of, or conversion into, such Term SOFR Loan; provided, that the Borrower may only request that the Initial Term Loan Lenders make the Initial Term Loan on the Closing Date as a Term SOFR Loan if the Borrower has delivered to the Administrative Agent a letter in form and substance reasonably satisfactory to the Administrative Agent indemnifying the Lenders in the manner set forth in Section 3.05 of this Agreement. Notwithstanding anything to the contrary contained herein, but subject to the provisions of Section 10.02, any telephonic notice or other electronic communication by Borrower pursuant to this Section 2.02(a) may be given by an individual who has been authorized in writing to do so by an appropriate Responsible Officer of Borrower. Each such telephonic notice or other electronic communication must be confirmed promptly by delivery to Administrative Agent of a written Loan Notice, appropriately completed and signed by an appropriate Responsible Officer of Borrower.

(b) Amount of Borrowing, Conversion or Continuation. (i) Each Borrowing (other than a Swing Line Borrowing) of, conversion to or continuation of Term SOFR Loans will be in an aggregate principal amount of $3,000,000 or a whole multiple of $500,000 in excess thereof (or if less, the remaining balance thereof); and (ii) except as provided in Sections 2.03(c) and Section 2.04(c), each Borrowing of or conversion to Base Rate Loans will be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof (or if less, the remaining balance thereof).

(c) Loan Notices Generally. Each Loan Notice (whether telephonic or written (including by electronic communication to the extent permitted by this Agreement)) will specify (i) that Borrower is requesting, as applicable: (A) a Revolving Credit Borrowing, the Initial Term Loan Borrowing or an Incremental Term Loan Borrowing, (B) a conversion of outstanding Loans from one Type to the other or (C) a continuation of Term SOFR Loans; (ii) the requested date (which will be a Business Day) of such Borrowing, conversion or continuation, as the case may be; (iii) the principal amount of the Loans to be borrowed, converted or continued; (iv) the Type of Loans to be borrowed or to which existing Loans are to

be converted; (v) [reserved]; and (vi) if applicable, the duration of the Interest Period with respect thereto. If Borrower fails to specify a Type of Loan in a Loan Notice or if Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans will be made as, or converted to, Base Rate Loans; provided, however, that notwithstanding the foregoing, so long as no Default or Event of Default has occurred and is continuing, Borrower will be deemed to have elected to continue any Loan constituting a Term SOFR Loan into a new Term SOFR Loan having an Interest Period of one month. Any such automatic conversion to a Base Rate Loan (or continuation of a Term SOFR Loan into a new Term SOFR Loan having an Interest Period of one month) will be effective as of the last day of the Interest Period then in effect with respect to the applicable Term SOFR Loans. If Borrower requests a Borrowing of, conversion to, or continuation of Term SOFR Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(d) Procedures Concerning the Making of Loans. Following receipt of a Loan Notice, Administrative Agent will promptly notify each applicable Lender of the amount of its applicable Percentage Share of the requested Borrowing. If Borrower does not timely provide notice of a conversion or continuation, then Administrative Agent will notify each applicable Lender of the details of any automatic conversion to Base Rate Loans to the extent described in the preceding subsection. Each Lender will make the amount of its applicable Loan available to Administrative Agent in immediately available funds, in Dollars, at Administrative Agent's Office, at such bank as Administrative Agent may designate to the Revolving Credit Lenders, the Initial Term Loan Lenders or the Incremental Term Loan Lenders, as applicable, not later than 11:00 a.m., in each case on the proposed borrowing date (which must be a Business Day) specified in the applicable Loan Notice. Subject to the prior satisfaction or waiver (in accordance with Section 10.01) as of the Closing Date of the conditions precedent set forth in Section 4.01 or upon the satisfaction or waiver (in accordance with Section 10.01) of the applicable conditions precedent set forth in Section 4.02, as applicable, Administrative Agent will make all funds so received available to Borrower in like funds as received by Administrative Agent either by: (i) crediting the account of Borrower on the books of Wells Fargo with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) Administrative Agent by Borrower; provided that, if, on the date the Loan Notice with respect to such Borrowing is given by Borrower, there are Letter of Credit Borrowings outstanding, then the proceeds of such Borrowing will be applied, first, to the payment in full of any such Letter of Credit Borrowings and, second, to Borrower as provided in this Section 2.02(d).

(e) Special Provisions Applicable to Continuation or Conversions of Term SOFR Loans. Subject to Section 3.05, a Term SOFR Loan may be continued or converted only on the last day of an Interest Period for such Term SOFR Loan. During the existence of an Event of Default: (i) no Loans may be requested as, converted to or continued as Term SOFR Loans without the consent of Administrative Agent or Required Lenders; and (ii) Required Revolving Credit Lenders, Required Initial Term Loan Lenders or Required Incremental Term Loan Lenders may demand that any or all of the then outstanding Revolving Credit Loans, Initial Term Loans or Incremental Term Loans, respectively, that are Term SOFR Loans be converted immediately to Base Rate Loans, whereupon Borrower will pay any amounts due under Section 3.05 in accordance with the terms thereof due to any such conversion.

(f) Notification of Interest Rate. Administrative Agent will promptly notify Borrower and the applicable Lenders of the interest rate (including the Applicable Margin, if any) applicable to any Interest Period for Term SOFR Loans upon determination of such interest rate.

(g) Limitation on Interest Periods. After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there will not be more than ten (10) Interest Periods in effect with respect to Revolving Credit Loans.

Section 2.03 Letters of Credit.

(a) Letter of Credit Subfacility. Subject to the terms and conditions set forth herein:

(i) Upon the terms, subject to the conditions and in reliance upon the representations and warranties of Borrower and each of the other Loan Parties set forth in this Agreement and in the other Loan Documents and upon the agreements of the Lenders set forth in this Section 2.03, L/C Issuer agrees (A) from time to time on any Business Day, during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars in accordance with this Agreement for the account of Borrower on behalf of Borrower (or such Subsidiaries of Borrower as Borrower designates) and amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) of this Section 2.03; and (B) to honor drawings under the Letters of Credit.

(ii) Each Lender severally agrees to participate in each Letter of Credit issued by L/C Issuer and each drawing thereunder; provided that, after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (A) the Total Revolving Credit Outstandings will not exceed the Aggregate Revolving Credit Commitments; (B) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus an amount equal to such Lender's Revolving Credit Percentage Share multiplied by the Outstanding Amount of all Letter of Credit Obligations, plus an amount equal to such Lender's Revolving Credit Percentage Share multiplied by the Outstanding Amount of all Swing Line Loans will not exceed such Lender's Revolving Credit Commitment; and (C) the Outstanding Amount of the Letter of Credit Obligations will not exceed the Letter of Credit Sublimit. Each request by Borrower for the issuance or amendment of a Letter of Credit will be deemed to be a representation by Borrower that each such issuance or amendment complies with the applicable conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, Borrower's ability to obtain Letters of Credit will be fully revolving, and, accordingly, Borrower may, during the period described in Section 2.03(a)(i), obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(iii) Subject to Section 2.03(b)(v), L/C Issuer will not issue or extend any Letter of Credit if (A) the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless Required Revolving Credit Lenders will have approved such expiry date, or (B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all Lenders will have approved such expiry date.

(iv) L/C Issuer will not have any obligation to issue a Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator will by its terms purport to enjoin or restrain L/C Issuer from issuing such Letter of Credit, or any Law applicable to L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over L/C Issuer will prohibit, or request that L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or will impose upon L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or will impose upon L/C Issuer any unreimbursed loss, cost or expense that was not applicable on the Closing Date and which L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of L/C Issuer;

(C) such Letter of Credit is to be denominated in a currency other than Dollars;

(D) [reserved];

(E) any Lender is at that time a Defaulting Lender, unless L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to L/C Issuer (in its sole discretion) with Borrower or such Lender to eliminate L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 3.07(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other Letter of Credit Obligations as to which L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(F) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(v) L/C Issuer will have no obligation to amend any Letter of Credit if L/C Issuer would not be obligated to issue such Letter of Credit in its amended form under the terms hereof or if the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) L/C Issuer will act on behalf of all Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and L/C Issuer will have all of the benefits and immunities (A) provided to Administrative Agent in Article IX with respect to any acts taken or omissions suffered by L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Automatic Extensions of Letters of Credit.

(i) Each Letter of Credit will be issued or amended, as the case may be, upon the request of Borrower delivered to L/C Issuer (with a copy to Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of Borrower. Such Letter of Credit Application must be received by L/C Issuer and Administrative Agent not later than 11:00 a.m. at least two (2) Business Days prior to the proposed issuance date or date of amendment, as the case may be, or in each case such other date or time as L/C Issuer and Administrative Agent may agree in a particular. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application will specify in form and detail satisfactory to L/C Issuer (A) the proposed issuance date of the requested Letter of Credit (which will be a Business Day), (B) the stated amount thereof, (C) the expiry date thereof, (D) the name and address of the beneficiary thereof, (E) the documents to be presented by such beneficiary in case of any drawing thereunder, (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application will specify in form and detail satisfactory to L/C Issuer (1) the Letter of Credit to be amended, (2) the proposed date of the amendment thereof (which will be a Business Day), (3) the nature of the proposed amendment and (4) such other matters as L/C Issuer may require. Additionally, Borrower will furnish to L/C Issuer and Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as L/C Issuer or Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application at the address provided pursuant to Section 10.02 for receiving Letter of Credit Applications and related correspondence, L/C Issuer will confirm with Administrative Agent (by telephone or in writing) that Administrative Agent has received a copy of such Letter of Credit Application from Borrower and, if not, L/C Issuer will provide Administrative Agent with a copy thereof (provided that such confirmation will not be required if L/C Issuer and Administrative Agent are the same Person). Unless L/C Issuer has received written notice from any Lender, Administrative Agent or any Loan Party at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit that one or more applicable conditions in Article IV will not then be satisfied, then, subject to the terms and conditions hereof, L/C Issuer will, on the requested date, issue the Letter of Credit requested by Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with L/C Issuer's usual and customary business practices.

(iii) L/C Issuer will promptly notify Administrative Agent in writing, and Administrative Agent will in turn notify each Lender in writing, of each such issuance of a Letter of Credit (including the amount, the expiry date and the beneficiary thereof). Immediately upon the issuance of each Letter of Credit, each Lender will be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from L/C Issuer a risk participation in such Letter of Credit equal to such Lender's Revolving Credit Percentage Share multiplied by the face amount of such Letter of Credit.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, L/C Issuer will also deliver to Borrower and Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(v) If Borrower specifically requests in any applicable Letter of Credit Application, L/C Issuer may issue an Automatic Extension Letter of Credit. Unless otherwise directed by L/C Issuer, Borrower will not be required to make a specific request to L/C Issuer for any such extension. Once an Automatic Extension Letter of Credit has been issued, Lenders will be deemed to have authorized (but may not require) L/C Issuer to permit the extension of such Automatic Extension Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided that L/C Issuer will not permit any such extension if (A) L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Automatic Extension Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of Section 2.03(a) or otherwise), or (B) L/C Issuer has received notice (which may be by telephone or in writing) on or before the day that is thirty (30) days before any date provided for in such Automatic Extension Letter of Credit as the last day by which notice of the non-extension thereof must be given (1) from Administrative Agent that Required Revolving Credit Lenders have elected not to permit such extension, or (2) from Administrative Agent, any Lender or Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing L/C Issuer not to permit such extension.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any drawing under such Letter of Credit (or any notice thereof), L/C Issuer will notify Borrower and Administrative Agent thereof. If L/C Issuer will make any payment in respect of a Letter of Credit, Borrower will reimburse L/C Issuer the amount of such payment not later than 12:00 noon on the related Honor Date if Borrower will have received notice of such payment prior to 10:00 a.m. on the Honor Date, or, if such notice has not been received by Borrower prior to 10:00 a.m. on such Honor Date, then not later than 10:00 a.m. on the Business Day immediately following the day that Borrower receives such notice. If Borrower fails to so reimburse L/C Issuer, then Administrative Agent will promptly notify each Lender of the related Honor Date, the Unreimbursed Amount and the amount of such Lender's Revolving Credit Percentage

Share of such Unreimbursed Amount. In such event, Borrower will be deemed to have requested a Revolving Credit Borrowing consisting of Base Rate Loans to be disbursed on such Honor Date in an amount equal to such Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Revolving Credit Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Loan Notice). Any notice given by L/C Issuer or Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation will not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender will, upon receipt of any notice pursuant to Section 2.03(c)(i), make funds available (and Administrative Agent may apply Cash Collateral provided for this purpose) for the account of L/C Issuer at Administrative Agent's Office in an amount equal to such Lender's Revolving Credit Percentage Share multiplied by the Unreimbursed Amount not later than 12:00 noon on the Business Day specified in such notice by Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available will be deemed to have made a Revolving Credit Loan that is a Base Rate Loan to Borrower in such amount on the Honor Date. Administrative Agent will remit the funds so received to L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing pursuant to Section 2.03(c)(ii), whether because each of the conditions (other than the delivery of a Loan Notice) set forth in Section 4.02 cannot be satisfied or otherwise, Borrower will be deemed to have incurred from L/C Issuer a Letter of Credit Borrowing on the Honor Date in the amount of the Unreimbursed Amount that is not so refinanced, which Letter of Credit Borrowing will be due and payable on demand (together with interest) and will bear interest at the Default Rate. In such event, each Lender's payment to Administrative Agent for the account of L/C Issuer pursuant to Section 2.03(c)(ii) will be deemed payment in respect of its participation in such Letter of Credit Borrowing and will constitute a Letter of Credit Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Revolving Credit Loan or Letter of Credit Advance pursuant to this Section 2.03(c) to reimburse L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of the amount of such Lender's Revolving Credit Percentage Share of such amount will be solely for the account of L/C Issuer.

(v) Each Lender's obligation to make Revolving Credit Loans or Letter of Credit Advances to reimburse L/C Issuer for amounts drawn under Letters of Credit issued by it, as contemplated by this Section 2.03(c), will be absolute and unconditional and will not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right that such Lender may have against L/C Issuer, Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or Event of Default or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by Borrower of a Loan Notice). No such making of a Letter of Credit Advance will relieve or otherwise impair the obligation of Borrower to reimburse L/C Issuer for the amount of any payment made by L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to Administrative Agent for the account of L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, L/C Issuer will be entitled to recover from such Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such

payment is required to the date on which such payment is immediately available to L/C Issuer at a rate per annum equal to the greater of the Overnight Rate and a rate determined by L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by L/C Issuer in connection with the foregoing. A certificate of L/C Issuer submitted to any Lender (through Administrative Agent) with respect to any amounts owing under this clause (vi) will be conclusive absent manifest error.

(d) Repayment of Participations.

(i) If, at any time after L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's Letter of Credit Advance in respect of such payment in accordance with Section 2.03(c), Administrative Agent receives for the account of L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from Borrower or otherwise, including proceeds of Cash Collateral applied thereto by Administrative Agent), Administrative Agent will distribute to such Lender an amount that equals its Revolving Credit Percentage Share thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's Letter of Credit Advance was outstanding) in the same funds as those received by Administrative Agent.

(ii) If any payment received by Administrative Agent for the account of L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by L/C Issuer in its discretion), each Lender will pay to Administrative Agent for the account of L/C Issuer an amount equal to its Revolving Credit Percentage Share thereof on the demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Overnight Rate from time to time in effect. The obligations of Lenders under this clause (ii) will survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of Borrower to reimburse L/C Issuer for each drawing under each Letter of Credit and to repay each Letter of Credit Borrowing is absolute, unconditional and irrevocable and will be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that Borrower or any other Loan Party may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction (including any underlying transaction between any Loan Party or any of their respective Subsidiaries and the beneficiary for which any Letter of Credit was procured);

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(iv) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(v) any payment by L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit;

(vi) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Borrower or of any other Loan Party or of any of their respective Subsidiaries;

(vii) the fact that a Default or Event of Default will have occurred and be continuing;

(viii) any payment made by L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(ix) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower or any other Loan Party or any of their respective Subsidiaries.

Borrower will promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and will notify L/C Issuer in writing of any claim of noncompliance with Borrower's instructions or other irregularity. Borrower will be conclusively deemed to have waived any such claim against L/C Issuer and its correspondents unless Borrower will have given written notice thereof to L/C Issuer within three (3) Business Days of L/C Issuer's delivery to Borrower of a copy of the such Letter of Credit or amendment thereto, as applicable.

(f) Role of L/C Issuer. Each Lender and Borrower agree that, in paying any drawing under a Letter of Credit, L/C Issuer will not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit issued, or requested to be issued, by it) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of L/C Issuer, Administrative Agent, any of their respective Related Parties and any correspondent, participant or assignee of L/C Issuer will be liable to any Lender for: (i) any action taken or not taken, at the request or with the approval of Lenders or Required Revolving Credit Lenders, as applicable, in connection with a Letter of Credit or any Issuer Document; (ii) in the absence of gross negligence or willful misconduct of L/C Issuer under the circumstances in question, as determined in a final, nonappealable judgment by a court of competent jurisdiction, any action taken or not taken in connection with a Letter of Credit or any Issuer Document; or (iii) the due execution, effectiveness, validity or enforceability of any document related to any Letter of Credit or Issuer Document. As between Borrower and L/C Issuer, Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided that this assumption is not intended to, and will not, preclude Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of L/C Issuer, Administrative Agent or any of their respective Related Parties or any correspondent, participant or assignee of L/C Issuer will be liable or responsible for any of the matters described in clauses (i) through (ix) of Section 2.03(e); provided that, notwithstanding anything to the contrary contained in such clauses, Borrower may have a claim against L/C Issuer, and L/C Issuer may be liable to Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower that Borrower proves were caused by L/C Issuer's willful misconduct or gross negligence or L/C Issuer's willful or grossly negligent failure to pay under any Letter of Credit issued by it after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit, as determined by a court of competent jurisdiction by final and

nonappealable judgment. In furtherance and not in limitation of the foregoing, L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and L/C Issuer will not be responsible for the validity or sufficiency of any document transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason.

(g) Applicability of ISP and UCP. Unless otherwise expressly agreed by L/C Issuer and Borrower, when a Letter of Credit is issued, (i) the rules of the ISP and Article 5 of the UCC will apply to each standby Letter of Credit; provided that in the event of a conflict between applicable provisions of the ISP and Article 5 of the UCC, the ISP will govern and (ii) the rules of the UCP and Article 5 of the UCC will apply to each commercial Letter of Credit; provided that in the event of a conflict between applicable provisions of the UCP and Article 5 of the UCC, the UCP will govern.

(h) [Reserved].

(i) Letter of Credit Fees. Borrower will pay to Administrative Agent for the account of each Lender in accordance with its Revolving Credit Percentage Share a fee (the "Letter of Credit Fee") equal to for each standby Letter of Credit and each commercial Letter of Credit, the Applicable Margin corresponding to Term SOFR Loans multiplied by the actual daily amount available to be drawn under such Letter of Credit; provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to L/C Issuer pursuant to Section 2.15 will be payable, to the maximum extent permitted by applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Revolving Credit Percentage Share allocable to such Letter of Credit pursuant to Section 3.07(a)(iv), with the balance of such fee, if any, payable to L/C Issuer for its own account. For purposes of computing the actual daily amount available to be drawn under all Letters of Credit, the amount of each Letter of Credit will be determined in accordance with Section 1.02(j). Letter of Credit Fees will be (i) computed on a quarterly basis in arrears and (ii) due and payable on the last Business Day of each March, June, September and December (in each case for the calendar quarter then ending), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Margin during any quarter, then the actual daily amount available to be drawn under all Letters of Credit will be computed and multiplied by the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect. Notwithstanding anything to the contrary contained herein, while any Event of Default exists, upon written notice to Borrower from Required Revolving Credit Lenders, all Letter of Credit Fees will accrue at the Default Rate.

(j) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. Borrower will pay directly to L/C Issuer for its own account in respect of any Letters of Credit issued by or outstanding from L/C Issuer, a fee (the "Fronting Fee") in Dollars with respect to each such Letter of Credit equal to 0.125% per annum, computed quarterly in arrears on the daily maximum amount available to be drawn thereunder, due and payable quarterly in arrears on the last Business Day of each March, June, September and December (in each case for the calendar quarter then ending), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. In addition, Borrower will pay directly to L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of L/C Issuer relating to letters of credit and bank undertakings as from time to time in effect, in Dollars. Such customary fees and standard costs and charges are due and payable on demand of L/C Issuer and are nonrefundable.

(k) Conflict with Issuer Documents. If a conflict exists between the terms hereof and the terms of any Issuer Document, the terms hereof will control.

(l) Resignation of L/C Issuers.

(i) Any L/C Issuer may resign at any time by giving thirty (30) days' prior notice to the Administrative Agent, the Lenders and the Borrower. After the resignation of an L/C Issuer hereunder, the retiring L/C Issuer shall remain a party hereto and shall continue to have all the rights and obligations of an L/C Issuer under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit or to extend, renew or increase the outstanding Letter of Credit.

(ii) Any resigning L/C Issuer shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit issued by it that are outstanding as of the effective date of its resignation as an L/C Issuer and all Letter of Credit Obligations with respect thereto (including the right to require the Revolving Credit Lenders to take such actions as are required under Section 2.3(c)). Without limiting the foregoing, upon the resignation of a Lender as an L/C Issuer hereunder, the Borrower may, or at the request of such resigned L/C Issuer the Borrower shall, use commercially reasonable efforts to, arrange for one or more of the other L/C Issuers to issue Letters of Credit hereunder in substitution for the Letters of Credit, if any, issued by such resigned L/C Issuer and outstanding at the time of such resignation, or use commercially reasonable efforts to make other arrangements satisfactory to the resigned L/C Issuer to effectively cause another L/C Issuer to assume the obligations of the resigned L/C Issuer with respect to any such Letters of Credit.

Section 2.04 Swing Line Loans.

(a) The Swing Line. Upon the terms, subject to the conditions and in reliance upon the representations and warranties of Borrower and each of the other Loan Parties set forth in this Agreement and in the other Loan Documents and upon the agreements of the Lenders set forth in this Section 2.04, Swing Line Lender may in its sole and absolute discretion make loans (each such loan, a "Swing Line Loan") in immediately available funds denominated in Dollars to Borrower on a revolving basis from time to time on any Business Day from the Closing Date through the tenth Business Day immediately preceding the last day of the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Revolving Credit Percentage Share of the Outstanding Amount of Revolving Credit Loans and Letter of Credit Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Revolving Credit Commitment; provided that, after giving effect to any Swing Line Loan, (i) the Total Revolving Credit Outstandings will not exceed the Aggregate Revolving Credit Commitments; and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender (other than Swing Line Lender in such capacity), plus such Lender's Revolving Credit Percentage Share of the Outstanding Amount of all Letter of Credit Obligations, plus such other Lender's Revolving Credit Percentage Share of the Outstanding Amount of all Swing Line Loans will not exceed such Lender's Revolving Credit Commitment. Each Swing Line Loan will be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Lender will be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to such Lender's Revolving Credit Percentage Share multiplied by the amount of such Swing Line Loan.

(b) Swing Line Borrowing Procedures. Each Swing Line Borrowing will be made upon Borrower's irrevocable notice (a "Swing Line Loan Notice") to Swing Line Lender and Administrative Agent, which may, subject to the provisions of Section 10.02, be given by telephone or by

approved electronic communication. Each such notice must be received by Swing Line Lender and Administrative Agent not later than 11:00 a.m. on the requested borrowing date, and must specify (i) the amount to be borrowed, which will be a minimum of $100,000, and (ii) the requested borrowing date, which must be a Business Day. Each such telephonic notice or notice by electronic communication must be confirmed promptly by delivery to Swing Line Lender and Administrative Agent of a separate written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of Borrower. Promptly after receipt by Swing Line Lender of any telephonic or electronic communication Swing Line Loan Notice, Swing Line Lender will confirm with Administrative Agent (by telephone or in writing, including by electronic communication) that Administrative Agent has also received such Swing Line Loan Notice and, if not, Swing Line Lender will notify Administrative Agent (by telephone or in writing) of the contents thereof. Unless (A) the Swing Line has been terminated or suspended by Swing Line Lender as provided in this Agreement, including Section 2.04(a), (B) Swing Line Lender has received notice (by telephone or in writing, including by electronic communication) from Administrative Agent (including at the request of any Lender) prior to 12:00 noon on the date of the proposed Swing Line Borrowing (1) directing Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (2) that at least one of the applicable conditions specified in Article IV is not then satisfied, or (C) Swing Line Lender has otherwise determined, in its sole and absolute discretion, not to fund the Swing Line Borrowing requested by Borrower in such Swing Line Loan Notice, then, subject to the terms and conditions hereof, Swing Line Lender will, not later than 2:00 p.m. on the borrowing date specified in the related Swing Line Loan Notice, make the amount of its Swing Line Loan available to Borrower at its office by crediting the account of Borrower on the books of Swing Line Lender in immediately available funds. Lenders agree that Swing Line Lender may agree to modify the borrowing procedures used in connection with the Swing Line in its discretion and without affecting any of the obligations of Lenders hereunder other than notifying Administrative Agent of a Swing Line Loan Notice.

(c) Refinancing of Swing Line Loans.

(i) Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of Borrower (which hereby irrevocably authorizes Swing Line Lender to so request on its behalf), that each Lender make a Revolving Credit Loan that is a Base Rate Loan in an amount equal to such Lender's Revolving Credit Percentage Share of the then aggregate Outstanding Amount of Swing Line Loans. Such request will be made in writing (which written request will be deemed to be a Swing Line Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Revolving Credit Commitments and the conditions set forth in Section 4.02. Swing Line Lender will furnish Borrower with a copy of the applicable Swing Line Loan Notice promptly after delivering such notice to Administrative Agent. Each Lender will make an amount equal to its Revolving Credit Percentage Share multiplied by the aggregate amount of the requested Revolving Credit Loans specified in such Swing Line Loan Notice available to Administrative Agent in immediately available funds (and Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of Swing Line Lender at Administrative Agent's Office not later than 12:00 noon on the day specified in such Swing Line Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Lender that so makes funds available will be deemed to have made a Revolving Credit Loan that is a Base Rate Loan to Borrower in such amount. Administrative Agent will promptly remit the funds so received to Swing Line Lender.

(ii) If for any reason the outstanding amount of all Swing Line Loans cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), then the request for Revolving Credit Loans that are Base Rate Loans submitted by Swing Line Lender as set forth herein will be deemed to be a request by Swing Line Lender that each Lender fund its risk participation in the

relevant Swing Line Loan and each Lender's payment to Administrative Agent for the account of Swing Line Lender pursuant to Section 2.04(c)(i) will be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to Administrative Agent for the account of Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), Swing Line Lender will be entitled to recover from such Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to Swing Line Lender at a rate per annum equal to the greater of the Overnight Rate and a rate determined by Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by Swing Line Lender in connection with the foregoing. A certificate of Swing Line Lender submitted to any Lender (through Administrative Agent) with respect to any amounts owing under this clause (iii) will be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) will be absolute and unconditional and will not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right that such Lender may have against Swing Line Lender, Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or Event of Default or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations will relieve or otherwise impair the obligation of Borrower to repay Swing Line Loans together with interest as provided herein.

(d) Repayment of Participations.

(i) If, at any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, Swing Line Lender receives any payment on account of such Swing Line Loan, then Swing Line Lender will distribute to such Lender an amount equal to its Revolving Credit Percentage Share multiplied by such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by Swing Line Lender.

(ii) If any payment received by Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by Swing Line Lender in its discretion), each Lender will pay to Swing Line Lender an amount equal to its Revolving Credit Percentage Share multiplied by the amount to be returned on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Overnight Rate. Administrative Agent will make such demand upon the request of Swing Line Lender. The obligations of Lenders under this clause will survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. Swing Line Lender will be responsible for invoicing Borrower for interest on Swing Line Loans. Until each Lender funds its Revolving Credit Loan that is a Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Revolving Credit Percentage Share of any Swing Line Loan, interest in respect of such proportionate share will be solely for the account of Swing Line Lender.

(f) Payments Directly to Swing Line Lender. Borrower will make all payments of principal and interest in respect of Swing Line Loans directly to Swing Line Lender.

Section 2.05 Payments and Prepayments.

(a) (i) Payments of the Swing Line Loans. Subject to the other terms and provisions of this Agreement, including the acceleration of the Obligations outstanding hereunder and under the other Loan Documents pursuant to Section 8.03 following the occurrence of an Event of Default, Borrower will repay each Swing Line Loan (A) on the tenth (10^{th}) Business Day following the Borrowing thereof; provided that if as a result of such repayment the Outstanding Amount of all Swing Line Loans would be less than $100,000, Borrower may defer repayment of that portion of the repayment required by this clause (A) that would cause, if made, the Outstanding Amount of all Swing Line Loans to be less than $100,000 until the next succeeding Business Day on which such deferred portion may be repaid without causing the Outstanding Amount of all Swing Line Loans to be less than $100,000, and (B) to the extent outstanding on the Revolving Credit Maturity Date, on the Revolving Credit Maturity Date.

(ii) Payments of the Initial Term Loans. The Borrower shall repay the aggregate outstanding principal amount of the Initial Term Loans in consecutive quarterly installments on the last Business Day of each of March, June, September and December commencing September 30, 2023 as set forth below, except as the amounts of individual installments may be adjusted pursuant to this Section 2.05:

PAYMENT DATE	PRINCIPAL INSTALLMENT
September 30, 2023	$3,125,000
December 31, 2023	$3,125,000
March 31, 2024	$3,125,000
June 30, 2024	$3,125,000
September 30, 2024	$6,250,000
December 31, 2024	$6,250,000
March 31, 2025	$6,250,000
June 30, 2025	$6,250,000
September 30, 2025	$9,375,000
December 31, 2025	$9,375,000
March 31, 2026	$9,375,000
June 30, 2026	$9,375,000
September 30, 2026	$9,375,000
December 31, 2026	$9,375,000
March 31, 2027	$9,375,000
June 30, 2027	$9,375,000
September 30, 2027	$12,500,000
December 31, 2027	$12,500,000
March 31, 2028	$12,500,000
Initial Term Loan Maturity Date	The aggregate outstanding principal amount of all Initial Term Loans

(iii) Payments of the Incremental Term Loans. Subject to the other terms and provisions of this Agreement, including the acceleration of the Obligations outstanding hereunder and under the other Loan Documents pursuant to Section 8.03 following the occurrence and during the continuance of an Event of Default, the Incremental Term Loans will be payable on such dates and in such amounts as set forth in the applicable Additional Commitment Documentation.

(b) Voluntary Prepayments.

(i) Borrower may, upon notice to Administrative Agent, at any time or from time to time voluntarily prepay Revolving Credit Loans or Initial Term Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by Administrative Agent not later than 11:00 a.m. (x) in the case of a Term SOFR Loan, at least three (3) U.S. Government Securities Business Days before prepayment of such Term SOFR Loan and (y) one (1) Business Day prior to any date of prepayment of Revolving Credit Loans or Initial Term Loans that are Base Rate Loans; and (B) any prepayment of (1) Term SOFR Loans will be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof, and (2) Base Rate Loans will be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof, or, if less, the entire principal amount thereof then outstanding. Each such notice will specify the date and amount of such prepayment and the Type(s) of Revolving Credit Loans or Initial Term Loans, as applicable, to be prepaid. Administrative Agent will promptly notify each Lender of its receipt of each such notice and of the amount of such Lender's Revolving Credit Percentage Share or Initial Term Loan Percentage Share, as applicable thereof. If Borrower gives such notice, then Borrower's prepayment obligation will be irrevocable, and Borrower will make such prepayment and the payment amount specified in such notice will be due and payable on the date specified therein. Notwithstanding the foregoing, any such notice of prepayment delivered in connection with any refinancing of all of the Obligations hereunder with the proceeds of such refinancing or of any incurrence of Indebtedness, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence and may be revoked by Borrower in the event such refinancing is not consummated. Any prepayment of a Revolving Credit Loan or Initial Term Loan that is a Term SOFR Loan will be accompanied by any additional amounts required pursuant to Section 3.05 (including amounts required pursuant to Section 3.05(c) and any foreign exchange losses). Subject to Section 3.07, each such prepayment will be applied to the Revolving Credit Loans or Initial Term Loans, as applicable, of the Lenders in accordance with their respective Revolving Credit Percentage Shares or Initial Term Loan Percentage Shares, as applicable.

(ii) Borrower may, upon notice to Swing Line Lender (with a copy to Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that: (A) such notice must be received by Swing Line Lender and Administrative Agent not later than 11:00 a.m. on the date of the prepayment; and (B) any such prepayment will be in a minimum principal amount of $100,000 or, if the aggregate Outstanding Amount of Swing Line Loans is less, the entire Outstanding Amount thereof. Each such notice will specify the date and amount of such prepayment. If Borrower gives such a notice, then Borrower's prepayment obligation will be irrevocable, and Borrower will make such prepayment and the payment amount specified in such notice will be due and payable on the date specified therein.

(c) Mandatory Prepayments.

(i) If, on any date, and for any reason, including following any reduction of the Aggregate Revolving Credit Commitments pursuant to Section 2.06, the Outstanding Amount of Letter of Credit Obligations exceeds the Letter of Credit Sublimit, Borrower will promptly (and in any event within three (3) Business Days thereof) Cash Collateralize the Outstanding Amount of such Letter of

Credit Obligations in an amount equal to such excess. Any Cash Collateral required to be provided pursuant to this Section 2.05 will be subject to release in accordance with Section 2.15(d).

(ii) If, on any date the Total Revolving Credit Outstandings, less the amount of Letter of Credit Obligations Cash Collateralized, exceeds the Aggregate Revolving Credit Commitments then in effect, including after giving effect to any reduction of the Aggregate Revolving Credit Commitments pursuant to Section 2.06, Borrower will immediately, and without notice or demand, prepay the outstanding principal amount of the Revolving Credit Loans, Swing Line Loans and Letter of Credit Borrowings by an amount equal to the applicable excess. Any such prepayment will be applied, *first*, to any Letter of Credit Borrowings, *second*, to prepay any outstanding Swing Line Loans and *third*, to prepay any outstanding Revolving Credit Loans.

(iii) If, following any reduction of the Aggregate Revolving Credit Commitments pursuant to Section 2.06, the aggregate Outstanding Amount of Swing Line Loans would exceed the Swing Line Sublimit (including as reduced by such reduction), Borrower will prepay on the reduction date the Outstanding Amount of Swing Line Loans by an amount equal to the amount by which such Outstanding Amount exceeds the Swing Line Sublimit.

(iv) The Borrower shall make mandatory principal prepayments of the Initial Term Loans (and, if applicable, any Incremental Term Loans) in the manner set forth in Section 2.05(d) in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from any Debt Issuance not otherwise permitted pursuant to Section 7.03. Such prepayment shall be made within three (3) Business Days after the date of receipt of the Net Cash Proceeds of any such Debt Issuance.

(v) The Borrower shall make mandatory principal prepayments of the Initial Term Loans (and, if applicable, any Incremental Term Loans) in the manner set forth in Section 2.05(d) in amounts equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from (A) any Disposition by any Loan Party or any Subsidiary thereof (other than any Disposition permitted pursuant to Section 7.04 (excluding Section 7.04(c) and (g) to the extent such Disposition is made to a Person that is not a Loan Party or a Subsidiary)) or (B) any Casualty Event, in each case, to the extent that the aggregate amount of such Net Cash Proceeds for any such Disposition or Casualty Event exceeds $10,000,000. Such prepayments shall be made within three (3) Business Days after the date of receipt of the Net Cash Proceeds; provided that, so long as no Event of Default has occurred and is continuing, no prepayment shall be required under this Section 2.05(c)(v) with respect to such portion of such Net Cash Proceeds that the Borrower shall have, on or prior to such date, given written notice to the Administrative Agent of its intent to reinvest in accordance with Section 2.05(c)(vi). Notwithstanding the foregoing, with respect to any Net Cash Proceeds from any Disposition or Casualty Event, the Borrower may prepay the Initial Term Loans (and, if applicable, any Incremental Term Loans) and prepay or purchase any Incremental Equivalent Debt that is secured by the Collateral on a pari passu basis (at a purchase price no greater than par plus accrued and unpaid interest), to the extent required thereby, on a pro rata basis in accordance with the respective outstanding principal amounts of the Initial Term Loans (and, if applicable, any Incremental Term Loans) and such Incremental Equivalent Debt as of the time of the applicable Disposition or Casualty Event.

(vi) With respect to any Net Cash Proceeds realized or received with respect to any Disposition or any Casualty Event by any Loan Party of any Subsidiary thereof (in each case, to the extent not excluded pursuant to Section 2.05(c)(v) at the option of the Borrower), the Loan Parties and their Subsidiaries may reinvest all or any portion of such Net Cash Proceeds in assets used or useful for the business of the Loan Parties and their Subsidiaries within (x) twelve (12) months following receipt of such Net Cash Proceeds or (y) if such Loan Party or Subsidiary enters into a bona fide commitment to reinvest such Net Cash Proceeds within twelve (12) months following receipt thereof, within the later of (A) twelve (12) months following receipt thereof and (B) six (6) months of the date of such commitment; provided that

if any Net Cash Proceeds are no longer intended to be or cannot be so reinvested at any time after delivery of a notice of reinvestment election, an amount equal to any such Net Cash Proceeds shall be applied within three (3) Business Days after the applicable Loan Party reasonably determines that such Net Cash Proceeds are no longer intended to be or cannot be so reinvested to the prepayment of the Loans as set forth in this Section 2.05(c).

(vii) Notwithstanding any provisions of Section 2.05(c) to the contrary (A) to the extent that any or all of the Net Cash Proceeds of any Disposition or Casualty Event by a Foreign Subsidiary giving rise to a prepayment event pursuant to Section 2.05(c)(v) (a "Foreign Disposition") are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Cash Proceeds so affected will not be required to be applied to repay Initial Term Loans (and, if applicable, any Incremental Term Loans) at the times provided in Section 2.05(c)(v) but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all commercially reasonable actions required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Cash Proceeds is permitted under the applicable local law, such repatriation will be effected promptly and such repatriated Net Cash Proceeds will be promptly (and in any event not later than three (3) Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Initial Term Loans (and, if applicable, any Incremental Term Loans) pursuant to Section 2.05(c)(v) to the extent provided therein, and (B) to the extent that the Borrower has reasonably determined in good faith that repatriation of any of or all the Net Cash Proceeds of any Foreign Disposition, would result in adverse Tax consequences (including withholding taxes) that are not de minimis to the Borrower and its Subsidiaries, the Net Cash Proceeds so affected may be retained by the applicable Foreign Subsidiary (the Borrower hereby agreeing to promptly take and cause such Foreign Subsidiary to take all commercially reasonable actions to eliminate or minimize any such adverse Tax consequences, to the extent reasonably practicable and permitted by law, in furtherance of allowing the repatriation of such Net Cash Proceeds; provided that in no event will Borrower be required to undertake any action that would result in any material costs or Taxes payable by, or withheld from payment to, the Borrower or its Subsidiaries).

(d) Application of Certain Payments. Subject to the other provisions of this Agreement applicable to the prepayment of Loans, any prepayment of Loans will be applied first to Base Rate Loans to the full extent thereof before application to Term SOFR Loans, in each case in a manner which minimizes the amount of any payments required to be made by Borrower pursuant to Section 3.05. Each prepayment of Initial Term Loans or Incremental Term Loans pursuant to Section 2.05(b) will be applied to reduce the remaining scheduled principal installments of the Initial Term Loans or Incremental Term Loans pursuant to Section 2.05(a)(ii) or Section 2.14(d), as applicable, as directed by the Borrower and in the absence of such direction, in direct order of maturity. Each prepayment of the Initial Term Loans pursuant to Section 2.05(c)(iv), (c)(v) and (c)(vi) shall be applied first to the next four (4) scheduled principal installments of the Initial Term Loans pursuant to Section 2.05(a)(ii) in direct order of maturity, and thereafter, to reduce on a pro rata basis the remaining scheduled principal installments of the Initial Term Loans pursuant to Section 2.05(a)(ii). Each prepayment of Incremental Term Loans pursuant to Section 2.05(c)(iv), (c)(v), (c)(vi) and (c)(vii) shall be applied as agreed among the Borrower and the applicable Incremental Term Loan Lenders pursuant to Section 2.14(d)(ii).

Section 2.06 Termination or Reduction of Aggregate Revolving Credit Commitments. Borrower may, upon notice to Administrative Agent, terminate the Aggregate Revolving Credit Commitments, or from time to time permanently reduce the Aggregate Revolving Credit Commitments; provided that (a) any such notice will be irrevocable and received by Administrative Agent not later than 11:00 a.m. three (3) Business Days prior to the requested effective date of such termination or reduction; (b) any such partial reduction will be in an aggregate amount of $5,000,000 or any whole multiple of

$1,000,000 in excess thereof; (c) Borrower will not terminate or reduce the Aggregate Revolving Credit Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Aggregate Revolving Credit Commitments; and (d) if, after giving effect to any reduction of the Aggregate Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Revolving Credit Commitments, such sublimit(s) will be automatically reduced by the amount of such excess. Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Revolving Credit Commitments. Any reduction of the Aggregate Revolving Credit Commitments will be applied to the commitment of each Lender according to its Revolving Credit Percentage Share thereof. All Revolving Credit Facility Fees accrued until the effective date of any termination of the Aggregate Revolving Credit Commitments will be paid on the effective date of such termination.

Section 2.07 Final Repayment of Revolving Credit Loans; Swing Loans; Initial Term Loans; and Incremental Term Loans.

(a) Payments Due on Revolving Credit Maturity Date. On the Revolving Credit Maturity Date, Borrower will repay (i) to Lenders in full the aggregate Outstanding Amount of all Revolving Credit Loans and (ii) to Swing Line Lender in full the aggregate Outstanding Amount of all Swing Line Loans, and in each case all accrued and unpaid interest thereon.

(b) Payments Due on Initial Term Loan Maturity Date. On the Initial Term Loan Maturity Date, Borrower will repay to the Initial Term Loan Lenders in full the aggregate Outstanding Amount of the Initial Term Loans and all accrued and unpaid interest thereon.

(c) Payments Due on Incremental Term Loan Maturity Date. For each Incremental Term Loan, on the Incremental Term Loan Maturity Date applicable to such Incremental Term Loan, Borrower will repay to the Incremental Term Loan Lenders in full the aggregate Outstanding Amount of such Incremental Term Loan and all accrued and unpaid interest thereon.

Section 2.08 Interest; Applicable Margins.

(a) Interest Generally. Subject to the provisions of this Section 2.08, Revolving Credit Loans, Initial Term Loans and Incremental Term Loans may be (i) Base Rate Loans or (ii) Term SOFR Loans. At the election of the Borrower (where applicable), (x) Revolving Credit Loans, Initial Term Loans and Incremental Term Loans that are (1) Base Rate Loans shall bear interest at the Base Rate plus the Applicable Margin and (2) Term SOFR Loans shall bear interest at Adjusted Term SOFR plus the Applicable Margin, and (y) any Swing Line Loan shall bear interest at the Base Rate plus the Applicable Margin. The Borrower shall select the rate of interest and Interest Period, if any, applicable to any Revolving Credit Loan, Initial Term Loan or Incremental Term Loan at the time a Loan Notice is given.

(b) Default Rate.

(i) If (A) an Event of Default occurs under Section 8.01(a) as a result of Borrower's failure to timely make any payment on the Obligations when due and payable under this Agreement or any of the other Loan Documents, whether at stated maturity, by acceleration or otherwise, or (B) an Event of Default occurs under Section 8.01(f) or Section 8.01(g), then in any such event the entire outstanding Obligations under this Agreement and the other Loan Documents (except for undrawn Letters of Credit) will thereafter, from the date such Event of Default occurred and continuing until the related Event of Default has been cured or waived in accordance with Section 10.01, without any required notice

from Lenders or Administrative Agent, bear interest at a fluctuating rate per annum at all times equal to the Default Rate, to the fullest extent permitted by applicable Laws.

(ii) If any Event of Default occurs (other than an Event of Default under Section 8.01(a), Section 8.01(f) or Section 8.01(g)), then, without limitation of and in addition to clause (i) of this Section 2.08(b), upon written notice to Borrower from Required Lenders (or from Administrative Agent at the direction of Required Lenders), the outstanding Obligations under this Agreement and the other Loan Documents will, effective as of the date of delivery of such written notice to Borrower and continuing until the related Event of Default has been cured or waived in accordance with Section 10.1 of this Agreement, will bear interest at a fluctuating rate per annum at all times equal to the Default Rate, to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) will be due and payable upon demand.

(c) Payment Dates; Accrual of Interest. Interest on each Loan will be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder (including interest at the Default Rate, to the extent applicable in accordance with Section 2.08(b)) will be due and payable in accordance with the terms hereof both before and after judgment, and both before and after the commencement of any proceeding under any Debtor Relief Law.

(d) Increases and Decreases of Applicable Margins. Any increase or decrease in any Applicable Margin resulting from a change in the Consolidated Net Leverage Ratio will become effective as of the date that is the earlier of (i) the last date by which Borrower is otherwise required to deliver a Compliance Certificate in accordance with Section 6.01(c) for given period (each such date, a "calculation date") and (ii) the date that is two (2) Business Days after the date on which Borrower actually delivers a Compliance Certificate in accordance with Section 6.01(c) for a given period; provided that the Applicable Margins in effect from the Closing Date to the date that is two (2) Business Days following receipt by Administrative Agent of a timely delivered Compliance Certificate with respect to the Fiscal Period ending after the Specified Guaranteed Payment has been paid in full will be set at levels no lower than Tier IV as indicated on the grid set forth in the definition of "Applicable Margin"; provided, further, that, if any Compliance Certificate required to be delivered in accordance with Section 6.01(c) is not delivered to Administrative Agent on or before the related calculation date, then the levels corresponding to Tier V as indicated on the grid set forth in the definition of "Applicable Margin" will apply, effective on the related calculation date until two (2) Business Days after such Compliance Certificate is actually received by Administrative Agent.

Notwithstanding the foregoing and for the avoidance of doubt, if, as a result of any restatement of or other adjustment to the financial statements of Borrower or for any other reason, Borrower or Administrative Agent (which may be at the direction of Required Lenders) determine that (A) the Consolidated Net Leverage Ratio as calculated by Borrower as of any applicable date was inaccurate and (B) a proper calculation of the Consolidated Net Leverage Ratio would have resulted in higher pricing for such period, Borrower will immediately and retroactively be obligated to pay to Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by Administrative Agent accompanied by calculations supporting Administrative Agent's determination (or, after the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code, automatically and without further action by Administrative Agent, any Lender or L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period; provided that, if such corrected calculations would have led to the application of a higher interest rate in one (1) or more periods and lower interest rate in one (1) or more periods due to the shifting of revenue, Borrower shall only be liable for the

positive difference over all such affected periods. The foregoing will in no way limit the rights of Administrative Agent to impose the Default Rate of interest pursuant to Section 2.08(b) or to exercise any other remedy available at law or as provided hereunder or under any of the other Loan Documents.

Section 2.09 Fees.

In addition to certain fees described in Sections 2.03(i) and (j):

(a) Revolving Credit Facility Fee. Subject to Section 3.07(a)(iii), Borrower will pay to Administrative Agent for the account of each Lender (other than a Defaulting Lender) in accordance with its Revolving Credit Percentage Share, a facility fee (the "Revolving Credit Facility Fee") equal to the Applicable Margin then in effect corresponding to Revolving Credit Facility Fees multiplied by the Aggregate Revolving Credit Commitments, subject to adjustment as provided in Section 3.07; provided that the Applicable Margin in effect from the Closing Date to the date that is two (2) Business Days following receipt by Administrative Agent of a timely delivered Compliance Certificate with respect to the Fiscal Period ending after the Specified Guaranteed Payment has been paid in full will be set at levels no lower than Tier IV as indicated on the grid set forth in the definition of "Applicable Margin"; provided, further, that, if any Compliance Certificate required to be delivered in accordance with Section 6.01(c) is not delivered to Administrative Agent on or before the related calculation date, then the levels corresponding to Tier V as indicated on the grid set forth in the definition of "Applicable Margin" will apply, effective on the related calculation date until two (2) Business Days after such Compliance Certificate is actually received by Administrative Agent. The Revolving Credit Facility Fee will accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and will be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the Revolving Credit Maturity Date. The Revolving Credit Facility Fee will be calculated quarterly in arrears, and if there is any change in the Aggregate Revolving Credit Commitments or in the Applicable Margin corresponding to the Revolving Credit Facility Fee during any quarter, the actual daily amount will be computed and multiplied by such Aggregate Revolving Credit Commitments or the Applicable Margin corresponding to the Revolving Credit Facility Fee separately for each period during such quarter that such Aggregate Revolving Credit Commitments or the Applicable Margin corresponding to the Revolving Credit Facility Fee was in effect.

(b) Administrative Agent's, L/C Issuer's and the Arranger's Fees. Borrower will pay to Administrative Agent for Administrative Agent's or L/C Issuer's own account, as applicable, to the Arrangers or their respective Affiliates for their respective accounts, and to the Left Lead Arranger for the Left Lead Arranger's own account such fees as are specified as owing to such Person in the Fee Letters.

Section 2.10 Computations of Interest and Fees. All computations of interest for Base Rate Loans based on the Prime Rate will be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of interest and fees hereunder will be made on the basis of a year of 360 days and actual days elapsed (which results in more interest being paid than if computed on the basis of a year of 365 or 366 days, as applicable). Interest will accrue on each Loan for the day on which the Loan is made, and will not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made will, subject to Section 2.12(a), bear interest for one day. Each determination by Administrative Agent of an interest rate or fee hereunder will be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Evidence of Indebtedness.

(a) Evidence of Payments. The Credit Extensions made by each Lender will be evidenced by one or more accounts or records maintained by such Lender and by Administrative Agent in the ordinary course of business, including the Register as described in Section 10.06(c). The accounts or records maintained by Administrative Agent and each Lender will be conclusive absent manifest error of the amount of the Credit Extensions made by Lenders to Borrower and the interest and payments thereon. Any failure to so record or any error in doing so will not, however, limit or otherwise affect the obligation of Borrower hereunder to pay any amount owing with respect to the Obligations. If any conflict exists between the accounts and records maintained by any Lender and the accounts and records of Administrative Agent in respect of such matters, the accounts and records of Administrative Agent will control in the absence of manifest error. Upon the request of any Lender or the Swing Line Lender made through Administrative Agent, Borrower will execute and deliver to such Lending Party (through Administrative Agent) a Note, which Note will be, for Revolving Credit Loans, a "Revolving Credit Note" substantially in the form attached as Exhibit E-1, for Swing Line Loans, a "Swing Line Note" substantially in the form attached as Exhibit E-2, and for Initial Term Loans, a "Term Loan Note" substantially in the form attached as Exhibit E-3, each of which will evidence such Lending Parties' Loans in addition to such accounts or records. Each Lending Party may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) Evidence of Certain Participations. In addition to the accounts and records referred to in Section 2.11(a), each Lender and Administrative Agent will maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. If any conflict exists between the accounts and records maintained by Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of Administrative Agent will control in the absence of manifest error.

Section 2.12 Payments Generally; Right of Administrative Agent to Make Deductions Automatically.

(a) Payments Generally.

(i) All payments to be made by Borrower will be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by Borrower hereunder will be made to Administrative Agent, for the account of the respective Lender to which such payment is owed, at Administrative Agent's Office in Dollars and in immediately available funds not later than 12:00 noon on the date specified herein. Administrative Agent will promptly distribute to each Lender its Percentage Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lending Party's Lending Office. All payments received by Administrative Agent after 12:00 noon will be deemed received on the next succeeding Business Day and any applicable interest or fee will continue to accrue. If any payment to be made by Borrower will come due on a day other than a Business Day, payment will be made on the next following Business Day, and such extension of time will be reflected in computing interest or fees, as the case may be.

(ii) Borrower hereby authorizes Administrative Agent (A) to deduct automatically all principal, interest or fees when due hereunder or under any Note from any account of Borrower maintained with Administrative Agent and (B) if and to the extent any payment of principal, interest or fees under this Agreement or any Note is not made when due to deduct any such amount from any or all of the accounts of Borrower maintained at Administrative Agent. Administrative Agent agrees to provide written notice to Borrower of any automatic deduction made pursuant to this Section 2.12(a)(ii)

showing in reasonable detail the amounts of such deduction. Each Lender agrees to reimburse Borrower based on its applicable Percentage Share for any amounts deducted from such accounts in excess of amount due hereunder and under any other Loan Documents.

(b) Fundings by the Lenders, Payments by Borrower and Presumptions by Administrative Agent.

(i) Unless Administrative Agent will have received notice from a Lender (A) in the case of Base Rate Loans (including Swing Line Loans), two hours prior to the proposed time of such Borrowing, and (B) otherwise prior to the proposed date of any Borrowing that such Lender will not make available to Administrative Agent such Lender's share of such Borrowing, Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to Administrative Agent, then the applicable Lender, on the one hand, and Borrower, on the other hand, each severally agrees to pay to Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from the date such amount is made available to Borrower to the date of payment to Administrative Agent, at (1) in the case of a payment to be made by such Lender, the greater of the Overnight Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by Administrative Agent in connection with the foregoing; and (2) in the case of a payment to be made by Borrower, the interest rate applicable to Revolving Credit Loans that are Base Rate Loans. If Borrower and such Lender will pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent will promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable Borrowing to Administrative Agent, then the amount so paid will constitute such Lender's Loan included in such Borrowing. Any payment by Borrower will be without prejudice to any claim Borrower may have against a Lender that will have failed to make such payment to Administrative Agent.

(ii) Unless Administrative Agent will have received notice from Borrower prior to the date on which any payment is due hereunder to Administrative Agent for the account of the Lenders or L/C Issuer that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or L/C Issuer, as the case may be, the amount due. In such event, if Borrower has not in fact made such payment, then the Lenders and L/C Issuer, as the case may be, each severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to such Lenders or L/C Issuer, as the case may be, in immediately available funds with interest thereon, for each day from the date such amount is distributed to it to the date of payment to Administrative Agent, at the greater of the Overnight Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of Administrative Agent to any Lender or Borrower with respect to any amount owing under this Section 2.12(b) will be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. Subject to Section 2.03 and Section 2.04, if any Lender makes available to Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II and such funds are not made available to Borrower by Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, Administrative Agent will return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of the Lenders are Several and not Joint. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and Swing Line Loans and to

make payments under Section 3.01(c)(ii), Section 10.04(c) and Section 9.13 are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder will not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender will be responsible for the failure of any other Lender to so make its Loan, purchase its participation or to make its payment under Section 2.12(b)(ii), Section 10.04(c) or Section 10.05.

(e) Funding Sources. Nothing herein will be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

Section 2.13 Sharing of Payments. If any Lender will, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it, or the participations in Letter of Credit Obligations or in Swing Line Loans held by it, resulting in such Lender receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon greater than its Percentage Share (or other applicable share as provided herein) thereof as provided herein, then the Lender receiving such greater proportion will: (a) notify Administrative Agent of such fact; and (b) purchase (for Cash at face value) participations in the Loans and subparticipations in Letter of Credit Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as will be equitable, so that the benefit of all such payments will be shared by Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that: (i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations will be rescinded and the purchase price restored to the extent of such recovery, without interest; and (ii) the provisions of this Section 2.13 will not be construed to apply to (A) any payment made by or on behalf of Borrower pursuant to and in accordance with the express terms of this Agreement, including the application of funds arising from the existence of a Defaulting Lender, (B) the application of Cash Collateral provided for in Section 2.15 or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in Letter of Credit Obligations or Swing Line Loans to any assignee or participant.

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

Section 2.14 Increase in Aggregate Commitments.

(a) Increase in Aggregate Commitments Generally. Subject to the further conditions set forth in Section 2.14(c), upon notice to Administrative Agent, at any time after the Closing Date but not less than thirty (30) days prior to the later of the Revolving Credit Maturity Date or the Initial Term Loan Maturity Date, Borrower may add Incremental Term Loan Commitments or Additional Revolving Credit Commitments from one or more Persons (which may include the then-existing Lenders; provided that no Lender shall be obligated to provide such Incremental Term Loan Commitments or Additional Revolving Credit Commitments and may elect or decline in its sole discretion to provide any such Incremental Term Loan Commitments or Additional Revolving Credit Commitments), it being understood that if such Incremental Term Loan Commitments or Additional Revolving Credit Commitments is to be provided by a Person that is not already a Lender, the Administrative Agent (to the extent such consent would be required for an assignment of such Loans or Commitments pursuant to Section 10.06, such consent not to be unreasonably withheld, delayed or conditioned) and, in the case of Incremental Revolving Credit Commitments, the L/C Issuer shall have consented to such Person being a Lender hereunder to the extent

such consent would be required pursuant to Section 10.06 in the event of an assignment to such Person (such consent not to be unreasonably withheld, conditioned or delayed); provided that (i) the aggregate initial amount of such Additional Revolving Credit Commitments and/or Incremental Term Loan Commitments will not exceed the Incremental Cap at such time; and (ii) any such addition will be in an aggregate amount of $25,000,000 or any whole multiple of $5,000,000 in excess thereof; provided that such amount may be less than $5,000,000 if such amount represents all remaining availability under the then-existing Incremental Cap.

(b) Certain Provisions Regarding Increase of Aggregate Commitments. If any Additional Revolving Credit Commitments or Incremental Term Loan Commitments are added in accordance with this Section 2.14, Administrative Agent and Borrower will determine the effective date (the "Additional Commitments Effective Date") of such addition and the amount of, and the Persons who will provide, such Additional Revolving Credit Commitments or Incremental Term Loan Commitments, as applicable.

(c) Conditions Precedent to the Effectiveness of each Increase of Aggregate Commitments. The effectiveness of any requested Additional Revolving Credit Commitments or Incremental Term Loan Commitments as of the applicable designated Additional Commitments Effective Date will, in each case, be subject to the satisfaction of each of the following conditions precedent:

(i) the representations and warranties contained in Article V and the other Loan Documents (including all documents required pursuant to Section 2.14(d)) will be true and correct in all material respects (except that such materiality qualifier will not be applicable to any portion of any representation or warranty that is already qualified or modified by materiality in the text thereof) on and as of the Additional Commitments Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they will have been true and correct in all material respects (except that such materiality qualifier will not be applicable to any portion of any representation or warranty that is already qualified or modified by materiality in the text thereof) as of such earlier date, and except that, for purposes of this Section 2.14(c), the representations and warranties contained in Section 5.12 will be deemed to refer to the financial statements most recently furnished pursuant to Section 6.01(a) and Section 6.01(b), as the case may be (provided, however, that if and to the extent such requested Additional Revolving Credit Commitments or Incremental Term Loan Commitments have been requested for the purpose of funding, in whole or in part, the Acquisition Consideration of a Limited Condition Transaction (including any portion which repays, redeems or otherwise discharges any Indebtedness of the Target or any of its Subsidiaries or other Affiliates being acquired as part of such Limited Condition Transaction) and/or fees and expenses incurred by Borrower or its Subsidiaries in connection therewith, the representations and warranties required to be true and correct as set forth in this clause (i) shall be limited to the Specified Representations);

(ii) no Default or Event of Default will exist immediately before or immediately after giving effect to such addition (provided, however, that if and to the extent such requested Additional Revolving Credit Commitments or Incremental Term Loan Commitments have been requested, in whole or in part, for the purpose of funding, in whole or in part, the Acquisition Consideration of a Limited Condition Transaction (including any portion which repays, redeems or otherwise discharges any Indebtedness of the Target or any of its Subsidiaries or other Affiliates being acquired as part of such Limited Condition Transaction) and/or fees and expenses incurred by Borrower or its Subsidiaries in connection therewith, the condition precedent of this clause (ii) will be limited solely to Specified Events of Default);

(iii) as of the date of the making of any Additional Revolving Credit Loan or Incremental Term Loan (based on the Consolidated financial statements of Borrower and its Subsidiaries

for the most recent Test Period), Borrower will be in compliance with the financial covenants set forth in Section 7.14 after giving pro forma effect to the funding in full of the requested Additional Revolving Credit Loans or Incremental Term Loans, as applicable, and other appropriate pro forma adjustment events, including any Acquisitions or Dispositions after the end of the relevant Test Period but prior to or substantially concurrently with the Borrowing of such Additional Revolving Credit Commitment or Incremental Term Loan Commitment, as the case may be (provided, however, that if and to the extent such requested Additional Revolving Credit Commitments or Incremental Term Loan Commitments have been requested, in whole or part, for the purpose of funding, in whole or in part, the Acquisition Consideration of a Limited Condition Transaction (including any portion which repays, redeems or otherwise discharges any Indebtedness of the Target or any of its Subsidiaries or other Affiliates being acquired as part of such Limited Condition Transaction) and/or fees and expenses incurred by Borrower or its Subsidiaries in connection therewith, the condition precedent of this clause (iii) requiring that Borrower be in compliance with the financial covenants set forth in Section 7.14 after giving pro forma effect to the making of such Additional Revolving Credit Loans or Incremental Term Loans as of the date of making such Loans will instead be tested as of the LCT Test Date for such Limited Condition Transaction);

(iv) Borrower, Administrative Agent and Lending Parties (including any new Lending Parties being added in connection with such addition) will have entered into all documents required pursuant to Section 2.14(d), and Borrower will have complied with all of the conditions precedent to the effectiveness of such addition as provided in such documents (including any requirement to pay fees and expenses to any or all of Administrative Agent, the Arrangers and the Lending Parties, including any new Lending Parties);

(v) all fees and expenses owing in respect of such increase to Administrative Agent and the Lenders (other than any Defaulting Lender) that have been invoiced at least three (3) Business Days prior to the applicable Additional Commitments Effective Date shall have been paid (or shall be paid substantially concurrently therewith); and

(vi) Borrower will have delivered to Administrative Agent a certificate dated as of the Additional Commitments Effective Date signed by a Responsible Officer of Borrower, certifying as to the truth, accuracy and correctness of the matters set forth in the immediately preceding clauses (i), (ii) and (iii).

On each Additional Commitments Effective Date, each applicable Lender, Eligible Assignee or other Person who is providing an Additional Revolving Credit Commitment or an Incremental Term Loan Commitment: (I) in the case of any Additional Revolving Credit Commitment, will become a "Revolving Credit Lender" for all purposes of this Agreement and the other Loan Documents; and (II) in the case of any Incremental Term Loan Commitment, will make an Incremental Term Loan to Borrower in a principal amount equal to such Incremental Term Loan Commitment. Any Additional Revolving Credit Loan will be a "Revolving Credit Loan" for all purposes of this Agreement and the other Loan Documents. In furtherance of the foregoing, on any Additional Commitments Effective Date on which Additional Revolving Credit Commitments are made, subject to the satisfaction of the other terms and conditions contained in this Section 2.14, (x) each of the existing Revolving Credit Lenders will assign to each Person providing an Additional Revolving Credit Commitment, and each such Person will purchase from each of the existing Revolving Credit Lenders, in an amount equal to the Outstanding Amount thereof (together with accrued but unpaid interest thereon), such interests in the Revolving Credit Loans outstanding on such date as will be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Credit Loans will be held by existing Revolving Credit Lenders and the Person making the Additional Revolving Credit Commitments ratably in accordance with their Revolving Credit Percentage Shares after giving effect to the addition of such Additional Revolving Credit Commitments to the existing Revolving Credit Commitments; and (y) each Person making an Additional Revolving Credit Commitment

will be deemed for all purposes to have made a Revolving Credit Commitment and each Additional Revolving Credit Loan will be deemed, for all purposes, a Revolving Credit Loan.

(d) Terms and Documentation. The terms of and documentation entered into in respect of any Additional Revolving Credit Commitments or any Incremental Term Loan Commitments provided in each case pursuant to this Section 2.14 (collectively, the "Additional Commitment Documentation") will be (x) in the case of any Additional Revolving Credit Commitments, consistent with the existing Revolving Credit Commitments and (y) in the case of any Incremental Term Loan Commitments, including as to the interest rate, fees, premium, or other pricing terms, required prepayments and participation in prepayments, amortization schedule and final maturity thereof or applicable thereto, as agreed to between Borrower and the Lenders or additional lenders providing such Incremental Term Loans; provided that:

(i) if the Additional Revolving Credit Commitments contain any increase in any Applicable Margin or other interest rate or any increase in the Revolving Credit Facility Fee or any other fee as compared to the existing Revolving Credit Commitments (taking into account any prior Additional Revolving Credit Commitments), the corresponding Applicable Margin or other interest rate or the corresponding Revolving Credit Facility Fee or other fee with respect to the existing Revolving Credit Commitments will be automatically increased to equal the increased Applicable Margin or other interest rate or the increased Revolving Credit Facility Fee or other fee, as the case may be, applicable to the Additional Revolving Credit Commitments;

(ii) in the case of each Incremental Term Loan:

(A) the maturity of any such Incremental Term Loan shall not be earlier than the latest scheduled maturity date of the Loans and Commitments in effect as of the Additional Commitments Effective Date and the Weighted Average Life to Maturity of any such Incremental Term Loan shall not be shorter than the remaining Weighted Average Life to Maturity of the latest maturing Initial Term Loans; provided that the restrictions of this clause (A) shall not apply to the extent such Incremental Term Loan constitutes a customary bridge or similar facility that is to be automatically converted or exchanged into notes or other permitted Indebtedness that otherwise would satisfy this clause (A) so long as such conversion or exchange is subject only to conditions customary for similar conversions and exchanges;

(B) any mandatory prepayment (other than scheduled amortization payments) of each Incremental Term Loan shall be made on a pro rata basis with all then existing Initial Term Loans and Incremental Term Loans, except that the Borrower and the Lenders or additional lenders providing such Incremental Term Loan may, in their sole discretion, elect to prepay or receive, as applicable, any prepayments on a less than pro rata basis (but not on a greater than pro rata basis); and

(C) except as provided above, all other terms and conditions applicable to any Incremental Term Loan shall be consistent with the terms and conditions applicable to the Initial Term Loan or (x) will, at the option of Borrower (1) reflect market terms and conditions (taken as a whole) at the time of incurrence or issuance (as determined by the Borrower in good faith) or (2) not be materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms applicable to the Initial Term Loan (except

for covenants or other provisions applicable only to periods after the latest final scheduled maturity date of the Initial Term Loan) or (y) if neither of the requirements in clause (x) are satisfied, will be reasonably satisfactory to the Administrative Agent and the Borrower; and

(iii) the Additional Revolving Credit Loans and Incremental Term Loans will (1) rank equal in right of payment with the other Obligations and (2) only be guaranteed by the Loan Parties (or Persons that will become Loan Parties in connection with such transaction). No consent of any Lender or the Administrative Agent shall be required to effectuate any Additional Commitment Documentation, other than (A) the consent of each Lender providing any Additional Revolving Credit Commitments or Incremental Term Loans, (B) in the case of Additional Revolving Credit Commitments, the consent of the L/C Issuer and the Swing Line Lender to the extent such consent would be required pursuant to Section 10.06 in the event of an assignment to any Lender providing such Additional Revolving Credit Commitments (such consent not to be unreasonably withheld, conditioned or delayed) and (C) the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), (1) to the extent such consent would be required pursuant to Section 10.06 in the event of an assignment to any Lender providing the applicable Additional Revolving Credit Commitments or Incremental Term Loans and (2) to the extent directly adversely amending or modifying the rights or duties of the Administrative Agent beyond those of the type already required to be performed under the Loan Documents.

Any Additional Revolving Credit Commitments or Incremental Term Loans, as applicable, made or provided pursuant to this Section 2.14 will be evidenced by one or more entries in the Register maintained by Administrative Agent in accordance with the provisions set forth in Section 10.06(c).

Section 2.15 Cash Collateral.

(a) Certain Credit Support Events.

(i) Upon the request of Administrative Agent or L/C Issuer, if, as of the Letter of Credit Expiration Date, any Letter of Credit Obligation for any reason remains outstanding, Borrower will immediately Cash Collateralize the Outstanding Amount of all Letter of Credit Obligations.

(ii) At any time that there exists a Defaulting Lender, within one Business Day following the written request of Administrative Agent or L/C Issuer (with a copy to Administrative Agent) Borrower will Cash Collateralize L/C Issuer's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 3.07(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than 100% of such Fronting Exposure.

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) will be maintained in blocked, non-interest bearing deposit accounts at Wells Fargo. Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender hereby grants to (and subjects to the control of) Administrative Agent, for the benefit of L/C Issuer, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of Letter of Credit Obligations, to be applied pursuant to Section 2.15(c). If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent and L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral

in an amount sufficient to eliminate such deficiency after giving effect to any Cash Collateral provided by the Defaulting Lender.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Section 3.07 in respect of Letters of Credit will be held and applied to the satisfaction of the applicable Defaulting Lender's obligations to fund participations in respect of Letter of Credit Obligations (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate excess portion thereof in the case of clause (ii) below) provided to reduce L/C Issuer's Fronting Exposure will no longer be required to be held as Cash Collateral pursuant to this Section 2.15 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender) or (ii) the determination by Administrative Agent and L/C Issuer that there exists excess Cash Collateral; provided, however, (A) that Cash Collateral furnished by or on behalf of a Loan Party will not be released during the continuance of a Default or Event of Default (and following application as provided in this Section 2.15 may be otherwise applied in accordance with Section 8.04); and (B) the Person providing Cash Collateral and L/C Issuer or Swing Line Lender, as applicable, may agree that Cash Collateral will not be released but instead held to support future anticipated Fronting Exposure or other obligations.

Section 2.16 Extension of Maturity Dates.

(a) Borrower may, by written notice to Administrative Agent from time to time, request an extension (each, an "Extension") of the maturity date of any Class of Loans and Commitments to the extended maturity date specified in such notice. Such notice shall (i) set forth the amount of the applicable Class of Revolving Credit Commitments and/or Term Loans that will be subject to the Extension (which shall be in a minimum amount of $5,000,000 and in minimum increments of $1,000,000), (ii) set forth the date on which such Extension is requested to become effective (which shall be not less than ten (10) Business Days nor more than sixty (60) days after the date of such Extension notice (or such longer or shorter periods as Administrative Agent shall agree in its sole discretion)) and (iii) identify the relevant Class of Revolving Credit Commitments and/or Term Loans to which such Extension relates. Each Lender of the applicable Class shall be offered (an "Extension Offer") an opportunity to participate in such Extension on a pro rata basis and on the same terms and conditions as each other Lender of such Class pursuant to procedures established by, or reasonably acceptable to, Administrative Agent and Borrower. If the aggregate principal amount of Revolving Credit Commitments or Term Loans in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Revolving Credit Commitments or Term Loans, as applicable, subject to the Extension Offer as set forth in the Extension notice, then the Revolving Credit Commitments or Term Loans, as applicable, of Lenders of the applicable Class shall be extended ratably up to such maximum amount based on the respective principal amounts with respect to which such Lenders have accepted such Extension Offer.

(b) The following shall be conditions precedent to the effectiveness of any Extension: (i) no Default or Event of Default shall have occurred and be continuing immediately prior to and immediately after giving effect to such Extension, (ii) the representations and warranties set forth in Article V and in each other Loan Document shall be deemed to be made and shall be true and correct in all material respects on and as of the effective date of such Extension (except to the extent that such representations and warranties specifically refer to an earlier date, in which case they will have been true and correct in all material respects as of such earlier date), (iii) the L/C Issuer and the Swing Line Lender shall have consented to any Extension of the Revolving Credit Commitments, to the extent that such Extension provides for the issuance or extension of Letters of Credit or making of Swing Line Loans at any

time during the extended period and (iv) the terms of such Extended Revolving Credit Commitments and Extended Term Loans shall comply with paragraph (c) of this Section.

(c) The terms of each Extension shall be determined by Borrower and the applicable extending Lenders and set forth in an Extension Amendment; provided that (i) the final maturity date of any Extended Revolving Credit Commitment or Extended Term Loan shall be no earlier than the Revolving Credit Maturity Date, the Initial Term Loan Maturity Date or the Incremental Term Loan Maturity Date, respectively, (ii)(A) there shall be no scheduled amortization of the loans or reductions of commitments under any Extended Revolving Credit Commitments and (B) the Weighted Average Life to Maturity of the Extended Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of the existing Term Loans, (iii) the Extended Revolving Credit Loans and the Extended Term Loans will rank pari passu in right of payment and with respect to security with the existing Revolving Credit Loans and the existing Term Loans and the borrower and guarantors of the Extended Revolving Credit Commitments or Extended Term Loans, as applicable, shall be the same as Borrower and Guarantors with respect to the existing Revolving Credit Loans or Term Loans, as applicable, (iv) the interest rate margin, rate floors, fees, original issue discount and premium applicable to any Extended Revolving Credit Commitment (and the Extended Revolving Credit Loans thereunder) and Extended Term Loans shall be determined by Borrower and the applicable extending Lenders, (v)(A) the Extended Term Loans may participate on a pro rata or less than pro rata (but not greater than pro rata) basis in mandatory prepayments with the other Term Loans and (B) borrowing and prepayment of Extended Revolving Credit Loans, or reductions of Extended Revolving Credit Commitments, and participation in Letters of Credit and Swing Line Loans, shall be on a pro rata basis with the other Revolving Credit Loans or Revolving Credit Commitments (other than upon the maturity of the non-extended Revolving Credit Loans and Revolving Credit Commitments) and (vi) the terms of the Extended Revolving Credit Commitments or Extended Term Loans, as applicable, shall be substantially identical to the terms set forth herein (except as set forth in clauses (i) through (v) above).

(d) In connection with any Extension, Borrower, Administrative Agent and each applicable extending Lender shall execute and deliver to Administrative Agent an Extension Amendment and such other documentation as Administrative Agent shall reasonably specify to evidence the Extension. Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension. Any Extension Amendment may, without the consent of any other Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of Administrative Agent and Borrower, to implement the terms of any such Extension, including any amendments necessary to establish Extended Revolving Credit Commitments or Extended Term Loans as a new Class or tranche of Revolving Credit Commitments or Term Loans, as applicable, and such other technical amendments as may be necessary or appropriate in the reasonable opinion of Administrative Agent and Borrower in connection with the establishment of such new Class or tranche (including to preserve the pro rata treatment of the extended and non-extended Classes or tranches and to provide for the reallocation of Revolving Credit Exposure upon the expiration or termination of the commitments under any Class or tranche), in each case on terms consistent with this section.

(e) Notwithstanding the terms of Sections 2.14 and 2.16, in no event shall there be more than (i) two (2) tranches of revolving facilities in the aggregate in effect at any time (including the Revolving Credit Commitments and any Extended Revolving Credit Commitments) and (ii) four (4) tranches of term loans (including the Initial Term Loan, any Extended Term Loans and any Incremental Term Loans), in each case under this Agreement.

ARTICLE III
TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document will be made without deduction or withholding for any 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 will be entitled to make such deduction or withholding and will timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party will be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of Section 3.01(a), the Loan Parties will timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification.

(i) Indemnification by Each Loan Party. The Loan Parties will jointly and severally indemnify each Recipient, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable details the amount or amounts of such payment or liability delivered to Borrower by a Lending Party (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lending Party, will be conclusive absent manifest error.

(ii) Indemnification by the Lending Parties. Each Lending Party will severally indemnify Administrative Agent, within ten (10) days after written demand therefor, for (i) any Indemnified Taxes attributable to such Lending Party (but only to the extent that any Loan Party has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lending Party's failure to comply with the provisions of Section 10.06(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lending Party, in each case, that are payable or paid by Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable details the amount or amounts of such payment or liability delivered to any Lending Party by Administrative Agent shall be conclusive absent manifest error. Each Lending Party hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lending Party under any Loan Document or otherwise payable by Administrative Agent to the Lending Party from any other source against any amount due to Administrative Agent under this Section 3.01(e).

(d) Delay in Making Demand for Indemnity. Failure or delay on the part of any Recipient to demand indemnity pursuant to the provisions of Section 3.01(c) will not constitute a waiver of such Recipient's right to demand such indemnification; provided that no Loan Party will be required to indemnify a Recipient pursuant to the provisions of Section 3.01(c) for any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, to the extent (i) such Indemnified Taxes were actually paid by such Recipient to the applicable Governmental Authority (or other Person entitled thereto) or (ii) such Recipient received any payment from which such Indemnified Taxes were actually withheld or deducted, in each case more than 180 days prior to the date that such Recipient delivers to Borrower its demand for indemnification of the amount or amounts so paid, withheld or deducted, as the case may be.

(e) Evidence of Payments. If and to the extent requested by Administrative Agent, in its Reasonable Discretion, as soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority as provided in this Section 3.01, such Loan Party will deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment satisfactory to Administrative Agent, in its Reasonable Discretion.

(f) Status of Lenders.

(i) Any Lending Party that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document will deliver to Borrower and Administrative Agent, at the time or times prescribed by law and at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lending Party, if reasonably requested by Borrower or Administrative Agent, will deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lending Party is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(f)(ii)(A), (B) and (D)) will not be required if in the Lending Party's reasonable judgment such completion, execution or submission would subject such Lending Party to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lending Party.

(ii) Without limiting the generality of the foregoing,

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

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

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

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "ten percent shareholder" of Borrower within the meaning of Section 871(h)(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) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E; or

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

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

(D) if a payment made to a Lending Party under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lending Party will deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lending Party has complied with such Lending Party's obligations under FATCA or to determine the amount to deduct and withhold from such payment; and

(E) For purposes of determining withholding Taxes imposed under FATCA, Borrower and Administrative Agent shall treat (and the Lenders hereby authorize Administrative

Agent to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

Each Lending Party agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it will update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), it will pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, will repay to such indemnified party the amount paid over pursuant to this Section 3.01(g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 3.01(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 3.01(g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section 3.01(g) will 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.

Section 3.02 Illegality. If, in any applicable jurisdiction, Administrative Agent, any L/C Issuer or any Lender determines that any applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for Administrative Agent, any L/C Issuer or any Lender to (a) perform any of its obligations hereunder or under any other Loan Document, (b) to fund or maintain its participation in any Loan or (c) issue, make, maintain, fund or charge interest or fees with respect to any Credit Extension, such Person shall promptly notify Administrative Agent, then, upon Administrative Agent notifying Borrower, and until such notice by such Person is revoked, any obligation of such Person to issue, make, maintain, fund or charge interest or fees with respect to any such Credit Extension shall be suspended, and to the extent required by applicable Law, cancelled. Upon receipt of such notice, the Loan Parties shall (i) repay that Person's participation in the Loans or other applicable Obligations on the last day of the Interest Period for each Loan or other Obligation occurring after Administrative Agent has notified Borrower or, if earlier, the date specified by such Person in the notice delivered to Administrative Agent (being no earlier than the last day of any applicable grace period permitted by applicable Law) and (ii) take all reasonable actions requested by such Person to mitigate or avoid such illegality.

Section 3.03 Inability to Determine Rates.

(a) Circumstances Affecting Term SOFR Availability. Subject to Section 3.03(c), in connection with any Term SOFR Loan, a request therefor, a conversion to or a continuation thereof or otherwise, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that if Adjusted Term SOFR is utilized in any calculations hereunder or under any other Loan Document with respect to any Obligations, interest, fees, commissions or other amounts, reasonable and adequate means do not exist for ascertaining Adjusted Term SOFR for the applicable Interest Period with respect to a proposed Term SOFR Loan on or prior to the first day of such Interest Period, (ii) [reserved], (iii) [reserved], or (iv) the Required Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that if Adjusted Term SOFR is utilized

in any calculations hereunder or under any other Loan Document with respect to any Obligations, interest, fees, commissions or other amounts, Adjusted Term SOFR does not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans during the applicable Interest Period and the Required Lenders have provided notice of such determination to the Administrative Agent, then Administrative Agent shall promptly give notice thereof to Borrower and each applicable Lender. Upon notice thereof by Administrative Agent to Borrower, (1) any obligation of the Lenders to make Term SOFR Loans, and any right of Borrower to convert any Loan to or continue any Loan as a Term SOFR Loan, shall be suspended (to the extent of the affected Term SOFR Loans or the affected Interest Periods) until Administrative Agent (with respect to clause (iv), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (I) Borrower may revoke any pending request for a borrowing of, conversion to or continuation of Term SOFR Loans (to the extent of the affected Interest Periods) or, failing that, (II) in the case of any request for a borrowing of an affected Term SOFR Loan, Borrower shall be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans in the amount specified therein. Any outstanding affected Term SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

(b) Laws Affecting Term SOFR Availability. If, after the date hereof, the introduction of, or any change in, any applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any of the Lenders (or any of their respective Lending Offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for any of the Lenders (or any of their respective Lending Offices) to honor its obligations hereunder to make or maintain any Term SOFR Loan, or to determine or charge interest based upon Term SOFR, such Lender shall promptly give notice thereof to Administrative Agent and Administrative Agent shall promptly give notice to Borrower and the other Lenders (an "Illegality Notice"). Thereafter, until each affected Lender notifies Administrative Agent and Administrative Agent notifies Borrower that the circumstances giving rise to such determination no longer exist, (i) any obligation of the Lenders to make Term SOFR Loans and any right of Borrower to convert any Loan to a Term SOFR Loan or continue any Loan as a Term SOFR Loan shall be suspended and (ii) if necessary to avoid such illegality, Administrative Agent shall compute the Base Rate without reference to clause (c) of the definition of "Base Rate". Upon receipt of an Illegality Notice, the Borrower shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to Administrative Agent), prepay or, if applicable, convert all Term SOFR Loans to Base Rate Loans (if necessary to avoid such illegality, the Administrative Agent shall compute the Base Rate without reference to clause (c) of the definition of "Base Rate"), on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such Term SOFR Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such Term SOFR Loans to such day. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

(c) Benchmark Replacement Setting.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event with respect to any Benchmark, Administrative Agent and Borrower may amend this Agreement to replace such Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after Administrative Agent has posted such proposed amendment to Borrower and all affected Lenders so long as Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising

Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 3.03(c)(i) will occur prior to the applicable Benchmark Transition Start Date.

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

(iii) Notices; Standards for Decisions and Determinations. Administrative Agent will promptly notify Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Administrative Agent will promptly notify Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 3.03(c)(iv) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.03(c), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 3.03(c).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if any then-current Benchmark is a term rate (including any Term SOFR) and either (x) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Administrative Agent in its Reasonable Discretion or (y) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to the foregoing clause (A) above either (I) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (II) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (A) Borrower may revoke any pending request for a borrowing of, conversion to or continuation of Term SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans in the amount specified therein, and (B) any outstanding affected Term SOFR Loans, if applicable, will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.03. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the

Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

(d) [Reserved].

Section 3.04 Increased Costs.

(a) Increased Costs Generally. If any Change in Law will:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lending Party;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or L/C Issuer any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing will be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the Term SOFR Reference Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lending Party hereunder (whether of principal, interest or any other amount), then, upon request of such applicable Lending Party, Borrower will pay to such Lending Party such additional amount or amounts as will compensate such Lending Party for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lending Party determines that any Change in Law affecting such Lending Party or the Lending Office of such Lending Party or such Lending Party's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lending Party's capital or on the capital of such Lending Party's holding company, if any, as a consequence of this Agreement, the Commitments of any such Lender or the Loans made by, or participations in Letters of Credit held by, any such Lender, or the Letters of Credit issued by L/C Issuer, to a level below that which such Lending Party or such Lending Party's holding company could have achieved but for such Change in Law (taking into consideration such Lending Party's policies and the policies of such Lending Party's holding company with respect to capital adequacy), then from time to time Borrower will pay to such Lending Party such additional amount or amounts as will compensate such Lending Party or such Lending Party's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. L/C Issuer or the Lender seeking payment of any amount under this Section 3.04 will use commercially reasonable efforts to deliver to Borrower a certificate setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or L/C Issuer or its holding company, as the case may be, as specified in Sections 3.04(a) and 3.04(b), as well as the basis for determining such amount or amounts, which certificate will be conclusive absent manifest error; provided that the failure to deliver a certificate hereunder will not relieve Borrower from any liability that it may have under this Section 3.04. Borrower will pay such Lender or L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 will not constitute a waiver of such Lender's or L/C Issuer's right to demand such compensation; provided that Borrower will not be required to compensate a Lender or L/C Issuer pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender or L/C Issuer, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to in this subsection (d) will be extended to include the period of retroactive effect thereof).

Section 3.05 Compensation for Losses. Upon written demand of any Lender (with a copy to Administrative Agent) from time to time, Borrower will promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it (including any loss, cost or expense arising from the liquidation or redeployment of funds) attributable to or resulting from (a) any failure by Borrower to make any payment when due of any amount due hereunder in connection with any Term SOFR Loan, (b) any failure of the Borrower to borrow or continue any Term SOFR Loan or convert to a Term SOFR Loan on the date specified by Borrower therefor, including in any Loan Notice, (c) any failure of Borrower to prepay any Term SOFR Loan or on a dated specified by Borrower therefor, (d) any payment, prepayment or conversion of any Term SOFR Loan on a date other than the last day of the Interest Period therefor (including as a result of an Event of Default) or (e) the assignment of any Term SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by Borrower pursuant to Section 3.08(a). A certificate of such Lender setting forth the basis for determining such amount or amounts necessary to compensate such Lender shall be forwarded to Borrower through Administrative Agent and shall be conclusively presumed to be correct save for manifest error. All of the obligations of the Loan Parties under this Section 3.05 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 3.06 Mitigation Obligations; Additional L/C Issuer. Notwithstanding anything to the contrary contained in Section 10.01:

(a) Mitigation by Lending Parties. If any Lending Party requests compensation under Section 3.04, or Borrower is required to pay additional amounts to any Lending Party or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lending Party gives a notice pursuant to Section 3.02, then such Lending Party, at the request of Borrower, will use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lending Party, such designation or assignment: (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or Section 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable; and (ii) in each case, would not subject such Lending Party to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lending Party as reasonably determined by such Lending Party. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lending Party in connection with any such designation or assignment.

(b) Additional L/C Issuer. If L/C Issuer may not issue Letters of Credit as a result of the limitations set forth in Section 2.03(a)(iv)(A), then Borrower may, if no Event of Default exists and with the prior written consent of Administrative Agent (which consent will not be unreasonably withheld or delayed), (i) request one of the other Lenders (with such other Lender's consent) to issue Letters of Credit or (ii) designate a supplemental bank or financial institution, which is an Eligible Assignee and otherwise satisfactory to Administrative Agent, to issue Letters of Credit and become an additional "L/C Issuer" hereunder.

Section 3.07 Defaulting Lenders.

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

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement will be restricted as set forth in Section 10.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to Administrative Agent by that Defaulting Lender pursuant to Section 10.08), will be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to L/C Issuer or Swing Line Lender hereunder; *third*, to Cash Collateralize L/C Issuer's Fronting Exposure with respect to that Defaulting Lender in accordance with Section 2.15; *fourth*, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *fifth*, if so determined by Administrative Agent and Borrower, to be held in a non-interest bearing deposit account and released pro rata in order to (1) satisfy that Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (2) Cash Collateralize L/C Issuer's future Fronting Exposure with respect to that Defaulting Lender with respect to future Letters of Credit issued under this Agreement in accordance with Section 2.15; *sixth*, to the payment of any amounts owing to the Lenders, L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, L/C Issuer or Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (1) such payment is a payment of the principal amount of any Loans or Letter of Credit Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (2) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment will be applied solely to pay the Loans of, and Letter of Credit Borrowings owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or Letter of Credit Borrowings owed to, that Defaulting Lender until such time as all Loans and funded and unfunded participations in Letter of Credit Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Revolving Credit Commitments under the Revolving Credit Facility without giving effect to Section 3.07(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 3.07(a)(ii) will be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender will be entitled to receive any Revolving Credit Facility Fee pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting

Lender (and Borrower will not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) A Defaulting Lender will be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Credit Percentage Share of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.15.

(C) With respect to any Revolving Credit Facility Fee or Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to the preceding clauses (A) or (B), Borrower will (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Obligations or Swing Line Loans that has been reallocated to such Non-Defaulting Lender pursuant to Section 3.07(a)(iv), (2) pay to L/C Issuer and the Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to L/C Issuer's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of that Defaulting Lender's participation in Letter of Credit Obligations and Swing Line Loans will be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Credit Percentages Shares (calculated without regard to that Defaulting Lender's Revolving Credit Commitment) but only to the extent that (A) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless Borrower will have otherwise notified Administrative Agent at such time, Borrower will be deemed to have represented and warranted that such conditions are satisfied at such time), and (B) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. No reallocation hereunder will constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in Section 3.07(a)(iv) cannot or can only partially be effected, Borrower will, without prejudice to any right or remedy available to it hereunder or under applicable Law, *first*, prepay all Swing Line Loans then outstanding in an amount equal to the Swing Line Lenders' Fronting Exposure and *second*, Cash Collateralize L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.15.

(b) Defaulting Lender Cure. If Borrower, Administrative Agent, L/C issuer and Swing Line Lender agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their applicable Percentage Share (without giving effect to Section 3.07(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swing Line Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swing Line Lender will not be required to fund any Swing Line Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swing Line Loan and (ii) L/C Issuer will not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

Section 3.08 Replacement of Lenders.

(a) Notwithstanding anything to the contrary contained in Section 10.01, Borrower may, with respect to any Specified Lender, at its sole expense and effort and upon written notice to such Lender and Administrative Agent, require such Specified Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06(b)), all of its interests, rights (except to the extent provided in Section 3.07(b)) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) Borrower will have paid to Administrative Agent the assignment fee (if any) specified in Section 10.06(b);

(ii) such Specified Lender will have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other Obligations payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee will have consented to the applicable amendment, waiver or consent;

provided; however, that a Lender will not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrower to require such assignment and delegation cease to apply.

Each party hereto agrees that (x) an assignment required pursuant to this Section 3.08(a) may be effected pursuant to an Assignment and Assumption executed by Borrower, Administrative Agent and the assignee and (y) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender or Administrative Agent; provided, further that any such documents shall be without recourse to or warranty by the parties thereto. Each Lender hereby grants to Administrative Agent a power of attorney (which power of attorney, being coupled with an interest, is irrevocable) to execute and deliver, on behalf of such Lender, as assignor, any Assignment and Assumption necessary to effectuate any assignment of such Lender's interests hereunder in circumstances contemplated by this Section 3.08(a).

(b) Certain Rights as a Lender. Upon the prepayment of all amounts owing to any Specified Lender and the termination of such Lender's Commitments pursuant to this Section 3.08, such Specified Lender will no longer constitute a "Lender" for purposes hereof; provided that such Specified Lender will continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the date on which all amounts owing to such Specified Lender were prepaid in full and the Revolving Credit Commitments of such Specified Lender were terminated pursuant to this Section 3.08.

(c) Evidence of Replacement. Promptly following the replacement of any Specified Lender in accordance with this Section 3.08, Administrative Agent will distribute an amended Schedule 2.01, which will be deemed incorporated into this Agreement, to reflect changes in the identities of Lenders and adjustments of their respective Revolving Credit Commitments or Percentage Shares, as applicable, resulting from any such removal or replacement.

Section 3.09 Survival. All obligations of the Loan Parties under this Article III will survive termination of the Aggregate Revolving Credit Commitments and repayment of all other Obligations.

ARTICLE IV
CONDITIONS PRECEDENT

Section 4.01 Conditions to the Effectiveness of this Agreement. Except for those items that are permitted to be satisfied on a post-closing basis pursuant to Section 6.15, the effectiveness of this Agreement and the agreement of the Lending Parties to provide the Credit Extensions described herein (including the initial Credit Extensions hereunder) is subject to the satisfaction of the following conditions precedent:

(a) Receipt of Certain Documents. Administrative Agent will have received the following, each of which will be, unless otherwise specified herein or otherwise required by Administrative Agent, originals (or facsimiles or portable document format versions thereof (in either such case, promptly followed by originals thereof)), each, to the extent to be executed by a Loan Party, duly executed by a Responsible Officer of such Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date), all, in the case of originals, in sufficient number as Administrative Agent will separately identify (including, if specified by Administrative Agent, for purposes of the distribution thereof to Administrative Agent, the Lending Parties and Borrower):

(i) This Agreement. This Agreement, executed by Borrower and the initial Guarantors hereunder, each Lending Party and Administrative Agent, together with all completed Schedules to this Agreement and the Disclosure Letter, executed by Borrower and the initial Guarantors, together with all completed schedules thereto;

(ii) Notes. If requested by any Lender, separate Notes executed by Borrower in favor of each such requesting Lending Party evidencing, as applicable, the Swing Line Loans, Initial Term Loans or the Revolving Credit Loans to be made by such Lender, duly executed by Borrower;

(iii) Security Documents. The Security Documents, executed by Borrower and the initial Guarantors hereunder and, where applicable, the Administrative Agent, together with all completed Schedules thereto;

(iv) Secretary's Certificates. A certificate, executed by a Responsible Officer of each Loan Party on behalf of such Loan Party, certifying, among other things, (A) that such Loan Party has the authority to execute, deliver and perform its obligations under each of the Loan Documents to which

it is a party, (B) that attached to such certificate are true, correct and complete copies of (1) the Organizational Documents of such Loan Party then in full force and effect, (2) the resolutions then in full force and effect adopted by the Board of Directors of such Loan Party authorizing and ratifying the execution, delivery and performance by such Loan Party of the Loan Documents to which it is a party and (3) a certificate of good standing or status from the secretary of state of the state under whose laws such Loan Party was incorporated or organized, as applicable, (C) the name(s) of the Responsible Officers of such Loan Party authorized to execute Loan Documents on behalf of such Loan Party, together with incumbency samples of the true signatures of such Responsible Officers, and (D) that Administrative Agent and the Lending Parties may conclusively rely on such certificate;

(v) Officer's Certificate. A certificate executed by a Responsible Officer of each Loan Party, certifying that (A) the conditions specified in Section 4.01(f), (i) and (k) to the initial Credit Extension have been satisfied on the Closing Date, (B) there have been no amendments, modifications, or waivers to the Closing Date Acquisition Agreement since the prior delivery to the Administrative Agent (or if such documents have been amended, modified or waived, attaching the applicable amendments, modifications or waivers) and (C) since April 21, 2023, there has been no development, event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect (as defined in the Closing Date Acquisition Agreement as in effect on April 21, 2023);

(vi) Opinions of the Loan Parties' Counsel. Such favorable opinion(s) of counsel to the Loan Parties, reasonably acceptable to Administrative Agent and its counsel, addressed to Administrative Agent and each Lending Party, as to such matters as are reasonably required by Administrative Agent or any Lending Party with respect to the Loan Parties and the Loan Documents; and

(vii) Existing Indebtedness. Administrative Agent will have received evidence acceptable to Administrative Agent in its Reasonable Discretion, that all amounts owing under that certain Credit Agreement, dated as of August 4, 2021, by and among, inter alia, Borrower, the other credit parties party thereto, the lenders party thereto and Capital One, National Association, as administrative agent, shall have been paid in full prior to, or substantially simultaneously with, the Closing Date Acquisition Closing Date, and the Administrative Agent shall have received customary payoff letters in connection therewith confirming that all indebtedness with respect thereto shall have been fully repaid and all commitments thereunder shall be terminated and cancelled on the Closing Date Acquisition Closing Date and all liens in connection therewith shall be terminated and released, in each case on the Closing Date Acquisition Closing Date.

(b) Personal Property Collateral.

(i) Filings and Recordings. Subject to the limitations and qualifications in the Security Documents, Administrative Agent shall have received all filings and recordations that are necessary to perfect the security interests of Administrative Agent, on behalf of the Credit Parties, in the Collateral and Administrative Agent shall have received evidence reasonably satisfactory to Administrative Agent that upon such filings and recordations such security interests constitute valid and perfected first priority Liens thereon (subject to Permitted Liens).

(ii) Pledged Collateral. Administrative Agent shall have received (A) original stock certificates or other certificates evidencing the certificated Equity Interests pledged pursuant to the Security Documents, together with an undated stock power for each such certificate duly executed in blank by the registered owner thereof and (B) each original promissory note pledged pursuant to the Security Documents together with an undated allonge for each such promissory note duly executed in blank by the holder thereof.

(iii) Lien Search. Administrative Agent shall have received the results of a Lien search (including a search as to judgments, bankruptcy, tax and intellectual property matters), in form and substance reasonably satisfactory thereto, made against the Loan Parties under the Uniform Commercial Code (or applicable judicial docket) as in effect in each jurisdiction in which filings or recordations under the applicable Uniform Commercial Code should be made to evidence or perfect security interests in all assets of such Loan Party, indicating among other things that the assets of each such Loan Party are free and clear of any Lien (except for Permitted Liens).

(iv) Intellectual Property. Administrative Agent shall have received security agreements duly executed by the applicable Loan Parties for all federally registered copyrights, copyright applications, patents, patent applications, trademarks and trademark applications included in the Collateral, in each case in proper form for filing with the U.S. Patent and Trademark Office or U.S. Copyright Office, as applicable.

(c) Governmental Consents. All material consents, approvals, orders and authorizations, and all registrations, declarations and filings with any Governmental Authority necessary for the consummation of the financing transactions contemplated by the Loan Documents have been obtained and are in form and substance acceptable to Administrative Agent, in its Reasonable Discretion.

(d) Third-Party Consents. All material consents, approvals and authorizations from third Persons (other than any Governmental Authority) required under any Material Contract or other document necessary for the consummation of the financing transactions contemplated by the Loan Documents have been obtained and are in form and substance acceptable to Administrative Agent, in its Reasonable Discretion.

(e) Insurance. Administrative Agent will have received documentation satisfactorily demonstrating that all insurance required to be maintained pursuant to Section 6.06 has been obtained and is in effect.

(f) No Litigation. No Proceeding instituted by any Person (including any Governmental Authority) will be pending in any court or before any arbitrator or mediator or before any Governmental Authority, or will have been threatened in writing by any Person (including any Governmental Authority) to be instituted, (i) with respect to this Agreement or any of the related Loan Documents, or (ii) which could reasonably be expected to have or result in a Material Adverse Effect.

(g) Financial Performance. Administrative Agent will have received and approved (i) copies of satisfactory audited Consolidated financial statements for Borrower and its Subsidiaries for the Fiscal Year most recently ended for which financial statements are available and interim unaudited Consolidated financial statements for the quarterly Fiscal Period ended at least forty-five (45) days prior to the Closing Date and (ii) copies of satisfactory unaudited Consolidated financial statements for the business to be acquired pursuant to the Closing Date Acquisition Agreement for (A) the Fiscal Year ended December 31, 2021, (B) the two-quarter Fiscal Period ended June 30, 2022, (C), the three-quarter Fiscal Period ended September 30, 2022, (D) the Fiscal Year ended December 31, 2022 and (E) the quarterly Fiscal Period ended March 31, 2023. Administrative Agent acknowledges and confirms that it has received copies, satisfactory to Administrative Agent, of all of the foregoing items in clause (ii) above.

(h) Financial Condition/Solvency Certificate. The Borrower shall have delivered to the Administrative Agent a certificate, in form and substance reasonably satisfactory to the Administrative Agent, and certified as accurate by the chief financial officer of the Borrower, that after giving effect to the Transactions on a pro forma basis (assuming the Closing Date Acquisition has been consummated on the Closing Date), the Borrower is, and the Loan Parties, taken as a whole, are, Solvent.

(i) Closing Date Acquisition.

(i) The Closing Date Acquisition shall be consummated substantially concurrently with the funding of the Initial Term Loan in all material respects in accordance with the terms described in the Closing Date Acquisition Agreement.

(ii) The representations and warranties made by or with respect to the Seller in the Closing Date Acquisition Agreement that are material to the interests of the Lenders shall be true and correct in all material respects (or if qualified by materiality or material adverse effect, in all respects) as of the Closing Date (unless such representations relate to an earlier date, in which case, such representations shall have been true and correct in all material respects (or if qualified by materiality or material adverse effect, in all respects) as of such earlier date), but only to the extent that Borrower or its Subsidiaries have the right to terminate their respective obligations under the Closing Date Acquisition Agreement or otherwise decline to close the Closing Date Acquisition as a result of a breach of any such representations and warranties or as a result of any such representations and warranties not being accurate (in each case, determined without regard to any notice requirement).

(j) Know Your Customer. Administrative Agent and the Lenders will have received, at least three (3) Business Days prior to the Closing Date, all documentation and other information (including, without limitation, a Beneficial Ownership Certification (or evidence satisfactory to the Administrative Agent and the Lenders that the Borrower is exempt from the reporting requirements of the Beneficial Ownership Regulation), as applicable) requested by the Administrative Agent or any Lender to comply with applicable "know your customer", anti-money laundering, beneficial ownership and other similar rules and regulations, including, without limitation, the PATRIOT Act, of the Borrower and its Subsidiaries that has been requested at least ten (10) Business Days prior to the Closing Date.

(k) Specified Representations. The Specified Representations will be true and correct in all material respects (or if qualified by materiality or material adverse effect, in all respects) as of the Closing Date (unless such representations relate to an earlier date, in which case, such representations shall have been true and correct in all material respects (or if qualified by materiality or material adverse effect, in all respects) as of such earlier date).

(l) Payment of Fees. Borrower will have paid (i) all fees required to be paid to Administrative Agent, the Left Lead Arranger and any Lending Party on or before the Closing Date and (ii) unless Administrative Agent will have agreed in writing to any delay in such payment, all reasonable and documented out-of-pocket fees and expenses of counsel to Administrative Agent to the extent invoiced at least two Business Days prior to the Closing Date or set forth in a funds flow approved by Borrower, plus such additional amounts of such reasonable and documented out-of-pocket fees and expenses as will constitute its reasonable estimate of such reasonable and documented out-of-pocket fees and expenses incurred or to be incurred by it through the closing proceedings (provided that such estimate will not thereafter preclude a final settling of accounts between Borrower and Administrative Agent) and shall be set forth in the funds flow approved by Borrower.

(m) Requests for Credit Extensions. Administrative Agent will have received a Request for Credit Extension with respect to the Credit Extension to be made on the Closing Date.

Administrative Agent will promptly notify each Borrower and each Lending Party of the occurrence of the Closing Date, and such notice will be conclusive and binding on all parties hereto. For purposes of determining compliance with the conditions specified in this Section 4.01 (but without limiting the generality of the provisions of Section 9.04), each (a) Lending Party that has signed this Agreement will be deemed to have consented to, approved or accepted or become satisfied with, each document or other

matter required hereunder to be consented to or approved by or to be acceptable or satisfactory to a Lending Party unless Administrative Agent will have received written notice from such Lending Party prior to the proposed Closing Date specifying its objection thereto and (b) the making or issuance of the initial Credit Extension hereunder by a Lending Party being conclusively deemed to be its satisfaction or waiver of the conditions precedent set forth in this Section 4.01 with respect to such initial Credit Extension.

Section 4.02 Conditions to All Credit Extensions. Commencing after the Closing Date and the satisfaction of the conditions precedent set forth in Section 4.01, the obligation of each Lending Party to make any Credit Extension (other than its initial Credit Extensions on the Closing Date) hereunder and to honor any Request for Credit Extension is further subject to the satisfaction, as determined by Administrative Agent, of each of the following separate and additional conditions precedent (which, in the case of any Incremental Term Loan for the express purpose of funding a Limited Condition Transaction, shall be subject to Section 1.02(s)):

(a) Truth and Correctness of Representations and Warranties. The representations and warranties of Borrower and each other Loan Party contained in this Agreement (including Article V) or in any other Loan Document will be true and correct in all material respects (except that such materiality qualifier will not be applicable to any portion of any representation and warranty that is already qualified or modified by materiality in the text thereof) on and as of the date of such Credit Extension, except to the extent that any such representation or warranty specifically refers to an earlier date, in which case such representation or warranty will be true and correct in all material respects (except that such materiality qualifier will not be applicable to any portion of any representation and warranty that is already qualified or modified by materiality in the text thereof) as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Section 5.12 will be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b).

(b) No Default or Event of Default. No Default or Event of Default will then exist, or will result from such proposed Credit Extension or from the application of the proceeds thereof or from the honoring of any Request for Credit Extension.

(c) Requests for Credit Extensions. Administrative Agent and, if applicable, the Swing Line Lender or L/C Issuer will have received the applicable Request for Credit Extension.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

As of the Closing Date, each Loan Party, in order to induce Administrative Agent and each Lending Party to enter into this Agreement and the Lending Parties to make or issue the Credit Extensions hereunder, hereby represents and warrants to Administrative Agent and each Lending Party as follows, and will be deemed to have been brought down and to apply anew (other than representations and warranties made as of a specific date, which will be deemed to have been made as of such specified date) to the making or issuance of each Credit Extension hereunder.

Section 5.01 Corporate Existence and Power. Each Loan Party and each of its Subsidiaries (a) is a corporation, partnership or limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation; (b) has the legal power and authority (i) to own its assets and carry on its business substantially as currently conducted by it and such business as contemplated to be conducted by it upon and following the consummation of the transactions contemplated by the Loan Documents, and (ii) to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party; and (c) is duly qualified as a foreign corporation, partnership or limited liability company, as applicable, and is licensed and in good standing under the laws

of each jurisdiction where its ownership, leasing or operation of property or the conduct of its business requires such qualification or license, except to the extent that the failure to do so could not reasonably be expected to have or result in a Material Adverse Effect.

Section 5.02 Corporate Authorization; No Contravention. The execution and delivery by each Loan Party, and the performance by each Loan Party of its obligations under each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organizational Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Material Contract to which such Person is a party or affecting such Person or the properties of such Person or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; (c) violate any Law applicable to any Loan Party or any of its Subsidiaries or any of their respective properties or (d) materially adversely affect any Regulatory Permit, except, in each case, to the extent it could not reasonably be expected to have or result in a Material Adverse Effect.

Section 5.03 Governmental Authorization; Compliance with Laws.

(a) Governmental Authorizations. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (i) the execution, delivery or performance by, or enforcement against, any Loan Party or any of its Subsidiaries of this Agreement or any other Loan Document or (ii) the exercise by Administrative Agent or any Lending Party of its rights under the Loan Documents, except as have been obtained or made (or will be made) as of the Closing Date and are in full force and effect or than a filing with the SEC on Form 8-K in accordance with the Exchange Act describing the Loan Parties' entering into this Agreement.

(b) Compliance with Laws. Each Loan Party and each of its Subsidiaries is in compliance in all material respects with the requirements of all Laws applicable to such Person or any of its properties and with all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have or result in a Material Adverse Effect. Each Loan Party and each of its Subsidiaries has all governmental licenses, authorizations, consents and approvals required or otherwise necessary to own its assets and carry on its business substantially as currently conducted by it and such business as contemplated to be conducted by it upon and following the consummation of the transactions contemplated by the Loan Documents, except as could not reasonably be expected to have a Material Adverse Effect.

Section 5.04 [Reserved].

Section 5.05 Binding Effect. This Agreement has been, and each other Loan Document (when delivered hereunder) will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement and each other Loan Document to which any Loan Party is a party constitute the legal, valid and binding obligations of such Person, enforceable against such Person in accordance with their respective terms, except as enforcement thereof may be limited by Debtor Relief Laws or other applicable Laws affecting the enforcement of creditors' rights generally and by general principles of equity.

Section 5.06 Litigation. Except as specifically disclosed on Schedule 5.06 to the Disclosure Letter (as such Schedule may be updated pursuant to Section 6.02(c)), (a) there are no Proceedings pending or, to each Loan Party's knowledge, threatened in writing against any Loan Party or any of its respective

Subsidiaries, or against any of such Persons' properties, at law or in equity, before any court, arbitrator, mediator or other Governmental Authority, and (b) to each Loan Party's knowledge, there is no investigation by any Governmental Authority of any Loan Party's or any such Subsidiary's affairs or properties, except (in the cases of the preceding clauses (a) and (b)) for such claims, actions, suits, proceedings, litigation and investigations as (i) could not reasonably be expected to have or result in a Material Adverse Effect, and (ii) notwithstanding the preceding clause (i), as do not purport to affect or pertain to any Loan Document or any of the transactions contemplated thereby.

Section 5.07 ERISA Compliance.

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal, foreign or, to the extent not pre-empted by ERISA, state Laws, except to the extent such non-compliance could not reasonably be expected to result in a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code and is sponsored by a Loan Party or an ERISA Affiliate has received a favorable determination letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code or is entitled to rely upon an opinion or notification letter issued to the sponsor of an IRS-approved master or prototype plan or volume submitter plan document or an application for such a letter is currently being processed by the IRS. Each trust related to any such Pension Plan is exempt from Federal income tax under Section 501(a) of the Code, and nothing has occurred that would reasonably be expected to prevent or cause the loss of such tax-qualified status, in each case except to the extent such non-compliance would not reasonably be expected to result in a Material Adverse Effect.

(b) There are no pending or, to the knowledge of each Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to have or result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and no Loan Party is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60.0% or higher and no Loan Party knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60.0% as of the most recent valuation date; (iv) neither any Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof or by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan, in the case of each of the foregoing clauses (i) through (vi), to the extent that such event or occurrence could reasonably be expected to result in a Material Adverse Effect.

(d) As of the Closing Date, neither any Loan Party nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than those listed on Schedule 5.07 to the Disclosure Letter (as such Schedule may be updated pursuant to Section 6.02(c)).

(e) Each Foreign Pension Plan is in compliance in all material respects with all requirements of Law applicable thereto and the respective requirements of the governing documents for such plan except to the extent such non-compliance could not reasonably be expected to result in a Material Adverse Effect. With respect to each Foreign Pension Plan that is sponsored, maintained or contributed to by a Loan Party or ERISA Affiliate, none of Borrower, its Subsidiaries or any of their respective directors, officers, employees or agents has engaged in a transaction which would subject Borrower or any of its Subsidiaries, directly or indirectly, to a tax or civil penalty which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. With respect to each Foreign Pension Plan, reserves have been established in the financial statements furnished to Administrative Agent and the Lenders in respect of any unfunded liabilities in accordance with applicable Law or, where required, in accordance with ordinary accounting practices, if any, in the jurisdiction in which such Foreign Pension Plan is maintained. The aggregate unfunded liabilities with respect to such Foreign Pension Plans could not reasonably be expected to result in a Material Adverse Effect. There are no actions, suits or claims (other than routine claims for benefits) pending or threatened against Borrower or any of its Subsidiaries with respect to any Foreign Pension Plan which could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(f) As of the Closing Date Borrower is not nor will be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

Section 5.08 Use of Proceeds. Borrower will use the proceeds of the Loans and other Credit Extensions made available hereunder solely for the purposes set forth in and as permitted by Section 7.09.

Section 5.09 Environmental Compliance. Except as set forth on Schedule 5.09 to the Disclosure Letter (as such Schedule may be updated pursuant to Section 6.02(c)), (a) each Loan Party and each of its Subsidiaries is in compliance with all applicable Environmental Laws, except where any such failure or failures to comply, individually or in the aggregate, could not reasonably be expected to have or result in a Material Adverse Effect, (b) to the knowledge of each Loan Party, (i) none of the operations of any Loan Party nor any of its Subsidiaries (including any of their respective owned or leased properties or assets) is the subject of any federal, state or local investigation, inquiry, notice of violation, demand, order, consent decree or notice of potential liability, or is otherwise subject to any Environmental Claim or Environmental Liability that, either individually or in the aggregate could reasonably be expected to have or result in a Material Adverse Effect, and (ii) other than in a manner that could not reasonably be expected to have or result in a Material Adverse Effect, none of the owned or leased properties or assets of any Loan Party or any of its Subsidiaries has been designated or identified as a Hazardous Materials disposal site pursuant to any Environmental Law and (c) no Loan Party nor any of its Subsidiaries has received written notice that a Lien arising under any Environmental Law has attached to any revenues or to any real property owned or operated by a Loan Party or its Subsidiaries, other than Permitted Liens.

Section 5.10 Title to Properties. Each Loan Party has good record and marketable title in fee simple to, or valid leasehold interests in, or valid rights to use (including easements) all real property necessary to the ordinary conduct of their respective businesses, except for Permitted Liens and for non-material defects in title that do not interfere with such Loan Party's ability to conduct its business or to use such property for its intended purpose. As of the Closing Date, no property owned by any Loan Party or any of its respective Subsidiaries is subject to any Liens other than Permitted Liens.

Section 5.11 Taxes. All material U.S. federal, state, local and foreign tax returns, reports and statements required to be filed by any Loan Party or any of its Subsidiaries have been filed with the appropriate Governmental Authorities and all material Taxes shown thereon to be due and payable by such Person have been paid, or such Person is diligently contesting its liability therefor in good faith by

appropriate proceedings and has adequately reserved all such amounts in the audited and unaudited Consolidated financial statements of Borrower, as the case may be delivered to Administrative Agent and the Lenders pursuant to Sections 6.01(a) and (b), respectively, except in each case where failure to do so could not reasonably be expected to have or result in a Material Adverse Effect.

Section 5.12 Financial Condition; No Material Adverse Effect; No Default.

(a) All balance sheets, and all statements of income, of stockholders' equity, and of changes in cash flow furnished to Administrative Agent and the Lenders by or on behalf of Borrower for the purposes of or in connection with this Agreement or any of the other Loan Documents have been prepared in accordance with GAAP consistently applied (from period to period except as and to the extent disclosed in the financial statements; provided, that any such disclosed changes will continue to be in accordance with GAAP) throughout the periods involved and such data, together with all other financial data (other than projections and financial data calculated on a pro forma basis) will present fairly in all material respects the financial condition of the entities involved as of the dates thereof and the result of their operations for the periods covered thereby (except that interim financial statements will be subject to customary nonmaterial year-end adjustments and may not have footnotes). All financial projections and forecasts which have been furnished to Administrative Agent and the Lenders for purposes of or in connection with this Agreement were prepared in good faith on the basis of assumptions which were, in the opinion of the management of Borrower, reasonable at the time made; and at the time of delivery, the management of Borrower believed, in good faith, that the assumptions used in preparation of the financial projections and forecasts remain reasonable (it being understood that such financial projections and forecasts are subject to uncertainties and contingencies, many of which are beyond the control of any Loan Party, and no assurances can be given that such financial projections and forecasts will be realized).

(b) Since December 31, 2022, there has been no development, event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have or result in a Material Adverse Effect.

(c) No Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

Section 5.13 Margin Regulations; Regulated Entities. No Loan Party nor any of its Subsidiaries is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock. No Loan Party nor any of its Subsidiaries nor any Person controlling Borrower is required to register as an "investment company" within the meaning of the Investment Company Act of 1940.

Section 5.14 Intellectual Property. Each Loan Party and each of its Subsidiaries owns or is licensed or otherwise has the right to use all of the patents, copyrights, trademarks, service marks, trade names, contractual franchises and other intellectual property rights that are reasonably necessary for the operation of its respective businesses as currently conducted by it, except to the extent that failure to hold such ownership, license or other right could not, individually or in the aggregate, reasonably be expected to have or result in a Material Adverse Effect. The use of such intellectual property by such Loan Party or such Subsidiary and the operation of its business does not infringe any valid and enforceable intellectual property rights of any other Person, except to the extent any such infringement could not, individually or in the aggregate, reasonably be expected to have or result in a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending nor, to each Loan Party's knowledge, overtly threatened, except for such claims or litigation as both (a) could not reasonably be expected to have or result in a Material Adverse Effect, and (b) do not purport to affect or pertain to any Loan Document or any of the transactions contemplated thereby.

Section 5.15 Capitalization and Subsidiaries. As of the Closing Date, Borrower has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.15 to the Disclosure Letter (as such Schedule may be updated pursuant to Section 6.02(c)), and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party free and clear of all Liens. Set forth on Part (a) of Schedule 5.15 to the Disclosure Letter (as such Schedule may be updated pursuant to Section 6.02(c)) is a complete and accurate list of all Loan Parties, showing as of the Closing Date (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and each jurisdiction in which it is qualified to do business. The copy of each Organizational Document of each Loan Party provided pursuant to Section 4.01(a)(iv) is a true and correct copy of such document, and is valid and in full force and effect as of the Closing Date. Aside from its Subsidiaries disclosed in Part (a) of Schedule 5.15 to the Disclosure Letter (as such Schedule may be updated pursuant to Section 6.02(c)), as of the Closing Date, no Loan Party owns, of record or beneficially, any Equity Interests in any other Person other than those specifically disclosed in Part (b) of Schedule 5.15 to the Disclosure Letter (as such Schedule may be updated pursuant to Section 6.02(c)).

Section 5.16 Labor Relations. There are no strikes, lockouts or other material labor disputes against any Loan Party nor any Subsidiary thereof, nor to each Loan Party's knowledge, threatened against or affecting any Loan Party or any Subsidiary thereof, and no significant unfair labor practice complaint is pending against any Loan Party or any its Subsidiaries nor, to the knowledge of each Loan Party, threatened against any of them before any Governmental Authority, in each case except which would not reasonably be expected to have or result in a Material Adverse Effect.

Section 5.17 Solvency. Borrower is, and the Loan Parties, taken as a whole, are, Solvent.

Section 5.18 Anti-Corruption Laws; Anti-Money Laundering Laws and Sanctions.

(a) None of (i) Borrower, any Subsidiary or, to the knowledge of Borrower or such Subsidiary, any of their respective directors, officers, employees or Affiliates, or (ii) to the knowledge of Borrower, any agent or representative of Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the Facilities, (A) is a Sanctioned Person or currently the subject or target of any Sanctions, (B) has its assets located in a Sanctioned Country, (C) is under administrative, civil or criminal investigation for an alleged violation of, or received notice from or made a voluntary disclosure to any governmental entity regarding a possible violation of, Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions by a Governmental Authority that enforces Sanctions or any Anti-Corruption Laws or Anti-Money Laundering Laws, or (D) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons.

(b) Each of Borrower and its Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to promote compliance by Borrower and its Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

(c) Each of Borrower and its Subsidiaries, and to the knowledge of Borrower, director, officer, employee, agent and Affiliate of Borrower and each such Subsidiary, is in compliance with all Anti-Corruption Laws, Anti-Money Laundering Laws in all material respects and applicable Sanctions.

(d) No proceeds of any Credit Extension have been used, directly or indirectly, by Borrower, any of its Subsidiaries or any of its or their respective directors, officers, employees and agents in violation of Section 7.09.

Section 5.19 Insurance. As required to be maintained pursuant to Section 6.06, the assets, properties and businesses of each Loan Party and each of its Subsidiaries are insured with financially sound and reputable insurance companies, in such amounts, with such deductibles and covering such risks as are customarily carried by companies of similar size engaged in similar businesses and owning similar properties, subject to commercially reasonable and prudent adjustments made by Borrower and its Subsidiaries; provided that Borrower and its Subsidiaries may self-insure against such risks, in accordance with sound business, accounting and actuarial practice, in such amounts as is usually self-insured by companies engaged in similar businesses and owning similar properties in the same general areas in which Borrower or such Subsidiary operates.

Section 5.20 Senior Indebtedness Status. The Obligations of each Loan Party under this Agreement and each of the other Loan Documents ranks and shall continue to rank senior in priority of payment to all Subordinated Debt and at least pari passu with all other unsecured Indebtedness of each such Person and is designated as "Senior Indebtedness" under all instruments and documents, now or in the future, relating to all Subordinated Debt and all other unsecured Indebtedness of such Person.

Section 5.21 Full Disclosure. No financial statement, material report, material certificate or other material information furnished in writing by or on behalf of any Loan Party or any Subsidiary thereof to Administrative Agent or any Lending Party in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), taken together as a whole, contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, pro forma financial information, estimated financial information and other projected or estimated information, such information was prepared in good faith based upon assumptions believed to be reasonable at the time prepared, it being understood that actual results may vary materially from the projected financial information. As of the Closing Date, all of the information included in the Beneficial Ownership Certification (if any) is true and correct.

Section 5.22 Affected Financial Institutions and Covered Parties. No Loan Party is an Affected Financial Institution or a Covered Party.

Section 5.23 Regulatory Matters.

(a) Schedule 5.23 to the Disclosure Letter sets forth, as of the Closing Date, a complete and correct list of all active Regulatory Permits held by each Loan Party and its Subsidiaries, the loss of which could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Such listed Regulatory Permits are the only Regulatory Permits that are required for the Loan Parties and their Subsidiaries to conduct their respective businesses as presently conducted and that the loss of which could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. With respect to Products subject to Pharma Laws, each Loan Party and its Subsidiaries has been and are in conformance with all applicable Regulatory Permits and Pharma Laws as required to conduct its respective businesses as now conducted except where the failure to do so could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Nothing herein in any way limits the Loan Party and its Subsidiaries either from obtaining or acquiring new Regulatory Permits or abandoning existing Regulatory Permits as applicable. To the knowledge of each Loan Party and its Subsidiaries, except where any of the following could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, (i) no Governmental Authority is considering limiting, suspending, or revoking such Regulatory Permits or materially changing the marketing classification or labeling that would reasonably result in a material restriction of the Products subject to regulation under Pharma Laws of the Loan Parties or any of their respective Subsidiaries, (ii) no event has occurred or

condition or state of facts exists which would reasonably result-in product liability related, in whole or in part, to Regulatory Matters and (iii) each third party that is a manufacturer or contractor for the Loan Parties or any of their respective Subsidiaries is in material compliance with all applicable Regulatory Permits required by the FDA or comparable Governmental Authority and all applicable Pharma Laws insofar as they reasonably pertain to the Products of the Loan Parties and their respective Subsidiaries. None of the Loan Parties and their respective Subsidiaries has submitted any materially false or misleading information or made any significant omission in any Product application or other submission to any Governmental Authority in violation of any applicable Pharma Laws except where any of the foregoing could not reasonably be expected to have a Material Adverse Effect. The Loan Parties and their respective Subsidiaries have fulfilled and performed their respective obligations under each applicable Regulatory Permit, and are not aware of any event or condition or state of facts which could constitute a breach or default, or could cause a revocation or termination of any such Regulatory Permit, except where any of the foregoing could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(b) All Products designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold or marketed by or on behalf of the Loan Parties or their respective Subsidiaries that are subject to Pharma Laws have been and are being designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold and marketed in material compliance with applicable Pharma Laws, Regulatory Permits and any other applicable Law.

(c) Except as set forth on Schedule 5.23 to the Disclosure Letter, as of the Closing Date, no Loan Party nor its Subsidiaries is subject to any obligation arising under an administrative or regulatory enforcement action, proceeding, investigation or inspection by or on behalf of a Governmental Authority, warning letter, notice of violation letter, consent decree, request for information or other adverse notice with a Governmental Authority with respect to Regulatory Matters, and, to the knowledge of each Loan Party and its Subsidiaries, no such obligation has been threatened. Each Loan Party and its Subsidiaries has made all notifications, submissions, and reports to Governmental Authorities as required by Law, and, to the knowledge of each Loan Party, all such notifications, submissions and reports were true and correct in all material respects as of the date of submission to FDA or any other Governmental Authority. There is no, and there is no prohibited act or material omission of which any Loan Party or any of its Subsidiaries has knowledge that could reasonably be expected to give rise to or lead to, any civil, criminal or administrative enforcement action, suit, demand, claim, complaint, hearing, investigation, demand letter, FDA warning letter, or proceeding pending against any Loan Party or its Subsidiaries. With respect to Regulatory Matters, there is no violation of any applicable Pharma Laws by any Loan Party or its Subsidiaries in its product development efforts, submissions, record keeping and reports to the FDA or any other Governmental Authority that could reasonably be expected to require or lead to an investigation, or enforcement, regulatory or administrative action that could reasonably be expected, in the aggregate, have a Material Adverse Effect. To the knowledge of each Loan Party and each of their respective Subsidiaries, there are no civil or criminal proceedings relating to any Loan Party or any of its Subsidiaries or any officer, director or employee of any Loan Party or Subsidiary of any Loan Party that involve a Regulatory Matter within or related to the FDA's or any other Governmental Authority's jurisdiction.

(d) Except as set forth on Schedule 5.23 to the Disclosure Letter, as of the Closing Date, no Loan Party nor its Subsidiaries is undergoing any inspection or investigation by any Governmental Authority related to Regulatory Matters, except where any such inspection or investigation could not reasonably be expected to have a Material Adverse Effect.

(e) To the knowledge of each Loan Party and its Subsidiaries, during the period of three calendar years immediately preceding the Closing Date, no Loan Party nor any Subsidiary of any Loan Party has introduced into commercial distribution any Products manufactured by or on behalf of any

Loan Party or any Subsidiary of a Loan Party or distributed any Products on behalf of another manufacturer that were upon their shipment by any Loan Party or any of its Subsidiaries adulterated or misbranded in violation of 21 U.S.C. § 331. No Loan Party nor any Subsidiary of any Loan Party has received any notice of communication from any Governmental Authority involving a Regulatory Matter alleging material noncompliance with any applicable Law. With respect to Regulatory Matters, no Product has been seized, withdrawn, recalled, detained, or subject to a suspension (other than in the ordinary course of business) of research, manufacturing, distribution, or commercialization activity, and, to the knowledge of each Loan Party and its Subsidiaries, there are no facts or circumstances reasonably likely to cause (i) the seizure, denial, withdrawal, recall, detention, public health notification, safety alert or suspension of manufacturing or other activity relating to any Product; (ii) a change in the labeling of any Product due to a material safety or compliance issue; or (iii) a termination, seizure or suspension of manufacturing, researching, distributing or marketing of any Product. No proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, revocation, suspension, import detention, or seizure of any Product are pending or, to the knowledge of each Loan Party and its Subsidiaries, threatened against any Loan Party or any of its Subsidiaries.

(f) No Loan Party nor any Subsidiary of any Loan Party nor any of their respective officers, directors, employees, or to the knowledge of each Loan Party and its Subsidiaries, any agents or contractors (i) have been excluded or debarred from any federal healthcare program (including Medicare or Medicaid) or any other federal program or (ii) have received notice from the FDA or any other Governmental Authority with respect to debarment or disqualification of any Person that could reasonably be expected to have, in the aggregate, a Material Adverse Effect. No Loan Party nor any Subsidiary of any Loan Party nor any of their respective officers, directors, employees, or to the knowledge of each Loan Party and its Subsidiaries, agents or contractors have been convicted of any crime or engaged in any conduct for which (x) debarment is mandated or permitted by 21 U.S.C. § 335a or (y) such Person has been excluded from participating in the federal health care programs under Section 1128 of the Social Security Act or any similar law. No officer of each Loan Party and its Subsidiaries, and to the knowledge of each Loan Party and its Subsidiaries, no employee or agent of any Loan Party or its Subsidiaries, has (A) made any untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Authority; (B) failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority; or (C) committed a prohibited act or made a statement of material fact that would reasonably be expected to provide the basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," as set forth in 56 Fed. Reg. 46191 (September 10, 1991), or for any other Governmental Authority to invoke a comparable policy.

(g) Except as set forth on Schedule 5.23 to the Disclosure Letter as of the Closing Date or which could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect: (i) each Loan Party and its Subsidiaries and, to their knowledge, their respective contract manufacturers are, and have been for the past three calendar years, in material compliance with, and each Product in current commercial distribution is designed, manufactured, processed, prepared, assembled, packaged, labeled, stored, installed, serviced and held in compliance with, the current Good Manufacturing Practice regulations set forth in 21 C.F.R. Parts 210, 211, and 820 or comparable quality management system, including, but not limited to, ISO 13485, as applicable, (ii) each Loan Party and its Subsidiaries is in compliance with the written procedures, record-keeping and reporting requirements required by the FDA or any comparable Governmental Authority pertaining to the reporting of adverse events and recalls involving the Products, (iii) all Products are and have been labeled, promoted, and advertised in accordance with their Regulatory Permits and approved or cleared labeling or within the scope of an exemption from obtaining such Regulatory Permits, as applicable, and (iv) each Loan Party and its Subsidiaries' establishments are registered with the FDA, as applicable, and each Product is listed with the FDA under the applicable FDA registration regulations for pharmaceuticals and medical devices.

ARTICLE VI
AFFIRMATIVE COVENANTS

Each Loan Party hereby covenants that, until the Obligations have been paid in full and each of the Revolving Credit Commitments hereunder have terminated, it will, and will cause each of its Subsidiaries to:

Section 6.01 Financial Statements. Deliver to Administrative Agent, in form and detail satisfactory to Administrative Agent (which will promptly make such information available to the Lending Parties in accordance with its customary practice):

(a) Annual Financial Statements. No later than one hundred twenty (120) days after the end of each Fiscal Year, a Consolidated balance sheet as at the end of such year and related Consolidated statements of income, stockholders' equity and cash flows of Borrower and its Consolidated Subsidiaries prepared for such Fiscal Year, setting forth, in comparative form the figures for the previous year, all in reasonable detail and accompanied by a report thereon of any "Big Four" or other independent public accountants of recognized national standing, which report will not contain an adverse opinion, a disclaimer of opinion or be qualified or limited because of a restricted or limited examination by such accountant of any material portion of the records of Borrower or any of its Consolidated Subsidiaries or be unqualified but subject to a "going concern" uncertainty or other similar required explanatory language (except, in each case, any "going concern" or similar qualification or exception pertaining to the maturity of the Obligations hereunder on the Revolving Credit Stated Maturity Date, Initial Term Loan Maturity Date or Incremental Term Loan Stated Maturity Date, as applicable, occurring within one (1) year from the time such opinion is delivered), and will state that such financial statements present fairly in all material respects the financial position of Borrower and its Subsidiaries on a Consolidated basis as at the dates indicated and the results of its operations and changes in its financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise stated therein) and that the examination by such accountants in connection with such Consolidated financial statements has been made in accordance with generally accepted auditing standards and;

(b) Fiscal Period Financial Statements. No later than fifty (50) days after the end of each Fiscal Period (excluding each Fiscal Period corresponding to the end of a Fiscal Year), a Consolidated balance sheet as at the end of such period and the related Consolidated statements of income, stockholders' equity and cash flows of Borrower and its Consolidated Subsidiaries prepared for such Fiscal Period and for such Fiscal Year to date, setting forth in each case in comparative form the figures for the corresponding period(s) of the previous Fiscal Year, all in reasonable detail and certified by a Responsible Officer of Borrower having responsibility for financial matters that they (i) present fairly in all material respects the financial condition of Borrower and its Consolidated Subsidiaries as at the dates indicated and the results of its operations and changes in their cash flow for the periods indicated, (ii) disclose all liabilities of Borrower and its Consolidated Subsidiaries that are required to be reflected or reserved against under GAAP, whether liquidated or unliquidated, fixed or contingent, and (iii) have been prepared in accordance with GAAP, subject to the absence of footnotes and changes resulting from audit and customary year-end adjustments;

(c) Compliance Certificate. Together with the financial statements delivered pursuant to Sections 6.01(a) and (b), a Compliance Certificate dated as of the last day of such reporting period, in each case certified by a Responsible Officer of Borrower having responsibility for financial matters (which delivery may be by electronic communication including fax or email and will be deemed to be an original authentic counterpart thereof for all purposes), together with a report containing management's discussion and analysis of Borrower's material quarterly and annual operating results, as applicable, and a report containing management's discussion and analysis of such financial statements;

(d) Financial Forecasts. No later than twenty (20) Business Days after approval thereof by Borrower's Board of Directors, a final annual operating budget for the forthcoming Fiscal Year prepared on a quarterly basis (or monthly basis, if available) and otherwise in form and substance reasonably satisfactory to Administrative Agent; provided that in the event any budget is materially revised in any Fiscal Year, such revised budget will be delivered to Administrative Agent promptly and in any event no later than twenty (20) Business Days after approval thereof by Borrower's Board of Directors; and provided further that each such budget shall be prepared on a reasonable basis and in good faith, based on assumptions believed by Borrower to be reasonable at the time made; and

(e) Other Reports. Promptly upon any request by Administrative Agent or any Lending Party, a copy of any detailed audit reports, management letters or recommendations submitted to the Board of Directors (or the audit committee of the Board of Directors) of Borrower by independent accountants in connection with the accounts or books of Borrower or any Subsidiary thereof, or any audit of any of them.

Section 6.02 Other Information. Deliver to Administrative Agent, in form and detail reasonably satisfactory to Administrative Agent (which will promptly make such information available to the Lending Parties in accordance with its customary practice):

(a) Equity Interest Reports and Public Filings. Promptly after the same are available, copies of each annual report, proxy or financial statement or other material report or communication sent to the holders of Equity Interests of Borrower in their capacity as shareholders, and copies of all annual, regular, periodic and special reports and registration statements that Borrower or any of its Subsidiaries may file or be required to file with the SEC under Section 13 or Section 15(d) of the Exchange Act, and, in each case, not otherwise required to be delivered to Administrative Agent pursuant hereto;

(b) Closing Date Acquisition Closing Date. As of the Closing Date Acquisition Closing Date, immediately after giving effect to the consummation of the Closing Date Acquisition, Borrower and each other Loan Party shall be deemed to represent and warrant to Administrative Agent and each Lending Party that the representations and warranties of Borrower and each other Loan Party contained in Article V will be true and correct in all material respects (except that such materiality qualifier will not be applicable to any portion of any representation and warranty that is already qualified or modified by materiality in the text thereof) on and as of the Closing Date Acquisition Closing Date, except to the extent that any such representation or warranty specifically refers to an earlier date, in which case such representation or warranty will be true and correct in all material respects (except that such materiality qualifier will not be applicable to any portion of any representation and warranty that is already qualified or modified by materiality in the text thereof) as of such earlier date;

(c) Updates of Disclosure Schedules. Upon the reasonable request of the Administrative Agent, promptly provide Administrative Agent in writing with such revisions or updates to any of the Schedules to the Disclosure Letter as may be necessary or appropriate to update the same as of a recent date; provided that (i) no Schedule to the Disclosure Letter will be deemed to have been amended, modified or superseded by any such correction or update, nor will any breach of warranty or representation resulting from the inaccuracy or incompleteness of any such Schedule be deemed to have been cured thereby, unless and until Administrative Agent (which may request the consent of the Required Lenders) has accepted in writing such revisions or updates to such Schedule, which acceptance will not be unreasonably withheld or delayed and (ii) Administrative Agent shall not exercise such rights more often than one (1) time during any calendar year;

(d) Insurance Reports. Promptly upon the request of Administrative Agent, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for Borrower and its

Subsidiaries and containing such additional information as Administrative Agent may reasonably specify; provided that Administrative Agent shall not exercise such rights more often than one (1) time during any calendar year;

(e) "Know Your Customer". Promptly upon the request thereof, such other information and documentation required under applicable "know your customer" rules and regulations, the PATRIOT Act, the Beneficial Ownership Regulations or any applicable Anti-Money Laundering Laws or Anti-Corruption Laws, in each case as from time to time reasonably requested by Administrative Agent or any Lender;

(f) Additional Information. Promptly, such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary thereof or compliance with the terms of the Loan Documents, as Administrative Agent or any Lending Party may from time to time reasonably request;

(g) Accounting Policies and Financial Reporting Practices. Promptly upon the occurrence thereof, notice of any material change in Borrower's or any of its Consolidated Subsidiaries' accounting policies or financial reporting practices, except changes required by GAAP; and

(h) Swap Contracts. Upon request from time to time of Administrative Agent, the Swap Termination Values, together with a description of the method by which such values were determined, relating to any then-outstanding Swap Contracts to which any Loan Party is a party.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(a) or (g) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, will be deemed to have been delivered on the date (i) on which Borrower posts such documents, or provides a link thereto on Borrower's website on the Internet at the website address listed on Schedule 10.02; (ii) on which such documents are posted on Borrower's behalf on an Internet or intranet website, if any, to which each Lender and Administrative Agent have access (whether a commercial, third-party website or whether sponsored by Administrative Agent); or (iii) on which such documents are posted to EDGAR; provided that Borrower will deliver paper copies of such documents to Administrative Agent upon its request to Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by Administrative Agent. Administrative Agent will have no obligation to request the delivery of or to maintain paper copies of the documents referred to above.

Section 6.03 Notices. Promptly, and in no event more than five (5) Business Days after any Responsible Officer or any other senior executive officer of any Loan Party becomes aware thereof, notify Administrative Agent (which will promptly make such information available to the Lending Parties in accordance with its customary practice):

(a) Defaults and Events of Default. The occurrence of any Default or Event of Default;

(b) Litigation. The (i) institution of any investigation, litigation, alternative dispute proceeding (including any Insolvency Proceeding) or other similar suit or proceeding (a "Proceeding") (or written threat to institute any of the foregoing) by any Person, including any Governmental Authority, (A) with respect to which there is a reasonable likelihood of a finding adverse to a Loan Party, which adverse finding, if made, could reasonably be expected to have or result in a Material Adverse Effect, or (B) which seeks in any manner to invalidate any Loan Document or any provision thereof or to otherwise enjoin the performance of any Loan Document or any provision thereof, and (ii) of any material development in any Proceeding described in the foregoing clause (i);

(c) ERISA Events. The occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of any Loan Party in an aggregate amount exceeding the Threshold Amount;

(d) Labor Controversies. Any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other labor disruption against or involving Borrower or any Subsidiary thereof, in each case which could reasonably be expected to have or result in a Material Adverse Effect;

(e) Governmental Matters. Any notice of any violation received by any Loan Party or any Subsidiary thereof from any Governmental Authority, including any notice of violation of Environmental Laws, which in any such case could reasonably be expected to have or result in a Material Adverse Effect, except to the extent that such Loan Party is not permitted to disclose such notice or correspondence by applicable Law or the request of the Governmental Authority; and

(f) Regulatory Matters. (i) any written notice that any Governmental Authority is limiting, suspending or revoking any Regulatory Permits, materially changing the market classification, distribution pathway, or labeling of the Products subject to Pharma Laws of the Loan Parties or their respective Subsidiaries, or considering any of the foregoing; (ii) any Loan Party or any of its Subsidiaries becoming subject to any administrative or regulatory enforcement action, warning letter, notice of violation letter, Form FDA 483 observation classified by FDA as an Official Action Indicated, or any Product subject to Pharma Laws of any Loan Party or any of its Subsidiaries being seized, withdrawn, recalled, detained, or subject to a suspension of manufacturing, or the commencement of any proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, suspension, import detention, or seizure of any Product subject to Pharma Laws are pending or threatened against the Loan Parties or their respective Subsidiaries; and (iii) any mandatory withdrawal or recall of any Product subject to Pharma Laws by any Loan Party or any of its Subsidiaries that generates at least the Threshold Amount in revenue per Fiscal Year or which could, in the aggregate, reasonably be expected to have or result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 will be accompanied by a statement of a Responsible Officer of Borrower setting forth details of the occurrence referred to therein and stating what action, if any, Borrower (or the other applicable Person) has taken or proposes to take with respect thereto.

Section 6.04 Preservation of Existence and Entitlements.

(a) Preserve, renew and maintain in full force and effect its respective legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or Section 7.05;

(b) Take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its respective businesses, except to the extent that the failure to do so could not reasonably be expected to have or result in a Material Adverse Effect; and

(c) In addition to the requirements of any of the Security Documents, preserve or renew all of their respective registered copyrights, patents, trademarks, trade names and service marks and other intellectual property, the non-preservation of which could reasonably be expected to have or result in a Material Adverse Effect.

Section 6.05 Maintenance of Properties. In addition to the requirements of any of the Security Documents, maintain, preserve and protect (or replace in the ordinary course of business) all of their

respective material properties and equipment necessary to the operation of its respective businesses in good working order and condition, ordinary wear and tear excepted, and make all necessary repairs thereto and renewals and replacements thereof, in each case except where the failure to do so could not, individually or in the aggregate, reasonably be expected to have or result in a Material Adverse Effect.

Section 6.06 Maintenance of Insurance. Maintain or cause to be maintained, with financially sound and reputable insurers, such commercial general liability insurance, including coverage for third party bodily injury (including death) and property damage, business interruption insurance, all-risk commercial property insurance and other casualty insurance (including force majeure) with respect to bodily injury and liabilities, losses or damage in respect of the assets, properties and businesses of the Loan Parties and their Subsidiaries as may customarily be carried or maintained under similar circumstances by companies of similar size engaged in similar businesses and owning similar properties, in each case in such amounts with such deductibles, covering such risks and otherwise on such terms and conditions as will be customary for companies similarly situated in the industry, subject to commercially reasonable and prudent adjustments made by Borrower and its Subsidiaries; provided that Borrower and its Subsidiaries may self-insure against such risks, in accordance with sound business, accounting and actuarial practice, in such amounts as is usually self-insured by companies engaged in similar businesses and owning similar properties in the same general areas in which Borrower or such Subsidiary operates. All such insurance shall, (a) provide that no cancellation or material modification thereof shall be effective until at least 30 days after receipt by Administrative Agent of written notice thereof (except as a result of non-payment of premium in which case only 10 days' prior written notice shall be required), (b) in the case of liability insurance, name Administrative Agent as an additional insured party thereunder and (c) in the case of each property insurance policy, name Administrative Agent as lender's loss payee.

Section 6.07 Compliance with Laws. Comply in all material respects with the requirements of all applicable Laws and all orders, writs, injunctions and decrees applicable to them or to their respective assets, properties or businesses, and will use and operate all of its facilities and properties in compliance with all applicable Laws, including Environmental Laws, and keep all permits, approvals, certificates and other authorizations of Governmental Authorities as is required by applicable Law, including Environmental Laws, in effect and remain in compliance therewith, except, in each case, where the failure to comply therewith could not reasonably be expected to have or result in a Material Adverse Effect.

Section 6.08 Books and Records. Maintain proper books of record and account, in which full, true and correct (in all material respects) entries in conformity with GAAP consistently applied are made of all financial transactions and matters involving its respective properties and businesses.

Section 6.09 Inspection Rights. Permit any representatives designated by Administrative Agent or any Lender, upon at least seven (7) Business Days' prior notice (provided that if an Event of Default has occurred and is continuing, no such prior notice shall be required) and all at the expense of the Borrower, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided that, excluding any such visits and inspections during the continuation of an Event of Default, Administrative Agent shall not exercise such rights more often than one (1) time during any calendar year.

Section 6.10 Covenant to Secure and Guarantee Obligations.

(a) Additional Subsidiaries. Upon the formation or acquisition by any Loan Party of any new direct or indirect Domestic Subsidiary that constitutes a Material Subsidiary, or upon any Domestic Subsidiary becoming a Material Subsidiary as determined based on the most recent audited Consolidated financial statements or unaudited Consolidated financial statements, as the case may be, of Borrower and

its Subsidiaries delivered to Administrative Agent and the Lenders pursuant to Sections 6.01(a) or (b), then Borrower will, in each case, at Borrower's expense promptly (and in any event within twenty (20) Business Days or such later date as agreed by Administrative Agent) after such formation or acquisition or the delivery of such Consolidated financial statements, (i) cause such Person to duly execute and deliver to Administrative Agent (A) a Joinder Agreement in substantially the form attached to this Agreement as Exhibit C satisfactory to Administrative Agent in its Reasonable Discretion, pursuant to which such Person is joined to this Agreement and becomes a Guarantor hereunder for all purposes of this Agreement, including Section 10.15, and the other Loan Documents, guaranteeing the other Loan Parties' Obligations under the Loan Documents and (B) a supplement to each applicable Security Document or such other document as Administrative Agent shall deem appropriate in its Reasonable Discretion for such Person to grant a security interest in all Collateral (subject to the exceptions specified in the Collateral Agreement) owned by such Person, in each case satisfactory to Administrative Agent in its Reasonable Discretion, pursuant to which such Person becomes a grantor under the applicable Security Document for all purposes of such Security Document, securing the Obligations under the Loan Documents; (ii) cause such Person to execute and deliver to Administrative Agent such other agreements, documents, instruments and certificates required by applicable Law or deemed necessary or advisable by Administrative Agent in its Reasonable Discretion to give effect to such grant of security interest and Guaranty as if such Person were an initial party to this Agreement, including for purposes of Section 10.15; (iii) if such Equity Interests are certificated and pledged pursuant to the Security Documents, deliver to Administrative Agent such original certificated Equity Interests or other certificates and stock or other transfer powers required to be pledged pursuant to the Security Documents evidencing the Equity Interests of such Person; (iv) deliver to Administrative Agent such updated Schedules to the Security Documents as requested by the Administrative Agent in its Reasonable Discretion with respect to such Person; (v) deliver to Administrative Agent a certificate, executed by a Responsible Officer of such Person, with the applicable certified attachments, as described in Section 4.01(a)(iv) and (vi) if reasonably requested, deliver to Administrative Agent a favorable opinion letter of counsel to such Person.

(b) Additional First Tier Foreign Subsidiaries and CFC Holdcos. In each case, subject to the limitation set forth in clause (e) below, notify Administrative Agent promptly after any Person becomes a First Tier Foreign Subsidiary or a CFC Holdco, and promptly thereafter (and, in any event, within twenty (20) Business Days after such notification or such later date as agreed by Administrative Agent), cause (i) the applicable Loan Party to deliver to Administrative Agent Security Documents pledging sixty-five percent (65%) of the total outstanding voting Equity Interests (and one hundred percent (100%) of the non-voting Equity Interests) of any such new First Tier Foreign Subsidiary that is a CFC or any such CFC Holdco and 100% of the Equity Interests of any First Tier Foreign Subsidiary that is not a CFC and a consent thereto executed by such new First Tier Foreign Subsidiary (including, if applicable, original certificated Equity Interests (or the equivalent thereof pursuant to the applicable Laws and practices of any relevant foreign jurisdiction) evidencing the Equity Interests of such new First Tier Foreign Subsidiary or CFC Holdco, as applicable, together with an appropriate undated stock or other transfer power for each certificate duly executed in blank by the registered owner thereof), (ii) such Person to execute and deliver to Administrative Agent such other agreements, documents, instruments and certificates required by applicable Law or deemed necessary or advisable by Administrative Agent in its Reasonable Discretion to give effect to such grant of security interest and (iii) such Person to deliver to Administrative Agent such updated Schedules to the Loan Documents as requested by Administrative Agent with regard to such Person.

(c) Merger Subsidiaries. Notwithstanding the foregoing, to the extent any new Subsidiary is created solely for the purpose of consummating a merger transaction pursuant to a Permitted Acquisition, and such new Subsidiary at no time holds any assets or liabilities other than any merger consideration contributed to it contemporaneously with the closing of such merger transaction, such new Subsidiary shall not be required to take the actions set forth in Section 6.10(a) or (b), as applicable, until

the consummation of such Permitted Acquisition (at which time, the surviving entity of the respective merger transaction shall be required to so comply with Section 6.10(a) or (b), as applicable, within ten (10) Business Days of the consummation of such Permitted Acquisition or such later date as agreed by Administrative Agent).

(d) Additional Collateral. Comply with the requirements set forth in the Security Documents with respect to any property constituting Collateral thereunder.

(e) Exclusions. The provisions of this Section 6.10 shall be subject to the limitations and exclusions set forth in the Security Documents.

Section 6.11 Payment of Obligations. Pay and discharge as the same will become due and payable, (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets the failure of which to pay could reasonably be expected to have or result in a Material Adverse Effect, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by such Person; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property (other than a Permitted Lien), except as could not reasonably be expected to have or result in a Material Adverse Effect; and (c) all Indebtedness, as and when due and payable (but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness), except as could not reasonably be expected to have or result in a Material Adverse Effect.

Section 6.12 Further Assurances. In addition to the obligations and documents which this Agreement expressly requires that any Loan Party or any Subsidiary thereof execute, acknowledge, deliver and perform, each Loan Party will, and will cause each of its Subsidiaries to, execute and acknowledge (or cause to be executed and acknowledged) and deliver to Administrative Agent all documents, and take all actions, that may be reasonably requested by Administrative Agent or the Lending Parties from time to time hereunder to confirm the rights created or now or hereafter intended to be created under the Loan Documents, or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties, or otherwise to carry out the purposes of the Loan Documents and the transactions contemplated hereunder and thereunder. Borrower also agrees to provide to Administrative Agent, from time to time upon the reasonable request by Administrative Agent, evidence reasonably satisfactory to Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

Section 6.13 Compliance with Anti-Corruption Laws, Beneficial Ownership Regulation, Anti-Money Laundering Laws and Sanctions. (a) Maintain in effect and enforce policies and procedures reasonably designed to promote compliance by Borrower, its Subsidiaries and their respective directors, officers, employees and agents with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions, (b) notify Administrative Agent and each Lender that previously received a Beneficial Ownership Certification (or a certification that Borrower qualifies for an express exclusion to the "legal entity customer" definition under the Beneficial Ownership Regulation) of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein (or, if applicable, Borrower ceasing to fall within an express exclusion to the definition of "legal entity customer" under the Beneficial Ownership Regulation) and (c) promptly upon the reasonable request of Administrative Agent or any Lender, provide Administrative Agent or directly to such Lender, as the case may be, any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.

Section 6.14 Regulatory Matters. With respect to Regulatory Matters, each Loan Party and its Subsidiaries shall comply with all applicable Pharma Laws and their implementation by any applicable

Governmental Authority. All Products developed, manufactured, tested, investigated, distributed, marketed, or sold by or on behalf of any Loan Party or any of its Subsidiaries that are subject to Pharma Laws and the jurisdiction of any Governmental Authority shall be developed, tested, manufactured, investigated, distributed, marketed, and sold in material compliance with applicable Pharma Laws and any other applicable Law, including, without limitation, product approval or premarket notification, good manufacturing practices, labeling, advertising, record-keeping, and adverse event reporting requirements.

Section 6.15 Post-Closing Matters. Execute and deliver the documents, take the actions and complete the tasks set forth on Schedule 6.15, in each case within the applicable corresponding time limits specified on such schedule.

ARTICLE VII
NEGATIVE COVENANTS

Each Loan Party hereby covenants that, until the Obligations have been paid in full and each of the Revolving Credit Commitments hereunder have terminated, it will not, and will not permit any of its Subsidiaries, directly or indirectly, to:

Section 7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than any of the following (collectively, "Permitted Liens"):

(a) Liens created pursuant to the Loan Documents (including Liens in favor of Swing Line Lender and/or L/C Issuer, as applicable, on Cash Collateral granted pursuant to the Loan Documents);

(b) Liens existing on the Closing Date and listed on Schedule 7.01 to the Disclosure Letter (as such Schedule may be updated pursuant to Section 6.02(c)) and any modifications, renewals, extensions, refinancings or replacements thereof upon or in the same property; provided that (i) the outstanding principal amount secured or benefited thereby is not increased except by an amount equal to the amount paid (including any premium and any accrued and unpaid interest thereon), and fees and expenses incurred, in connection with such modification, renewal, extension, refinancing or replacement and by an amount equal to any existing commitments unutilized thereunder, (ii) the direct or any contingent obligor with respect thereto is not changed and (iii) and any modification, renewal, extension, refinancing or replacement of the obligations secured or benefited thereby is permitted by Section 7.03(c);

(c) Liens for Tax liabilities, fees, assessments and other governmental charges or levies not yet delinquent or remaining payable without penalty or to the extent that non-payment thereof is permitted by Section 6.11;

(d) landlord's, grower's, supplier's, producer's, carrier's, warehouseman's, mechanic's, materialman's, repairman's or other like Liens (whether arising by operation of law, contract or otherwise) arising in the ordinary course of business that is not overdue for a period of more than sixty (60) days, or that is being contested in good faith and by appropriate proceedings timely instituted and diligently conducted, if adequate reserves with respect thereto, if any, in accordance with GAAP are set aside on the financial statements of the applicable Person;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA or applicable Environmental Law;

(f) deposits to secure the performance of bids, trade contracts or leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature, in each case incurred in the ordinary course of business;

(g) zoning, building and other land use restrictions, easements, rights-of-way, covenants, restrictions and other similar encumbrances incurred in the ordinary course of business which do not in any case materially detract from the value of the real property subject thereto or interfere with the ordinary conduct of the businesses of such Person;

(h) Liens securing Indebtedness permitted under Section 7.03(g); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness (and any accessions, improvements or additions thereto and proceeds thereof), (ii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing and/or improving such property (including any customary "soft costs" incurred in connection therewith), and (iii) such security interests and the Indebtedness secured thereby are incurred and attach prior to or within one hundred twenty (120) days after such acquisition or the completion of such construction or improvement;

(i) rights of a (sub)licensor under any license agreement for the use of intellectual property or other intangible assets as to which any Loan Party or any of its Subsidiaries is the (sub)licensee;

(j) rights of a (sub)licensee under any license agreement for the use of intellectual property or other intangible assets of any Loan Party or any of its Subsidiaries as to which such Person is the (sub)licensor permitted under Section 7.04(n);

(k) (sub)leases granted to others in the ordinary course of business not interfering, alone or in the aggregate, with the conduct of the business of Borrower and its Subsidiaries taken as a whole;

(l) interests or title of a (sub)lessor under an operating lease;

(m) Liens securing a judgment for the payment of money not constituting an Event of Default under Section 8.01(h) or securing an appeal or other surety bond related to any such judgment;

(n) Liens arising by virtue of any contractual, statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit or security accounts or other funds maintained with a creditor depository institution; provided that such deposit account is not a dedicated cash collateral account in favor of such depository institution and is not otherwise intended to provide collateral security (other than for customary account commissions, fees and reimbursable expenses relating solely to such deposit account, and for returned items);

(o) Liens existing on any property or assets of a Person prior to the Acquisition thereof by any Loan Party or any Subsidiary thereof or existing on any property or asset of any Person that thereafter becomes a Subsidiary of Borrower after the Closing Date; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary of Borrower, as the case may be; (ii) such Lien attaches to or otherwise encumbers only specified property, improvements and/or fixed assets of such Person and is not in the nature of a floating Lien (provided that the foregoing restriction shall not apply to floating Liens on any property or assets of any Person that is acquired by any Loan Party or any other Subsidiary after the Closing Date; provided (1) such acquired Person is not and does not become a Material Subsidiary, (2) such acquired Person does not merge with any Loan Party or any other Subsidiary and (3) such floating Liens are terminated within 180 days of the date such Person

was acquired by such Loan Party or such other Subsidiary); and (iii) such Lien will secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary of Borrower, as the case may be, and modifications, extensions, renewals, refinancings and replacements thereof upon or in the same property; provided that (A) the outstanding principal amount secured or benefited thereby is not increased except by an amount equal to the amount paid (including any premium and any accrued and unpaid interest thereon), and fees and expenses incurred, in connection with such modification, renewal, extension, refinancing or replacement and by an amount equal to any existing commitments unutilized thereunder, (B) the direct or any contingent obligor with respect thereto is not changed and (C) the Indebtedness secured or benefited thereby (including any such modification, extension, renewal, refinancing or replacement) is permitted by Sections 7.03(f) or (g);

(p) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by any Loan Party or any Subsidiary thereof in the ordinary course of business not materially interfering with the conduct of the business of Borrower and its Subsidiaries taken as a whole;

(q) Liens deemed to exist in connection with repurchase agreements permitted under the definition of "Cash Equivalents";

(r) real estate security deposits with respect to leaseholds in the ordinary course of business;

(s) Liens on any property or asset of Foreign Subsidiaries to secure Indebtedness permitted pursuant to Section 7.03(b); provided that such Lien shall not apply to any property or asset of any Loan Party;

(t) interests of any collection agency in accounts receivable assigned to it by Borrower or any Subsidiary in the ordinary course of business for the purpose of facilitating the collection of such accounts receivable;

(u) Liens in favor of customs and revenues authorities which secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(v) reservations by vendors of security interests in the ordinary course of business pursuant to Section 2-401(1) of the Uniform Commercial Code as in effect in the applicable jurisdiction;

(w) Permitted Encumbrances;

(x) Liens on Collateral securing Incremental Equivalent Debt; and

(y) Liens not otherwise permitted under this Section 7.01; provided that the obligations secured by such other Liens will not, in the aggregate, as determined as of any date, exceed the greater of (i) $50,000,000 and (ii) an amount equal to 20.0% of Consolidated EBITDA, as determined as of the date of the incurrence or assumption of such Lien and calculated on a pro forma basis for the most recent Test Period.

Notwithstanding the foregoing, Borrower will not, nor will it permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Lien on or with respect to any of its fee-owned real property, whether now owned or hereafter acquired, other than Liens described above in clauses (a), (b), (c), (d), (f), (g), (h), (k), (l), (m), (n), (o), (r) and/or (s) of this Section 7.01, as applicable.

Section 7.02 Investments. Except as may be permitted by Section 7.04, make any Acquisition or make, purchase or acquire any Investment, except for:

(a) Investments in Cash Equivalents;

(b) (i) the Closing Date Acquisition and (ii) Investments to the extent constituting Permitted Acquisitions;

(c) Guaranties constituting Indebtedness to the extent permitted by Section 7.03(d);

(d) Investments by Borrower in its Subsidiaries and Investments by any Subsidiary of Borrower in any other Subsidiary or in Borrower directly (collectively, "Intercompany Investments"); provided, however, that if the Consolidated Net Leverage Ratio, as determined as of the date of such Investment and calculated on a pro forma basis for the most recent Test Period, but after giving effect to such Investment and all Indebtedness to be incurred therewith, is equal to or greater than 2.75:1.00, then the aggregate amount of such Investment together with all other Intercompany Investments as are thereafter made by Borrower and its Subsidiaries (other than Investments otherwise permitted under this Section 7.02) will not exceed the greater of (i) $50,000,000 and (ii) an amount equal to 20.0% of Consolidated EBITDA, as determined as of the date of such Investment and calculated on a pro forma basis for the most recent Test Period; provided, further, however, that in the event that the Consolidated Net Leverage Ratio, as determined as of the last day of each of any two consecutive Test Periods, for the Test Period ending on each such Fiscal Period-end is less than 2.75:1.00, then the cumulative amount of Intercompany Investments made prior to the last day of such most recent Fiscal Period will be deemed to be $-0- solely for purpose of re-setting the basket contemplated by this Section 7.02(d);

(e) Investments in the form of loans and advances to employees of Borrower and its Subsidiaries in the ordinary course of business not to exceed an aggregate principal amount of $5,000,000 at any time outstanding;

(f) Swap Contracts to the extent permitted by Section 7.03(e);

(g) Investments existing on the Closing Date and set forth on Schedule 7.02 to the Disclosure Letter (as such Schedule may be updated pursuant to Section 6.02(c)), including any modifications, extensions, renewals, reinvestments and replacements thereof that do not increase the amount thereof;

(h) Investments arising from transactions by Borrower or any of its Subsidiaries with customers or suppliers in the ordinary course of business, including Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers and suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(i) Investments constituting capital expenditures to the extent otherwise permitted hereby;

(j) Investments constituting extensions of trade credit (including in the form of accounts receivable) in the ordinary course of business;

(k) Investments constituting prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits provided to third parties, in each case, in the ordinary course of business;

(l) loans to employees or directors of Borrower or any of its Subsidiaries for the purpose of purchasing the Equity Interests of Borrower; provided that each such loan and purchase transaction has a cash neutral effect on Borrower and its Consolidated Subsidiaries;

(m) transactions set forth in Schedule 7.07 to the Disclosure Letter (as such Schedule may be updated pursuant to Section 6.02(c));

(n) (i) any Acquisition (including those effected through a merger, consolidation, amalgamation, reorganization or other similar transaction) by Borrower of the assets or identifiable business unit or division of, or Equity Interests in, any Subsidiary or (ii) any Acquisition (including those effected through a merger, consolidation, amalgamation, reorganization or other similar transaction) by any Subsidiary of the assets or identifiable business unit or division of, or Equity Interests in, any other Subsidiary;

(o) transactions contemplated by Sections 7.04(a) and 7.04(e);

(p) existing Investments of any Person that becomes a Subsidiary on or after the Closing Date in connection with a Permitted Acquisition or other Acquisition permitted by Section 7.02; provided that such Investments are not made in anticipation or contemplation of such acquisition or such Person becoming a Subsidiary;

(q) Investments among Borrower and/or its Subsidiaries in connection with Cash Management Arrangements and Swap Contracts permitted hereunder;

(r) Investments not otherwise permitted under this Section 7.02; provided that the Consolidated Net Leverage Ratio, as determined as of the date of the making of such Investment and calculated on a pro forma basis for the most recent Test Period, is not greater than 2.75:1.00; and

(s) to the extent Investments, any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction.

Section 7.03 Indebtedness. Create, incur, assume, suffer to exist, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(a) (i) Indebtedness under this Agreement and/or the other Loan Documents and (ii) any Incremental Equivalent Debt (and any modifications, refinancings, refundings, renewals or extensions thereof; provided that the amount of such Incremental Equivalent Debt is not increased at the time of such modification, refinancing, refunding, renewal or extension except by an amount equal to any accrued and unpaid interest thereon, the amount paid (including any premium), and fees and expenses incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder);

(b) Indebtedness of a Foreign Subsidiary secured only by the assets of any one or more Foreign Subsidiaries, and non-recourse to any Loan Party, in an aggregate principal amount not exceeding the greater of (i) $50,000,000 and (ii) an amount equal to 20.0% of Consolidated EBITDA at any time outstanding, as determined as of the date of the incurrence or assumption of such Indebtedness and calculated on a pro forma basis for the most recent Test Period;

(c) Indebtedness outstanding on the Closing Date (including Indebtedness extended after the Closing Date pursuant to committed or uncommitted credit facilities from third parties outstanding on the Closing Date), in each case listed on Schedule 7.03 to the Disclosure Letter (as such Schedule may

be updated pursuant to Section 6.02(c)) and any modifications, refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such modification, refinancing, refunding, renewal or extension except by an amount equal to any accrued and unpaid interest thereon, the amount paid (including any premium), and fees and expenses incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder;

(d) Guarantees provided by any Loan Party in respect and to the extent of Indebtedness otherwise permitted by this Section 7.03;

(e) Indebtedness in the form of any Swap Contracts entered into by any Loan Party 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 or taking a "market view";

(f) existing Indebtedness of (i) any Person or assets of any Person, in each case, that becomes a Subsidiary of Borrower after the Closing Date in connection with a Permitted Acquisition or other Acquisition or Investment, in each case, permitted by Section 7.02 or (ii) attaching to assets that are acquired by Borrower or a Subsidiary of Borrower (or assets owned by any Person acquired by Borrower or a Subsidiary of Borrower), in each case of clauses (i) and (ii); provided that such Indebtedness is not created in contemplation of or in connection with such Acquisition or such Person becoming a Subsidiary, as the case may be and provided further that the aggregate principal amount of all such Indebtedness permitted by this Section 7.03(f), including any modifications, extensions, renewals, refinancings and replacements thereof that do not increase the outstanding principal amount thereof (except by an amount equal to the amount paid (including any premium and accrued and unpaid interest thereon), and fees and expenses incurred, in connection with such modification, extension, renewal, refinancing or replacement and by an amount equal to any existing commitments unutilized thereunder), will not exceed the greater of (i) $50,000,000 and (ii) 20.0% of Consolidated EBITDA at any time outstanding, as determined as of the date of the incurrence or assumption of such Indebtedness and calculated on a pro forma basis for the most recent Test Period;

(g) Indebtedness (including Capitalized Leases, Synthetic Lease Obligations, mortgage financings, construction-in-process financings secured by real estate and purchase money obligations) incurred to finance the acquisition, construction or improvement of goods or other fixed or capital assets (whether initially incurred by Borrower or any of its Subsidiaries or assumed by Borrower or any of its Subsidiaries in connection with an acquisition of such goods or other fixed or capital assets); provided that if all or any portion of such Indebtedness is secured, the Liens securing such Indebtedness will be subject the limitations set forth in clauses (i), (ii) and (iii) of Section 7.01(h), and provided, further, that the aggregate principal amount of all such Indebtedness permitted by this Section 7.03(g), including any modifications, extensions, renewals, refinancings and replacements thereof that do not increase the outstanding principal amount thereof (except by an amount equal to the amount paid (including any premium and accrued and unpaid interest thereon), and fees and expenses incurred, in connection with such modification, extension, renewal, refinancing or replacement and by an amount equal to any existing commitments unutilized thereunder), will not exceed the greater of (i) $25,000,000 and (ii) 10.0% of Consolidated EBITDA at any time outstanding, as determined as of the date of the incurrence or assumption of such Indebtedness and calculated on a pro forma basis for the most recent Test Period;

(h) Indebtedness constituting endorsements for collection or deposit in the ordinary course of business;

(i) Indebtedness constituting Investments permitted under Section 7.02(d) to the extent constituting a loan among Loan Parties and/or any of their Subsidiaries; provided that such Indebtedness is unsecured; provided, however, that if the Consolidated Net Leverage Ratio, as determined as of the date of incurrence of such Indebtedness and calculated on a pro forma basis for the most recent Test Period, but after giving effect to the incurrence of such Indebtedness, is equal to or greater than 2.75:1.00, such Indebtedness is subordinated in right of payment, enforcement and collection to the Obligations as set forth in the Intercompany Note;

(j) Indebtedness arising from any judgment, order, decree or award not constituting an Event of Default under Section 8.01(h);

(k) Deferred Purchase Price Obligations, including the Specified Guaranteed Payment, payable pursuant to the Closing Date Acquisition Agreement; provided that such Deferred Purchase Price Obligations are unsecured;

(l) Deferred Purchase Price Obligations incurred in connection with Permitted Acquisitions or other Investments; provided that such Deferred Purchase Price Obligations are unsecured;

(m) Indebtedness (i) owing under Swap Contracts entered into in order to manage existing or anticipated interest rate, exchange rate or commodity price risks and not for speculative purposes and (ii) in respect of Cash Management Agreements entered into in the ordinary course of business;

(n) [reserved];

(o) Indebtedness of Borrower or any other Loan Party not otherwise permitted under this Section 7.03; provided that such additional Indebtedness is (i) unsecured, (ii) ranks pari passu or junior in right of payment, enforcement and collection to the Obligations, (iii) such Indebtedness does not mature, or require any principal amortization, mandatory prepayment, put right or sinking fund obligation prior to the then latest scheduled maturity date of the Loans and Commitments (or, with respect to any such Indebtedness that ranks pari passu or junior in right of payment, enforcement and collection to the Obligations, the date that is 91 days after the then latest maturity of the Loans and Commitments); provided that (x) any Indebtedness consisting of a customary bridge facility shall be deemed to satisfy this requirement so long as such Indebtedness automatically converts into long-term debt which satisfies this clause (iii), (y) customary prepayment, redemption, repurchase or defeasance obligations in connection with a change of control, asset sale, fundamental change or other similar event or the exercise of remedies after an event of default (in each case as determined by Borrower in good faith) shall not disqualify such Indebtedness from satisfying the requirements of this clause (iii), and (z) for purposes of determining whether Permitted Convertible Indebtedness meets the foregoing requirements, neither any settlement upon conversion of such Permitted Convertible Indebtedness (whether in cash, stock or other property) nor any required redemption or repurchase thereof upon a "fundamental change" (as customarily defined for such Permitted Convertible Indebtedness) shall disqualify such Permitted Convertible Indebtedness from satisfying such requirements notwithstanding a possible occurrence prior to the then latest scheduled maturity date of the Loans and Commitments, (iv) the terms of such Indebtedness either (x) reflect market terms (taken as a whole) at the time of issuance or (y) when taken as a whole, are not materially more restrictive (in each case, as determined by Borrower in good faith) on Borrower and its Subsidiaries than the terms and conditions of this Agreement (other than pricing, fees, rate floors, premiums and optional prepayment or redemption provisions), taken as a whole (except for covenants or other provisions applicable only to periods after the Revolving Credit Maturity Date and the Initial Term Loan Maturity Date or which are added for the benefit of the Initial Term Loans), and (v) the Consolidated Net Leverage Ratio, as determined as of the date of the incurrence of such Indebtedness and calculated on a pro forma basis for the most recent Test Period, is not greater than 2.75:1.00; and

(p) Indebtedness of any Subsidiary (other than Indebtedness of, or Guaranteed by, a Loan Party) and not otherwise permitted under this Section 7.03, in an aggregate principal amount outstanding at any time (for all Domestic Subsidiaries) not to exceed the greater of (i) $50,000,000 and (ii) an amount equal to 20.0% of Consolidated EBITDA, as determined as of the date of incurrence of such Indebtedness and calculated on a pro forma basis for the most recent Test Period.

Section 7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) any of its assets (whether now owned or hereafter acquired) to or in favor of any Person, other than, so long as no Event of Default has occurred and is continuing or would result therefrom:

(a) any Subsidiary may merge or consolidate with (i) Borrower (provided that Borrower is the continuing or surviving Person) or (ii) any one or more other Subsidiaries (provided that when (A) any Loan Party is merging or consolidating with a Subsidiary that is not a Loan Party, such Loan Party will be the continuing or surviving Loan Party, (B) any wholly owned Subsidiary that is not a Loan Party is merging or consolidating with a Subsidiary that also is not a Loan Party, such wholly owned Subsidiary is the continuing or surviving Person), and (C) any such merger or consolidation involving a Subsidiary that is not wholly owned immediately prior to such merger or consolidation is otherwise an Investment permitted under Section 7.02);

(b) Dispositions (upon voluntary liquidation or otherwise) (i) between or among Loan Parties, (ii) by any Subsidiary that is not a Guarantor to any Loan Party (provided that in connection with any new transfer, such Loan Party shall not pay more than an amount equal to the fair market value of such assets as determined in good faith by Borrower at the time of such transfer) and (iii) by any Subsidiary that is not a Guarantor to any other Subsidiary that is not a Guarantor;

(c) Dispositions not otherwise permitted pursuant to this Section; provided that (i) such Disposition is made for not less than fair market value as determined in good faith by the Board of Directors of Borrower and (ii) the all-in consideration (A) for all such transactions consummated after Closing Date does not exceed, in the aggregate, the greater of (x) $25,000,000 and (y) an amount equal to 10.0% of Consolidated EBITDA, and (B) for any such single transactions (or series of related transactions) after the Closing Date does not exceed the greater of (x) $12,500,000 and (y) an amount equal to 5.0% of Consolidated EBITDA, in each case, as determined as of the date of such Disposition and calculated on a pro forma basis for the most recent Test Period;

(d) Borrower may contribute Equity Interests of a Subsidiary that is directly owned by Borrower to a wholly owned Subsidiary of Borrower;

(e) in connection with any Permitted Acquisition, (i) Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that Borrower will be the surviving Person of such merger or consolidation, and (ii) any Subsidiary of Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that, subject to the preceding clause (i), (1) the Person surviving such merger or consolidation will be a direct or indirect wholly owned Subsidiary of Borrower and (2) in the case of any such merger or consolidation to which any Loan Party (other than Borrower) is a party, such Loan Party is the surviving Person;

(f) the liquidation or dissolution of any Subsidiary if the Board of Directors of Borrower determines in good faith that such liquidation or dissolution is in the best interest of Borrower; provided that, in the case of any Subsidiary that is a Loan Party, (i) Borrower provides written notice to

Administrative Agent at least ten (10) days prior to the effectiveness of such liquidation or dissolution and (ii) all assets and property of such Subsidiary is transferred to another Loan Party;

(g) Dispositions of non-core assets, including Equity Interests, (i) acquired in connection with any Investment permitted hereunder or (ii) made to obtain the approval of any applicable antitrust or other regulatory authority in connection with any Investment permitted hereunder;

(h) any Restricted Payment permitted by Section 7.05;

(i) the sale of inventory in the ordinary course of business;

(j) the write-off, discount, sale or other disposition of defaulted or past-due receivables and similar obligations in the ordinary course of business and not undertaken as part of an accounts receivable financing transaction;

(k) the disposition, termination or unwinding of any Swap Contract;

(l) dispositions of Cash and Cash Equivalents;

(m) the sale or other disposition of obsolete, worn-out or surplus assets no longer used or useful in the business of Borrower or any of its Subsidiaries;

(n) (i) non-exclusive licenses and sublicenses of intellectual property rights in the ordinary course of business not interfering, individually or in the aggregate, in any material respect with the business of Borrower and its Subsidiaries and (ii) exclusive licenses and sublicenses of intellectual property rights not interfering, individually or in the aggregate, in any material respect with the business of Borrower and its Subsidiaries; provided that such exclusive licenses of intellectual property rights neither result in a legal transfer of title of the licensed intellectual property rights nor have the same effect as a sale of such intellectual property rights, but that may be exclusive in other respects, including, without limitation, exclusivity with respect to geographical scope, fields of use, license duration and customized products for third parties;

(o) leases, subleases, licenses or sublicenses of real or personal property granted by Borrower or any of its Subsidiaries to others in the ordinary course of business not detracting from the value of such real or personal property or interfering in any material respect with the business of Borrower or any of its Subsidiaries;

(p) Dispositions in the form of Casualty Events; provided that the requirements of Section 2.05(c)(v) are complied with in connection therewith;

(q) Dispositions of property in the form of an Investment permitted pursuant to Section 7.03; and

(r) to the extent constituting a Disposition, Liens permitted by Section 7.01.

Section 7.05 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary of Borrower may make Restricted Payments to Borrower and to wholly-owned Subsidiaries of Borrower (and, in the case of a Restricted Payment by a non-wholly-owned

Subsidiary, to Borrower and any Subsidiary of Borrower and to each other owner of Equity Interests of such Subsidiary on a pro rata basis based on their relative ownership interests);

(b) each Loan Party and each of its respective Subsidiaries may declare and make dividend payments or other distributions payable solely in common Equity Interests of such Person;

(c) Borrower may make Restricted Payments pursuant to and in accordance with equity incentive plans or other benefit plans for management, employees, consultants or directors of Borrower and its Subsidiaries;

(d) without limitation of Section 7.05(c), so long as no Event of Default has occurred and is continuing prior to or immediately following such action or otherwise results from such action, Borrower may declare and pay Restricted Payments; provided that the Consolidated Net Leverage Ratio, as determined as of the effective date of such Restricted Payment and calculated on a pro forma basis for the most recent Test Period, is not greater than 2.75:1.00;

(e) Borrower may make Net Stock Repurchases in an aggregate amount not to exceed $50,000,000 in any Fiscal Year; provided no Default or Event of Default shall have occurred and be continuing or would result therefrom; and

(f) so long as no Default or Event of Default has occurred and is continuing prior to or immediately following such action or otherwise results from such action, Borrower may make additional Restricted Payments in an aggregate amount not to exceed $5,000,000 in any Fiscal Year.

Section 7.06 Sale-Leaseback Transactions. Enter into any arrangement with any Person providing for the leasing, whether by an operating lease, a finance lease or a capital lease, by Borrower or any of its Subsidiaries of real or personal property which has been or is to be sold or transferred by Borrower or such Subsidiary to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of Borrower or such Subsidiary if and to the extent the aggregate consideration received by Borrower and its Subsidiaries in connection with all such transactions since the Closing Date exceeds $25,000,000; provided that the foregoing restriction will not apply to transitional leases, licenses to use or other similar rental arrangements whose term, including all renewal options, does not exceed an aggregate of one year following the initial date of sale or transfer.

Section 7.07 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of any Loan Party, irrespective of whether in the ordinary course of business, other than on fair and reasonable terms, when taken as a whole, at least as favorable to Borrower and the other Loan Parties as would be obtainable by such Person at the time in a comparable arm's-length transaction with a Person other than an Affiliate; provided that the foregoing restriction will not apply to (a) transactions between or among Borrower and its wholly owned Subsidiaries or between or among Borrower's wholly owned Subsidiaries not involving any other Affiliate that is not a wholly owned Subsidiary, (b) Restricted Payments permitted under Section 7.05, (c) Guaranties permitted under Section 7.03(d), (d) employment and severance arrangements (including equity incentive plans and employee benefit plans and arrangements) with their respective officers and employees in the ordinary course of business, (e) payment of fees and other compensation and reasonable out-of-pocket costs to, and indemnities for the benefit of, directors, consultants, officers and employees of Borrower and its Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of such Person, (f) the transactions described on Schedule 7.07 to the Disclosure Letter (as such Schedule may be updated pursuant to Section 6.02(c)) and (g) transactions that, individually or in the aggregate, are otherwise not material to Borrower or any other Loan Party or to the operation of its or their business.

Section 7.08 Burdensome Agreements. Except for agreements described on Schedule 7.08 to the Disclosure Letter (as such Schedule may be updated pursuant to Section 6.02(c)) or otherwise as provided or permitted in this Agreement (whether referencing this Section 7.08 or not):

(a) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Borrower to pay dividends or make any other distributions on any of such Subsidiary's Equity Interests owned by Borrower or any other Subsidiary; or

(b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Loan Party or any of its Subsidiaries to (i) repay or prepay any Indebtedness owed by such Loan Party or Subsidiary to Borrower or any other Loan Party, (ii) make loans or advances to Borrower or any other Loan Party, (iii) transfer any of its property or assets to Borrower or any other Loan Party or (iv) grant any Lien on the Collateral to secure the Obligations, in each case other than (A) customary non-assignment provisions of leases, subleases and sublicenses and similar agreements, (B) with respect to the specific property to be sold pursuant to an executed agreement in connection with a Disposition permitted under Section 7.04, or (C) with respect to the incurrence of Indebtedness permitted under Sections 7.03(c) and (g).

The preceding restrictions in this Section 7.08 shall not apply to encumbrances or restrictions existing under or by reason of: (i) applicable law, rule, regulation or order; (ii) any instrument governing Indebtedness incurred pursuant to Section 7.03(f), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired and was not created in contemplation of or in connection with such acquisition; (iii) the Loan Documents; (iv) Swap Contracts permitted pursuant to Section 7.03(e); provided that such restrictions are no more restrictive on the Borrower and its Subsidiaries than those set forth in this Agreement; (v) restrictions solely on the transfer of assets subject to any Lien permitted under this Agreement imposed by the holder of such Lien; (vi) restrictions imposed by any agreement to sell assets or Equity Interests permitted under this Agreement to any Person pending the closing of such sale; (vii) asset sale agreements, stock sale agreements, purchase agreements and acquisition agreements (including by way of merger, acquisition or consolidation) entered into in connection with the entering into of such transaction, which limitation is applicable only to the assets that are the subject of those agreements; (viii) any agreement or instrument governing Equity Interests of any Person that is acquired, so long as the restrictions in such agreement or instrument were not imposed solely in contemplation of such Person being so acquired; (ix) secured Indebtedness otherwise permitted to be incurred pursuant to Sections 7.01 and 7.03 to the extent limiting the right of the debtor to dispose of the assets securing such Indebtedness; (x) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business; (xi) Indebtedness or Disqualified Equity Interests of the Borrower or any Subsidiary that is incurred subsequent to the Closing Date pursuant to Section 7.03; provided that such restrictions, taken as a whole, are no more restrictive on the Borrower and its Subsidiaries than those set forth in this Agreement (as determined by Borrower in good faith); (xii) customary provisions in joint venture and other similar agreements applicable solely to such joint venture and its subsidiaries; (xiii) customary provisions in leases and other similar agreements entered into in the ordinary course of business; provided that such restrictions are limited to the assets which are the subject of such lease or similar agreement; or (xiv) any encumbrances or restrictions of the type referred to in Section 7.08(a) and (b) imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xiii); provided that such encumbrances and restrictions contained in any such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing are, in the good faith judgment of Borrower, not materially more restrictive, taken as a whole, than the encumbrances and restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 7.09 Use of Proceeds.

(a) Use any portion of the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock, (ii) to repay or otherwise refinance indebtedness of Borrower or others incurred to purchase or carry Margin Stock, (iii) to extend credit to others for the purpose of purchasing or carrying any Margin Stock or (iv) or for any other purpose other than (A) with respect to the Initial Term Loan funded on the Closing Date (1) to finance a portion of the purchase price for the Closing Date Acquisition, (2) to refinance certain Indebtedness of Borrower and its Subsidiaries and (3) to finance the payment of premiums, fees and expenses incurred in connection with this Agreement, the Closing Date Acquisition and the other Transactions contemplated to occur on or about the Closing Date and (B) with respect to the Revolving Credit Loans and Swing Line loans, (1) to fund Permitted Acquisitions, other Investments and the payment in Cash of Restricted Payments, to the extent not otherwise prohibited by this Agreement and the other Loan Documents and (2) for ongoing working capital, general corporate purposes and general business needs of Borrower and its Subsidiaries, to the extent not otherwise prohibited by this Agreement and the other Loan Documents.

(b) Request any Credit Extension, and Borrower shall not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Credit Extension, directly or indirectly, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or Anti-Money Laundering Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 7.10 Maintenance of Business.

(a) Engage to any material extent in any business other than businesses of the type conducted by Borrower and its Subsidiaries on the Closing Date and after the Closing Date Acquisition and any Related Business; provided that Borrower and its Subsidiaries may discontinue or dispose of existing product lines or product groups, subject to the other restrictions of this Agreement.

(b) Dispose of its accounts receivable, or an interest therein, to any other Person (other than Dispositions of accounts receivable to collection agencies for the purpose of facilitating the collection thereof or in connection with the compromise, settlement or collection thereof, in each case in the ordinary course of business), or enter into any other securitization transaction with respect to its accounts receivable.

Section 7.11 Amendments of Organization Documents; Closing Date Acquisition Agreement. Amend or modify the terms of (a) Borrower's or any other Loan Party's Organizational Document other than changes that are not materially adverse to Administrative Agent or any Lender or (b) at any time prior to the Closing Date Acquisition Closing Date, the Closing Date Acquisition Agreement in any respect materially adverse to the Administrative Agent or any Lender.

Section 7.12 Accounting Changes. Make any (a) material change in Borrower's or any of its Consolidated Subsidiaries' accounting policies or financial reporting practices, except as required by GAAP, or (b) change in Borrower's or any of its Consolidated Subsidiaries' Fiscal Year.

Section 7.13 Prepayments and Modifications of Subordinated Debt.

(a) Amend, modify, waive or supplement (or permit the amendment, modification, waiver or supplement of) any of the terms or provisions of any Subordinated Debt in any respect if such amendment, modification, waiver or supplement would affect any of the terms described in clauses (a) through (c) of the definition of "Subordinated Debt" set forth in Section 1.01, impair the ability of any Loan Party to pay or perform its obligations under this Agreement or the Loan Documents, except to the extent permitted by the applicable subordination agreement or subordination terms.

(b) Cancel, forgive, make any prepayment on, or redeem or acquire for value (including by way of depositing with any trustee with respect thereto money or securities before due for the purpose of paying when due and at the maturity thereof) any Subordinated Debt, except:

(i) refinancings, refundings, renewals, extensions or exchange of any Subordinated Debt permitted by Section 7.03 and by any subordination agreement applicable thereto; and

(ii) the payment of interest, expenses and indemnities in respect of Subordinated Debt permitted by Section 7.03 (other than any such payments prohibited by the subordination provisions thereof);

provided that the foregoing restrictions on the cancellation, forgiveness or making of prepayments on, or the redemption or acquisition for value (including by way of any deposit made with any trustee) of any Subordinated Debt, will not apply (A) to Deferred Purchase Price Obligations to the extent permitted by Section 7.03(k) and (B) to any such cancellation, forgiveness, prepayment, or redemption or acquisition for value if, at the time thereof, (1) no Default or Event of Default has occurred and is then continuing or would otherwise result therefrom and (2) the Consolidated Net Leverage Ratio, calculated on a pro forma basis for the most recent Test Period, is 2.75:1.00 or less; provided, further, that if such cancellation, forgiveness, prepayment, redemption or acquisition for value is made in connection with a Limited Condition Transaction, the foregoing test shall be subject to Section 1.02(s).

Nothing in this Section 7.13 shall prohibit the payment of the Specified Guaranteed Payment and/or any earnout payments arising under the Closing Date Acquisition Agreement.

Section 7.14 Financial Covenants.

(a) Maximum Consolidated Net Leverage Ratio. Maintain a Consolidated Net Leverage Ratio, as determined as of the last day of each Test Period, of not greater than 3.50:1.00.

(b) Minimum Consolidated Interest Coverage Ratio. Maintain a Consolidated Interest Coverage Ratio, as determined as of the last day of each Test Period, of not less than 3.00:1.00.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default. Each of the following will constitute an event of default hereunder (each, an "Event of Default"):

(a) Non-Payment. Borrower fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan or any Letter of Credit Obligation or deposit of funds as Cash Collateral in respect of Letter of Credit Obligations; or (ii) pay within three (3) Business Days after the same becomes due, any interest on any Loan or on any Letter of Credit Obligation, or any fee due hereunder;

or (iii) within three (3) Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. (i) Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.03, Section 6.04 (with respect to any Loan Party's existence), or Section 6.10 or Article VII; or (ii) any Guarantor fails to perform or observe any term, covenant or agreement contained in its Guaranty (including any failure of any Guarantor to perform or observe any term, covenant or agreement contained in Section 10.15); or (iii) any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01 or Section 6.02 and such failure continues for five (5) Business Days; or

(c) Representations and Warranties. Any representation, warranty, statement or certification made by any Loan Party or any of its Subsidiaries in this Agreement or in any other Loan Document or in any other document, instrument or Record delivered or made available to Administrative Agent or any other Lending Party in connection with any Loan Document that is subject to materiality or a Material Adverse Effect qualification will be incorrect or misleading in any respect when made or deemed made or any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party or any of its Subsidiaries in this Agreement or in any other Loan Document or in any other document, instrument or Record delivered or made available to Administrative Agent or any other Lending Party in connection with any Loan Document that is not subject to materiality or a Material Adverse Effect will be incorrect or misleading in any material respect when made or deemed made; or

(d) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a), Section 8.01(b) or Section 8.01(c)) contained in this Agreement or in any other Loan Document on its part to be performed or observed and such failure continues for ten (10) days (or if such Default is not reasonably susceptible to cure within ten (10) days, continues for thirty (30) days so long as and provided that the Loan Parties are diligently pursuing cure) after a Responsible Officer of any Loan Party becomes aware thereof, whether by notice thereof by Administrative Agent or any Lending Party or otherwise; or

(e) Cross-Default. (i) Any Loan Party or Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise and after giving effect to any grace or cure period) in respect of any Indebtedness (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount; or (B) after giving effect to any applicable grace or cure period, fails to observe or perform any other agreement or condition relating to any such Indebtedness or contained in any document evidencing, securing or relating to any of the foregoing, or any other default or event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders), as the case may be, to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity (including the foreclosure or similar action on any Lien securing such Indebtedness) (other than (1) any event that permits holders of any Permitted Convertible Indebtedness to convert or exchange such Indebtedness, (2) the conversion or exchange of any Permitted Convertible Indebtedness, in either case, into common stock of Borrower (or other securities or property following a merger event, reclassification or other change of the common stock of Borrower), cash or a combination thereof, (3) any repurchase, prepayment, defeasance, redemption, conversion or settlement with respect to any Permitted Convertible Indebtedness, or satisfaction of any condition giving rise to or permitting the foregoing, pursuant to its terms unless such repurchase, prepayment, defeasance, redemption, conversion or settlement

results from a default thereunder or an event of the type that constitutes an Event of Default, or (4) the occurrence of any early termination, unwind or cancellation and payment (each howsoever defined) of any Permitted Bond Hedge Transaction or any Permitted Warrant Transaction); or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which Borrower or any of its Subsidiaries is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which any Loan Party or any Subsidiary thereof is the sole Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary in respect of such Swap Contract as a result thereof is greater than the Threshold Amount; or

(f) Insolvency; Voluntary Proceedings. Any Loan Party or any Material Subsidiary thereof (i) ceases or fails to be Solvent (for purposes of this Section 8.01(f), determined without regard to any intercompany payables), or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; (ii) except as permitted under Section 7.04, voluntarily liquidates, dissolves or ceases to conduct its business in the ordinary course; (iii) commences any Insolvency Proceeding with respect to itself; or (iv) takes any action to effectuate or authorize any of the foregoing; or

(g) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against any Loan Party or any Material Subsidiary thereof, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of any Loan Party's properties or assets or the properties or assets of any Material Subsidiary thereof, and any such proceeding or petition will not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process will not be released, vacated or fully bonded within sixty (60) days after commencement, filing or levy; (ii) any Loan Party or any Material Subsidiary thereof admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-United States Debtor Relief Law) is ordered in any Insolvency Proceeding; or (iii) any Loan Party or any Material Subsidiary thereof acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar Person for itself or a substantial portion of its property, assets or business; or

(h) Judgments. There is entered or issued against any Loan Party or any Subsidiary thereof (i) a final (non-interlocutory) judgment, order or decree by any Governmental Authority or a final or binding award by an arbitrator or arbitration panel or other similar alternative dispute resolution body for the payment of money in an amount, singularly or in the aggregate, exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage); or (ii) any one or more injunctive or other non-monetary final judgments that have, or could reasonably be expected to have or result in, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect and such ERISA Event continues unremedied for a period of thirty (30) days after it occurs or otherwise arises (provided that such thirty day cure period will not apply to (A) ERISA Events which are Reportable Events for which no cure period is allowed by regulation, (B) an ERISA Event of the type described in clause (d) of the definition of "ERISA Event" set forth in Section 1.01) and (C) an ERISA Event of the type described in clause (f) of the definition of "ERISA Event" set forth in Section 1.01), or (ii) any Loan Party fails to pay, or incurs liability as a result of an ERISA Affiliate failing to pay, when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal

liability under Section 4201 of ERISA under a Multiemployer Plan and such failure or liability has resulted or could reasonably be expected to result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. Any Loan Document or any material provision thereof, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in any manner the validity or enforceability of any Loan Document or any provision thereof; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document or any provision thereof; or any Loan Document shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on, or security interest in, any of the Collateral purported to be covered thereby other than in accordance with the express terms thereof; or

(k) Change of Control. A Change of Control occurs; or

(l) Regulatory. (i) Any Governmental Authority initiates enforcement action against any Loan Party or any of its Subsidiaries, or any suppliers that causes such Loan Party or Subsidiary to recall, withdraw, remove or discontinue marketing any of its Products which could reasonably be expected to result in aggregate liability and expense to the Loan Parties and their Subsidiaries of $25,000,000 or more; (ii) [reserved]; (iii) any Loan Party or any of its Subsidiaries conducts a mandated recall which could reasonably be expected to result in aggregate liability and expense to the Loan Parties and their Subsidiaries of $25,000,000 or more; or (iv) any Loan Party or any of its Subsidiaries enters into a settlement agreement with the FDA or any other Governmental Authority or is assessed a fine by the FDA or any other Governmental Authority in any case that results in aggregate liability as to any single or related series of transactions, incidents or conditions, of $25,000,000 or more, or that could reasonably be expected to have a Material Adverse Effect, in each case with respect to the foregoing clauses (i) through (iv), to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage.

Section 8.02 Waivers of Events of Defaults. Except as provided in Section 10.01, any Event of Default (or any Default that, with the lapsing of the applicable grace period, if any, would become an Event of Default) may be waived only with the written consent of Required Lenders. Any Event of Default (or Default) so waived will be deemed to have been cured and not to be continuing; but no such waiver will be deemed a continuing waiver or will extend to or affect any subsequent like default or impair any rights arising therefrom.

Section 8.03 Remedies Upon Event of Default. Upon the occurrence and during the continuance of any Default or Event of Default, the Lending Parties will have no obligation to advance money or extend any additional credit to or for the benefit of Borrower, whether in the form of the making of Loans, the issuance of Letters of Credit or otherwise. In addition, upon the occurrence and during the continuance of any Event of Default, Administrative Agent will, at the request of, or may, with the consent of, Required Lenders, take any or all of the following actions, all of which are hereby authorized by Borrower and each of the other Loan Parties:

(a) Termination of Revolving Credit Commitments. Declare, by written notice to Borrower, the Aggregate Revolving Credit Commitments, including any commitments of any Lender or the Swing Line Lender to make and advance Loans and any obligation of L/C Issuer to make or issue L/C Credit Extensions, to be terminated, whereupon such commitments and obligations will be terminated;

(b) Acceleration of Obligations. Declare all or any portion of the unpaid principal amount the outstanding Loans, the interest accrued and unpaid thereon and the other amounts and Obligations owing or payable under this Agreement or under any other Loan Document or any other

instrument executed by Borrower or any other Loan Party pursuant to the Loan Documents to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Borrower and each such other Loan Party;

(c) Cash Collateralization of Letter of Credit Obligations. Require that Borrower Cash Collateralize the Letter of Credit Obligations in an amount equal to 105% of the then Outstanding Amount thereof;

(d) Discretionary Advances. Make advances of Loans after the occurrence of any Event of Default, without thereby waiving their right to demand payment of the Obligations under this Agreement, or any of the other Loan Documents, or any other rights or remedies described in this Agreement or any other Loan Document, and without liability to make any other or further advances, notwithstanding Administrative Agent's or any Lending Party's previous exercise of any such rights and remedies; or

(e) Exercise of Rights and Remedies. Exercise on behalf of itself and the Credit Parties, in addition to all rights and remedies granted or otherwise made available to Administrative Agent or the Credit Parties under this Agreement, any and all rights and remedies granted or otherwise made available to Administrative Agent or the Credit Parties under the other Loan Documents or otherwise under applicable Law or in equity;

provided that upon the occurrence and continuation of an Event of Default under Section 8.01(f) or Section 8.01(g), the obligation of each Lender or Swing Line Lender to make or advance Loans and any obligation of L/C Issuer to make or issue L/C Credit Extensions will automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts and Obligations as aforesaid will automatically become due and payable, and the obligation of Borrower to Cash Collateralize the Letter of Credit Obligations in an amount equal to 105% of the then Outstanding Amount thereof will automatically become effective, in each case, without further act of Administrative Agent or any Lending Party.

Section 8.04 Application of Funds. Following the occurrence and during the continuation of an Event of Default or following any exercise of remedies provided for in Section 8.03 (or after the Loans have automatically become immediately due and payable and the Letter of Credit Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.03), any amounts received on account of the Obligations will, subject to the provisions of Section 2.15 and Section 3.07, be applied by Administrative Agent in the following order (on a pro rata basis within each level of priority):

(a) *First*, to payment in full of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to Administrative Agent and amounts payable under Article III) payable to Administrative Agent in its capacity as such;

(b) *Second*, to payment in full of that portion of the Obligations constituting fees (including commitment fees), indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lending Parties (including fees, charges and disbursements of counsel to the respective Lending Parties arising under the Loan Documents and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause *Second* payable to them;

(c) *Third*, to payment in full of that portion of the Obligations constituting accrued and unpaid interest on the Loans, Letter of Credit Borrowings and other Obligations arising under the Loan

Documents and accrued and unpaid Letter of Credit Fees, ratably among the Lending Parties in proportion to the respective amounts described in this clause *Third* payable to them;

(d) *Fourth*, to payment in full of that portion of the Obligations constituting unpaid principal of all Loans and the Letter of Credit Borrowings, Cash Management Obligations then owing and Hedging Obligations, including Swap Termination Values, and to Administrative Agent for the account of L/C Issuer, to Cash Collateralize in full that portion of Letter of Credit Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by Borrower pursuant to Section 2.15, ratably among the holders of such obligations in proportion to the respective amounts described in this clause *Fourth* held by them;

(e) *Fifth*, to payment in full of all other Obligations (including the provision of amounts to Administrative Agent to be held by Administrative Agent, for the benefit of the Cash Management Banks, as the amount necessary to secure the Loan Parties' obligations in respect of unliquidated or contingent Cash Management Obligations); and

(f) *Last*, the balance, if any, after all of the Obligations have been paid in full, to Borrower or as otherwise required by Law.

Subject to Section 2.03(c) and Section 2.15, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to the foregoing clause *Fourth* will be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount will be applied to the other Obligations, if any, in the order set forth in this Section 8.04.

Notwithstanding the foregoing, Hedging Obligations arising under Swap Contracts and Cash Management Obligations under Cash Management Agreements will be excluded from the application described above if Administrative Agent has not received written notice thereof, together with such supporting documentation as Administrative Agent may reasonably request, from the applicable Hedge Bank or Cash Management Bank, as the case may be. Each Hedge Bank or Cash Management Bank that has given the notice contemplated by the preceding sentence will, by such notice, be deemed to have acknowledged and accepted the appointment of Administrative Agent pursuant to the terms of Article IX for itself and its Affiliates as if a "Lender" party hereto; it being understood and agreed that the rights and benefits of any such Hedge Bank or Cash Management Bank under the Loan Documents consist exclusively of such Hedge Bank's or Cash Management Bank's, as the case may be, right to share in payments and collections arising after the occurrence and during the continuation of an Event of Default as more fully set forth herein. In connection with any such distribution of payments and collections, Administrative Agent will be entitled to assume no amounts are due to any Hedge Bank or Cash Management Bank unless such Hedge Bank or Cash Management Bank has notified Administrative Agent in writing of the amount of any such liability owed to it prior to such distribution. Except as otherwise expressly set forth herein, no Person that obtains the benefit of the provisions of this Section 8.04 by virtue of the provisions hereof will have any right to notice of any action or to consent to, direct or object to any action hereunder or under any of the other Loan Documents other than in its capacity as a Lending Party and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any provision in Article IX to the contrary, Administrative Agent will be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Hedging Obligations and Cash Management Obligations only if and to the extent Administrative Agent has received written notice of such Obligations, together with such supporting documentation as Administrative Agent may request, from the applicable Hedge Bank or Cash Management Bank.

Section 8.05 Credit Bidding.

(a) Administrative Agent, on behalf of itself and the Credit Parties, shall have the right, exercisable at the direction of the Required Lenders, to credit bid and purchase for the benefit of Administrative Agent and the Credit Parties all or any portion of Collateral at any sale thereof conducted by Administrative Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the United States Bankruptcy Code, including Section 363 thereof, or a sale under a plan of reorganization, or at any other sale or foreclosure conducted by Administrative Agent (whether by judicial action or otherwise) in accordance with applicable Law. Such credit bid or purchase may be completed through one or more acquisition vehicles formed by Administrative Agent to make such credit bid or purchase and, in connection therewith, Administrative Agent is authorized, on behalf of itself and the other Credit Parties, to adopt documents providing for the governance of the acquisition vehicle or vehicles, and assign the applicable Obligations to any such acquisition vehicle in exchange for Equity Interests and/or debt issued by the applicable acquisition vehicle (which shall be deemed to be held for the ratable account of the applicable Credit Parties on the basis of the Obligations so assigned by each Credit Party); provided that any actions by Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof, shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 10.01;

(b) Each Lender hereby agrees, on behalf of itself and each of its Affiliates that is a Credit Party, that, except as otherwise provided in any Loan Document or with the written consent of Administrative Agent and the Required Lenders, it will not take any enforcement action, accelerate obligations under any of the Loan Documents, or exercise any right that it might otherwise have under applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral.

ARTICLE IX
ADMINISTRATIVE AGENT

Section 9.01 Appointment and Authorization of Administrative Agent. Each Lending Party hereby irrevocably appoints, designates and authorizes Wells Fargo to act on its behalf as Administrative Agent hereunder and under the other Loan Documents, including to act in such representative capacity as secured party on behalf and for the benefit of each such Lending Party under this Agreement and the other Loan Documents, and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX are solely for the benefit of Administrative Agent, the Arrangers and the Lending Parties and their respective Related Parties, and neither Borrower nor any other Loan Party will have rights as a third party beneficiary of any of such provisions. Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Credit Parties (including each holder of Hedging Obligations and Cash Management Obligations) and the L/C Issuer hereby irrevocably appoints and authorizes Administrative Agent to act as the agent of such Lending Party and such L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto (including to enter into additional Loan Documents or supplements to existing Loan Documents on behalf of the Credit Parties). In this connection, Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by Administrative Agent pursuant to this Article IX for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of Administrative Agent), shall be entitled to the benefits of all provisions of this Article and Article X (including Section 10.04, as though such co-agents, sub-agents and

attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 9.02 Rights as a Lender. If the Person serving as Administrative Agent hereunder is also "Swing Line Lender," "L/C Issuer" or a "Lender," such Person will have the same rights and powers in such capacity(ies) as any other Person in such capacity(ies) and may exercise the same as though it were not Administrative Agent. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial advisory, underwriting, capital markets or other business with Borrower or any Subsidiary or other Affiliate thereof as if such Person were not Administrative Agent hereunder and without any duty to account therefor to any other Lending Party or to provide notice to, or the consent of, the Lending Parties with respect thereto.

Section 9.03 Exculpatory Provisions.

(a) Administrative Agent, the Arrangers and their respective Related Parties will not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder will be administrative in nature. Without limiting the generality of the foregoing, Administrative Agent, the Arrangers and their respective Related Parties:

(i) will not be subject to any agency, trust, fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) will not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that Administrative Agent is required to exercise as directed in writing by Required Lenders (or such other number or percentage of Lenders as will be expressly provided for herein or in any other Loan Documents), Swing Line Lender or L/C Issuer, as applicable; provided that Administrative Agent will not be required to take any action that, in its opinion or the opinion of its counsel, may expose Administrative Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(iii) will not, have any duty to disclose, and shall not be liable for the failure to disclose to any Lending Party or any other Person, any credit or other information relating concerning the business, prospects, operations, properties, assets, financial or other condition or creditworthiness of Borrower or any of its Subsidiaries or Affiliates that is communicated to, obtained by or otherwise in the possession of the Person serving as Administrative Agent or an Arranger or their respective Related Parties in any capacity, except for notices, reports and other documents that are required to be furnished by Administrative Agent to the Lending Parties pursuant to the express provisions of this Agreement; and

(iv) will not be required to account to any Lending Party for any sum or profit received by Administrative Agent for its own account.

(b) Administrative Agent, the Arrangers and their respective Related Parties will not be liable for any action taken or not taken by it under or in connection with this Agreement or any other

Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 8.02 and Section 10.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final non-appealable judgment. Administrative Agent will be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default and indicating that such notice is a "Notice of Default" is given to Administrative Agent by Borrower or a Lending Party.

(c) Administrative Agent, the Arrangers and their respective Related Parties will not be responsible for or have any duty or obligations to any Lender or Participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.

Section 9.04 Reliance by Administrative Agent. Administrative Agent will be entitled to rely upon, will be fully protected in relying and will not incur any liability for relying upon, any notice, request, certificate, consent, communication, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person, including any certification pursuant to Section 9.10. Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person and will be protected in relying and will not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a specified Lending Party, Administrative Agent may presume that such condition is satisfactory to such Lending Party, unless Administrative Agent will have received notice to the contrary from such Lending Party prior to the making of such Loan or the issuance, extension, renewal or increase of such Letter of Credit. In this regard, for purposes of determining compliance with the conditions set forth in Section 4.01, each Lending Party that has executed this Agreement will be deemed to have consented to, approved or accepted, or to be satisfied with, each document and matter either sent, or made available, by Administrative Agent to such Lending Party for consent, approval, acceptance or satisfaction, or required thereunder to be consented to or approved by or acceptable or satisfactory to such Lending Party, unless Administrative Agent will have received notice from such Lending Party not less than two (2) days prior to the Closing Date specifying such Lending Party's objection thereto and such objection will not have been withdrawn by notice to Administrative Agent to such effect on or prior to the Closing Date. Administrative Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts it selects and will not be liable for any action it takes or does not take in accordance with the advice of any such counsel, accountants or experts.

Section 9.05 Delegation of Duties. Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents it appoints. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX will apply to any such sub-agent and to the Related Parties of Administrative

Agent and any such sub-agent and will apply to their respective activities in connection with the syndication of the credit facilities provided for herein, as well as activities as Administrative Agent. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 9.06 Resignation of Administrative Agent.

(a) Administrative Agent may at any time give notice of its resignation to the Lending Parties and Borrower. Upon receipt of any such notice of resignation, Required Lenders will have the right, in consultation with Borrower, to appoint a successor, which shall be a bank or an Affiliate of a bank. If no such successor will have been so appointed by Required Lenders and will have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lending Parties, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation will become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof set forth in Section 1.01, Required Lenders may, to the extent permitted by applicable Law, by notice in writing to Borrower and such Person remove such Person as Administrative Agent and, in consultation with Borrower, appoint a successor. If no such successor will have been so appointed by Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) Effective as of and from the Resignation Effective Date or the Removal Effective Date (as applicable), (i) the retiring or removed Administrative Agent will be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security, including any Cash Collateral, held by Administrative Agent for the benefit of the Credit Parties or L/C Issuer under any of the Loan Documents, the retiring or removed Administrative Agent will continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lending Party directly, until such time, if any, as Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the applicable Resignation Effective Date or the Removal Effective Date), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article IX and Section 10.04 will continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent or relating to its duties as Administrative Agent that are carried out following its retirement or removal, including, without limitation, any actions taken with respect to acting as collateral agent or otherwise holding any Collateral on behalf of

any of the Credit Parties or in respect of any actions taken in connection with the transfer of agency to a replacement or successor Administrative Agent.

(d) Any resignation by Wells Fargo as Administrative Agent pursuant to this Section 9.06 will also constitute its resignation as L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder: (i) such successor will succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender; (ii) the retiring L/C Issuer and Swing Line Lender will be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents; (iii) the successor L/C Issuer will issue letters of credit and/or bank undertakings in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit; and (iv) the successor Swing Line Lenders will purchase the outstanding Swing Line Loans of the resigning Swing Line Lender at par.

Section 9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lending Party expressly acknowledges that none of Administrative Agent, any Arranger or any of their respective Related Parties has made any representations or warranties to it and that no act taken or failure to act by Administrative Agent or any Arranger or any of their respective Related Parties, including any consent to, and acceptance of any assignment or review of the affairs of Borrower and its Subsidiaries or Affiliates will be deemed to constitute a representation or warranty of Administrative Agent, any Arranger or any of their respective Related Parties to any Credit Party as to any matter, including whether Administrative Agent or any Arranger or any of their respective Related Parties have disclosed material information in their (or their respective Related Parties') possession. Each Lending Party expressly acknowledges, represents and warrants to Administrative Agent and each Arranger that (a) the Loan Documents set forth the terms of a commercial lending facility, (b) it is engaged in making, acquiring, purchasing or holding commercial loans in the ordinary course and is entering into this Agreement and the other Loan Documents to which it is a party as a Lending Party for the purpose of making, acquiring, purchasing and/or holding the commercial loans and other Credit Extensions set forth herein as may be applicable to it, and not for the purpose of making, acquiring, purchasing or holding any other type of financial instrument, (c) it is sophisticated with respect to decisions to make, acquire, purchase or hold the commercial loans applicable to it and either it or the Person exercising discretion in making its decisions to make, acquire, purchase or hold such commercial loans and other Credit Extensions is experienced in making, acquiring, purchasing or holding commercial loans and other Credit Extensions, (d) it has, independently and without reliance upon Administrative Agent, any Arranger, any other Lending Party or any of their respective Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and appraisal of, and investigations into, the business, prospects, operations, property, assets, liabilities, financial and other condition and creditworthiness of Borrower and its Subsidiaries, all applicable bank or other regulatory applicable Laws relating to the transactions contemplated by this Agreement and the other Loan Documents and (e) it has made its own independent decision to enter into this Agreement and the other Loan Documents to which it is a party and to extend credit hereunder and thereunder. Each Lending Party also acknowledges that (i) it will, independently and without reliance upon Administrative Agent, any Arranger or any other Lending Party or any of their respective Related Parties (A) continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder based on such documents and information as it shall from time to time deem appropriate and its own independent investigations and (B) continue to make such investigations and inquiries as it deems necessary to inform itself as to Borrower and its Subsidiaries and (ii) it will not assert any claim in contravention of this Section 9.07.

Section 9.08 No Other Duties, Etc. Notwithstanding anything to the contrary contained herein, no Person identified herein or on the facing page or signature pages hereof as a "Syndication Agent," "Senior Managing Agent," "Co-Agent," "Bookrunner," "Arranger," "Left Lead Arranger", or "Joint Lead Arranger," if any, will have or be deemed to have any right, power, obligation, liability, responsibility or duty under this Agreement or the other Loan Documents, other than in such Person's capacity as (a) Administrative Agent or a Lending Party hereunder and (b) an Indemnitee hereunder, and no such Person will have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on such Persons in deciding to enter into this Agreement or any other Loan Document or in taking or not taking any action hereunder or thereunder.

Section 9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit Obligation will then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent will have made any demand on Borrower) will be entitled and empowered, by intervention in such proceeding or otherwise (a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letter of Credit Obligations and all other Obligations that are owing and unpaid, and to file such other documents as may be necessary or advisable in order to have the claims of the Lending Parties and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lending Parties and Administrative Agent and their respective agents and counsel and all other amounts due the Lending Parties and Administrative Agent under Sections 2.03(h), 2.09, 3.05 and 10.04) allowed in such judicial proceeding, and (b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lending Party to make such payments to Administrative Agent and, in the event that Administrative Agent will consent to the making of such payments directly to the Lending Parties, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.03(h), 2.09, 3.05 and 10.04. Nothing contained herein will be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lending Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lending Party or to authorize Administrative Agent to vote in respect of the claim of any Lending Party in any such proceeding.

Section 9.10 Collateral and Guaranty Matters.

(a) Each Lending Party hereby irrevocably authorizes Administrative Agent, at its option and in its discretion:

(i) to release any Lien on any Collateral granted to or held by Administrative Agent, for the ratable benefit of the Credit Parties, under any Loan Document (A) upon the termination of the Aggregate Revolving Credit Commitments and payment in full of all Obligations (other than (1) contingent indemnification obligations and (2) Cash Management Obligations or Hedging Obligations) and the expiration or termination of all Letters of Credit (other than Letters of Credit which have been Cash Collateralized or as to which other arrangements satisfactory to Administrative Agent and the applicable L/C Issuer shall have been made), (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition to a Person other than a Loan Party permitted under the Loan Documents, as certified by Borrower, or (C) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 10.01; provided that any release of all or substantially of the Collateral shall be subject to Section 10.01(k);

(ii) to subordinate any Lien on any Collateral granted to or held by Administrative Agent under any Loan Document to the holder of any Lien permitted pursuant to Section 7.01(h); provided that the subordination of all or substantially all of the Collateral shall be subject to Section 10.01(k); and

(iii) to release any Guarantor from its obligations under any Loan Documents as provided in Section 10.15(o).

Upon request by Administrative Agent at any time, the Required Lenders will confirm in writing Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, Administrative Agent will, at Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10 as certified by Borrower. In the case of any such sale, transfer or disposal of any property constituting Collateral in a transaction constituting a Disposition permitted pursuant to Section 7.04 to a Person other than a Loan Party, the Liens created by any of the Security Documents on such property shall be automatically released without need for further action by any person; provided that (i) such transaction is entered into for a bona fide business purpose (as determined in good faith by Borrower) and, for the avoidance of doubt, not for the primary purpose of causing such release and (ii) such assets were not transferred to an Affiliate of Borrower (other than for purposes of a bona fide joint venture arrangement on terms that are not less favorable than arm's-length terms).

(b) Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall Administrative Agent be responsible or liable to the Lending Parties for any failure to monitor or maintain any portion of the Collateral.

Section 9.11 Legal Representation of Administrative Agent. In connection with the negotiation, drafting, and execution of this Agreement and the other Loan Documents, or in connection with future legal representation relating to loan administration, amendments, modifications, waivers, or enforcement of remedies, McGuireWoods LLP only has represented and only will represent Wells Fargo in its capacity as Administrative Agent and as a Lending Party and Wells Fargo Securities, LLC in its capacity as the Left Lead Arranger. Each other Lending Party hereby acknowledges that McGuireWoods LLP does not represent it in connection with any such matters.

Section 9.12 Certain ERISA Matters.

(a) Each Lender (1) represents and warrants, as of the date such Person became a Lender party hereto, to, and (2) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent, the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between Administrative Agent, in its sole discretion, and such Lender.

In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of Borrower or any other Loan Party, that none of Administrative Agent and the Arrangers and their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 9.13 Erroneous Payments.

(a) Each Lending Party, each other Credit Party and any other party hereto hereby severally agrees that if (i) Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lending Party or any other Credit Party or any other Person that has received funds from Administrative Agent or any of its Affiliates, either for its own account or on behalf of a Lending Party or other Credit Party (each such recipient, a "Payment Recipient") that Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in

whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this Section 9.13(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an "Erroneous Payment"), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section 9.13 shall require Administrative Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Administrative Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify Administrative Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of Administrative Agent, and upon demand from Administrative Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than one Business Day thereafter, return to Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in immediately available funds, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to Administrative Agent at the Federal Funds Rate.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by Administrative Agent for any reason, after demand therefor by Administrative Agent in accordance with immediately preceding clause (c), from any Lending Party that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lending Party, an "Erroneous Payment Return Deficiency"), then at the sole discretion of Administrative Agent and upon Administrative Agent's written notice to such Lending Party, such Lending Party shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") to Administrative Agent or, at the option of Administrative Agent, Administrative Agent's applicable lending affiliate in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by Administrative Agent or its applicable lending affiliate as the assignee of such Erroneous Payment Deficiency Assignment. Without limitation of its rights hereunder, Administrative Agent may cancel any Erroneous Payment Deficiency Assignment at any time by written notice to the applicable assigning Lending Party and upon such revocation all of the Loans assigned pursuant to such Erroneous Payment Deficiency Assignment shall be reassigned to such Lender without any requirement for payment or other consideration. The parties hereto acknowledge and agree that (i) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (ii) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 10.06 and (iii) Administrative Agent shall reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (i) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment

(or portion thereof) for any reason, Administrative Agent (A) shall be subrogated to all the rights of such Payment Recipient with respect to such amount and (B) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by Administrative Agent to such Payment Recipient from any source, against any amount due to Administrative Agent under this Section 9.13 or under the indemnification provisions of this Agreement, (ii) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by Administrative Agent from Borrower or any other Loan Party or their respective Affiliates for the purpose of making for a payment on the Obligations and (iii) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(f) Each party's obligations under this Section 9.13 shall survive the resignation or replacement of Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

(g) Nothing in this Section 9.13 will constitute a waiver or release of any claim of any party hereunder arising from any Payment Recipient's receipt of an Erroneous Payment.

Section 9.14 Hedging Obligations and Cash Management Obligations. No holder of any Hedging Obligations or Cash Management Obligations that obtains the benefits of Section 8.04 or any Collateral by virtue of the provisions hereof or of any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral), or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of any Guarantee or any Security Document, other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Hedging Obligations and Cash Management Obligations.

ARTICLE X
GENERAL PROVISIONS

Section 10.01 Amendments, Etc. Except as set forth below or as specifically provided in any Loan Document, including Section 3.03(c) of this Agreement, no amendment or, subject to Section 8.02, waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by Borrower or any other Loan Party therefrom (including any cure of any Event of Default), will be effective unless in writing approved by Required Lenders (or in the case of any amendment, waiver or consent which directly affects only one Facility, Required Revolving Credit Lenders, Required Initial Term Loan Lenders or Required Incremental Term Loan Lenders, as applicable, and not Required Lenders), or Administrative Agent with the consent of Required Lenders (or in the case of any amendment, waiver or consent which directly affects only one Facility, Required Revolving Credit Lenders, Required Initial Term Loan Lenders or Required Incremental Term Loan Lenders, as applicable, and not Required Lenders), on the one hand, and Borrower or the applicable Loan Party, on the other, as the case may be, with receipt acknowledged by Administrative Agent, and each such waiver or consent will be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent will:

(a) waive any condition set forth in Section 4.01 without the written consent of each Lender;

(b) as to any Credit Extension after the Closing Date, (i) waive any condition set forth in Section 4.02 as to any Credit Extension under the Revolving Credit Facility without the written consent of Required Revolving Credit Lenders (which shall not require the consent of Required Lenders or all Lenders in addition thereto) or (ii) waive any condition set forth in Section 4.02 as to any Credit Extension of any Incremental Term Loan without the written consent of a majority of the Lenders holding Incremental Term Loan Commitments with respect thereto (which, in each case, shall not require the consent of Required Lenders or all Lenders in addition thereto);

(c) subordinate any of the Obligations in right of payment or otherwise adversely affect the priority of payment of any of such Obligations without the written consent of such affected Lender;

(d) increase or extend the Commitments of any Lender (or reinstate any Commitment terminated pursuant to Section 8.03) without the written consent of such affected Lender;

(e) except as provided under Section 2.16, postpone any date fixed by this Agreement or any other Loan Document for any payment, of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each affected Lender;

(f) reduce the principal of, or the rate of interest specified herein on (subject to clause (vii) in the second proviso to this Section 10.01), any Loan or Letter of Credit Borrowing, or (subject to clause (i) of the proviso below to this Section 10.01(f)) any fees or other amounts payable hereunder or under any other Loan Document, or change the manner of computation of any financial ratio (including any change in any applicable defined term) used in determining the Applicable Margin that would result in a reduction of any interest rate on any Loan or any fee payable hereunder, without the written consent of each affected Lender; provided, however, that only the consent of Required Lenders will be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or Letter of Credit Borrowing or to reduce any fee payable hereunder;

(g) change (i) Section 2.13 or Section 8.04 (or amending any other term of the Loan Documents that would have the effect of changing Section 2.13 or Section 8.04) in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender or (ii) the order of application of any reduction in the Commitments or any prepayment of Loans from the application thereof set forth in the applicable provisions of Sections 2.05(c) and (d) in any manner that materially and adversely affects the Lenders under a Facility without the written consent of (A) if such Facility is the Revolving Credit Facility, Required Revolving Credit Lenders, (B) if such Facility is the Initial Term Loan Facility, Required Initial Term Loan Lenders or (C) if such Facility is the Incremental Term Loan Facility, Required Incremental Term Loan Lenders (provided that, notwithstanding the foregoing, any Incremental Term Loan Facility that may be added to this Agreement may share on a pro rata basis in the payments applicable to the other term loan facilities without the written consent of Required Lenders);

(h) change (i) any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder

(other than the definitions specified in clauses (ii), (iv) and (v) of this Section 10.01(h)), without the written consent of each Lender, (ii)(A) the definition of "Required Revolving Credit Lenders", "Revolving Credit Maturity Date" or "Revolving Credit Stated Maturity Date" or (B) Section 2.06 to allow for non-pro rata application of any reductions in the Aggregate Revolving Credit Commitments without the written consent of each Revolving Credit Lender (which shall not require the consent of Required Lenders in addition thereto), (iii) any provision of Section 3.07 or Section 8.04 without the written consent of each Lender, (iv) the definition of "Required Initial Term Loan Lenders" or "Initial Term Loan Maturity Date" without the written consent of each Initial Term Loan Lender (which shall not require the consent of Required Lenders in addition thereto), (v) the definition of "Required Incremental Term Loan Lenders" or "Incremental Term Loan Maturity Date" without the written consent of each Incremental Term Loan Lender (which shall not require the consent of Required Lenders in addition thereto), or (vi) any provision of Section 10.06 or the definition of "Eligible Assignee," "Participant," "Defaulting Lender" or "Specified Lender" without the written consent of each Lender;

(i) release all or substantially all of the value of the Guaranties set forth in Section 10.15 without the written consent of each Lender;

(j) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of, (i) if such Facility is the Revolving Credit Facility, Required Revolving Credit Lenders (which shall not require the consent of Required Lenders in addition thereto), (ii) if such Facility is the Initial Term Loan Facility, the Required Initial Term Loan Lenders (which shall not require the consent of Required Lenders in addition thereto) or (iii) if such Facility is the Incremental Term Loan Facility, the Required Incremental Term Loan Lenders (which shall not require the consent of Required Lenders in addition thereto); or

(k) release all or substantially all, or subordinate any, of the Collateral or release or subordinate any Security Document (or any Lien created thereby) which would have the effect of releasing or subordinating all or substantially all of the Collateral without the written consent of each Lender;

and provided, further, that (i) no amendment, waiver or consent will, unless in writing and signed by L/C Issuer in addition to the Lenders required above, affect the rights or duties of L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent will, unless in writing and signed by Swing Line Lender in addition to the Lenders required above, affect the rights or duties of Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent will, unless in writing and signed by Administrative Agent in addition to the Lenders required above, affect the rights or duties of Administrative Agent under this Agreement or any other Loan Document or modify Section 10.02(b) or Section 10.20 or Article IX; (iv) each Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; (v) each Issuer Document may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; provided that a copy of such amended Issuer Document shall be promptly delivered to Administrative Agent upon such amendment or waiver; (vi) Administrative Agent and Borrower will be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if Administrative Agent and Borrower will have jointly identified an obvious error or any error, ambiguity, defect or inconsistency or omission of a technical or immaterial nature in any such provision; and (vii) Administrative Agent (and, if applicable, Borrower) may, without the consent of any Lender, enter into amendments or modifications to this Agreement or any of the other Loan Documents or to enter into additional Loan Documents in order to implement any Benchmark Replacement or any Conforming Changes or otherwise effectuate the terms of Section 3.03(c) in accordance with the terms of Section 3.03(c). Notwithstanding anything to the contrary herein, no Defaulting Lender will have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or

consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (A) the Revolving Credit Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender, (B) the amount of principal and accrued fees and interest owing to the Defaulting Lender may not be reduced without the consent of such Lender and (C) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders will require the consent of such Defaulting Lender.

Notwithstanding anything in this Agreement to the contrary, each Lender hereby irrevocably authorizes Administrative Agent on its behalf, and without further consent of any Lender (but with the consent of Borrower and Administrative Agent), to (x) amend and restate this Agreement and the other Loan Documents if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement and the other Loan Documents and (y) enter into amendments or modifications to this Agreement (including amendments to this Section 10.01) or any of the other Loan Documents or to enter into additional Loan Documents as Administrative Agent reasonably deems appropriate in order to effectuate the terms of Section 2.14 (including as applicable, (1) to permit any increases in the Aggregate Commitments to share ratably in the benefits of this Agreement and the other Loan Documents, (2) to include an increase in the Aggregate Commitments, as applicable, in any determination of (i) Required Lenders, Required Revolving Credit Lenders, Required Initial Term Loan Lenders or Required Incremental Term Loan Lenders, as applicable or (ii) similar required lender terms applicable thereto); provided that no amendment or modification shall result in any increase in the amount of any Lender's Commitment(s) or any increase in any Lender's Revolving Credit Percentage Share, Initial Term Loan Percentage Share or Percentage Share, in each case, without the written consent of such affected Lender, and (3) to make amendments to any outstanding tranche of Initial Term Loans or Incremental Term Loans to permit any proposed Incremental Term Loan Commitments and Incremental Term Loans to be "fungible" (including for purposes of the Code) with such tranche of Initial Term Loans or Incremental Term Loans, including increases in the Applicable Margin or any fees payable to such outstanding tranche of Initial Term Loans or Incremental Term Loans or providing such outstanding tranche of Initial Term Loans or Incremental Term Loans with the benefit of any call protection or covenants that are applicable to the proposed Incremental Term Loan Commitments or Incremental Term Loans; provided that any such amendments or modifications to such outstanding tranche of Initial Term Loans or Incremental Term Loans shall not directly adversely affect the Lenders holding such tranche of outstanding Initial Term Loans or Incremental Term Loans without their consent.

Section 10.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.02(b)), all notices and other communications provided for herein will be in writing and will be delivered by hand or overnight courier service, mailed by certified or registered mail, sent by facsimile transmission or sent by approved electronic transmission in accordance with Section 10.02(b), and all notices and other communications expressly permitted to be given by telephone will be made to the applicable telephone number, as follows:

(i) if to any Loan Party, Administrative Agent, L/C Issuer or Swing Line Lender, to the address, facsimile number, e-mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any Lender, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Detail Form (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Detail Form then in effect for the delivery of notices that may contain material non-public information relating to Borrower).

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, will be deemed to have been given when received, and notices sent by facsimile transmission or by means of approved electronic communication will be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, will be deemed to have been given at the opening of business on the next business day for the recipient); provided that notices delivered through electronic communications to the extent provided by Section 10.02(b) will be effective as provided in such subsection (b).

(b) Electronic Communications.

(i) Each Lending Party agrees that notices and other communications to it hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent; provided that the foregoing will not apply to notices to any Lending Party pursuant to Article II if such Lending Party has notified Administrative Agent that it is incapable of receiving notices under Article II by electronic communication. In furtherance of the foregoing, each Lending Party hereby agrees to notify Administrative Agent in writing, on or before the date such Lending Party becomes a party to this Agreement, of such Lending Party's e-mail address to which a notice may be sent (and from time to time thereafter to ensure that Administrative Agent has on record an effective e-mail address for such Lending Party). Each of Administrative Agent and Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by means of electronic communication pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(ii) Unless Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address will be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (B) notices or communications posted to an Internet or intranet website will be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (A) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both the preceding clauses (A) and (B), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(iii) Borrower and each Loan Party hereby acknowledges and agrees that (A) Administrative Agent may, but will not be obligated to, make the Communications available to Lending Parties by posting some or all of the Communications on an Platform, (B) the distribution of materials and information through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with any such distribution, (C) the Platform is provided and used on an "As Is," "As Available" basis and (D) neither Administrative Agent nor any of its Affiliates warrants the accuracy, completeness, timeliness, sufficiency or sequencing of the Specified Materials posted on the Platform. Administrative Agent and its Related Parties (collectively, the "Agent Parties") do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. Although the Platform is secured

pursuant to generally-applicable security procedures and policies implemented or modified by the Agent Parties, each of the Lending Parties and Borrower acknowledges and agrees that distribution of information through an electronic means is not necessarily secure in all respects, the Agent Parties are not responsible for approving or vetting the representatives, designees or contacts of any Lending Party that are provided access to the Platform and that there may be confidentiality and other risks associated with such form of distribution. Borrower and each Lending Party hereto understands and accepts such risks. In no event shall any Agent Party have any liability to Borrower or any other Loan Party, any Lending Party or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any other Loan Party's or Administrative Agent's transmission of Communications through the Platform.

(iv) Each Lending Party hereby agrees that notice to it in accordance with Section 10.02(b)(ii)(B) specifying that any Specified Materials (and as such, constituting Communications) have been posted to the Platform will, for purposes of this Agreement, constitute effective delivery to such Lending Party of such Specified Materials.

(v) Each Loan Party hereby acknowledges and agrees certain of the Lending Parties (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to Borrower or the other Loan Parties or their Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Person's securities. Each Loan Party hereby agrees that so long as Borrower or any of the other Loan Parties is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Specified Materials that may be distributed to the Public Lenders and that (A) all such Specified Materials will be clearly and conspicuously marked "PUBLIC" which, at a minimum, will mean that the word "PUBLIC" will appear prominently on the first page thereof; (B) by marking Specified Materials "PUBLIC," Borrower (on behalf of itself, the other Loan Parties and its other Affiliates) will be deemed to have authorized Administrative Agent and the Lending Parties to treat such Specified Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Specified Materials constitute Information, they will treated as set forth in Section 10.07); (C) all Specified Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (D) Administrative Agent will be entitled to treat any Specified Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

(vi) Each Lending Party (A) acknowledges that the Specified Materials, including information furnished to it by any Loan Party or Administrative Agent pursuant to, or in the course of administering, the Loan Documents, may include material, non-public information concerning Borrower and the other Loan Parties and their respective Affiliates or their respective securities and businesses, and (B) confirms that it (1) has developed compliance procedures regarding the use of material, non-public information and (2) will handle such material, non-public information in accordance with such procedures and applicable Laws, including Federal and state securities Laws.

(c) Change of Address, Etc. Borrower, Administrative Agent, Swing Line Lender and L/C Issuer may change their respective address(es), facsimile number(s), telephone number(s) or e-mail address(es) for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address(es), facsimile number(s), telephone number(s) or e-mail address(es) for notices and other communications hereunder by notice to Borrower, Administrative Agent, Swing Line Lender and L/C Issuer.

(d) Reliance by Administrative Agent and the Lending Parties. Administrative Agent and the Lending Parties will be entitled to rely and act upon any notices (including telephonic or electronically delivered Requests for Credit Extension) purportedly given by or on behalf of Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Borrower will indemnify Administrative Agent and each Lending Party and their respective Related Parties from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Borrower; provided that such indemnity will not be available to the extent that such losses, costs, expenses and liabilities resulted from the gross negligence or willful misconduct of the party seeking indemnification as determined by a court of competent jurisdiction by final and nonappealable judgment. All telephonic notices to and other telephonic communications with Administrative Agent may be recorded by Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies; Enforcement. No failure by Administrative Agent or any Lending Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder will operate as a waiver thereof; no single or partial exercise of any right, remedy, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against Borrower or any other Loan Party will be vested exclusively in, and all actions and proceedings at law in connection with such enforcement will be instituted and maintained exclusively by, Administrative Agent in accordance with Section 8.03 for the benefit of all the Lending Parties; provided, however, that the foregoing will not prohibit (a) Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) L/C Issuer or Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Lending Party from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) Required Lenders will have the rights otherwise ascribed to Administrative Agent pursuant to Section 8.03 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of Required Lenders, enforce any rights and remedies available to it and as authorized by Required Lenders.

Section 10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. Borrower will pay or reimburse, promptly upon written demand therefor, (i) all reasonable and documented out-of-pocket expenses incurred by Administrative Agent and its Affiliates (including the reasonable and documented fees, charges and out-of-pocket disbursements of one firm of outside counsel for Administrative Agent and all reasonable audit, appraisal, environmental assessment or inspection, consulting, search and filing, registration and recording and other similar fees and other expenses), in connection with the syndication of the credit facility provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of, or consents with respect to, the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby will be consummated);

(ii) all reasonable and documented out-of-pocket expenses incurred by L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; and (iii) all reasonable and documented out-of-pocket expenses incurred by Administrative Agent or any Lending Party (including the reasonable and documented fees, charges and out-of-pocket disbursements of one firm of outside counsel for Administrative Agent and one firm of outside counsel for the other Lending Parties), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.04 or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such documented out-of-pocket expenses incurred during any workout or restructuring (or negotiations in connection with the foregoing) in respect of such Loans or Letters of Credit.

(b) Indemnification by Borrower. Borrower will indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable and documented fees, charges, settlement costs and disbursements of one firm of outside counsel for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest where the Indemnitee affected by such conflict informs Borrower of such conflict and thereafter retains its own counsel, of another firm of outside counsel for such affected Indemnitee)) incurred by any Indemnitee or asserted against any Indemnitee by any Person (including any Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any document contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of Administrative Agent (and any sub-agent) and its Related Parties only, the administration of this Agreement and the other Loan Documents; (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit); (iii) Environmental Claims and Environmental Liabilities related in any way to any Loan Party or any of its Subsidiaries, including any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries; or (iv) any actual or prospective claim, investigation, litigation or other proceeding (including any administrative proceeding or any arbitration or other alternative dispute resolution proceeding) relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Borrower or any other Loan Party or any of their respective Affiliates, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided that such indemnity will not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from (1) the gross negligence or willful misconduct of such Indemnitee or (2) such Indemnitee's bad faith breach of its obligations under this Agreement or any other applicable Loan Document, or (B) arise out of any investigation, litigation or proceeding (or preparation of a defense in connection therewith) solely between or among Indemnitees not arising from any act or omission by Borrower or any of its Subsidiaries or Affiliates (other than any proceeding against any Indemnitee in its capacity or fulfilling its role as Administrative Agent, an Arranger, a syndication agent or any similar role, or the Swing Line Lender or L/C Issuer, in its capacity as such). This Section 10.04(b) shall not apply to Taxes, except any Taxes that represent losses, claims, damages, or liabilities arising or reasonably related expenses arising from a non-Tax claim.

(c) Reimbursement by Lenders. If and to the extent Borrower for any reason fails to pay when due any amount that it is required to pay under Section 10.04(a) or Section 10.04(b) to Administrative Agent (or any sub-agent thereof), Swing Line Lender, L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to Administrative Agent (or any such sub-agent), Swing Line Lender, L/C Issuer or such Related Party, as the case may be, such Lender's pro rata share

(determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on its Revolving Credit Percentage Share at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to L/C Issuer or the Swing Line Lender solely in its capacity as such, only the Lenders will be required to pay such unpaid amounts, such payment to be made severally among them based on such Lenders' applicable Revolving Credit Percentage Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); provided further that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against Administrative Agent (or any such sub-agent), Swing Line Lender, L/C Issuer or any Related Party of any of the foregoing acting for Administrative Agent (or any such sub-agent), Swing Line Lender or L/C Issuer in connection with such capacity. The obligations of Lenders under this Section 10.04(c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law no Person party hereto, or any Indemnitee, shall assert, and each such Person that is a party to this Agreement, on behalf of itself and each of its Affiliates hereby waives, any claim against any other, 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 Loan Document or any document contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof; provided that, for the avoidance of doubt, the foregoing shall not limit any Loan Party's indemnification or reimbursement obligations under Section 10.04(b) or any similar provision set forth in any other Loan Document to the extent such consequential, punitive, special or indirect damages are included in any third party claim in which an Indemnitee is otherwise entitled to indemnification or reimbursement hereunder or thereunder, as applicable. No Indemnitee referred to in Section 10.04(b) will be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section 10.04 will be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section 10.04 will survive the resignation of Administrative Agent, Swing Line Lender and L/C Issuer, the replacement of any Lender, the termination of the Aggregate Revolving Credit Commitments and payment in full of the Obligations.

Section 10.05 Marshalling; Payments Set Aside. Neither Administrative Agent nor any Lending Party will be under any obligation to marshal any asset in favor of Borrower or any other Loan Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of Borrower or any Loan Party is made to Administrative Agent or any Credit Party, or Administrative Agent or any Credit Party receives any payment or proceeds of the Collateral, or Administrative Agent or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Administrative Agent or any Lending Party in such Person's discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied will be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lending Party

severally agrees to pay to Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by Administrative Agent plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate. The obligations of each Lending Party under clause (b) of the preceding sentence will survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and each Lending Party, and neither Swing Line Lender nor any Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d) and (e) or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f) (and any other attempted assignment or transfer by any party hereto will be null and void). Nothing in this Agreement, expressed or implied, will be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.06(d) and (e) and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent and each Lending Party) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Swing Line Lender or any Lender. Swing Line Lender or any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment(s) and the Loans (including for purposes of this subsection (b), participations in Letter of Credit Obligations and in Swing Line Loans, as applicable) at the time owing to it); provided that any such assignment will be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of (1) an assignment of the entire remaining amount of the assigning Lender's Revolving Credit Commitment and/or the Loans at the time owing to it, (2) contemporaneous assignments to related Approved Funds that equal at least the amount specified in Section 10.06(b)(i)(B) in the aggregate or (3) an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in Section 10.06(b)(i)(A), the aggregate amount of the Revolving Credit Commitment (which for this purpose includes Loans outstanding thereunder) and/or the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $5,000,000, unless each of Administrative Agent and, so long as no Event of Default has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided that Borrower will be deemed to have consented to any such amount unless it objects thereto by written notice to Administrative Agent within five (5) Business Days after having received written notice thereof.

(ii) Proportionate Amounts. Each partial assignment will be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement

with respect to the Loan or the Revolving Credit Commitment(s) (including any Additional Revolving Credit Commitment) assigned.

(iii) Required Consents. No consent will be required for any assignment except to the extent required by Section 10.06(b)(i)(B) and, in addition:

(A) the consent of Borrower (such consent not to be unreasonably withheld or delayed) will be required unless (1) an Event of Default under Section 8.01(a), (f) or (g) has occurred and is continuing at the time of such assignment, or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that Borrower will be deemed to have consented to any such assignment unless it objects thereto by written notice to Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) will be required for assignments in respect of (i) the Revolving Credit Facility or any unfunded Commitments with respect to the Incremental Term Loan Facility if such assignment is to a Person that is not a Lender with a Commitment in respect of such Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender, or (ii) the Initial Term Loans or any Incremental Term Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of L/C Issuer and the Swing Line Lender (in each case, such consent not to be unreasonably withheld or delayed) will be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption. The parties to each assignment will execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500; provided that Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, will deliver to Administrative Agent an Administrative Detail Form.

(v) No Assignment to Certain Persons. No assignment will be made to (A) Borrower or any other Loan Party or any of its or their respective Subsidiaries or Affiliates or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender.

(vi) No Assignment to Natural Persons. No assignment will be made to a natural Person (or holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no assignment will be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrower and Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent and each Lending Party hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans

in accordance with its applicable Revolving Credit Percentage Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder will become effective under applicable Law without compliance with the provisions of this Section 10.06(b)(vii), then the assignee of such interest will be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by Administrative Agent pursuant to Section 10.06(c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder will, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Article III and Section 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph will be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Borrower, will maintain at Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a Register. The entries in the Register will be conclusive absent manifest error, and Borrower, Administrative Agent and the Lending Parties will treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register will be available for inspection by each of Borrower, Lender (but only to the extent of entries in the Register that are applicable to such Lender), Swing Line Lender and L/C Issuer, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, Borrower or Administrative Agent, sell participations to any Person other than a natural Person (or holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person), Borrower or any Affiliate of Borrower (each, a "Participant") in all or a portion of such Person's rights and/or obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and/or the Loans (including such Lender's participations in Letter of Credit Obligations and/or Swing Line Loans) owing to it); provided that (i) any sale of a participation to a proposed Participant that would not otherwise qualify as an Eligible Assignee or that is a Defaulting Lender must be approved by Administrative Agent, (ii) such Person's obligations under this Agreement will remain unchanged, (iii) such Person will remain solely responsible to the other parties hereto for the performance of such obligations and (iv) Borrower, Administrative Agent and the Lending Parties will continue to deal solely and directly with such Person in connection with such Person's rights and obligations under this Agreement. For the avoidance of doubt, each Lender will be responsible for the indemnity under Section 10.04(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement, instrument or other document pursuant to which a Lender sells such a participation will provide that such Person will retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; provided that such document may provide that such Person will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Borrower agrees that each Participant will be entitled

to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirements under Section 3.01(d) (it being understood that the documentation required under Section 3.01(d) will be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b); provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 3.08 as if it were an assignee under Section 10.06(b), and (B) will not be entitled to receive any greater payment under Sections 3.01 and 3.04, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at Borrower's request and expense, to use reasonable efforts to cooperate with Borrower to effectuate the provisions of Section 3.08 with respect to any Participant. To the extent permitted by applicable Law, each Participant also will be entitled to the benefits of Section 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation will, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender will 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 Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Sections 163(f), 871(h)(2) and 881(c)(2) of the Code, Section 5f.103-1(c) of the United States Treasury Regulations or Section 1.163-5(b) of the proposed United States Treasury Regulations (or, in each case, any amended or successor version thereof). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender will treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) will have no responsibility for maintaining a Participant Register.

(e) Limitations upon Participant Rights. A Participant will not be entitled to receive any greater payment under Section 3.01 or Section 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender will not be entitled to the benefits of Section 3.01 unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment will release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption will be deemed to include Electronic Signatures or the keeping of records in electronic form, each of which will be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, the California Uniform Electronic Transactions Act or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) Resignation as L/C Issuer or Swing Line Lender. Notwithstanding anything to the contrary contained herein, if at any time Wells Fargo assigns all of its Revolving Credit Commitments and Loans pursuant to Section 10.06(b), Wells Fargo may do either or both of the following: (i) upon thirty (30) days' notice to Borrower and all Lenders, resign as L/C Issuer or (ii) upon thirty (30) days' notice to Borrower, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, Borrower will be entitled to appoint from among Lenders a successor L/C Issuer or Swing Line Lender (subject to such Lender's consent to such appointment, at its sole discretion); provided that no failure by Borrower to appoint any such successor will affect the resignation of Wells Fargo as L/C Issuer or Swing Line Lender, as the case may be. If Wells Fargo resigns as L/C Issuer, it will retain all the rights and obligations of L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all Letter of Credit Obligations with respect thereto (including the right to require Lenders to make Revolving Credit Loans that are Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Wells Fargo resigns as Swing Line Lender, it will retain all the rights of Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require Lenders to make Revolving Credit Loans that are Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c).

Section 10.07 Treatment of Certain Information; Confidentiality. Administrative Agent and each Lending Party each agrees to maintain the confidentiality of the Information, except that Information may be disclosed: (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority, purporting to have jurisdiction over such Person or is Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; provided that, if not prohibited by law, the disclosing party will use commercially reasonable efforts (i) to notify Borrower in advance of such disclosure so that Borrower may seek an appropriate protective order and (ii) to cooperate with Borrower to obtain such protective order; (d) to Gold Sheets (published by Thomson Reuters LPC) or other similar bank trade publication or online information service; provided that such disclosures of Information will be limited to the material deal terms of the Facilities consistent with other customary disclosures by banks and institutional lenders to such publications or online services for league table reporting purposes; (e) to any other party hereto; (f) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (g) subject to an agreement containing provisions substantially the same as those of this Section 10.07 to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to Borrower and its obligations, this Agreement or payments hereunder; (h) on a confidential basis to (A) any rating agency in connection with rating Borrower or its Subsidiaries or the credit facility provided herein or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the credit facility provided herein; (i) with the consent of Borrower; (j) to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section 10.07 or (2) becomes available to Administrative Agent, any Lending Party or any of their respective Affiliates on a non-confidential basis from a source other than Borrower or any Subsidiary thereof and not in contravention of this Section 10.07; or (k) to the extent required by a potential or actual insurer or reinsurer in connection with providing insurance, reinsurance or credit risk mitigation coverage under which payments are to be made or may be made by reference to this Agreement (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential). For purposes of this Section 10.07, "Information" means all information (including financial

information) received from Borrower or any other Loan Party or any of their respective Subsidiaries relating to Borrower or any such Loan Party or any of such Affiliates or their respective businesses, assets, operations or condition (financial or otherwise), other than any such information that is available to Administrative Agent or any Lending Party on a non-confidential basis, and not in contravention of this Section 10.07, prior to disclosure by Borrower or any other Loan Party or any of their respective Subsidiaries; provided that, in the case of information received from Borrower or any other Loan Party or any of their respective Subsidiaries after the date of this Agreement, such information is clearly identified at the time of delivery as confidential or should, because of its nature, reasonably be understood to be confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.07 will be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 10.08 Right of Setoff. If an Event of Default will have occurred and be continuing, each Lending Party and its respective Affiliates is hereby authorized at any time and from time to time to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held, and other obligations (in whatever currency) at any time owing, by such Lending Party or any such Affiliate to or for the credit or the account of Borrower or any other Loan Party against any and all of the Obligations to such Lending Party or such Affiliate, irrespective of whether or not such Lending Party or Affiliate will have made any demand under this Agreement or any other Loan Document and although such obligations of Borrower or such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lending Party different from the branch, office or Affiliate holding such deposit or obligated on such obligations; provided that in the event that any Defaulting Lender will exercise any such right of setoff, (a) all amounts so set off will be paid over immediately to Administrative Agent for further application in accordance with the provisions of Section 3.07 and, pending such payment, will be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent and the Lending Parties, and (b) the Defaulting Lender will provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lending Party and its Affiliates under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lending Party or its Affiliates may have. Each Lending Party agrees to notify Borrower and Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice will not affect the validity of such setoff and application.

Section 10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents will not exceed the maximum rate of non-usurious interest permitted by applicable Law. If Administrative Agent or any Lender will receive interest in an amount that exceeds the maximum rate of non-usurious interest permitted by applicable Law, the excess interest will be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to Borrower or the Guarantors, as applicable. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the maximum rate of non-usurious interest permitted by applicable Law, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.10 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which will constitute an

original, but all of which when taken together will constitute a single contract. This Agreement and the other Loan Documents constitute the entire agreement among the parties relating to the subject matter hereof and supersede any and all previous documents, agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement will become effective when it will have been executed and delivered by Administrative Agent and when Administrative Agent will have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or electronic transmission (such as by "pdf") will be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution. The words "execute," "execution," "signed," "signature," "delivery" and words of like import in or related to this Agreement, any other Loan Document or any document, amendment, approval, consent, waiver, modification, information, notice, certificate, report, statement, disclosure, or authorization to be signed or delivered in connection with this Agreement or any other Loan Document or the transactions contemplated hereby shall be deemed to include Electronic Signatures or execution in the form of an Electronic Record, and contract formations on electronic platforms approved by Administrative Agent, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act. Each party hereto agrees that any Electronic Signature or execution in the form of an Electronic Record shall be valid and binding on itself and each of the other parties hereto to the same extent as a manual, original signature. For the avoidance of doubt, the authorization under this Section 10.10(b) may include use or acceptance by the parties of a manually signed paper which has been converted into electronic form (such as scanned into PDF format), or an electronically signed paper converted into another format, for transmission, delivery and/or retention. Notwithstanding anything contained herein to the contrary, Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by Administrative Agent pursuant to procedures approved by it; provided that without limiting the foregoing, (i) to the extent Administrative Agent has agreed to accept such Electronic Signature from any party hereto, Administrative Agent and the other parties hereto shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the executing party without further verification and (ii) upon the request of Administrative Agent or any Lending Party, any Electronic Signature shall be promptly followed by an original manually executed counterpart thereof. Without limiting the generality of the foregoing, each party hereto hereby (A) agrees that, for all purposes, including in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among Administrative Agent, the Lenders and any of the Credit Parties, electronic images of this Agreement or any other Loan Document (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (B) waives any argument, defense or right to contest the validity or enforceability of the Loan Documents based solely on the lack of paper original copies of any Loan Documents, including with respect to any signature pages thereto.

Section 10.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith will survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by Administrative Agent and each Lending Party, regardless of any investigation made by Administrative Agent or any Lender or on their behalf and notwithstanding that Administrative Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and will continue in full force and effect until the payment in full of the Obligations.

Section 10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents will not be affected or impaired thereby and (b) the parties will endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders will be limited by Debtor Relief Laws, as determined in good faith by Administrative Agent, L/C Issuer or Swing Line Lender, as applicable, then such provisions will be deemed to be in effect only to the extent not so limited.

Section 10.13 Lender-Creditor Relationship. The relationship between the Lending Parties and Administrative Agent, on the one hand, and Borrower and the other Loan Parties, on the other, is solely that of creditor and debtor. Neither any Lending Party nor Administrative Agent has (or will be deemed to have) any fiduciary relationship or duty to Borrower or any other Loan Party arising out of or in connection with, and there is no agency or joint venture relationship between the Lending Parties and Administrative Agent, on the one hand, and Borrower and the other Loan Parties, on the other, by virtue of this Agreement or any other Loan Document or any of the Transactions contemplated herein or therein.

Section 10.14 USA PATRIOT Act Notice. Each Lending Party that is subject to the PATRIOT Act and Administrative Agent (for itself and not on behalf of any Lending Party) hereby notifies Borrower that, pursuant to the requirements of the PATRIOT Act, they are each required to obtain, verify and record information that identifies Borrower and each other Loan Party, which information includes the name and address of Borrower and each other Loan Party and other information that will allow such Lending Party or Administrative Agent, as applicable, to identify Borrower and each other Loan Party in accordance with the PATRIOT Act.

Section 10.15 Guaranty.

(a) Guaranty. Amphastar Medication Co., LLC, International Medication Systems, Limited, and Armstrong Pharmaceuticals, Inc. and each other Guarantor at any time party hereto, jointly and severally, unconditionally and irrevocably guarantees to Administrative Agent and the Lending Parties the full and prompt payment when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) and performance of the Obligations (the "Guaranteed Obligations"). The Guaranteed Obligations include interest that, but for a proceeding under any Debtor Relief Law, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Borrower for such interest in any such proceeding. Notwithstanding anything to the contrary in this Section 10.15, the Guaranteed Obligations guaranteed by Borrower hereunder shall be limited to that portion of the Guaranteed Obligations with respect to any Hedging Obligations and Cash Management Obligations owed by any Person other than Borrower.

(b) Separate Obligation. Each Guarantor acknowledges and agrees that (i) the Guaranteed Obligations are separate and distinct from any Indebtedness arising under or in connection with any other document, including under any provision of this Agreement other than this Section 10.15, executed at any time by such Guarantor in favor of Administrative Agent or any Lending Party; and (ii) such Guarantor will pay and perform all of the Guaranteed Obligations as required under this Section 10.15, and Administrative Agent and the Lending Parties may enforce any and all of their respective rights and remedies hereunder, without regard to any other document, including any provision of this Agreement other than this Section 10.15, at any time executed by such Guarantor in favor of Administrative Agent or any Lending Party, irrespective of whether any such other document, or any provision thereof or hereof, will

for any reason become unenforceable or any of the Indebtedness thereunder will have been discharged, whether by performance, avoidance or otherwise. Each Guarantor acknowledges that, in providing benefits to Borrower, Administrative Agent and the Lending Parties are relying upon the enforceability of this Section 10.15 and the Guaranteed Obligations as separate and distinct Indebtedness of each such Guarantor, and each Guarantor agrees that Administrative Agent and the Lending Parties would be denied the full benefit of their bargain if at any time this Section 10.15 or the Guaranteed Obligations were treated any differently. The fact that the Guaranty is set forth in this Agreement rather than in a separate guaranty document is for the convenience of Borrower and each Guarantor and will in no way impair or adversely affect the rights or benefits of Administrative Agent and the Lending Parties under this Section 10.15. Each Guarantor agrees to execute and deliver a separate document, immediately upon request at any time of Administrative Agent or any Lending Party, evidencing each such Guarantor's obligations under this Section 10.15. Upon the occurrence of any Event of Default, a separate action or actions may be brought against each such Guarantor, whether or not Borrower or any other Guarantor or any other Person is joined therein or a separate action or actions are brought against Borrower or any such other Guarantor or any such other Person.

(c) Insolvency Laws; Right of Contribution.

(i) As used in this Section 10.15(c): (a) the term "Guarantor Applicable Insolvency Laws" means the Laws of any Governmental Authority relating to bankruptcy, reorganization, arrangement, adjustment of debts, relief of debtors, dissolution, insolvency, fraudulent transfers or conveyances or other similar laws (including 11 U. S. C. §547, §548, §550 and other "avoidance" provisions of the Bankruptcy Code) as applicable in any proceeding in which the validity or enforceability of this Agreement or any other Loan Document against any Guarantor, or any Guarantor Specified Lien is in issue; and (b) "Guarantor Specified Lien" means any Lien from time to time granted by any Guarantor securing the Guaranteed Obligations. Notwithstanding any provision of this Agreement to the contrary, if, in any proceeding, a court of competent jurisdiction determines that with respect to any Guarantor, this Agreement or any other Loan Document or any Guarantor Specified Lien would, but for the operation of this Section 10.15(c), be subject to avoidance and/or recovery or be unenforceable by reason of Guarantor Applicable Insolvency Laws, this Agreement, such other Loan Document and each such Guarantor Specified Lien will be valid and enforceable against such Guarantor, only to the maximum extent that would not cause this Agreement, such other Loan Document or such Guarantor Specified Lien to be subject to avoidance, recovery or unenforceability. To the extent that any payment to, or realization by, Administrative Agent or any Lending Party on the Guaranteed Obligations exceeds the limitations of this Section 10.15(c) and is otherwise subject to avoidance and recovery in any such proceeding, the amount subject to avoidance will in all events be limited to the amount by which such actual payment or realization exceeds such limitation, and this Agreement as limited will in all events remain in full force and effect and be fully enforceable against such Guarantor. This Section 10.15(c) is intended solely to reserve the rights of Administrative Agent and the Lending Parties hereunder against each Guarantor, in such proceeding to the maximum extent permitted by Guarantor Applicable Insolvency Laws and neither Borrower, nor any Guarantor or any other guarantor of the Obligations nor any other Person will have any right, claim or defense under this Section 10.15(c) that would not otherwise be available under Guarantor Applicable Insolvency Laws in such proceeding.

(ii) Each Guarantor hereby agrees that, to the extent that any Guarantor will have paid an amount hereunder to or on behalf of Administrative Agent and the Lending Parties that is greater than the net value of the benefits received, directly or indirectly, by such paying Guarantor as a result of the Credit Extensions and other credit accommodations extended hereunder, such paying Guarantor will be entitled to contribution from any Guarantor that has not paid its proportionate share, based on benefits received as a result of the making and issuance of the Credit Extensions. Any amount payable as a contribution under this Section 10.15(c) will be determined as of the date on which the related

payment or distribution is made by the Guarantor seeking contribution and each Guarantor acknowledges that the right to contribution hereunder will constitute an asset of such Guarantor to which such contribution is owed. Notwithstanding the foregoing, the provisions of this Section 10.15 (c) will in no respect limit the obligations and liabilities of any Guarantor to Administrative Agent and the Lending Parties hereunder or under any other Loan Document, and each Guarantor will remain jointly and severally liable for the full payment and performance of the Guaranteed Obligations.

(d) Liability of Guarantors. The liability of each Guarantor under this Section 10.15 will be irrevocable, absolute, independent and unconditional, and will not be affected by any circumstance that might constitute a discharge of a surety or guarantor other than the payment and performance in full of all Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(i) such Guarantor's liability hereunder will be the immediate, direct, and primary obligation of such Guarantor and will not be contingent upon Administrative Agent's or any Lending Party's exercise or enforcement of any remedy it may have against Borrower or any other Person, or against any collateral or other security for any Guaranteed Obligations;

(ii) this Guaranty is a guaranty of payment when due and not merely of collectability;

(iii) Administrative Agent and the Lending Parties may enforce this Section 10.15 upon the occurrence of an Event of Default notwithstanding the existence of any dispute among Administrative Agent and the Lending Parties, on the one hand, and Borrower or any other Person, on the other hand, with respect to the existence of such Event of Default;

(iv) such Guarantor's payment of a portion, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge such Guarantor's liability for any portion of the Guaranteed Obligations remaining unsatisfied; and

(v) such Guarantor's liability with respect to the Guaranteed Obligations will remain in full force and effect without regard to, and will not be impaired or affected by, nor will such Guarantor be exonerated or discharged by, any of the following events:

(A) any proceeding under any Debtor Relief Law;

(B) any limitation, discharge, or cessation of the liability of Borrower or any Guarantor or other Person for any Guaranteed Obligations due to any applicable Law, or any invalidity or unenforceability in whole or in part of any of the Guaranteed Obligations or the Loan Documents;

(C) any merger, acquisition, consolidation or change in structure of Borrower or any Guarantor or other Person, or any sale, lease, transfer or other disposition of any or all of the assets or shares of Borrower or any other Guarantor or Person;

(D) any assignment or other transfer, in whole or in part, of Administrative Agent's or any Lending Party's interests in and rights under this Agreement (including this Section 10.15) or the other Loan Documents;

(E) any claim, defense, counterclaim or setoff, other than that of prior performance, that Borrower, any Guarantor or any other Person may have or assert, including any defense of incapacity or lack of corporate or other authority to execute any of the Loan Documents;

(F) Administrative Agent's or any Lending Party's amendment, modification, renewal, extension, cancellation or surrender of any Loan Document or any Guaranteed Obligations;

(G) Administrative Agent's or any Lending Party's exercise or non-exercise of any power, right or remedy with respect to any Guaranteed Obligations or any collateral;

(H) Administrative Agent's or any Lending Party's vote, claim, distribution, election, acceptance, action or inaction in any proceeding under any Debtor Relief Law; or

(I) any other guaranty, whether by such Guarantor or any other Person, of all or any part of the Guaranteed Obligations or any other indebtedness, obligations or liabilities of Borrower to Administrative Agent or any Lending Party.

(e) Consents of Guarantors. Each Guarantor hereby unconditionally consents and agrees that, without notice to or further assent from any such Guarantor:

(i) the principal amount of the Guaranteed Obligations may be increased or decreased and additional indebtedness or obligations of Borrower under the Loan Documents may be incurred and the time, manner, place or terms of any payment under any Loan Document may be extended or changed, by one or more amendments, modifications, renewals or extensions of any Loan Document or otherwise;

(ii) the time for Borrower's (or any other Person's) performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any Loan Document may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to, all in such manner and upon such terms as Administrative Agent and the Lending Parties (as applicable under the relevant Loan Documents) may deem proper;

(iii) Administrative Agent and the Lending Parties may request and accept other guaranties and may take and hold security as collateral for the Guaranteed Obligations, and may, from time to time, in whole or in part, exchange, sell, surrender, release, subordinate, modify, waive, rescind, compromise or extend such other guaranties or security and may permit or consent to any such action or the result of any such action, and may apply such security and direct the order or manner of sale thereof; and

(iv) Administrative Agent or the Lending Parties may exercise, or waive or otherwise refrain from exercising, any other right, remedy, power or privilege even if the exercise thereof affects or eliminates any right of subrogation or any other right of such Guarantor against Borrower.

(f) Guarantors' Waivers. Each Guarantor hereby waives (to the extent permitted by applicable Law) and agrees not to assert:

(i) any right to require Administrative Agent or any Lending Party to proceed against Borrower, any other Guarantor or any other Person, or to pursue any other right, remedy, power or privilege of Administrative Agent or any Lending Party whatsoever;

(ii) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Guaranteed Obligations (and in this regard that the performance of any act or any payment which tolls any statute of limitations applicable to Obligations under any of the Loan Documents will similarly operate to toll the statute of limitations applicable to each such Guarantor's liability hereunder);

(iii) any defense arising by reason of any lack of corporate or other authority or any other defense of Borrower, such Guarantor or any other Person (other than payment in full of the Guaranteed Obligations);

(iv) any defense based upon Administrative Agent's or any Lending Party's errors or omissions in the administration of the Guaranteed Obligations;

(v) any rights to set-offs and counterclaims;

(vi) without limiting the generality of the foregoing, to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties, or that may conflict with the terms of this Section 10.15, including any and all benefits that otherwise might be available to such Guarantor under California Civil Code Sections 1432, 2809, 2810, 2815, 2819, 2839, 2845, 2848, 2849, 2850, 2899 and 3433 and California Code of Civil Procedure Sections 580a, 580b, 580d and 726; and

(vii) any and all notice of the acceptance of this Guaranty, and any and all notice of the creation, renewal, modification, extension or accrual of the Guaranteed Obligations, or the reliance by Administrative Agent and the Lending Parties upon this Guaranty, or the exercise of any right, power or privilege hereunder. The Guaranteed Obligations will conclusively be deemed to have been created, contracted, incurred and permitted to exist in reliance upon this Guaranty. Each Guarantor waives promptness, diligence, presentment, protest, demand for payment, notice of default, dishonor or nonpayment and all other notices to or upon Borrower, any Guarantor or any other Person with respect to the Guaranteed Obligations.

(g) Stay of Acceleration. If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against Borrower under any Debtor Relief Law, or otherwise, all such amounts will nonetheless be jointly and severally payable by each Guarantor immediately upon demand by Administrative Agent.

(h) Financial Condition of Borrower. No Guarantor will have any right to require Administrative Agent or any Lending Party to obtain or disclose any information with respect to (i) the financial condition or character of Borrower or the ability of Borrower to pay and perform the Guaranteed Obligations, (ii) the Guaranteed Obligations, (iii) any collateral or other security for any or all of the Guaranteed Obligations, (iv) the existence or nonexistence of any other guarantees of all or any part of the Guaranteed Obligations, (v) any action or inaction on the part of Administrative Agent or any Lending Party or any other Person or (vi) any other matter, fact or occurrence whatsoever. Each Guarantor hereby acknowledges that it has undertaken its own independent investigation of the financial condition of Borrower and all other matters pertaining to this Guaranty set forth in this Section 10.15 and further acknowledges that it is not relying in any manner upon any representation or statement of Administrative Agent or any Lending Party with respect thereto.

(i) Subrogation. Until the Guaranteed Obligations have been paid and performed in full and the Aggregate Revolving Credit Commitments have been terminated, no Guarantor will directly or indirectly exercise (i) any rights that it may acquire by way of subrogation under this Section 10.15, by any

payment hereunder or otherwise, (ii) any rights of contribution, indemnification, reimbursement or similar suretyship claims arising out of this Section 10.15 or (iii) any other right that it might otherwise have or acquire (in any way whatsoever) that could entitle it at any time to share or participate in any right, remedy or security of Administrative Agent or any Lending Party as against any Borrower or any other Guarantor or any other Person, whether in connection with this Section 10.15, any of the other Loan Documents or otherwise.

(j) Subordination. All payments on account of all indebtedness, liabilities and other obligations of Borrower to any Guarantor, whether now existing or hereafter arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined (the "Guarantor Subordinated Indebtedness") will be subject, subordinate and junior in right of payment and exercise of remedies, to the extent and in the manner set forth herein, to the prior payment in full in Cash of the Guaranteed Obligations. As long as any of the Guaranteed Obligations (other than unasserted contingent indemnification obligations) will remain outstanding and unpaid, no Guarantor will accept or receive any payment or distribution by or on behalf of Borrower or any other Guarantor, directly or indirectly, or assets of Borrower or any other Guarantor, of any kind or character, whether in Cash, property or securities, including on account of the purchase, redemption or other acquisition of Guarantor Subordinated Indebtedness, as a result of any collection, sale or other disposition of collateral, or by setoff, exchange or in any other manner, for or on account of the Guarantor Subordinated Indebtedness ("Guarantor Subordinated Indebtedness Payments"), except that, so long as an Event of Default does not then exist, each Guarantor will be entitled to accept and receive payments on its Guarantor Subordinated Indebtedness in accordance with past business practices of such Guarantor and Borrower (or any other applicable Guarantor or other Person) and not in contravention of any Law or the terms of the Loan Documents.

If any Guarantor Subordinated Indebtedness Payments will be received in contravention of this Section 10.15, such Guarantor Subordinated Indebtedness Payments will be held in trust for the benefit of Administrative Agent and the Lending Parties and will be paid over or delivered to Administrative Agent for application to the payment in full in Cash of all Guaranteed Obligations remaining unpaid to the extent necessary to give effect to this Section 10.15 after giving effect to any concurrent payments or distributions to Administrative Agent and the Lending Parties in respect of the Guaranteed Obligations.

(k) Continuing Guaranty. The Guaranty set forth in this Section 10.15 is a continuing irrevocable guaranty and agreement of subordination and will continue in effect and be binding upon each Guarantor until termination of the Aggregate Revolving Credit Commitments and payment and performance in full of the Guaranteed Obligations, including Guaranteed Obligations which may exist continuously or which may arise from time to time under successive transactions, and each such Guarantor expressly acknowledges that this Guaranty will remain in full force and effect notwithstanding that there may be periods in which no Guaranteed Obligations exist.

(l) Reinstatement. The Guaranty set forth in this Section 10.15 will continue to be effective or will be reinstated and revived, as the case may be, if, for any reason, any payment of the Guaranteed Obligations by or on behalf of Borrower (or receipt of any proceeds of collateral) will be rescinded, invalidated, declared to be fraudulent or preferential, set aside, voided or otherwise required to be repaid to Borrower, its estate, trustee, receiver or any other Person (including under any Debtor Relief Law), or must otherwise be restored by Administrative Agent or any Lending Party, whether as a result of proceedings under any Debtor Relief Law or otherwise. All losses, damages, costs and expenses that Administrative Agent, or any Lending Party may suffer or incur as a result of any voided or otherwise set aside payments will be specifically covered by the indemnity in favor of Administrative Agent and the Lending Parties contained in Section 10.04.

(m) Substantial Benefits. The Credit Extensions provided to or for the benefit of Borrower hereunder by the Lending Parties have been and are to be contemporaneously used for the benefit of Borrower and each Guarantor. It is the position, intent and expectation of the parties that Borrower and each such Guarantor have derived and will derive significant and substantial direct and indirect benefits from the Credit Extensions to be made available by the Lending Parties under the Loan Documents.

(n) Knowing and Explicit Waivers. Each Guarantor acknowledges that it either has obtained the advice of legal counsel or has had the opportunity to obtain such advice in connection with the terms and provisions of this Section 10.15. Each Guarantor acknowledges and agrees that each of the waivers and consents set forth herein is made with full knowledge of its significance and consequences, that all such waivers and consents herein are explicit and knowing and that each such Guarantor expects such waivers and consents to be fully enforceable.

(o) Release of Guaranty. Notwithstanding anything to the contrary in this Section 10.15:

(i) if Borrower's delivery of financial reports to Administrative Agent and the Lenders pursuant to Sections 6.01(c) or (b), as applicable, along with the accompanying Compliance Certificates, demonstrates to the reasonable satisfaction of Administrative Agent that any Guarantor that has been a Material Subsidiary is no longer a Material Subsidiary, and if no Event of Default has occurred and is then continuing, Administrative Agent will, within fifteen (15) Business Days after the written request of Borrower to the Administrative Agent, terminate and release the Guaranty set forth in this Section 10.15 by such Guarantor of the Obligations; and

(ii) to the extent permitted hereunder, upon a sale of all or substantially all of the assets or Equity Interests of a Guarantor (such that upon the consummation of such sale such Guarantor would cease to be a Material Subsidiary), Administrative Agent will upon the consummation of such sale, and conditioned upon the effectiveness thereof, terminate and release the Guaranty set forth in this Section 10.15 by such Guarantor of the Obligations.

If, while any Guarantor Subordinated Indebtedness is outstanding, any proceeding under any Debtor Relief Law is commenced by or against Borrower or its property, Administrative Agent, when so instructed by L/C Issuer, Swing Line Lender and Required Lenders, is hereby irrevocably authorized and empowered (in the name of the Lending Parties or in the name of any Guarantor or otherwise), but will have no obligation, to demand, sue for, collect and receive every payment or distribution in respect of all Guarantor Subordinated Indebtedness and give acquittances therefor and to file claims and proofs of claim and take such other action (including voting the Guarantor Subordinated Indebtedness) as it may deem necessary or advisable for the exercise or enforcement of any of the rights or interests of Administrative Agent and the Lending Parties; and each such Guarantor will promptly take such action as Administrative Agent (on instruction from L/C Issuer, Swing Line Lender and Required Lenders) may reasonably request (A) to collect the Guarantor Subordinated Indebtedness for the account of the Lending Parties and to file appropriate claims or proofs of claim in respect of the Guarantor Subordinated Indebtedness; (B) to execute and deliver to Administrative Agent such powers of attorney, assignments and other instruments as it may request to enable it to enforce any and all claims with respect to the Guarantor Subordinated Indebtedness; and (C) to collect and receive any and all Guarantor Subordinated Indebtedness Payments.

(p) Keepwell. Each Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds and other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty and the other Loan Documents in respect of Hedging Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.15 for the maximum amount of such liability that can be hereby incurred

without rendering its obligations under this Section 10.15, or otherwise under this Agreement or any other Loan Document, voidable under Debtor Relief Laws and not for any greater amount). Subject to Section 10.15(l), the obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until all of the Guaranteed Obligations and all the obligations of the Guarantors shall have been paid in full in cash and the Commitments terminated. Each Qualified ECP Guarantor intends that this Section constitute, and this Section 10.15(p) shall be deemed to constitute, a "keepwell, support or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

Section 10.16 Governing Law; Jurisdiction; Etc.

(a) Governing Law. This Agreement and the other Loan Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby will be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflicts of law other than New York General Obligations Law 5-1401 and 5-1402.

(b) Submission to Jurisdiction. Borrower and each other Loan Party party hereto each irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against Administrative Agent, any Lending Party or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the Supreme Court of the State of New York sitting in New York County in the Borough of Manhattan and of the United States District Court for the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive (subject only to the last sentence of this Section 10.16(b)) jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State Court or, to the fullest extent permitted by applicable Law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Nothing in this Agreement or in any other Loan Document will affect any right that Administrative Agent or any Lending Party may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or any of its properties in the courts of any other jurisdiction.

(c) Waiver of Venue. Borrower and each other Loan Party party hereto each irrevocably and unconditionally waives, to the fullest extent permitted by applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 10.16(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 10.02. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.

Section 10.17 Waiver of Right to Jury Trial.

(a) BORROWER AND EACH OTHER LOAN PARTY, ADMINISTRATIVE AGENT AND EACH LENDING PARTY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN

ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AND EACH OTHER LOAN PARTY HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR ADMINISTRATIVE AGENT AND THE LENDING PARTIES ENTERING INTO THIS AGREEMENT.

(b) EACH OF THE PARTIES HERETO REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(c) TO THE EXTENT THAT THE WAIVER OF JURY TRIAL IN SECTION 10.17(a) IS UNENFORCEABLE, THE PARTIES HERETO DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE OR RETIRED JUDGE APPLYING THE APPLICABLE LAW. THEREFOR, THE PARTIES HERETO AGREE TO REFER, FOR A COMPLETE AND FINAL ADJUDICATION, ANY AND ALL ISSUES OF FACT OR LAW INVOLVED IN ANY LITIGATION OR PROCEEDING (INCLUDING ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS, AND POST-TRIAL MOTIONS (E.G., MOTIONS FOR RECONSIDERATION, NEW TRIAL AND TO TAX COSTS, ATTORNEY FEES AND PREJUDGMENT INTEREST)) UP TO AND INCLUDING FINAL JUDGMENT, BROUGHT TO RESOLVE ANY DISPUTE (WHETHER SOUNDING IN CONTRACT, TORT, UNDER ANY STATUTE, OR OTHERWISE) BETWEEN THE LENDER AND BORROWER ARISING OUT OF, CONNECTED WITH, OR RELATED OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THE PARTIES IN CONNECTION WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR THE TRANSACTIONS RELATED HERETO AND THERETO, TO A JUDICIAL REFEREE WHO WILL BE APPOINTED UNDER A GENERAL REFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638. THE REFEREE'S DECISION WOULD STAND AS THE DECISION OF THE COURT, WITH JUDGMENT TO BE ENTERED ON HIS STATEMENT OF DECISION IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. ADMINISTRATIVE AGENT AND BORROWER WILL SELECT A SINGLE NEUTRAL REFEREE, WHO WILL BE A RETIRED STATE OR FEDERAL JUDGE WITH AT LEAST FIVE YEARS OF JUDICIAL EXPERIENCE IN CIVIL MATTERS. IN THE EVENT THAT ADMINISTRATIVE AGENT AND BORROWER CANNOT AGREE UPON A REFEREE, THE REFEREE WILL BE APPOINTED BY THE COURT. THE LOAN PARTIES WILL JOINTLY AND SEVERALLY BEAR THE FEES AND EXPENSES OF THE REFEREE UNLESS THE REFEREE OTHERWISE PROVIDES IN THE STATEMENT OF DECISION. EACH PARTY AGREES THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10.17 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE REFERENCE TO A JUDICIAL REFEREE AS PROVIDED ABOVE.

Section 10.18 [Reserved].

Section 10.19 Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this

Agreement, pursuant to a cashless settlement mechanism approved in writing by Borrower, Administrative Agent and such Lender.

Section 10.20 No Advisory or Fiduciary Responsibility.

(a) In connection with all aspects of each transaction contemplated hereby, each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between Borrower and its Affiliates, on the one hand, and Administrative Agent, the Arrangers and the Lending Parties, on the other hand, and Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof), (ii) in connection with the process leading to such transaction, each of Administrative Agent, the Arrangers and the Lending Parties is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person, (iii) none of Administrative Agent, the Arrangers or the Lending Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any Arranger or any Lending Party has advised or is currently advising Borrower or any of its Affiliates on other matters) and none of Administrative Agent, the Arrangers or the Lending Parties has any obligation to Borrower or any of its Affiliates with respect to the financing transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iv) the Arrangers and the Lending Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of Borrower and its Affiliates, and none of Administrative Agent, the Arrangers or the Lending Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship and (v) Administrative Agent, the Arrangers and the Lending Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

(b) Each Loan Party acknowledges and agrees that each Lending Party and each Arranger and any Affiliate thereof may lend money to, invest in, and generally engage in any kind of business with, any of Borrower, any Affiliate thereof or any other person or entity that may do business with or own securities of any of the foregoing, all as if such Lending Party or Arranger or Affiliate thereof were not a Lending Party, an Arranger or an Affiliate thereof (or an agent or any other person with any similar role under the credit facilities provided for hereunder) and without any duty to account therefor to any other Lending Party or Arranger, to Borrower or to any Affiliate of the foregoing. Each Lending Party and Arranger and any Affiliate thereof may accept fees and other consideration from Borrower or any Affiliate thereof for services in connection with this Agreement, the credit facilities provided for hereunder or otherwise without having to account for the same to any other Lending Party, Arranger, Borrower or any Affiliate of the foregoing.

Section 10.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be

subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

Section 10.22 PATRIOT Act. Each Lender that is subject to the PATRIOT Act and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow each such Lender or Administrative Agent, as applicable, to identify Borrower in accordance with the PATRIOT Act. Borrower shall, promptly following a request by Administrative Agent or any Lender, provide all documentation and other information that Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including PATRIOT Act.

Section 10.23 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and, each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States.

(b) In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 10.24 Inconsistencies with Other Documents. In the event there is a conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall control; provided that any provision of the Security Documents which imposes additional burdens on Borrower or any of its Subsidiaries or further restricts the rights of Borrower or any of its Subsidiaries or gives Administrative Agent or Lenders additional rights shall not be deemed to be in conflict or inconsistent with this Agreement and shall be given full force and effect.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed as of the date first written above.

BORROWER:

AMPHASTAR PHARMACEUTICALS, INC.

By: **/s/ William J. Peters**
Name: William J. Peters
Title: Chief Financial Officer

GUARANTORS:

INTERNATIONAL MEDICATION SYSTEMS, LIMITED

By: **/s/ William J. Peters**
Name: William J. Peters
Title: President

ARMSTRONG PHARMACEUTICALS, INC.

By: **/s/ William J. Peters**
Name: William J. Peters
Title: Chief Financial Officer

AMPHASTAR MEDICATION CO., LLC

By: Amphastar Pharmaceuticals, Inc., its sole member
By: **/s/ William J. Peters**
Name: William J. Peters
Title: Chief Financial Officer

ADMINISTRATIVE AGENT AND LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent, Swing Line Lender, L/C Issuer
and Lender

By: **/s/ Brandon Moss**
Name: Brandon Moss
Title: Vice President

CAPITAL ONE, NATIONAL ASSOCIATION,
as Lender

By: **/s/ Terrence Knapp**
Name: Terrence Knapp
Title: Duly Authorized Signatory

JPMORGAN CHASE BANK, N.A.,
as Lender

By: **/s/ Ling Li**
Name: Ling Li
Title: Executive Director

EAST WEST BANK,
as Lender

By: **/s/ Rebecca Lee**
Name: Rebecca Lee
Title: Senior Vice President

CATHAY BANK,
as Lender

By: **/s/ David W. Lee**
Name: David W. Lee
Title: Senior Vice President

FIFTH THIRD BANK, NATIONAL ASSOCIATION,
as Lender

By: **/s/ James Kordas**
Name: James Kordas
Title: Senior Vice President

CIBC BANK USA,
as Lender

By: **/s/ Anne Mulock Westbrook**
Name: Anne Mulock Westbrook
Title: Managing Director

PNC BANK, NATIONAL ASSOCIATION,
as Lender

By: **/s/ Leslie Light**
Name: Leslie Light
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION,
as Lender

By: **/s/ David Rofsky**
Name: David Rofsky
Title: Senior Vice President

BANK OF AMERICA, N.A.,
as Lender

By: **/s/ Kenneth Wong**
Name: Kenneth Wong
Title: Senior Vice President

HUNTINGTON BANK,
as Lender

By: **/s/ Michael J. Kinnick**
Name: Michael J. Kinnick
Title: Managing Director

TD BANK, N.A.,
as Lender

By: **/s/ Nicholas Rizzo**
Name: Nicholas Rizzo
Title: Vice President

HSBC BANK USA, NATIONAL ASSOCIATION
as Lender

By: **/s/ Paul M. Weeks**
Name: Paul M. Weeks
Title: Regional Head

Exhibit 31.1

CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14a OF THE SECURITIES EXCHANGE ACT OF 1934 AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES OXLEY ACT OF 2002

I, Jack Y. Zhang, Ph.D., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Amphastar Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer 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.

Date: August 9, 2023

By: **/s/ JACK Y. ZHANG**
Jack Y. Zhang
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14a OF THE SECURITIES EXCHANGE ACT OF 1934 AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES OXLEY ACT OF 2002

I, William J. Peters, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Amphastar Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer 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.

Date: August 9, 2023

By: **/s/ WILLIAM J. PETERS**
William J. Peters
Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 32.1

CERTIFICATIONS OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

The undersigned officer of Amphastar Pharmaceuticals, Inc. (the "Company"), hereby certifies, to the best of such officer's knowledge, that:

(i) the Quarterly Report on Form 10-Q of the Company for the quarter ended June 30, 2023 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company at the dates and for the periods indicated.

Date: August 9, 2023

By: **/s/ JACK Y. ZHANG**
Jack Y. Zhang
Chief Executive Officer
(Principal Executive Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. §1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Exhibit 32.2

CERTIFICATIONS OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

The undersigned officer of Amphastar Pharmaceuticals, Inc. (the "Company"), hereby certifies, to the best of such officer's knowledge, that:

(i) the Quarterly Report on Form 10-Q of the Company for the quarter ended June 30, 2023 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company at the dates and for the periods indicated.

Date: August 9, 2023

By: **/s/ WILLIAM J. PETERS**
William J. Peters
Chief Financial Officer
(Principal Financial and Accounting Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. §1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.