

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

FORM 10-Q
(Mark one)

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

For the quarterly period ended **September 30, 2024**

OR

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

For the transition period from _____ to _____

Commission File Number: 001-41063

JOURNEY MEDICAL CORPORATION
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

47-1879539

(I.R.S. Employer Identification No.)

9237 E Via de Ventura Blvd, Suite 105, Scottsdale, AZ 85258
(Address of principal executive offices and zip code)

(480) 434-6670

(Registrant's telephone number, including area code)

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	DERM	NASDAQ Capital Market

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

Indicate by check mark whether the registrant has submitted electronically, if any, 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 definition of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer	<input type="checkbox"/>	Accelerated Filer	<input type="checkbox"/>
Non-accelerated Filer	<input checked="" type="checkbox"/>	Smaller Reporting Company	<input checked="" type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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

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

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Class of Common Stock	Outstanding Shares as of November 11, 2024
Common Stock Class A, \$0.0001 par value	6,000,000
Common Stock, \$0.0001 par value	14,889,936

JOURNEY MEDICAL CORPORATION
Quarterly Report on Form 10-Q

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PART I. FINANCIAL INFORMATION**Item 1. Condensed Consolidated Financial Statements (unaudited)**

JOURNEY MEDICAL CORPORATION
Unaudited Condensed Consolidated Balance Sheets
(Dollars in thousands except for share and per share amounts)

	<u>September 30, 2024</u>	<u>December 31, 2023</u>
ASSETS		
Current assets		
Cash and cash equivalents	\$ 22,461	\$ 27,439
Accounts receivable, net of reserves	10,671	15,222
Inventory	11,788	10,206
Prepaid expenses and other current assets	1,242	3,588
Total current assets	<u>46,162</u>	<u>56,455</u>
Intangible assets, net	17,844	20,287
Operating lease right-of-use asset, net	32	101
Other assets	6	6
Total assets	<u>\$ 64,044</u>	<u>\$ 76,849</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	\$ 15,339	\$ 18,149
Due to related party	370	195
Accrued expenses	16,008	20,350
Accrued interest	332	22
Income taxes payable	—	53
Installment payments – licenses, short-term	1,250	3,000
Operating lease liability, short-term	34	99
Total current liabilities	<u>33,333</u>	<u>41,868</u>
Term loan, long-term, net of debt discount	19,785	14,622
Operating lease liability, long-term	—	9
Total liabilities	<u>53,118</u>	<u>56,499</u>
Commitments and contingencies (Note 13)		
Stockholders' equity		
Common stock, \$.0001 par value, 50,000,000 shares authorized, 14,728,904 and 13,323,952 shares issued and outstanding as of September 30, 2024 and December 31, 2023, respectively	1	1
Common stock - Class A, \$.0001 par value, 50,000,000 shares authorized, 6,000,000 shares issued and outstanding as of September 30, 2024 and December 31, 2023	1	1
Additional paid-in capital	99,472	92,703
Accumulated deficit	(88,548)	(72,355)
Total stockholders' equity	<u>10,926</u>	<u>20,350</u>
Total liabilities and stockholders' equity	<u>\$ 64,044</u>	<u>\$ 76,849</u>

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements

JOURNEY MEDICAL CORPORATION
Unaudited Condensed Consolidated Statements of Operations
(Dollars in thousands except for share and per share amounts)

	Three-Month Periods Ended September 30,		Nine-Month Periods Ended September 30,	
	2024	2023	2024	2023
Revenue:				
Product revenue, net	\$ 14,629	\$ 15,279	\$ 42,514	\$ 44,405
Other revenue	—	19,260	—	19,519
Total revenue	<u>14,629</u>	<u>34,539</u>	<u>42,514</u>	<u>63,924</u>
Operating expenses				
Cost of goods sold – product revenue	5,285	6,429	18,642	20,645
Research and development	842	2,229	9,639	6,036
Selling, general and administrative	11,396	8,636	30,144	34,069
Loss on impairment of intangible assets	—	—	—	3,143
Total operating expenses	<u>17,523</u>	<u>17,294</u>	<u>58,425</u>	<u>63,893</u>
Income (loss) from operations	(2,894)	17,245	(15,911)	31
Other expense (income)				
Interest income	(188)	(8)	(566)	(209)
Interest expense	758	268	1,869	1,674
Foreign exchange transaction losses	51	101	104	181
Gain on extinguishment of debt	(1,125)	—	(1,125)	—
Total other expense (income)	<u>(504)</u>	<u>361</u>	<u>282</u>	<u>1,646</u>
Income (loss) before income taxes	<u>(2,390)</u>	<u>16,884</u>	<u>(16,193)</u>	<u>(1,615)</u>
Income tax expense	—	95	—	95
Net income (loss)	<u>\$ (2,390)</u>	<u>\$ 16,789</u>	<u>\$ (16,193)</u>	<u>\$ (1,710)</u>
Net income (loss) per common share:				
Basic	\$ (0.12)	\$ 0.91	\$ (0.80)	\$ (0.09)
Diluted	\$ (0.12)	\$ 0.80	\$ (0.80)	\$ (0.09)
Weighted average number of common shares:				
Basic	20,537,794	18,416,368	20,137,942	18,078,437
Diluted	20,537,794	21,034,758	20,137,942	18,078,437

The accompanying notes are an integral part of these unaudited condensed financial statements

JOURNEY MEDICAL CORPORATION
Unaudited Condensed Consolidated Statements of Changes in Stockholders' Equity
(Dollars in thousands except for share and per share amounts)

Nine-Month Period Ended September 30, 2024

	Common Stock		Common Stock A		Additional Paid-in Capital	Accumulated Deficit	Total Shareholders' Equity
	Shares	Amount	Shares	Amount	\$	\$	\$
Balance as of December 31, 2023	13,323,952	\$ 1	6,000,000	\$ 1	\$ 92,703	\$ (72,355)	\$ 20,350
Share-based compensation	—	—	—	—	4,720	—	4,720
Exercise of stock options for cash	101,568	—	—	—	162	—	162
Issuance of common stock for vested restricted stock units	893,901	—	—	—	—	—	—
Issuance of common stock under ESPP	84,464	—	—	—	209	—	209
Issuance of common stock, ATM offering, net of issuance costs of \$52	325,019	—	—	—	1,678	—	1,678
Net loss	—	—	—	—	—	(16,193)	(16,193)
Balance as of September 30, 2024	14,728,904	\$ 1	6,000,000	\$ 1	\$ 99,472	\$ (88,548)	\$ 10,926

Three-Month Period Ended September 30, 2024

	Common Stock		Common Stock A		Additional Paid-in Capital	Accumulated Deficit	Total Shareholders' Equity
	Shares	Amount	Shares	Amount	\$	\$	\$
Balance as of June 30, 2024	14,018,146	\$ 1	6,000,000	\$ 1	\$ 97,451	\$ (86,158)	\$ 11,295
Share-based compensation	—	—	—	—	1,640	—	1,640
Exercise of stock options for cash	31,524	—	—	—	63	—	63
Issuance of common stock for vested restricted stock units	611,706	—	—	—	—	—	—
Issuance of common stock under ESPP	32,253	—	—	—	124	—	124
Issuance of common stock, ATM offering, net of issuance costs of \$6	35,275	—	—	—	194	—	194
Net loss	—	—	—	—	—	(2,390)	(2,390)
Balance as of September 30, 2024	14,728,904	\$ 1	6,000,000	\$ 1	\$ 99,472	\$ (88,548)	\$ 10,926

Nine-Month Period Ended September 30, 2023

	Common Stock		Common Stock A		Additional Paid-in Capital	Accumulated Deficit	Total Shareholders' Equity
	Shares	Amount	Shares	Amount	\$	\$	\$
Balance as of December 31, 2022	11,765,700	\$ 1	6,000,000	\$ 1	\$ 85,482	\$ (68,502)	\$ 16,982
Share-based compensation	—	—	—	—	2,077	—	2,077
Exercise of options for cash	23,000	—	—	—	25	—	25
Issuance of common stock for vested restricted stock units	708,082	—	—	—	—	—	—
Net loss	—	—	—	—	—	(1,710)	(1,710)
Balance as of September 30, 2023	12,496,782	\$ 1	6,000,000	\$ 1	\$ 87,584	\$ (70,212)	\$ 17,374

Three-Month Period Ended September 30, 2023

	Common Stock		Common Stock A		Additional Paid-in Capital	Accumulated Deficit	Total Shareholders' Equity
	Shares	Amount	Shares	Amount	\$	\$	\$
Balance as of June 30, 2023	12,133,890	\$ 1	6,000,000	\$ 1	\$ 87,004	\$ (87,001)	\$ 5
Share-based compensation	—	—	—	—	558	—	558
Exercise of options for cash	18,000	—	—	—	22	—	22
Issuance of common stock for vested restricted stock units	344,892	—	—	—	—	—	—
Net loss	—	—	—	—	—	16,789	16,789
Balance as of September 30, 2023	12,496,782	\$ 1	6,000,000	\$ 1	\$ 87,584	\$ (70,212)	\$ 17,374

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements

JOURNEY MEDICAL CORPORATION
Unaudited Condensed Consolidated Statements of Cash Flows
(Dollars in thousands except for share and per share amounts)

	Nine-Month Periods Ended September 30,	
	2024	2023
Cash flows from operating activities		
Net loss	\$ (16,193)	\$ (1,710)
Adjustments to reconcile net loss to net cash used in operating activities:		
Bad debt expense	823	492
Non-cash interest expense	—	353
Amortization of debt discount	213	354
Amortization of acquired intangible assets	2,443	2,952
Amortization of operating lease right-of-use assets	69	65
Share-based compensation	4,720	2,077
Loss on impairment of intangible assets	—	3,143
Gain on extinguishment of debt	(1,125)	—
Changes in operating assets and liabilities:		
Accounts receivable	3,728	19,727
Inventory	(1,582)	3,135
Prepaid expenses and other current assets	2,346	2,385
Accounts payable	(2,810)	(8,406)
Due to related party	175	680
Accrued expenses	(4,342)	(3,362)
Accrued interest	310	(160)
Income tax payable	(53)	95
Lease liabilities	(74)	(60)
Net cash (used in) provided by operating activities	<u>(11,352)</u>	<u>21,760</u>
Cash flows from investing activities		
Acquired intangible assets	—	(5,000)
Net cash used in investing activities	<u>—</u>	<u>(5,000)</u>
Cash flows from financing activities		
Proceeds from exercise of stock options	162	25
Proceeds from issuance of common stock, ATM offering, net of issuance costs	1,678	—
Issuance of common stock under ESPP	209	—
Proceeds from term-loan, net of issuance costs	4,950	—
Payment of license installment note payable	(625)	(1,000)
Proceeds from line of credit	—	28,000
Repayments of line of credit	—	(30,948)
Repayment of EWB term-loan	—	(20,000)
Payment of issuance costs associated with EWB term-loan modification	—	(91)
Net cash provided by (used in) financing activities	<u>6,374</u>	<u>(24,014)</u>
Net change in cash	(4,978)	(7,254)
Cash at the beginning of the period	27,439	32,003
Cash at the end of the period	<u>\$ 22,461</u>	<u>\$ 24,749</u>
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ 1,346	\$ 1,127
Cash paid for income taxes	\$ 104	\$ 85

The accompanying notes are an integral part of these unaudited condensed financial statements

JOURNEY MEDICAL CORPORATION
Notes to Unaudited Condensed Consolidated Financial Statements

NOTE 1. ORGANIZATION AND PLAN OF BUSINESS OPERATIONS

Journey Medical Corporation ("Journey" or the "Company") is a commercial-stage pharmaceutical company that primarily focuses on the selling and marketing of U.S. Food and Drug Administration ("FDA") approved prescription pharmaceutical products for the treatment of dermatological conditions. The Company's current product portfolio includes seven branded and two authorized generic prescription drugs for dermatological conditions that are marketed in the U.S. The Company acquires rights to products and product candidates by licensing or otherwise acquiring an ownership interest in, funding the research and development of, and eventually commercializing the products through its field sales organization.

As of September 30, 2024 and December 31, 2023, the Company was a majority-owned subsidiary of Fortress Biotech, Inc. ("Fortress" or "Parent").

Liquidity and Capital Resources

At September 30, 2024, the Company had \$ 22.5 million in cash and cash equivalents as compared to \$ 27.4 million of cash and cash equivalents at December 31, 2023.

On December 27, 2023, the Company entered into a Credit Agreement (the "Credit Agreement") with SWK Funding LLC ("SWK"). The Credit Agreement provides for a term loan facility (the "Credit Facility") in the original principal amount of up to \$20.0 million. On the closing date, the Company drew \$15.0 million. On June 26, 2024, the Company drew the remaining \$5.0 million under the Credit Facility. Loans under the Credit Facility (the "Term Loans") mature on December 27, 2027, and bear interest at a rate per annum equal to the three-month term Secured Overnight Financing Rate ("SOFR") (subject to a SOFR floor of 5%) plus 7.75%. The interest rate resets quarterly. Interest payments began in February 2024 and are paid quarterly. Beginning in February 2026, the Company is required to repay a portion of the outstanding principal of the Term Loans quarterly in an amount equal to 7.5% of the principal amount of funded Term Loans.

On July 9, 2024, the Company entered into an amendment (the "Amendment") to the Credit Agreement. The Amendment increased the original principal amount of the Credit Facility from \$20.0 million to \$25.0 million. The \$5.0 million of additional principal added in the Amendment is contractually required to be drawn upon FDA approval of Emrosi™ (Minocycline Hydrochloride Extended Release Capsules, 40 mg), formerly referred to as DFD-29 ("Emrosi"), subject to the Company receiving approval on or before June 30, 2025. The FDA approved Emrosi on November 4, 2024. The FDA approval also triggered a \$15.0 million milestone payment obligation to Dr. Reddy's Laboratories, Ltd ("DRL") that is due 30 days after the FDA approval. See Note 19, Subsequent Events, for further information regarding the payment triggered upon FDA approval of Emrosi.

On December 30, 2022, the Company filed a shelf registration statement on Form S-3 (File No. 333-269079), which was declared effective by the Securities and Exchange Commission ("SEC") on January 26, 2023. This shelf registration statement covers the offering, issuance and sale by the Company of up to an aggregate of \$150.0 million of the Company's common stock, preferred stock, debt securities, warrants, and units (the "2022 Shelf"). In connection with the 2022 Shelf, the Company entered into an At Market Issuance Sales Agreement (the "Sales Agreement") relating to shares of the Company's common stock. The Company may offer and sell up to 4,900,000 shares of its common stock, from time to time, under the Sales Agreement. During the nine months ended September 30, 2024, the Company issued and sold 325,019 shares of common stock under the 2022 Shelf, generating net proceeds of \$1.7 million. At September 30, 2024, 3,826,278 shares remain available for issuance under the 2022 Shelf.

On September 19, 2024, the United States District Court Southern District of New York through the United States Marshalls notified the Company that it has recovered and will be returning to the Company a portion of the misappropriated cash in connection with the previously disclosed September 2021 cybersecurity incident.

The Company regularly evaluates market conditions, its liquidity profile, and financing alternatives, including out-licensing arrangements for its products, to enhance its capital structure. The Company may seek to raise capital through debt or equity financings to expand its product portfolio and for other strategic initiatives, which may include sales of securities under either the 2022 Shelf or a new registration statement. The Company cannot make any assurances that such additional financing will be available and, if available, the terms may negatively impact the Company's business and operations. The Company's expectations are based on current assumptions, projected commercial sales of products, clinical development plans and regulatory submission timelines, which may be uncertain and may not emerge as expected. As a result of recurring losses and the conditions described above, substantial doubt exists about the Company's ability to continue as a going concern for a period of at least twelve months from the date of issuance of these financial statements.

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the ordinary course of business. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that may be necessary if the Company is unable to continue as a going concern.

NOTE 2. BASIS OF PRESENTATION

Basis of Presentation and Principles of Consolidation

The Company's consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP"). The Company's consolidated financial statements include the accounts of the Company and the accounts of the Company's wholly-owned subsidiary, JG Pharma, Inc. ("JG" or "JG Pharma"). All intercompany balances and transactions have been eliminated.

Emerging Growth Company

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board ("FASB") or other standard-setting bodies and adopted by the Company as of the specified effective date. Unless otherwise discussed, the impact of recently issued standards that are not yet effective will not have a material impact on the Company's audited consolidated financial statements upon adoption. Under the Jumpstart Our Business Startups Act of 2012, as amended, the Company meets the definition of an emerging growth company and elected the extended transition period for complying with new or revised accounting standards, which delays the adoption of these accounting standards until they would apply to private companies.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Significant estimates made by management include provisions for coupons, chargebacks, wholesaler fees, specialty pharmacy discounts, managed care rebates, product returns, and other allowances customary to the pharmaceutical industry. Significant estimates made by management also include inventory realization, valuation of intangible assets, useful lives of amortizable intangible assets and share-based compensation. Actual results may differ materially and adversely from these estimates. To the extent there are material differences between the estimates and actual results, the Company's future results of operations will be affected.

Segment Information

Operating segments are defined as components of an enterprise about which separate discrete information is available for evaluation by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company views its operations and manages its business in one segment, which reflects products for the treatment of dermatological conditions.

NOTE 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Company's significant accounting policies are described in Note 2 of the Notes to the Consolidated Financial Statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2023 (the "2023 Form 10-K").

Accounting Standards Note Yet Adopted

In November 2023, the FASB issued Accounting Standards Update ("ASU") No. 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*, which requires that an entity report segment information in accordance with Topic 280, Segment Reporting. The amendment in the ASU is intended to improve reportable segment disclosure requirements primarily through enhanced disclosures about significant segment expenses. The amendments in this update are effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. The Company is currently evaluating the impact of the new standard on its financial statement disclosures.

In December 2023, the FASB issued ASU No. 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, which expands disclosures in an entity's income tax rate reconciliation table and disclosures regarding cash taxes paid both in the U.S. and foreign jurisdictions. The update will be effective for annual periods beginning after December 15, 2024. The Company is currently evaluating the impact that this guidance will have on its financial statement disclosures.

NOTE 4. INVENTORY

The Company's inventory consists of the following for the periods ended:

(\$'s in thousands)	September 30, 2024	December 31, 2023
Raw materials	\$ 3,551	\$ 4,640
Work-in-process	—	884
Finished goods	8,718	4,987
Inventory at cost	12,269	10,511
Inventory reserves	(481)	(305)
Total inventories	\$ 11,788	\$ 10,206

NOTE 5. INTANGIBLE ASSETS

The Company's finite-lived intangible assets consist of acquired intangible assets. The Company's intangible assets as of September 30, 2024 and December 31, 2023 are summarized as follows:

(\$'s in thousands)	Estimated Useful Lives (Years)	September 30, 2024	December 31, 2023
Intangible assets - product licenses	3-9	\$ 37,925	\$ 37,925
Accumulated amortization		(16,938)	(14,495)
Accumulated impairment loss		(3,143)	(3,143)
Total intangible assets		\$ 17,844	\$ 20,287

The Company's amortization expense for the three-month periods ended September 30, 2024 and 2023 was \$ 0.8 million and \$0.8 million, respectively. The Company's amortization expense for the nine-month periods ended September 30, 2024 and 2023 was \$2.4 million and \$3.0 million, respectively. Amortization expense is recorded as a component of cost of goods sold in the Company's unaudited condensed consolidated statements of operations.

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Future amortization of the Company's intangible assets is as follows:

<i>For the years ended</i>	Total Amortization
Remainder of 2024	\$ 814
December 31, 2025	3,257
December 31, 2026	2,471
December 31, 2027	1,775
December 31, 2028	1,595
Thereafter	3,990
Subtotal	13,902
Asset not yet placed in service	3,942
Total	\$ 17,844

NOTE 6. LICENSES ACQUIRED

Emrosi

In June 2021, the Company entered a license, collaboration, and assignment agreement (the "DFD-29 Agreement") to obtain global rights for the development and commercialization of Emrosi for the treatment of rosacea with DRL; provided, that DRL retained certain rights to the program in select markets including Brazil, Russia, India and China. Pursuant to the terms and conditions of the DFD-29 Agreement, the Company paid \$10.0 million. Based on the development and commercialization of Emrosi, additional contingent regulatory and commercial milestone payments totaling up to \$140.0 million, which excludes the \$15.0 million milestone payment triggered by FDA approval on November 4, 2024, may also become payable by the Company. (See Note 19, Subsequent Events, for further information regarding current contingent regulatory milestone payments to DRL pursuant to the DFD - 29 Agreement). The Company is required to pay royalties ranging from approximately ten percent to twenty percent on net sales of Emrosi, subject to certain reductions. Additionally, the Company was required to fund and oversee the Phase 3 clinical trials beginning after the execution of the DFD-29 Agreement in 2021. The Phase 3 clinical trials substantially concluded in July 2023 upon the Company's receipt of positive Phase 3 clinical trial results.

Qbrexza

In March 2021, the Company executed an Asset Purchase Agreement (the "Qbrexza APA") with Dermira, Inc., a subsidiary of Eli Lilly and Company ("Dermira"). Pursuant to the terms of the Qbrexza APA, the Company acquired the rights to Qbrexza® (glycopyrronium), a prescription cloth towelette to treat primary axillary hyperhidrosis in patients nine years of age or older. The Company paid the upfront fee of \$12.5 million to Dermira. In addition, the Company is obligated to pay Dermira up to \$ 144.0 million in the aggregate upon the achievement of certain sales milestones. The royalty structure for the agreement is tiered with royalties for the first two years ranging from approximately 40% to 30%. Thereafter, royalties are approximately 12.0% to 19.0%. Royalty amounts are subject to certain reductions in the event there is a loss of exclusivity.

Accutane

In July 2020, the Company entered into an exclusive license and supply agreement for Accutane (the "Accutane Agreement") with DRL. Pursuant to the Accutane Agreement, the Company paid \$5.0 million. Three additional milestone payments totaling \$17.0 million are contingent upon the achievement of certain net sales milestones. The Company is required to pay royalties in an amount equal to a low-double digit percentage of net sales. The term of the Accutane Agreement is ten years and renewable upon mutual agreement. Each party may terminate the Accutane Agreement for an uncured material breach by the other party or for certain bankruptcy or insolvency related events. The Company may also terminate the Accutane Agreement without cause upon 180 days written notice to DRL.

NOTE 7. FAIR VALUE MEASUREMENTS

Fair value is defined as an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability.

The accounting guidance requires fair value measurements be classified and disclosed in one of the following three categories:

Level 1: Quoted prices in active markets for identical assets or liabilities.

Level 2: Observable inputs other than Level 1 prices for similar assets or liabilities that are directly or indirectly observable in the marketplace.

Level 3: Unobservable inputs which are supported by little or no market activity and that are financial instruments whose values are determined using pricing models, discounted cash flow methodologies, or similar techniques.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

Certain of the Company's financial instruments are not measured at fair value on a recurring basis but are recorded at amounts that approximate their fair value due to their liquid or short-term nature, such as accounts payable, accrued expenses and other current liabilities.

Financial assets and liabilities measured at fair value on a recurring basis are summarized below:

(\$'s in thousands)	September 30, 2024			
	Level 1	Level 2	Level 3	Total
Assets				
Cash and cash equivalents	\$ 22,461	\$ —	\$ —	\$ 22,461
Total	\$ 22,461	\$ —	\$ —	\$ 22,461
(\$'s in thousands)	December 31, 2023			
	Level 1	Level 2	Level 3	Total
Assets				
Cash and cash equivalents	\$ 27,439	\$ —	\$ —	\$ 27,439
Total	\$ 27,439	\$ —	\$ —	\$ 27,439

The Company did not carry any level 2 or level 3 assets or liabilities at September 30, 2024 or December 31, 2023. No transfers occurred between level 1, level 2, and level 3 instruments during the nine-month periods ended September 30, 2024 and 2023.

NOTE 8. RELATED PARTY AGREEMENTS

Shared Services Agreement with Fortress

On November 12, 2021, the Company and Fortress entered into an arrangement to share the cost of certain employees (the "Shared Services Agreement"). Fortress' Executive Chairman and Chief Executive Officer is the Executive Chairman of the Company. Under the terms of the Shared Services Agreement, the Company will reimburse Fortress for the salary and benefit costs associated with these employees based upon actual hours worked on Journey-related projects following the completion of the Company's initial public offering, which occurred in November 2021. In addition, the Company reimburses Fortress for various payroll-related costs and selling, general and administrative costs incurred by Fortress for the benefit of the Company.

For the three-month periods ended September 30, 2024 and 2023, the Company recorded related party expenses to Fortress of approximately \$8,000 and \$11,000, respectively. For the nine-month periods ended September 30, 2024 and 2023, the Company recorded related party expenses to Fortress of approximately \$26,000 and \$47,000, respectively. The due to related party liability at September 30, 2024 and December 31, 2023 was \$0.4 million and \$0.2 million, respectively, and primarily relate to reimbursable

expenses incurred by Fortress on behalf of the Company. The Company would have incurred these costs irrespective of the relationship with Fortress.

Fortress Income Tax

At September 30, 2024, 47.6% of all classes of the Company's outstanding common stock was owned by Fortress. Prior to the Company's initial public offering of securities in 2021, the Company had been filing consolidated federal tax returns and consolidated or combined state tax returns in multiple jurisdictions with Fortress. The Company may still be required to file combined tax returns in certain "combined filing states." These jurisdictions generally require corporations engaged in unitary business and meet the capital stock requirement of fifty percent to file a combined state tax return.

Additionally, see Note 17 below for a discussion of income taxes.

NOTE 9. ACCRUED EXPENSES

Accrued expenses consisted of the following:

(\$'s in thousands)	September 30, 2024	December 31, 2023
Accrued expenses:		
Accrued coupons and rebates	\$ 6,321	\$ 9,987
Return reserve	3,430	4,077
Accrued compensation	2,588	3,374
Accrued royalties payable	1,601	2,015
Accrued legal, accounting and tax	567	185
Accrued marketing and market access	673	—
Accrued research and development	248	20
Accrued inventory	355	352
Accrued iPledge program	90	174
Other	135	166
Total accrued expenses	\$ 16,008	\$ 20,350

NOTE 10. OPERATING LEASE OBLIGATIONS

The Company leases 3,681 square feet of office space in Scottsdale, Arizona. In September 2022, the Company amended the lease to extend the lease term for an additional 25 months at an annual rate of approximately \$0.1 million. The amended lease will expire on January 31, 2025.

The Company recorded lease expense as follows:

(\$'s in thousands)	Three-Month Periods Ended September 30,		Nine-Month Periods Ended September 30,	
	2024	2023	2024	2023
Operating lease cost	\$ 24	\$ 24	\$ 72	\$ 72
Variable lease cost	1	1	4	3
Total lease cost	\$ 25	\$ 25	\$ 76	\$ 75

The following table summarizes quantitative information about the Company's operating leases:

(\$'s in thousands)	Three-Month Periods Ended September 30,		Nine-Month Periods Ended September 30,	
	2024	2023	2024	2023
Cash paid for amounts included in the measurement of lease liabilities	\$ 26	\$ 25	\$ 77	\$ 67
Weighted-average remaining lease term - operating leases	0.3	1.4	0.3	1.4
Weighted-average discount rate - operating leases	6.25 %	6.25 %	6.25 %	6.25 %

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As of September 30, 2024, future minimum lease payments under lease agreements associated with the Company's operations were as follows:

<i>\$'s in thousands</i>		
Remainder of 2024		\$ 25
2025		9
Total lease payments		34
Less: present value discount		—
Total operating lease liabilities		\$ 34

NOTE 11. DEBT

The Company's debt obligations at September 30, 2024 and December 31, 2023 were as follows:

<i>(\$'s in thousands)</i>	September 30, 2024	December 31, 2023
Principal balance	\$ 20,000	\$ 15,000
Plus: Exit fee	1,000	750
Less: Debt discount and fees	(1,215)	(1,128)
Net carry amount (Long-term)	\$ 19,785	\$ 14,622

SWK Long-Term Debt

On December 27, 2023 (the "Closing Date"), the Company entered into a Credit Agreement with SWK. The Credit Agreement provides for a term loan Credit Facility in the original principal amount of up to \$20.0 million. On the Closing Date, the Company drew \$15.0 million. On June 26, 2024, the Company drew the remaining \$5.0 million under the Credit Facility. On July 9, 2024, the Company entered into the Amendment to the Credit Agreement with SWK. The Amendment increased the original principal amount of the Credit Facility from \$20.0 million to \$25.0 million. The \$5.0 million of additional principal added in the Amendment is contractually required to be drawn upon FDA approval of Emrosi, subject to the Company receiving approval on or before June 30, 2025.

Term Loans under the Credit Facility mature on December 27, 2027. The Term Loans accrue interest which is payable quarterly in arrears. The Term Loans bear interest at a rate per annum equal to the three-month term SOFR (subject to a SOFR floor of 5%) plus 7.75%. The interest rate resets quarterly.

Beginning in February 2026, the Company is required to repay a portion of the outstanding principal of the Term Loans quarterly in an amount equal to 7.5% of the principal amount of funded Term Loans, with any remaining principal balance due on the maturity date. If the total revenue of the Company, measured on a trailing twelve-month basis, is greater than \$70.0 million as of December 31, 2025, the principal repayment start date is extended from February 2026 to February 2027, at which point the Company is required to repay a portion of the outstanding principal of the Term Loans quarterly in an amount equal to 15% of the principal amount of funded Term Loans, with any remaining principal balance due on the maturity date.

The Company may at any time prepay the outstanding principal balance of the Term Loans in whole or in part. Prepayment of the Term Loans is subject to payment of a prepayment premium equal to (i) 2% of the Term Loans prepaid plus the amount of interest that would have been due through the first anniversary of the Closing Date if the Term Loans are prepaid prior to the first anniversary of the Closing Date, (ii) 1% of the Term Loans prepaid if the Term Loans are prepaid on or after the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date, or (iii) 0% if prepaid thereafter.

Upon repayment in full of the Term Loans, the Company will pay an exit fee equal to 5% of the original principal amount of the Term Loans. Additionally, the Company paid an origination fee of \$0.2 million on the Closing Date and incurred issuance costs of \$0.2 million, both of which have been recorded as a debt discount. The Company is accreting the carrying value of the SWK Term Loan to the original principal balance plus the exit fee over the term of the loan using the effective interest method. The amortization of the discount is accounted for as interest expense. The effective interest rate on the SWK Term Loan as of September 30, 2024 was 14.88%. The fair value of the debt approximates its carrying value.

The SWK Credit Facility also includes both revenue and liquidity covenants, restrictions as to payment of dividends, and is secured by substantially all assets of the Company. As of September 30, 2024, the Company was in compliance with the financial covenants under the SWK Credit Facility.

As of September 30, 2024, the contractual maturities of the long-term debt, including the payment of the exit fee, are as follows (dollars in thousands):

Years ending December 31,	Term Loan
Remainder of 2024	\$ —
2025	—
2026	6,000
2027	15,000
Total	21,000
Debt discount	(1,215)
Total, net	19,785
Current portion	—
Term-loan (long-term)	\$ 19,785

NOTE 12: INTEREST EXPENSE AND FINANCING FEES

Interest expense and financing fees for the three and nine-month periods ended September 30, 2024 and 2023 consisted of the following:

(\$'s in thousands)	Three-Month Periods Ended September 30,		Nine-Month Periods Ended September 30,	
	2024	2023	2024	2023
Interest payments on term loans and LOC	\$ 671	\$ 34	\$ 1,656	\$ 967
Amortization/Accretion	87	58	213	354
Imputed interest on acquired intangible assets	—	176	—	353
Total interest expense and financing fees	\$ 758	\$ 268	\$ 1,869	\$ 1,674

NOTE 13. COMMITMENTS AND CONTINGENCIES

License Agreements

The Company has undertaken to make contingent milestone payments to the licensors of its portfolio of drug products and candidates. In addition, the Company is required to pay royalties to such licensors based on a percentage of net sales of each drug candidate following regulatory marketing approval. For additional information on future milestone payments and royalties, see Note 6.

NOTE 14. SHARE-BASED COMPENSATION

In 2015, the Company's Board of Directors adopted, and stockholders approved, the Journey Medical 2015 Stock Plan (the "Plan") authorizing the Company to grant shares of common stock to eligible employees, directors, and consultants in the form of restricted stock, restricted stock units ("RSUs"), stock options and other types of grants. The amount, terms, and exercisability provisions of grants are determined by the Board of Directors. At the Company's 2024 Annual Meeting of Stockholders, held on June 25, 2024, the Company's stockholders approved, among other matters, an amendment to the Plan to increase the number of shares of Common Stock issuable under the Plan by 3,000,000 to 10,642,857. As of September 30, 2024, 2,796,065 shares were available for issuance under the Plan.

The Company, from time to time, grants stock options to employees, non-employees and directors with exercise prices equal to the closing price of the underlying shares of the Company's common stock on the Nasdaq Capital Market on the date that the options are granted. Options granted have a term of ten years from the grant date. Options granted generally vest over a four-year period. Compensation cost for stock options is charged against operations on a straight-line basis over the vesting period. The Company estimates the fair value of stock options on the grant date by applying the Black-Scholes option pricing valuation model.

In 2023, the Company's Board of Directors adopted, and stockholders approved, the Journey Medical Corporation 2023 Employee Stock Purchase Plan (the "2023 ESPP"). The Company initially reserved 300,000 shares of common stock for future issuance under the 2023 ESPP. As of September 30, 2024, 215,536 shares were available for issuance under the 2023 ESPP.

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The following table summarizes the components of share-based compensation expense in the consolidated statements of operations for the three and nine-month periods ended September 30, 2024 and 2023:

(\$'s in thousands)	Three-Month Periods Ended September 30,		Nine-Month Periods Ended September 30,	
	2024	2023	2024	2023
Research and development	\$ 150	\$ 23	\$ 466	\$ 87
Selling, general and administrative	1,490	535	4,254	1,990
Total non-cash compensation expense related to share-based compensation included in operating expense	\$ 1,640	\$ 558	\$ 4,720	\$ 2,077

Stock Options

The following table summarizes the Company's stock option activities:

	Number of Shares	Weighted average exercise price	Aggregate intrinsic value	Weighted average remaining contractual life (years)
Outstanding options at December 31, 2023	2,769,869	\$ 1.49	\$ 3,441,146	4.53
Granted	25,000	4.57		
Exercised	(101,568)	1.59		
Forfeited	(143,349)	2.88		
Expired	(26,306)	2.30		
Outstanding options at September 30, 2024	2,523,646	\$ 1.43	\$ 10,640,203	3.55
Options vested and exercisable at September 30, 2024	2,087,920	\$ 1.10	\$ 9,508,566	2.58

For the three-month periods ended September 30, 2024 and 2023, approximately \$ 0.1 million and \$0.1 million, respectively, of stock option compensation expense was charged against operations. For the nine-month periods ended September 30, 2024 and 2023, approximately \$0.2 million and \$0.4 million, respectively, of stock option compensation expense was charged against operations. For the nine-month period ended September 30, 2024, the Company issued 101,568 shares of common stock upon the exercise of outstanding stock options and received proceeds of approximately \$162,000. At September 30, 2024, the Company had unrecognized stock-based compensation expense related to all unvested options of \$0.5 million, which the Company expects to recognize over a weighted-average period of approximately 1.6 years.

The aggregate intrinsic value in the previous table reflects the total pre-tax intrinsic value (the difference between the Company's closing stock price on the last trading day of the period and the exercise price of the options, multiplied by the number of in-the-money stock options) that would have been received by the option holders had all option holders exercised their options on September 30, 2024. The intrinsic value of the Company's stock options changes based on the closing price of the Company's common stock.

Restricted Stock Units

The following table summarizes the activity related to the Company's RSUs for the nine-month period ended September 30, 2024:

	Number of units	Weighted average grant date Fair value
Unvested balance at December 31, 2023	1,306,923	\$ 3.88
Granted	2,098,912	4.56
Vested	(893,901)	4.04
Forfeited	(27,500)	4.61
Unvested balance at September 30, 2024	2,484,434	\$ 4.39

For the three-month periods ended September 30, 2024 and 2023, approximately \$ 1.5 million and \$0.5 million, respectively, of stock compensation expense related to RSUs was charged against operations. For the nine-month periods ended September 30, 2024 and 2023,

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approximately \$4.3 million and \$1.6 million, respectively, of stock compensation expense related to RSUs was charged against operations. For the nine-month periods ended September 30, 2024 and 2023, the Company issued 893,901 and 708,082 shares of common stock, respectively, upon vesting of RSU's amounting to \$3.6 million and \$2.8 million, respectively, in total aggregate fair market value. At September 30, 2024, 2,484,434 RSUs remained unvested and there was approximately \$ 6.8 million of unrecognized compensation cost related to restricted stock which the Company expects to recognize over a weighted-average period of approximately 1.8 years.

Employee Stock Purchase Plan

The 2023 ESPP provides that eligible employees may contribute up to 10% of their eligible earnings toward a semi-annual purchase of the Company's common stock. The 2023 ESPP is qualified under Section 423 of the Internal Revenue Code. The employee's purchase price is derived from a formula based on the closing price of the common stock on the first day of the offering period versus the closing price on the last date of purchase (or, if not a trading day, on the immediately preceding trading day). The offering period under the 2023 ESPP has a duration of six months, and the purchase price with respect to each offering period beginning on or after such date is, until otherwise amended, equal to 85% of the lesser of (i) the fair market value of the Company's common stock at the commencement of the applicable six-month offering period or (ii) the fair market value of the Company's common stock on the purchase date. The Company estimates the fair value of the common stock under the 2023 ESPP using a Black-Scholes valuation model. The fair value was estimated on the date of grant for the offering period beginning February 1, 2024 using the Black-Scholes option valuation model and the straight-line attribution approach with the following assumptions: risk-free interest rate (5.1%); expected term (0.5 years); expected volatility (96%); and an expected dividend yield (0%). The Company recorded \$0.2 million of stock-based compensation under the 2023 ESPP for the nine-month period ended September 30, 2024. As of September 30, 2024, there was unrecognized stock-based compensation expense of approximately \$34,000 related to the current ESPP offering period, which ends January 31, 2025.

NOTE 15. REVENUES FROM CONTRACTS WITH CUSTOMERS

Disaggregation of Net Revenues

The Company has the following actively marketed products, Qbrexza®, Amzeeq®, Zilxi®, Accutane®, Exelderm®, Targadox®, and Luxamend®. All of the Company's product revenues are recorded in the U.S.

Revenues by product are summarized as follows:

(\$ in thousands)	Three-Month Periods Ended September 30,		Nine-Month Periods Ended September 30,	
	2024	2023	2024	2023
Qbrexza®	\$ 7,583	\$ 5,865	\$ 19,435	\$ 18,038
Accutane®	3,996	4,882	15,534	15,109
Amzeeq®	1,542	2,336	3,503	4,904
Zilxi®	558	681	1,200	1,567
Other / legacy	950	1,515	2,842	4,787
Total product revenues	\$ 14,629	\$ 15,279	\$ 42,514	\$ 44,405

The Company recognized other revenue as follows:

(\$ in thousands)	Three-Month Periods Ended September 30,		Nine-Month Periods Ended September 30,	
	2024	2023	2024	2023
Non-refundable upfront payment from Maruho	\$ —	\$ 19,000	\$ —	\$ 19,000
Royalties on sales of Rapifort® Wipes 2.5%	—	260	—	519
Total other revenue	\$ —	\$ 19,260	\$ —	\$ 19,519

Significant Customers

For the three and nine-month periods ended September 30, 2024 and 2023 there were no customers that accounted for more than 10% of the Company's total gross product revenue.

At September 30, 2024, one of the Company's customers accounted for more than 10% of its total accounts receivable balance at 12.4%. At December 31, 2023, one of the Company's customers accounted for more than 10% of its total accounts receivable balance at 13.0%.

NOTE 16. XIMINO SETTLEMENT

In August 2024, the Company executed a settlement agreement (the "Settlement Agreement") to settle amounts owed by the Company to Sun Pharmaceutical Industries, Inc. ("Sun") pursuant to the Ximino Asset Purchase Agreement. The Company owed \$3.0 million of license installment payments to Sun associated with the license of Ximino. Pursuant to the Settlement Agreement, the Company agreed to settle the total outstanding obligation owed to Sun for a total of \$1.9 million, payable in three installments: 1) \$625.0 thousand upon execution of the Settlement Agreement, 2) \$625.0 thousand on December 1, 2024, and 3) \$625.0 thousand on January 15, 2025. The Company accounted for the settlement of the license installment payment as a gain of \$1.1 million for the difference between the carrying value of the license installment payments of \$3.0 million and the settlement amount of \$1.9 million. The Company recorded the difference of \$1.1 million as a Gain on extinguishment of debt in the Condensed Consolidated Statements of Operations.

NOTE 17. INCOME TAXES

(\$ in thousands)	Three-Month Periods Ended September 30,		Nine-Month Periods Ended September 30,	
	2024	2023	2024	2023
Net income (loss) before income taxes	\$ (2,390)	\$ 16,884	\$ (16,193)	\$ (1,615)
Provision (benefit) for Income	—	95	—	95
Effective tax rate	0.0 %	0.6 %	0.0 %	-5.9%

The Company records income taxes using the asset and liability method. Deferred income tax assets and liabilities are recognized for the future tax effects attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective income tax bases, and operating loss and tax credit carryforwards. The Company establishes a valuation allowance if management believes it is more likely than not that the deferred tax assets will not be recovered based on an evaluation of objective verifiable evidence. Management has considered the Company's history of book and tax income and losses incurred since inception, and the other positive and negative evidence, and has concluded that it is more likely than not that the Company will not realize the benefits of the net deferred tax assets as of September 30, 2024.

As of September 30, 2024, the Company had no unrecognized tax benefits and does not anticipate any significant change to the unrecognized tax benefit balance.

NOTE 18. NET LOSS PER COMMON SHARE

The Company accounts for and discloses net earnings (loss) per share using the treasury stock method. Net earnings (loss) per share, or basic earnings (loss) per share, is computed by dividing net earnings (loss) by the weighted-average number of shares of common stock outstanding. Net earnings (loss) per share assuming dilutions, or diluted earnings (loss) per share, is computed by reflecting the potential dilution from the exercise of in-the-money stock options and the issuance of non-vested restricted stock units.

Diluted net income (loss) per shares was calculated as follows:

	Three-Month Periods Ended September 30,		Nine-Month Periods Ended September 30,	
	2024	2023	2024	2023
Diluted earnings per share				
Numerator:				
Net income (loss) - basic and diluted	\$ (2,390)	\$ 16,789	\$ (16,193)	\$ (1,710)
Denominator				
Weighted-average shares outstanding - basic	20,537,794	18,416,368	20,137,942	18,078,437
Dilutive impact from:				
Stock options	—	1,252,578	—	—
Restricted stock units	—	1,365,812	—	—
Weighted-average shares outstanding - diluted	20,537,794	21,034,758	20,137,942	18,078,437
Net income (loss) per share - basic	\$ (0.12)	\$ 0.91	\$ (0.80)	\$ (0.09)
Net income (loss) per share - diluted	\$ (0.12)	\$ 0.80	\$ (0.80)	\$ (0.09)
Potentially dilutive securities excluded from the calculation of net income (loss) per share				
Unvested restricted stock units	2,484,434	—	2,484,434	1,365,812
Stock options	1,739,786	976,949	1,640,972	1,144,412
Total potentially dilutive securities	4,224,220	976,949	4,125,406	2,510,224

The Company's potentially dilutive securities, including unvested restricted stock and options have been excluded from the computation of diluted loss per share for the three and nine-month periods ended September 30, 2024, and the nine - month period ended September 30, 2023, as the effect would be to reduce the loss per share. Therefore, the weighted average common stock outstanding used to calculate both the basic and diluted loss per share is the same for the three and nine-month periods ended September 30, 2024 and for the nine - month period ended September 30, 2023.

NOTE 19. SUBSEQUENT EVENTS

Milestone payment to Dr Reddy upon FDA approval of Emrosi

On November 4, 2024, the Company received FDA approval for Emrosi, its product for the treatment of papulopustular rosacea. Pursuant to the DFD-29 Agreement, the Company is contractually obligated to pay DRL contingent regulatory, commercial, and corporate-based milestone payments and royalties. The approval of Emrosi by the FDA on November 4, 2024, triggered a \$15.0 million milestone payment obligation to DRL that is due 30 days after FDA approval. Milestone payments made upon regulatory approval are capitalized and amortized over the remaining useful life of the related product. The approval of Emrosi by the FDA also triggered the requirement of the Company to draw on the remaining \$5.0 million under the SWK Credit Facility. As of the date of issuance of these financial statements, the Company has not drawn on this amount.

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

Special Cautionary Notice Regarding Forward-Looking Statements

Certain matters discussed in this report may constitute forward-looking statements for purposes of the Securities Act of 1933, as amended (the "Securities Act"), and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from the future results, performance or achievements expressed or implied by such forward-looking statements. The words "anticipate," "believe," "estimate," "may," "expect," "will," "could," "project," "should," "intend" and similar expressions are generally intended to identify forward-looking statements. Our actual results may differ materially from the results anticipated in or implied by these forward-looking statements due to a variety of factors, including, without limitation:

- *the fact that our products and product candidates are subject to time and cost intensive regulation and clinical testing and as a result, may never be successfully developed or commercialized;*
- *a substantial portion of our sales derive from products that are without patent protection and/or are or may become subject to third-party generic competition, the introduction of new competitor products, or an increase in market share of existing competitor products, any of which could have a significant adverse impact on our operating income;*
- *we operate in a heavily regulated industry, and we cannot predict the impact that any future legislation or administrative or executive action may have on our operations;*
- *our revenue is dependent mainly upon sales of our dermatology products and any setback relating to the sale of such products could impair our operating results;*
- *competition could limit our products' commercial opportunity and profitability, including competition from manufacturers of generic versions of our products;*
- *the risk that our products do not achieve broad market acceptance, including by government and third-party payors;*
- *our reliance third parties for several aspects of our operations;*
- *our dependence on our ability to identify, develop, and acquire or in-license products and integrate them into our operations, at which we may be unsuccessful;*
- *the dependence of the success of our business, including our ability to finance our company and generate additional revenue, on the successful commercialization of our recently approved product, Emrosi, and any future product candidates that we may develop, in-license or acquire;*
- *clinical drug development is very expensive, time consuming, and uncertain and our clinical trials may fail to adequately demonstrate the safety and efficacy of our current or any future product candidates;*
- *our competitors could develop and commercialize products similar or identical to ours;*
- *risks related to the protection of our intellectual property and our potential inability to maintain sufficient patent protection for our technology and products;*
- *our business and operations would suffer in the event of computer system failures, cyber-attacks, or deficiencies in our or our third parties' cybersecurity;*
- *the effects of major public health issues, epidemics or pandemics on our product revenues and any future clinical trials;*
- *our potential need to raise additional capital;*
- *the substantial doubt expressed about our ability to continue as a going concern;*

- Fortress controls a voting majority of our common stock, which could be detrimental to our other shareholders; and
- the risks described in under the section titled "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2023 (the "2023 Form 10-K").

The forward-looking statements contained in this report reflect our views and assumptions as of the effective date of this report. New risks and uncertainties arise from time to time, and it is impossible for us to predict these events or how they may affect us. Except as required by law, we assume no responsibility for updating any forward-looking statements.

We qualify all of our forward-looking statements by these cautionary statements. In addition, with respect to all of our forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

Overview

We are a commercial-stage pharmaceutical company founded in October 2014 that primarily focuses on the selling and marketing of FDA-approved prescription pharmaceutical products for the treatment of dermatological conditions. Our current portfolio includes seven branded and two authorized generic prescription drugs for dermatological conditions that are actively marketed in the U.S. We are managed by experienced life science executives with a track record of creating value for their stakeholders and bringing novel medicines to the market, enabling patients to experience increased quality of life and physicians and other licensed medical professionals to provide better care for their patients. We aim to acquire rights to future products by licensing or otherwise acquiring an ownership interest in, funding the research and development of, and eventually commercializing, the products through our field sales force.

Recent Corporate Highlights

FDA Approval of Emrosi

On November 4, 2024, the U.S. Food and Drug Administration (the "FDA") approved Emrosi™ (Minocycline Hydrochloride Extended Release Capsules, 40 mg), formerly referred to as DFD-29 ("Emrosi") for the treatment of inflammatory lesions of rosacea in adults. Emrosi was developed by Journey in collaboration with DRL. Journey is completing the manufacturing of Emrosi for the U.S. market and anticipates initial supply will be available in late first quarter or early second quarter of 2025. Journey intends to commercialize Emrosi in the U.S. with its commercial team.

Critical Accounting Policies and Uses of Estimates

Our discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which we have prepared in accordance with accounting principles generally accepted in the United States. Applying these principles requires our judgment in determining the appropriateness of acceptable accounting principles and methods of application in diverse and complex economic activities. The preparation of the accompanying financial statements requires us to make estimates and judgments that affect the reported amounts of revenues, expenses, assets and liabilities, and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and other assumptions that we believe are reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

For a discussion of our critical accounting estimates, see the section of the 2023 Form 10-K titled "Management's Discussion and Analysis of Financial Condition and Results of Operations – Critical Accounting Policies and Use of Estimates." There were no material changes in our critical accounting estimates or accounting policies from December 31, 2023.

Accounting Pronouncements

During the nine-month period ended September 30, 2024, there were no new accounting pronouncements or updates to recently issued accounting pronouncements disclosed in the 2023 Form 10-K that are expected to materially affect the Company's present or future financial statements.

Emerging Growth Company and Smaller Reporting Company Status

We are an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012 (“JOBS Act”). Under the JOBS Act, emerging growth companies can delay the adoption of new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. Other exemptions and reduced reporting requirements under the JOBS Act for emerging growth companies include presentation of only two years of audited financial statements in our annual reports on Form 10-K, an exemption from the requirement to provide an auditor’s report on internal controls over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, as amended, an exemption from any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation and less extensive disclosure about our executive compensation arrangements. We have elected to use the extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that (i) we are no longer an emerging growth company or (ii) we affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act.

We are also a “smaller reporting company,” meaning that either (i) the market value of our shares held by non-affiliates is less than \$250 million or (ii) the market value of our shares held by non-affiliates is less than \$700 million and our annual revenue was less than \$100 million during the most recently completed fiscal year. We may continue to be a smaller reporting company if either (i) the market value of our shares held by non-affiliates is less than \$250 million or (ii) our annual revenue was less than \$100 million during the most recently completed fiscal year and the market value of our shares held by non-affiliates is less than \$700 million. As a smaller reporting company, we may choose to present only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K, we have reduced disclosure obligations regarding executive compensation, and smaller reporting companies are permitted to delay adoption of certain recent accounting pronouncements discussed in Note 2 to our consolidated financial statements in this report on Form 10-Q.

Results of Operations

The following table summarizes our results of operations for the three-month periods ended September 30, 2024 and 2023:

Comparison of the Three-Month Periods Ended September 30, 2024 and 2023

(\$ in thousands, except per share data)	Three-Month Periods Ended September 30,		Change	
	2024	2023	\$	%
Revenue:				
Product revenue, net	\$ 14,629	\$ 15,279	\$ (650)	-4 %
Other revenue	—	19,260	(19,260)	-100 %
Total revenue	14,629	34,539	(19,910)	-58 %
Operating expenses				
Cost of goods sold – product revenue	5,285	6,429	(1,144)	-18 %
Research and development	842	2,229	(1,387)	-62 %
Selling, general and administrative	11,396	8,636	2,760	32 %
Total operating expenses	17,523	17,294	229	1 %
Income (loss) from operations	(2,894)	17,245	(20,139)	-117 %
Other expense (income)				
Interest income	(188)	(8)	(180)	2250 %
Interest expense	758	268	490	183 %
Foreign exchange transaction losses	51	101	(50)	-50 %
Gain on extinguishment of debt	(1,125)	—	(1,125)	100 %
Total other expense (income)	(504)	361	(865)	-240 %
Income (loss) before income taxes	(2,390)	16,884	(19,274)	-114 %
Income tax expense	—	95	(95)	-100 %
Net income (loss)	\$ (2,390)	\$ 16,789	\$ (19,179)	-114 %

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Revenues

The following table reflects our net product revenue for the three-month periods ended September 30, 2024 and 2023:

(\$ in thousands)	Three-Month Periods Ended			Change
	September 30		\$	%
	2024	2023		
Qbrexza®	\$ 7,583	\$ 5,865	\$ 1,718	29 %
Accutane®	3,996	4,882	(886)	-18 %
Amzeeq®	1,542	2,336	(794)	-34 %
Zilxi®	558	681	(123)	-18 %
Other / legacy	950	1,515	(565)	-37 %
Total net product revenue	\$ 14,629	\$ 15,279	\$ (650)	-4 %

Total net product revenues decreased by \$0.7 million, or 4%, to \$14.6 million for the three-month period ended September 30, 2024, from \$15.3 million for the three-month period ended September 30, 2023.

Qbrexza® net product revenue increased by \$1.7 million, or 29%, to \$7.6 million for the three-month period ended September 30, 2024, from \$5.9 million for the three-month period ended September 30, 2023. The increase is primarily volume driven, due to our continued marketing efforts and the recent expansion of our access and coverage platforms related to the Qbrexza product.

Accutane® net product revenue decreased by \$0.9 million, or 18%, to \$4.0 million for the three-month period ended September 30, 2024, from \$4.9 million for the three-month period ended September 30, 2023 due to recent market competition.

Amzeeq® and Zilxi® net product revenue combined, decreased by \$0.9 million, or 30%, to \$2.1 million for the three-month period ended September 30, 2024, from \$3.0 million for the three-month period ended September 30, 2023. The decrease is primarily due to a slight decrease in unit sales volume and an increase in coupon rebates as a result of the expansion of our patient coverage options under our overall market access program driving average selling prices lower as compared to the prior year quarter.

Net Revenue from our legacy products decreased by \$0.6 million, or 37%, to \$0.9 million for the three-month period ended September 30, 2024, from \$1.5 million for the three-month period ended September 30, 2023. Targadox® continues to experience erosion due to generic competition and we discontinued selling Ximino® on September 29, 2023.

Other Revenue

(\$ in thousands)	Three-Month Periods Ended September 30,			Change
	2024		\$	%
	2024	2023		
Other revenue	—	19,260	(19,260)	-100 %
Total other revenue	\$ —	\$ 19,260	\$ (19,260)	-100 %

On August 31, 2023, we entered into a license agreement (the "Maruho Agreement") with Maruho Co., Ltd., a Japanese company specializing in dermatology ("Maruho"), whereby we granted an exclusive license to Maruho to develop and commercialize Qbrexza® for the treatment of primary axillary hyperhidrosis in South Korea, Taiwan, Hong Kong, Macau, Thailand, Indonesia, Malaysia, Philippines, Singapore, Vietnam, Brunei, Cambodia, Myanmar and Laos (the "Territory"). Under the terms of the Maruho Agreement, Maruho paid us \$19.0 million as a non - refundable upfront payment. Maruho is also obligated to make royalty payments to us related to sales of the product in the Territory equal to the corresponding rate payable by us to Dermira under the asset purchase agreement between us and Dermira.

Gross-to-Net Sales Accruals

We record gross-to-net sales accruals for sales returns, coupons, managed care rebates, government rebates, and other allowances (chargebacks, distributor service fees, prompt pay discounts), customary to the pharmaceutical industry.

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Gross-to-net sales accruals and the balance in the related allowance accounts for the three-month periods ended September 30, 2024 and 2023, were as follows:

(\$'s in thousands)	Returns	Coupons	Managed Care Rebates	Other	Total
Balance as of June 30, 2024	\$ 3,214	\$ 1,764	\$ 3,803	\$ 1,029	\$ 9,810
Current provision related to sales in the current period	456	18,241	6,228	1,066	25,991
Checks/credits issued to third parties	(240)	(18,289)	(6,370)	(1,151)	(26,050)
Balance as of September 30, 2024	<u>\$ 3,430</u>	<u>\$ 1,716</u>	<u>\$ 3,661</u>	<u>\$ 944</u>	<u>\$ 9,751</u>

(\$'s in thousands)	Returns	Coupons	Managed Care Rebates	Other	Total
Balance as of June 30, 2023	\$ 4,545	\$ 4,092	\$ 3,732	\$ 4,753	\$ 17,122
Current provision related to sales in the current period	497	20,604	5,478	2,247	28,826
Checks/credits issued to third parties	(519)	(22,926)	(6,266)	(5,572)	(35,283)
Balance as of September 30, 2023	<u>\$ 4,523</u>	<u>\$ 1,770</u>	<u>\$ 2,944</u>	<u>\$ 1,428</u>	<u>\$ 10,665</u>

Gross-to-net sales accruals are primarily a function of product sales volume, mix of products sold, and contractual discounts or rebates. Our reserves for gross-to-net sales allowances were \$9.8 million at September 30, 2024, compared to \$9.8 million at June 30, 2024, consistent from period-to-period.

Cost of Goods Sold

Cost of goods sold decreased by \$1.1 million, or 18%, to \$5.3 million for the three-month period ended September 30, 2024, from \$6.4 million for the three-month period ended September 30, 2023 driving an increase in our gross product margin of 6.0%, from 57.9% for the three-month period ended September 30, 2023, to 63.9% for the three-month period ended September 30, 2024. The decrease in cost of goods sold and related increase in our gross product margin from period-to-period is mainly due to \$0.6 million in inventory charges recorded in the prior year period and a decrease of \$0.2 million in product royalties from the same period in 2023, resulting from lower sales of Accutane and the contractual expiration of our Exelderm® product royalty in November 2023. Additionally, Prescription User Drug (PDUFA) fees were lower than the same period in 2023 by \$0.3 million, due to the discontinuation of Ximino® in September of 2023. Non-cash amortization of acquired intangible assets was \$0.8 million for each of the three-month periods ending September 30, 2024 and 2023.

Research and Development

Research and Development ("R&D") expenses decreased by \$1.4 million, to \$0.8 million for the three-month period ended September 30, 2024, from \$2.2 million for the three-month period ended September 30, 2023. The decrease is primarily driven by lower clinical trial expenses to develop Emrosi, offset slightly by R&D-related launch costs for the product, as the clinical phase of the project has concluded, and our Emrosi launch efforts have commenced.

Selling, General and Administrative

Selling, general and administrative ("SG&A") expenses increased by \$2.8 million, or 32%, to \$11.4 million for the three-month period ended September 30, 2024, from \$8.6 million for the three-month period ended September 30, 2023. The increase is mainly due to increases non-cash share-based compensation expense and overall selling and marketing expenses. Non-cash share-based compensation expense increased by \$1.0 million as a result of an increase in outstanding equity awards from the same period in 2023. The remaining increase is primarily due to the expansion of our access and coverage platforms and the commencement of our launch efforts for Emrosi related mainly to market research and access and corporate headcount. Additionally, product sample expenses increased from the same period in 2023 due to the timing of delivery of product samples from period-to-period, as the bulk of our product sample expense in 2023 occurred in the first half of the year.

Interest Income

Interest income increased by \$0.2 million compared to the same period in 2023. Interest income reflects the income earned on our high yield money market account. The increase is due to a higher invested balance compared to the prior year resulting from entering into the SWK Credit Facility in December 2023, and to a lesser extent, a slight increase in investment yield.

Interest Expense

Interest expense increased by \$0.5 million compared to the same period in 2023. In July 2023, we satisfied all of our outstanding debt obligations with East West Bank ("EWB") by voluntarily repaying the outstanding balance on our term loan under the Loan and Security Agreement with EWB. As such, we had no additional debt or borrowing of funds until entering into the Credit Facility with SWK in December of 2023.

Comparison of the Nine-Month Periods Ended September 30, 2024 and 2023

(\$ in thousands, except per share data)	Nine-Month Periods Ended September 30,		Change	
	2024	2023	\$	%
Revenue:				
Product revenue, net	\$ 42,514	\$ 44,405	\$ (1,891)	-4 %
Other revenue	—	19,519	(19,519)	-100 %
Total revenue	42,514	63,924	(21,410)	-33 %
Operating expenses				
Cost of goods sold – product revenue	18,642	20,645	(2,003)	-10 %
Research and development	9,639	6,036	3,603	60 %
Selling, general and administrative	30,144	34,069	(3,925)	-12 %
Loss on impairment of intangible assets	—	3,143	(3,143)	-100 %
Total operating expenses	58,425	63,893	(5,468)	-9 %
Income (loss) from operations	(15,911)	31	(15,942)	-51426 %
Other expense (income)				
Interest income	(566)	(209)	(357)	171 %
Interest expense	1,869	1,674	195	12 %
Foreign exchange transaction losses	104	181	(77)	-43 %
Gain on extinguishment of debt	(1,125)	—	(1,125)	100 %
Total other expense (income)	282	1,646	(1,364)	-83 %
Loss before income taxes	(16,193)	(1,615)	(14,578)	903 %
Income tax expense	—	95	(95)	-100 %
Net loss	\$ (16,193)	\$ (1,710)	\$ (14,483)	847 %

Revenues

The following table reflects our net product revenue for the nine-month periods ended September 30, 2024 and 2023:

(\$ in thousands)	Nine-Month Periods Ended		Change		
	September 30	2024	2023	\$	%
Qbrexza®	\$ 19,435	\$ 18,038	\$ 1,397	8 %	
Accutane®	15,534	15,109	425	3 %	
Amzeeq®	3,503	4,904	(1,401)	-29 %	
Zilxi®	1,200	1,567	(367)	-23 %	
Other / legacy	2,842	4,787	(1,945)	-41 %	
Total net product revenue	\$ 42,514	\$ 44,405	\$ (1,891)	-4 %	

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Total net product revenues decreased by \$1.9 million, or 4%, to \$42.5 million for the nine-month period ended September 30, 2024, from \$44.4 million for the nine-month period ended September 30, 2023.

Qbrexza® net product revenue increased by \$1.4 million, or 8%, to \$19.4 million for the nine-month period ended September 30, 2024, from \$18.0 million for the nine-month period ended September 30, 2023. The increase is due to an increase in unit sales volume driven by our continued marketing efforts and the expansion of our access and coverage platforms related to Qbrexza.

Accutane net product revenue increased by \$0.4 million, or 3%, to \$15.5 million for the nine-month period ended September 30, 2024, from \$15.1 million for the nine-month period ended September 30, 2023 due to increased unit volume from the expansion of our customer and distribution base as a result of our focused selling and marketing efforts for Accutane.

Amzeeq and Zilxi combined net product revenue decreased by \$1.8 million, or 27%, to \$4.7 million for the nine-month period ended September 30, 2024, from \$6.5 million for the nine-month period ended September 30, 2023. The decrease is substantially due to decreased unit sales volume. In addition, coupon rebates were higher as a result of the expansion of coverage options under our overall market access program. Additionally, managed care rebates increased from the same period in 2023 due to higher managed care utilization and cost increases, driving Amzeeq and Zilxi's average selling price lower than the prior year.

Net revenue from our legacy products decreased by \$1.9 million, or 41%, to \$2.8 million for the nine-month period ended September 30, 2024, from \$4.8 million for the nine-month period ended September 30, 2023 due to the continued price erosion of Targadox from generic competition, and the discontinuation of Ximino on September 29, 2023.

Other revenue

(\$ in thousands)	Nine-Month Periods Ended September 30,		Change	
	2024	2023	\$	%
Other revenue	—	19,519	(19,519)	-100 %
Total other revenue	\$ —	\$ 19,519	\$ (19,519)	-100 %

On August 31, 2023, we entered into the Maruho Agreement where Maruho paid us \$19.0 million as a non-refundable upfront payment.

Gross-to-Net Sales Accruals

Gross-to-net sales accruals and the balance in the related allowance accounts for the nine-month periods ended September 30, 2024 and 2023, were as follows:

(\$ in thousands)	Managed				
	Returns	Coupons	Care Rebates	Other	Total
Balance as of December 31, 2023	\$ 4,077	\$ 3,444	\$ 5,210	\$ 1,386	\$ 14,117
Current provision related to sales in the current period	1,696	60,556	17,441	4,780	84,473
Checks/credits issued to third parties	(2,343)	(62,284)	(18,990)	(5,222)	(88,839)
Balance as of September 30, 2024	\$ 3,430	\$ 1,716	\$ 3,661	\$ 944	\$ 9,751

(\$ in thousands)	Managed				
	Returns	Coupons	Care Rebates	Other	Total
Balance as of December 31, 2022	\$ 3,689	\$ 1,696	\$ 3,594	\$ 2,399	\$ 11,378
Current provision related to sales in the current period	4,670	74,298	16,892	11,405	107,265
Checks/credits issued to third parties	(3,836)	(80,391)	(17,542)	(12,376)	(114,145)
Reclass coupon vendor deposit to accounts payable	—	6,167	—	—	6,167
Balance as of September 30, 2023	\$ 4,523	\$ 1,770	\$ 2,944	\$ 1,428	\$ 10,665

Our reserves for gross-to-net sales allowances were \$9.8 million at September 30, 2024, compared to \$14.1 million at December 31, 2023, a decrease of \$4.4 million. The decrease in the returns reserve reflects lower units on hand in the wholesaler channel. The decrease in the coupon and managed care reserves is primarily a result of the timing of credits and invoices received at the end of 2023, leading to a higher reserves at December 31, 2023.

Cost of Goods Sold

Cost of goods sold ("COGS") decreased by \$2.0 million, or 10%, to \$18.6 million for the nine-month period ended September 30, 2024, from \$20.6 million for the nine-month period ended September 30, 2023. Product royalties were lower by \$1.0 million compared to the same period in 2023 due to the contractual expiration of our Exelderm product royalty in November 2023, the contractual decrease in our Qbrexza royalty in the second quarter of 2023, and the discontinuation of Ximino in September of 2023. In addition, the discontinuation of Ximo has resulted in lower PDUFA fees of \$0.8 million and lower non-cash license amortization of \$0.5 million. These decreases were offset, in part, by an increase in product COGS of \$0.5 million, as a result of product mix, mainly driven by the higher Accutane net product revenue from period-to-period.

Research and Development

R&D expense increased by \$3.6 million, to \$9.6 million for the nine-month period ended September 30, 2024, from \$6.0 million for the nine-month period ended September 30, 2023. The increase is driven by the \$4.1 million filing fee payment to the FDA for Emrosi in January 2024 and a \$3.0 million payment for the contractual milestone payment owed to Dr. Reddy's Laboratories, Ltd ("DRL") triggered by the FDA's acceptance of the NDA for Emrosi in March 2024. In addition, Emrosi launch related expenses were an incremental \$0.8 million from the same period in 2023 as a result of the commencement of our product launch efforts in 2024. These increases were offset, in part, by \$4.3 million of lower clinical trial expenses to develop Emrosi compared to the same period in 2023, as the clinical phase of the project has concluded.

Selling, General and Administrative

SG&A expenses decreased by \$3.9 million, or 12%, to \$30.1 million for the nine-month period ended September 30, 2024, from \$34.1 million for the nine-month period ended September 30, 2023. The decrease is due to our continued expense management efforts, offset by non-cash share-based compensation, the expansion of our access and coverage platforms and the commencement of our launch efforts for Emrosi. SG&A related to our continued expense management efforts, primarily in sales and marketing and other SG&A areas, decreased by \$7.6 million compared to the same period in 2023. This decrease is partially offset by a \$1.4 million increase in SG&A expenses from period-to-period due to the expansion of our access and coverage platforms, and the commencement of our launch efforts for Emrosi related mainly to market research and access and corporate headcount. In addition, non-cash share-based compensation expense increased by \$2.3 million compared to the same period in 2023 as a result of an increase in outstanding equity awards from period-to-period.

Interest Income

Interest income increased by \$0.4 million compared to the same period in 2023. Interest income reflects the income earned on our high yield money market account. The increase is due to a higher invested balance compared to the prior year resulting from entering into the SWK Credit Facility in December 2023, and to a lesser extent, a slight increase in investment yield.

Interest Expense

Interest expense increased by \$0.2 million compared to the same period in 2023. In July 2023, we satisfied all of our outstanding debt obligations with EWB by voluntarily repaying the outstanding balance on our term loan under the Loan and Security Agreement with EWB. As such, we had no additional debt or borrowing of funds, and therefore incurred only minimal interest expense until entering into the Credit Facility with SWK in December of 2023.

Liquidity and Capital Resources

At September 30, 2024, we had \$22.5 million in cash and cash equivalents as compared to \$27.4 million of cash and cash equivalents at December 31, 2023.

On December 27, 2023, we entered into a Credit Agreement (the "Credit Agreement") with SWK Funding LLC ("SWK"). The Credit Agreement originally provided for a term loan facility (the "Credit Facility") in the original principal amount of up to \$20.0 million. On the closing date, we drew \$15.0 million. On June 26, 2024, we drew the then remaining \$5.0 million under the Credit Facility. Loans under the Credit Facility (the "Term Loans") mature on December 27, 2027, and bear interest at a rate per annum equal to the three-month term Secured Overnight Financing Rate ("SOFR") (subject to a SOFR floor of 5%) plus 7.75%. The interest rate resets quarterly. Interest payments began in February 2024 and are paid quarterly. Beginning in February 2026, we are required to repay a portion of the

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outstanding principal of the Term Loans quarterly in an amount equal to 7.5% of the principal amount of funded Term Loans. The SWK Credit Facility also includes both revenue and liquidity covenants, restrictions as to payment of dividends, and is secured by substantially all assets of the Company. As of June 30, 2023, and as of the date of this Quarterly Report on Form 10-Q, the Company was in compliance with the financial covenants under the SWK Credit Facility.

On July 9, 2024, we entered into an amendment (the "Amendment") to the Credit Agreement. The Amendment increased the original principal amount of the Credit Facility from \$20.0 million to \$25.0 million. The \$5.0 million of additional principal added in the Amendment is contractually required to be drawn upon FDA approval of Emrosi, subject to receiving approval on or before June 30, 2025. The approval of Emrosi by the FDA triggered the requirement to draw on the remaining \$5.0 million under the Credit Facility. As of the date of issuance of these financial statements, we have not drawn on this amount. The FDA approval also triggered a \$15.0 million milestone payment obligation to DRL that is due 30 days after the FDA approval. (See Note 19, to the consolidated financial statements, "Subsequent Events", for further information regarding current contingent regulatory milestone payments to DRL pursuant to the DFD – 29 Agreement).

On December 30, 2022, we filed a shelf registration statement on Form S-3 (File No. 333-269079), which was declared effective by the Securities and Exchange Commission ("SEC") on January 26, 2023. This shelf registration statement covers the offering, issuance and sale of up to an aggregate of \$150.0 million of our common stock, preferred stock, debt securities, warrants, and units (the "2022 Shelf"). In connection with the 2022 Shelf, we entered into an At Market Issuance Sales Agreement (the "Sales Agreement") relating to shares of our common stock. We may offer and sell up to 4,900,000 shares of our common stock, from time to time, under the Sales Agreement. During the nine months ended September 30, 2024, we issued and sold 325,019 shares of common stock under the 2022 Shelf, generating net proceeds of \$1.7 million. At September 30, 2024, 3,826,278 shares remain available for issuance under the 2022 Shelf.

On September 19, 2024, the United States District Court Southern District of New York through the United States Marshalls notified us that it has recovered and will be returning to the Company a portion of the misappropriated cash in connection with the previously disclosed September 2021 cybersecurity incident.

We regularly evaluate market conditions, our liquidity profile, and financing alternatives, including out-licensing arrangements for our products to enhance our capital structure. We may seek to raise capital through debt or equity financings to expand our product portfolio and for other strategic initiatives, which may include sales of securities under either the 2022 Shelf or a new registration statement. Additionally, since we received FDA approval for Emrosi on November 4, 2024, we are required to draw on the remaining \$5.0 million under the SWK Credit Facility on or before June 30, 2025. We cannot make any assurances that such additional financing will be available and, if available, the terms may negatively impact the Company's business and operations. Our expectations are based on current assumptions, projected commercial sales of our products, clinical development plans and regulatory submission timelines, which may be uncertain and may not emerge as expected. Additionally, as a result of recurring losses, substantial doubt exists about our ability to continue as a going concern for a period of at least twelve months from the date of issuance of these financial statements.

Cash Flows for the Nine-Month Periods Ended June 30, 2024 and 2023

(\$'s in thousands)	Nine-Month Periods Ended September 30,		Increase (Decrease)
	2024	2023	
Net cash (used in) provided by operating activities	\$ (11,352)	\$ 21,760	\$ (33,112)
Net cash provided by (used in) investing activities	—	(5,000)	5,000
Net cash provided by (used in) financing activities	6,374	(24,014)	30,388
Net change in cash and cash equivalents	(4,978)	(7,254)	2,276

Operating Activities

Net cash flows used in operating activities for the nine-month period ended September 30, 2024 were \$11.4 million compared to \$21.8 million of net cash flows provided by operating activities for the nine-month period ended September 30, 2023, reflecting a change of \$33.1 million from period-to-period. Cash provided by operating activities for the nine-month period ended September 30, 2023 includes cash received pursuant to the Maruho Agreement, where Maruho paid us \$19.0 million as a non-refundable upfront payment. Additionally, in 2024 we made cash payments of \$4.1 million related to the filing fee paid to the FDA for Emrosi in January 2024 and \$3.0 million for the contractual milestone payment owed DRL triggered by the FDA's acceptance of the NDA for Emrosi in March 2024. The remainder was driven primarily by the changes in net working capital.

Investing Activities

The nine-month period ended September 30, 2023 reflects the \$5.0 million deferred cash payment paid in January 2023 related to the Vyne Product Acquisition.

Financing Activities

Net cash flows provided by financing activities for the nine-month period ended September 30, 2024 were \$6.4 million compared to \$24.0 million of net cash flows used in financing activities for the nine-month period ended September 30, 2023, reflecting a change of \$30.4 million from period-to-period. Cash provided by financing activities for the nine-month period ended September 30, 2024 reflects the draw of an additional \$5.0 million under the SWK Credit Facility in June of 2024, as well as the net proceeds from issuances of common stock under the Sales Agreement of \$1.7 million as compared to the payoff of our prior letter of credit and debt facility in the prior year period. Net cash used in financing activities for the nine-month period ended September 30, 2023 reflects the voluntarily repayment the outstanding balance on our term loan under the Loan and Security Agreement with EWB.

Material Cash Requirements

In the normal course of business, we enter into contractual obligations that contain cash requirements of which the most significant currently include the following:

- We are required to make regular payments under the SWK Credit Facility. Based on the amount currently outstanding under the SWK facility and current interest rates, and assuming we do not make further draws under the SWK facility, we expect to make the following payments:

	Payments by Period				
	Total	Remainder of			
		2024	2025	2026	2027
Interest	\$ 6,971	\$ 664	\$ 2,634	\$ 2,237	\$ 1,436
Principal	20,000	—	—	6,000	14,000
Exit fee	1,000	—	—	—	1,000
Total	\$ 27,971	\$ 664	\$ 2,634	\$ 8,237	\$ 16,436

- Excluded from the above table is an additional \$5.0 million under the SWB Credit Facility that is contractually required to be drawn upon FDA approval of Emrosi, subject to receiving approval on or before June 30, 2025. The approval of Emrosi by the FDA triggered the requirement to draw on the remaining \$5.0 million under the Credit Facility.
- Pursuant to the Vyne Product Acquisition Agreement, upon the achievement of net sales milestones with respect to the products purchased in the Vyne Product Acquisition, we are also required to pay contingent consideration consisting of a one-time payment, per product, of \$10.0 million and \$20.0 million upon each product reaching annual net sales of \$100 million and \$200 million, respectively. Each required payment must only be paid one time following the first achievement of the applicable annual net sales milestone amount.
- On June 29, 2021, we entered into the DFD-29 Agreement to obtain the global rights for the development and commercialization of Emrosi with DRL. Based on the development and commercialization of Emrosi, additional contingent regulatory and commercial milestone payments totaling up to \$140.0 million, which excludes the \$15.0 million milestone payment triggered by FDA approval on November 4, 2024, may also become payable. (See Note 19, to the consolidated financial statements, "Subsequent Events", for further information regarding current contingent regulatory milestone payments to DRL pursuant to the DFD – 29 Agreement). Royalties ranging from ten percent to twenty percent are payable on net sales of the product. In January 2024, we paid a \$4.0 million filing fee to the FDA upon filing of an NDA for Emrosi. We made a \$3.0 million contractual milestone payment to DRL in April 2024 based on the FDA's acceptance of our NDA for Emrosi filed in January 2024. On November 4, 2024, we received FDA approval for Emrosi, which triggered a \$15.0 million milestone payment obligation to DRL, that is due 30 days after FDA approval.
- In August 2024, we executed a settlement agreement (the "Settlement Agreement") to settle amounts owed by us to Sun Pharmaceutical Industries, Inc. ("Sun") pursuant to the Ximino Asset Purchase Agreement. We owed \$3.0 million of license

installment payments to Sun associated with the license of Ximino. Pursuant to the Settlement Agreement, we agreed to settle the total outstanding obligation owed to Sun for a total of \$1.9 million, payable in three installments: i) \$625.0 thousand upon execution of the Settlement Agreement, ii) \$625.0 thousand on December 1, 2024, and iii) \$625.0 thousand on January 15, 2025.

- We are contractually obligated to make sales-based royalty payments to Dermira (for Qbrexza), Sun Pharmaceutical Industries (for Exelder) and PuraCap Caribe (for Targadox). Due to the contingent nature of these obligations, the amounts of these payments cannot be reasonably predicted.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

We are a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and are not required to provide the information otherwise required under this item.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness, as of June 30, 2024, of the design and operation of our disclosure controls and procedures, as such term is defined in Exchange Act Rules 13a-15(e) and 15d-15(e). Based on this evaluation, our principal executive officer and principal financial officer have concluded that, as of such date, our disclosure controls and procedures are effective to ensure that information required to be disclosed by us in our Exchange Act reports is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

No change in internal control over financial reporting occurred during the most recent quarter with respect to our operations; which materially affected, or is reasonable likely to materially affect, our internal controls over financial reporting.

Part II. Other Information

Item 1. Legal Proceedings.

To our knowledge, there are no legal proceedings pending against us, other than routine actions, administrative proceedings, and other actions not deemed material, that are expected to have a material adverse effect on our financial condition, results of operations, or cash flows. In the ordinary course of business, however, the Company may be subject to both insured and uninsured litigation. Suits and claims may be brought against the Company by customers, suppliers, partners and/or third parties (including tort claims for personal injury arising from clinical trials of the Company's product candidates and property damage) alleging deficiencies in performance, breach of contract, etc., and seeking resulting alleged damages.

Item 1A. Risk Factors.

We have disclosed under the heading "Risk Factors" in the 2023 Form 10-K a number of risks which may materially affect our business, financial condition or results of operations. You should carefully consider these Risk Factors and other information set forth elsewhere in this Quarterly Report on Form 10-Q. You should be aware that these risk factors and other information may not describe every risk facing our Company. Additional risks and uncertainties not currently known to us may also materially adversely affect our business, financial condition and/or results of operations.

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

During the period covered by this report, we have not sold any equity securities in transactions that were not registered under the Securities Act, and neither we nor our affiliates have purchased any equity securities issued by us.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not Applicable.

Item 5. Other Information.

None.

Item 6. Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	Third Amended and Restated Certificate of Incorporation of Journey Medical Corporation, filed as Exhibit 3.1 to Form 10-K, filed on March 28, 2022 and incorporated herein by reference.
3.2	Amended and Restated Bylaws of Journey Medical Corporation, filed as Exhibit 3.2 to Form 10-K, filed on March 28, 2022 and incorporated herein by reference.
4.1	Form of Common Stock Certificate, filed as Exhibit 4.1 to Form S-1, filed on October 22, 2021 and incorporated herein by reference.
10.1	First Amendment to the Credit Agreement, dated June 25, 2024, by and among Journey Medical Corporation, SWK Funding LLC, and the other financial institutions party thereto.**
10.2	Second Amendment to the Credit Agreement, dated October 21, 2024, by and among Journey Medical Corporation, SWK Funding LLC, and the other financial institutions party thereto.**
31.1	Certification of Chief Executive Officer of Journey Medical Corporation pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated November 12, 2024.**
31.2	Certification of Principal Financial Officer of Journey Medical Corporation pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, dated November 12, 2024.**
32.1	Certification of Chief Executive Officer of Journey Medical Corporation pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, dated November 12, 2024.***
32.2	Certification of Principal Financial Officer of Journey Medical Corporation pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, dated November 12, 2024.***
101	The following financial information from the Company's quarterly report on Form 10-Q for the period ended September 30, 2024, formatted in Inline Extensible Business Reporting Language (XBRL): (i) the Condensed Consolidated Balance Sheets, (ii) the Condensed Consolidated Statements of Operations, (iii) the Condensed Consolidated Statement of Stockholders' Equity, (iv) the Condensed Consolidated Statements of Cash Flows, and (v) Notes to the Condensed Consolidated Financial Statements (filed herewith).**
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).**

** Filed herewith.

*** Furnished herewith.

SIGNATURES

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

**Journey Medical Corporation
(Registrant)**

Date: November 12, 2024

By: /s/ Claude Maraoui

Claude Maraoui

President and Chief Executive Officer
(Principal Executive Officer)

Date: November 12, 2024

By: /s/ Joseph Benesch

Joseph Benesch

Chief Financial Officer
(Principal Financial Officer)

FIRST AMENDMENT TO CREDIT AGREEMENT

THIS FIRST AMENDMENT TO CREDIT AGREEMENT (this "Amendment"), dated as of July 9, 2024, is entered into by and among **JOURNEY MEDICAL CORPORATION**, a Delaware corporation ("Borrower"), each of the undersigned financial institutions (individually each a "Lender" and collectively "Lenders") and **SWK FUNDING LLC**, a Delaware limited liability company, in its capacity as administrative agent for the other Lenders (in such capacity, "Agent").

RECITALS

WHEREAS, Borrower, Agent and Lenders entered into that certain Credit Agreement dated as of December 27, 2023 (as the same may be amended, modified or restated from time to time, being hereinafter referred to as the "Credit Agreement"); and

WHEREAS, Borrower, Agent and Lenders have agreed to amend certain provisions of the Credit Agreement as more fully set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

ARTICLE I

Definitions

1.1 Capitalized terms used in this Amendment are defined in the Credit Agreement, as amended hereby, unless otherwise stated.

ARTICLE II

Amendments to Credit Agreement

2.1 Effective as of the date hereof, the Credit Agreement is hereby amended (a) to delete the red or green stricken text (indicated textually in the same manner as the following examples: **stricken text** and **stricken text**) and (b) to add the blue or green double-underlined text (indicated textually in the same manner as the following examples: **double-underlined text** and **double-underlined text**), in each case, as set forth in the changed-page, marked copy of the Credit Agreement, attached as Exhibit A hereto and made a part hereof for all purposes.

2.2 Effective as of the date hereof, Exhibit B hereto contains the Credit Agreement incorporating all changes set forth in this Amendment as well as all prior amendments to the Credit Agreement^{2.3}.

ARTICLE III

Conditions Precedent

3.1 Conditions Precedent. The effectiveness of this Amendment is subject to the satisfaction of the following conditions precedent in a manner satisfactory to Agent, unless specifically waived in writing by Agent in its sole discretion:

- (A). Agent shall have received this Amendment duly executed by Borrower.
- (B). Borrower shall have requested, and Lenders shall have funded, the Subsequent Term Loan (as defined in the Credit Agreement immediately prior to the effectiveness of this Amendment) on or prior to the date hereof.
- (C). Agent shall have received payment, for the benefit of Lenders, of an origination fee in the amount of \$50,000, which origination fee shall be deemed fully-earned and non-refundable as of the date hereof.
- (D). The representations and warranties contained herein and in the Credit Agreement and the other Loan Documents, as each is amended hereby, shall be true and correct in all material respects as of the date hereof, as if made on the date hereof, except for such representations and warranties as are by their express terms limited to a specific date.
- (E). No Default or Event of Default under the Credit Agreement, as amended hereby, shall have occurred and be continuing, unless such Default or Event of Default has been otherwise specifically waived in writing by Agent.

ARTICLE IV

No Waiver, Ratifications, Representations and Warranties

4.1 No Waiver. Nothing contained in this Amendment or any other communication between Agent, any Lender, Borrower or any other Loan Party shall be a waiver of any past, present or future non-compliance, violation, Default or Event of Default of Borrower under the Credit Agreement or any Loan Document. Agent and each Lender hereby expressly reserves any rights, privileges and remedies under the Credit Agreement and each Loan Document that Lender may have with respect to any non-compliance, violation, Default or Event of Default, and any failure by Agent or any Lender to exercise any right, privilege or remedy as a result of the violations set forth above shall not directly or indirectly in any way whatsoever either (i) impair, prejudice or otherwise adversely affect the rights of Agent or any Lender, except as set forth herein, at any time to exercise any right, privilege or remedy in connection with the Credit Agreement or any Loan Document, (ii) amend or alter any provision of the Credit Agreement or any Loan Document or any other contract or instrument or (iii) constitute any course of dealing or other basis for altering any obligation of Borrower or any rights, privilege or remedy of Agent or any Lender under the Credit Agreement or any Loan Document or any other contract or instrument. Nothing

in this Amendment shall be construed to be a consent by Agent or any Lender to any prior, existing or future violations of the Credit Agreement or any Loan Document.

4.2 Ratifications. The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Credit Agreement and the other Loan Documents, and, except as expressly modified and superseded by this Amendment, the terms and provisions of the Credit Agreement and the other Loan Documents are ratified and confirmed and shall continue in full force and effect. Borrower, Lenders and Agent agree that the Credit Agreement and the other Loan Documents, as amended hereby, shall continue to be legal, valid, binding and enforceable in accordance with their respective terms. Borrower agrees that this Amendment is not intended to and shall not cause a novation with respect to any or all of the Obligations.

4.3 Representations and Warranties. Borrower hereby represents and warrants to Agent and Lenders that (a) the execution, delivery and performance of this Amendment, any and all other Loan Documents executed and/or delivered in connection herewith have been authorized by all requisite action (as applicable) on the part of Borrower and will not violate the organizational documents of Borrower; (b) Borrower's directors and/or managers have authorized the execution, delivery and performance of this Amendment any and all other Loan Documents executed and/or delivered in connection herewith; (c) the representations and warranties contained in the Credit Agreement, as amended hereby, and any other Loan Document are true and correct in all material respects on and as of the date hereof and on and as of the date of execution hereof as though made on and as of each such date (except to the extent such representations and warranties expressly relate to an earlier date); and (d) no Default or Event of Default under the Credit Agreement, as amended hereby, has occurred and is continuing.

ARTICLE V

Miscellaneous Provisions

5.1 Survival of Representations and Warranties. All representations and warranties made in the Credit Agreement or any other Loan Document, including, without limitation, any document furnished in connection with this Amendment, shall survive the execution and delivery of this Amendment and the other Loan Documents, and no investigation by Agent or any Lender or any closing shall affect the representations and warranties or the right of Agent and each Lender to rely upon them.

5.2 Reference to Credit Agreement. Each of the Credit Agreement and the other Loan Documents, and any and all other Loan Documents, documents or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement, as amended hereby, are hereby amended so that any reference in the Credit Agreement and such other Loan Documents to the Credit Agreement shall mean a reference to the Credit Agreement, as amended hereby.

5.3 Expenses of Agent. As provided in the Credit Agreement, Borrower agrees to pay on demand all costs and expenses incurred by Agent, or its Affiliates, in connection with the

preparation, negotiation, and execution of this Amendment and the other Loan Documents executed pursuant hereto and any and all amendments, modifications, and supplements thereto, including, without limitation, the reasonable fees and costs of legal counsel, and all costs and expenses incurred by Agent and each Lender in connection with the enforcement or preservation of any rights under the Credit Agreement, as amended hereby, or any other Loan Documents, including, without, limitation, the reasonable fees and costs of legal counsel.

5.4 Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

5.5 Successors and Assigns. This Amendment is binding upon and shall inure to the benefit of Agent and each Lender and Borrower and their respective successors and assigns, except that no Loan Party may assign or transfer any of its rights or obligations hereunder without the prior written consent of Agent.

5.6 Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. This Amendment may be executed by facsimile or electronic (.pdf) transmission, which facsimile or electronic (.pdf) signatures shall be considered original executed counterparts for purposes of this Section 5.6, and each party to this Amendment agrees that it will be bound by its own facsimile or electronic (.pdf) signature and that it accepts the facsimile or electronic (.pdf) signature of each other party to this Amendment.

5.7 Effect of Waiver. No consent or waiver, express or implied, by Agent to or for any breach of or deviation from any covenant or condition by Borrower shall be deemed a consent to or waiver of any other breach of the same or any other covenant, condition or duty.

5.8 Headings. The headings, captions, and arrangements used in this Amendment are for convenience only and shall not affect the interpretation of this Amendment.

5.9 Applicable Law. THE TERMS AND PROVISIONS OF SECTIONS 10.17 (GOVERNING LAW) AND 10.18 (FORUM SELECTION; CONSENT TO JURISDICTION) OF THE CREDIT AGREEMENT ARE HEREBY INCORPORATED HEREIN BY REFERENCE, AND SHALL APPLY TO THIS AMENDMENT MUTATIS MUTANDIS AS IF FULLY SET FORTH HEREIN.

5.10 Final Agreement. THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS, EACH AS AMENDED HEREBY, REPRESENT THE ENTIRE EXPRESSION OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF ON THE DATE THIS AMENDMENT IS EXECUTED. THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS AMENDED HEREBY, MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. NO MODIFICATION, RESCISSION, WAIVER, RELEASE OR AMENDMENT OF

ANY PROVISION OF THIS AMENDMENT SHALL BE MADE, EXCEPT BY A WRITTEN AGREEMENT
SIGNED BY BORROWER AND AGENT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Amendment has been executed and is effective as of the date first written above.

BORROWER:

JOURNEY MEDICAL CORPORATION, a Delaware corporation

By: /s/ Joseph Benesch

Name: Joseph Benesch

Title: Chief Financial Officer

[Journey] First Amendmen
#503834015

AGENT AND LENDER:

SWK FUNDING LLC, as Agent and a Lender

By: SWK Holdings Corporation, its sole Manager

By: /s/ Joe D. Staggs

Name: Joe D. Staggs

Title: President and CEO

[Journey] First Amendmen
#503834015

Exhibit A
Amendments to Credit Agreement
(Attached)

CREDIT AGREEMENT
among
JOURNEY MEDICAL CORPORATION,
as Borrower,
SWK FUNDING LLC,
as Agent, Sole Lead Arranger and Sole Bookrunner,
and
the financial institutions party hereto from time to time as Lenders

Dated as of December 27, 2023

FOR PURPOSES OF SECTIONS 1272, 1273, AND 1275 OF THE UNITED STATES INTERNAL REVENUE CODE,
THIS NOTE IS BEING ISSUED WITH "ORIGINAL ISSUE DISCOUNT." PLEASE CONTACT MICHAEL MINER,
VICE PRESIDENT, 5956 SHERRY LANE, SUITE 650, DALLAS, TEXAS 75225, TELEPHONE: TO OBTAIN
INFORMATION REGARDING THE ISSUE PRICE, THE ISSUE DATE, THE AMOUNT OF ORIGINAL ISSUE
DISCOUNT, AND THE YIELD TO MATURITY.

JOURNEY] CREDIT AGREEMENT

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Improvement Amendments, 42 U.S.C. § 263a et seq. (“CLIA 88”), and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder, or (b) any equivalent state statute (and any and all rules or regulations promulgated from time to time thereunder) recognized by the relevant Governmental Authority as (x) having an “Equivalency” (as defined by CLIA) to CLIA, and (y) offering a compliance and regulatory framework that is applicable to a Person in such state in lieu of CLIA.

Closing Date shall have the meaning set forth in the Preamble.

Closing Date Term Loan has the meaning set forth in Section 2.2.

CMS means the Centers for Medicare and Medicaid Services of the United States of America.

Collateral has the meaning set forth in the Guarantee and Collateral Agreement.

Collateral Access Agreement means an agreement in form and substance reasonably satisfactory to Agent pursuant to which a mortgagee or lessor of real property on which Collateral (or any books and records) is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory or other property owned by any Loan Party, acknowledges the Liens of Agent and waives (or, if approved by Agent, subordinates) any Liens held by such Person on such property, and, in the case of any such agreement with a mortgagee or lessor, permits Agent reasonable access to any Collateral stored or otherwise located thereon.

Collateral Documents means, collectively, the Guarantee and Collateral Agreement, IP Security Agreement, each Collateral Access Agreement, any mortgage delivered in connection with the Loan from time to time, each Account Control Agreement, if any, and each other agreement or instrument pursuant to or in connection with which any Loan Party or any other Person grants a Lien in any Collateral to Agent for the benefit of Agent and Lenders, each as amended, restated or otherwise modified from time to time.

Commitment means, as to any Lender, such Lender’s Pro Rata Term Loan Share. Compliance Certificate means a certificate substantially in the form of Exhibit B.

Consolidated Unencumbered Liquid Assets means as of any date of determination, the aggregate amount of unrestricted Cash Equivalent Investments owned by Loan Parties and their Subsidiaries, on a consolidated basis.

Contingent Obligation means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to or otherwise to invest in a debtor, or otherwise to assure a creditor against loss) any indebtedness, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person’s obligation in respect of any Contingent Obligation shall be deemed to be the amount for which the Person obligated thereon is reasonably expected to be liable or responsible.

Contract Rate means a rate per annum equal to (x) the Term SOFR Rate, plus (y) seven and three-quarters of one percent (7.75%).

DFD-29 means NDA 219015.

DFD-29 Advance has the meaning set forth in Section 2.2.

DFD-29 Advance Condition means the satisfaction of the following condition: Borrower shall have provided Agent evidence that Borrower, through its licensing partner and the sponsor of the DFD-29 New Drug Application ("NDA"), Dr. Reddy's Laboratories, Ltd. ("DRL"), has received FDA approval in accordance with the FDA Law and Regulations for DFD-29.

Disposition has the meaning set forth in Section 7.4(b).

Division means, with respect to any Person which is an entity, the division of such Person into two (2) or more separate such Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under Section 18-217 of the Delaware Limited Liability Act for limited liability companies formed under Delaware law, or any analogous action taken pursuant to any other applicable law with respect to any corporation, limited liability company, partnership or other entity. The word "Divide," when capitalized, shall have a correlative meaning.

Dollar and \$ mean lawful money of the United States of America.

Drug Application means a new drug application, an abbreviated drug application, or a product license application for any Product, as appropriate, as those terms are defined in the FDA Law and Regulation.

Elapsed Period has the meaning set forth in Section 2.9.1(a).

Environmental Claims means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment or any Person or property.

Environmental Laws means all present or future foreign, federal, state or local laws, statutes, common law duties, rules, regulations, directives, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case relating to any matter arising out of or relating to the effect of the environment on health and safety, or pollution or protection of the environment or workplace, including any of the foregoing relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, discharge, release, control or cleanup of any Hazardous Substance.

Equity Cure has the meaning set forth in Section 8.4.1.

Equity Interests means, with respect to any Person, its equity ownership interests, its common stock and any other capital stock or other equity ownership units of such Person authorized from time to time, its share capital, and any other shares, options, interests, participations or other equivalents (however designated) of or in such Person, whether voting or nonvoting, including, without limitation, common stock, options, warrants, preferred stock, phantom stock, membership units (common or preferred), stock appreciation rights, membership unit appreciation rights, convertible notes or debentures, SAFE's or similar instruments, stock purchase rights, membership unit purchase rights and all securities convertible, exercisable or exchangeable, in whole or in part, into any one or more of the foregoing, but excluding any debt securities convertible into any of the foregoing to the extent not converted.

medicine, fee-splitting, state anti-kickback or self-referral prohibitions, each of clauses (i) through (xi) as may be amended from time to time.

Hedging Obligation means, with respect to any Person, any liability of such Person under any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices. The amount of any Person's obligation in respect of any Hedging Obligation shall be deemed to be the incremental obligation that would be reflected in the financial statements of such Person in accordance with GAAP.

Indemnified Taxes has the meaning set forth in [Section 3.1\(a\)](#).

Intellectual Property has the meaning set forth in the Guarantee and Collateral Agreement.

Inventory has the meaning set forth in the Guarantee and Collateral Agreement.

Investment means, with respect to any Person, (a) the purchase of any debt or equity security of any other Person, (b) the making of any loan or advance to any other Person, (c) becoming obligated with respect to a Contingent Obligation in respect of obligations of any other Person (other than travel and similar advances to employees in the ordinary course of business) or (d) the making of an Acquisition.

IP Security Agreement means the Intellectual Property Security Agreement dated on or about the Closing Date by each Loan Party signatory thereto in favor of Agent for the benefit of Lenders.

IRC means the Internal Revenue Code of 1986, as amended.

IRS means the United States Internal Revenue Service.

[June 2024 Advance](#) has the meaning set forth in [Section 2.2](#).

Legal Costs means, with respect to any Person, all reasonable, duly documented, out-of-pocket fees and charges of any counsel, accountants, auditors, appraisers, consultants and other professionals to such Person, and all court costs and similar legal expenses.

Lenders has the meaning set forth in the Preamble.

Lien means, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person which secures payment or performance of any obligation and shall include any mortgage (whether legal or equitable), lien, encumbrance, charge, pledge, assignment by way of security or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

Loan or Loans means, individually and collectively the Term Loan and any other advances made by Agent and Lenders in accordance with the Loan Documents.

Loan Documents means this Agreement, any Notes, any intercreditor agreements, any Subordination Agreement, the Collateral Documents and all documents, instruments and agreements delivered in connection with the foregoing.

Loan Party means Borrower and each of its Subsidiaries.

Capital Expenditures, less (iii) DFD-29 FDA submission related expenses including the approximate \$4,048,695 user fee under the Prescription Drug User Fee Act to FDA for a new drug application ("NDA") submission; \$3,000,000~~3,000,000~~ NDA acceptance milestone payable to Dr. Reddy's Laboratories, Ltd. ("DRL"); and \$15,000,000 NDA approval milestone to DRL, pursuant to, and in accordance with, that certain Assignment, License, and Collaboration Agreement, between DRL and Borrower, dated June 29, 2021, less (iv) any other one-time or extraordinary expenses made within such measurement period, as mutually agreed upon by Agent and Borrower, in each case as determined from the cash flow statement provided by Borrower and in accordance with GAAP.

Origination Fee shall have the meaning set forth in Section 2.7(a).

Paid in Full, Pay in Full or Payment in Full means, with respect to any Obligations, the payment in full in cash of all such Obligations (other than contingent indemnification obligations, yield protection and expense reimbursement to the extent no claim giving rise thereto has been asserted in respect of contingent indemnification obligations, and to the extent no amounts therefor have been asserted, in the case of yield protection and expense reimbursement obligations, which Obligations shall survive the Payment in Full of the Obligations).

Patents has the meaning set forth in the Guarantee and Collateral Agreement.

Payment Date means the fifteenth (15th) day of each of February, May, August and November (or the next succeeding Business Day to the extent such 15th day is not a Business Day), commencing with February 15, 2024.

PBGC means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its material functions under ERISA.

Pension Plan means a "pension plan", as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Pension Plan), and to which Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

Permit means, with respect to any Person, any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, including without limitation all registrations with Governmental Authorities.

Permitted Acquisition means any Acquisition so long as:

(a) both immediately before and immediately after the consummation of such Acquisition, no Default, Event of Default or Material Adverse Effect shall have occurred and be continuing or result therefrom;

(b) the Acquisition shall be with respect to an operating company or division or line of business that engages in, and that substantially all of the sales and operating profits generated by such company or division or line of business are in, a line of business substantially similar, reasonably related, ancillary or incidental to the principal business in which the Borrower is engaged;

commercially available source designated by Agent) as of the end of the preceding Business Day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding Business Day in Agent's principal foreign exchange trading office for the first currency.

Subordinated Debt means any Debt incurred by Borrower and/or any other Loan Party that is subordinated to the Obligations pursuant to a subordination agreement entered into between Agent, any applicable Loan Party and the subordinated creditor(s) upon terms acceptable to Agent in its sole discretion.

Subordination Agreement means any subordination agreement that may be executed from time to time in connection with any Subordinated Debt.

Subsequent Term Loan means the Term Loan, if any, made to the Borrower pursuant to Section 2.2.2.

Subsidiary means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding shares or other equity interests as to have more than fifty percent (50%) of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to direct and indirect Subsidiaries of Borrower.

SWK has the meaning set forth in the Preamble.

Tax or Taxes has the meaning set forth in Section 3.1(a).

Term Loan has the meaning set forth in Section 2.12.2.

Term Loan Commitment means \$20,000,000~~25,000,000~~.

Term Loan Maturity Date means December 27, 2027.

Term SOFR Administrator means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Agent in its reasonable discretion after consultation with Borrower).

Term SOFR Rate means the Term SOFR Reference Rate for a three (3) month period that is ten (10) Business Days prior to each Payment Date (such day, the "Periodic Term SOFR Determination Day"), and effective on the Payment Date immediately following such determination date and continuing to but not including the next succeeding Payment Date, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such three (3) month period, as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate was published by the Term SOFR Administrator. Notwithstanding the foregoing, (i) if at any time Agent determines (which determination shall be conclusive absent manifest error) that the Term SOFR Rate is no longer available for determining interest rates for loans or notes similar to the Loans, then Agent shall, in consultation with Borrower, endeavor to establish an alternate rate of interest to the Term SOFR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for loans or notes similar to the Loans in the United States at such time, and,

and including"; (v) unless otherwise expressly provided in such Loan Document, (A) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto, but only to the extent such amendments, restatements and other modifications are not prohibited by the terms of any Loan Document, and (B) references to any statute, directive or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute, directive or regulation; (vi) this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, all of which are cumulative and each shall be performed in accordance with its terms and (vii) this Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to Agent, Borrower, Lenders and the other parties hereto and thereto and are the products of all parties; accordingly, they shall not be construed against Borrower, Agent or Lenders merely because of Borrower's, Agent's or Lenders' involvement in their preparation. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of Agent's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (x) within the sole and absolute discretion of Agent and/or Lenders; and (y) deemed to have been given only by a specific writing intended for such purpose executed by Agent.

(b) For purposes of converting any amount denominated in any currency other than Dollars to Dollars under or in connection with the Loan Documents, Agent shall calculate such currency conversion using the current Spot Rate.

(c) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Agent and the Lenders 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.

(d) Notwithstanding anything to the contrary contained in this Agreement, all obligations that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the "ASU") shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purposes of the Loan Documents (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as capitalized lease obligations in the financial statements to be delivered pursuant to the Loan Documents.

Section 2 Credit Facility.

2.1 Term Loan Commitments[Reserved].

On and subject to the terms and conditions of this Agreement, each Lender, severally and for itself alone, agrees to make a multi draw term loan to Borrower (each such loan, individually and collectively, a "Term Loan") in an amount equal to such Lender's applicable Pro Rata Term Loan Share of the Term Loan Commitment. The Commitments of Lenders to make any portion of the Term Loan shall terminate concurrently with the making of such portion of the Term Loan, such portion terminated to equal (i) on the Closing Date, the amount of the Term Loan set forth in Section 2.2.1, and (ii) on the

date of the making of the Subsequent Term Loan, the amount of the Subsequent Term Loan set forth in Section 2.2.2. The Loan is not a revolving credit facility, and therefore any amount thereof that is repaid or prepaid by Borrower, in whole or in part, may not be re borrowed.

2.2 Loan Procedures.

(a) The Lenders, severally and for themselves alone, made a term loan to Borrower on the Closing Date in the original principal amount of \$15,000,000 (the "Closing Date Term Loan").

(b) On or about June [], 2024, Lenders, severally and for themselves alone, made an additional advance to Borrower in the original principal amount of \$5,000,000, resulting in an aggregate, unpaid principal balance of the Term Loan of \$20,000,000 immediately following such advance (the "June 2024 Advance").

2.2.1 Initial Advance.

On the Closing Date, each Lender shall advance to Borrower an amount equal to its Pro Rata Share of Fifteen Million and No/100 Dollars (\$15,000,000), upon Borrower's satisfaction of the conditions to closing described in Section 4 of this Agreement.

2.2.2 Subsequent Term Loan.

(c) Borrower may, no later than the date occurring on the twelve (12) month anniversary of the Closing Date, request, in writing, a subsequent advance of the Term Loan and, so long as no Material Adverse Effect, Default or Event of Default has occurred and is continuing or would be caused thereby, each Lender Upon satisfaction of the DFD-29 Advance Condition on or before June 30, 2025, Lenders shall make one (1) additional advance (within five (5) Business Days of receipt by Agent of such written request for advance) satisfaction of such DFD-29 Advance Condition) to Borrower in the amount equal to, but not less than, such lender's Pro Rata Share of Five Million and No/100 Dollars (\$5,000,000). (the "DFD-29 Advance"). For the avoidance of doubt, any such funding of the DFD-29 Advance shall be made by Lenders upon the satisfaction of the DFD-29 Advance Condition regardless of any request therefore by Borrower.

(d) The Closing Date Term Loan, the June 2024 Advance and the DFD-29 Advance, if any, shall be deemed a single term loan (each such loan individually and collectively, the "Term Loan"). The Term Loan is not a revolving credit facility, and therefore, any amount thereof that is repaid or prepaid by Borrower, in whole or in part, may not be re-borrowed.

2.3 Commitments Several.

The failure of any Lender to make any advance of the initial Term Loan on the Closing Date or the Subsequent Term Loan in accordance with Section 2.2.2 above shall not relieve any other Lender of its obligation (if any) to make its Loan on the applicable date, but no Lender shall be responsible for the failure of any other Lender to make any Term Loan to be made by such other Lender.

2.4 Indebtedness Absolute; No Offset; Waiver.

The payment obligations of Borrower hereunder are absolute and unconditional, without any right of rescission, set-off, counterclaim or defense for any reason against Agent and Lenders to the maximum extent permitted by applicable law. As of the Closing Date, the Loan has not been compromised, adjusted, extended, satisfied, rescinded, set-off or modified, and the Loan Documents are

no operations of Borrower are the subject of any governmental investigation, evaluation or any remedial action which could reasonably be expected to result in a Material Adverse Effect.

4.6 Corporate Matters.

All corporate and other proceedings, documents, instruments and other legal matters in connection with the transactions contemplated by the Loan Documents (including, but not limited to, those relating to corporate and capital structures of Borrower) shall be satisfactory to Lenders in their reasonable discretion.

4.7 No Material Adverse Effect.

No Material Adverse Effect shall have occurred and be continuing.

Section 5 Representations and Warranties.

To induce Agent and Lenders to enter into this Agreement and to induce Lenders to make the Loan hereunder, Borrower represents and warrants to Agent and Lenders, as of the Closing Date and the date of each advance of the Subsequent Term Loan (if any) made by Lenders pursuant to Section 2.2.2 hereunder, that:

5.1 Organization.

Each Loan Party is duly incorporated, validly existing and (if applicable) in good standing under the laws of its state or country of jurisdiction as set forth on Schedule 5.1, and is duly qualified to carry on its business in each jurisdiction set forth on Schedule 5.1, which are all of the jurisdictions in which failure to so qualify would reasonably be likely to have or result in a Material Adverse Effect. Each Loan Party has the power to own its assets and carry on its business as it is being conducted.

5.2 Authorization; No Conflict.

Each Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, to borrow or guarantee monies thereunder, as applicable, and to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by each Loan Party of this Agreement and the other Loan Documents to which it is a party, as applicable, and the transactions contemplated therein, do not and will not (a) require any consent or approval of any Governmental Authority (other than any consent or approval which has been obtained and is in full force and effect), (b) conflict with (i) any provision of applicable law (including any Health Care Law), (ii) the charter, certificate of incorporation, by-laws, or other organizational documents of such Loan Party or (iii) (except as it relates to the documents governing the Prior Debt, each of which will be terminated and/or paid on the Closing Date) any Material Contract, or any judgment, order or decree, which is binding upon any Loan Party or any of its properties or (c) require, or result in, the creation or imposition of any Lien on any asset of any Loan Party (other than Liens in favor of Agent created pursuant to the Collateral Documents). No limit on any Loan Party's powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Loan Documents to which it is a party.

Exhibit B
Conformed Credit Agreement
(Attached)

[JOURNEY] CREDIT AGREEMENT

CREDIT AGREEMENT

among

JOURNEY MEDICAL CORPORATION,
as Borrower,

SWK FUNDING LLC,
as Agent, Sole Lead Arranger and Sole Bookrunner,

and

the financial institutions party hereto from time to time as Lenders

Dated as of December 27, 2023

**FOR PURPOSES OF SECTIONS 1272, 1273, AND 1275 OF THE UNITED STATES INTERNAL REVENUE CODE,
THIS NOTE IS BEING ISSUED WITH "ORIGINAL ISSUE DISCOUNT." PLEASE CONTACT MICHAEL MINER,
VICE PRESIDENT, 5956 SHERRY LANE, SUITE 650, DALLAS, TEXAS 75225, TELEPHONE: TO OBTAIN
INFORMATION REGARDING THE ISSUE PRICE, THE ISSUE DATE, THE AMOUNT OF ORIGINAL ISSUE
DISCOUNT, AND THE YIELD TO MATURITY.**

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- v -

[JOURNEY] CREDIT AGREEMENT

CREDIT AGREEMENT

This Credit Agreement (as may be amended, restated, supplemented, or otherwise modified from time to time, this **"Agreement"**) dated as of December 27, 2023 (the **"Closing Date"**), among JOURNEY MEDICAL CORPORATION, a Delaware corporation ("Borrower"), the financial institutions party hereto from time to time as lenders (each a **"Lender"** and collectively, the **"Lenders"**) and SWK Funding LLC, a Delaware limited liability company (in its individual capacity, "SWK"), as Agent for all Lenders.

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

Section 1 Definitions; Interpretation.

1.1 Definitions.

When used herein the following terms shall have the following meanings:

Account Control Agreement means, individually and collectively, any account control agreement, account bank agreement or similar agreement(s) entered into from time to time at Agent's request, among a Loan Party, Agent and any third party bank or financial institution at which such Loan Party maintains a Deposit Account.

Acquisition means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of all or substantially all of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the capital stock, share capital partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, (c) the acquisition of a product license or a product line, or (d) a merger, amalgamation or consolidation or any other combination (other than a merger, amalgamation, consolidation or combination that effects a Disposition) with another Person (other than a Person that is already a Subsidiary).

Affiliate of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any managing member, manager, officer or director of such Person and (c) with respect to any Lender, any entity administered or managed by such Lender or an Affiliate or investment advisor thereof which is engaged in making, purchasing, holding or otherwise investing in commercial loans. Unless expressly stated otherwise herein, neither Agent nor any Lender shall be deemed an Affiliate of Borrower, any Loan Party or any Affiliate thereof.

Agent means SWK in its capacity as administrative and collateral agent for all Lenders hereunder and any successor thereto in such capacity.

Agreement shall have the meaning set forth in the Preamble.

Approved Fund means (a) any fund, trust or similar entity that invests in commercial loans in the ordinary course of business and is advised or managed by (i) a Lender, (ii) an Affiliate of a Lender, (iii) the same investment advisor that manages a Lender or (iv) an Affiliate of an investment advisor that manages a Lender or (b) any finance company, insurance company or other financial institution which temporarily warehouses loans for any Lender or any Person described in clause (a) above.

Assignment Agreement means an agreement substantially in the form of Exhibit A.

Authorization shall have the meaning set forth in Section 5.22(b).

Board means Borrower's board of directors or such similar governing body.

Borrower shall have the meaning set forth in the Preamble.

Business Day means any day on which commercial banks are open for commercial banking business in Dallas, Texas; provided that, with respect to any determination of the Term SOFR Reference Rate, Business Day shall exclude any 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.

Capital Lease means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP in respect of any Person incorporated in the United States of America, is accounted for as a capital lease and as a liability on the balance sheet of such Person.

Cash Equivalent Investment means, at any time, (a) any evidence of Debt, maturing not more than one year after such time, issued or guaranteed by the United States Government or any agency thereof, (b) commercial paper, or corporate demand notes, in each case (unless issued by a Lender or its holding company) rated at least "A-1" by Standard & Poor's Ratings Group or "P-1" by Moody's Investors Service, Inc., (c) any certificate of deposit (or time deposit represented by a certificate of deposit) or banker's acceptance maturing not more than one year after such time, or any overnight Federal funds transaction that is issued or sold by any Lender (or by a commercial banking institution that is a member of the Federal Reserve System or is a U.S. branch of a foreign banking institution and has a combined capital and surplus and undivided profits of not less than \$500,000,000), (d) any repurchase agreement entered into with any Lender (or commercial banking institution of the nature referred to in clause (c) above) which (i) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (a) through (c) above and (ii) has a market value at the time such repurchase agreement is entered into of not less than one-hundred percent (100%) of the repurchase obligation of such Lender (or other commercial banking institution) thereunder, (e) money market accounts or mutual funds which invest exclusively or substantially in assets satisfying the foregoing requirements, (f) cash, and (g) other short term liquid investments approved in writing by Agent.

Change of Control means the occurrence of any of the following, unless such action has been consented to in advance in writing by Agent in its sole discretion:

- (i) any Person (other than Fortress Biotech, Inc. and its Affiliates) acquires the direct or indirect ownership of more than fifty percent (50%) of the issued and outstanding total combined voting Equity Interests of Borrower;
- (ii) Borrower shall at any time fail to own, directly or indirectly, one hundred percent (100%) of the Equity Interests of each of its Subsidiaries except as otherwise explicitly permitted by this Agreement; or
- (iii) the sale of all or substantially all of the assets of Borrower, or any merger, amalgamation, consolidation or acquisition by Borrower which does not result in such Person being the sole surviving entity.

CLIA means (a) the Clinical Laboratory Improvement Act of 1967, as the same may be amended, modified or supplemented from time to time, including without limitation the Clinical Laboratory Improvement Amendments, 42 U.S.C. § 263a et seq. ("CLIA 88"), and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder, or (b) any equivalent state statute

(and any and all rules or regulations promulgated from time to time thereunder) recognized by the relevant Governmental Authority as (x) having an "Equivalency" (as defined by CLIA) to CLIA, and (y) offering a compliance and regulatory framework that is applicable to a Person in such state in lieu of CLIA.

Closing Date shall have the meaning set forth in the Preamble.

Closing Date Term Loan has the meaning set forth in Section 2.2.

CMS means the Centers for Medicare and Medicaid Services of the United States of America.

Collateral has the meaning set forth in the Guarantee and Collateral Agreement.

Collateral Access Agreement means an agreement in form and substance reasonably satisfactory to Agent pursuant to which a mortgagee or lessor of real property on which Collateral (or any books and records) is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory or other property owned by any Loan Party, acknowledges the Liens of Agent and waives (or, if approved by Agent, subordinates) any Liens held by such Person on such property, and, in the case of any such agreement with a mortgagee or lessor, permits Agent reasonable access to any Collateral stored or otherwise located thereon.

Collateral Documents means, collectively, the Guarantee and Collateral Agreement, IP Security Agreement, each Collateral Access Agreement, any mortgage delivered in connection with the Loan from time to time, each Account Control Agreement, if any, and each other agreement or instrument pursuant to or in connection with which any Loan Party or any other Person grants a Lien in any Collateral to Agent for the benefit of Agent and Lenders, each as amended, restated or otherwise modified from time to time.

Commitment means, as to any Lender, such Lender's Pro Rata Term Loan Share.

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

Consolidated Unencumbered Liquid Assets means as of any date of determination, the aggregate amount of unrestricted Cash Equivalent Investments owned by Loan Parties and their Subsidiaries, on a consolidated basis.

Contingent Obligation means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to or otherwise to invest in a debtor, or otherwise to assure a creditor against loss) any indebtedness, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation in respect of any Contingent Obligation shall be deemed to be the amount for which the Person obligated thereon is reasonably expected to be liable or responsible.

Contract Rate means a rate per annum equal to (x) the Term SOFR Rate, plus (y) seven and three-quarters of one percent (7.75%).

Controlled Group means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with a Loan Party, are treated as a single employer under Section 414 of the IRC or Section 4001 of ERISA.

Controlled Substances Act means the Drug Abuse Prevention and Control Act; Title 21 of the United States Code, 13 U.S.C. as amended from time to time.

Copyrights has the meaning set forth in the Guarantee and Collateral Agreement.

DEA means the Federal Drug Enforcement Administration of the United States of America.

Debt of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding (i) trade accounts payable in the ordinary course of business, (ii) royalty payments or cash milestone payments made or to be made by such Person from time to time in connection with an Acquisition or a licensing or sublicensing transaction, (iii) any earn-out obligation unless either such obligation is not paid after becoming due and payable or such obligation is required to be reflected on the Issuer's balance sheet in accordance with GAAP, and (iv) accruals for payroll and deferred compensation arrangements), (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person (with the amount thereof being measured as the lesser of (x) the aggregate unpaid amount of such indebtedness and (y) the fair market value of such property), (f) all reimbursement obligations, contingent or otherwise, with respect to letters of credit (whether or not drawn), banker's acceptances and surety bonds issued for the account of such Person, other than obligations that relate to trade accounts payable in the ordinary course of business, (g) all Hedging Obligations of such Person, (h) all Contingent Obligations of such Person in respect of Debt of others, (i) all indebtedness of any partnership of which such Person is a general partner except to the extent such Person is not liable for such Debt, and (j) all obligations of such Person under any synthetic lease transaction, where such obligations are considered borrowed money indebtedness for tax purposes but the transaction is classified as an operating lease in accordance with GAAP.

Debtor Relief Law means, collectively: (a) Title 11 of the United States Code, 11 U.S.C. § 101 et. seq., as amended from time to time, and (b) all other United States or foreign applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, administration, reorganization or similar debtor relief laws from time to time in effect affecting the rights of creditors generally, in each case as amended from time to time.

Default means any event that, if it continues uncured, will, with the lapse of time or the giving of notice or both, constitute an Event of Default.

Default Rate means a rate per annum equal to the lesser of (i) three percent (3%) over the Contract Rate, or (ii) the maximum rate of interest permitted to be charged by applicable laws, directives or regulations governing this Agreement until paid.

Deposit Account means, individually and collectively, any bank or other depository accounts of a Loan Party.

DFD-29 means NDA 219015.

DFD-29 Advance has the meaning set forth in Section 2.2.

DFD-29 Advance Condition means the satisfaction of the following condition: Borrower shall have provided Agent evidence that Borrower, through its licensing partner and the sponsor of the DFD-29

New Drug Application ("NDA"), Dr. Reddy's Laboratories, Ltd. ("DRL"), has received FDA approval in accordance with the FDA Law and Regulations for DFD-29.

Disposition has the meaning set forth in Section 7.4(b).

Division means, with respect to any Person which is an entity, the division of such Person into two (2) or more separate such Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under Section 18-217 of the Delaware Limited Liability Act for limited liability companies formed under Delaware law, or any analogous action taken pursuant to any other applicable law with respect to any corporation, limited liability company, partnership or other entity. The word "Divide," when capitalized, shall have a correlative meaning.

Dollar and \$ mean lawful money of the United States of America.

Drug Application means a new drug application, an abbreviated drug application, or a product license application for any Product, as appropriate, as those terms are defined in the FDA Law and Regulation.

Elapsed Period has the meaning set forth in Section 2.9.1(a).

Environmental Claims means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment or any Person or property.

Environmental Laws means all present or future foreign, federal, state or local laws, statutes, common law duties, rules, regulations, directives, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case relating to any matter arising out of or relating to the effect of the environment on health and safety, or pollution or protection of the environment or workplace, including any of the foregoing relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, discharge, release, control or cleanup of any Hazardous Substance.

Equity Cure has the meaning set forth in Section 8.4.1.

Equity Interests means, with respect to any Person, its equity ownership interests, its common stock and any other capital stock or other equity ownership units of such Person authorized from time to time, its share capital, and any other shares, options, interests, participations or other equivalents (however designated) of or in such Person, whether voting or nonvoting, including, without limitation, common stock, options, warrants, preferred stock, phantom stock, membership units (common or preferred), stock appreciation rights, membership unit appreciation rights, convertible notes or debentures, SAFE's or similar instruments, stock purchase rights, membership unit purchase rights and all securities convertible, exercisable or exchangeable, in whole or in part, into any one or more of the foregoing, but excluding any debt securities convertible into any of the foregoing to the extent not converted.

ERISA means the Employee Retirement Income Security Act of 1974, as amended from time to time.

Event of Default means any of the events described in Section 8.1.

Excluded Taxes has the meaning set forth in Section 3.1(a).

Exempt Accounts means any Deposit Accounts, securities accounts or other similar accounts (i) into which there are deposited no funds other than those intended solely to cover compensation or salary to employees of the Loan Parties (and related contributions to be made on behalf of such employees to health and benefit plans) plus balances for outstanding checks for compensation or salary and such contributions from prior periods; (ii) constituting employee withholding accounts and contain only funds deducted from pay otherwise due to employees for services rendered to be applied toward the Tax obligations of such Person or its employees, or (iii) into which there are deposited no funds other than those received in trust or in escrow, or as cash collateral to secure performance or for Permitted Liens.

Exit Fee has the meaning set forth in Section 2.7(b).

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

FD&C Act means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq., as amended, and all applicable regulations or guidance promulgated by the FDA.

FDA means the Food and Drug Administration of the United States of America.

FDA Law and Regulation means the provisions of the FD&C Act and all applicable regulations or guidance promulgated by the FDA.

FDA Products means any finished products sold by Borrower or any of the other Loan Parties for itself or for a third party that are subject to applicable Health Care Laws.

Federal Funds Effective Rate means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day's Federal funds transactions by depositary institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding day on which commercial banks are open for commercial banking business in New York, New York, by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 1.00%.

Fiscal Quarter means a calendar quarter of a Fiscal Year.

Fiscal Year means the fiscal year of Borrower, which period shall be the twelve (12) month period ending on December 31 of each year.

Foreign Lender means any Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

Fortress Note Documents means that certain Amended and Restated Future Advance Promissory Note between Fortress Biotech Inc. and the Borrower, and the documents, instruments, and agreements executed in conjunction therewith, as in place on the Closing Date.

FRB means the Board of Governors of the Federal Reserve System or any successor thereto.

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

Governmental Authority means any nation or government, any state or other political subdivision thereof, and any agency, branch of government, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign. Governmental Authority shall include any agency, branch or other governmental body charged with the responsibility and/or vested with the authority to administer and/or enforce any Health Care Laws.

Guarantee and Collateral Agreement means the Guarantee and Collateral Agreement dated as of the Closing Date executed by each Loan Party signatory thereto in favor of Agent for the benefit of Lenders.

Hazardous Substances means hazardous waste, pollutant, contaminant, toxic substance, oil, hazardous material, chemical or other substance regulated by any Environmental Law.

Health Care Laws mean all foreign, federal and state fraud and abuse laws relating to the regulation of healthcare products, pharmaceutical products, laboratory facilities and services, healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors, including but not limited to (i) the federal Anti-Kickback Statute (42 U.S.C. (§1320a-7b(b))), the Stark Law (42 U.S.C. §1395nn and §1395(q)), the civil False Claims Act (31 U.S.C. §3729 et seq.), TRICARE (10 U.S.C. Section 1071 et seq.), Section 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes; (ii) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as amended by the Health Information, Technology for Economic and Clinical Health Act of 2009, and the regulations promulgated thereunder, (iii) Medicare (Title XVIII of the Social Security Act) and the regulations promulgated thereunder; (iv) Medicaid (Title XIX of the Social Security Act) and the regulations promulgated thereunder; (v) the FD&C Act and all applicable requirements, regulations and guidances issued thereunder by the FDA (including FDA Law and Regulation); (vi) the Controlled Substances Act, as amended, and all applicable requirements, regulations and guidances issued thereunder by the DEA; (vii) [reserved]; (viii) quality, safety and accreditation standards and requirements of all applicable foreign and domestic federal, provincial or state laws, directives, regulations or regulatory bodies; (ix) all applicable licensure laws, directives and regulations; (x) all applicable professional standards regulating healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors; and (xi) any and all other applicable health care laws (whether foreign or domestic), regulations, directives, manual provisions, policies and administrative guidance, including those related to the corporate practice of medicine, fee-splitting, state anti-kickback or self-referral prohibitions, each of clauses (i) through (xi) as may be amended from time to time.

Hedging Obligation means, with respect to any Person, any liability of such Person under any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices. The amount of any Person's obligation in respect of any Hedging Obligation shall be deemed to be the incremental obligation that would be reflected in the financial statements of such Person in accordance with GAAP.

Indemnified Taxes has the meaning set forth in Section 3.1(a).

Intellectual Property has the meaning set forth in the Guarantee and Collateral Agreement.

Inventory has the meaning set forth in the Guarantee and Collateral Agreement.

Investment means, with respect to any Person, (a) the purchase of any debt or equity security of any other Person, (b) the making of any loan or advance to any other Person, (c) becoming obligated with respect to a Contingent Obligation in respect of obligations of any other Person (other than travel and similar advances to employees in the ordinary course of business) or (d) the making of an Acquisition.

IP Security Agreement means the Intellectual Property Security Agreement dated on or about the Closing Date by each Loan Party signatory thereto in favor of Agent for the benefit of Lenders.

IRC means the Internal Revenue Code of 1986, as amended.

IRS means the United States Internal Revenue Service.

June 2024 Advance has the meaning set forth in Section 2.2.

Legal Costs means, with respect to any Person, all reasonable, duly documented, out-of-pocket fees and charges of any counsel, accountants, auditors, appraisers, consultants and other professionals to such Person, and all court costs and similar legal expenses.

Lenders has the meaning set forth in the Preamble.

Lien means, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person which secures payment or performance of any obligation and shall include any mortgage (whether legal or equitable), lien, encumbrance, charge, pledge, assignment by way of security or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

Loan or Loans means, individually and collectively the Term Loan and any other advances made by Agent and Lenders in accordance with the Loan Documents.

Loan Documents means this Agreement, any Notes, any intercreditor agreements, any Subordination Agreement, the Collateral Documents and all documents, instruments and agreements delivered in connection with the foregoing.

Loan Party means Borrower and each of its Subsidiaries.

Margin Stock means any "margin stock" as defined in Regulation T, U or X of the FRB.

Material Adverse Effect means (a) a material adverse change in, or a material and adverse effect upon, the financial condition, operations, assets, or business of Loan Parties and their Subsidiaries taken as a whole, (b) a material impairment of the ability of any Loan Party to perform any of its payment Obligations under any Loan Document or (c) a material and adverse effect upon any material portion of the Collateral under the Collateral Documents or upon the legality, validity, binding effect or enforceability against any Loan Party of any material Loan Document.

Material Contract means each "material definitive agreement" identified as such in Borrower's public filings with the U.S. Securities and Exchange Commission to the extent the loss or termination of any such contract would reasonably be expected to result in a Material Adverse Effect.

Multiemployer Pension Plan means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which Borrower or any member of the Controlled Group may have any liability.

Net Cash Proceeds means, with respect to any Disposition, the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance and by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) received by any Loan Party pursuant to such Disposition net of (i) the reasonable direct costs relating to such Disposition (including sales commissions and legal, accounting and investment banking fees, commissions and expenses), (ii) any portion of such proceeds deposited in an escrow account pursuant to the documentation relating to such Disposition (provided that such amounts shall be treated as Net Cash Proceeds upon their release from such escrow account to and receipt by the applicable Loan Party), (iii) Taxes and other governmental costs and expenses paid or reasonably estimated by a Loan Party to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (iv) amounts required to be applied to the repayment of any Debt (together with any interest thereon, premium or penalty and any other amount payable with respect thereto) secured by a Lien that has priority over the Lien, if any, of Agent on the asset subject to such Disposition, (v) reserves for purchase price adjustments and retained liabilities reasonably expected to be payable by the Loan Parties in connection therewith established in accordance with GAAP (provided that upon the final determination of the amount paid in respect of such purchase price adjustments and retained liabilities, the actual amount of purchase price adjustments and retained liabilities paid is less than such reserves, the difference shall, at such time, constitute Net Cash Proceeds) and (vi) with respect to any Disposition, all money actually applied within one hundred eighty (180) days to purchase assets used or useful in the business of the Loan Parties and their Subsidiaries.

Note means a promissory note substantially in the form of Exhibit C.

Obligations means all liabilities, indebtedness and obligations (monetary (including post-petition interest, allowed or not) or otherwise) of any Loan Party under this Agreement, any other Loan Document or any other document or instrument executed in connection herewith or therewith which are owed to any Lender or Affiliate of a Lender, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. For the avoidance of doubt, "Obligations" shall include Borrower's obligation to pay any amounts due under Sections 2.7 and 2.8.2 and payable on such date of determination.

OFAC means the U.S. Department of Treasury's Office of Foreign Asset Control.

Operating Burn means, for any period being measured, the product of (x) -1 and (y) the sum of (i) aggregate net cash used in operating activities from operations of Loan Parties, plus (ii) Unfinanced Capital Expenditures, less (iii) DFD-29 FDA submission related expenses including the approximate \$4,048,695 user fee under the Prescription Drug User Fee Act to FDA for NDA submission; \$3,000,000 NDA acceptance milestone payable to DRL; and \$15,000,000 NDA approval milestone to DRL, pursuant to, and in accordance with, that certain Assignment, License, and Collaboration Agreement, between DRL and Borrower, dated June 29, 2021, less (iv) any other one-time or extraordinary expenses made within such measurement period, as mutually agreed upon by Agent and Borrower, in each case as determined from the cash flow statement provided by Borrower and in accordance with GAAP.

Origination Fee shall have the meaning set forth in Section 2.7(a).

Paid in Full, Pay in Full or Payment in Full means, with respect to any Obligations, the payment in full in cash of all such Obligations (other than contingent indemnification obligations, yield protection and expense reimbursement to the extent no claim giving rise thereto has been asserted in respect of contingent

indemnification obligations, and to the extent no amounts therefor have been asserted, in the case of yield protection and expense reimbursement obligations, which Obligations shall survive the Payment in Full of the Obligations).

Patents has the meaning set forth in the Guarantee and Collateral Agreement.

Payment Date means the fifteenth (15th) day of each of February, May, August and November (or the next succeeding Business Day to the extent such 15th day is not a Business Day), commencing with February 15, 2024.

PBGC means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its material functions under ERISA.

Pension Plan means a "pension plan", as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Pension Plan), and to which Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

Permit means, with respect to any Person, any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, including without limitation all registrations with Governmental Authorities.

Permitted Acquisition means any Acquisition so long as:

(a) both immediately before and immediately after the consummation of such Acquisition, no Default, Event of Default or Material Adverse Effect shall have occurred and be continuing or result therefrom;

(b) the Acquisition shall be with respect to an operating company or division or line of business that engages in, and that substantially all of the sales and operating profits generated by such company or division or line of business are in, a line of business substantially similar, reasonably related, ancillary or incidental to the principal business in which the Borrower is engaged;

(c) the board of directors (or other comparable governing body) of the Person to be acquired or owning such assets or Equity Interests (and, if required, the holders of any Equity Interests in such Person) shall have duly approved such Acquisition;

(d) Agent shall have received written notice not less than ten (10) Business Days' prior to the closing of the proposed Acquisition and such information with respect thereto as Agent may reasonably request and which is then readily available, including (i) the proposed date and amount of the Acquisition, (ii) a list and description of the assets or Equity Interests to be acquired and (iii) the total purchase price for the assets or Equity Interests to be purchased (and the terms of payment of such purchase price); and

(e) the total cash consideration (excluding the proceeds of concurrent equity issuances) shall not exceed \$5,000,000 per year for all such Acquisitions.

Permitted Liens means Liens permitted by Section 7.2.

Person means any natural person, corporation, partnership, trust, limited liability company, association, Governmental Authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

Prior Debt means the Debt listed on Schedule 4.1.

Pro Rata Term Loan Share means, with respect to any Lender, the applicable percentage (as adjusted from time to time in accordance with the terms hereof) specified opposite such Lender's name on Annex I which percentage represents the aggregate percentage of the Term Loan Commitment held by such Lender, which percentage shall be with respect to the outstanding balance of the Term Loan as of any date of determination after the Term Loan Commitment has terminated.

Product means any products manufactured, sold, developed, tested or marketed by Borrower or any of its Subsidiaries, including, without limitation, those products set forth on Schedule 5.18(b) (as updated from time to time in accordance with Section 6.1.2); *provided, however*, that if Borrower shall fail to comply with the obligations under Section 6.1.2 to give notice to Agent and update Schedule 5.18(b) prior to manufacturing, selling, developing, testing or marketing any new Product, any such improperly undisclosed Product shall be deemed to be included in this definition; and *provided, further*, that products manufactured by Borrower for unaffiliated third parties shall not be deemed "Products" hereunder.

Registered Intellectual Property means all applications, registrations and recordings for or of Patents, Trademarks or Copyrights filed by a Loan Party with any Governmental Authority, all internet domain name registrations owned by a Loan Party, and all proprietary software owned by a Loan Party.

Required Lenders means Lenders having an aggregate Pro Rata Term Loan Share in excess of fifty percent (50%), collectively.

Required Permit means a Permit (a) required under applicable law for the business of Borrower or any of its Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under any laws applicable to the business of Borrower or any of its Subsidiaries (including, without limitation, any applicable Health Care Laws) or any Drug Application (including without limitation, at any point in time, all licenses, approvals and permits issued by the FDA, CMS, or any other applicable Governmental Authority necessary for the testing, manufacture, marketing or sale of any Product by Borrower or any of its Subsidiaries as such activities are being conducted by such Person with respect to such Product at such time), and (b) required by any Person from which Borrower or any of its Subsidiaries have received an accreditation.

Responsible Officer means (a) the chief executive officer, chief operating officer, or chief financial officer a Person, and (b) in respect of any other Person, the president, vice president or secretary of such Person, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants or delivery of financial information, the chief financial officer, the treasurer or the controller of such Person, or any other officer having substantially the same authority and responsibility, and in all cases such person shall be listed on an incumbency certificate delivered to Agent, in form and substance acceptable to Agent in its sole discretion.

Revenue-Based Payment Amount has the meaning set forth in Section 2.9.1(a).

Royalties means the amount of any and all royalties, license fees and any other payments or income of any type recognized as revenue in accordance with GAAP by the Loan Parties with respect to the sale of Products or the provision of services by independent licensees or sublicensees of Borrower and/or its

Subsidiaries, including any such payments characterized as a share of net profits, any up-front or lump sum payments, any milestone payments, commissions, fees or any other similar amounts, less deductions for amounts deducted, repaid or credited by reason of adjustments to the sales upon which royalty amounts are based, regardless of the reason for such adjustment to such sales. For the purposes of calculating Royalties, Lenders and Agent understand and agree that Affiliates of Borrower shall not be regarded as independent licensees.

Services means services provided by Borrower or any Subsidiary of Borrower to un-Affiliated Persons, including without limitation any sales, laboratory analysis, testing, consulting, marketing, commercialization and any other healthcare-related services.

SOFR shall mean a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

SOFR Administrator shall mean 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 is greater than the amount of such Person's liabilities (including disputed, contingent, prospective, unmatured and unliquidated liabilities); (b) the present fair saleable 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 pay its debts and other liabilities (including subordinated, disputed, contingent, unmatured and unliquidated 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; (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; (f) such Person has not admitted in writing its inability generally to pay its debts as they become due or suspended or threatened to suspend making payments on any of its debts; and (g) such Person, by reason of actual or anticipated financial difficulties, has not commenced negotiations with one or more of its creditors (excluding the Agent or any Lender in its capacity as such) with a view to rescheduling any of its indebtedness.

Spot Rate means the exchange rate, as determined by Agent, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source designated by Agent) as of the end of the preceding Business Day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding Business Day in Agent's principal foreign exchange trading office for the first currency.

Subordinated Debt means any Debt incurred by Borrower and/or any other Loan Party that is subordinated to the Obligations pursuant to a subordination agreement entered into between Agent, any applicable Loan Party and the subordinated creditor(s) upon terms acceptable to Agent in its sole discretion.

Subordination Agreement means any subordination agreement that may be executed from time to time in connection with any Subordinated Debt.

Subsidiary means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding shares or other equity interests as to have more than fifty percent (50%) of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity.

Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to direct and indirect Subsidiaries of Borrower.

SWK has the meaning set forth in the Preamble.

Tax or Taxes has the meaning set forth in Section 3.1(a).

Term Loan has the meaning set forth in Section 2.2.

Term Loan Commitment means \$25,000,000.

Term Loan Maturity Date means December 27, 2027.

Term SOFR Administrator means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Agent in its reasonable discretion after consultation with Borrower).

Term SOFR Rate means the Term SOFR Reference Rate for a three (3) month period that is ten (10) Business Days prior to each Payment Date (such day, the "Periodic Term SOFR Determination Day"), and effective on the Payment Date immediately following such determination date and continuing to but not including the next succeeding Payment Date, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such three (3) month period, as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate was published by the Term SOFR Administrator. Notwithstanding the foregoing, (i) if at any time Agent determines (which determination shall be conclusive absent manifest error) that the Term SOFR Rate is no longer available for determining interest rates for loans or notes similar to the Loans, then Agent shall, in consultation with Borrower, endeavor to establish an alternate rate of interest to the Term SOFR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for loans or notes similar to the Loans in the United States at such time, and, if requested by Agent, Agent and Lenders at such time party hereto and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (including, for the avoidance of doubt, any amendments to the definition of "Contract Rate" to ensure that the interest rate payable by Borrower hereunder is substantially similar to the interest rate that would otherwise be paid prior to the selection of such alternate rate of interest), and (ii) in no event shall the "Term SOFR Rate" or any such alternate rate of interest to the Term SOFR Rate ever be less than five percent (5.0%).

Term SOFR Reference Rate means the forward-looking term rate based on SOFR.

Termination Date means the earlier to occur of (a) the Term Loan Maturity Date, or (b) the date upon which the Loan and all other Obligations are Paid in Full, whether as a result of (i) the prepayment of the Term Loan and all Obligations through any other mandatory or voluntary prepayment of the Term Loan in full, (ii) the contractual acceleration of the Loan hereunder, (iii) the acceleration of the Loan by Agent in accordance with this Agreement, or (iv) otherwise.

Total Revenue shall mean revenue of the Borrower and its Subsidiaries on a consolidated basis as determined in accordance with GAAP excluding the upfront payment in the amount of \$19,000,000 payable pursuant to that certain Exclusive License Agreement, dated as of August 31, 2023, by and between Maruho Co., Ltd. and Borrower.

Trademarks has the meaning set forth in the Guarantee and Collateral Agreement.

Unfinanced Capital Expenditures means capital expenditures (i) not financed with the proceeds of any incurrence of Debt, the proceeds of any sale or issuance of Equity Interests or equity contributions, the proceeds of any asset sale (other than the sale of Inventory in the ordinary course of business) or any insurance proceeds, and (ii) that are not reimbursed by a third person (excluding any Loan Party) in the period such expenditures are made pursuant to a written agreement.

Uniform Commercial Code means the Uniform Commercial Code as in effect in the State of New York; *provided* that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

U.S. Lender means any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

Wholly-Owned Subsidiary means, as to any Person, another Person all of the Equity Interests of which (except directors' qualifying shares) are at the time directly or indirectly owned by such Person and/or another Wholly-Owned Subsidiary of such Person.

1.2 Interpretation.

(a) In the case of this Agreement and each other Loan Document, (i) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms; (ii) Annex, Exhibit, Schedule and Section references are to such Loan Document unless otherwise specified; (iii) the term "including" is not limiting and means "including but not limited to"; (iv) 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"; (v) unless otherwise expressly provided in such Loan Document, (A) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto, but only to the extent such amendments, restatements and other modifications are not prohibited by the terms of any Loan Document, and (B) references to any statute, directive or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute, directive or regulation; (vi) this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, all of which are cumulative and each shall be performed in accordance with its terms and (vii) this Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to Agent, Borrower, Lenders and the other parties hereto and thereto and are the products of all parties; accordingly, they shall not be construed against Borrower, Agent or Lenders merely because of Borrower's, Agent's or Lenders' involvement in their preparation. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of Agent's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (x) within the sole and absolute discretion of Agent and/or Lenders; and (y) deemed to have been given only by a specific writing intended for such purpose executed by Agent.

(b) For purposes of converting any amount denominated in any currency other than Dollars to Dollars under or in connection with the Loan Documents, Agent shall calculate such currency conversion using the current Spot Rate.

(c) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Agent and the Lenders 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.

(d) Notwithstanding anything to the contrary contained in this Agreement, all obligations that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the "ASU") shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purposes of the Loan Documents (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as capitalized lease obligations in the financial statements to be delivered pursuant to the Loan Documents.

Section 2 Credit Facility.

2.1 [Reserved].

2.2 Loan Procedures.

(a) The Lenders, severally and for themselves alone, made a term loan to Borrower on the Closing Date in the original principal amount of \$15,000,000 (the "**Closing Date Term Loan**").

(b) On or about June 26, 2024, Lenders, severally and for themselves alone, made an additional advance to Borrower in the original principal amount of \$5,000,000, resulting in an aggregate, unpaid principal balance of the Term Loan of \$20,000,000 immediately following such advance (the "**June 2024 Advance**").

(c) Upon satisfaction of the DFD-29 Advance Condition on or before June 30, 2025, Lenders shall make one (1) additional advance (within five (5) Business Days of satisfaction of such DFD-29 Advance Condition) to Borrower in the amount equal to, but not less than, such lender's Pro Rata Share of \$5,000,000 (the "**DFD-29 Advance**"). For the avoidance of doubt, any such funding of the DFD-29 Advance shall be made by Lenders upon the satisfaction of the DFD-29 Advance Condition regardless of any request therefore by Borrower.

(d) The Closing Date Term Loan, the June 2024 Advance and the DFD-29 Advance, if any, shall be deemed a single term loan (each such loan individually and collectively, the "**Term Loan**"). The Term Loan is not a revolving credit facility, and therefore, any amount thereof that is repaid or prepaid by Borrower, in whole or in part, may not be re-borrowed.

2.3 Commitments Several.

The failure of any Lender to make any advance of the Term Loan shall not relieve any other Lender of its obligation (if any) to make its Loan on the applicable date, but no Lender shall be responsible for the failure of any other Lender to make any Term Loan to be made by such other Lender.

2.4 Indebtedness Absolute; No Offset; Waiver.

The payment obligations of Borrower hereunder are absolute and unconditional, without any right of rescission, set-off, counterclaim or defense for any reason against Agent and Lenders to the maximum extent permitted by applicable law. As of the Closing Date, the Loan has not been compromised, adjusted, extended, satisfied, rescinded, set-off or modified, and the Loan Documents are not subject to any litigation, dispute, refund, claims of rescission, set-off, netting, counterclaim or defense whatsoever, including but not limited to, claims by or against any Loan Party or any other Person. Payment of the Obligations by Borrower, shall be made only by wire transfer, in Dollars, and in immediately available funds when due and payable pursuant to the terms of this Agreement and the other Loan Documents, is not subject to compromise, adjustment, extension, satisfaction, rescission, set-off, counterclaim, defense, abatement, suspension, deferment, deductible, reduction, termination or modification, whether arising out of transactions concerning the Loan, or otherwise. Without limitation to the foregoing, to the fullest extent permitted under applicable law and notwithstanding any other term or provision contained in this Agreement or any other Loan Document, Borrower hereby waives (and shall cause each Loan Party to waive) (a) presentment, protest and demand, notice of default (except as expressly required in the Loan Documents), notice of intent to accelerate, notice of acceleration, notice of protest, notice of demand and of dishonor and non-payment of the Obligations, (b) any requirement of diligence or promptness on Agent's part in the enforcement of its rights under the provisions of this Agreement and any other Loan Document, (c) any rights, legal or equitable, to require any marshalling of assets or to require foreclosure sales in a particular order, (d) all notices of every kind and description which may be required to be given by any statute or rule of law except as specifically required hereunder, (e) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale or any portion of the Collateral, (f) all rights of homestead, exemption, redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Obligations in the event of foreclosure of the Liens created by the Loan Documents, (g) the pleading of any statute of limitations as a defense to any demand under any Loan Document and (h) any defense to the obligation to make any payments required under the Loan Documents, including the obligation to pay taxes based on any damage to, defects in or destruction of the Collateral or any other event, including obsolescence of any of the Collateral, it being agreed and acknowledged that such payment obligations are unconditional and irrevocable. Borrower further acknowledges and agrees (i) to any substitution, subordination, exchange or release of any security or the release of any party primarily or secondarily liable for the payment of the Loan; (ii) that Agent shall not be required to first institute suit or exhaust its remedies hereon against others liable for repayment of all or any part of the Loan, whether primarily or secondarily (collectively, the "**Obligors**"), or to perfect or enforce its rights against any Obligor or any security for the Loan; and (iii) that its liability for payment of the Loan shall not be affected or impaired by any determination that any security interest or lien taken by Agent for the benefit of Agent and Lenders to secure the Loan is invalid or unperfected. Borrower acknowledges, warrants and represents in connection with each waiver of any right or remedy of Borrower contained in any Loan Document, that it has been fully informed with respect to, and represented by counsel of its choice in connection with, such rights and remedies, and all such waivers, and after such advice and consultation, has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive or relinquish such rights and remedies to the full extent specified in each such waiver.

2.5 Loan Accounting.

2.5.1 Recordkeeping.

Agent, on behalf of each Lender, shall record in its records the date and amount of the Loan made by each Lender, each prepayment and repayment thereof. The aggregate unpaid principal amount so recorded shall be final, binding and conclusive absent manifest error. The failure to so record

any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of Borrower hereunder or under any Note to repay the principal amount of the Loans hereunder, together with all interest accruing thereon.

2.5.2 Notes.

At the request of any Lender, the Loan of such Lender shall be evidenced by a Note, with appropriate insertions, payable to such Lender in a face principal amount equal to such Lender's Pro Rata Term Loan Share and payable in such amounts and on such dates as are set forth herein.

2.6 Payment of Interest.

2.6.1 Interest Rates.

(a) The outstanding principal balance under the Loan shall bear interest at a per annum rate of interest equal to the Contract Rate (as may be adjusted from time to time in accordance with this Section 2.6.1). The Contract Rate applicable to the period beginning on the Closing Date through the date that is one (1) day immediately prior to the initial Payment Date shall be calculated based on the Term SOFR Rate as of the Closing Date. Whenever, on or subsequent to the initial Payment Date, the Term SOFR Rate is increased or decreased (as determined on the date that is ten(10) Business Days prior to each Payment Date), the Contract Rate, as set forth herein, shall be similarly changed effective as of such subsequent Payment Date, without notice or demand of any kind by an amount equal to the amount of such change in the Term SOFR Rate on the date that is ten (10) Business Days prior to each such Payment Date. The interest due on the principal balance of the Loan outstanding as of any Payment Date shall be computed for the actual number of days elapsed during the period in question on the basis of a year consisting of three hundred sixty (360) days and shall be calculated by determining the daily principal balance outstanding for each day of such period in question. The daily rate shall be equal to 1/360th times the Contract Rate. If any statement furnished by Agent for the amount of a payment due exceeded the actual amount that should have been paid because the Term SOFR Rate decreased and such decrease was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall receive a credit for the overpayment, which credit shall be applied towards the next subsequent payment due hereunder. If any statement furnished by Agent for the amount of a payment due was less than the actual amount that should have been paid because the Term SOFR Rate increased and such increase was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall be required to pay any resulting underpayment with the next subsequent payment due hereunder.

(b) Borrower recognizes and acknowledges that any default on any payment, or portion thereof, due hereunder or to be made under any of the other Loan Documents, will result in losses and additional expenses to Agent in servicing the Loan, and in losses due to Lenders' loss of the use of funds not timely received. Borrower further acknowledges and agrees that in the event of any such Event of Default, Lenders would be entitled to damages for the detriment proximately caused thereby, but that it would be extremely difficult and impracticable to ascertain the extent of or compute such damages. Therefore, upon the Term Loan Maturity Date and/or upon the occurrence and during the existence of an Event of Default (or upon any acceleration), interest shall automatically accrue hereunder, without notice to Borrower, at the Default Rate. The Default Rate shall be calculated and due from the date that the Event of Default occurred and shall be payable upon demand.

(c) Notwithstanding anything herein to the contrary, if at any time the interest rate for any Loan (if applicable), together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively, "charges"), shall exceed the maximum lawful rate (the

"Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder (if applicable), together with all charges payable in respect of the Loan, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest (if any) and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan or refunded to the Borrower so that at no time shall the interest (if any) and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

2.6.2 Payments of Interest and Principal.

Borrower shall pay to Lenders all accrued interest on the Loan in arrears on each Payment Date, upon a prepayment of such Loan in accordance with Section 2.8 and at maturity in cash. Any partial prepayment of the Loan shall be applied pursuant to Section 2.9.1 (but this shall not be construed as permitting any partial prepayment other than as may be expressly permitted elsewhere in this Agreement).

2.7 Fees.

(a) **Origination Fee.** Borrower shall pay to Agent, for the benefit of Lenders, a fee (the "**Origination Fee**") in the amount of \$200,000, which Origination Fee shall be deemed fully earned and non-refundable on the Closing Date.

(b) **Exit Fee.** Upon the Termination Date, Borrower shall pay an exit fee (the "**Exit Fee**") to Agent, for the benefit of Lenders, in an amount equal to five percent (5.00%) multiplied by the aggregate amount of the Term Loan funded hereunder on or prior to such date, which Exit Fee shall be deemed fully earned and non-refundable on the Termination Date.

2.8 Prepayment.

2.8.1 Mandatory Prepayment.

(a) Borrower shall prepay the Obligations, or any portion thereof, as applicable, (which shall include the amounts due and payable under Section 2.7(b) hereof to the extent such prepayment results in a prepayment in full of the Term Loan) until paid in full within ten (10) Business Days after the receipt by a Loan Party of any Net Cash Proceeds in excess of \$5,000,000 in the aggregate during any calendar year from one (1) or more Dispositions made pursuant to Section 7.4(b)(iii), in an amount equal to such excess Net Cash Proceeds.

(b) In connection with any prepayment of the Term Loan made pursuant to this Section 2.8.1, Borrower shall pay to Agent, for the benefit of Lenders, any amounts that would otherwise be due and payable on such date had Borrower voluntarily prepaid the Obligations pursuant to Section 2.8.2 (in addition to any such prepayment of the Term Loan and related Obligations).

2.8.2 Voluntary Prepayment.

(a) Subject to clause (b) below, Borrower may, on at least five (5) Business Days' written notice or telephonic notice (followed on the same Business Day by written confirmation thereof) to Agent (which shall promptly advise each Lender thereof) not later than 12:00 noon Dallas time on such day, prepay the Term Loan and all related Obligations in whole or in part at any time prior to the Term Loan Maturity Date. Such notice to Agent shall specify the amount and proposed date of such prepayment, and the application of such amounts to be prepaid shall be applied in accordance with Section 2.9.1(b) or 2.10.2 (as applicable).

(b) If Borrower makes a prepayment of the Term Loan under Section 2.8.2(a), it shall pay to Agent, for the benefit of Lenders, the following amounts (in addition to any such prepayment of the Term Loan and related Obligations) on the date of such prepayment: (i) if such prepayment is made prior to the first anniversary of the Closing Date, an amount equal to (A) two percent (2.0%) of the aggregate amount of the Term Loan so prepaid plus (B) an amount equal to the aggregate interest that would have accrued pursuant to this Agreement in relation to the aggregate amount of the Term Loan so prepaid from the date of such prepayment through the first anniversary of the Closing Date assuming a static Contract Rate equal to the Contract Rate in effect on such date of prepayment, (ii) if such prepayment is made on or after the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date, one percent (1.0%) of the aggregate amount of the Term Loan so prepaid, and (iii) if such prepayment is made on or after the second anniversary of the Closing Date, zero percent (0%) of the aggregate amount of the Term Loan so prepaid.

(c) For the avoidance of doubt, a permitted payment under this Section 2.8.2 is independent of and in addition to Revenue-Based Payment Amounts that are credited toward the principal of the Loans under Section 2.9.1(b). Notwithstanding anything set forth herein or in any other Loan Documents to the contrary, any prepayment of the Loans other than via the application of Revenue-Based Payment Amounts made pursuant to Section 2.9.1 or Section 2.10.2, as applicable, shall be limited and governed by this Section 2.8.2.

2.9 Repayment of Term Loan.

2.9.1 Revenue-Based Payment Amount.

(a) During the period commencing January 1, 2024 until the Obligations are Paid in Full, Borrower promises to pay to Agent, for the account of each Lender according to its Pro Rata Term Loan Share, an amount based on a percentage of Total Revenue in each Fiscal Quarter (the "**Revenue-Based Payment Amount**"), which will be applied to the Obligations as provided in clause (b) below. The Revenue-Based Payment Amount with respect to each Fiscal Quarter shall be applied by Borrower on the Payment Date next following the end of such Fiscal Quarter in accordance with clause (b) below. The Revenue-Based Payment Amount with respect to each Fiscal Quarter shall be equal to the aggregate Revenue-Based Payment Amounts payable during the period commencing as of January 1 of the Fiscal Year of which such Fiscal Quarter is part, through the end of such Fiscal Quarter (such elapsed portion of the Fiscal Year, the "Elapsed Period"), calculated as the sum of:

(i) One hundred percent (100%) of Total Revenue during the Elapsed Period up to and including \$10,000,000; plus

(ii) Seventy-five percent (75%) of Total Revenue during the Elapsed Period greater than \$10,000,000; minus

(iii) the aggregate amount of Revenue-Based Payment Amounts, if any, paid in cash to Agent, for the benefit of Lenders, pursuant to this Section 2.9.1, with respect to each prior Fiscal Quarter in such Fiscal Year; *provided that the Revenue-Based Payment Amount is payable solely upon Total Revenue in a given Fiscal Year, and will not be calculated on a cumulative, year-over-year basis; minus*

(iv) the aggregate amount of mandatory and voluntary prepayments made pursuant to Section 2.8 prior to the applicable Payment Date.

(b) So long as no Event of Default has occurred and is continuing and until the Obligations have been Paid in Full, on each Payment Date the applicable Revenue Based Payment Amount will be applied in the following priority:

(i) FIRST, to the payment of all fees, costs, expenses and indemnities due and owing to Agent pursuant to Sections 2.7, 3.1, 3.2, 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, and any other Obligations owing to Agent in respect of sums advanced by Agent to preserve or protect the Collateral or to preserve or protect its security interest in the Collateral;

(ii) SECOND, to the payment of all fees, costs, expenses and indemnities due and owing to Lenders in respect of the Loans and Commitments pursuant to Sections 2.7, 3.1, 3.2, 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iii) THIRD, to the payment of all accrued but unpaid interest in respect of the Loans as of such Payment Date pursuant to Section 2.6 under this Agreement, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full

(iv) FOURTH,

(A) if the Total Revenue of the Loan Parties (on a consolidated basis) for the consecutive twelve (12) month period ended on December 31, 2025 is less than or equal to \$70,000,000, as it relates to each Payment Date on or after the Payment Date occurring in February 2026, to the payment of outstanding principal of the Loans, pro rata based on each Lender's Pro Rata Term Loan Share, in an amount equal to seven and one-half of one percent (7.5%) multiplied by the aggregate amount of the Term Loan funded hereunder as of such date of determination minus the aggregate amount of mandatory and voluntary prepayments made pursuant to Section 2.8 prior to the applicable Payment Date, or

(B) if the Total Revenue of the Loan Parties (on a consolidated basis) for the consecutive twelve (12) month period ended on December 31, 2025 is greater than \$70,000,000, as it relates to each Payment Date on or after the Payment Date occurring in February 2027, to the payment of outstanding principal of the Loans, pro rata based on each Lender's Pro Rata Term Loan Share, in an amount equal to fifteen percent (15.0%) multiplied by the aggregate amount of the Term Loan funded hereunder as of such date of determination minus the aggregate amount of mandatory and voluntary prepayments made pursuant to Section 2.8 prior to the applicable Payment Date; and

(v) FIFTH, all remaining amounts to be retained by Borrower.

For the avoidance of doubt, on each Payment Date the Borrower shall not be required to pay more than the amounts set forth in clauses (b)(i) through (b)(iv) above.

In the event that the Revenue-Based Payment Amount in relation to any Payment Date is insufficient for payment of the amounts set forth in clauses (b)(i) through (b)(iv) above for such Payment Date, Borrower shall pay an amount equal to the extent of such insufficiency, in immediately available funds, within two (2) Business Days of request by Agent.

(c) In the event that Borrower makes any adjustment to Total Revenue after it has been reported to Agent, and such adjustment results in an adjustment to the Revenue-Based Payment Amount due to the Lenders pursuant to this Section 2.9.1, Borrower shall so notify Agent and such adjustment shall be captured, reported and reconciled with the next scheduled report and payment of Revenue-Based Payment Amount hereunder. Notwithstanding the foregoing, Agent and Borrower shall discuss and agree on the amount of any such adjustment prior to it being given effect with respect to future Revenue-Based Payment Amounts.

2.9.2 Principal.

Notwithstanding the foregoing, the outstanding principal balance of the Term Loan and all other Obligations then due and owing shall be Paid in Full on the Termination Date.

2.10 Payment.

2.10.1 Making of Payments.

All payments of principal, interest, fees and other amounts, shall be made in immediately-available funds, via wire transfer as directed by Agent in writing, not later than 1:00 p.m. Dallas time on the date due, and funds received after that hour shall be deemed to have been received by Agent on the following Business Day. Not later than two (2) Business Days prior to each Payment Date, Agent shall provide to Borrower and each Lender a quarterly statement with the amounts payable by Borrower to Agent on such Payment Date in accordance with Section 2.9.1(b) hereof, which shall include, for additional clarity, Agent's calculation of the Revenue-Based Payment Amount for the prior Fiscal Quarter, which statement shall be binding on Borrower absent manifest error, and Borrower shall be entitled to rely on such quarterly statement in relation to its payment obligations on such Payment Date.

2.10.2 Application of Payments and Proceeds Following an Event of Default

Following the occurrence and during the continuance of an Event of Default, or if the Obligations have otherwise become or have been declared to become immediately due and payable in accordance with this Agreement, then notwithstanding anything herein or in any other Loan Document to the contrary, Agent shall apply all or any part of payments in respect of the Obligations and proceeds of Collateral, in each case as received by Agent, to the payment of the Obligations in the order and priority as determined by Agent in its sole discretion.

2.10.3 Set-off.

Borrower agrees that Agent and each Lender and its Affiliates have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, Borrower agrees that at any time an Event of Default exists, Agent and each Lender may, to the fullest extent permitted by applicable law, apply to the payment of any Obligations of Borrower hereunder then due, any and all balances, credits, deposits, accounts or moneys of Borrower then or thereafter with Agent or such Lender. Notwithstanding

the foregoing, no Lender shall exercise any rights described in the preceding sentence without the prior written consent of Agent.

2.10.4 Proration of Payments.

If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of set-off or otherwise, on account of principal of, interest on or fees in relation to any Loan, but excluding any payment pursuant to Section 3.1, 3.2, 10.5 or 10.8) in excess of its applicable Pro Rata Term Loan Share of payments and other recoveries obtained by all Lenders on account of principal of, interest on or fees in relation to such Term Loan then held by them, then such Lender shall purchase from the other Lenders such participations in the Loans held by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided* that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery.

Section 3 Yield Protection.

3.1 Taxes.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder by or on behalf of Borrower to or for the account of Agent or any Lender shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, property or franchise taxes and other taxes, fees, duties, levies, withholdings or other similar charges imposed by any Governmental Authority that is a taxing authority ("Tax" or "Taxes"), except as required by applicable law. If any withholding or deduction from any payment to be made by Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then Borrower shall: (w) be entitled to make such withholding or deduction; (x) pay directly to the relevant Governmental Authority the full amount so withheld or deducted; (y) as promptly as practicable forward to Agent the original or a certified copy of an official receipt or other documentation reasonably satisfactory to Agent evidencing such payment to such Governmental Authority; and (z) if the withholding or deduction is with respect to Indemnified Taxes, pay to Agent for the account of Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by each Lender will equal the full amount such Lender would have received had no such withholding or deduction of Indemnified Taxes been required. For purposes of this Agreement, "Indemnified Taxes" mean any Taxes excluding (i) Taxes imposed on or measured by Agent's or any Lender's net income (however denominated) or gross profits, and franchise Taxes, imposed by any jurisdiction (or subdivision thereof) under the laws of which Agent or such Lender is organized or in which Agent or such Lender conducts business or, in the case of any Lender, in which its applicable lending office is located at the time such Lender acquires its initial interest in any Term Loan Commitment, (ii) any branch profit Taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which Agent or a Lender is located or conducts business; (iii) in the case of any Lender, any withholding Tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement or designates a new lending office; (iv) in the case of any U.S. Lender, any United States federal backup withholding Tax; and (v) Taxes imposed under FATCA; (vi) Taxes attributable to a Foreign Lender's failure to comply with Section 3.1(c) or inability to provide the applicable IRS Form set forth in Section 3.1(c) to Borrower and Agent; (vii) with respect to Agent or any Lender, Taxes imposed as a result of a present or former connection between such Agent or Lender and the jurisdiction imposing such Tax (other than connections arising from such Agent or Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document); and (viii) in the case of a Lender, U.S. federal withholding Taxes, if any and not otherwise included in clauses (i) through (vii), imposed on

amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which such Lender acquires such interest in the Loan or Commitment or changes its lending office (items in clauses (i) through (viii), “Excluded Taxes”). To the extent that any amounts shall ever be paid by Borrower in respect of Indemnified Taxes, such amounts shall, for greater certainty, be considered to have accrued and to have been paid by Borrower as interest on the Loans.

(b) Borrower shall indemnify Agent and each Lender for any Indemnified Taxes paid by Agent or such Lender, as applicable, on or with respect to any payment by or on account of any obligation of Borrower hereunder, and any additions to Tax, penalties and interest paid by Agent or such Lender with respect to such Indemnified Taxes; *provided* that Borrower shall not have any obligation to indemnify any party hereunder for any Indemnified Taxes or additions to Tax, penalties or interest with respect thereto that result from or are attributable to such party's own fraud, gross negligence or willful misconduct. Payment under this Section 3.1(b) shall be made within thirty (30) days after the date Agent or the Lender, as applicable, makes written demand therefor; *provided, however*, that if such written demand is made more than one-hundred eighty (180) days after the earlier of (i) the date on which Agent or the Lender, as applicable, pays such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto and (ii) the date on which the applicable Governmental Authority makes written demand on Agent or such Lender, as applicable, for payment of such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto, then Borrower shall not be obligated to indemnify Agent or such Lender for such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto.

(c) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Agent, at the time or times reasonably requested by Borrower or Agent, such properly completed and executed documentation reasonably requested by Borrower or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Agent as will enable Borrower or Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing:

(i) Each Foreign Lender shall deliver to Borrower and Agent on or prior to the date on which such Foreign Lender becomes a party to this Agreement:

- (1) Two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE) claiming exemption from withholding of Taxes under an income tax treaty to which the United States of America is a party;
- (2) two duly completed and executed originals of IRS Form W-8ECI;
- (3) a certificate in form and substance reasonably satisfactory to Agent and Borrower claiming entitlement to the portfolio interest exemption under Section 881(c) of the IRC and certifying that such Foreign Lender is not (w) a conduit entity participating in a conduit financing arrangement as defined in Treasury Regulation 1.881-3, (x) a “bank” within the meaning of Section 881(c)(3)(A) of the IRC, (y) a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or (z) a “controlled foreign corporation” described in Sections 881(c)(3)(C) of the

IRC, together with two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE); or

(4) if the Foreign Lender is not the beneficial owner of amounts paid to it hereunder, two duly completed and executed originals of IRS Form W-8IMY, each accompanied by a duly completed and executed IRS Form W-8ECI, IRS Form W-8BEN (or IRS Form W-8BEN-E), IRS Form W-9 and/or other certification documents from each beneficial owner of such amounts claiming entitlement to exemption from withholding or backup withholding of Taxes.

(ii) Each Foreign Lender shall (to the extent legally entitled to do so) provide updated forms to Borrower and Agent on or prior to the date any prior form previously provided under this clause (c) becomes obsolete or expires, after the occurrence of an event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (c) or from time to time if requested by Borrower or Agent.

(iii) Each U.S. Lender shall deliver to Agent and Borrower on or prior to the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the request of Borrower or Agent) properly completed and executed originals of IRS Form W-9 certifying that such Lender is exempt from backup withholding.

Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be required to pay additional amounts to or indemnify any Lender pursuant to this Section 3.1 with respect to any Taxes required to be deducted or withheld (or any additions to Tax, penalties or interest with respect thereto) (A) on the basis of the information, certificates or statements of exemption provided by a Lender pursuant to this clause (c), or (B) if such Lender shall fail to comply with the certification requirements of this clause (c). For the avoidance of doubt, all references to IRS Forms in this clause (c) shall include, in each case, any successor form.

(d) Without limiting the foregoing, each Lender shall timely comply with any certification, documentation, information or other reporting necessary to establish an exemption from withholding under FATCA and shall provide any documentation reasonably requested by Borrower or Agent sufficient for Borrower and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such applicable reporting requirements. Solely for purposes of this paragraph (d), "FATCA" shall include any amendments to FATCA after the date of this Agreement.

(e) If Agent or a Lender determines that it is entitled to or has received a refund or credit of any Taxes for which it has been indemnified by Borrower (or another Loan Party) or with respect to which Borrower (or another Loan Party) shall have paid additional amounts pursuant to this Section 3.1, it shall promptly notify Borrower of such refund or credit, and promptly make an appropriate claim to the relevant Governmental Authority for such refund or credit (if it has not previously done so). If Agent or a Lender receives a refund or credit (whether or not pursuant to such claim) of such Taxes, it shall promptly pay over such refund or credit to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Loan Parties under this Section 3.1 with respect to the Taxes giving rise to such refund or credit), net of all reasonable out-of-pocket and documented third-party expenses of the Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund or credit); *provided* that Borrower, upon the request of Agent or such Lender, agrees to repay to Agent or such Lender the amount paid over to Borrower in the event Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 3.1(e) shall not be construed to require Agent or any Lender to make available its Tax returns (or any other information relating to its

Taxes which it deems confidential) to Borrower or any other Person or to alter its internal practices or procedures with respect to the administration of Taxes.

3.2 Increased Cost.

(a) If, after the Closing Date, the adoption of, or any change in, any applicable law, rule, directive or regulation, or any change in the interpretation or administration of any applicable law, rule, directive or regulation by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof (*provided* that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be considered a change in applicable law, regardless of the date enacted, adopted or issued), or compliance by any Lender with any request or directive (whether or not having the force of law) issued after the Closing Date of any such authority, central bank or comparable agency: (i) shall impose, modify or deem applicable any reserve (including any reserve imposed by the FRB), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by any Lender; or (ii) shall impose on any Lender any other condition affecting its ability to make loans based on the Term SOFR Rate or its obligation to make loans based on the Term SOFR Rate; and the result of anything described in clauses (i) and (ii) above is to increase the cost to (or to impose a cost on) such Lender of making or maintaining any loan based on the Term SOFR Rate, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or under its Note with respect thereto, then upon demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), and without duplication of other payment obligations of Borrower hereunder (including pursuant to Section 3.1), Borrower shall pay directly to such Lender such additional amount as will compensate such Lender for such increased cost or such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor; *provided* that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect. For the avoidance of doubt, this clause (a) will not apply to any such increased costs or reductions resulting from Taxes, as to which Section 3.1 shall govern.

(b) If any Lender shall reasonably determine that any change after the Closing Date in, or the adoption or phase-in after the Closing Date of, any applicable law, rule, directive or regulation regarding capital adequacy, or any change after the Closing Date in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or the compliance by any Lender or any Person controlling such Lender with any request or directive issued after the Closing Date regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency (*provided* that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be considered a change in applicable law, regardless of the date enacted, adopted or issued), has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such change, adoption, phase-in or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) by an amount deemed by such Lender or such controlling Person to be material, then from time to time, within five (5) Business Days of demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrower shall pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor;

provided that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect.

(c) Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans, becomes aware of the occurrence of an event or the existence of a condition that would entitle such Lender to receive payments under this Section 3.2, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (i) make, issue, fund or maintain its Loans through another office of such Lender, or (ii) take such other measures as such Lender may deem reasonable, if as a result thereof the additional amounts which would otherwise be required to be paid to such Lender pursuant to this Section 3.2 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Loans or the interests of such Lender; *provided* that such Lender will not be obligated to utilize such other office pursuant to this clause (c) unless Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this clause (c) (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Agent) shall be conclusive absent manifest error.

3.3 [Reserved].

3.4 Manner of Funding; Alternate Funding Offices.

Notwithstanding any provision of this Agreement to the contrary, each Lender shall be entitled to fund and maintain its funding of all or any part of its Loans in any manner it may determine at its sole discretion. Each Lender may, if it so elects, fulfill its commitment to make the Term Loan by causing any branch or Affiliate of such Lender to make such Loan; *provided* that in such event for the purposes of this Agreement (other than Section 3.1) such Loan shall be deemed to have been made by such Lender and the obligation of Borrower to repay such Loan shall nevertheless be to such Lender and shall be deemed held by it, to the extent of such Loan, for the account of such branch or Affiliate.

3.5 Conclusiveness of Statements; Survival.

Determinations and statements of any Lender pursuant to Section 3.1, 3.2, 3.3 or 3.4 shall be conclusive absent demonstrable error. Lenders may use reasonable averaging and attribution methods in determining compensation under Sections 3.1 or 3.2, and the provisions of such Sections shall survive repayment of the Loans, cancellation of the Notes and termination of this Agreement.

Section 4 Conditions Precedent.

The obligation of each Lender to make its Loan hereunder is subject to the following conditions precedent, each of which shall be reasonably satisfactory in all respects to Agent.

4.1 Prior Debt.

The Prior Debt other than the Subordinated Debt, if any, (i) has been (or substantially concurrently with the funding of the initial borrowing on the Closing Date will be) paid in full and (ii) Agent shall have received evidence that arrangements satisfactory to Agent have been made for the termination and release of all related Liens, if any, granted in connection with such Prior Debt.

4.2 General.

Borrower shall have delivered the following documents in form and substance acceptable to Agent in its sole discretion (and, as applicable, duly executed):

(a) Loan Documents. The Loan Documents to which any Loan Party is a party, each duly executed by a Responsible Officer of each Loan Party and the other parties thereto (except Agent and the Lenders), and each other Person (except Agent and the Lenders) shall have delivered to Agent and Lenders the Loan Documents to which it is a party, each duly executed and delivered by such Person and the other parties thereto (except Agent and the Lenders).

(b) Financing Statements. Properly completed Uniform Commercial Code financing statements and other filings and documents required by law or the Loan Documents to provide Agent, for the benefit of Lenders, perfected first priority Liens in the Collateral.

(c) Lien Searches. Copies of Uniform Commercial Code, foreign, state and county search reports listing all effective financing statements filed and other Liens of record against any Loan Party, with copies of any financing statements and applicable searches of the records of the U.S. Patent and Trademark Office and the U.S. Copyright Office performed with respect to each Loan Party, all in each jurisdiction reasonably determined by Agent.

(d) Payoff; Release. Payoff letters with respect to the repayment in full of all Prior Debt other than the Subordinated Debt, termination of all agreements relating thereto and the release of all Liens granted in connection therewith, with Uniform Commercial Code or other appropriate termination statements and documents effective to evidence the foregoing or authorization to file the same.

(e) Authorization Documents. For each Loan Party, such Person's (i) charter, certificate of incorporation (or similar formation document), and (if any) certificate of incorporation on change of name, certified by the appropriate Governmental Authority, as applicable, (ii) good standing certificates in its jurisdiction of incorporation (or formation), as applicable, and in each other jurisdiction reasonably requested by Agent, (iii) bylaws or memorandum and articles of association (or similar governing document), (iv) resolutions of its board of directors (or similar governing body) and shareholders, in each case approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby, and (v) specimen signature and incumbency certificates of its Responsible Officers executing any of the Loan Documents, all certified by its director, secretary or an assistant secretary (or similar officer) as being in full force and effect without modification, in form and substance reasonably satisfactory to Agent.

(f) Opinions of Counsel. Opinions of counsel for each Loan Party in form and substance acceptable to Agent regarding certain closing matters, and Borrower hereby requests such counsel to deliver such opinions and authorizes Agent and Lenders to rely thereon.

(g) Insurance. Certificates or other evidence of insurance (including, in respect of the policies listed in Schedule 5.16, a letter from the relevant insurance brokers addressed to Agent and Lenders listing the insurance policies of the Loan Parties and confirming that they are on risk and covering appropriate risks for the business carried out by the Loan Parties) in effect as required by Section 6.3(c) and (d), in respect of policies issued by any insurance company in the United States.

(h) Financials. The financial statements, projections and pro forma balance sheet described in Section 5.4.

(i) Consents. Evidence that all necessary consents, permits and approvals (governmental or otherwise) required for the execution, delivery and performance by each Loan Party of the Loan Documents have been duly obtained and are in full force and effect.

(j) Borrowing Limits. A certificate of Borrower confirming that borrowing or guaranteeing or securing, as appropriate, the Term Loan Commitment would not cause any borrowing, guarantee, security or similar limit binding on any Loan Party to be exceeded.

(k) Other Documents. Such other certificates, documents and agreements as Agent or any Lender may reasonably request.

4.3 Fees.

The Lenders and Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including Legal Costs), required to be paid under the Loan Documents on or before the Closing Date. All such amounts will be paid with proceeds of the initial advance of the Term Loan and any previous expense deposits made with Agent on or before the Closing Date and will be reflected in the funding instructions given by Borrower to Agent on or before the Closing Date.

4.4 Representations, Warranties, Defaults.

As of the Closing Date, after giving effect to the making of the Loans, (a) all representations and warranties of Borrower set forth in any Loan Document shall be true and correct in all material respects as if made on and as of the Closing Date (except to the extent already qualified by materiality, in which case it shall be true and correct in all respects and shall not be false or misleading in any respect and except for representations and warranties that specifically refer to an earlier date, which shall be true and correct in all material respects as of such earlier date) and (b) no Default or Event of Default shall exist. The acceptance of the Term Loan by Borrower shall be deemed to be a certification by Borrower that the conditions set forth in this Section 4.4 have been satisfied.

4.5 Diligence.

Agent and Lenders shall have completed their due diligence review of the Loan Parties and their Subsidiaries, their assets, business, obligations and the transactions contemplated herein, the results of which shall be reasonably satisfactory in form and substance to Lenders, including, without limitation, (i) an examination of (A) Borrower's projected Total Revenue for such periods as required by Lenders, (B) such valuations of Borrower and its assets as Lenders shall require (C) the terms and conditions of all obligations owed by Borrower deemed material by Lenders, the results of which shall be satisfactory in form and substance to Lenders and (D) background checks with respect to the managers, officers and owners of Borrower required by Agent; (ii) an examination of the Collateral, the financial statements and the books, records, business, obligations, financial condition and operational state of Borrower, and Borrower shall have demonstrated to Agent's satisfaction, in its reasonable discretion, that no operations of Borrower are the subject of any governmental investigation, evaluation or any remedial action which could reasonably be expected to result in a Material Adverse Effect.

4.6 Corporate Matters.

All corporate and other proceedings, documents, instruments and other legal matters in connection with the transactions contemplated by the Loan Documents (including, but not limited to, those

relating to corporate and capital structures of Borrower) shall be satisfactory to Lenders in their reasonable discretion.

4.7 No Material Adverse Effect

No Material Adverse Effect shall have occurred and be continuing.

Section 5 Representations and Warranties

To induce Agent and Lenders to enter into this Agreement and to induce Lenders to make the Loan hereunder, Borrower represents and warrants to Agent and Lenders, as of the Closing Date and the date of each advance of the Term Loan made by Lenders hereunder, that:

5.1 Organization

Each Loan Party is duly incorporated, validly existing and (if applicable) in good standing under the laws of its state or country of jurisdiction as set forth on Schedule 5.1, and is duly qualified to carry on its business in each jurisdiction set forth on Schedule 5.1, which are all of the jurisdictions in which failure to so qualify would reasonably be likely to have or result in a Material Adverse Effect. Each Loan Party has the power to own its assets and carry on its business as it is being conducted.

5.2 Authorization; No Conflict

Each Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, to borrow or guarantee monies thereunder, as applicable, and to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by each Loan Party of this Agreement and the other Loan Documents to which it is a party, as applicable, and the transactions contemplated therein, do not and will not (a) require any consent or approval of any Governmental Authority (other than any consent or approval which has been obtained and is in full force and effect), (b) conflict with (i) any provision of applicable law (including any Health Care Law), (ii) the charter, certificate of incorporation, by-laws, or other organizational documents of such Loan Party or (iii) (except as it relates to the documents governing the Prior Debt, each of which will be terminated and/or paid on the Closing Date) any Material Contract, or any judgment, order or decree, which is binding upon any Loan Party or any of its properties or (c) require, or result in, the creation or imposition of any Lien on any asset of any Loan Party (other than Liens in favor of Agent created pursuant to the Collateral Documents). No limit on any Loan Party's powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Loan Documents to which it is a party.

5.3 Validity; Binding Nature

Each of this Agreement and each other Loan Document to which any Loan Party is a party, as applicable, is the legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity and concepts of reasonableness.

5.4 Financial Condition

(a) The audited financial statements of Borrower for the Fiscal Year 2022 and the unaudited financial statements of Borrower for the Fiscal Quarter ended September 2023, copies of each of which have been delivered pursuant hereto, were prepared in accordance with GAAP and present fairly in

all material respects the consolidated financial condition of Borrower as at such dates and the results of its operations for the periods then ended, subject, in the case of unaudited financial statements, to the absence of footnotes and normal year end audit adjustments.

(b) The consolidated financial projections (including an operating budget and a cash flow budget) of Borrower delivered to Agent and Lenders on or prior to the Closing Date (i) were prepared by Borrower in good faith and (ii) were prepared in accordance with assumptions for which Borrower believes it has a reasonable basis, and the accompanying consolidated and consolidating pro forma unaudited balance sheet of Borrower as at the Closing Date, adjusted to give effect to the financings contemplated hereby as if such transactions had occurred on such date, is consistent in all material respects with such projections (it being understood that the projections are not a guaranty of future performance and that actual results during the period covered by the projections may materially differ from the projected results therein).

5.5 No Material Adverse Effect.

Since December 31, 2022, there has been no Material Adverse Effect.

5.6 Litigation.

Except as set forth on Schedule 5.6, no litigation (including derivative actions), arbitration proceeding, administrative proceeding or governmental investigation or proceeding is pending or, to Borrower's knowledge, threatened against any Loan Party that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. As of the Closing Date, other than any liability incidental to such litigation or proceedings, no Loan Party has any material Contingent Obligations not disclosed in the financial statements specified in Section 5.4(a) and other Contingent Obligations permitted by Section 7.1.

5.7 Ownership of Properties; Liens.

Borrower and each other Loan Party owns, or leases or licenses, as applicable, all of its material properties and assets, tangible and intangible, of any nature whatsoever that it purports to own, or lease, as applicable (including Intellectual Property), free and clear of all Liens and charges and claims (including infringement claims with respect to Intellectual Property), except Permitted Liens and as set forth on Schedule 5.7.

5.8 Capitalization.

All issued and outstanding Equity Interests of Loan Parties are duly authorized, validly issued, fully paid, non-assessable, and such securities were issued in compliance in all material respects with all applicable laws concerning the issuance of securities. Schedule 5.8 sets forth the authorized Equity Interests of each Loan Party (other than Borrower) as of the Closing Date as well as all Persons owning more than ten percent (10%) of the outstanding Equity Interests in each such Loan Party (other than Borrower) as of the Closing Date.

5.9 Pension Plans.

No Loan Party has a Pension Plan except in compliance with Section 6.6.1.

5.10 Investment Company Act.

No Loan Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company", within the meaning of the Investment Company Act of 1940.

5.11 No Default.

No Event of Default or Default exists or would result from the incurrence by Borrower of any Debt hereunder or under any other Loan Document or as a result of any Loan Party entering into the Loan Documents to which it is a party.

5.12 Margin Stock.

No Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. As of the Closing Date, no portion of the Obligations is secured directly or indirectly by Margin Stock.

5.13 Taxes.

Each Loan Party has filed, or caused to be filed, all material federal, state, foreign and other tax returns and reports required by law to have been filed by it and has paid all federal, state, foreign and other taxes and governmental charges thereby shown to be owing, except any such taxes or charges (a) that are not delinquent, (b) that are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books, or (c) that do not exceed \$500,000.

5.14 Solvency.

On the Closing Date, and immediately prior to and after giving effect to the borrowing hereunder and the use of the proceeds hereof, Borrower and its Subsidiaries, on a consolidated basis, are, and will be, Solvent.

5.15 Environmental Matters.

The on-going operations of Loan Parties comply in all respects with all applicable Environmental Laws, except for non-compliance which could not (if enforced in accordance with applicable law) reasonably be expected to result in a Material Adverse Effect. Each Loan Party has obtained, and maintained in good standing, all licenses, permits, authorizations and registrations required under any Environmental Law and necessary for its respective ordinary course operations, and each Loan Party is in compliance with all material terms and conditions thereof, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. No Loan Party nor any of their respective properties or operations is subject to any outstanding written order from or agreement with any federal, state, or local Governmental Authority, nor subject to any judicial or docketed administrative proceeding, respecting any Environmental Law, Environmental Claim or Hazardous Substance, in each case, except as could not reasonably be expected to result in a Material Adverse Effect. There are no Hazardous Substances or other conditions or circumstances existing with respect to any property, or arising from operations prior to the Closing Date, of any Loan Party that would reasonably be expected to result in a Material Adverse Effect. No Loan Party has underground storage tanks.

5.16 Insurance.

Loan Parties and their respective properties are insured with financially sound and reputable insurance companies which are not Affiliates of any Loan Party, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Parties operate, as applicable. A true and complete listing of such insurance as of the Closing Date, including issuers, coverages and deductibles, is set forth on Schedule 5.16.

5.17 Information.

All written information heretofore or contemporaneously herewith furnished in writing by Borrower to Agent or any Lender for purposes of or in connection with this Agreement and the transactions contemplated hereby, taken as a whole, is, and all written information hereafter furnished by or on behalf of Borrower to Agent or any Lender pursuant hereto or in connection herewith, taken as a whole, will be true and accurate in all material respects on the date as of which such information, taken as a whole, is dated or certified, and none of such information is or will be incomplete by omitting to state any material fact necessary to make such information not misleading in any material respect in light of the circumstances under which made (it being recognized by Agent and Lenders that any projections and forecasts provided by Borrower are based on good faith estimates and assumptions believed by Borrower to be reasonable as of the date of the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may materially differ from projected or forecasted results).

5.18 Intellectual Property: Products and Services.

(a) Schedule 5.18(a) (as updated from time to time in accordance with Section 6.1.2 hereof) accurately and completely lists all of Loan Parties' Registered Intellectual Property. Each Loan Party owns and possesses or has a license or other right to use all Intellectual Property as is necessary for the conduct of the business of such Loan Party, and, to the knowledge of such Loan Party, without any infringement upon the intellectual property rights of others, except as otherwise set forth on Schedule 5.18(a) hereto.

(b) Schedule 5.18(b) (as updated from time to time in accordance with Section 6.1.2 hereof) accurately and completely lists all material Products and Services and all Required Permits in relation thereto.

(c) With respect to any Product or Service being tested, manufactured, marketed, sold, and/or delivered by Loan Parties, the applicable Loan Party has received (or the applicable, authorized third parties have received), and such Product or Service is the subject of, all Required Permits needed in connection with the testing, manufacture, marketing, sale, and/or delivery of such Product or Service by or on behalf of Loan Parties as currently conducted. No Loan Party has received any notice from any applicable Governmental Authority, specifically including the FDA and/or CMS, that such Governmental Authority is conducting an investigation or review (other than a normal routine scheduled inspection) of any Loan Party's (x) manufacturing facilities, laboratory facilities, the processes for such Product, or any related sales or marketing activities and/or the Required Permits related to such Product, and (y) laboratory facilities, the processes for such Services, or any related sales or marketing activities and/or the Required Permits related to such Services. There are no material deficiencies or violations of applicable laws in relation to the manufacturing, processes, sales, marketing, or delivery of such Product or Services and/or the Required Permits related to such Product or Services, no Required Permit has been revoked or withdrawn, nor, to the best of Borrower's knowledge, has any such Governmental Authority issued any order or recommendation stating that the development, testing, manufacturing, sales and/or marketing of

such Product or Services by or on behalf of Loan Parties should cease or be withdrawn from the marketplace, as applicable.

(d) Except as set forth on Schedule 5.18(b), (A) there have been no materially adverse clinical trial results in respect of any Product since the date on which the applicable Loan Party acquired rights to such Product, and (B) there have been no product recalls or voluntary product withdrawals from any market in respect of any material Product since the date on which the applicable Loan Party acquired rights to such Product.

(e) No Loan Party has experienced any significant failures in its manufacturing of any Product which caused any reduction in material Products sold.

5.19 Restrictive Provisions.

No Loan Party is a party to any agreement or contract or subject to any restriction contained in its operative documents which would reasonably be expected to have a Material Adverse Effect.

5.20 Labor Matters.

No Loan Party is subject to any labor or collective bargaining agreement. There are no existing or threatened strikes, lockouts or other labor disputes involving any Loan Party that singly or in the aggregate would reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of each Loan Party are not in violation in any material respect of the Fair Labor Standards Act or any other applicable law, rule, directive or regulation dealing with such matters. Each Loan Party has fully and timely made any and all social benefits and pension contributions and payments required to be made by such Loan Party according to any applicable law or agreement.

5.21 Material Contracts.

Schedule 5.21 sets forth, with respect to each real estate lease agreement to which any Loan Party is a party as of the Closing Date, the address of the subject property. The consummation of the transactions contemplated by the Loan Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than a Loan Party) which could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

5.22 Compliance with Laws; Health Care Laws.

(a) Laws Generally. Each Loan Party is in compliance with, and is conducting and has conducted its business and operations in material compliance with the requirements of all applicable laws, rules, regulations, directives, decrees, orders, judgments and Permits, in each case, except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect.

(b) Health Care Laws. Without limiting the generality of clause (a) above:

(i) No Loan Party is in violation of any applicable Health Care Laws, except for any such violation which would not reasonably be expected (either individually and taken as a whole with any other violations) to have a Material Adverse Effect.

(ii) Each Loan Party (either directly or through one or more authorized third parties) has (i) all licenses, consents, accreditations, certificates, permits, authorizations, approvals, franchises, registrations, qualifications and other rights from, and has made all applicable

declarations and filings with, all applicable Governmental Authorities and self-regulatory authorities (each, an "Authorization") necessary to engage in the business conducted by it, except for such Authorizations with respect to which the failure to obtain would not reasonably be expected to have a Material Adverse Effect, and (ii) no knowledge that any Governmental Authority is considering limiting, suspending or revoking any such Authorization, except where the limitation, suspension or revocation of such Authorization would not reasonably be expected to have a Material Adverse Effect. All such Authorizations are valid and in full force and effect and such Loan Party is in material compliance with the terms and conditions of all such Authorizations and with the rules, guidance documents, directives and regulations of the applicable regulatory authorities having jurisdiction with respect to such Authorizations, except where failure to be in such compliance or for an Authorization to be valid and in full force and effect could not reasonably be expected to have a Material Adverse Effect.

(iii) Each Loan Party has received and maintains accreditation in good standing and without limitation or impairment by all applicable accrediting organizations, to the extent required by applicable law or regulation (including any foreign law or equivalent directive or regulation), except where the failure to be so accredited and in good standing without limitation would not reasonably be expected to have a Material Adverse Effect.

(iv) Except where any of the following would not reasonably be expected to have a Material Adverse Effect, no Loan Party has been, or has been threatened to be, (i) excluded from U.S. health care programs pursuant to 42 U.S.C. §1320(a)7 or any related regulations, (ii) "suspended" or "debarred" from selling products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (48 C.F.R. Subpart 9.4), or other applicable laws, directives or regulations, or (iii) made a party to any other action by any Governmental Authority that may prohibit it from selling products to any governmental or other purchaser pursuant to any federal, state, local or foreign laws, directives or regulations.

(v) No Loan Party has received any written notice from the FDA, CMS, or any other Governmental Authority with respect to, nor to Borrower's best knowledge is there, any actual or threatened investigation, inquiry, or administrative or judicial action, hearing, or enforcement proceeding by the FDA, CMS, or any other Governmental Authority against any Loan Party regarding any violation of applicable law, except for such investigations, inquiries, or administrative or judicial actions, hearings, or enforcement proceedings which, individually and in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.23 Existing Indebtedness; Investments, Guarantees and Certain Contracts

Except as otherwise permitted pursuant to Section 7.1 or Section 7.10, no Loan Party (a) has any outstanding Debt, except Debt under the Loan Documents, or (b) owns or holds any equity or long-term debt investments in, or has any outstanding advances to or any outstanding guarantees for the obligations of, or any outstanding borrowings from, any other Person.

5.24 Affiliated Agreements.

Except as permitted by Section 7.7 and employment agreements entered into with employees, managers, officers and directors from time to time in the ordinary course of business, there are no existing or proposed agreements, arrangements, understandings or transactions between any Loan Party, on the one hand, and such Loan Party's members, managers, managing members, investors, officers,

directors, stockholders, other equity holders, employees, or Affiliates or any members of their respective families, on the other hand.

5.25 Names; Locations of Offices, Records and Collateral; Deposit Accounts.

No Loan Party has conducted business under or used any name (whether corporate, partnership or assumed) other than such names set forth on Schedule 5.25A. Each Loan Party is the sole owner(s) of all of its respective names listed on Schedule 5.25A, and any and all business conducted and invoices issued in such names are such Loan Party's sales, business and invoices. Each Loan Party maintains respective places of business only at the locations set forth on Schedule 5.25B, and all books and records of Loan Parties relating to or evidencing the Collateral are located in and at such locations (other than (i) Deposit Accounts, (ii) Collateral in the possession of Agent, for the benefit of Agent and Lenders, and (iii) other locations disclosed to Agent from time to time in writing). Schedule 7.14 lists all of Loan Parties' Deposit Accounts as of the Closing Date. All of the material tangible Collateral is located exclusively within the United States.

5.26 Non-Subordination.

The payment and performance of the Obligations by Loan Parties are not subordinated in any way to any other obligations of such Loan Parties or to the rights of any other Person.

5.27 Broker's or Finder's Commissions.

Except as set forth in Schedule 5.27, no broker's, finder's or placement fee or commission will be payable to any broker or agent engaged by any Loan Party or any of its officers, directors or agents with respect to the Loan or the transactions contemplated by this Agreement except for fees payable to Agent and Lenders. Borrower agrees to indemnify Agent and each Lender and hold each harmless from and against any claim, demand or liability for broker's, finder's or placement fees or similar commissions, whether or not payable by Borrower, alleged to have been incurred in connection with such transactions, other than any broker's or finder's fees payable to Persons engaged by Agent and/or Lenders.

5.28 Anti-Terrorism; OFAC.

(a) No Loan Party nor any Person controlling or controlled by a Loan Party, nor, to Borrower's knowledge, any Person having a beneficial interest in a Loan Party, nor any Person for whom a Loan Party is acting as agent or nominee in connection with this transaction (1) is a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (2) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such Person in any manner that violates of Section 2 of such executive order, or (3) is a Person on the list of Specially Designated Nationals and Blocked Persons or is in violation of the limitations or prohibitions under any other OFAC regulation or executive order.

(b) No part of the proceeds of the Loan will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

5.29 Security Interest.

Each Loan Party has full right and power to grant to Agent, for the benefit of itself and the other Lenders, a perfected, first priority (subject to Permitted Liens) security interest and Lien on the Collateral pursuant to this Agreement and the other Loan Documents, as applicable, subject to the following sentence. Upon the execution and delivery of this Agreement and the other Loan Documents, and upon the filing of the necessary financing statements and/or appropriate filings and/or delivery of the necessary certificates evidencing any equity interest, control and/or possession, as applicable, without any further action, Agent will have a good, valid and first priority (subject to Permitted Liens) perfected Lien and security interest in the Collateral, for the benefit of Agent and Lenders. Borrower is not party to any agreement, document or instrument that conflicts with this Section 5.29.

5.30 Survival.

Borrower hereby makes the representations and warranties contained herein with the knowledge and intention that Agent and Lenders are relying and will rely thereon. All such representations and warranties will survive the execution and delivery of this Agreement, the closing and the making of the Loan.

Section 6 Affirmative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, it will:

6.1 Information.

Furnish to Agent (which shall furnish to each Lender):

6.1.1 Annual Report.

Within one hundred fifty (150) days after the close of each Fiscal Year a copy of the annual audited report of Borrower and its Subsidiaries for such Fiscal Year, including therein (i) a consolidated balance sheet and statement of earnings and cash flows of Borrower and its Subsidiaries as at the end of and for such Fiscal Year, certified without qualification (except for qualifications relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by Borrower's independent certified public accountants) by independent auditors of recognized standing selected by Borrower and reasonably acceptable to Agent; it being understood that Borrower's auditor as of the Closing Date and any other auditor of nationally recognized standing are acceptable to Agent, and (ii) a comparison with the previous Fiscal Year.

6.1.2 Interim Reports.

(a) Within five (5) days after the quarterly filing thereof with the U.S. Securities and Exchange Commission, unaudited consolidated balance sheets of Loan Parties as of the end of such Fiscal Quarter, together with consolidated statements of earnings and cash flows for such Fiscal Quarter and for the period beginning with the first day of such Fiscal Year and ending on the last day of such Fiscal Quarter, together with a comparison with the corresponding period of the previous Fiscal Year and a comparison with the budget for such period of the current Fiscal Year (which may be in preliminary form), certified by the chief financial officer or other executive officer of Borrower.

(b) Together with each such quarterly report to be delivered pursuant to clause (a) above, Borrower shall provide to Agent (i) a written statement of Borrower's management in setting forth a summary discussion of Borrower's financial condition, changes in financial condition and results of operations, and (ii) updated Schedules to this Agreement, as applicable, setting forth any material changes to the disclosures set forth in such schedules as most recently provided to Agent or, as applicable, a written statement of Borrower's management stating that there have been no changes to such disclosures as most recently provided to Agent.

(c) Within fifteen (15) days after the end of each calendar month, monthly unaudited consolidated balance sheets of Loan Parties as of the end of such month, together with consolidated statements of earnings and cash flows for such month, utilizing the reporting format then in use by Borrower's management, certified by a Responsible Officer of Borrower, in form and substance reasonably acceptable to Agent.

(d) Within five (5) days after the end of each calendar month, a statement of the Consolidated Unencumbered Liquid Assets of Loan Parties as determined on the last day of the prior calendar month, in form and substance reasonably acceptable to Agent.

6.1.3 Quarterly Review Meeting.

Borrower and any other Loan Parties as requested by Agent shall be available in person or via teleconference as and when reasonably requested by Agent and no less frequently than quarterly for a review meeting regarding the status of Borrower, the Collateral and performance of the same.

6.1.4 [Reserved.]

6.1.5 Compliance Certificate.

Contemporaneously with the furnishing of a copy of each annual audit report pursuant to Section 6.1.1 and each set of quarterly statements pursuant to Section 6.1.2 (including, for the avoidance of doubt the quarterly statements delivered for the Fiscal Quarter ending December 31st of each year), a duly completed Compliance Certificate, with appropriate insertions, dated the date of delivery and corresponding to such annual report or such quarterly statements, and signed by a Responsible Officer of Borrower, containing computations, if applicable, showing compliance with Section 7.13 and a statement to the effect that such officer has not become aware of any Event of Default or Default that exists or, if there is any such event, describing it and the steps, if any, being taken to cure it.

6.1.6 Reports to Governmental Authorities and Shareholders.

Promptly upon the filing or sending thereof, copies of (a) all regular, periodic or special material reports of each Loan Party filed with any Governmental Authority (excluding all regular and periodic filings related to Taxes (other than annual income tax filings)), (b) all material registration statements (or such equivalent documents) of each Loan Party filed with any Governmental Authority and (c) all proxy statements or other communications made to the holders of Borrower's Equity Interests generally.

6.1.7 Notice of Default; Litigation.

Promptly upon becoming aware of any of the following, written notice describing the same and summarizing the steps being taken by Borrower or the applicable Loan Party affected thereby with respect thereto:

- (a) the occurrence of an Event of Default;
- (b) any litigation, arbitration or administrative or governmental investigation or proceeding not previously disclosed by Borrower to Lenders which has been instituted or, to the knowledge of Borrower, is threatened in writing against Borrower or any other Loan Party or to which any of the properties of any thereof is subject, which in each case would reasonably be expected to have a Material Adverse Effect;
- (c) the institution of any steps by any member of the Controlled Group or any other Person to terminate any Pension Plan, or the failure of any member of the Controlled Group to make a required contribution to any Pension Plan (if such failure is sufficient to give rise to a Lien under Section 303(k) of ERISA) or to any Multiemployer Pension Plan, or the taking of any action with respect to a Pension Plan which could result in the requirement that Borrower or any other Loan Party furnish a bond or other security to the PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan or Multiemployer Pension Plan which could result in the incurrence by any member of the Controlled Group of any material liability, fine or penalty (including any claim or demand for withdrawal liability or partial withdrawal from any Multiemployer Pension Plan), or any material increase in the contingent liability of Borrower or any other Loan Party with respect to any post-retirement welfare plan benefit, or any notice that any Multiemployer Pension Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise Tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the IRC, that any such plan is or may be terminated, or that any such plan is or may become insolvent, in each case, to the extent such action or event could reasonably be expected to result in a Material Adverse Effect;
- (d) any cancellation or material adverse change in any insurance maintained by Borrower or any other Loan Party;
- (e) any other event (including (i) any violation of any law, including any Environmental Law, or the assertion of any Environmental Claim or (ii) the enactment or effectiveness of any law, rule, directive or regulation) which would reasonably be expected to have a Material Adverse Effect; or
- (f) (i) any suspension, revocation, cancellation or withdrawal of an Authorization required for Borrower or any other Loan Party, is threatened or there is any basis for believing that such Authorization will not be renewable upon expiration or will be suspended, revoked, cancelled or withdrawn, (ii) Borrower or any other Loan Party enters into any consent decree or order pursuant to any Health Care Law and Regulation, or becomes a party to any judgment, decree or judicial or administrative order pursuant to any Health Care Law, (iii) receipt of any written notice or other written communication from the FDA, CMS, or any other applicable Governmental Authority alleging non-compliance with CLIA or any other applicable Health Care Law, (iv) the occurrence of any violation of any Health Care Law by Borrower or any of the other Loan Parties in the development or provision of Services, and record keeping and reporting to the FDA or CMS that would reasonably be expected to require or lead to an investigation, corrective action or enforcement, regulatory or administrative action, (v) the occurrence of any civil or criminal proceedings relating to Borrower or any of the other Loan Parties or any of their respective employees, which involve a matter within or related to the FDA's or CMS' jurisdiction, (vi) any officer, employee or agent of Borrower or any of the other Loan Parties is convicted of any crime or has engaged in any conduct for which debarment is mandated or permitted by 21 U.S.C. § 335a, or (vii) any officer, employee or agent of Borrower or any of the other Loan Parties has been convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

6.1.8 Projections.

Within sixty (60) days after the commencement of each Fiscal Year, financial projections on a quarterly basis for the Loan Parties for such Fiscal Year prepared in a manner consistent with the projections delivered by Borrower to Agent prior to the Closing Date or otherwise in a manner reasonably satisfactory to Agent, accompanied by a certificate of a Responsible Officer of Borrower on behalf of Borrower to the effect that (a) such projections were prepared by them in good faith, (b) Borrower believes that it has a reasonable basis for the assumptions contained in such projections, (c) such projections have been prepared in accordance with such assumptions and (d) such projections have been approved in writing by the Board as the operating plan for the subsequent Fiscal Year.

6.1.9 Updated Schedules to Guarantee and Collateral Agreement

Contemporaneously with the furnishing of each annual audit report pursuant to Section 6.1.1, updated versions of the Schedules to the Guarantee and Collateral Agreement showing information as of the date of such audit report (it being agreed and understood that this requirement shall be in addition to the notice and delivery requirements set forth in the Guarantee and Collateral Agreement).

6.1.10 Other Information.

Promptly, from time to time as Agent reasonably requests, Borrower shall deliver or shall cause to be delivered to Agent:

- (a) copies of any reports, statements or written materials (other than routine communications (electronic or otherwise) between Borrower or its Subsidiaries and such entities that are not material in nature) in relation to any Material Contract;
- (b) such other information concerning Borrower and any other Loan Party as Agent may reasonably request;
- (c) copies of all material communication as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, DEA, or any other Governmental Authority; and
- (d) copies of (x) any notices or other communications relating to any breach, default, or event of default with respect to any Subordinated Debt and (y) any other modifications or amendments entered into in relation to any Subordinated Debt.

Documents required to be delivered pursuant to the terms of this Section 6.1 (to the extent any such documents are included in materials otherwise filed with the U.S. Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower or any of its Subsidiaries posts such documents, or provides a link thereto, on Borrower's or any of its Subsidiaries' website on the internet at Borrower's or any of its Subsidiaries' website address or when such documents are filed with EDGAR.

6.2 Books; Records; Inspections.

6.2.1 Maintain Books and Records

Borrower shall keep, and cause each other Loan Party to keep, its books and records in accordance with sound business practices sufficient to allow the preparation of financial statements in accordance with GAAP.

6.2.2 Access by the Agent etc.

Borrower shall

(a) permit, and cause each other Loan Party to permit (at any reasonable time and with reasonable notice), Agent or any representative thereof to inspect the properties and operations of Borrower or any other Loan Party;

(b) permit, and cause each other Loan Party to permit, at any reasonable time and with reasonable notice (or at any time without notice if an Event of Default exists), Agent (accompanied by any Lender) or any representative thereof to visit any or all of its offices, to discuss its financial matters with its officers and its independent auditors (and Borrower hereby authorizes such independent auditors to discuss such financial matters with any Lender or Agent or any representative thereof), and to examine (and, at the expense of Borrower or the applicable Loan Party, photocopy extracts from) any of its books or other records; and

(c) permit, and cause each other Loan Party to permit, (at any reasonable time and with reasonable notice) Agent and its representatives to inspect the Collateral and other tangible assets of Borrower or Loan Party, to perform appraisals of the equipment of Borrower or Loan Party, and to inspect, audit, check and make copies of and extracts from the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to any Collateral.

Notwithstanding the foregoing, audits and inspections shall not be conducted more than once per year absent the continuance of an Event of Default.

6.3 Conduct of Business; Maintenance of Property; Insurance.

(a) Borrower shall, and shall cause each other Loan Party to, (i) conduct its business substantially in accordance with its current business practices, (ii) engage principally in the same or similar lines of business substantially as heretofore conducted and lines of business ancillary, supplemental or reasonably related thereto, (iii) collect the Royalties in the ordinary course of business, (iv) maintain all of its Collateral used or useful in its business in good repair, working order and condition (normal wear and tear excepted and except as may be disposed of in the ordinary course of business and in accordance with the terms of the Loan Documents), (v) from time to time to make all necessary repairs, renewals and replacements to the Collateral; (vi) maintain and keep in full force and effect all material Permits and qualifications to do business and good standing in its jurisdiction of formation and each other jurisdiction in which the ownership or lease of property or the nature of its business makes such Permits or qualification necessary and in which failure to maintain such Permits or qualification could reasonably be expected to be, have or result in a Material Adverse Effect; (vii) remain in good standing and maintain operations in all jurisdictions in which it is currently located, except where the failure to remain in good standing or maintain operations would not reasonably be expected to be, have or result in a Material Adverse Effect, and (viii) maintain, comply with and keep in full force and effect all Intellectual Property and Permits necessary to conduct its business.

(b) Borrower shall keep, and cause each other Loan Party to keep, all property necessary in the business of Borrower or each other Loan Party in good working order and condition, ordinary wear and tear excepted.

(c) Borrower shall maintain, and cause each other Loan Party to maintain, with responsible insurance companies, such insurance coverage as shall be required by all laws, directives, governmental regulations and court decrees and orders applicable to it and such other insurance, to such extent and against such hazards and liabilities, as is customarily maintained by Persons operating in the same geographical region as Borrower that are (A) subject to CLIA and other applicable Health Care Laws, or (B) otherwise delivering to customers products or services similar to the Services (in each case, as determined by Agent acting in its reasonable discretion). Upon request of Agent or any Lender, Borrower shall furnish to Agent or such Lender a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by Borrower and each other Loan Party. Borrower shall cause each issuer of an insurance policy to provide Agent with an endorsement (x) showing Agent as a lender's loss payee with respect to each policy of property or casualty insurance and naming Agent as an additional insured with respect to each policy of liability insurance promptly upon request by Agent, (y) providing that the insurance carrier will endeavor to give at least thirty (30) days' prior written notice to Borrower and Agent (or ten (10) days' prior written notice if the Agent consents to such shorter notice) before the termination or cancellation of the policy prior to the expiration thereof and (z) reasonably acceptable in all other respects to Agent.

(d) Unless Borrower provides Agent with evidence of the continuing insurance coverage required by this Agreement, Agent (upon reasonable advance notice to Borrower) may purchase insurance at Borrower's expense to protect Agent's and Lenders' interests in the Collateral. This insurance shall protect Borrower's and each other Loan Party's interests. The coverage that Agent purchases shall pay any claim that is made against Borrower or any other Loan Party in connection with the Collateral. Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrower has obtained the insurance coverage required by this Agreement. If Agent purchases insurance for the Collateral, as set forth above, Borrower will be responsible for the reasonable costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance, and such costs of the insurance may be added to the principal amount of the Loans owing hereunder.

6.4 Compliance with Laws; Payment of Taxes and Liabilities.

(a) Comply, and cause each other Loan Party to comply, in all material respects with all applicable laws, rules, regulations, directives, decrees, orders, judgments, licenses and permits, except where failure to comply would not reasonably be expected to have a Material Adverse Effect; (b) without limiting clause (a) above, ensure, and cause each other Loan Party to ensure, that no person who Controls a Loan Party is (i) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (ii) a Person designated under Section 1(b), (c) or (d) or Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders; (c) without limiting clause (a) above, comply and cause each other Loan Party to comply, with all applicable Bank Secrecy Act and anti-money laundering laws, directives and regulations, (d) file, or cause to be filed, all material federal, state, foreign and other Tax returns and reports required by law to be filed by any Loan Party, and (e) pay, and cause each other Loan Party to pay, prior to delinquency, all material foreign, federal, state and other Taxes and other material governmental charges against it or any of its property, as well as material claims of any kind which, if unpaid, could become a Lien (other than a Permitted Lien) on any of its property; provided that the foregoing shall not require Borrower or any other Loan Party to pay any such tax, charge or claim (i) so long as it shall contest the validity thereof in good faith by appropriate

proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP or (ii) to the extent it is less than \$500,000. For purposes of this Section 6.4, "Control" shall mean, when used with respect to any Person, (x) the direct or indirect beneficial ownership of fifty-one percent (51%) or more of the outstanding Equity Interests of such Person or (y) the power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

6.5 Maintenance of Existence.

Maintain and preserve, and (subject to Section 7.4) cause each other Loan Party to maintain and preserve, (a) its existence and good standing in the jurisdiction of its organization and (b) its qualification to do business and good standing in each jurisdiction where the nature of its business makes such qualification necessary, other than any such jurisdiction where the failure to be qualified or in good standing would not reasonably be expected to have a Material Adverse Effect.

6.6 Employee Benefit Plans.

6.6.1 Pension Plans

Except to the extent that failure to do so would not be reasonably expected to result in (a) a Material Adverse Effect or (b) liability in excess of \$500,000 of any Loan Party, maintain, and cause each other Loan Party to maintain, each Pension Plan (if any) in substantial compliance with all applicable requirements of law, directives and regulations.

6.7 Environmental Matters.

Except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, if any release or disposal of Hazardous Substances shall occur or shall have occurred on any real property or any other assets of Borrower or any other Loan Party, cause, or direct the applicable Loan Party to cause, the prompt containment and removal of such Hazardous Substances and the remediation of such real property or other assets as is necessary to comply in all material respects with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, Borrower shall, and shall cause each other Loan Party to, comply with each valid federal or state judicial or administrative order requiring the performance at any real property by Borrower or any other Loan Party of activities in response to the release or threatened release of a Hazardous Substance.

6.8 Further Assurances.

Take, and cause each other Loan Party to take, such actions as are necessary or as Agent or the Required Lenders may reasonably request from time to time to ensure that the Obligations of Borrower and each other Loan Party under the Loan Documents are secured by a perfected Lien in favor of Agent (subject only to the Permitted Liens) on substantially all of the assets of Borrower and each Loan Party (as well as all equity interests of each Loan Party) and guaranteed by each Loan Party (including, promptly upon the acquisition or creation thereof, any Subsidiary of Borrower acquired or created after the Closing Date), in each case including (a) the execution and delivery of guarantees, security agreements, pledge agreements, mortgages, deeds of trust, financing statements and other documents, and the filing or recording of any of the foregoing; (b) the delivery of certificated securities (if any) and other Collateral with respect to which perfection is obtained by possession but excluding (i) the requirement for the Loan Parties to execute and deliver leasehold mortgages, and (ii) any other Excluded Collateral as defined in the Guarantee and Collateral Agreement; and (c) using commercially reasonable efforts to obtain and deliver

executed Collateral Access Agreements in relation to any foreign and domestic location where a material portion of the Collateral is held or otherwise stored from time to time.

6.9 Compliance with Health Care Laws.

(a) Without limiting or qualifying Section 6.4 or any other provision of this Agreement, Borrower will comply, and will cause each other Loan Party to comply, in all material respects with all applicable Health Care Laws relating to the operation of such Person's business, except where failure to comply would not reasonably be expected to have a Material Adverse Effect.

(b) Borrower will, and will cause each other Loan Party to:

(i) Keep in full force and effect all Authorizations required to operate such Person's business under applicable Health Care Laws and maintain any other qualifications necessary to conduct, arrange for, administer, provide services in connection with or receive payment for all applicable Services, except to the extent such failure to keep in full force and effect or maintain would not reasonably be expected to have a Material Adverse Effect.

(ii) Promptly furnish or cause to be furnished to the Agent, (w) copies of all material reports of investigational/inspectional observations issued to and received by the Loan Parties or any of their Subsidiaries, and issued by any Governmental Authority relating to such Person's business, (x) copies of all material establishment investigation/inspection reports (including, but not limited to, FDA Form 483's) issued to and received by Loan Parties or any of their Subsidiaries and issued by any Governmental Authority, (y) copies of all material warnings and material untitled letters as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, DEA, or any other Governmental Authority relating to or arising out of the conduct applicable to the business of the Loan Parties or any of their Subsidiaries that asserts past or ongoing lack of compliance with any Health Care Law or any other applicable foreign, federal, state or local law, directive or regulation of similar import and (z) notice of any material investigation or material audit or similar proceeding by the FDA, DEA, CMS, or any other Governmental Authority.

(iii) Promptly furnish or cause to be furnished to the Agent, (in such form as may be reasonably required by Agent) copies of all non-privileged, reports, correspondence, pleadings and other communications relating to any matter that could lead to the loss, revocation or suspension (or threatened loss, revocation or suspension) of any material Authorization or of any material qualification of any Loan Party or Subsidiary; *provided* that any internal reports to a Person's compliance "hot line" which are promptly investigated and determined to be without merit need not be reported.

(iv) Promptly furnish or cause to be furnished to the Agent notice of all material fines or penalties imposed by any Governmental Authority under any Health Care Law against any Loan Party or any of its Subsidiaries.

(v) Promptly furnish or cause to be furnished to the Agent notice of all material allegations by any Governmental Authority (or any agent thereof) of fraudulent activities of any Loan Party or any of its Subsidiaries in relation to the provision of clinical research or related services.

Notwithstanding anything to the contrary in any Loan Document, no Loan Party or any of its Subsidiaries shall be required to furnish to Agent or any Lender patient-related or other information, the disclosure of which to Agent or such Lender is prohibited by any applicable law.

6.10 Cure of Violations.

If there shall occur any breach of Section 6.9, Borrower shall take such commercially reasonable action as is necessary to validly challenge or otherwise appropriately respond to such fact, event or circumstance within any timeframe required by applicable Health Care Laws, and shall thereafter use commercially reasonable efforts to diligently pursue the same.

6.11 Corporate Compliance Program.

Maintain, and will cause each other Loan Party to maintain on its behalf, a corporate compliance program reasonably acceptable to Agent to ensure continuing compliance in all material respects with all applicable Health Care Laws. Borrower will permit Agent and/or any of its outside consultants to review such corporate compliance programs from time to time upon reasonable notice and during normal business hours of Borrower.

6.12 Payment of Debt.

Except as otherwise prescribed in the Loan Documents, Borrower shall pay, discharge or otherwise satisfy when due and payable (subject to applicable grace periods and, in the case of trade payables, to ordinary course of past payment practices) all of its material obligations and liabilities, except (i) when the amount or validity thereof is being contested in good faith by appropriate proceedings and appropriate reserves shall have been made in accordance with GAAP consistently applied, or (ii) where the failure to make any such payments could not reasonably be expected to result in a Material Adverse Effect.

6.13 Additional Subsidiaries.

(a) **Additional Subsidiaries.** Promptly after the creation or acquisition of any Subsidiary (and, in any event, within thirty (30) days after such creation or acquisition, as such time period may be extended by Agent in its sole discretion), cause such Person to (i) become a Loan Party by delivering to Agent a duly executed supplement to the Guarantee and Collateral Agreement or such other document as Agent shall approve for such purpose, (ii) grant a security interest in all Collateral (but not any Excluded Collateral as defined in the Guarantee and Collateral Agreement) owned by such Subsidiary by delivering to Agent a duly executed supplement to each applicable Collateral Document or such other document as Agent shall reasonably deem appropriate for such purpose and comply with the terms of each applicable Collateral Document, (iii) deliver to Agent such customary opinions, documents and certificates referred to in Section 4.2 as may be reasonably requested by Agent, (iv) deliver to Agent such original certificated Equity Interests or other certificates and stock or other transfer powers evidencing the Equity Interests in such Person, (v) deliver to Agent such updated Schedules to the Loan Documents as reasonably requested by Agent with respect to such Person, (vi) using commercially reasonable efforts to obtain and deliver executed Collateral Access Agreements in relation to any foreign and domestic location where a material portion of the Collateral is held or otherwise stored from time to time, and (vii) deliver to Agent such other documents as may be reasonably requested by Agent in order to comply with this Section 6.13, all in form, content and scope reasonably satisfactory to Agent.

(b) **Merger Subsidiaries.** Notwithstanding the foregoing, to the extent any new Subsidiary is created solely for the purpose of consummating a merger transaction pursuant to an Acquisition permitted hereby, and such new Subsidiary at no time holds any material assets or liabilities

other than any merger consideration contributed to it contemporaneously with the closing of such merger transaction (provided, however, that such merger consideration shall not be held by such new Subsidiary for more than five (5) Business Days without the approval of Agent in its reasonable discretion), such new Subsidiary shall not be required to take the actions set forth in Section 6.13(a) until the consummation of such Acquisition (at which time, the surviving entity of the respective merger transaction shall be required to so comply with Section 6.13(a) within thirty (30) days of the consummation of such Acquisition, as such time period may be extended by Agent in its sole discretion).

6.14 Post-Closing Obligations.

On or before January 31, 2024 (or such longer period as permitted by Agent in its reasonably discretion), Borrower shall deliver endorsements of insurance in effect as required by Section 6.3(c), naming Agent as lender's loss payee and/or additional insured, as applicable, and providing that insurance carrier will endeavor to give at least thirty (30) days' prior written notice to Borrower and Agent (or ten (10) days' prior written notice if the Agent consents to such shorter notice) before the termination or cancellation of the applicable policy prior to the expiration thereof, in each case in form and substance reasonably satisfactory to Agent.

Section 7 Negative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, in its sole discretion, it will:

7.1 Debt.

Not, and not permit any other Loan Party to, create, incur, assume or suffer to exist any Debt, except:

- (a) Obligations under this Agreement and the other Loan Documents;
- (b) Subordinated Debt;
- (c) Debt secured by Liens permitted by Section 7.2(b), Section 7.2(c) or Section 7.2(m) and extensions, renewals and re-financings thereof; *provided* that the aggregate amount of all such Debt permitted under Section 7.2(c) at any time outstanding shall not exceed \$500,000;
- (d) Debt with respect to any Hedging Obligations incurred for bona fide hedging purposes and not for speculation;
- (e) Debt (i) arising from customary agreements for indemnification related to sales of goods, licensing of intellectual property or adjustment of purchase price or similar obligations in any case incurred in connection with the acquisition or disposition of any business, assets or Subsidiary of Borrower otherwise permitted hereunder, (ii) representing deferred compensation to employees of any Loan Party incurred in the ordinary course of business, or (iii) representing trade payables incurred with suppliers in the ordinary course of business and customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;
- (f) Debt with respect to cash management obligations and other Debt in respect of automatic clearing house arrangements, netting services, overdraft protection and similar arrangements, in each case incurred in the ordinary course of business;

(g) Debt incurred in connection with surety bonds, performance bonds or letters of credit for worker's compensation, unemployment compensation and other types of social security and otherwise in the ordinary course of business or referred to in Section 7.2(e);

(h) unsecured Debt (which for further clarity shall exclude accounts payable and other current liabilities incurred by Loan Parties in the ordinary course of business), in addition to the Debt listed above, in an aggregate outstanding amount not at any time exceeding \$500,000;

(i) unsecured Debt among the Loan Parties;

(j) royalties, milestones, installment payments and notes payable incurred in connection with licenses and sublicenses;

(k) Debt consisting of the financing of insurance premiums in the ordinary course of business;

(l) Debt incurred in the ordinary course of business in connection with corporate credit cards, not to exceed Five Hundred Thousand Dollars (\$500,000.00) in the aggregate outstanding at any time;

(m) Indebtedness in the form of purchase price adjustments, earn outs, deferred compensation, or other arrangements representing acquisition consideration or deferred payments of a similar nature incurred in connection with Investments permitted by Section 7.10;

(n) to the extent constituting Debt, Investments permitted by Section 7.10; and

(o) Debt existing on the Closing Date and set forth on Schedule 7.1; and

(p) Unsecured Debt owing under the Fortress Note Documents; provided that prior to Borrower incurring any such Debt, Borrower shall cause such Debt to be subject to a Subordination Agreement.

7.2 Liens.

Not, and not permit any other Loan Party to, create or permit to exist any Lien on any of its real or personal properties, assets or rights of whatsoever nature (whether now owned or hereafter acquired), except:

(a) Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty, or being diligently contested in good faith by appropriate proceedings and for which it maintains adequate reserves in accordance with GAAP;

(b) Liens arising in the ordinary course of business (including without limitation (i) Liens of carriers, warehousemen, mechanics, landlords and materialmen and other similar Liens imposed by law and (ii) Liens incurred in connection with worker's compensation, unemployment compensation and other types of social security or in connection with surety bonds, bids, tenders, performance bonds, trade contracts not for borrowed money, licenses, statutory obligations and similar obligations) for sums not overdue or being diligently contested in good faith by appropriate proceedings and not involving any deposits or advances or borrowed money or the deferred purchase price of property or services and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement of which is effectively stayed;

(c) (i) Liens arising in connection with Capital Leases (and attaching only to the property being leased and the proceeds thereof), (ii) Liens on any property securing debt incurred for the purpose of financing all or any part of the cost of acquiring or improving such property; *provided* that any such Lien attaches to such property within ninety (90) days of the acquisition or improvement thereof and attaches solely to the property so acquired or improved and the proceeds thereof, and (iii) the replacement, extension or renewal of a Lien permitted by one of the foregoing clauses (i) or (ii) in the same property subject thereto arising out of the extension, renewal or replacement of the Debt secured thereby (without increase in the amount thereof);

(d) Liens relating to litigation bonds and attachments, appeal bonds, judgments and other similar Liens arising in connection with any judgment or award that is not an Event of Default hereunder;

(e) easements, rights of way, restrictions, minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of Borrower or any other Loan Party;

(f) Liens arising under the Loan Documents;

(g) any interest or title of a licensor, sublicensor, lessor or sublessor under any license, lease, sublicense or sublease agreement entered into in the normal course of business, only to the extent limited to the item licensed or leased;

(h) (i) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) customary set off rights of deposit banks with respect to deposit accounts maintained at such deposit banks or which are contained in standard agreements for the opening of an account with a bank;

(i) Liens arising from precautionary filings of financing statements under the Uniform Commercial Code or similar legislation of any applicable jurisdiction in respect of operating leases permitted hereunder and entered into by a Loan Party in the ordinary course of business;

(j) Liens attaching to cash earnest money deposits in connection with any letter of intent or purchase agreement permitted hereunder or indemnification other post-closing escrows or holdbacks;

(k) Liens incurred with respect to Hedging Obligations incurred for bona fide hedging purposes and not for speculation;

(l) Liens to secure obligations of a Loan Party to another Loan Party;

(m) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business;

(n) Licenses permitted by Section 7.4(c);

(o) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets);

(p) Utility, lease, contract and similar deposits in the ordinary course of business;

- (q) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due;
- (r) Liens on Subordinated Debt to the extent permitted by the Subordination Agreement applicable thereto; and
- (s) Liens existing on the Closing Date and set forth on Schedule 7.2.

7.3 Dividends; Redemption of Equity Interests.

Not (a) declare, pay or make any dividend or distribution on any Equity Interests or other securities or ownership interests, other than dividends or distributions declared, paid or made to a Loan Party or in the form of Equity Interests, (b) apply any of its funds, property or assets to the acquisition, redemption or other retirement of any Equity Interests or other securities or interests or of any options to purchase or acquire any of the foregoing, (c) otherwise make any payments, dividends or distributions to any member, manager, managing member, stockholder, shareholder, director or other equity owner in such Person's capacity as such other than in compliance with Section 7.7 hereof, or (d) make any payment of any management, service or related or similar fee to any Affiliate or holder of Equity Interests of Borrower other than in compliance with Section 7.7 hereof.

7.4 Mergers; Consolidations; Asset Sales.

(a) Except for Permitted Acquisitions, not be a party to any amalgamation or any other form of Division, demerger, merger or consolidation, unless agreed to by Agent in its sole discretion, nor permit any other Loan Party to be a party to any Division, demerger, amalgamation or any other form of merger or consolidation, unless agreed to by Agent in its reasonable discretion; provided that any Subsidiary may merge with and into a Loan party.

(b) Not, and not permit any other Loan Party to, sell, transfer, dispose of, convey, lease or license any of its real or personal property assets or Equity Interests (each, a "**Disposition**"), except for (i) sales of Inventory in the ordinary course of business for at least fair market value, (ii) transfers, destruction or other disposition of obsolete, surplus or worn-out assets in the ordinary course of business and (iii) at all times subject to Section 2.8.1, any other sales and dispositions of assets (excluding (A) any Equity Interests of Borrower or any Subsidiary or (B) sales of Inventory described in clause (i) above) for at least fair market value (as determined by the Board), (iv) sales and dispositions to Loan Parties, (v) leases, licenses, subleases and sublicenses entered into in the ordinary course of business, including licensing transactions permitted by Section 7.4(c), (vi) sales and exchanges of Cash Equivalent Investments to the extent otherwise permitted hereunder, (vii) Liens expressly permitted under Section 7.2 and transactions expressly permitted by clause (a) or Section 7.10, (viii) sales or issuances of Equity Interests by Borrower, (ix) issuances of Equity Interests by any Loan Party to any other Loan Party, (x) dispositions in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Loan Parties, (xi) a cancellation of any intercompany Debt among the Loan Parties, (xii) a disposition which constitutes an insured event or pursuant to a condemnation, expropriation, "eminent domain" or similar proceeding, (xiii) sales and dispositions among Subsidiaries of Borrower, (xiv) exchanges of existing equipment for new equipment that is substantially similar to the equipment being exchanged and that has a value equal to or greater than the equipment being exchanged, and (xv) sale, transfer, or disposition of Ximino, Eurax, and Exelderm.

(c) Notwithstanding any provision in this Agreement or any other Loan Documents to the contrary, the prior consent of Agent shall not be required in connection with the licensing or sublicensing

(whether in-licensing or out-licensing) of Intellectual Property pursuant to collaborations, licenses or other strategic transactions with third parties executed (i) in the ordinary course of a Loan Party's business, (ii) on an arms-length basis and (iii) as long as no Event of Default has occurred and is continuing.

7.5 Modification of Organizational Documents.

Not permit the charter, by-laws or other organizational documents or constitutional documents of Borrower or any other Loan Party to be amended or modified in any way which could reasonably be expected to materially and adversely affect the interests of Agent or any Lender. An amendment to Borrower's certificate of incorporation to increase Borrower's authorized share capital shall not be deemed to adversely affect the interests of Agent or any Lender.

7.6 Use of Proceeds.

Use the proceeds of the Loans solely to refinance the Prior Debt, if any, and otherwise for working capital, for fees and expenses related to the negotiation, execution, delivery and closing of this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby, and for other general business purposes of Borrower and its Subsidiaries, and not use any proceeds of any Loan or permit any proceeds of any Loan to be used, either directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of "purchasing or carrying" any Margin Stock.

7.7 Transactions with Affiliates.

Not, and not permit any other Loan Party to, enter into, or cause, suffer or permit to exist any transaction, arrangement or contract with any of its other Affiliates, which is on terms which are less favorable than are obtainable from any Person which is not one of its Affiliates, other than (i) reasonable compensation and indemnities to, benefits for, reimbursement of expenses of, and employment arrangements with, officers, employees and directors in the ordinary course of business, (ii) transactions among Loan Parties, (iii) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.7, (iv) the Shared Services Agreement with Fortress Biotech, Inc., dated as of November 12, 2021, (v) Investments permitted by Section 7.10 and transactions permitted by Section 7.3, (vi) the Subordinated Debt in existence as of the Closing Date, and (vii) any tax sharing arrangements entered into in the ordinary course of business.

7.8 Inconsistent Agreements.

Not, and not permit any other Loan Party to, enter into any agreement containing any provision which would (a) be violated or breached by any borrowing by Borrower hereunder or by the performance by Borrower or any other Loan Party of any of its Obligations hereunder or under any other Loan Document, (b) prohibit Borrower or any other Loan Party from granting to Agent and Lenders a Lien on the Collateral or (c) create or permit to exist or become effective any encumbrance or restriction on the ability of any other Loan Party to (i) pay dividends or make other distributions to Borrower or any other Loan Party, or pay any Debt owed to Borrower or any other Loan Party, (ii) make loans or advances to Borrower or any other Loan Party or (iii) transfer any of its assets or properties to Borrower or any other Loan Party, other than, in the cases of clauses (b) and (c), (A) restrictions or conditions imposed by any agreement relating to purchase money Debt, Capital Leases and other secured Debt or to leases and licenses permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Debt or the property leased or licensed, (B) customary provisions in leases, licenses and other contracts restricting the assignment thereof, (C) restrictions and conditions imposed by law, (D) those arising under any Loan Document or any loan documents governing any Subordinated Debt, and (E) customary provisions in contracts for the disposition of any assets; *provided* that the restrictions in any such contract

shall apply only to the assets or Subsidiary that is to be disposed of and such disposition is permitted hereunder.

7.9 Business Activities.

Not, and not permit any other Loan Party to, engage in any line of business other than the businesses engaged in on the Closing Date and businesses reasonably related, ancillary or supplemental thereto or extensions thereof.

7.10 Investments.

Not, and not permit any other Loan Party to, make or permit to exist any Investment in any other Person, except the following:

(a) The creation of any Wholly-Owned Subsidiary and contributions by Borrower to the capital of any Wholly-Owned Subsidiary of Borrower, so long as the recipient of any such contribution has guaranteed the Obligations and such guaranty is secured by a pledge of all of its equity interests and substantially all of its real and personal property, in each case in accordance with Section 6.14;

- (b) Cash Equivalent Investments;
- (c) bank deposits in the ordinary course of business;
- (d) any purchase or other acquisition by Borrower or any Wholly-Owned Subsidiary of Borrower of the assets or equity interests of any Subsidiary of Borrower;
- (e) transactions among Loan Parties;
- (f) Hedging Obligations permitted under Section 7.1(d);
- (g) lease, utility and other similar deposits made in the ordinary course of business and trade credit extended in the ordinary course of business;
- (h) Investments consisting of the non-cash portion of the consideration received in respect of Dispositions permitted hereunder;
- (i) Investments permitted by Borrower or any Loan Party as a result of the receipt of insurance and/or condemnation or expropriation proceeds in accordance with the Loan Documents;
- (j) Investments (i) received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes or (ii) in securities of customers and suppliers received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and bona fide disputes with, customers and suppliers, and, in each case, extensions, modifications and renewals thereof;
- (k) Permitted Acquisitions;
- (l) licensing transactions permitted by Section 7.4(c);
- (m) Investments held by any Person as of the date such Person is acquired in connection with a Permitted Acquisition, provided that such Investments were not made, in any case, by such Person in connection with, or in contemplation of, such Permitted Acquisition;

- (n) Investments received in connection with dispositions permitted by Section 7.4;
- (o) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business;
- (p) Investments consisting of travel advances in the ordinary course of business;
- (q) joint ventures, strategic alliances, collaboration arrangements or non-exclusive licensing arrangements in the ordinary course of a Borrower's business consisting of the nonexclusive licensing of technology, the development of technology or the providing of technical support;
- (r) Investments consisting of loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of Equity Interests of a Borrower pursuant to employee stock purchase plans or other similar agreements approved by such Borrower's Board of Directors; and
- (s) Investments existing on the Closing Date and set forth on Schedule 7.10.

7.11 Restriction of Amendments to Certain Documents

Not, nor permit any Loan Party to, amend or otherwise modify in any material manner, or waive any material rights under, any provisions of any of (i) any loan documents governing any Subordinated Debt (except that the terms of any document governing any Subordinated Debt be amended, modified or otherwise waived to the extent permitted under the applicable subordination agreement that Agent is a party to in connection therewith), or (ii) any Material Contracts (or any replacements thereof) following the occurrence and continuance of an Event of Default; in either case without the written approval of Agent.

7.12 Fiscal Year

Not change its Fiscal Year.

7.13 Financial Covenants

7.13.1 Minimum Consolidated Unencumbered Liquid Assets

(a) Not permit the Consolidated Unencumbered Liquid Assets, as determined on the last day of each calendar month, to be less than the greater of (i) \$2,000,000, or (ii) the Operating Burn for the most recently-completed Fiscal Quarter.

(b) Notwithstanding anything to the contrary contained in this Agreement, in the event that Borrower fails, as determined on the date of receipt by Agent of the interim reports to be delivered pursuant to Section 6.1.2(d) (the "**Liquidity Default Date**"), to comply with the financial covenant set forth in Section 7.13.1(a) above (a "**Liquidity Covenant Default**"), Borrower shall have the right to effect a "cure" of such Liquidity Covenant Default (the "**Liquidity Cure Right**"), subject to the terms and conditions of this Section 7.13.1(b). So long as no other Event of Default has occurred and is continuing, Borrower may exercise the Liquidity Cure Right by (i) notifying Agent in writing of its intent to exercise its Liquidity Cure Right within five (5) Business Days of such Liquidity Default Date (the "**Liquidity Cure Right Notice**") and (ii) providing evidence, acceptable to Agent in its commercially-reasonable discretion, that Borrower has received net cash proceeds in an aggregate amount that is equal to or greater than the amount required to bring Borrower into compliance with the covenant set forth in Section

7.13.1(a) above (the “**Liquidity Cure Amount**”) within thirty (30) Business Days after delivery of the Liquidity Cure Right Notice (each such period, the “**Liquidity Cure Right Exercise Period**”) pursuant to (A) the issuance by Borrower of Subordinated Debt, on terms and conditions satisfactory to Agent in its commercially-reasonable discretion, (B) the issuance by Borrower of additional Equity Interests, on terms and conditions satisfactory to Agent in its commercially-reasonable discretion, (C) the receipt by Loan Parties of cash flow from operations and/or cash realized on Investments held by Loan Parties or (D) some combination of (A)-(C). Upon Borrower’s satisfaction of the requirements set forth in the prior sentence prior to the expiration of the Liquidity Cure Right Exercise Period, the Liquidity Covenant Default shall be deemed cured and no longer continuing. For the avoidance of doubt, Agent and Lenders shall automatically be deemed to reserve all rights and remedies available to them during the occurrence and continuance of an Event of Default (including the right to charge interest on the Obligations at the Default Rate from the Liquidity Default Date) during any Liquidity Cure Right Exercise Period. For the avoidance of doubt, any amounts received during a Liquidity Cure Right Exercise Period in connection with a Revenue Cure Right (as defined below) under Section 7.13.2(b) may be included in determining whether the Liquidity Cure Amount was received under this Section 7.13.1(b) during such Liquidity Cure Right Exercise Period.

7.13.2 Minimum Total Revenue.

(a) Not permit the Total Revenue of the Loan Parties (on a consolidated basis) for the consecutive twelve (12) month period ending on the last Business Day of any Fiscal Quarter set forth in the table below (designated by “Q” in the table below) to be less than the applicable amount set forth in the table below for such period.

Minimum Total Revenue as of the end of:	
Q4 2023	\$49,500,000
Q1 2024	\$51,750,000
Q2 2024	\$53,000,000
Q3 2024	\$54,000,000
Q4 2024 and each Fiscal Quarter thereafter	\$55,000,000

(b) Notwithstanding anything to the contrary contained in the Agreement, in the event that Borrower fails, as determined on the date of receipt by Agent of the interim reports to be delivered pursuant to Section 6.1.2(a) (the “**Revenue Default Date**”), to comply with the financial covenant set forth in Section 7.13.2(a) above (a “**Revenue Covenant Default**”), Borrower shall have the right to effect a “cure” of such Revenue Covenant Default (the “**Revenue Cure Right**”), subject to the terms and conditions of this Section 7.13.2(b). So long as no other Event of Default has occurred and is continuing, Borrower may exercise the Revenue Cure Right by (i) notifying Agent in writing of its intent to exercise its Revenue Cure Right within five (5) Business Days of the Revenue Default Date (the “**Revenue Cure Right Notice**”) and (ii) providing evidence, acceptable to Agent in its commercially-reasonable discretion, that Borrower has received net cash proceeds in an aggregate amount that is equal to or greater than one hundred percent (100%) of the amount by which Borrower’s actual Total Revenue for the applicable reporting period was less than the minimum Total Revenue required pursuant to Section 7.13.2(a) above (the “**Revenue Cure Amount**”) within thirty (30) Business Days after delivery of the Revenue Cure Right.

Notice (each such period, the “**Revenue Cure Right Exercise Period**”) pursuant to the issuance by Borrower of (A) Subordinated Debt, (B) additional Equity Interests or (C) some combination of (A) and (B), in each case on terms and conditions satisfactory to Agent in its commercially-reasonable discretion. Notwithstanding the forgoing, Borrower shall be permitted to exercise the Revenue Cure Right (i) on no more than two (2) occasions during any period of twelve (12) consecutive months, and (ii) a maximum of three (3) occasions during the term of the Loan. Upon Borrower’s satisfaction of the requirements set forth in the prior sentence prior to the expiration of the Revenue Cure Right Exercise Period, the Revenue Covenant Default shall be deemed cured and no longer continuing. For the avoidance of doubt, Agent and Lenders shall automatically be deemed to reserve all rights and remedies available to them during the occurrence and continuance of an Event of Default (including the right to charge interest on the Obligations at the Default Rate from the Liquidity Default Date) during any Revenue Cure Right Exercise Period. Upon any “cure” of a Revenue Covenant Default in accordance with this Section 7.13.2(b), the Revenue Cure Amount shall be deemed to be included in the Total Revenue as of the last Business Day of the Fiscal Quarter giving rise to such Revenue Covenant Default for purposes of calculating Borrower’s Total Revenue for subsequent Fiscal Quarters where the Fiscal Quarter giving Rise to such Revenue Covenant Default would be included in such calculation. For the avoidance of doubt, any amounts received during a Revenue Cure Right Exercise Period in connection with any Liquidity Cure Right under Section 7.13.1(b) may be included in determining whether the Revenue Cure Amount was received under this Section 7.13.2(b) during such Revenue Cure Right Exercise Period, provided that any amounts received in connection with any Liquidity Cure Right during any period other than a Revenue Cure Right Exercise Period shall not be deemed to be included in calculating Borrower’s Total Revenue for any period.

7.13.3 Treatment of Amounts Raised In Connection With Cure Rights

For the avoidance of doubt, any amounts received by Borrower in connection with the issuance of Subordinated Debt and/or Equity Interests pursuant to Section 7.13.1(b) and Section 7.13.2(b) shall be excluded from the calculation of Total Revenue and the Revenue-Based Payment Amount.

7.14 Deposit Accounts.

Not, and not permit any other Loan Party, to maintain or establish any new Deposit Accounts other than (a) Exempt Accounts and (b) the Deposit Accounts set forth on Schedule 7.14 (which Deposit Accounts constitute all of the Deposit Accounts, securities accounts or other similar accounts maintained by the Loan Parties as of the Closing Date) without prior written notice to Agent. Upon the request of Agent at any time following the occurrence of a Material Adverse Effect, Default or Event of Default, Borrower or such other applicable Loan Party shall promptly enter into an Account Control Agreement, in form and substance reasonably satisfactory to Agent, in relation to the Deposit Account(s) selected by Agent.

7.15 Subsidiaries.

Not, and not permit any other Loan Party to, in each case without the prior written consent of Agent in its sole discretion, establish or acquire any Subsidiary unless (i) no Default or Event of Default has occurred and is continuing or would result therefrom, (ii) such Subsidiary shall have assumed and joined each Loan Document as a Loan Party pursuant to documentation acceptable to Agent in its sole discretion and (iii) all other Loan Parties shall have reaffirmed all Obligations as well as all representations and warranties under the Loan Documents (except to the extent such representations and warranties specifically relate to a prior date only).

7.16 Regulatory Matters.

Not, and not permit any other Loan Party to, (i) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any Governmental Authority; or commit a material act, make a material statement, or fail to make a statement in breach of CLIA or that could otherwise reasonably be expected to provide the basis for CMS or any Governmental Authority to undertake action against such Loan Party, (ii) introduce into commercial distribution any FDA Products which are, upon their shipment, adulterated or misbranded in violation of 21 U.S.C. § 331, (iii) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority; or commit a material act, make a material statement, or fail to make a statement in breach of the FD&C Act or that could otherwise reasonably be expected to provide the basis for the FDA or any other Governmental Authority 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 (iv) otherwise incur any material liability (whether actual or contingent) for failure to comply with Health Care Laws.

7.17 Name; Permits; Dissolution; Insurance Policies; Disposition of Collateral; Taxes; Trade Names; Location of Assets; Change of Chief Executive Office.

Borrower shall not, nor shall it permit any Loan Party to, (a) change its jurisdiction of organization, change the jurisdiction in which its chief executive office is located or change its corporate name without thirty (30) calendar days prior written notice to Agent, (b) amend, alter, suspend, terminate or make provisional in any material way, any Permit, the suspension, amendment, alteration or termination of which would reasonably be expected to be, have or result in a Material Adverse Effect without the prior written consent of Agent, which consent shall not be unreasonably withheld, (c) wind up, liquidate or dissolve (voluntarily or involuntarily) or commence or suffer any proceedings seeking or that would result in any of the foregoing, (d) amend, modify, restate or change any insurance policy in a manner adverse to Agent or Lenders or otherwise allow its aggregate products liability insurance coverage to be less than an amount that is commercially reasonable and consistent with customary industry practices, (e) change its federal tax employer identification number or similar tax identification number under the relevant jurisdiction or establish new or additional trade names without providing not less than thirty (30) days advance written notice to Agent, (f) revoke, alter or amend any Tax Information Authorization (on IRS Form 8821 or otherwise) or other similar authorization mandated by the relevant Governmental Authority given to any Lender, or (g) permit any of its material tangible personal property to be located in or relocated to any jurisdiction in which Agent has not registered or perfected its security interest without thirty (30) calendar days prior written notice to Agent.

7.18 Truth of Statements.

Borrower shall not knowingly furnish to Agent or any Lender any certificate or other document that contains any untrue statement of a material fact or that omits to state a material fact necessary to make it not misleading in light of the circumstances under which it was furnished.

Section 8 Events of Default; Remedies.

8.1 Events of Default.

Each of the following shall constitute an Event of Default under this Agreement:

8.1.1 Non-Payment of Credit

(a) Default in the payment when due of all outstanding Obligations on the Termination Date; (b) default in the payment of any Revenue-Based Payment Amount on or before the applicable Payment Date; or (c) without duplication of clause (b) hereof, default, and continuance thereof for five (5) Business Days, in the payment when due of any interest, fee, or other amount payable by any Loan Party hereunder or under any other Loan Document.

8.1.2 Default Under Other Debt

Any "Event of Default" (or such similar defined term) shall occur under the terms applicable to any Debt of any Loan Party (excluding the Obligations) in an aggregate principal amount (for all such Debt so affected and including undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) exceeding \$500,000.

8.1.3 Bankruptcy; Insolvency.

(a) Any Loan Party shall (i) be unable to pay its debts generally as they become due, (ii) file a petition under any insolvency statute, (iii) make a general assignment for the benefit of its creditors, (iv) commence a proceeding for the appointment of a receiver, trustee, interim receiver, receiver and manager, liquidator or conservator of itself or of the whole or any substantial part of its property or shall otherwise be dissolved or liquidated, or (v) make an application or commence a proceeding seeking reorganization or liquidation or similar relief under any Debtor Relief Law or any other applicable law; or

(b) (i) a court of competent jurisdiction shall (A) enter an order, judgment or decree appointing a custodian, receiver, trustee, , interim receiver, receiver and manager, liquidator or conservator of any Loan Party or the whole or any substantial part of any of Loan Party's properties, which shall continue unstayed and in effect for a period of sixty (60) calendar days, (B) approve a petition or claim filed against any Loan Party seeking reorganization, liquidation, appointment of a receiver, interim receiver, liquidator, conservator, trustee or special manager or similar relief under the any Debtor Relief Law or any other applicable law, which is not dismissed within sixty (60) calendar days or, (C) under the provisions of any Debtor Relief Law or other applicable law or statute, assume custody or control of any Loan Party or of the whole or any substantial part of any of Loan Party's properties, which is not irrevocably relinquished within sixty (60) calendar days, or (ii) there is commenced against any Loan Party any proceeding or petition seeking reorganization, liquidation or similar relief under any Debtor Relief Law or any other applicable law or statute, which (A) is not unconditionally dismissed within sixty (60) calendar days after the date of commencement, or (B) is with respect to which Borrower takes any action to indicate its approval of or consent.

8.1.4 Non-Compliance with Loan Documents.

(a) Any failure by Borrower to comply with or to perform any covenant set forth in Section 7; or (b) failure by any Loan Party to comply with or to perform any other provision of this Agreement or any other Loan Document applicable to it (and not constituting an Event of Default under any other provision of this Section 8) and continuance of such failure described in this clause (b) for thirty (30) days after the earlier of any Loan Party becoming aware of such failure or notice thereof to Borrower from Agent or any Lender.

8.1.5 Representations; Warranties.

Any representation or warranty made by any Loan Party herein or any other Loan Document is false or misleading in any material respect when made, or any schedule, certificate, financial statement, report, notice or other writing furnished by any Loan Party to Agent or any Lender in connection herewith is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified and, if such representation or warranty is capable of being cured, remains incorrect for a period of 30 days after the making of such representation or warranty.

8.1.6 Pension Plans.

(a) Institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Loan Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$500,000; (b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA securing obligations in excess of \$500,000; or (c) there shall occur any withdrawal or partial withdrawal from a Multiemployer Pension Plan and the withdrawal liability (without un-accrued interest) to Multiemployer Pension Plans as a result of such withdrawal (including any outstanding withdrawal liability that Borrower or any other Loan Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$500,000.

8.1.7 Judgments.

Final judgments which exceed an aggregate of \$500,000 (to the extent not adequately covered by insurance as to which the insurance company has not disclaimed liability (provided that customary "reservation of rights" letters shall not be deemed to be disclaimers of liability)) shall be rendered against any Loan Party and shall not have been paid, discharged or vacated or had execution thereof stayed pending appeal within thirty (30) calendar days after entry or filing of such judgments.

8.1.8 Invalidity of Loan Documents or Liens.

(a) Any Loan Document shall cease to be in full force and effect otherwise in accordance with its express terms that results in a material diminution of the rights and remedies afforded to Agent and/or Lenders or any other secured parties thereunder; (b) any Loan Party (or any Person by, through or on behalf of any Loan Party) shall contest in any manner the validity, binding nature or enforceability of any Loan Document; or (c) any Lien created pursuant to any Loan Document ceases to constitute a valid first priority perfected Lien (subject to Permitted Liens) on any material portion of the Collateral in accordance with the terms thereof, or Agent ceases to have a valid perfected first priority security interest (subject to Permitted Liens) in any material portion of the Collateral pledged to Agent, for the benefit of Agent and Lenders, pursuant to the Collateral Documents.

8.1.9 Invalidity of Subordination Provisions.

Any subordination provision in any document or instrument governing any Subordinated Debt and any subordination provision in any intercreditor agreement or Subordination Agreement in relation thereto shall cease to be in full force and effect, or any Loan Party shall contest in any manner the validity, binding nature or enforceability of any such provision

8.1.10 Change of Control.

A Change of Control shall occur that does not result in the Payment In Full in accordance with Section 2.8.

8.1.11 Certificate Withdrawals, Adverse Test or Audit Results, and Other Matters

(a) The institution of any proceeding by FDA, CMS, or any other Governmental Authority to order the withdrawal of any Product or Product category or Service or Service category from the market or to enjoin Borrower or any of its Subsidiaries from manufacturing, marketing, selling, distributing, or otherwise providing any Product or Product category or Service or Service category that would reasonably be expected to have a Material Adverse Effect, (b) the institution of any action or proceeding by DEA, FDA, CMS, or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Required Permit held by Borrower or any of its Subsidiaries or any of their representatives, which, in each case, would reasonably be expected to have a Material Adverse Effect, (c) the commencement of any enforcement action against Borrower or any of its Subsidiaries by DEA, FDA, CMS, or any other Governmental Authority that would reasonably be expected to have a Material Adverse Effect, (d) the recall of any Products or Service from the market, the voluntary withdrawal of any Products or Service from the market, or actions to discontinue the sale of any Products or Service that would reasonably be expected to have a Material Adverse Effect, (e) the occurrence of adverse test, audit, or inspection results in connection with a Product or Service which would reasonably be expected to have a Material Adverse Effect, or (f) the occurrence of any event described in clauses (a) through (e) above that would otherwise cause Borrower to be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

8.1.12 Material Adverse Effect.

Any Material Adverse Effect shall occur that is not otherwise provided for in this Section 8.1.

8.2 Remedies.

(a) If any Event of Default described in Section 8.1.3 shall occur, the Loan and all other Obligations shall become immediately due and payable without presentment, demand, protest or notice of any kind; and, if any other Event of Default shall occur and be continuing, Agent may, and upon the written request of Required Lenders shall, declare all or any part of the Loans and other Obligations to be due and payable, whereupon the Loans and other Obligations (including without limitation the Exit Fee and any amounts due pursuant to Section 2.8 hereof, payable with respect thereto) shall become immediately due and payable (in whole or in part, as applicable), all without presentment, demand, protest or notice of any kind. Agent shall use commercially reasonable efforts to promptly advise Borrower of any such declaration, but failure to do so shall not impair the effect of such declaration.

(b) In addition to the acceleration provisions set forth in Section 8.2(a) above, upon the occurrence and continuation of an Event of Default, Agent may (or shall at the request of Required Lenders) exercise any and all rights, options and remedies provided for in any Loan Document, under the Uniform Commercial Code, any other applicable foreign or domestic laws or otherwise at law or in equity, including, without limitation, the right to (i) apply any property of Borrower held by Agent to reduce the Obligations, (ii) foreclose the Liens created under the Loan Documents, (iii) realize upon, take possession of and/or sell any Collateral or securities pledged, with or without judicial process, (iv) exercise all rights and powers with respect to the Collateral as Borrower might exercise, (v) collect and send notices regarding the Collateral, with or without judicial process, (vi) by its own means or with judicial assistance, enter any

premises at which Collateral and/or pledged securities are located, or render any of the foregoing unusable or dispose of the Collateral and/or pledged securities on such premises without any liability for rent, storage, utilities, or other sums, and Borrower shall not resist or interfere with such action, (vii) at Borrower's expense, require that all or any part of the Collateral be assembled and made available to Agent, for the benefit of Lenders, or Required Lenders at any place reasonably designated by Agent, in its sole discretion, and/or relinquish or abandon any Collateral or securities pledged or any Lien thereon.

(c) The enumeration of any rights and remedies in any Loan Document is not intended to be exhaustive, and all rights and remedies of Agent and Lenders described in any Loan Document are cumulative and are not alternative to or exclusive of any other rights or remedies which Agent and Lenders otherwise may have. The partial or complete exercise of any right or remedy shall not preclude any other further exercise of such or any other right or remedy.

(d) Notwithstanding any provision of any Loan Document, Agent, in its sole discretion shall have the right, but not any obligation, at any time that Loan Parties fail to do so, subject to any applicable cure periods permitted by or otherwise set forth in the Loan Documents, and from time to time, without prior notice, to: (i) discharge (at Borrower's expense) taxes or Liens affecting any of the Collateral that have not been paid in violation of any Loan Document or that jeopardize Agent's Lien priority in the Collateral; or (ii) make any other payment (at Borrower's expense) for the administration, servicing, maintenance, preservation or protection of the Collateral (each such advance or payment set forth in clauses (i) and (ii) herein, a "Protective Advance"). Agent shall be reimbursed for all Protective Advances pursuant to Section 2.9.1(b) and/or Section 2.10, as applicable, and any Protective Advances shall bear interest at the Default Rate from the date such Protective Advance is paid by Agent until it is repaid. No Protective Advance by Agent shall be construed as a waiver by Agent, or any Lender of any Default, Event of Default or any of the rights or remedies of Agent or any Lender under any Loan Document.

Section 9 Agent.

9.1 Appointment: Authorization.

Each Lender hereby irrevocably appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent.

9.2 Delegation of Duties.

Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

9.3 Limited Liability.

None of Agent or any of its Affiliates, directors, officers, employees or agents shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement

or any other Loan Document or the transactions contemplated hereby (except to the extent resulting from its own gross negligence or willful misconduct as determined by a court of competent jurisdiction), or (b) be responsible in any manner to any Lender for any recital, statement, representation or warranty made by any Loan Party or Affiliate of any Loan Party, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any Lien or security interest therein), or for any failure of any Loan Party or any other party to any Loan Document to perform its Obligations hereunder or thereunder. Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or Affiliate of any Loan Party.

9.4 Reliance.

Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of Required Lenders (or all Lenders if expressly required hereunder) as it deems appropriate and, if it so requests, confirmation from Lenders of their obligation to indemnify Agent against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of Required Lenders (or all Lenders if expressly required hereunder) and such request and any action taken or failure to act pursuant thereto shall be binding upon each Lender.

9.5 Notice of Default

Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Event of Default or Default and stating that such notice is a "notice of default". Agent will notify Lenders of its receipt of any such notice or any such default in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders. Agent shall take such action with respect to such Event of Default or Default as may be requested by Required Lenders in accordance with Section 8.2; *provided* that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default or Default as it shall deem advisable or in the best interest of Lenders.

9.6 Credit Decision.

Each Lender acknowledges that Agent has not made any representation or warranty to it, and that no act by Agent hereafter taken, including any review of the affairs of Borrower and the other Loan Parties, shall be deemed to constitute any representation or warranty by Agent to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of

Borrower, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except for notices, reports and other documents expressly herein required to be furnished to Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of any Loan Party which may come into the possession of Agent.

9.7 Indemnification.

Whether or not the transactions contemplated hereby are consummated, each Lender shall indemnify upon demand Agent and its Affiliates, directors, officers, employees and agents (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), based on such Lender's Pro Rata Term Loan Share, from and against any and all actions, causes of action, suits, losses, liabilities, damages and out-of-pocket expenses, including Legal Costs, except to the extent any thereof result from the applicable Person's own gross negligence or willful misconduct, as determined by a court of competent jurisdiction. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Legal Costs) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section 9.7 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or modification, release or discharge of, any or all of the Collateral Documents, termination of this Agreement and the resignation or replacement of Agent.

9.8 Agent Individually.

SWK and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any Loan Party and any Affiliate of any Loan Party as though SWK were not Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, SWK or its Affiliates may receive information regarding Loan Parties or their Affiliates (including information that may be subject to confidentiality obligations in favor of any such Loan Party or such Affiliate) and acknowledge that Agent shall be under no obligation to provide such information to them. With respect to their Loans (if any), SWK and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though SWK were not Agent, and the terms "Lender" and "Lenders" include SWK and its Affiliates, to the extent applicable, in their individual capacities.

9.9 Successor Agent.

Agent may resign as Agent at any time upon 30 days' prior notice to Lenders and Borrower (unless during the existence of an Event of Default such notice is waived by Required Lenders). If Agent resigns under this Agreement, Required Lenders shall, with (so long as no Event of Default exists) the consent of Borrower (which shall not be unreasonably withheld or delayed), appoint from among Lenders a successor agent for Lenders. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, on behalf of, and after consulting with Lenders and (so long as no Event of

Default exists) Borrower, a successor agent. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent, and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent becomes effective, the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Agent hereunder until such time, if any, as Required Lenders appoint a successor agent as provided for above; *provided* that in the case of any collateral security held by Agent for the benefit of Lenders under any of the Loan Documents, the retiring Agent shall continue so to hold such collateral security until such time as a successor Agent is appointed and the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit so long as retiring Agent shall continue to so hold such collateral security. Upon the acceptance of a successor's appointment as Agent hereunder, the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents in respect of the Collateral.

9.10 Collateral and Guarantee Matters.

Lenders irrevocably authorize Agent, at its option and in its discretion, (a) to release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement); or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by Required Lenders; (b) notwithstanding Section 10.1(a)(ii) hereof to release any party from its guaranty under the Guarantee and Collateral Agreement (i) when all Obligations have been Paid in Full or (ii) if such party was sold or is to be sold or disposed of as part of or in connection with any disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition being made in compliance with this Agreement); or (c) to subordinate its interest in any Collateral to any holder of a Lien on such Collateral which is permitted by Section 7.2(d) (it being understood that Agent may conclusively rely on a certificate from Borrower in determining whether the Debt secured by any such Lien is permitted by Section 7.1). Upon request by Agent at any time, Lenders will confirm in writing Agent's authority to release, or subordinate its interest in, particular types or items of Collateral pursuant to this Section 9.10.

Agent shall release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full, (ii) in respect of property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement) or (iii) subject to Section 10.1, if directed to do so in writing by Required Lenders.

In furtherance of the foregoing, Agent agrees to execute and deliver to Borrower, at Borrower's expense, such termination and release documentation as Borrower may reasonably request to evidence a Lien release that occurs pursuant to terms of this Section 9.10.

9.11 Intercreditor and Subordination Agreements.

Each Lender hereby irrevocably appoints, designates and authorizes Agent to enter into one or more intercreditor agreements and/or Subordination Agreements in relation to any other Debt of Borrower entered into in accordance with this Agreement or as otherwise approved by Required Lenders, on its behalf and to take such action on its behalf under the provisions of any such agreement (subject to the last sentence of this Section 9.11). Each Lender further agrees to be bound by the terms and conditions of any such intercreditor agreement and Subordination Agreement. Each Lender hereby authorizes Agent to issue blockages notices in connection with any such Debt of Borrower and such intercreditor agreement and Subordination Agreement, or any replacement intercreditor agreement and/or Subordination Agreement, in its discretion or, at the direction of Required Lenders.

9.12 Actions in Concert.

For the sake of clarity, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement, the Notes or any other Loan Document (including exercising any rights of set-off) without first obtaining the prior written consent of Agent and Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement, the Notes and the other Loan Documents shall be taken in concert and at the direction or with the consent of Agent or Required Lenders.

Section 10 Miscellaneous.

10.1 Waiver; Amendments.

(a) Except as otherwise expressly provided in this Agreement, no amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or any of the other Loan Documents shall in any event be effective unless the same shall be in writing and signed by Borrower (with respect to Loan Documents to which Borrower is a party), by Lenders having aggregate Pro Rata Term Loan Shares of not less than the aggregate Pro Rata Term Loan Shares expressly designated herein with respect thereto or, in the absence of such express designation herein, by Required Lenders, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however, that:*

(i) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders directly affected thereby, in addition to Required Lenders and Borrower, do any of the following: (A) increase any of the Commitments (*provided* that only the Lenders participating in any such increase of the Commitments shall be considered directly affected by such increase), (B) extend the date scheduled for payment of any principal of (except as otherwise expressly set forth below in clause (C)), or interest on, the Loans or any fees or other amounts payable hereunder or under the other Loan Documents, or (C) reduce the principal amount of any Loan, the amount or rate of interest thereon, or any fees or other amounts payable hereunder or under the other Loan Documents; and

(ii) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders in addition to Borrower (with respect to Loan Documents to which Borrower is a party), do any of the following: (A) release any material guaranty under the Guarantee and Collateral Agreement or release all or substantially all of the Collateral granted under the Collateral Documents, except as otherwise specifically provided in this Agreement or the other Loan Documents, (B) change the definition of Required Lenders, (C) change any provision of this Section 10.1, (D) amend the provisions of Section 2.10.2 or Section 2.10.4, or (E) reduce

the aggregate Pro Rata Term Loan Shares required to effect any amendment, modification, waiver or consent under the Loan Documents.

(b) No amendment, modification, waiver or consent shall, unless in writing and signed by Agent, in addition to Borrower and Required Lenders (or all Lenders directly affected thereby or all of the Lenders, as the case may be, in accordance with the provisions above), affect the rights, privileges, duties or obligations of Agent (including without limitation under the provisions of Section 9), under this Agreement or any other Loan Document.

(c) No delay on the part of Agent or any Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

10.2 Notices.

All notices hereunder shall be in writing (including via electronic mail) and shall be sent to the applicable party at such party's address set forth beneath its signature on the signature page to this Agreement or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by electronic mail transmission shall be deemed to have been given when sent if sent during regular business hours on a Business Day, otherwise, such deemed delivery will be effective as of the next Business Day; notices sent by mail shall be deemed to have been given five (5) Business Days after the date when sent by registered or certified mail, first class postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed to have been given when received. Borrower, Agent and Lenders each hereby acknowledge that, from time to time, Agent, Lenders and Borrower may deliver information and notices using electronic mail.

10.3 Computations.

Unless otherwise specifically provided herein, any accounting term used in this Agreement shall have the meaning customarily given such term in accordance with GAAP, and all financial computations hereunder shall be computed in accordance with GAAP consistently applied. The explicit qualification of terms or computations by the phrase "in accordance with GAAP" shall in no way be construed to limit the foregoing. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (Codification of Accounting Standards 825-10) to value any Debt or other liabilities of any Loan Party at "fair value", as defined therein.

10.4 Costs; Expenses.

Borrower agrees to pay on demand the reasonable, out-of-pocket costs and expenses of (a) Agent (including Legal Costs) in connection with (i) the preparation, execution, syndication and delivery (including perfection and protection of Collateral) of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith, (ii) the administration of the Loans and the Loan Documents, and (iii) any proposed or actual amendment, supplement or waiver to any Loan Document, and (b) Agent and Lenders (including Legal Costs) in connection with the collection of the Obligations and enforcement of this Agreement, the other Loan Documents or any such other documents. In addition, Borrower agrees to pay and to save Agent and Lenders harmless from all liability for, any fees of Borrower's auditors in connection with any reasonable exercise by Agent and Lenders of their rights pursuant to and to the extent provided in Section 6.2. All

Obligations provided for in this Section 10.4 shall survive repayment of the Loans, cancellation of the Notes, and termination of this Agreement.

10.5 Indemnification by Borrower.

In consideration of the execution and delivery of this Agreement by Agent and Lenders and the agreement to extend the Commitments provided hereunder, Borrower hereby agrees to indemnify, exonerate and hold Agent, each Lender and each of the officers, directors, employees, Affiliates and agents of Agent and each Lender (each a "Lender Party") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including Legal Costs (collectively, the "Indemnified Liabilities"), incurred by Lender Parties or any of them as a result of, or arising out of, or relating to any Loan Party or any of their respective officers, directors or agents, including, without limitation, (a) any tender offer, merger, amalgamation, purchase of equity interests, purchase of assets or other similar transaction financed or proposed to be financed in whole or in part, directly or indirectly, with the proceeds of any of the Loans, (b) the use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any Hazardous Substance at any property owned or leased by Borrower or any other Loan Party, (c) any violation of any applicable Environmental Laws with respect to conditions at any property owned or leased by any Loan Party or the operations conducted thereon, (d) the investigation, cleanup or remediation of offsite locations at which any Loan Party or their respective predecessors are alleged to have directly or indirectly disposed of Hazardous Substances, (e) the execution, delivery, performance or enforcement of this Agreement or any other Loan Document by any Lender Party, except to the extent any such Indemnified Liabilities result solely from the applicable Lender Party's own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction in a non-appealable judgment, or (f) such Person's general operation of its business including all product liability out of or in connection with such Person's or any of its Affiliates or licensees manufacture use or sale of a Product or the provision of a Service. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. All Obligations provided for in this Section 10.5 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement. Notwithstanding the foregoing, this Section 10.5 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

10.6 Marshaling; Payments Set Aside.

Neither Agent nor any Lender shall be under any obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that Borrower makes a payment or payments to Agent or any Lender, or Agent or any Lender enforces its Liens or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent or any Lender in its discretion) to be repaid to a trustee, receiver, interim receiver, receiver and manager, or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (a) to the fullest extent permitted by applicable law, to the extent of such recovery, the obligation hereunder or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred and (b) each Lender severally agrees to pay to Agent upon demand its ratable share of the total amount so recovered from or repaid by Agent to the extent paid to such Lender.

10.7 Non-liability of Lenders.

The relationship between Borrower on the one hand and Lenders and Agent on the other hand shall be solely that of borrower and lender. Neither Agent nor any Lender shall have any fiduciary responsibility to Borrower. Neither Agent nor any Lender undertakes any responsibility to Borrower to review or inform Borrower of any matter in connection with any phase of Borrower's business or operations. To the fullest extent permitted under applicable law, execution of this Agreement by Borrower constitutes a full, complete and irrevocable release of any and all claims which Borrower may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. Neither Agent nor any Lender shall have any liability with respect to, and Borrower hereby, to the fullest extent permitted under applicable law, waives, releases and agrees not to sue for, any special, indirect, punitive or consequential damages or liabilities.

10.8 Assignments.

10.8.1 Assignments.

(a) Any Lender may at any time assign to one or more Persons (other than a Loan Party and their respective Affiliates) (any such Person, an "**Assignee**") all or any portion of such Lender's Loans and Commitments, with the prior written consent of Agent, and, so long as no Event of Default has occurred and is continuing, Borrower (which consents shall not be unreasonably withheld or delayed), provided, however, that no such consent(s) shall be required:

(i) from Borrower for an assignment by a Lender to another Lender, an Affiliate of a Lender, an Approved Fund of a Lender, or any other financial institution that invests in commercial loans in the ordinary course of its business, but such Lender will give written notice to Borrower of any such assignment;

(ii) from Agent for an assignment by a Lender to an Affiliate of a Lender or an Approved Fund of a Lender;

(iii) from Borrower or Agent for an assignment by SWK, as a Lender, to any Person for which SWK Advisors LLC acts as an investment advisor (or any similar type of representation or agency) pursuant to a written agreement, but SWK will give written notice to Borrower of any such assignment;

(iv) from Borrower or Agent for an assignment by a Lender of its Loans and its Note as collateral security to a Federal Reserve Bank or, as applicable, to such Lender's trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder); or

(v) from Borrower, Agent or any Lender for (A) the assignment of SWK's Loans and Commitments to a Permitted Assignee (as defined below) or (B) a collateral assignment by SWK of, and the grant by SWK of a security interest in, all of SWK's right, title and interest in, to and under each of the Loan Documents, including, without limitation, all of SWK's rights and interests in, to and under this Agreement, the Obligations and the Collateral (collectively, the "**Assigned Rights**"), to a Permitted Assignee, provided that no such collateral assignment shall release SWK from any of its obligations under any of the Loan Documents. In connection with any enforcement of or foreclosure upon its security interests in any of the Assigned Rights, a Permitted Assignee, upon notice to Borrower, SWK and the other Lenders, shall be entitled to substitute itself, or its designee, for SWK as a Lender under this Agreement. For purposes hereof,

the term “**Permitted Assignee**” shall mean any lender to or funding source of SWK or its Affiliate, together with its successors, assigns or designees (including, without limitation, any purchaser or other assignee of the Assigned Rights from such Person). Effective immediately upon the replacement of SWK as a Lender under this Agreement by a Permitted Assignee in accordance with this clause (v), SWK shall automatically be deemed to have resigned as Agent pursuant to Section 9.9 of this Agreement (without the need for Agent giving advance written notice of such resignation as required pursuant to such Section 9.9), and Required Lenders shall appoint a successor Agent in accordance with Section 9.9 of this Agreement.

(b) From and after the date on which the conditions described above have been met, (i) such Assignee shall be deemed automatically to have become a party hereto and, to the extent that rights and obligations hereunder have been assigned to such Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder and (ii) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights (other than its indemnification rights) and obligations hereunder. Upon the request of the Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, Borrower shall execute and deliver to Agent for delivery to the Assignee (and, as applicable, the assigning Lender) a Note in the principal amount of the Assignee’s Pro Rata Term Loan Share (and, as applicable, a Note in the principal amount of the Pro Rata Term Loan Share retained by the assigning Lender). Each such Note shall be dated the effective date of such assignment. Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower any prior Note held by it.

(c) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in the United States a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the Commitments of, and principal amount of the Loans owing to, such Lender pursuant to the terms hereof. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent.

(d) Notwithstanding the foregoing provisions of this Section 10.8.1 or any other provision of this Agreement, any Lender may at any time assign all or any portion of its Loans and its Note (i) as collateral security to a Federal Reserve Bank or, as applicable, to such Lender’s trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder) and (ii) to (w) an Affiliate of such Lender which is at least fifty percent (50%) owned (directly or indirectly) by such Lender or by its direct or indirect parent company, (x) its direct or indirect parent company, (y) to one or more other Lenders or (z) to an Approved Fund.

10.9 Participations.

Any Lender may at any time sell to one or more Persons participating interests in its Loans, Commitments or other interests hereunder (any such Person, a “Participant”). In the event of a sale by a Lender of a participating interest to a Participant, (a) such Lender’s obligations hereunder shall remain unchanged for all purposes, (b) Borrower and Agent shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations hereunder and (c) all amounts payable by Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. No Participant shall have any direct or indirect voting rights hereunder except with respect to any event described in Section 10.1 expressly requiring the unanimous vote of all Lenders or, as applicable, all affected Lenders. Each Lender agrees to incorporate the requirements of the preceding

sentence into each participation agreement which such Lender enters into with any Participant. Borrower agrees, to the fullest extent permitted by applicable law, that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided* that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 2.10.4. Borrower also agrees that each Participant shall be entitled to the benefits of Section 3 as if it were a Lender (*provided* that a Participant shall not be entitled to such benefits unless such Participant agrees, for the benefit of Borrower, to comply with the documentation requirements of Section 3.1(c) as if it were a Lender and complies with such requirements, and *provided, further*, that no Participant shall receive any greater compensation pursuant to Section 3 than would have been paid to the participating Lender if no participation had been sold). Any such Lender transferring a participation shall, as an agent for Borrower, maintain in the United States a register to record the names, address, and interest, principal and other amounts owing to, each Participant. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and the Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Participant hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such participation register shall be available for inspection by the Agent or Borrower, at any reasonable time upon reasonable prior written notice from Agent or Borrower.

10.10 Confidentiality.

Borrower, Agent and each Lender agree to use commercially reasonable efforts (equivalent to the efforts Borrower, Agent or such Lender applies to maintain the confidentiality of its own confidential information) to maintain as confidential all information (including, without limitation, any information provided by Borrower pursuant to Sections 6.1, 6.2 and 6.9) provided to them by any other party hereto and/or any other Loan Party, as applicable, except that Agent and each Lender may disclose such information (a) to Persons employed or engaged by Agent or such Lender or any of their Affiliates (including collateral managers of Lenders) in evaluating, approving, structuring or administering the Loans and the Commitments (*provided* that such Persons have been informed of the covenants contained in this Section 10.10); (b) to any assignee, funding source of Agent or any Lender, or participant or potential assignee or participant that has agreed to comply with the covenants contained in this Section 10.10 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any federal or state regulatory authority or examiner, or any insurance industry association, or as reasonably believed by Agent or such Lender to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of Agent's or such Lender's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which Agent or such Lender is a party; (f) to any nationally recognized rating agency or investor of a Lender that requires access to information about a Lender's investment portfolio in connection with ratings issued or investment decisions with respect to such Lender; (g) that ceases to be confidential through no fault of Agent or any Lender; (h) to a Person that is an investor or prospective investor in a Securitization that agrees that its access to information regarding Borrower and the Loans and Commitments is solely for purposes of evaluating an investment in such Securitization and who agrees to treat such information as confidential; or (i) to a Person that is a trustee, collateral manager, servicer, noteholder or secured party in a Securitization in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For purposes of this Section, "Securitization" means a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans or the Commitments. In each case described in clauses (c), (d) and (e) (as such disclosure in clause (e) pertains to litigation only), where the Agent or Lender, as applicable, is compelled to disclose a Loan Party's confidential information,

promptly after such disclosure the Agent or such Lender, as applicable, shall notify Borrower of such disclosure *provided, however,* that neither the Agent nor any Lender shall be required to notify Borrower of any such disclosure (i) to any federal or state banking regulatory authority conducting an examination of the Agent or such Lender, or (ii) to the extent that it is legally prohibited from so notifying Borrower. Notwithstanding the foregoing, Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.11 Captions.

Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

10.12 Nature of Remedies.

All Obligations of Borrower and rights of Agent and Lenders expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.13 Counterparts; Electronic Signatures.

This Agreement and the other Loan Documents may be executed in counterparts with the same effect as if all parties had executed the same document. All counterparts shall be construed together and shall constitute a single agreement. Further, the parties hereto consent and agree that this Agreement and the other Loan Documents may be signed and/or transmitted by e-mail of any .pdf file, .jpeg file, or any other electronic or image file, or any "electronic signature" as defined under the U.S. Electronic Signatures in Global and National Commerce Act or the New York Electronic Signatures and Records Act, which includes any electronic signature provided using Orbit, Adobe Sign, DocuSign, or any other similar platform identified by the parties hereto and reasonably available at no undue burden or expense to the Agent), except to the extent the Agent requires otherwise. Any such electronic signatures shall be valid, effective and legally binding as if such electronic signatures were handwritten signatures and shall be deemed to have been duly and validly delivered for all purposes hereunder. No party hereto shall raise the use of e-mail or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of e-mail or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

10.14 Severability.

The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

10.15 Entire Agreement.

This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

10.16 Successors; Assigns.

This Agreement shall be binding upon Borrower, Lenders and Agent and their respective successors and assigns, and shall inure to the benefit of Borrower, Lenders and Agent and the successors and assigns of Lenders and Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Borrower may not assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of Agent and each Lender.

10.17 Governing Law.

THIS AGREEMENT AND EACH NOTE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE.

10.18 Forum Selection; Consent to Jurisdiction.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN NEW YORK; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HEREBY EXPRESSLY, VOLUNTARILY, AND IRREVOCABLY SUBMITS ITSELF EXCLUSIVELY TO PERSONAL JURISDICTION AND VENUE IN THE DISTRICT COURT OF DALLAS COUNTY, TEXAS AND IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE; SUCH COURTS SHALL BE THE EXCLUSIVE PROPER VENUE FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY HEREBY EXPRESSLY, VOLUNTARILY, AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH PARTY FURTHER EXPRESSLY, VOLUNTARILY, AND IRREVOCABLY CONSENTS TO SERVICE OF PROCESS RELATED TO ANY SUCH LITIGATION AS SET FORTH ABOVE BY FEDERAL EXPRESS OR REGISTERED/CERTIFIED MAIL SENT TO THE APPLICABLE PARTY AT such party's address set forth beneath its signature on the signature page to this Agreement OR AT SUCH OTHER ADDRESS AS SUCH PARTY MAY, BY WRITTEN NOTICE RECEIVED BY THE OTHER PARTIES, HAVE DESIGNATED AS ITS ADDRESS. THE PARTIES AGREE THAT THESE METHODS FOR SERVICE OF PROCESS ARE VALID FOR PURPOSES OF EFFECTING SERVICE OF PROCESS, AS THEY ARE EFFICIENT AND COST-EFFECTIVE ALTERNATIVES TO FORMAL SERVICE OF PROCESS (THE PARTIES MAY EFFECT SERVICE OF PROCESS IN ANY OTHER METHOD ALLOWED UNDER THE LAW IF THEY SO CHOOSE).

10.19 Waiver of Jury Trial.

EACH OF BORROWER, AGENT AND EACH LENDER, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, HEREBY EXPRESSLY, VOLUNTARILY, AND IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT

DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.20 Patriot Act.

Each Lender that is subject to the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), and Agent (for itself and not on behalf of any Lender), hereby notifies each Loan Party that, pursuant to the requirements of the Patriot Act, such Lender and Agent are required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or Agent, as applicable, to identify each Loan Party in accordance with the Patriot Act.

10.21 Independent Nature of Relationship.

Nothing herein contained shall constitute any Loan Party and SWK as a partnership, an association, a joint venture or any other kind of entity or legal form or constitute any party the agent of the other. No party shall hold itself out contrary to the terms of this Section 10.21 and no party shall become liable by any representation, act or omission of the other contrary to the provisions hereof. No Loan Party, Lender, nor SWK has any fiduciary or other special relationship with the other party hereto or any of its Affiliates. The Loan Parties and SWK agree that SWK is not involved in or responsible for the manufacture, marketing or sale of any Product or the provision of any Service.

[Remainder of page intentionally blank; signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

BORROWER:

JOURNEY MEDICAL CORPORATION,
a Delaware corporation

By: _____
Name:
Title:

Address:

9237 E. Via de Ventura Blvd.
Suite 105
Scottsdale, AZ 85258
Email: ***

With a copy to:

Cooley LLP
1299 Pennsylvania Ave NW
Suite 700
Washington, DC 20004
Attention: Mike Tollini
Email: mtollini@cooley.com

[JOURNEY] CREDIT AGREEMENT

AGENT AND LENDER:

SWK FUNDING LLC, a Delaware limited liability company, as Agent and a Lender

By: SWK Holdings Corporation, a Delaware corporation, its sole Manager

By:

Name: Joe D. Staggs

Title: Chief Executive Officer

Address:

SWK Funding LLC
5956 Sherry Lane, Suite 650
Dallas, Texas 75225
Email: notifications@swkhold.com

With a copy to:

Holland & Knight LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Attention: Ryan Magee
Email: Ryan.Magee@hklaw.com

[JOURNEY] CREDIT AGREEMENT

ANNEX I

(intentionally omitted)

[JOURNEY] CREDIT AGREEMENT

**SECOND AMENDMENT TO
CREDIT AGREEMENT**

THIS SECOND AMENDMENT TO CREDIT AGREEMENT (this "Amendment"), dated as of October 21, 2024, is entered into by and among **JOURNEY MEDICAL CORPORATION**, a Delaware corporation ("Borrower"), each of the undersigned financial institutions (individually each a "Lender" and collectively "Lenders") and **SWK FUNDING LLC**, a Delaware limited liability company, in its capacity as administrative agent for the other Lenders (in such capacity, "Agent").

RECITALS

WHEREAS, Borrower, Agent and Lenders entered into that certain Credit Agreement dated as of December 27, 2023 (as the same may be amended, modified or restated from time to time, being hereinafter referred to as the "Credit Agreement"); and

WHEREAS, Borrower, Agent and Lenders have agreed to amend certain provisions of the Credit Agreement as more fully set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

ARTICLE I

Definitions

1.1 Capitalized terms used in this Amendment are defined in the Credit Agreement, as amended hereby, unless otherwise stated.

ARTICLE II

Amendments to Credit Agreement

2.1 Effective as of the date hereof, the Credit Agreement is hereby amended (a) to delete the red or green stricken text (indicated textually in the same manner as the following examples: **stricken text** and **stricken text**) and (b) to add the blue or green double-underlined text (indicated textually in the same manner as the following examples: **double-underlined text** and **double-underlined text**), in each case, as set forth in the changed-page, marked copy of the Credit Agreement, attached as **Exhibit A** hereto and made a part hereof for all purposes.

2.2 Effective as of the date hereof, **Exhibit B** hereto contains the Credit Agreement incorporating all changes set forth in this Amendment as well as all prior amendments to the Credit Agreement.

[Journey] Second Amendment
#510303743

ARTICLE III

Conditions Precedent

3.1 Conditions Precedent. The effectiveness of this Amendment is subject to the satisfaction of the following conditions precedent in a manner satisfactory to Agent, unless specifically waived in writing by Agent in its sole discretion:

- (A). Agent shall have received this Amendment duly executed by Borrower.
- (B). Agent shall have received payment, for the benefit of Lenders, of an amendment fee in the amount of \$15,000, which amendment fee shall be deemed fully-earned and non-refundable as of the date hereof.
- (C). The representations and warranties contained herein and in the Credit Agreement and the other Loan Documents, as each is amended hereby, shall be true and correct in all material respects as of the date hereof, as if made on the date hereof, except for such representations and warranties as are by their express terms limited to a specific date.
- (D). No Default or Event of Default under the Credit Agreement, as amended hereby, shall have occurred and be continuing, unless such Default or Event of Default has been otherwise specifically waived in writing by Agent.

ARTICLE IV

No Waiver, Ratifications, Representations and Warranties

4.1 No Waiver. Nothing contained in this Amendment or any other communication between Agent, any Lender, Borrower or any other Loan Party shall be a waiver of any past, present or future non-compliance, violation, Default or Event of Default of Borrower under the Credit Agreement or any Loan Document. Agent and each Lender hereby expressly reserves any rights, privileges and remedies under the Credit Agreement and each Loan Document that Lender may have with respect to any non-compliance, violation, Default or Event of Default, and any failure by Agent or any Lender to exercise any right, privilege or remedy as a result of the violations set forth above shall not directly or indirectly in any way whatsoever either (i) impair, prejudice or otherwise adversely affect the rights of Agent or any Lender, except as set forth herein, at any time to exercise any right, privilege or remedy in connection with the Credit Agreement or any Loan Document, (ii) amend or alter any provision of the Credit Agreement or any Loan Document or any other contract or instrument or (iii) constitute any course of dealing or other basis for altering any obligation of Borrower or any rights, privilege or remedy of Agent or any Lender under the Credit Agreement or any Loan Document or any other contract or instrument. Nothing in this Amendment shall be construed to be a consent by Agent or any Lender to any prior, existing or future violations of the Credit Agreement or any Loan Document.

4.2 Ratifications. The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Credit Agreement and the other

Loan Documents, and, except as expressly modified and superseded by this Amendment, the terms and provisions of the Credit Agreement and the other Loan Documents are ratified and confirmed and shall continue in full force and effect. Borrower, Lenders and Agent agree that the Credit Agreement and the other Loan Documents, as amended hereby, shall continue to be legal, valid, binding and enforceable in accordance with their respective terms. Borrower agrees that this Amendment is not intended to and shall not cause a novation with respect to any or all of the Obligations.

4.3 Representations and Warranties. Borrower hereby represents and warrants to Agent and Lenders that (a) the execution, delivery and performance of this Amendment, any and all other Loan Documents executed and/or delivered in connection herewith have been authorized by all requisite action (as applicable) on the part of Borrower and will not violate the organizational documents of Borrower; (b) Borrower's directors and/or managers have authorized the execution, delivery and performance of this Amendment, any and all other Loan Documents executed and/or delivered in connection herewith; (c) the representations and warranties contained in the Credit Agreement, as amended hereby, and any other Loan Document are true and correct in all material respects on and as of the date hereof and on and as of the date of execution hereof as though made on and as of each such date (except to the extent such representations and warranties expressly relate to an earlier date); and (d) no Default or Event of Default under the Credit Agreement, as amended hereby, has occurred and is continuing.

ARTICLE V

Miscellaneous Provisions

5.1 Survival of Representations and Warranties. All representations and warranties made in the Credit Agreement or any other Loan Document, including, without limitation, any document furnished in connection with this Amendment, shall survive the execution and delivery of this Amendment and the other Loan Documents, and no investigation by Agent or any Lender or any closing shall affect the representations and warranties or the right of Agent and each Lender to rely upon them.

5.2 Reference to Credit Agreement. Each of the Credit Agreement and the other Loan Documents, and any and all other Loan Documents, documents or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement, as amended hereby, are hereby amended so that any reference in the Credit Agreement and such other Loan Documents to the Credit Agreement shall mean a reference to the Credit Agreement, as amended hereby.

5.3 Expenses of Agent. As provided in the Credit Agreement, Borrower agrees to pay on demand all costs and expenses incurred by Agent, or its Affiliates, in connection with the preparation, negotiation, and execution of this Amendment and the other Loan Documents executed pursuant hereto and any and all amendments, modifications, and supplements thereto, including, without limitation, the reasonable fees and costs of legal counsel, and all costs and expenses incurred by Agent and each Lender in connection with the enforcement or preservation

of any rights under the Credit Agreement, as amended hereby, or any other Loan Documents, including, without, limitation, the reasonable fees and costs of legal counsel.

5.4 Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

5.5 Successors and Assigns. This Amendment is binding upon and shall inure to the benefit of Agent and each Lender and Borrower and their respective successors and assigns, except that no Loan Party may assign or transfer any of its rights or obligations hereunder without the prior written consent of Agent.

5.6 Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. This Amendment may be executed by facsimile or electronic (.pdf) transmission, which facsimile or electronic (.pdf) signatures shall be considered original executed counterparts for purposes of this Section 5.6, and each party to this Amendment agrees that it will be bound by its own facsimile or electronic (.pdf) signature and that it accepts the facsimile or electronic (.pdf) signature of each other party to this Amendment.

5.7 Effect of Waiver. No consent or waiver, express or implied, by Agent to or for any breach of or deviation from any covenant or condition by Borrower shall be deemed a consent to or waiver of any other breach of the same or any other covenant, condition or duty.

5.8 Headings. The headings, captions, and arrangements used in this Amendment are for convenience only and shall not affect the interpretation of this Amendment.

5.9 Applicable Law. THE TERMS AND PROVISIONS OF SECTIONS 10.17 (GOVERNING LAW) AND 10.18 (FORUM SELECTION; CONSENT TO JURISDICTION) OF THE CREDIT AGREEMENT ARE HEREBY INCORPORATED HEREIN BY REFERENCE, AND SHALL APPLY TO THIS AMENDMENT *MUTATIS MUTANDIS* AS IF FULLY SET FORTH HEREIN.

5.10 Final Agreement. THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS, EACH AS AMENDED HEREBY, REPRESENT THE ENTIRE EXPRESSION OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF ON THE DATE THIS AMENDMENT IS EXECUTED. THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS AMENDED HEREBY, MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. NO MODIFICATION, RESCISSION, WAIVER, RELEASE OR AMENDMENT OF ANY PROVISION OF THIS AMENDMENT SHALL BE MADE, EXCEPT BY A WRITTEN AGREEMENT SIGNED BY BORROWER AND AGENT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Amendment has been executed and is effective as of the date first written above.

BORROWER:

JOURNEY MEDICAL CORPORATION,
a Delaware corporation

By: /s/ Joseph Benesch

Name: Joseph Benesch

Title: Chief Executive Officer

[Journey] Second Amendment
#510303743

AGENT AND LENDER:

SWK FUNDING LLC,
as Agent and a Lender

By: SWK Holdings Corporation,
its sole Manager

By: /s/ Joe D. Staggs
Name: Joe D. Staggs
Title: President and CEO

[Journey] Second Amendment
#510303743

Exhibit A
Amendments to Credit Agreement
(Attached)

CREDIT AGREEMENT
among

JOURNEY MEDICAL CORPORATION,
as Borrower,

SWK FUNDING LLC,
as Agent, Sole Lead Arranger and Sole Bookrunner,

and

the financial institutions party hereto from time to time as Lenders

Dated as of December 27, 2023

FOR PURPOSES OF SECTIONS 1272, 1273, AND 1275 OF THE UNITED STATES INTERNAL REVENUE CODE, THIS NOTE IS BEING ISSUED WITH "ORIGINAL ISSUE DISCOUNT." PLEASE CONTACT MICHAEL MINER, VICE PRESIDENT, 5956 SHERRY LANE, SUITE 650, DALLAS, TEXAS 75225, TELEPHONE: TO OBTAIN INFORMATION REGARDING THE ISSUE PRICE, THE ISSUE DATE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, AND THE YIELD TO MATURITY.

[JOURNEY] CREDIT AGREEMENT

definition of "Contract Rate" to ensure that the interest rate payable by Borrower hereunder is substantially similar to the interest rate that would otherwise be paid prior to the selection of such alternate rate of interest), and (ii) in no event shall the "Term SOFR Rate" or any such alternate rate of interest to the Term SOFR Rate ever be less than five percent (5.0%).

Term SOFR Reference Rate means the forward-looking term rate based on SOFR.

Termination Date means the earlier to occur of (a) the Term Loan Maturity Date, or (b) the date upon which the Loan and all other Obligations are Paid in Full, whether as a result of (i) the prepayment of the Term Loan and all Obligations through any other mandatory or voluntary prepayment of the Term Loan in full, (ii) the contractual acceleration of the Loan hereunder, (iii) the acceleration of the Loan by Agent in accordance with this Agreement, or (iv) otherwise.

Total Revenue shall mean (i) revenue of the Borrower and its Subsidiaries on a consolidated basis as determined in accordance with GAAP excluding, plus (ii) up to \$4,500,000 of proceeds received, or to be received, by Borrower pursuant to or otherwise in connection with the Stipulation and Order, dated September 19, 2024, in United States Of America v. All Assets Formerly Contained in Certain Binance Accounts Seized by the Government On Or About February 15, 2022 and All Funds Traceable Thereto to Each Listed Account, including Accrued Interest (Case 1:24-cv-03894-JPC), U.S. District Court, S.D.N.Y., less (iii) the upfront payment in the amount of \$19,000,000 payable pursuant to that certain Exclusive License Agreement, dated as of August 31, 2023, by and between Maruho Co., Ltd. and Borrower.

Trademarks has the meaning set forth in the Guarantee and Collateral Agreement.

Unfinanced Capital Expenditures means capital expenditures (i) not financed with the proceeds of any incurrence of Debt, the proceeds of any sale or issuance of Equity Interests or equity contributions, the proceeds of any asset sale (other than the sale of Inventory in the ordinary course of business) or any insurance proceeds, and (ii) that are not reimbursed by a third person (excluding any Loan Party) in the period such expenditures are made pursuant to a written agreement.

Uniform Commercial Code means the Uniform Commercial Code as in effect in the State of New York; *provided* that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

U.S. Lender means any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

Wholly-Owned Subsidiary means, as to any Person, another Person all of the Equity Interests of which (except directors' qualifying shares) are at the time directly or indirectly owned by such Person and/or another Wholly-Owned Subsidiary of such Person.

1.2 Interpretation.

(a)In the case of this Agreement and each other Loan Document, (i) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms; (ii) Annex, Exhibit, Schedule and Section references are to such Loan Document unless otherwise specified; (iii) the term "including" is not limiting and means "including but not limited to"; (iv) in the computation of

Exhibit B

Conformed Credit Agreement

(Attached)

[JOURNEY] CREDIT AGREEMENT

CREDIT AGREEMENT

among

JOURNEY MEDICAL CORPORATION,
as Borrower,

SWK FUNDING LLC,
as Agent, Sole Lead Arranger and Sole Bookrunner,

and

the financial institutions party hereto from time to time as Lenders

Dated as of December 27, 2023

FOR PURPOSES OF SECTIONS 1272, 1273, AND 1275 OF THE UNITED STATES INTERNAL REVENUE CODE, THIS NOTE IS BEING ISSUED WITH "ORIGINAL ISSUE DISCOUNT." PLEASE CONTACT MICHAEL MINER, VICE PRESIDENT, 5956 SHERRY LANE, SUITE 650, DALLAS, TEXAS 75225, TELEPHONE: TO OBTAIN INFORMATION REGARDING THE ISSUE PRICE, THE ISSUE DATE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, AND THE YIELD TO MATURITY.

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[JOURNEY] CREDIT AGREEMENT

CREDIT AGREEMENT

This Credit Agreement (as may be amended, restated, supplemented, or otherwise modified from time to time, this "Agreement") dated as of December 27, 2023 (the "Closing Date"), among JOURNEY MEDICAL CORPORATION, a Delaware corporation ("Borrower"), the financial institutions party hereto from time to time as lenders (each a "Lender" and collectively, the "Lenders") and SWK Funding LLC, a Delaware limited liability company (in its individual capacity, "SWK"), as Agent for all Lenders.

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

Section 1 Definitions; Interpretation.

1.1 Definitions.

When used herein the following terms shall have the following meanings:

Account Control Agreement means, individually and collectively, any account control agreement, account bank agreement or similar agreement(s) entered into from time to time at Agent's request, among a Loan Party, Agent and any third party bank or financial institution at which such Loan Party maintains a Deposit Account.

Acquisition means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of all or substantially all of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the capital stock, share capital partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, (c) the acquisition of a product license or a product line, or (d) a merger, amalgamation or consolidation or any other combination (other than a merger, amalgamation, consolidation or combination that effects a Disposition) with another Person (other than a Person that is already a Subsidiary).

Affiliate of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any managing member, manager, officer or director of such Person and (c) with respect to any Lender, any entity administered or managed by such Lender or an Affiliate or investment advisor thereof which is engaged in making, purchasing, holding or otherwise investing in commercial loans. Unless expressly stated otherwise herein, neither Agent nor any Lender shall be deemed an Affiliate of Borrower, any Loan Party or any Affiliate thereof.

Agent means SWK in its capacity as administrative and collateral agent for all Lenders hereunder and any successor thereto in such capacity.

Agreement shall have the meaning set forth in the Preamble.

Approved Fund means (a) any fund, trust or similar entity that invests in commercial loans in the ordinary course of business and is advised or managed by (i) a Lender, (ii) an Affiliate of a Lender, (iii) the same investment advisor that manages a Lender or (iv) an Affiliate of an investment advisor that manages a Lender or (b) any finance company, insurance company or other financial institution which temporarily warehouses loans for any Lender or any Person described in clause (a) above.

Assignment Agreement means an agreement substantially in the form of Exhibit A.

Authorization shall have the meaning set forth in Section 5.22(b).

Board means Borrower's board of directors or such similar governing body.

Borrower shall have the meaning set forth in the Preamble.

Business Day means any day on which commercial banks are open for commercial banking business in Dallas, Texas; provided that, with respect to any determination of the Term SOFR Reference Rate, Business Day shall exclude any 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.

Capital Lease means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP in respect of any Person incorporated in the United States of America, is accounted for as a capital lease and as a liability on the balance sheet of such Person.

Cash Equivalent Investment means, at any time, (a) any evidence of Debt, maturing not more than one year after such time, issued or guaranteed by the United States Government or any agency thereof, (b) commercial paper, or corporate demand notes, in each case (unless issued by a Lender or its holding company) rated at least "A-1" by Standard & Poor's Ratings Group or "P-1" by Moody's Investors Service, Inc., (c) any certificate of deposit (or time deposit represented by a certificate of deposit) or banker's acceptance maturing not more than one year after such time, or any overnight Federal funds transaction that is issued or sold by any Lender (or by a commercial banking institution that is a member of the Federal Reserve System or is a U.S. branch of a foreign banking institution and has a combined capital and surplus and undivided profits of not less than \$500,000,000), (d) any repurchase agreement entered into with any Lender (or commercial banking institution of the nature referred to in clause (c) above) which (i) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (a) through (c) above and (ii) has a market value at the time such repurchase agreement is entered into of not less than one-hundred percent (100%) of the repurchase obligation of such Lender (or other commercial banking institution) thereunder, (e) money market accounts or mutual funds which invest exclusively or substantially in assets satisfying the foregoing requirements, (f) cash, and (g) other short term liquid investments approved in writing by Agent.

Change of Control means the occurrence of any of the following, unless such action has been consented to in advance in writing by Agent in its sole discretion:

(i) any Person (other than Fortress Biotech, Inc. and its Affiliates) acquires the direct or indirect ownership of more than fifty percent (50%) of the issued and outstanding total combined voting Equity Interests of Borrower;

(ii) Borrower shall at any time fail to own, directly or indirectly, one hundred percent (100%) of the Equity Interests of each of its Subsidiaries except as otherwise explicitly permitted by this Agreement; or

(iii) the sale of all or substantially all of the assets of Borrower, or any merger, amalgamation, consolidation or acquisition by Borrower which does not result in such Person being the sole surviving entity.

CLIA means (a) the Clinical Laboratory Improvement Act of 1967, as the same may be amended, modified or supplemented from time to time, including without limitation the Clinical Laboratory Improvement Amendments, 42 U.S.C. § 263a et seq. ("CLIA 88"), and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder, or (b) any equivalent state statute

(and any and all rules or regulations promulgated from time to time thereunder) recognized by the relevant Governmental Authority as (x) having an "Equivalency" (as defined by CLIA) to CLIA, and (y) offering a compliance and regulatory framework that is applicable to a Person in such state in lieu of CLIA.

Closing Date shall have the meaning set forth in the Preamble.

Closing Date Term Loan has the meaning set forth in Section 2.2.

CMS means the Centers for Medicare and Medicaid Services of the United States of America.

Collateral has the meaning set forth in the Guarantee and Collateral Agreement.

Collateral Access Agreement means an agreement in form and substance reasonably satisfactory to Agent pursuant to which a mortgagee or lessor of real property on which Collateral (or any books and records) is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory or other property owned by any Loan Party, acknowledges the Liens of Agent and waives (or, if approved by Agent, subordinates) any Liens held by such Person on such property, and, in the case of any such agreement with a mortgagee or lessor, permits Agent reasonable access to any Collateral stored or otherwise located thereon.

Collateral Documents means, collectively, the Guarantee and Collateral Agreement, IP Security Agreement, each Collateral Access Agreement, any mortgage delivered in connection with the Loan from time to time, each Account Control Agreement, if any, and each other agreement or instrument pursuant to or in connection with which any Loan Party or any other Person grants a Lien in any Collateral to Agent for the benefit of Agent and Lenders, each as amended, restated or otherwise modified from time to time.

Commitment means, as to any Lender, such Lender's Pro Rata Term Loan Share.

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

Consolidated Unencumbered Liquid Assets means as of any date of determination, the aggregate amount of unrestricted Cash Equivalent Investments owned by Loan Parties and their Subsidiaries, on a consolidated basis.

Contingent Obligation means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to or otherwise to invest in a debtor, or otherwise to assure a creditor against loss) any indebtedness, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation in respect of any Contingent Obligation shall be deemed to be the amount for which the Person obligated thereon is reasonably expected to be liable or responsible.

Contract Rate means a rate per annum equal to (x) the Term SOFR Rate, plus (y) seven and three-quarters of one percent (7.75%).

Controlled Group means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with a Loan Party, are treated as a single employer under Section 414 of the IRC or Section 4001 of ERISA.

Controlled Substances Act means the Drug Abuse Prevention and Control Act; Title 21 of the United States Code, 13 U.S.C, as amended from time to time.

Copyrights has the meaning set forth in the Guarantee and Collateral Agreement.

DEA means the Federal Drug Enforcement Administration of the United States of America.

Debt of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding (i) trade accounts payable in the ordinary course of business, (ii) royalty payments or cash milestone payments made or to be made by such Person from time to time in connection with an Acquisition or a licensing or sublicensing transaction, (iii) any earn-out obligation unless either such obligation is not paid after becoming due and payable or such obligation is required to be reflected on the Issuer's balance sheet in accordance with GAAP, and (iv) accruals for payroll and deferred compensation arrangements), (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person (with the amount thereof being measured as the lesser of (x) the aggregate unpaid amount of such indebtedness and (y) the fair market value of such property), (f) all reimbursement obligations, contingent or otherwise, with respect to letters of credit (whether or not drawn), banker's acceptances and surety bonds issued for the account of such Person, other than obligations that relate to trade accounts payable in the ordinary course of business, (g) all Hedging Obligations of such Person, (h) all Contingent Obligations of such Person in respect of Debt of others, (i) all indebtedness of any partnership of which such Person is a general partner except to the extent such Person is not liable for such Debt, and (j) all obligations of such Person under any synthetic lease transaction, where such obligations are considered borrowed money indebtedness for tax purposes but the transaction is classified as an operating lease in accordance with GAAP.

Debtor Relief Law means, collectively: (a) Title 11 of the United States Code, 11 U.S.C. § 101 et. seq., as amended from time to time, and (b) all other United States or foreign applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, administration, reorganization or similar debtor relief laws from time to time in effect affecting the rights of creditors generally, in each case as amended from time to time.

Default means any event that, if it continues uncured, will, with the lapse of time or the giving of notice or both, constitute an Event of Default.

Default Rate means a rate per annum equal to the lesser of (i) three percent (3%) over the Contract Rate, or (ii) the maximum rate of interest permitted to be charged by applicable laws, directives or regulations governing this Agreement until paid.

Deposit Account means, individually and collectively, any bank or other depository accounts of a Loan Party.

DFD-29 means NDA 219015.

DFD-29 Advance has the meaning set forth in Section 2.2.

DFD-29 Advance Condition means the satisfaction of the following condition: Borrower shall have provided Agent evidence that Borrower, through its licensing partner and the sponsor of the DFD-29

New Drug Application ("NDA"), Dr. Reddy's Laboratories, Ltd. ("DRL"), has received FDA approval in accordance with the FDA Law and Regulations for DFD-29.

Disposition has the meaning set forth in Section 7.4(b).

Division means, with respect to any Person which is an entity, the division of such Person into two (2) or more separate such Persons, with the dividing Person either continuing or terminating its existence as part of such division, including as contemplated under Section 18-217 of the Delaware Limited Liability Act for limited liability companies formed under Delaware law, or any analogous action taken pursuant to any other applicable law with respect to any corporation, limited liability company, partnership or other entity. The word "Divide," when capitalized, shall have a correlative meaning.

Dollar and \$ mean lawful money of the United States of America.

Drug Application means a new drug application, an abbreviated drug application, or a product license application for any Product, as appropriate, as those terms are defined in the FDA Law and Regulation.

Elapsed Period has the meaning set forth in Section 2.9.1(a).

Environmental Claims means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment or any Person or property.

Environmental Laws means all present or future foreign, federal, state or local laws, statutes, common law duties, rules, regulations, directives, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case relating to any matter arising out of or relating to the effect of the environment on health and safety, or pollution or protection of the environment or workplace, including any of the foregoing relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, discharge, release, control or cleanup of any Hazardous Substance.

Equity Cure has the meaning set forth in Section 8.4.1.

Equity Interests means, with respect to any Person, its equity ownership interests, its common stock and any other capital stock or other equity ownership units of such Person authorized from time to time, its share capital, and any other shares, options, interests, participations or other equivalents (however designated) of or in such Person, whether voting or nonvoting, including, without limitation, common stock, options, warrants, preferred stock, phantom stock, membership units (common or preferred), stock appreciation rights, membership unit appreciation rights, convertible notes or debentures, SAFE's or similar instruments, stock purchase rights, membership unit purchase rights and all securities convertible, exercisable or exchangeable, in whole or in part, into any one or more of the foregoing, but excluding any debt securities convertible into any of the foregoing to the extent not converted.

ERISA means the Employee Retirement Income Security Act of 1974, as amended from time to time.

Event of Default means any of the events described in Section 8.1.

Excluded Taxes has the meaning set forth in Section 3.1(a).

Exempt Accounts means any Deposit Accounts, securities accounts or other similar accounts (i) into which there are deposited no funds other than those intended solely to cover compensation or salary to employees of the Loan Parties (and related contributions to be made on behalf of such employees to health and benefit plans) plus balances for outstanding checks for compensation or salary and such contributions from prior periods; (ii) constituting employee withholding accounts and contain only funds deducted from pay otherwise due to employees for services rendered to be applied toward the Tax obligations of such Person or its employees, or (iii) into which there are deposited no funds other than those received in trust or in escrow, or as cash collateral to secure performance or for Permitted Liens.

Exit Fee has the meaning set forth in Section 2.7(b).

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

FD&C Act means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq., as amended, and all applicable regulations or guidance promulgated by the FDA.

FDA means the Food and Drug Administration of the United States of America.

FDA Law and Regulation means the provisions of the FD&C Act and all applicable regulations or guidance promulgated by the FDA.

FDA Products means any finished products sold by Borrower or any of the other Loan Parties for itself or for a third party that are subject to applicable Health Care Laws.

Federal Funds Effective Rate means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day's Federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding day on which commercial banks are open for commercial banking business in New York, New York, by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 1.00%.

Fiscal Quarter means a calendar quarter of a Fiscal Year.

Fiscal Year means the fiscal year of Borrower, which period shall be the twelve (12) month period ending on December 31 of each year.

Foreign Lender means any Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

Fortress Note Documents means that certain Amended and Restated Future Advance Promissory Note between Fortress Biotech Inc. and the Borrower, and the documents, instruments, and agreements executed in conjunction therewith, as in place on the Closing Date.

FRB means the Board of Governors of the Federal Reserve System or any successor thereto.

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

Governmental Authority means any nation or government, any state or other political subdivision thereof, and any agency, branch of government, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign. Governmental Authority shall include any agency, branch or other governmental body charged with the responsibility and/or vested with the authority to administer and/or enforce any Health Care Laws.

Guarantee and Collateral Agreement means the Guarantee and Collateral Agreement dated as of the Closing Date executed by each Loan Party signatory thereto in favor of Agent for the benefit of Lenders.

Hazardous Substances means hazardous waste, pollutant, contaminant, toxic substance, oil, hazardous material, chemical or other substance regulated by any Environmental Law.

Health Care Laws mean all foreign, federal and state fraud and abuse laws relating to the regulation of healthcare products, pharmaceutical products, laboratory facilities and services, healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors, including but not limited to (i) the federal Anti-Kickback Statute (42 U.S.C. (§1320a-7b(b))), the Stark Law (42 U.S.C. §1395nn and §1395(q)), the civil False Claims Act (31 U.S.C. §3729 et seq.), TRICARE (10 U.S.C. Section 1071 et seq.), Section 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes; (ii) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as amended by the Health Information, Technology for Economic and Clinical Health Act of 2009, and the regulations promulgated thereunder, (iii) Medicare (Title XVIII of the Social Security Act) and the regulations promulgated thereunder; (iv) Medicaid (Title XIX of the Social Security Act) and the regulations promulgated thereunder; (v) the FD&C Act and all applicable requirements, regulations and guidances issued thereunder by the FDA (including FDA Law and Regulation); (vi) the Controlled Substances Act, as amended, and all applicable requirements, regulations and guidances issued thereunder by the DEA; (vii) [reserved]; (viii) quality, safety and accreditation standards and requirements of all applicable foreign and domestic federal, provincial or state laws, directives, regulations or regulatory bodies; (ix) all applicable licensure laws, directives and regulations; (x) all applicable professional standards regulating healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors; and (xi) any and all other applicable health care laws (whether foreign or domestic), regulations, directives, manual provisions, policies and administrative guidance, including those related to the corporate practice of medicine, fee-splitting, state anti-kickback or self-referral prohibitions, each of clauses (i) through (xi) as may be amended from time to time.

Hedging Obligation means, with respect to any Person, any liability of such Person under any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices. The amount of any Person's obligation in respect of any Hedging Obligation shall be deemed to be the incremental obligation that would be reflected in the financial statements of such Person in accordance with GAAP.

Indemnified Taxes has the meaning set forth in Section 3.1(a).

Intellectual Property has the meaning set forth in the Guarantee and Collateral Agreement.

Inventory has the meaning set forth in the Guarantee and Collateral Agreement.

Investment means, with respect to any Person, (a) the purchase of any debt or equity security of any other Person, (b) the making of any loan or advance to any other Person, (c) becoming obligated with respect to a Contingent Obligation in respect of obligations of any other Person (other than travel and similar advances to employees in the ordinary course of business) or (d) the making of an Acquisition.

IP Security Agreement means the Intellectual Property Security Agreement dated on or about the Closing Date by each Loan Party signatory thereto in favor of Agent for the benefit of Lenders.

IRC means the Internal Revenue Code of 1986, as amended.

IRS means the United States Internal Revenue Service.

June 2024 Advance has the meaning set forth in Section 2.2.

Legal Costs means, with respect to any Person, all reasonable, duly documented, out-of-pocket fees and charges of any counsel, accountants, auditors, appraisers, consultants and other professionals to such Person, and all court costs and similar legal expenses.

Lenders has the meaning set forth in the Preamble.

Lien means, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person which secures payment or performance of any obligation and shall include any mortgage (whether legal or equitable), lien, encumbrance, charge, pledge, assignment by way of security or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

Loan or Loans means, individually and collectively the Term Loan and any other advances made by Agent and Lenders in accordance with the Loan Documents.

Loan Documents means this Agreement, any Notes, any intercreditor agreements, any Subordination Agreement, the Collateral Documents and all documents, instruments and agreements delivered in connection with the foregoing.

Loan Party means Borrower and each of its Subsidiaries.

Margin Stock means any "margin stock" as defined in Regulation T, U or X of the FRB.

Material Adverse Effect means (a) a material adverse change in, or a material and adverse effect upon, the financial condition, operations, assets, or business of Loan Parties and their Subsidiaries taken as a whole, (b) a material impairment of the ability of any Loan Party to perform any of its payment Obligations under any Loan Document or (c) a material and adverse effect upon any material portion of the Collateral under the Collateral Documents or upon the legality, validity, binding effect or enforceability against any Loan Party of any material Loan Document.

Material Contract means each "material definitive agreement" identified as such in Borrower's public filings with the U.S. Securities and Exchange Commission to the extent the loss or termination of any such contract would reasonably be expected to result in a Material Adverse Effect.

Multiemployer Pension Plan means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which Borrower or any member of the Controlled Group may have any liability.

Net Cash Proceeds means, with respect to any Disposition, the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance and by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) received by any Loan Party pursuant to such Disposition net of (i) the reasonable direct costs relating to such Disposition (including sales commissions and legal, accounting and investment banking fees, commissions and expenses), (ii) any portion of such proceeds deposited in an escrow account pursuant to the documentation relating to such Disposition (provided that such amounts shall be treated as Net Cash Proceeds upon their release from such escrow account to and receipt by the applicable Loan Party), (iii) Taxes and other governmental costs and expenses paid or reasonably estimated by a Loan Party to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (iv) amounts required to be applied to the repayment of any Debt (together with any interest thereon, premium or penalty and any other amount payable with respect thereto) secured by a Lien that has priority over the Lien, if any, of Agent on the asset subject to such Disposition, (v) reserves for purchase price adjustments and retained liabilities reasonably expected to be payable by the Loan Parties in connection therewith established in accordance with GAAP (provided that upon the final determination of the amount paid in respect of such purchase price adjustments and retained liabilities, the actual amount of purchase price adjustments and retained liabilities paid is less than such reserves, the difference shall, at such time, constitute Net Cash Proceeds) and (vi) with respect to any Disposition, all money actually applied within one hundred eighty (180) days to purchase assets used or useful in the business of the Loan Parties and their Subsidiaries.

Note means a promissory note substantially in the form of Exhibit C.

Obligations means all liabilities, indebtedness and obligations (monetary (including post-petition interest, allowed or not) or otherwise) of any Loan Party under this Agreement, any other Loan Document or any other document or instrument executed in connection herewith or therewith which are owed to any Lender or Affiliate of a Lender, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. For the avoidance of doubt, "Obligations" shall include Borrower's obligation to pay any amounts due under Sections 2.7 and 2.8.2 and payable on such date of determination.

OFAC means the U.S. Department of Treasury's Office of Foreign Asset Control.

Operating Burn means, for any period being measured, the product of (x) -1 and (y) the sum of (i) aggregate net cash used in operating activities from operations of Loan Parties, plus (ii) Unfinanced Capital Expenditures, less (iii) DFD-29 FDA submission related expenses including the approximate \$4,048,695 user fee under the Prescription Drug User Fee Act to FDA for NDA submission; \$3,000,000 NDA acceptance milestone payable to DRL; and \$15,000,000 NDA approval milestone to DRL, pursuant to, and in accordance with, that certain Assignment, License, and Collaboration Agreement, between DRL and Borrower, dated June 29, 2021, less (iv) any other one-time or extraordinary expenses made within such measurement period, as mutually agreed upon by Agent and Borrower, in each case as determined from the cash flow statement provided by Borrower and in accordance with GAAP.

Origination Fee shall have the meaning set forth in Section 2.7(a).

Paid in Full, Pay in Full or Payment in Full means, with respect to any Obligations, the payment in full in cash of all such Obligations (other than contingent indemnification obligations, yield protection and expense reimbursement to the extent no claim giving rise thereto has been asserted in respect of contingent

indemnification obligations, and to the extent no amounts therefor have been asserted, in the case of yield protection and expense reimbursement obligations, which Obligations shall survive the Payment in Full of the Obligations).

Patents has the meaning set forth in the Guarantee and Collateral Agreement.

Payment Date means the fifteenth (15th) day of each of February, May, August and November (or the next succeeding Business Day to the extent such 15th day is not a Business Day), commencing with February 15, 2024.

PBGC means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its material functions under ERISA.

Pension Plan means a "pension plan", as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Pension Plan), and to which Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

Permit means, with respect to any Person, any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, including without limitation all registrations with Governmental Authorities.

Permitted Acquisition means any Acquisition so long as:

(a) both immediately before and immediately after the consummation of such Acquisition, no Default, Event of Default or Material Adverse Effect shall have occurred and be continuing or result therefrom;

(b) the Acquisition shall be with respect to an operating company or division or line of business that engages in, and that substantially all of the sales and operating profits generated by such company or division or line of business are in, a line of business substantially similar, reasonably related, ancillary or incidental to the principal business in which the Borrower is engaged;

(c) the board of directors (or other comparable governing body) of the Person to be acquired or owning such assets or Equity Interests (and, if required, the holders of any Equity Interests in such Person) shall have duly approved such Acquisition;

(d) Agent shall have received written notice not less than ten (10) Business Days' prior to the closing of the proposed Acquisition and such information with respect thereto as Agent may reasonably request and which is then readily available, including (i) the proposed date and amount of the Acquisition, (ii) a list and description of the assets or Equity Interests to be acquired and (iii) the total purchase price for the assets or Equity Interests to be purchased (and the terms of payment of such purchase price); and

(e) the total cash consideration (excluding the proceeds of concurrent equity issuances) shall not exceed \$5,000,000 per year for all such Acquisitions.

Permitted Liens means Liens permitted by Section 7.2.

Person means any natural person, corporation, partnership, trust, limited liability company, association, Governmental Authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

Prior Debt means the Debt listed on Schedule 4.1.

Pro Rata Term Loan Share means, with respect to any Lender, the applicable percentage (as adjusted from time to time in accordance with the terms hereof) specified opposite such Lender's name on Annex I which percentage represents the aggregate percentage of the Term Loan Commitment held by such Lender, which percentage shall be with respect to the outstanding balance of the Term Loan as of any date of determination after the Term Loan Commitment has terminated.

Product means any products manufactured, sold, developed, tested or marketed by Borrower or any of its Subsidiaries, including, without limitation, those products set forth on Schedule 5.18(b) (as updated from time to time in accordance with Section 6.1.2); *provided, however*, that if Borrower shall fail to comply with the obligations under Section 6.1.2 to give notice to Agent and update Schedule 5.18(b) prior to manufacturing, selling, developing, testing or marketing any new Product, any such improperly undisclosed Product shall be deemed to be included in this definition; and *provided, further*, that products manufactured by Borrower for unaffiliated third parties shall not be deemed "Products" hereunder.

Registered Intellectual Property means all applications, registrations and recordings for or of Patents, Trademarks or Copyrights filed by a Loan Party with any Governmental Authority, all internet domain name registrations owned by a Loan Party, and all proprietary software owned by a Loan Party.

Required Lenders means Lenders having an aggregate Pro Rata Term Loan Share in excess of fifty percent (50%), collectively.

Required Permit means a Permit (a) required under applicable law for the business of Borrower or any of its Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under any laws applicable to the business of Borrower or any of its Subsidiaries (including, without limitation, any applicable Health Care Laws) or any Drug Application (including without limitation, at any point in time, all licenses, approvals and permits issued by the FDA, CMS, or any other applicable Governmental Authority necessary for the testing, manufacture, marketing or sale of any Product by Borrower or any of its Subsidiaries as such activities are being conducted by such Person with respect to such Product at such time), and (b) required by any Person from which Borrower or any of its Subsidiaries have received an accreditation.

Responsible Officer means (a) the chief executive officer, chief operating officer, or chief financial officer a Person, and (b) in respect of any other Person, the president, vice president or secretary of such Person, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants or delivery of financial information, the chief financial officer, the treasurer or the controller of such Person, or any other officer having substantially the same authority and responsibility, and in all cases such person shall be listed on an incumbency certificate delivered to Agent, in form and substance acceptable to Agent in its sole discretion.

Revenue-Based Payment Amount has the meaning set forth in Section 2.9.1(a).

Royalties means the amount of any and all royalties, license fees and any other payments or income of any type recognized as revenue in accordance with GAAP by the Loan Parties with respect to the sale of Products or the provision of services by independent licensees or sublicensees of Borrower and/or its

Subsidiaries, including any such payments characterized as a share of net profits, any up-front or lump sum payments, any milestone payments, commissions, fees or any other similar amounts, less deductions for amounts deducted, repaid or credited by reason of adjustments to the sales upon which royalty amounts are based, regardless of the reason for such adjustment to such sales. For the purposes of calculating Royalties, Lenders and Agent understand and agree that Affiliates of Borrower shall not be regarded as independent licensees.

Services means services provided by Borrower or any Subsidiary of Borrower to un-Affiliated Persons, including without limitation any sales, laboratory analysis, testing, consulting, marketing, commercialization and any other healthcare-related services.

SOFR shall mean a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

SOFR Administrator shall mean 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 is greater than the amount of such Person's liabilities (including disputed, contingent, prospective, unmatured and unliquidated liabilities); (b) the present fair saleable 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 pay its debts and other liabilities (including subordinated, disputed, contingent, unmatured and unliquidated 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; (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; (f) such Person has not admitted in writing its inability generally to pay its debts as they become due or suspended or threatened to suspend making payments on any of its debts; and (g) such Person, by reason of actual or anticipated financial difficulties, has not commenced negotiations with one or more of its creditors (excluding the Agent or any Lender in its capacity as such) with a view to rescheduling any of its indebtedness.

Spot Rate means the exchange rate, as determined by Agent, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source designated by Agent) as of the end of the preceding Business Day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding Business Day in Agent's principal foreign exchange trading office for the first currency.

Subordinated Debt means any Debt incurred by Borrower and/or any other Loan Party that is subordinated to the Obligations pursuant to a subordination agreement entered into between Agent, any applicable Loan Party and the subordinated creditor(s) upon terms acceptable to Agent in its sole discretion.

Subordination Agreement means any subordination agreement that may be executed from time to time in connection with any Subordinated Debt.

Subsidiary means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding shares or other equity interests as to have more than fifty percent (50%) of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity.

Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to direct and indirect Subsidiaries of Borrower.

SWK has the meaning set forth in the Preamble.

Tax or Taxes has the meaning set forth in Section 3.1(a).

Term Loan has the meaning set forth in Section 2.2.

Term Loan Commitment means \$25,000,000.

Term Loan Maturity Date means December 27, 2027.

Term SOFR Administrator means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Agent in its reasonable discretion after consultation with Borrower).

Term SOFR Rate means the Term SOFR Reference Rate for a three (3) month period that is ten (10) Business Days prior to each Payment Date (such day, the "Periodic Term SOFR Determination Day"), and effective on the Payment Date immediately following such determination date and continuing to but not including the next succeeding Payment Date, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such three (3) month period, as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate was published by the Term SOFR Administrator. Notwithstanding the foregoing, (i) if at any time Agent determines (which determination shall be conclusive absent manifest error) that the Term SOFR Rate is no longer available for determining interest rates for loans or notes similar to the Loans, then Agent shall, in consultation with Borrower, endeavor to establish an alternate rate of interest to the Term SOFR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for loans or notes similar to the Loans in the United States at such time, and, if requested by Agent, Agent and Lenders at such time party hereto and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (including, for the avoidance of doubt, any amendments to the definition of "Contract Rate" to ensure that the interest rate payable by Borrower hereunder is substantially similar to the interest rate that would otherwise be paid prior to the selection of such alternate rate of interest), and (ii) in no event shall the "Term SOFR Rate" or any such alternate rate of interest to the Term SOFR Rate ever be less than five percent (5.0%).

Term SOFR Reference Rate means the forward-looking term rate based on SOFR.

Termination Date means the earlier to occur of (a) the Term Loan Maturity Date, or (b) the date upon which the Loan and all other Obligations are Paid in Full, whether as a result of (i) the prepayment of the Term Loan and all Obligations through any other mandatory or voluntary prepayment of the Term Loan in full, (ii) the contractual acceleration of the Loan hereunder, (iii) the acceleration of the Loan by Agent in accordance with this Agreement, or (iv) otherwise.

Total Revenue shall mean (i) revenue of the Borrower and its Subsidiaries on a consolidated basis as determined in accordance with GAAP, plus (ii) up to \$4,500,000 of proceeds received, or to be received, by Borrower pursuant to or otherwise in connection with the Stipulation and Order, dated September 19, 2024, in *United States Of America v. All Assets Formerly Contained in Certain Binance Accounts Seized*

by the Government On Or About February 15, 2022 and All Funds Traceable Thereto to Each Listed Account, including Accrued Interest (Case 1:24-cv-03894-JPC), U.S. District Court, S.D.N.Y. , less (iii) the upfront payment in the amount of \$19,000,000 payable pursuant to that certain Exclusive License Agreement, dated as of August 31, 2023, by and between Maruho Co., Ltd. and Borrower.

Trademarks has the meaning set forth in the Guarantee and Collateral Agreement.

Unfinanced Capital Expenditures means capital expenditures (i) not financed with the proceeds of any incurrence of Debt, the proceeds of any sale or issuance of Equity Interests or equity contributions, the proceeds of any asset sale (other than the sale of Inventory in the ordinary course of business) or any insurance proceeds, and (ii) that are not reimbursed by a third person (excluding any Loan Party) in the period such expenditures are made pursuant to a written agreement.

Uniform Commercial Code means the Uniform Commercial Code as in effect in the State of New York; *provided* that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

U.S. Lender means any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

Wholly-Owned Subsidiary means, as to any Person, another Person all of the Equity Interests of which (except directors' qualifying shares) are at the time directly or indirectly owned by such Person and/or another Wholly-Owned Subsidiary of such Person.

1.2 Interpretation.

(a) In the case of this Agreement and each other Loan Document, (i) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms; (ii) Annex, Exhibit, Schedule and Section references are to such Loan Document unless otherwise specified; (iii) the term "including" is not limiting and means "including but not limited to"; (iv) 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"; (v) unless otherwise expressly provided in such Loan Document, (A) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto, but only to the extent such amendments, restatements and other modifications are not prohibited by the terms of any Loan Document, and (B) references to any statute, directive or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute, directive or regulation; (vi) this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, all of which are cumulative and each shall be performed in accordance with its terms and (vii) this Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to Agent, Borrower, Lenders and the other parties hereto and thereto and are the products of all parties; accordingly, they shall not be construed against Borrower, Agent or Lenders merely because of Borrower's, Agent's or Lenders' involvement in their preparation. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of Agent's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (x) within the sole and absolute discretion of Agent and/or Lenders; and (y) deemed to have been given only by a specific writing intended for such purpose executed by Agent.

(b) For purposes of converting any amount denominated in any currency other than Dollars to Dollars under or in connection with the Loan Documents, Agent shall calculate such currency conversion using the current Spot Rate.

(c) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Agent and the Lenders 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.

(d) Notwithstanding anything to the contrary contained in this Agreement, all obligations that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the "ASU") shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purposes of the Loan Documents (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retrospective basis or otherwise) to be treated as capitalized lease obligations in the financial statements to be delivered pursuant to the Loan Documents.

Section 2 Credit Facility.

2.1 [Reserved].

2.2 Loan Procedures.

(a) The Lenders, severally and for themselves alone, made a term loan to Borrower on the Closing Date in the original principal amount of \$15,000,000 (the "**Closing Date Term Loan**").

(b) On or about June 26, 2024, Lenders, severally and for themselves alone, made an additional advance to Borrower in the original principal amount of \$5,000,000, resulting in an aggregate, unpaid principal balance of the Term Loan of \$20,000,000 immediately following such advance (the "**June 2024 Advance**").

(c) Upon satisfaction of the DFD-29 Advance Condition on or before June 30, 2025, Lenders shall make one (1) additional advance (within five (5) Business Days of satisfaction of such DFD-29 Advance Condition) to Borrower in the amount equal to, but not less than, such lender's Pro Rata Share of \$5,000,000 (the "**DFD-29 Advance**"). For the avoidance of doubt, any such funding of the DFD-29 Advance shall be made by Lenders upon the satisfaction of the DFD-29 Advance Condition regardless of any request therefore by Borrower.

(d) The Closing Date Term Loan, the June 2024 Advance and the DFD-29 Advance, if any, shall be deemed a single term loan (each such loan individually and collectively, the "**Term Loan**"). The Term Loan is not a revolving credit facility, and therefore, any amount thereof that is repaid or prepaid by Borrower, in whole or in part, may not be re-borrowed.

2.3 Commitments Several.

The failure of any Lender to make any advance of the Term Loan shall not relieve any other Lender of its obligation (if any) to make its Loan on the applicable date, but no Lender shall be responsible for the failure of any other Lender to make any Term Loan to be made by such other Lender.

2.4 Indebtedness Absolute; No Offset; Waiver.

The payment obligations of Borrower hereunder are absolute and unconditional, without any right of rescission, set-off, counterclaim or defense for any reason against Agent and Lenders to the maximum extent permitted by applicable law. As of the Closing Date, the Loan has not been compromised, adjusted, extended, satisfied, rescinded, set-off or modified, and the Loan Documents are not subject to any litigation, dispute, refund, claims of rescission, set-off, netting, counterclaim or defense whatsoever, including but not limited to, claims by or against any Loan Party or any other Person. Payment of the Obligations by Borrower, shall be made only by wire transfer, in Dollars, and in immediately available funds when due and payable pursuant to the terms of this Agreement and the other Loan Documents, is not subject to compromise, adjustment, extension, satisfaction, rescission, set-off, counterclaim, defense, abatement, suspension, deferral, deductible, reduction, termination or modification, whether arising out of transactions concerning the Loan, or otherwise. Without limitation to the foregoing, to the fullest extent permitted under applicable law and notwithstanding any other term or provision contained in this Agreement or any other Loan Document, Borrower hereby waives (and shall cause each Loan Party to waive) (a) presentment, protest and demand, notice of default (except as expressly required in the Loan Documents), notice of intent to accelerate, notice of acceleration, notice of protest, notice of demand and of dishonor and non-payment of the Obligations, (b) any requirement of diligence or promptness on Agent's part in the enforcement of its rights under the provisions of this Agreement and any other Loan Document, (c) any rights, legal or equitable, to require any marshalling of assets or to require foreclosure sales in a particular order, (d) all notices of every kind and description which may be required to be given by any statute or rule of law except as specifically required hereunder, (e) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisement before sale or any portion of the Collateral, (f) all rights of homestead, exemption, redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the Obligations in the event of foreclosure of the Liens created by the Loan Documents, (g) the pleading of any statute of limitations as a defense to any demand under any Loan Document and (h) any defense to the obligation to make any payments required under the Loan Documents, including the obligation to pay taxes based on any damage to, defects in or destruction of the Collateral or any other event, including obsolescence of any of the Collateral, it being agreed and acknowledged that such payment obligations are unconditional and irrevocable. Borrower further acknowledges and agrees (i) to any substitution, subordination, exchange or release of any security or the release of any party primarily or secondarily liable for the payment of the Loan; (ii) that Agent shall not be required to first institute suit or exhaust its remedies hereon against others liable for repayment of all or any part of the Loan, whether primarily or secondarily (collectively, the "**Obligors**"), or to perfect or enforce its rights against any Obligor or any security for the Loan; and (iii) that its liability for payment of the Loan shall not be affected or impaired by any determination that any security interest or lien taken by Agent for the benefit of Agent and Lenders to secure the Loan is invalid or unperfected. Borrower acknowledges, warrants and represents in connection with each waiver of any right or remedy of Borrower contained in any Loan Document, that it has been fully informed with respect to, and represented by counsel of its choice in connection with, such rights and remedies, and all such waivers, and after such advice and consultation, has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive or relinquish such rights and remedies to the full extent specified in each such waiver.

2.5 Loan Accounting.

2.5.1 Recordkeeping.

Agent, on behalf of each Lender, shall record in its records the date and amount of the Loan made by each Lender, each prepayment and repayment thereof. The aggregate unpaid principal amount so recorded shall be final, binding and conclusive absent manifest error. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of Borrower hereunder or under any Note to repay the principal amount of the Loans hereunder, together with all interest accruing thereon.

2.5.2 Notes.

At the request of any Lender, the Loan of such Lender shall be evidenced by a Note, with appropriate insertions, payable to such Lender in a face principal amount equal to such Lender's Pro Rata Term Loan Share and payable in such amounts and on such dates as are set forth herein.

2.6 Payment of Interest.

2.6.1 Interest Rates.

(a) The outstanding principal balance under the Loan shall bear interest at a per annum rate of interest equal to the Contract Rate (as may be adjusted from time to time in accordance with this Section 2.6.1). The Contract Rate applicable to the period beginning on the Closing Date through the date that is one (1) day immediately prior to the initial Payment Date shall be calculated based on the Term SOFR Rate as of the Closing Date. Whenever, on or subsequent to the initial Payment Date, the Term SOFR Rate is increased or decreased (as determined on the date that is ten(10) Business Days prior to each Payment Date), the Contract Rate, as set forth herein, shall be similarly changed effective as of such subsequent Payment Date, without notice or demand of any kind by an amount equal to the amount of such change in the Term SOFR Rate on the date that is ten (10) Business Days prior to each such Payment Date. The interest due on the principal balance of the Loan outstanding as of any Payment Date shall be computed for the actual number of days elapsed during the period in question on the basis of a year consisting of three hundred sixty (360) days and shall be calculated by determining the daily principal balance outstanding for each day of such period in question. The daily rate shall be equal to 1/360th times the Contract Rate. If any statement furnished by Agent for the amount of a payment due exceeded the actual amount that should have been paid because the Term SOFR Rate decreased and such decrease was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall receive a credit for the overpayment, which credit shall be applied towards the next subsequent payment due hereunder. If any statement furnished by Agent for the amount of a payment due was less than the actual amount that should have been paid because the Term SOFR Rate increased and such increase was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall be required to pay any resulting underpayment with the next subsequent payment due hereunder.

(b) Borrower recognizes and acknowledges that any default on any payment, or portion thereof, due hereunder or to be made under any of the other Loan Documents, will result in losses and additional expenses to Agent in servicing the Loan, and in losses due to Lenders' loss of the use of funds not timely received. Borrower further acknowledges and agrees that in the event of any such Event of Default, Lenders would be entitled to damages for the detriment proximately caused thereby, but that it would be extremely difficult and impracticable to ascertain the extent of or compute such damages. Therefore, upon the Term Loan Maturity Date and/or upon the occurrence and during the existence of an

Event of Default (or upon any acceleration), interest shall automatically accrue hereunder, without notice to Borrower, at the Default Rate. The Default Rate shall be calculated and due from the date that the Event of Default occurred and shall be payable upon demand.

(c) Notwithstanding anything herein to the contrary, if at any time the interest rate for any Loan (if applicable), together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively, "charges"), shall exceed the maximum lawful rate (the "**Maximum Rate**") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder (if applicable), together with all charges payable in respect of the Loan, shall be limited to the Maximum Rate. To the extent lawful, the interest and charges that would have been paid in respect of such Loan but were not paid as a result of the operation of this Section shall be cumulated and the interest (if any) and charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the amount collectible at the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate for each day to the date of repayment, shall have been received by such Lender. Any amount collected by such Lender that exceeds the maximum amount collectible at the Maximum Rate shall be applied to the reduction of the principal balance of such Loan or refunded to the Borrower so that at no time shall the interest (if any) and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

2.6.2 Payments of Interest and Principal.

Borrower shall pay to Lenders all accrued interest on the Loan in arrears on each Payment Date, upon a prepayment of such Loan in accordance with Section 2.8 and at maturity in cash. Any partial prepayment of the Loan shall be applied pursuant to Section 2.9.1 (but this shall not be construed as permitting any partial prepayment other than as may be expressly permitted elsewhere in this Agreement).

2.7 Fees.

(a) Origination Fee. Borrower shall pay to Agent, for the benefit of Lenders, a fee (the "**Origination Fee**") in the amount of \$200,000, which Origination Fee shall be deemed fully earned and non-refundable on the Closing Date.

(b) Exit Fee. Upon the Termination Date, Borrower shall pay an exit fee (the "**Exit Fee**") to Agent, for the benefit of Lenders, in an amount equal to five percent (5.00%) multiplied by the aggregate amount of the Term Loan funded hereunder on or prior to such date, which Exit Fee shall be deemed fully earned and non-refundable on the Termination Date.

2.8 Prepayment.

2.8.1 Mandatory Prepayment.

(a) Borrower shall prepay the Obligations, or any portion thereof, as applicable, (which shall include the amounts due and payable under Section 2.7(b) hereof to the extent such prepayment results in a prepayment in full of the Term Loan) until paid in full within ten (10) Business Days after the receipt by a Loan Party of any Net Cash Proceeds in excess of \$5,000,000 in the aggregate during any calendar year from one (1) or more Dispositions made pursuant to Section 7.4(b)(iii), in an amount equal to such excess Net Cash Proceeds.

(b) In connection with any prepayment of the Term Loan made pursuant to this Section 2.8.1, Borrower shall pay to Agent, for the benefit of Lenders, any amounts that would otherwise be due and payable on such date had Borrower voluntarily prepaid the Obligations pursuant to Section 2.8.2 (in addition to any such prepayment of the Term Loan and related Obligations).

2.8.2 Voluntary Prepayment.

(a) Subject to clause (b) below, Borrower may, on at least five (5) Business Days' written notice or telephonic notice (followed on the same Business Day by written confirmation thereof) to Agent (which shall promptly advise each Lender thereof) not later than 12:00 noon Dallas time on such day, prepay the Term Loan and all related Obligations in whole or in part at any time prior to the Term Loan Maturity Date. Such notice to Agent shall specify the amount and proposed date of such prepayment, and the application of such amounts to be prepaid shall be applied in accordance with Section 2.9.1(b) or 2.10.2 (as applicable).

(b) If Borrower makes a prepayment of the Term Loan under Section 2.8.2(a), it shall pay to Agent, for the benefit of Lenders, the following amounts (in addition to any such prepayment of the Term Loan and related Obligations) on the date of such prepayment: (i) if such prepayment is made prior to the first anniversary of the Closing Date, an amount equal to (A) two percent (2.0%) of the aggregate amount of the Term Loan so prepaid plus (B) an amount equal to the aggregate interest that would have accrued pursuant to this Agreement in relation to the aggregate amount of the Term Loan so prepaid from the date of such prepayment through the first anniversary of the Closing Date assuming a static Contract Rate equal to the Contract Rate in effect on such date of prepayment, (ii) if such prepayment is made on or after the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date, one percent (1.0%) of the aggregate amount of the Term Loan so prepaid, and (iii) if such prepayment is made on or after the second anniversary of the Closing Date, zero percent (0%) of the aggregate amount of the Term Loan so prepaid.

(c) For the avoidance of doubt, a permitted payment under this Section 2.8.2 is independent of and in addition to Revenue-Based Payment Amounts that are credited toward the principal of the Loans under Section 2.9.1(b). Notwithstanding anything set forth herein or in any other Loan Documents to the contrary, any prepayment of the Loans other than via the application of Revenue-Based Payment Amounts made pursuant to Section 2.9.1 or Section 2.10.2, as applicable, shall be limited and governed by this Section 2.8.2.

2.9 Repayment of Term Loan.

2.9.1 Revenue-Based Payment Amount.

(a) During the period commencing January 1, 2024 until the Obligations are Paid in Full, Borrower promises to pay to Agent, for the account of each Lender according to its Pro Rata Term Loan Share, an amount based on a percentage of Total Revenue in each Fiscal Quarter (the "**Revenue-Based Payment Amount**"), which will be applied to the Obligations as provided in clause (b) below. The Revenue-Based Payment Amount with respect to each Fiscal Quarter shall be applied by Borrower on the Payment Date next following the end of such Fiscal Quarter in accordance with clause (b) below. The Revenue-Based Payment Amount with respect to each Fiscal Quarter shall be equal to the aggregate Revenue-Based Payment Amounts payable during the period commencing as of January 1 of the Fiscal Year of which such Fiscal Quarter is part, through the end of such Fiscal Quarter (such elapsed portion of the Fiscal Year, the "Elapsed Period"), calculated as the sum of:

(i) One hundred percent (100%) of Total Revenue during the Elapsed Period up to and including \$10,000,000; plus

(ii) Seventy-five percent (75%) of Total Revenue during the Elapsed Period greater than \$10,000,000; minus

(iii) the aggregate amount of Revenue-Based Payment Amounts, if any, paid in cash to Agent, for the benefit of Lenders, pursuant to this Section 2.9.1, with respect to each prior Fiscal Quarter in such Fiscal Year; *provided* that the Revenue-Based Payment Amount is payable solely upon Total Revenue in a given Fiscal Year, and will not be calculated on a cumulative, year-over-year basis; minus

(iv) the aggregate amount of mandatory and voluntary prepayments made pursuant to Section 2.8 prior to the applicable Payment Date.

(b) So long as no Event of Default has occurred and is continuing and until the Obligations have been Paid in Full, on each Payment Date the applicable Revenue Based Payment Amount will be applied in the following priority:

(i) FIRST, to the payment of all fees, costs, expenses and indemnities due and owing to Agent pursuant to Sections 2.7, 3.1, 3.2, 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, and any other Obligations owing to Agent in respect of sums advanced by Agent to preserve or protect the Collateral or to preserve or protect its security interest in the Collateral;

(ii) SECOND, to the payment of all fees, costs, expenses and indemnities due and owing to Lenders in respect of the Loans and Commitments pursuant to Sections 2.7, 3.1, 3.2, 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iii) THIRD, to the payment of all accrued but unpaid interest in respect of the Loans as of such Payment Date pursuant to Section 2.6 under this Agreement, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full

(iv) FOURTH,

(A) if the Total Revenue of the Loan Parties (on a consolidated basis) for the consecutive twelve (12) month period ended on December 31, 2025 is less than or equal to \$70,000,000, as it relates to each Payment Date on or after the Payment Date occurring in February 2026, to the payment of outstanding principal of the Loans, pro rata based on each Lender's Pro Rata Term Loan Share, in an amount equal to seven and one-half of one percent (7.5%) multiplied by the aggregate amount of the Term Loan funded hereunder as of such date of determination minus the aggregate amount of mandatory and voluntary prepayments made pursuant to Section 2.8 prior to the applicable Payment Date, or

(B) if the Total Revenue of the Loan Parties (on a consolidated basis) for the consecutive twelve (12) month period ended on December 31, 2025 is greater than \$70,000,000, as it relates to each Payment Date on or after the Payment Date occurring in February 2027, to the payment of outstanding principal of the Loans, pro rata based on each Lender's Pro Rata Term Loan Share, in an amount equal to fifteen percent (15.0%)

multiplied by the aggregate amount of the Term Loan funded hereunder as of such date of determination minus the aggregate amount of mandatory and voluntary prepayments made pursuant to Section 2.8 prior to the applicable Payment Date; and

(v) FIFTH, all remaining amounts to be retained by Borrower.

For the avoidance of doubt, on each Payment Date the Borrower shall not be required to pay more than the amounts set forth in clauses (b)(i) through (b)(iv) above.

In the event that the Revenue-Based Payment Amount in relation to any Payment Date is insufficient for payment of the amounts set forth in clauses (b)(i) through (b)(iv) above for such Payment Date, Borrower shall pay an amount equal to the extent of such insufficiency, in immediately available funds, within two (2) Business Days of request by Agent.

(c) In the event that Borrower makes any adjustment to Total Revenue after it has been reported to Agent, and such adjustment results in an adjustment to the Revenue-Based Payment Amount due to the Lenders pursuant to this Section 2.9.1, Borrower shall so notify Agent and such adjustment shall be captured, reported and reconciled with the next scheduled report and payment of Revenue-Based Payment Amount hereunder. Notwithstanding the foregoing, Agent and Borrower shall discuss and agree on the amount of any such adjustment prior to it being given effect with respect to future Revenue-Based Payment Amounts.

2.9.2 Principal.

Notwithstanding the foregoing, the outstanding principal balance of the Term Loan and all other Obligations then due and owing shall be Paid in Full on the Termination Date.

2.10 Payment.

2.10.1 Making of Payments.

All payments of principal, interest, fees and other amounts, shall be made in immediately-available funds, via wire transfer as directed by Agent in writing, not later than 1:00 p.m. Dallas time on the date due, and funds received after that hour shall be deemed to have been received by Agent on the following Business Day. Not later than two (2) Business Days prior to each Payment Date, Agent shall provide to Borrower and each Lender a quarterly statement with the amounts payable by Borrower to Agent on such Payment Date in accordance with Section 2.9.1(b) hereof, which shall include, for additional clarity, Agent's calculation of the Revenue-Based Payment Amount for the prior Fiscal Quarter, which statement shall be binding on Borrower absent manifest error, and Borrower shall be entitled to rely on such quarterly statement in relation to its payment obligations on such Payment Date.

2.10.2 Application of Payments and Proceeds Following an Event of Default.

Following the occurrence and during the continuance of an Event of Default, or if the Obligations have otherwise become or have been declared to become immediately due and payable in accordance with this Agreement, then notwithstanding anything herein or in any other Loan Document to the contrary, Agent shall apply all or any part of payments in respect of the Obligations and proceeds of Collateral, in each case as received by Agent, to the payment of the Obligations in the order and priority as determined by Agent in its sole discretion.

2.10.3 Set-off.

Borrower agrees that Agent and each Lender and its Affiliates have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, Borrower agrees that at any time an Event of Default exists, Agent and each Lender may, to the fullest extent permitted by applicable law, apply to the payment of any Obligations of Borrower hereunder then due, any and all balances, credits, deposits, accounts or moneys of Borrower then or thereafter with Agent or such Lender. Notwithstanding the foregoing, no Lender shall exercise any rights described in the preceding sentence without the prior written consent of Agent.

2.10.4 Proration of Payments.

If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of set-off or otherwise, on account of principal of, interest on or fees in relation to any Loan, but excluding any payment pursuant to Section 3.1, 3.2, 10.5 or 10.8) in excess of its applicable Pro Rata Term Loan Share of payments and other recoveries obtained by all Lenders on account of principal of, interest on or fees in relation to such Term Loan then held by them, then such Lender shall purchase from the other Lenders such participations in the Loans held by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided* that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery.

Section 3 Yield Protection.

3.1 Taxes.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder by or on behalf of Borrower to or for the account of Agent or any Lender shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, property or franchise taxes and other taxes, fees, duties, levies, withholdings or other similar charges imposed by any Governmental Authority that is a taxing authority ("Tax" or "Taxes"), except as required by applicable law. If any withholding or deduction from any payment to be made by Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then Borrower shall: (w) be entitled to make such withholding or deduction; (x) pay directly to the relevant Governmental Authority the full amount so withheld or deducted; (y) as promptly as practicable forward to Agent the original or a certified copy of an official receipt or other documentation reasonably satisfactory to Agent evidencing such payment to such Governmental Authority; and (z) if the withholding or deduction is with respect to Indemnified Taxes, pay to Agent for the account of Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by each Lender will equal the full amount such Lender would have received had no such withholding or deduction of Indemnified Taxes been required. For purposes of this Agreement, "Indemnified Taxes" mean any Taxes excluding (i) Taxes imposed on or measured by Agent's or any Lender's net income (however denominated) or gross profits, and franchise Taxes, imposed by any jurisdiction (or subdivision thereof) under the laws of which Agent or such Lender is organized or in which Agent or such Lender conducts business or, in the case of any Lender, in which its applicable lending office is located at the time such Lender acquires its initial interest in any Term Loan Commitment, (ii) any branch profit Taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which Agent or a Lender is located or conducts business; (iii) in the case of any Lender, any withholding Tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement or designates a new lending office; (iv) in the case of any U.S. Lender, any United States federal backup withholding Tax; and (v) Taxes imposed under FATCA; (vi) Taxes attributable to a Foreign Lender's failure to comply with Section 3.1(c) or inability to provide

the applicable IRS Form set forth in Section 3.1(c) to Borrower and Agent; (vii) with respect to Agent or any Lender, Taxes imposed as a result of a present or former connection between such Agent or Lender and the jurisdiction imposing such Tax (other than connections arising from such Agent or Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document); and (viii) in the case of a Lender, U.S. federal withholding Taxes, if any and not otherwise included in clauses (i) through (vii), imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which such Lender acquires such interest in the Loan or Commitment or changes its lending office (items in clauses (i) through (vii), "Excluded Taxes"). To the extent that any amounts shall ever be paid by Borrower in respect of Indemnified Taxes, such amounts shall, for greater certainty, be considered to have accrued and to have been paid by Borrower as interest on the Loans.

(b) Borrower shall indemnify Agent and each Lender for any Indemnified Taxes paid by Agent or such Lender, as applicable, on or with respect to any payment by or on account of any obligation of Borrower hereunder, and any additions to Tax, penalties and interest paid by Agent or such Lender with respect to such Indemnified Taxes; *provided* that Borrower shall not have any obligation to indemnify any party hereunder for any Indemnified Taxes or additions to Tax, penalties or interest with respect thereto that result from or are attributable to such party's own fraud, gross negligence or willful misconduct. Payment under this Section 3.1(b) shall be made within thirty (30) days after the date Agent or the Lender, as applicable, makes written demand therefor; *provided, however,* that if such written demand is made more than one-hundred eighty (180) days after the earlier of (i) the date on which Agent or the Lender, as applicable, pays such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto and (ii) the date on which the applicable Governmental Authority makes written demand on Agent or such Lender, as applicable, for payment of such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto, then Borrower shall not be obligated to indemnify Agent or such Lender for such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto.

(c) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Agent, at the time or times reasonably requested by Borrower or Agent, such properly completed and executed documentation reasonably requested by Borrower or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Agent as will enable Borrower or Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing:

(i) Each Foreign Lender shall deliver to Borrower and Agent on or prior to the date on which such Foreign Lender becomes a party to this Agreement:

- (1) Two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE) claiming exemption from withholding of Taxes under an income tax treaty to which the United States of America is a party;
- (2) two duly completed and executed originals of IRS Form W-8ECI;
- (3) a certificate in form and substance reasonably satisfactory to Agent and Borrower claiming entitlement to the portfolio interest exemption under Section 881(c) of the IRC and certifying that

such Foreign Lender is not (w) a conduit entity participating in a conduit financing arrangement as defined in Treasury Regulation 1.881-3, (x) a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, (y) a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or (z) a "controlled foreign corporation" described in Sections 881(c)(3)(C) of the IRC, together with two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE); or

(4) if the Foreign Lender is not the beneficial owner of amounts paid to it hereunder, two duly completed and executed originals of IRS Form W-8IMY, each accompanied by a duly completed and executed IRS Form W-8ECI, IRS Form W-8BEN (or IRS Form W-8BEN-E), IRS Form W-9 and/or other certification documents from each beneficial owner of such amounts claiming entitlement to exemption from withholding or backup withholding of Taxes.

(ii) Each Foreign Lender shall (to the extent legally entitled to do so) provide updated forms to Borrower and Agent on or prior to the date any prior form previously provided under this clause (c) becomes obsolete or expires, after the occurrence of an event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (c) or from time to time if requested by Borrower or Agent.

(iii) Each U.S. Lender shall deliver to Agent and Borrower on or prior to the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the request of Borrower or Agent) properly completed and executed originals of IRS Form W-9 certifying that such Lender is exempt from backup withholding.

Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be required to pay additional amounts to or indemnify any Lender pursuant to this Section 3.1 with respect to any Taxes required to be deducted or withheld (or any additions to Tax, penalties or interest with respect thereto) (A) on the basis of the information, certificates or statements of exemption provided by a Lender pursuant to this clause (c), or (B) if such Lender shall fail to comply with the certification requirements of this clause (c). For the avoidance of doubt, all references to IRS Forms in this clause (c) shall include, in each case, any successor form.

(d) Without limiting the foregoing, each Lender shall timely comply with any certification, documentation, information or other reporting necessary to establish an exemption from withholding under FATCA and shall provide any documentation reasonably requested by Borrower or Agent sufficient for Borrower and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such applicable reporting requirements. Solely for purposes of this paragraph (d), "FATCA" shall include any amendments to FATCA after the date of this Agreement.

(e) If Agent or a Lender determines that it is entitled to or has received a refund or credit of any Taxes for which it has been indemnified by Borrower (or another Loan Party) or with respect to which Borrower (or another Loan Party) shall have paid additional amounts pursuant to this Section 3.1, it shall promptly notify Borrower of such refund or credit, and promptly make an appropriate claim to the relevant Governmental Authority for such refund or credit (if it has not previously done so). If Agent or a Lender receives a refund or credit (whether or not pursuant to such claim) of such Taxes, it shall promptly pay over such refund or credit to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Loan Parties under this Section 3.1 with respect to the Taxes giving rise to such

refund or credit), net of all reasonable out-of-pocket and documented third-party expenses of the Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund or credit); *provided* that Borrower, upon the request of Agent or such Lender, agrees to repay to Agent or such Lender the amount paid over to Borrower in the event Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 3.1(e) shall not be construed to require Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to Borrower or any other Person or to alter its internal practices or procedures with respect to the administration of Taxes.

3.2 Increased Cost.

(a) If, after the Closing Date, the adoption of, or any change in, any applicable law, rule, directive or regulation, or any change in the interpretation or administration of any applicable law, rule, directive or regulation by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof (*provided* that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be considered a change in applicable law, regardless of the date enacted, adopted or issued), or compliance by any Lender with any request or directive (whether or not having the force of law) issued after the Closing Date of any such authority, central bank or comparable agency: (i) shall impose, modify or deem applicable any reserve (including any reserve imposed by the FRB), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by any Lender; or (ii) shall impose on any Lender any other condition affecting its ability to make loans based on the Term SOFR Rate or its obligation to make loans based on the Term SOFR Rate; and the result of anything described in clauses (i) and (ii) above is to increase the cost to (or to impose a cost on) such Lender of making or maintaining any loan based on the Term SOFR Rate, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or under its Note with respect thereto, then upon demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), and without duplication of other payment obligations of Borrower hereunder (including pursuant to Section 3.1), Borrower shall pay directly to such Lender such additional amount as will compensate such Lender for such increased cost or such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor; *provided* that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect. For the avoidance of doubt, this clause (a) will not apply to any such increased costs or reductions resulting from Taxes, as to which Section 3.1 shall govern.

(b) If any Lender shall reasonably determine that any change after the Closing Date in, or the adoption or phase-in after the Closing Date of, any applicable law, rule, directive or regulation regarding capital adequacy, or any change after the Closing Date in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or the compliance by any Lender or any Person controlling such Lender with any request or directive issued after the Closing Date regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency (*provided* that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be considered a change in applicable law, regardless of the date enacted, adopted or issued), has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such change, adoption, phase-in or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) by an amount deemed by

such Lender or such controlling Person to be material, then from time to time, within five (5) Business Days of demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrower shall pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor; *provided* that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect.

(c) Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans, becomes aware of the occurrence of an event or the existence of a condition that would entitle such Lender to receive payments under this Section 3.2, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (i) make, issue, fund or maintain its Loans through another office of such Lender, or (ii) take such other measures as such Lender may deem reasonable, if as a result thereof the additional amounts which would otherwise be required to be paid to such Lender pursuant to this Section 3.2 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Loans or the interests of such Lender; *provided* that such Lender will not be obligated to utilize such other office pursuant to this clause (c) unless Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this clause (c) (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Agent) shall be conclusive absent manifest error.

3.3 [Reserved].

3.4 Manner of Funding; Alternate Funding Offices.

Notwithstanding any provision of this Agreement to the contrary, each Lender shall be entitled to fund and maintain its funding of all or any part of its Loans in any manner it may determine at its sole discretion. Each Lender may, if it so elects, fulfill its commitment to make the Term Loan by causing any branch or Affiliate of such Lender to make such Loan; *provided* that in such event for the purposes of this Agreement (other than Section 3.1) such Loan shall be deemed to have been made by such Lender and the obligation of Borrower to repay such Loan shall nevertheless be to such Lender and shall be deemed held by it, to the extent of such Loan, for the account of such branch or Affiliate.

3.5 Conclusiveness of Statements; Survival.

Determinations and statements of any Lender pursuant to Section 3.1, 3.2, 3.3 or 3.4 shall be conclusive absent demonstrable error. Lenders may use reasonable averaging and attribution methods in determining compensation under Sections 3.1 or 3.2, and the provisions of such Sections shall survive repayment of the Loans, cancellation of the Notes and termination of this Agreement.

Section 4 Conditions Precedent.

The obligation of each Lender to make its Loan hereunder is subject to the following conditions precedent, each of which shall be reasonably satisfactory in all respects to Agent.

4.1 Prior Debt.

The Prior Debt other than the Subordinated Debt, if any, (i) has been (or substantially concurrently with the funding of the initial borrowing on the Closing Date will be) paid in full and (ii) Agent shall have received evidence that arrangements satisfactory to Agent have been made for the termination and release of all related Liens, if any, granted in connection with such Prior Debt.

4.2 General.

Borrower shall have delivered the following documents in form and substance acceptable to Agent in its sole discretion (and, as applicable, duly executed):

(a) Loan Documents. The Loan Documents to which any Loan Party is a party, each duly executed by a Responsible Officer of each Loan Party and the other parties thereto (except Agent and the Lenders), and each other Person (except Agent and the Lenders) shall have delivered to Agent and Lenders the Loan Documents to which it is a party, each duly executed and delivered by such Person and the other parties thereto (except Agent and the Lenders).

(b) Financing Statements. Properly completed Uniform Commercial Code financing statements and other filings and documents required by law or the Loan Documents to provide Agent, for the benefit of Lenders, perfected first priority Liens in the Collateral.

(c) Lien Searches. Copies of Uniform Commercial Code, foreign, state and county search reports listing all effective financing statements filed and other Liens of record against any Loan Party, with copies of any financing statements and applicable searches of the records of the U.S. Patent and Trademark Office and the U.S. Copyright Office performed with respect to each Loan Party, all in each jurisdiction reasonably determined by Agent.

(d) Payoff: Release. Payoff letters with respect to the repayment in full of all Prior Debt other than the Subordinated Debt, termination of all agreements relating thereto and the release of all Liens granted in connection therewith, with Uniform Commercial Code or other appropriate termination statements and documents effective to evidence the foregoing or authorization to file the same.

(e) Authorization Documents. For each Loan Party, such Person's (i) charter, certificate of incorporation (or similar formation document), and (if any) certificate of incorporation on change of name, certified by the appropriate Governmental Authority, as applicable, (ii) good standing certificates in its jurisdiction of incorporation (or formation), as applicable, and in each other jurisdiction reasonably requested by Agent, (iii) bylaws or memorandum and articles of association (or similar governing document), (iv) resolutions of its board of directors (or similar governing body) and shareholders, in each case approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby, and (v) specimen signature and incumbency certificates of its Responsible Officers executing any of the Loan Documents, all certified by its director, secretary or an assistant secretary (or similar officer) as being in full force and effect without modification, in form and substance reasonably satisfactory to Agent.

(f) Opinions of Counsel. Opinions of counsel for each Loan Party in form and substance acceptable to Agent regarding certain closing matters, and Borrower hereby requests such counsel to deliver such opinions and authorizes Agent and Lenders to rely thereon.

(g) Insurance. Certificates or other evidence of insurance (including, in respect of the policies listed in Schedule 5.16, a letter from the relevant insurance brokers addressed to Agent and Lenders

listing the insurance policies of the Loan Parties and confirming that they are on risk and covering appropriate risks for the business carried out by the Loan Parties) in effect as required by Section 6.3(c) and (d), in respect of policies issued by any insurance company in the United States.

(h) Financials. The financial statements, projections and pro forma balance sheet described in Section 5.4.

(i) Consents. Evidence that all necessary consents, permits and approvals (governmental or otherwise) required for the execution, delivery and performance by each Loan Party of the Loan Documents have been duly obtained and are in full force and effect.

(j) Borrowing Limits. A certificate of Borrower confirming that borrowing or guaranteeing or securing, as appropriate, the Term Loan Commitment would not cause any borrowing, guarantee, security or similar limit binding on any Loan Party to be exceeded.

(k) Other Documents. Such other certificates, documents and agreements as Agent or any Lender may reasonably request.

4.3 Fees.

The Lenders and Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including Legal Costs), required to be paid under the Loan Documents on or before the Closing Date. All such amounts will be paid with proceeds of the initial advance of the Term Loan and any previous expense deposits made with Agent on or before the Closing Date and will be reflected in the funding instructions given by Borrower to Agent on or before the Closing Date.

4.4 Representations, Warranties, Defaults.

As of the Closing Date, after giving effect to the making of the Loans, (a) all representations and warranties of Borrower set forth in any Loan Document shall be true and correct in all material respects as if made on and as of the Closing Date (except to the extent already qualified by materiality, in which case it shall be true and correct in all respects and shall not be false or misleading in any respect and except for representations and warranties that specifically refer to an earlier date, which shall be true and correct in all material respects as of such earlier date) and (b) no Default or Event of Default shall exist. The acceptance of the Term Loan by Borrower shall be deemed to be a certification by Borrower that the conditions set forth in this Section 4.4 have been satisfied.

4.5 Diligence.

Agent and Lenders shall have completed their due diligence review of the Loan Parties and their Subsidiaries, their assets, business, obligations and the transactions contemplated herein, the results of which shall be reasonably satisfactory in form and substance to Lenders, including, without limitation, (i) an examination of (A) Borrower's projected Total Revenue for such periods as required by Lenders, (B) such valuations of Borrower and its assets as Lenders shall require (C) the terms and conditions of all obligations owed by Borrower deemed material by Lenders, the results of which shall be satisfactory in form and substance to Lenders and (D) background checks with respect to the managers, officers and owners of Borrower required by Agent; (ii) an examination of the Collateral, the financial statements and the books, records, business, obligations, financial condition and operational state of Borrower, and Borrower shall have demonstrated to Agent's satisfaction, in its reasonable discretion, that no operations

of Borrower are the subject of any governmental investigation, evaluation or any remedial action which could reasonably be expected to result in a Material Adverse Effect.

4.6 Corporate Matters.

All corporate and other proceedings, documents, instruments and other legal matters in connection with the transactions contemplated by the Loan Documents (including, but not limited to, those relating to corporate and capital structures of Borrower) shall be satisfactory to Lenders in their reasonable discretion.

4.7 No Material Adverse Effect.

No Material Adverse Effect shall have occurred and be continuing.

Section 5 Representations and Warranties.

To induce Agent and Lenders to enter into this Agreement and to induce Lenders to make the Loan hereunder, Borrower represents and warrants to Agent and Lenders, as of the Closing Date and the date of each advance of the Term Loan made by Lenders hereunder, that:

5.1 Organization.

Each Loan Party is duly incorporated, validly existing and (if applicable) in good standing under the laws of its state or country of jurisdiction as set forth on Schedule 5.1, and is duly qualified to carry on its business in each jurisdiction set forth on Schedule 5.1, which are all of the jurisdictions in which failure to so qualify would reasonably be likely to have or result in a Material Adverse Effect. Each Loan Party has the power to own its assets and carry on its business as it is being conducted.

5.2 Authorization; No Conflict.

Each Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, to borrow or guarantee monies thereunder, as applicable, and to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by each Loan Party of this Agreement and the other Loan Documents to which it is a party, as applicable, and the transactions contemplated therein, do not and will not (a) require any consent or approval of any Governmental Authority (other than any consent or approval which has been obtained and is in full force and effect), (b) conflict with (i) any provision of applicable law (including any Health Care Law), (ii) the charter, certificate of incorporation, by-laws, or other organizational documents of such Loan Party or (iii) (except as it relates to the documents governing the Prior Debt, each of which will be terminated and/or paid on the Closing Date) any Material Contract, or any judgment, order or decree, which is binding upon any Loan Party or any of its properties or (c) require, or result in, the creation or imposition of any Lien on any asset of any Loan Party (other than Liens in favor of Agent created pursuant to the Collateral Documents). No limit on any Loan Party's powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Loan Documents to which it is a party.

5.3 Validity; Binding Nature.

Each of this Agreement and each other Loan Document to which any Loan Party is a party, as applicable, is the legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the

enforceability of creditors' rights generally and to general principles of equity and concepts of reasonableness.

5.4 Financial Condition.

(a) The audited financial statements of Borrower for the Fiscal Year 2022 and the unaudited financial statements of Borrower for the Fiscal Quarter ended September 2023, copies of each of which have been delivered pursuant hereto, were prepared in accordance with GAAP and present fairly in all material respects the consolidated financial condition of Borrower as at such dates and the results of its operations for the periods then ended, subject, in the case of unaudited financial statements, to the absence of footnotes and normal year end audit adjustments.

(b) The consolidated financial projections (including an operating budget and a cash flow budget) of Borrower delivered to Agent and Lenders on or prior to the Closing Date (i) were prepared by Borrower in good faith and (ii) were prepared in accordance with assumptions for which Borrower believes it has a reasonable basis, and the accompanying consolidated and consolidating pro forma unaudited balance sheet of Borrower as at the Closing Date, adjusted to give effect to the financings contemplated hereby as if such transactions had occurred on such date, is consistent in all material respects with such projections (it being understood that the projections are not a guaranty of future performance and that actual results during the period covered by the projections may materially differ from the projected results therein).

5.5 No Material Adverse Effect.

Since December 31, 2022, there has been no Material Adverse Effect.

5.6 Litigation.

Except as set forth on Schedule 5.6, no litigation (including derivative actions), arbitration proceeding, administrative proceeding or governmental investigation or proceeding is pending or, to Borrower's knowledge, threatened against any Loan Party that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. As of the Closing Date, other than any liability incidental to such litigation or proceedings, no Loan Party has any material Contingent Obligations not disclosed in the financial statements specified in Section 5.4(a) and other Contingent Obligations permitted by Section 7.1.

5.7 Ownership of Properties; Liens.

Borrower and each other Loan Party owns, or leases or licenses, as applicable, all of its material properties and assets, tangible and intangible, of any nature whatsoever that it purports to own, or lease, as applicable (including Intellectual Property), free and clear of all Liens and charges and claims (including infringement claims with respect to Intellectual Property), except Permitted Liens and as set forth on Schedule 5.7.

5.8 Capitalization.

All issued and outstanding Equity Interests of Loan Parties are duly authorized, validly issued, fully paid, non-assessable, and such securities were issued in compliance in all material respects with all applicable laws concerning the issuance of securities. Schedule 5.8 sets forth the authorized Equity Interests of each Loan Party (other than Borrower) as of the Closing Date as well as all Persons owning

more than ten percent (10%) of the outstanding Equity Interests in each such Loan Party (other than Borrower) as of the Closing Date.

5.9 Pension Plans.

No Loan Party has a Pension Plan except in compliance with Section 6.6.1.

5.10 Investment Company Act.

No Loan Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company", within the meaning of the Investment Company Act of 1940.

5.11 No Default.

No Event of Default or Default exists or would result from the incurrence by Borrower of any Debt hereunder or under any other Loan Document or as a result of any Loan Party entering into the Loan Documents to which it is a party.

5.12 Margin Stock.

No Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. As of the Closing Date, no portion of the Obligations is secured directly or indirectly by Margin Stock.

5.13 Taxes.

Each Loan Party has filed, or caused to be filed, all material federal, state, foreign and other tax returns and reports required by law to have been filed by it and has paid all federal, state, foreign and other taxes and governmental charges thereby shown to be owing, except any such taxes or charges (a) that are not delinquent, (b) that are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books, or (c) that do not exceed \$500,000.

5.14 Solvency.

On the Closing Date, and immediately prior to and after giving effect to the borrowing hereunder and the use of the proceeds hereof, Borrower and its Subsidiaries, on a consolidated basis, are, and will be, Solvent.

5.15 Environmental Matters.

The on-going operations of Loan Parties comply in all respects with all applicable Environmental Laws, except for non-compliance which could not (if enforced in accordance with applicable law) reasonably be expected to result in a Material Adverse Effect. Each Loan Party has obtained, and maintained in good standing, all licenses, permits, authorizations and registrations required under any Environmental Law and necessary for its respective ordinary course operations, and each Loan Party is in compliance with all material terms and conditions thereof, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. No Loan Party nor any of their respective properties or operations is subject to any outstanding written order from or agreement with any federal, state, or local Governmental Authority, nor subject to any judicial or docketed administrative

proceeding, respecting any Environmental Law, Environmental Claim or Hazardous Substance, in each case, except as could not reasonably be expected to result in a Material Adverse Effect. There are no Hazardous Substances or other conditions or circumstances existing with respect to any property, or arising from operations prior to the Closing Date, of any Loan Party that would reasonably be expected to result in a Material Adverse Effect. No Loan Party has underground storage tanks.

5.16 Insurance.

Loan Parties and their respective properties are insured with financially sound and reputable insurance companies which are not Affiliates of any Loan Party, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Parties operate, as applicable. A true and complete listing of such insurance as of the Closing Date, including issuers, coverages and deductibles, is set forth on Schedule 5.16.

5.17 Information.

All written information heretofore or contemporaneously herewith furnished in writing by Borrower to Agent or any Lender for purposes of or in connection with this Agreement and the transactions contemplated hereby, taken as a whole, is, and all written information hereafter furnished by or on behalf of Borrower to Agent or any Lender pursuant hereto or in connection herewith, taken as a whole, will be true and accurate in all material respects on the date as of which such information, taken as a whole, is dated or certified, and none of such information is or will be incomplete by omitting to state any material fact necessary to make such information not misleading in any material respect in light of the circumstances under which made (it being recognized by Agent and Lenders that any projections and forecasts provided by Borrower are based on good faith estimates and assumptions believed by Borrower to be reasonable as of the date of the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may materially differ from projected or forecasted results).

5.18 Intellectual Property: Products and Services.

(a) Schedule 5.18(a) (as updated from time to time in accordance with Section 6.1.2 hereof) accurately and completely lists all of Loan Parties' Registered Intellectual Property. Each Loan Party owns and possesses or has a license or other right to use all Intellectual Property as is necessary for the conduct of the business of such Loan Party, and, to the knowledge of such Loan Party, without any infringement upon the intellectual property rights of others, except as otherwise set forth on Schedule 5.18(a) hereto.

(b) Schedule 5.18(b) (as updated from time to time in accordance with Section 6.1.2 hereof) accurately and completely lists all material Products and Services and all Required Permits in relation thereto.

(c) With respect to any Product or Service being tested, manufactured, marketed, sold, and/or delivered by Loan Parties, the applicable Loan Party has received (or the applicable, authorized third parties have received), and such Product or Service is the subject of, all Required Permits needed in connection with the testing, manufacture, marketing, sale, and/or delivery of such Product or Service by or on behalf of Loan Parties as currently conducted. No Loan Party has received any notice from any applicable Governmental Authority, specifically including the FDA and/or CMS, that such Governmental Authority is conducting an investigation or review (other than a normal routine scheduled inspection) of any Loan Party's (x) manufacturing facilities, laboratory facilities, the processes for such Product, or any related sales or marketing activities and/or the Required Permits related to such Product, and (y) laboratory

facilities, the processes for such Services, or any related sales or marketing activities and/or the Required Permits related to such Services. There are no material deficiencies or violations of applicable laws in relation to the manufacturing, processes, sales, marketing, or delivery of such Product or Services and/or the Required Permits related to such Product or Services, no Required Permit has been revoked or withdrawn, nor, to the best of Borrower's knowledge, has any such Governmental Authority issued any order or recommendation stating that the development, testing, manufacturing, sales and/or marketing of such Product or Services by or on behalf of Loan Parties should cease or be withdrawn from the marketplace, as applicable.

(d) Except as set forth on Schedule 5.18(b), (A) there have been no materially adverse clinical trial results in respect of any Product since the date on which the applicable Loan Party acquired rights to such Product, and (B) there have been no product recalls or voluntary product withdrawals from any market in respect of any material Product since the date on which the applicable Loan Party acquired rights to such Product.

(e) No Loan Party has experienced any significant failures in its manufacturing of any Product which caused any reduction in material Products sold.

5.19 Restrictive Provisions.

No Loan Party is a party to any agreement or contract or subject to any restriction contained in its operative documents which would reasonably be expected to have a Material Adverse Effect.

5.20 Labor Matters.

No Loan Party is subject to any labor or collective bargaining agreement. There are no existing or threatened strikes, lockouts or other labor disputes involving any Loan Party that singly or in the aggregate would reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of each Loan Party are not in violation in any material respect of the Fair Labor Standards Act or any other applicable law, rule, directive or regulation dealing with such matters. Each Loan Party has fully and timely made any and all social benefits and pension contributions and payments required to be made by such Loan Party according to any applicable law or agreement.

5.21 Material Contracts.

Schedule 5.21 sets forth, with respect to each real estate lease agreement to which any Loan Party is a party as of the Closing Date, the address of the subject property. The consummation of the transactions contemplated by the Loan Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than a Loan Party) which could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

5.22 Compliance with Laws: Health Care Laws.

(a) Laws Generally. Each Loan Party is in compliance with, and is conducting and has conducted its business and operations in material compliance with the requirements of all applicable laws, rules, regulations, directives, decrees, orders, judgments and Permits, in each case, except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect.

(b) Health Care Laws. Without limiting the generality of clause (a) above:

(i) No Loan Party is in violation of any applicable Health Care Laws, except for any such violation which would not reasonably be expected (either individually and taken as a whole with any other violations) to have a Material Adverse Effect.

(ii) Each Loan Party (either directly or through one or more authorized third parties) has (i) all licenses, consents, accreditations, certificates, permits, authorizations, approvals, franchises, registrations, qualifications and other rights from, and has made all applicable declarations and filings with, all applicable Governmental Authorities and self-regulatory authorities (each, an "Authorization") necessary to engage in the business conducted by it, except for such Authorizations with respect to which the failure to obtain would not reasonably be expected to have a Material Adverse Effect, and (ii) no knowledge that any Governmental Authority is considering limiting, suspending or revoking any such Authorization, except where the limitation, suspension or revocation of such Authorization would not reasonably be expected to have a Material Adverse Effect. All such Authorizations are valid and in full force and effect and such Loan Party is in material compliance with the terms and conditions of all such Authorizations and with the rules, guidance documents, directives and regulations of the applicable regulatory authorities having jurisdiction with respect to such Authorizations, except where failure to be in such compliance or for an Authorization to be valid and in full force and effect could not reasonably be expected to have a Material Adverse Effect.

(iii) Each Loan Party has received and maintains accreditation in good standing and without limitation or impairment by all applicable accrediting organizations, to the extent required by applicable law or regulation (including any foreign law or equivalent directive or regulation), except where the failure to be so accredited and in good standing without limitation would not reasonably be expected to have a Material Adverse Effect.

(iv) Except where any of the following would not reasonably be expected to have a Material Adverse Effect, no Loan Party has been, or has been threatened to be, (i) excluded from U.S. health care programs pursuant to 42 U.S.C. §1320(a)7 or any related regulations, (ii) "suspended" or "debarred" from selling products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (48 C.F.R. Subpart 9.4), or other applicable laws, directives or regulations, or (iii) made a party to any other action by any Governmental Authority that may prohibit it from selling products to any governmental or other purchaser pursuant to any federal, state, local or foreign laws, directives or regulations.

(v) No Loan Party has received any written notice from the FDA, CMS, or any other Governmental Authority with respect to, nor to Borrower's best knowledge is there, any actual or threatened investigation, inquiry, or administrative or judicial action, hearing, or enforcement proceeding by the FDA, CMS, or any other Governmental Authority against any Loan Party regarding any violation of applicable law, except for such investigations, inquiries, or administrative or judicial actions, hearings, or enforcement proceedings which, individually and in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.23 Existing Indebtedness; Investments, Guarantees and Certain Contracts.

Except as otherwise permitted pursuant to Section 7.1 or Section 7.10, no Loan Party (a) has any outstanding Debt, except Debt under the Loan Documents, or (b) owns or holds any equity or long-term debt investments in, or has any outstanding advances to or any outstanding guarantees for the obligations of, or any outstanding borrowings from, any other Person.

5.24 Affiliated Agreements.

Except as permitted by Section 7.7 and employment agreements entered into with employees, managers, officers and directors from time to time in the ordinary course of business, there are no existing or proposed agreements, arrangements, understandings or transactions between any Loan Party, on the one hand, and such Loan Party's members, managers, managing members, investors, officers, directors, stockholders, other equity holders, employees, or Affiliates or any members of their respective families, on the other hand.

5.25 Names; Locations of Offices, Records and Collateral; Deposit Accounts.

No Loan Party has conducted business under or used any name (whether corporate, partnership or assumed) other than such names set forth on Schedule 5.25A. Each Loan Party is the sole owner(s) of all of its respective names listed on Schedule 5.25A, and any and all business conducted and invoices issued in such names are such Loan Party's sales, business and invoices. Each Loan Party maintains respective places of business only at the locations set forth on Schedule 5.25B, and all books and records of Loan Parties relating to or evidencing the Collateral are located in and at such locations (other than (i) Deposit Accounts, (ii) Collateral in the possession of Agent, for the benefit of Agent and Lenders, and (iii) other locations disclosed to Agent from time to time in writing). Schedule 7.14 lists all of Loan Parties' Deposit Accounts as of the Closing Date. All of the material tangible Collateral is located exclusively within the United States.

5.26 Non-Subordination.

The payment and performance of the Obligations by Loan Parties are not subordinated in any way to any other obligations of such Loan Parties or to the rights of any other Person.

5.27 Broker's or Finder's Commissions.

Except as set forth in Schedule 5.27, no broker's, finder's or placement fee or commission will be payable to any broker or agent engaged by any Loan Party or any of its officers, directors or agents with respect to the Loan or the transactions contemplated by this Agreement except for fees payable to Agent and Lenders. Borrower agrees to indemnify Agent and each Lender and hold each harmless from and against any claim, demand or liability for broker's, finder's or placement fees or similar commissions, whether or not payable by Borrower, alleged to have been incurred in connection with such transactions, other than any broker's or finder's fees payable to Persons engaged by Agent and/or Lenders.

5.28 Anti-Terrorism; OFAC.

(a) No Loan Party nor any Person controlling or controlled by a Loan Party, nor, to Borrower's knowledge, any Person having a beneficial interest in a Loan Party, nor any Person for whom a Loan Party is acting as agent or nominee in connection with this transaction (1) is a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13324 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (2) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such Person in any manner that violates of Section 2 of such executive order, or (3) is a Person on the list of Specially Designated Nationals and Blocked Persons or is in violation of the limitations or prohibitions under any other OFAC regulation or executive order.

(b) No part of the proceeds of the Loan will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

5.29 Security Interest.

Each Loan Party has full right and power to grant to Agent, for the benefit of itself and the other Lenders, a perfected, first priority (subject to Permitted Liens) security interest and Lien on the Collateral pursuant to this Agreement and the other Loan Documents, as applicable, subject to the following sentence. Upon the execution and delivery of this Agreement and the other Loan Documents, and upon the filing of the necessary financing statements and/or appropriate filings and/or delivery of the necessary certificates evidencing any equity interest, control and/or possession, as applicable, without any further action, Agent will have a good, valid and first priority (subject to Permitted Liens) perfected Lien and security interest in the Collateral, for the benefit of Agent and Lenders. Borrower is not party to any agreement, document or instrument that conflicts with this Section 5.29.

5.30 Survival.

Borrower hereby makes the representations and warranties contained herein with the knowledge and intention that Agent and Lenders are relying and will rely thereon. All such representations and warranties will survive the execution and delivery of this Agreement, the closing and the making of the Loan.

Section 6 Affirmative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, it will:

6.1 Information.

Furnish to Agent (which shall furnish to each Lender):

6.1.1 Annual Report.

Within one hundred fifty (150) days after the close of each Fiscal Year a copy of the annual audited report of Borrower and its Subsidiaries for such Fiscal Year, including therein (i) a consolidated balance sheet and statement of earnings and cash flows of Borrower and its Subsidiaries as at the end of and for such Fiscal Year, certified without qualification (except for qualifications relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by Borrower's independent certified public accountants) by independent auditors of recognized standing selected by Borrower and reasonably acceptable to Agent; it being understood that Borrower's auditor as of the Closing Date and any other auditor of nationally recognized standing are acceptable to Agent, and (ii) a comparison with the previous Fiscal Year.

6.1.2 Interim Reports.

(a) Within five (5) days after the quarterly filing thereof with the U.S. Securities and Exchange Commission, unaudited consolidated balance sheets of Loan Parties as of the end of such Fiscal Quarter, together with consolidated statements of earnings and cash flows for such Fiscal

Quarter and for the period beginning with the first day of such Fiscal Year and ending on the last day of such Fiscal Quarter, together with a comparison with the corresponding period of the previous Fiscal Year and a comparison with the budget for such period of the current Fiscal Year (which may be in preliminary form), certified by the chief financial officer or other executive officer of Borrower.

(b) Together with each such quarterly report to be delivered pursuant to clause (a) above, Borrower shall provide to Agent (i) a written statement of Borrower's management in setting forth a summary discussion of Borrower's financial condition, changes in financial condition and results of operations, and (ii) updated Schedules to this Agreement, as applicable, setting forth any material changes to the disclosures set forth in such schedules as most recently provided to Agent or, as applicable, a written statement of Borrower's management stating that there have been no changes to such disclosures as most recently provided to Agent.

(c) Within fifteen (15) days after the end of each calendar month, monthly unaudited consolidated balance sheets of Loan Parties as of the end of such month, together with consolidated statements of earnings and cash flows for such month, utilizing the reporting format then in use by Borrower's management, certified by a Responsible Officer of Borrower, in form and substance reasonably acceptable to Agent.

(d) Within five (5) days after the end of each calendar month, a statement of the Consolidated Unencumbered Liquid Assets of Loan Parties as determined on the last day of the prior calendar month, in form and substance reasonably acceptable to Agent.

6.1.3 Quarterly Review Meeting.

Borrower and any other Loan Parties as requested by Agent shall be available in person or via teleconference as and when reasonably requested by Agent and no less frequently than quarterly for a review meeting regarding the status of Borrower, the Collateral and performance of the same.

6.1.4 [Reserved.]

6.1.5 Compliance Certificate.

Contemporaneously with the furnishing of a copy of each annual audit report pursuant to Section 6.1.1 and each set of quarterly statements pursuant to Section 6.1.2 (including, for the avoidance of doubt the quarterly statements delivered for the Fiscal Quarter ending December 31st of each year), a duly completed Compliance Certificate, with appropriate insertions, dated the date of delivery and corresponding to such annual report or such quarterly statements, and signed by a Responsible Officer of Borrower, containing computations, if applicable, showing compliance with Section 7.13 and a statement to the effect that such officer has not become aware of any Event of Default or Default that exists or, if there is any such event, describing it and the steps, if any, being taken to cure it.

6.1.6 Reports to Governmental Authorities and Shareholders.

Promptly upon the filing or sending thereof, copies of (a) all regular, periodic or special material reports of each Loan Party filed with any Governmental Authority (excluding all regular and periodic filings related to Taxes (other than annual income tax filings)), (b) all material registration statements (or such equivalent documents) of each Loan Party filed with any Governmental Authority and (c) all proxy statements or other communications made to the holders of Borrower's Equity Interests generally.

6.1.7 Notice of Default; Litigation.

Promptly upon becoming aware of any of the following, written notice describing the same and summarizing the steps being taken by Borrower or the applicable Loan Party affected thereby with respect thereto:

(a) the occurrence of an Event of Default;

(b) any litigation, arbitration or administrative or governmental investigation or proceeding not previously disclosed by Borrower to Lenders which has been instituted or, to the knowledge of Borrower, is threatened in writing against Borrower or any other Loan Party or to which any of the properties of any thereof is subject, which in each case would reasonably be expected to have a Material Adverse Effect;

(c) the institution of any steps by any member of the Controlled Group or any other Person to terminate any Pension Plan, or the failure of any member of the Controlled Group to make a required contribution to any Pension Plan (if such failure is sufficient to give rise to a Lien under Section 303(k) of ERISA) or to any Multiemployer Pension Plan, or the taking of any action with respect to a Pension Plan which could result in the requirement that Borrower or any other Loan Party furnish a bond or other security to the PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan or Multiemployer Pension Plan which could result in the incurrence by any member of the Controlled Group of any material liability, fine or penalty (including any claim or demand for withdrawal liability or partial withdrawal from any Multiemployer Pension Plan), or any material increase in the contingent liability of Borrower or any other Loan Party with respect to any post-retirement welfare plan benefit, or any notice that any Multiemployer Pension Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise Tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the IRC, that any such plan is or may be terminated, or that any such plan is or may become insolvent, in each case, to the extent such action or event could reasonably be expected to result in a Material Adverse Effect;

(d) any cancellation or material adverse change in any insurance maintained by Borrower or any other Loan Party;

(e) any other event (including (i) any violation of any law, including any Environmental Law, or the assertion of any Environmental Claim or (ii) the enactment or effectiveness of any law, rule, directive or regulation) which would reasonably be expected to have a Material Adverse Effect; or

(f) (i) any suspension, revocation, cancellation or withdrawal of an Authorization required for Borrower or any other Loan Party, is threatened or there is any basis for believing that such Authorization will not be renewable upon expiration or will be suspended, revoked, cancelled or withdrawn, (ii) Borrower or any other Loan Party enters into any consent decree or order pursuant to any Health Care Law and Regulation, or becomes a party to any judgment, decree or judicial or administrative order pursuant to any Health Care Law, (iii) receipt of any written notice or other written communication from the FDA, CMS, or any other applicable Governmental Authority alleging non-compliance with CLIA or any other applicable Health Care Law, (iv) the occurrence of any violation of any Health Care Law by Borrower or any of the other Loan Parties in the development or provision of Services, and record keeping and reporting to the FDA or CMS that would reasonably be expected to require or lead to an investigation, corrective action or enforcement, regulatory or administrative action, (v) the occurrence of any civil or criminal proceedings relating to Borrower or any of the other Loan Parties or any of their respective employees, which involve a matter within or related to the FDA's or CMS' jurisdiction, (vi) any officer,

employee or agent of Borrower or any of the other Loan Parties is convicted of any crime or has engaged in any conduct for which debarment is mandated or permitted by 21 U.S.C. § 335a, or (vii) any officer, employee or agent of Borrower or any of the other Loan Parties has been convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

6.1.8 Projections.

Within sixty (60) days after the commencement of each Fiscal Year, financial projections on a quarterly basis for the Loan Parties for such Fiscal Year prepared in a manner consistent with the projections delivered by Borrower to Agent prior to the Closing Date or otherwise in a manner reasonably satisfactory to Agent, accompanied by a certificate of a Responsible Officer of Borrower on behalf of Borrower to the effect that (a) such projections were prepared by them in good faith, (b) Borrower believes that it has a reasonable basis for the assumptions contained in such projections, (c) such projections have been prepared in accordance with such assumptions and (d) such projections have been approved in writing by the Board as the operating plan for the subsequent Fiscal Year.

6.1.9 Updated Schedules to Guarantee and Collateral Agreement.

Contemporaneously with the furnishing of each annual audit report pursuant to Section 6.1.1, updated versions of the Schedules to the Guarantee and Collateral Agreement showing information as of the date of such audit report (it being agreed and understood that this requirement shall be in addition to the notice and delivery requirements set forth in the Guarantee and Collateral Agreement).

6.1.10 Other Information.

Promptly, from time to time as Agent reasonably requests, Borrower shall deliver or shall cause to be delivered to Agent:

- (a) copies of any reports, statements or written materials (other than routine communications (electronic or otherwise) between Borrower or its Subsidiaries and such entities that are not material in nature) in relation to any Material Contract;
- (b) such other information concerning Borrower and any other Loan Party as Agent may reasonably request;
- (c) copies of all material communication as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, DEA, or any other Governmental Authority; and
- (d) copies of (x) any notices or other communications relating to any breach, default, or event of default with respect to any Subordinated Debt and (y) any other modifications or amendments entered into in relation to any Subordinated Debt.

Documents required to be delivered pursuant to the terms of this Section 6.1 (to the extent any such documents are included in materials otherwise filed with the U.S. Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower or any of its Subsidiaries posts such documents, or provides a link thereto, on Borrower's or any of its Subsidiaries' website on the internet at Borrower's or any of its Subsidiaries' website address or when such documents are filed with EDGAR.

6.2 Books; Records; Inspections.

6.2.1 Maintain Books and Records

Borrower shall keep, and cause each other Loan Party to keep, its books and records in accordance with sound business practices sufficient to allow the preparation of financial statements in accordance with GAAP.

6.2.2 Access by the Agent etc.

Borrower shall

(a) permit, and cause each other Loan Party to permit (at any reasonable time and with reasonable notice), Agent or any representative thereof to inspect the properties and operations of Borrower or any other Loan Party;

(b) permit, and cause each other Loan Party to permit, at any reasonable time and with reasonable notice (or at any time without notice if an Event of Default exists), Agent (accompanied by any Lender) or any representative thereof to visit any or all of its offices, to discuss its financial matters with its officers and its independent auditors (and Borrower hereby authorizes such independent auditors to discuss such financial matters with any Lender or Agent or any representative thereof), and to examine (and, at the expense of Borrower or the applicable Loan Party, photocopy extracts from) any of its books or other records; and

(c) permit, and cause each other Loan Party to permit, (at any reasonable time and with reasonable notice) Agent and its representatives to inspect the Collateral and other tangible assets of Borrower or Loan Party, to perform appraisals of the equipment of Borrower or Loan Party, and to inspect, audit, check and make copies of and extracts from the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to any Collateral.

Notwithstanding the foregoing, audits and inspections shall not be conducted more than once per year absent the continuance of an Event of Default.

6.3 Conduct of Business; Maintenance of Property; Insurance.

(a) Borrower shall, and shall cause each other Loan Party to, (i) conduct its business substantially in accordance with its current business practices, (ii) engage principally in the same or similar lines of business substantially as heretofore conducted and lines of business ancillary, supplemental or reasonably related thereto, (iii) collect the Royalties in the ordinary course of business, (iv) maintain all of its Collateral used or useful in its business in good repair, working order and condition (normal wear and tear excepted and except as may be disposed of in the ordinary course of business and in accordance with the terms of the Loan Documents), (v) from time to time to make all necessary repairs, renewals and replacements to the Collateral; (vi) maintain and keep in full force and effect all material Permits and qualifications to do business and good standing in its jurisdiction of formation and each other jurisdiction in which the ownership or lease of property or the nature of its business makes such Permits or qualification necessary and in which failure to maintain such Permits or qualification could reasonably be expected to be, have or result in a Material Adverse Effect; (vii) remain in good standing and maintain operations in all jurisdictions in which it is currently located, except where the failure to remain in good standing or maintain operations would not reasonably be expected to be, have or result in a Material Adverse Effect, and (viii) maintain, comply with and keep in full force and effect all Intellectual Property and Permits necessary to conduct its business.

(b) Borrower shall keep, and cause each other Loan Party to keep, all property necessary in the business of Borrower or each other Loan Party in good working order and condition, ordinary wear and tear excepted.

(c) Borrower shall maintain, and cause each other Loan Party to maintain, with responsible insurance companies, such insurance coverage as shall be required by all laws, directives, governmental regulations and court decrees and orders applicable to it and such other insurance, to such extent and against such hazards and liabilities, as is customarily maintained by Persons operating in the same geographical region as Borrower that are (A) subject to CLIA and other applicable Health Care Laws, or (B) otherwise delivering to customers products or services similar to the Services (in each case, as determined by Agent acting in its reasonable discretion). Upon request of Agent or any Lender, Borrower shall furnish to Agent or such Lender a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by Borrower and each other Loan Party. Borrower shall cause each issuer of an insurance policy to provide Agent with an endorsement (x) showing Agent as a lender's loss payee with respect to each policy of property or casualty insurance and naming Agent as an additional insured with respect to each policy of liability insurance promptly upon request by Agent, (y) providing that the insurance carrier will endeavor to give at least thirty (30) days' prior written notice to Borrower and Agent (or ten (10) days' prior written notice if the Agent consents to such shorter notice) before the termination or cancellation of the policy prior to the expiration thereof and (z) reasonably acceptable in all other respects to Agent.

(d) Unless Borrower provides Agent with evidence of the continuing insurance coverage required by this Agreement, Agent (upon reasonable advance notice to Borrower) may purchase insurance at Borrower's expense to protect Agent's and Lenders' interests in the Collateral. This insurance shall protect Borrower's and each other Loan Party's interests. The coverage that Agent purchases shall pay any claim that is made against Borrower or any other Loan Party in connection with the Collateral. Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrower has obtained the insurance coverage required by this Agreement. If Agent purchases insurance for the Collateral, as set forth above, Borrower will be responsible for the reasonable costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance, and such costs of the insurance may be added to the principal amount of the Loans owing hereunder.

6.4 Compliance with Laws; Payment of Taxes and Liabilities.

(a) Comply, and cause each other Loan Party to comply, in all material respects with all applicable laws, rules, regulations, directives, decrees, orders, judgments, licenses and permits, except where failure to comply would not reasonably be expected to have a Material Adverse Effect; (b) without limiting clause (a) above, ensure, and cause each other Loan Party to ensure, that no person who Controls a Loan Party is (i) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (ii) a Person designated under Section 1(b), (c) or (d) or Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders; (c) without limiting clause (a) above, comply and cause each other Loan Party to comply, with all applicable Bank Secrecy Act and anti-money laundering laws, directives and regulations, (d) file, or cause to be filed, all material federal, state, foreign and other Tax returns and reports required by law to be filed by any Loan Party, and (e) pay, and cause each other Loan Party to pay, prior to delinquency, all material foreign, federal, state and other Taxes and other material governmental charges against it or any of its property, as well as material claims of any kind which, if unpaid, could become a Lien (other than a Permitted Lien) on any of its property; provided that the foregoing shall not require Borrower or any other Loan Party to pay any such tax, charge or claim (i) so long as it shall contest the validity thereof in good faith by appropriate

proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP or (ii) to the extent it is less than \$500,000. For purposes of this Section 6.4, "Control" shall mean, when used with respect to any Person, (x) the direct or indirect beneficial ownership of fifty-one percent (51%) or more of the outstanding Equity Interests of such Person or (y) the power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

6.5 Maintenance of Existence.

Maintain and preserve, and (subject to Section 7.4) cause each other Loan Party to maintain and preserve, (a) its existence and good standing in the jurisdiction of its organization and (b) its qualification to do business and good standing in each jurisdiction where the nature of its business makes such qualification necessary, other than any such jurisdiction where the failure to be qualified or in good standing would not reasonably be expected to have a Material Adverse Effect.

6.6 Employee Benefit Plans.

6.6.1 Pension Plans

Except to the extent that failure to do so would not be reasonably expected to result in (a) a Material Adverse Effect or (b) liability in excess of \$500,000 of any Loan Party, maintain, and cause each other Loan Party to maintain, each Pension Plan (if any) in substantial compliance with all applicable requirements of law, directives and regulations.

6.7 Environmental Matters.

Except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, if any release or disposal of Hazardous Substances shall occur or shall have occurred on any real property or any other assets of Borrower or any other Loan Party, cause, or direct the applicable Loan Party to cause, the prompt containment and removal of such Hazardous Substances and the remediation of such real property or other assets as is necessary to comply in all material respects with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, Borrower shall, and shall cause each other Loan Party to, comply with each valid federal or state judicial or administrative order requiring the performance at any real property by Borrower or any other Loan Party of activities in response to the release or threatened release of a Hazardous Substance.

6.8 Further Assurances.

Take, and cause each other Loan Party to take, such actions as are necessary or as Agent or the Required Lenders may reasonably request from time to time to ensure that the Obligations of Borrower and each other Loan Party under the Loan Documents are secured by a perfected Lien in favor of Agent (subject only to the Permitted Liens) on substantially all of the assets of Borrower and each Loan Party (as well as all equity interests of each Loan Party) and guaranteed by each Loan Party (including, promptly upon the acquisition or creation thereof, any Subsidiary of Borrower acquired or created after the Closing Date), in each case including (a) the execution and delivery of guaranties, security agreements, pledge agreements, mortgages, deeds of trust, financing statements and other documents, and the filing or recording of any of the foregoing; (b) the delivery of certificated securities (if any) and other Collateral with respect to which perfection is obtained by possession but excluding (i) the requirement for the Loan Parties to execute and deliver leasehold mortgages, and (ii) any other Excluded Collateral as defined in the Guarantee and Collateral Agreement; and (c) using commercially reasonable efforts to obtain and deliver

executed Collateral Access Agreements in relation to any foreign and domestic location where a material portion of the Collateral is held or otherwise stored from time to time.

6.9 Compliance with Health Care Laws.

(a) Without limiting or qualifying Section 6.4 or any other provision of this Agreement, Borrower will comply, and will cause each other Loan Party to comply, in all material respects with all applicable Health Care Laws relating to the operation of such Person's business, except where failure to comply would not reasonably be expected to have a Material Adverse Effect.

(b) Borrower will, and will cause each other Loan Party to:

(i) Keep in full force and effect all Authorizations required to operate such Person's business under applicable Health Care Laws and maintain any other qualifications necessary to conduct, arrange for, administer, provide services in connection with or receive payment for all applicable Services, except to the extent such failure to keep in full force and effect or maintain would not reasonably be expected to have a Material Adverse Effect.

(ii) Promptly furnish or cause to be furnished to the Agent, (w) copies of all material reports of investigational/inspectional observations issued to and received by the Loan Parties or any of their Subsidiaries, and issued by any Governmental Authority relating to such Person's business, (x) copies of all material establishment investigation/inspection reports (including, but not limited to, FDA Form 483's) issued to and received by Loan Parties or any of their Subsidiaries and issued by any Governmental Authority, (y) copies of all material warnings and material untitled letters as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, DEA, or any other Governmental Authority relating to or arising out of the conduct applicable to the business of the Loan Parties or any of their Subsidiaries that asserts past or ongoing lack of compliance with any Health Care Law or any other applicable foreign, federal, state or local law, directive or regulation of similar import and (z) notice of any material investigation or material audit or similar proceeding by the FDA, DEA, CMS, or any other Governmental Authority.

(iii) Promptly furnish or cause to be furnished to the Agent, (in such form as may be reasonably required by Agent) copies of all non-privileged, reports, correspondence, pleadings and other communications relating to any matter that could lead to the loss, revocation or suspension (or threatened loss, revocation or suspension) of any material Authorization or of any material qualification of any Loan Party or Subsidiary; *provided* that any internal reports to a Person's compliance "hot line" which are promptly investigated and determined to be without merit need not be reported.

(iv) Promptly furnish or cause to be furnished to the Agent notice of all material fines or penalties imposed by any Governmental Authority under any Health Care Law against any Loan Party or any of its Subsidiaries.

(v) Promptly furnish or cause to be furnished to the Agent notice of all material allegations by any Governmental Authority (or any agent thereof) of fraudulent activities of any Loan Party or any of its Subsidiaries in relation to the provision of clinical research or related services.

Notwithstanding anything to the contrary in any Loan Document, no Loan Party or any of its Subsidiaries shall be required to furnish to Agent or any Lender patient-related or other information, the disclosure of which to Agent or such Lender is prohibited by any applicable law.

6.10 Cure of Violations.

If there shall occur any breach of Section 6.9, Borrower shall take such commercially reasonable action as is necessary to validly challenge or otherwise appropriately respond to such fact, event or circumstance within any timeframe required by applicable Health Care Laws, and shall thereafter use commercially reasonable efforts to diligently pursue the same.

6.11 Corporate Compliance Program.

Maintain, and will cause each other Loan Party to maintain on its behalf, a corporate compliance program reasonably acceptable to Agent to ensure continuing compliance in all material respects with all applicable Health Care Laws. Borrower will permit Agent and/or any of its outside consultants to review such corporate compliance programs from time to time upon reasonable notice and during normal business hours of Borrower.

6.12 Payment of Debt.

Except as otherwise prescribed in the Loan Documents, Borrower shall pay, discharge or otherwise satisfy when due and payable (subject to applicable grace periods and, in the case of trade payables, to ordinary course of past payment practices) all of its material obligations and liabilities, except (i) when the amount or validity thereof is being contested in good faith by appropriate proceedings and appropriate reserves shall have been made in accordance with GAAP consistently applied, or (ii) where the failure to make any such payments could not reasonably be expected to result in a Material Adverse Effect.

6.13 Additional Subsidiaries.

(a) Additional Subsidiaries. Promptly after the creation or acquisition of any Subsidiary (and, in any event, within thirty (30) days after such creation or acquisition, as such time period may be extended by Agent in its sole discretion), cause such Person to (i) become a Loan Party by delivering to Agent a duly executed supplement to the Guarantee and Collateral Agreement or such other document as Agent shall approve for such purpose, (ii) grant a security interest in all Collateral (but not any Excluded Collateral as defined in the Guarantee and Collateral Agreement) owned by such Subsidiary by delivering to Agent a duly executed supplement to each applicable Collateral Document or such other document as Agent shall reasonably deem appropriate for such purpose and comply with the terms of each applicable Collateral Document, (iii) deliver to Agent such customary opinions, documents and certificates referred to in Section 4.2 as may be reasonably requested by Agent, (iv) deliver to Agent such original certificated Equity Interests or other certificates and stock or other transfer powers evidencing the Equity Interests in such Person, (v) deliver to Agent such updated Schedules to the Loan Documents as reasonably requested by Agent with respect to such Person, (vi) using commercially reasonable efforts to obtain and deliver executed Collateral Access Agreements in relation to any foreign and domestic location where a material portion of the Collateral is held or otherwise stored from time to time, and (vii) deliver to Agent such other documents as may be reasonably requested by Agent in order to comply with this Section 6.13, all in form, content and scope reasonably satisfactory to Agent.

(b) Merger Subsidiaries. Notwithstanding the foregoing, to the extent any new Subsidiary is created solely for the purpose of consummating a merger transaction pursuant to an Acquisition permitted hereby, and such new Subsidiary at no time holds any material assets or liabilities

other than any merger consideration contributed to it contemporaneously with the closing of such merger transaction (provided, however, that such merger consideration shall not be held by such new Subsidiary for more than five (5) Business Days without the approval of Agent in its reasonable discretion), such new Subsidiary shall not be required to take the actions set forth in Section 6.13(a) until the consummation of such Acquisition (at which time, the surviving entity of the respective merger transaction shall be required to so comply with Section 6.13(a) within thirty (30) days of the consummation of such Acquisition, as such time period may be extended by Agent in its sole discretion).

6.14 Post-Closing Obligations.

On or before January 31, 2024 (or such longer period as permitted by Agent in its reasonably discretion), Borrower shall deliver endorsements of insurance in effect as required by Section 6.3(c), naming Agent as lender's loss payee and/or additional insured, as applicable, and providing that insurance carrier will endeavor to give at least thirty (30) days' prior written notice to Borrower and Agent (or ten (10) days' prior written notice if the Agent consents to such shorter notice) before the termination or cancellation of the applicable policy prior to the expiration thereof, in each case in form and substance reasonably satisfactory to Agent.

Section 7 Negative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, in its sole discretion, it will:

7.1 Debt.

Not, and not permit any other Loan Party to, create, incur, assume or suffer to exist any Debt, except:

- (a) Obligations under this Agreement and the other Loan Documents;
- (b) Subordinated Debt;
- (c) Debt secured by Liens permitted by Section 7.2(b), Section 7.2(c) or Section 7.2(m) and extensions, renewals and re-financings thereof; *provided* that the aggregate amount of all such Debt permitted under Section 7.2(c) at any time outstanding shall not exceed \$500,000;
- (d) Debt with respect to any Hedging Obligations incurred for bona fide hedging purposes and not for speculation;
- (e) Debt (i) arising from customary agreements for indemnification related to sales of goods, licensing of intellectual property or adjustment of purchase price or similar obligations in any case incurred in connection with the acquisition or disposition of any business, assets or Subsidiary of Borrower otherwise permitted hereunder, (ii) representing deferred compensation to employees of any Loan Party incurred in the ordinary course of business, or (iii) representing trade payables incurred with suppliers in the ordinary course of business and customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;
- (f) Debt with respect to cash management obligations and other Debt in respect of automatic clearing house arrangements, netting services, overdraft protection and similar arrangements, in each case incurred in the ordinary course of business;

(g) Debt incurred in connection with surety bonds, performance bonds or letters of credit for worker's compensation, unemployment compensation and other types of social security and otherwise in the ordinary course of business or referred to in Section 7.2(e);

(h) unsecured Debt (which for further clarity shall exclude accounts payable and other current liabilities incurred by Loan Parties in the ordinary course of business), in addition to the Debt listed above, in an aggregate outstanding amount not at any time exceeding \$500,000;

(i) unsecured Debt among the Loan Parties;

(j) royalties, milestones, installment payments and notes payable incurred in connection with licenses and sublicenses;

(k) Debt consisting of the financing of insurance premiums in the ordinary course of business;

(l) Debt incurred in the ordinary course of business in connection with corporate credit cards, not to exceed Five Hundred Thousand Dollars (\$500,000.00) in the aggregate outstanding at any time;

(m) Indebtedness in the form of purchase price adjustments, earn outs, deferred compensation, or other arrangements representing acquisition consideration or deferred payments of a similar nature incurred in connection with Investments permitted by Section 7.10;

(n) to the extent constituting Debt, Investments permitted by Section 7.10; and

(o) Debt existing on the Closing Date and set forth on Schedule 7.1; and

(p) Unsecured Debt owing under the Fortress Note Documents; provided that prior to Borrower incurring any such Debt, Borrower shall cause such Debt to be subject to a Subordination Agreement.

7.2 Liens.

Not, and not permit any other Loan Party to, create or permit to exist any Lien on any of its real or personal properties, assets or rights of whatsoever nature (whether now owned or hereafter acquired), except:

(a) Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty, or being diligently contested in good faith by appropriate proceedings and for which it maintains adequate reserves in accordance with GAAP;

(b) Liens arising in the ordinary course of business (including without limitation (i) Liens of carriers, warehousemen, mechanics, landlords and materialmen and other similar Liens imposed by law and (ii) Liens incurred in connection with worker's compensation, unemployment compensation and other types of social security or in connection with surety bonds, bids, tenders, performance bonds, trade contracts not for borrowed money, licenses, statutory obligations and similar obligations) for sums not overdue or being diligently contested in good faith by appropriate proceedings and not involving any deposits or advances or borrowed money or the deferred purchase price of property or services and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement of which is effectively stayed;

(c) (i) Liens arising in connection with Capital Leases (and attaching only to the property being leased and the proceeds thereof), (ii) Liens on any property securing debt incurred for the purpose of financing all or any part of the cost of acquiring or improving such property; *provided* that any such Lien attaches to such property within ninety (90) days of the acquisition or improvement thereof and attaches solely to the property so acquired or improved and the proceeds thereof, and (iii) the replacement, extension or renewal of a Lien permitted by one of the foregoing clauses (i) or (ii) in the same property subject thereto arising out of the extension, renewal or replacement of the Debt secured thereby (without increase in the amount thereof);

(d) Liens relating to litigation bonds and attachments, appeal bonds, judgments and other similar Liens arising in connection with any judgment or award that is not an Event of Default hereunder;

(e) easements, rights of way, restrictions, minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of Borrower or any other Loan Party;

(f) Liens arising under the Loan Documents;

(g) any interest or title of a licensor, sublicensee, lessor or sublessor under any license, lease, sublicense or sublease agreement entered into in the normal course of business, only to the extent limited to the item licensed or leased;

(h) (i) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) customary set off rights of deposit banks with respect to deposit accounts maintained at such deposit banks or which are contained in standard agreements for the opening of an account with a bank;

(i) Liens arising from precautionary filings of financing statements under the Uniform Commercial Code or similar legislation of any applicable jurisdiction in respect of operating leases permitted hereunder and entered into by a Loan Party in the ordinary course of business;

(j) Liens attaching to cash earnest money deposits in connection with any letter of intent or purchase agreement permitted hereunder or indemnification other post-closing escrows or holdbacks;

(k) Liens incurred with respect to Hedging Obligations incurred for bona fide hedging purposes and not for speculation;

(l) Liens to secure obligations of a Loan Party to another Loan Party;

(m) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business;

(n) Licenses permitted by Section 7.4(c);

(o) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets);

(p) Utility, lease, contract and similar deposits in the ordinary course of business;

(q) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due;

(r) Liens on Subordinated Debt to the extent permitted by the Subordination Agreement applicable thereto; and

(s) Liens existing on the Closing Date and set forth on Schedule 7.2.

7.3 Dividends; Redemption of Equity Interests.

Not (a) declare, pay or make any dividend or distribution on any Equity Interests or other securities or ownership interests, other than dividends or distributions declared, paid or made to a Loan Party or in the form of Equity Interests, (b) apply any of its funds, property or assets to the acquisition, redemption or other retirement of any Equity Interests or other securities or interests or of any options to purchase or acquire any of the foregoing, (c) otherwise make any payments, dividends or distributions to any member, manager, managing member, stockholder, shareholder, director or other equity owner in such Person's capacity as such other than in compliance with Section 7.7 hereof, or (d) make any payment of any management, service or related or similar fee to any Affiliate or holder of Equity Interests of Borrower other than in compliance with Section 7.7 hereof.

7.4 Mergers; Consolidations; Asset Sales.

(a) Except for Permitted Acquisitions, not be a party to any amalgamation or any other form of Division, demerger, merger or consolidation, unless agreed to by Agent in its sole discretion, nor permit any other Loan Party to be a party to any Division, demerger, amalgamation or any other form of merger or consolidation, unless agreed to by Agent in its reasonable discretion; provided that any Subsidiary may merge with and into a Loan party.

(b) Not, and not permit any other Loan Party to, sell, transfer, dispose of, convey, lease or license any of its real or personal property assets or Equity Interests (each, a "**Disposition**"), except for (i) sales of Inventory in the ordinary course of business for at least fair market value, (ii) transfers, destruction or other disposition of obsolete, surplus or worn-out assets in the ordinary course of business and (iii) at all times subject to Section 2.8.1, any other sales and dispositions of assets (excluding (A) any Equity Interests of Borrower or any Subsidiary or (B) sales of Inventory described in clause (i) above) for at least fair market value (as determined by the Board), (iv) sales and dispositions to Loan Parties, (v) leases, licenses, subleases and sublicenses entered into in the ordinary course of business, including licensing transactions permitted by Section 7.4(c), (vi) sales and exchanges of Cash Equivalent Investments to the extent otherwise permitted hereunder, (vii) Liens expressly permitted under Section 7.2 and transactions expressly permitted by clause (a) or Section 7.10, (viii) sales or issuances of Equity Interests by Borrower, (ix) issuances of Equity Interests by any Loan Party to any other Loan Party, (x) dispositions in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Loan Parties, (xi) a cancellation of any intercompany Debt among the Loan Parties, (xii) a disposition which constitutes an insured event or pursuant to a condemnation, expropriation, "eminent domain" or similar proceeding, (xiii) sales and dispositions among Subsidiaries of Borrower, (xiv) exchanges of existing equipment for new equipment that is substantially similar to the equipment being exchanged and that has a value equal to or greater than the equipment being exchanged, and (xv) sale, transfer, or disposition of Ximino, Eurax, and Exelderm.

(c) Notwithstanding any provision in this Agreement or any other Loan Documents to the contrary, the prior consent of Agent shall not be required in connection with the licensing or sublicensing

(whether in-licensing or out-licensing) of Intellectual Property pursuant to collaborations, licenses or other strategic transactions with third parties executed (i) in the ordinary course of a Loan Party's business, (ii) on an arms-length basis and (iii) as long as no Event of Default has occurred and is continuing.

7.5 Modification of Organizational Documents.

Not permit the charter, by-laws or other organizational documents or constitutional documents of Borrower or any other Loan Party to be amended or modified in any way which could reasonably be expected to materially and adversely affect the interests of Agent or any Lender. An amendment to Borrower's certificate of incorporation to increase Borrower's authorized share capital shall not be deemed to adversely affect the interests of Agent or any Lender.

7.6 Use of Proceeds.

Use the proceeds of the Loans solely to refinance the Prior Debt, if any, and otherwise for working capital, for fees and expenses related to the negotiation, execution, delivery and closing of this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby, and for other general business purposes of Borrower and its Subsidiaries, and not use any proceeds of any Loan or permit any proceeds of any Loan to be used, either directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of "purchasing or carrying" any Margin Stock.

7.7 Transactions with Affiliates.

Not, and not permit any other Loan Party to, enter into, or cause, suffer or permit to exist any transaction, arrangement or contract with any of its other Affiliates, which is on terms which are less favorable than are obtainable from any Person which is not one of its Affiliates, other than (i) reasonable compensation and indemnities to, benefits for, reimbursement of expenses of, and employment arrangements with, officers, employees and directors in the ordinary course of business, (ii) transactions among Loan Parties, (iii) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.7, (iv) the Shared Services Agreement with Fortress Biotech, Inc., dated as of November 12, 2021, (v) Investments permitted by Section 7.10 and transactions permitted by Section 7.3, (vi) the Subordinated Debt in existence as of the Closing Date, and (vii) any tax sharing arrangements entered into in the ordinary course of business.

7.8 Inconsistent Agreements.

Not, and not permit any other Loan Party to, enter into any agreement containing any provision which would (a) be violated or breached by any borrowing by Borrower hereunder or by the performance by Borrower or any other Loan Party of any of its Obligations hereunder or under any other Loan Document, (b) prohibit Borrower or any other Loan Party from granting to Agent and Lenders a Lien on the Collateral or (c) create or permit to exist or become effective any encumbrance or restriction on the ability of any other Loan Party to (i) pay dividends or make other distributions to Borrower or any other Loan Party, or pay any Debt owed to Borrower or any other Loan Party, (ii) make loans or advances to Borrower or any other Loan Party or (iii) transfer any of its assets or properties to Borrower or any other Loan Party, other than, in the cases of clauses (b) and (c), (A) restrictions or conditions imposed by any agreement relating to purchase money Debt, Capital Leases and other secured Debt or to leases and licenses permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Debt or the property leased or licensed, (B) customary provisions in leases, licenses and other contracts restricting the assignment thereof, (C) restrictions and conditions imposed by law, (D) those arising under any Loan Document or any loan documents governing any Subordinated Debt, and (E) customary provisions in contracts for the disposition of any assets; *provided* that the restrictions in any such contract

shall apply only to the assets or Subsidiary that is to be disposed of and such disposition is permitted hereunder.

7.9 Business Activities.

Not, and not permit any other Loan Party to, engage in any line of business other than the businesses engaged in on the Closing Date and businesses reasonably related, ancillary or supplemental thereto or extensions thereof.

7.10 Investments.

Not, and not permit any other Loan Party to, make or permit to exist any Investment in any other Person, except the following:

(a) The creation of any Wholly-Owned Subsidiary and contributions by Borrower to the capital of any Wholly-Owned Subsidiary of Borrower, so long as the recipient of any such contribution has guaranteed the Obligations and such guaranty is secured by a pledge of all of its equity interests and substantially all of its real and personal property, in each case in accordance with Section 6.14;

- (b) Cash Equivalent Investments;
- (c) bank deposits in the ordinary course of business;
- (d) any purchase or other acquisition by Borrower or any Wholly-Owned Subsidiary of Borrower of the assets or equity interests of any Subsidiary of Borrower;
- (e) transactions among Loan Parties;
- (f) Hedging Obligations permitted under Section 7.1(d);
- (g) lease, utility and other similar deposits made in the ordinary course of business and trade credit extended in the ordinary course of business;
- (h) Investments consisting of the non-cash portion of the consideration received in respect of Dispositions permitted hereunder;
- (i) Investments permitted by Borrower or any Loan Party as a result of the receipt of insurance and/or condemnation or expropriation proceeds in accordance with the Loan Documents;
- (j) Investments (i) received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes or (ii) in securities of customers and suppliers received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and bona fide disputes with, customers and suppliers, and, in each case, extensions, modifications and renewals thereof;
- (k) Permitted Acquisitions;
- (l) licensing transactions permitted by Section 7.4(c);
- (m) Investments held by any Person as of the date such Person is acquired in connection with a Permitted Acquisition, provided that such Investments were not made, in any case, by such Person in connection with, or in contemplation of, such Permitted Acquisition;

- (n) Investments received in connection with dispositions permitted by Section 7.4;
- (o) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business;
- (p) Investments consisting of travel advances in the ordinary course of business;
- (q) joint ventures, strategic alliances, collaboration arrangements or non-exclusive licensing arrangements in the ordinary course of a Borrower's business consisting of the nonexclusive licensing of technology, the development of technology or the providing of technical support;
- (r) Investments consisting of loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of Equity Interests of a Borrower pursuant to employee stock purchase plans or other similar agreements approved by such Borrower's Board of Directors; and
- (s) Investments existing on the Closing Date and set forth on Schedule 7.10.

7.11 Restriction of Amendments to Certain Documents.

Not, nor permit any Loan Party to, amend or otherwise modify in any material manner, or waive any material rights under, any provisions of any of (i) any loan documents governing any Subordinated Debt (except that the terms of any document governing any Subordinated Debt be amended, modified or otherwise waived to the extent permitted under the applicable subordination agreement that Agent is a party to in connection therewith), or (ii) any Material Contracts (or any replacements thereof) following the occurrence and continuance of an Event of Default; in either case without the written approval of Agent.

7.12 Fiscal Year.

Not change its Fiscal Year.

7.13 Financial Covenants.

7.13.1 Minimum Consolidated Unencumbered Liquid Assets.

(a) Not permit the Consolidated Unencumbered Liquid Assets, as determined on the last day of each calendar month, to be less than the greater of (i) \$2,000,000, or (ii) the Operating Burn for the most recently-completed Fiscal Quarter.

(b) Notwithstanding anything to the contrary contained in this Agreement, in the event that Borrower fails, as determined on the date of receipt by Agent of the interim reports to be delivered pursuant to Section 6.1.2(d) (the "**Liquidity Default Date**"), to comply with the financial covenant set forth in Section 7.13.1(a) above (a "**Liquidity Covenant Default**"), Borrower shall have the right to effect a "cure" of such Liquidity Covenant Default (the "**Liquidity Cure Right**"), subject to the terms and conditions of this Section 7.13.1(b). So long as no other Event of Default has occurred and is continuing, Borrower may exercise the Liquidity Cure Right by (i) notifying Agent in writing of its intent to exercise its Liquidity Cure Right within five (5) Business Days of such Liquidity Default Date (the "**Liquidity Cure Right Notice**") and (ii) providing evidence, acceptable to Agent in its commercially-reasonable discretion, that Borrower has received net cash proceeds in an aggregate amount that is equal to or greater than the amount required to bring Borrower into compliance with the covenant set forth in Section

7.13.1(a) above (the “**Liquidity Cure Amount**”) within thirty (30) Business Days after delivery of the Liquidity Cure Right Notice (each such period, the “**Liquidity Cure Right Exercise Period**”) pursuant to (A) the issuance by Borrower of Subordinated Debt, on terms and conditions satisfactory to Agent in its commercially-reasonable discretion, (B) the issuance by Borrower of additional Equity Interests, on terms and conditions satisfactory to Agent in its commercially-reasonable discretion, (C) the receipt by Loan Parties of cash flow from operations and/or cash realized on Investments held by Loan Parties or (D) some combination of (A)-(C). Upon Borrower’s satisfaction of the requirements set forth in the prior sentence prior to the expiration of the Liquidity Cure Right Exercise Period, the Liquidity Covenant Default shall be deemed cured and no longer continuing. For the avoidance of doubt, Agent and Lenders shall automatically be deemed to reserve all rights and remedies available to them during the occurrence and continuance of an Event of Default (including the right to charge interest on the Obligations at the Default Rate from the Liquidity Default Date) during any Liquidity Cure Right Exercise Period. For the avoidance of doubt, any amounts received during a Liquidity Cure Right Exercise Period in connection with a Revenue Cure Right (as defined below) under Section 7.13.2(b) may be included in determining whether the Liquidity Cure Amount was received under this Section 7.13.1(b) during such Liquidity Cure Right Exercise Period.

7.13.2 Minimum Total Revenue

(a) Not permit the Total Revenue of the Loan Parties (on a consolidated basis) for the consecutive twelve (12) month period ending on the last Business Day of any Fiscal Quarter set forth in the table below (designated by “Q” in the table below) to be less than the applicable amount set forth in the table below for such period.

Minimum Total Revenue as of the end of:	
Q4 2023	\$49,500,000
Q1 2024	\$51,750,000
Q2 2024	\$53,000,000
Q3 2024	\$54,000,000
Q4 2024 and each Fiscal Quarter thereafter	\$55,000,000

(b) Notwithstanding anything to the contrary contained in the Agreement, in the event that Borrower fails, as determined on the date of receipt by Agent of the interim reports to be delivered pursuant to Section 6.1.2(a) (the “**Revenue Default Date**”), to comply with the financial covenant set forth in Section 7.13.2(a) above (a “**Revenue Covenant Default**”), Borrower shall have the right to effect a “cure” of such Revenue Covenant Default (the “**Revenue Cure Right**”), subject to the terms and conditions of this **Section 7.13.2(b)**. So long as no other Event of Default has occurred and is continuing, Borrower may exercise the Revenue Cure Right by (i) notifying Agent in writing of its intent to exercise its Revenue Cure Right within five (5) Business Days of the Revenue Default Date (the “**Revenue Cure Right Notice**”) and (ii) providing evidence, acceptable to Agent in its commercially-reasonable discretion, that Borrower has received net cash proceeds in an aggregate amount that is equal to or greater than one hundred percent (100%) of the amount by which Borrower’s actual Total Revenue for the applicable reporting period was less than the minimum Total Revenue required pursuant to Section 7.13.2(a) above (the “**Revenue Cure Amount**”) within thirty (30) Business Days after delivery of the Revenue Cure Right

Notice (each such period, the “**Revenue Cure Right Exercise Period**”) pursuant to the issuance by Borrower of (A) Subordinated Debt, (B) additional Equity Interests or (C) some combination of (A) and (B), in each case on terms and conditions satisfactory to Agent in its commercially-reasonable discretion. Notwithstanding the forgoing, Borrower shall be permitted to exercise the Revenue Cure Right (i) on no more than two (2) occasions during any period of twelve (12) consecutive months, and (ii) a maximum of three (3) occasions during the term of the Loan. Upon Borrower’s satisfaction of the requirements set forth in the prior sentence prior to the expiration of the Revenue Cure Right Exercise Period, the Revenue Covenant Default shall be deemed cured and no longer continuing. For the avoidance of doubt, Agent and Lenders shall automatically be deemed to reserve all rights and remedies available to them during the occurrence and continuance of an Event of Default (including the right to charge interest on the Obligations at the Default Rate from the Liquidity Default Date) during any Revenue Cure Right Exercise Period. Upon any “cure” of a Revenue Covenant Default in accordance with this Section 7.13.2(b), the Revenue Cure Amount shall be deemed to be included in the Total Revenue as of the last Business Day of the Fiscal Quarter giving rise to such Revenue Covenant Default for purposes of calculating Borrower’s Total Revenue for subsequent Fiscal Quarters where the Fiscal Quarter giving rise to such Revenue Covenant Default would be included in such calculation. For the avoidance of doubt, any amounts received during a Revenue Cure Right Exercise Period in connection with any Liquidity Cure Right under Section 7.13.1(b) may be included in determining whether the Revenue Cure Amount was received under this Section 7.13.2(b) during such Revenue Cure Right Exercise Period, provided that any amounts received in connection with any Liquidity Cure Right during any period other than a Revenue Cure Right Exercise Period shall not be deemed to be included in calculating Borrower’s Total Revenue for any period.

7.13.3 Treatment of Amounts Raised In Connection With Cure Rights.

For the avoidance of doubt, any amounts received by Borrower in connection with the issuance of Subordinated Debt and/or Equity Interests pursuant to Section 7.13.1(b) and Section 7.13.2(b) shall be excluded from the calculation of Total Revenue and the Revenue-Based Payment Amount.

7.14 Deposit Accounts.

Not, and not permit any other Loan Party, to maintain or establish any new Deposit Accounts other than (a) Exempt Accounts and (b) the Deposit Accounts set forth on Schedule 7.14 (which Deposit Accounts constitute all of the Deposit Accounts, securities accounts or other similar accounts maintained by the Loan Parties as of the Closing Date) without prior written notice to Agent. Upon the request of Agent at any time following the occurrence of a Material Adverse Effect, Default or Event of Default, Borrower or such other applicable Loan Party shall promptly enter into an Account Control Agreement, in form and substance reasonably satisfactory to Agent, in relation to the Deposit Account(s) selected by Agent.

7.15 Subsidiaries.

Not, and not permit any other Loan Party to, in each case without the prior written consent of Agent in its sole discretion, establish or acquire any Subsidiary unless (i) no Default or Event of Default has occurred and is continuing or would result therefrom, (ii) such Subsidiary shall have assumed and joined each Loan Document as a Loan Party pursuant to documentation acceptable to Agent in its sole discretion and (iii) all other Loan Parties shall have reaffirmed all Obligations as well as all representations and warranties under the Loan Documents (except to the extent such representations and warranties specifically relate to a prior date only).

7.16 Regulatory Matters.

Not, and not permit any other Loan Party to, (i) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any Governmental Authority; or commit a material act, make a material statement, or fail to make a statement in breach of CLIA or that could otherwise reasonably be expected to provide the basis for CMS or any Governmental Authority to undertake action against such Loan Party, (ii) introduce into commercial distribution any FDA Products which are, upon their shipment, adulterated or misbranded in violation of 21 U.S.C. § 331, (iii) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority; or commit a material act, make a material statement, or fail to make a statement in breach of the FD&C Act or that could otherwise reasonably be expected to provide the basis for the FDA or any other Governmental Authority 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 (iv) otherwise incur any material liability (whether actual or contingent) for failure to comply with Health Care Laws.

7.17 Name; Permits; Dissolution; Insurance Policies; Disposition of Collateral; Taxes; Trade Names; Location of Assets; Change of Chief Executive Office.

Borrower shall not, nor shall it permit any Loan Party to, (a) change its jurisdiction of organization, change the jurisdiction in which its chief executive office is located or change its corporate name without thirty (30) calendar days prior written notice to Agent, (b) amend, alter, suspend, terminate or make provisional in any material way, any Permit, the suspension, amendment, alteration or termination of which would reasonably be expected to be, have or result in a Material Adverse Effect without the prior written consent of Agent, which consent shall not be unreasonably withheld, (c) wind up, liquidate or dissolve (voluntarily or involuntarily) or commence or suffer any proceedings seeking or that would result in any of the foregoing, (d) amend, modify, restate or change any insurance policy in a manner adverse to Agent or Lenders or otherwise allow its aggregate products liability insurance coverage to be less than an amount that is commercially reasonable and consistent with customary industry practices, (e) change its federal tax employer identification number or similar tax identification number under the relevant jurisdiction or establish new or additional trade names without providing not less than thirty (30) days advance written notice to Agent, (f) revoke, alter or amend any Tax Information Authorization (on IRS Form 8821 or otherwise) or other similar authorization mandated by the relevant Governmental Authority given to any Lender, or (g) permit any of its material tangible personal property to be located in or relocated to any jurisdiction in which Agent has not registered or perfected its security interest without thirty (30) calendar days prior written notice to Agent.

7.18 Truth of Statements.

Borrower shall not knowingly furnish to Agent or any Lender any certificate or other document that contains any untrue statement of a material fact or that omits to state a material fact necessary to make it not misleading in light of the circumstances under which it was furnished.

Section 8 Events of Default; Remedies.

8.1 Events of Default.

Each of the following shall constitute an Event of Default under this Agreement:

8.1.1 Non-Payment of Credit.

(a) Default in the payment when due of all outstanding Obligations on the Termination Date; (b) default in the payment of any Revenue-Based Payment Amount on or before the applicable Payment Date; or (c) without duplication of clause (b) hereof, default, and continuance thereof for five (5) Business Days, in the payment when due of any interest, fee, or other amount payable by any Loan Party hereunder or under any other Loan Document.

8.1.2 Default Under Other Debt.

Any "Event of Default" (or such similar defined term) shall occur under the terms applicable to any Debt of any Loan Party (excluding the Obligations) in an aggregate principal amount (for all such Debt so affected and including undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) exceeding \$500,000.

8.1.3 Bankruptcy; Insolvency.

(a) Any Loan Party shall (i) be unable to pay its debts generally as they become due, (ii) file a petition under any insolvency statute, (iii) make a general assignment for the benefit of its creditors, (iv) commence a proceeding for the appointment of a receiver, trustee, interim receiver, receiver and manager, liquidator or conservator of itself or of the whole or any substantial part of its property or shall otherwise be dissolved or liquidated, or (v) make an application or commence a proceeding seeking reorganization or liquidation or similar relief under any Debtor Relief Law or any other applicable law; or

(b) (i) a court of competent jurisdiction shall (A) enter an order, judgment or decree appointing a custodian, receiver, trustee, , interim receiver, receiver and manager, liquidator or conservator of any Loan Party or the whole or any substantial part of any of Loan Party's properties, which shall continue unstayed and in effect for a period of sixty (60) calendar days, (B) approve a petition or claim filed against any Loan Party seeking reorganization, liquidation, appointment of a receiver, interim receiver, liquidator, conservator, trustee or special manager or similar relief under the any Debtor Relief Law or any other applicable law, which is not dismissed within sixty (60) calendar days or, (C) under the provisions of any Debtor Relief Law or other applicable law or statute, assume custody or control of any Loan Party or of the whole or any substantial part of any of Loan Party's properties, which is not irrevocably relinquished within sixty (60) calendar days, or (ii) there is commenced against any Loan Party any proceeding or petition seeking reorganization, liquidation or similar relief under any Debtor Relief Law or any other applicable law or statute, which (A) is not unconditionally dismissed within sixty (60) calendar days after the date of commencement, or (B) is with respect to which Borrower takes any action to indicate its approval of or consent.

8.1.4 Non-Compliance with Loan Documents.

(a) Any failure by Borrower to comply with or to perform any covenant set forth in Section 7; or (b) failure by any Loan Party to comply with or to perform any other provision of this Agreement or any other Loan Document applicable to it (and not constituting an Event of Default under any other provision of this Section 8) and continuance of such failure described in this clause (b) for thirty (30) days after the earlier of any Loan Party becoming aware of such failure or notice thereof to Borrower from Agent or any Lender.

8.1.5 Representations; Warranties.

Any representation or warranty made by any Loan Party herein or any other Loan Document is false or misleading in any material respect when made, or any schedule, certificate, financial statement, report, notice or other writing furnished by any Loan Party to Agent or any Lender in connection herewith is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified and, if such representation or warranty is capable of being cured, remains incorrect for a period of 30 days after the making of such representation or warranty.

8.1.6 Pension Plans.

(a) Institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Loan Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$500,000; (b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA securing obligations in excess of \$500,000; or (c) there shall occur any withdrawal or partial withdrawal from a Multiemployer Pension Plan and the withdrawal liability (without un-accrued interest) to Multiemployer Pension Plans as a result of such withdrawal (including any outstanding withdrawal liability that Borrower or any other Loan Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$500,000.

8.1.7 Judgments.

Final judgments which exceed an aggregate of \$500,000 (to the extent not adequately covered by insurance as to which the insurance company has not disclaimed liability (provided that customary "reservation of rights" letters shall not be deemed to be disclaimers of liability)) shall be rendered against any Loan Party and shall not have been paid, discharged or vacated or had execution thereof stayed pending appeal within thirty (30) calendar days after entry or filing of such judgments.

8.1.8 Invalidity of Loan Documents or Liens.

(a) Any Loan Document shall cease to be in full force and effect otherwise in accordance with its express terms that results in a material diminution of the rights and remedies afforded to Agent and/or Lenders or any other secured parties thereunder; (b) any Loan Party (or any Person by, through or on behalf of any Loan Party) shall contest in any manner the validity, binding nature or enforceability of any Loan Document; or (c) any Lien created pursuant to any Loan Document ceases to constitute a valid first priority perfected Lien (subject to Permitted Liens) on any material portion of the Collateral in accordance with the terms thereof, or Agent ceases to have a valid perfected first priority security interest (subject to Permitted Liens) in any material portion of the Collateral pledged to Agent, for the benefit of Agent and Lenders, pursuant to the Collateral Documents.

8.1.9 Invalidity of Subordination Provisions.

Any subordination provision in any document or instrument governing any Subordinated Debt and any subordination provision in any intercreditor agreement or Subordination Agreement in relation thereto shall cease to be in full force and effect, or any Loan Party shall contest in any manner the validity, binding nature or enforceability of any such provision

8.1.10 Change of Control.

A Change of Control shall occur that does not result in the Payment In Full in accordance with Section 2.8.

8.1.11 Certificate Withdrawals, Adverse Test or Audit Results, and Other Matters.

(a) The institution of any proceeding by FDA, CMS, or any other Governmental Authority to order the withdrawal of any Product or Product category or Service or Service category from the market or to enjoin Borrower or any of its Subsidiaries from manufacturing, marketing, selling, distributing, or otherwise providing any Product or Product category or Service or Service category that would reasonably be expected to have a Material Adverse Effect, (b) the institution of any action or proceeding by DEA, FDA, CMS, or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Required Permit held by Borrower or any of its Subsidiaries or any of their representatives, which, in each case, would reasonably be expected to have a Material Adverse Effect, (c) the commencement of any enforcement action against Borrower or any of its Subsidiaries by DEA, FDA, CMS, or any other Governmental Authority that would reasonably be expected to have a Material Adverse Effect, (d) the recall of any Products or Service from the market, the voluntary withdrawal of any Products or Service from the market, or actions to discontinue the sale of any Products or Service that would reasonably be expected to have a Material Adverse Effect, (e) the occurrence of adverse test, audit, or inspection results in connection with a Product or Service which would reasonably be expected to have a Material Adverse Effect, or (f) the occurrence of any event described in clauses (a) through (e) above that would otherwise cause Borrower to be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

8.1.12 Material Adverse Effect.

Any Material Adverse Effect shall occur that is not otherwise provided for in this Section 8.1.

8.2 Remedies.

(a) If any Event of Default described in Section 8.1.3 shall occur, the Loan and all other Obligations shall become immediately due and payable without presentment, demand, protest or notice of any kind; and, if any other Event of Default shall occur and be continuing, Agent may, and upon the written request of Required Lenders shall, declare all or any part of the Loans and other Obligations to be due and payable, whereupon the Loans and other Obligations (including without limitation the Exit Fee and any amounts due pursuant to Section 2.8 hereof, payable with respect thereto) shall become immediately due and payable (in whole or in part, as applicable), all without presentment, demand, protest or notice of any kind. Agent shall use commercially reasonable efforts to promptly advise Borrower of any such declaration, but failure to do so shall not impair the effect of such declaration.

(b) In addition to the acceleration provisions set forth in Section 8.2(a) above, upon the occurrence and continuation of an Event of Default, Agent may (or shall at the request of Required Lenders) exercise any and all rights, options and remedies provided for in any Loan Document, under the Uniform Commercial Code, any other applicable foreign or domestic laws or otherwise at law or in equity, including, without limitation, the right to (i) apply any property of Borrower held by Agent to reduce the Obligations, (ii) foreclose the Liens created under the Loan Documents, (iii) realize upon, take possession of and/or sell any Collateral or securities pledged, with or without judicial process, (iv) exercise all rights and powers with respect to the Collateral as Borrower might exercise, (v) collect and send notices regarding the Collateral, with or without judicial process, (vi) by its own means or with judicial assistance, enter any

premises at which Collateral and/or pledged securities are located, or render any of the foregoing unusable or dispose of the Collateral and/or pledged securities on such premises without any liability for rent, storage, utilities, or other sums, and Borrower shall not resist or interfere with such action, (vii) at Borrower's expense, require that all or any part of the Collateral be assembled and made available to Agent, for the benefit of Lenders, or Required Lenders at any place reasonably designated by Agent, in its sole discretion, and/or relinquish or abandon any Collateral or securities pledged or any Lien thereon.

(c) The enumeration of any rights and remedies in any Loan Document is not intended to be exhaustive, and all rights and remedies of Agent and Lenders described in any Loan Document are cumulative and are not alternative to or exclusive of any other rights or remedies which Agent and Lenders otherwise may have. The partial or complete exercise of any right or remedy shall not preclude any other further exercise of such or any other right or remedy.

(d) Notwithstanding any provision of any Loan Document, Agent, in its sole discretion shall have the right, but not any obligation, at any time that Loan Parties fail to do so, subject to any applicable cure periods permitted by or otherwise set forth in the Loan Documents, and from time to time, without prior notice, to: (i) discharge (at Borrower's expense) taxes or Liens affecting any of the Collateral that have not been paid in violation of any Loan Document or that jeopardize Agent's Lien priority in the Collateral; or (ii) make any other payment (at Borrower's expense) for the administration, servicing, maintenance, preservation or protection of the Collateral (each such advance or payment set forth in clauses (i) and (ii) herein, a "Protective Advance"). Agent shall be reimbursed for all Protective Advances pursuant to Section 2.9.1(b) and/or Section 2.10, as applicable, and any Protective Advances shall bear interest at the Default Rate from the date such Protective Advance is paid by Agent until it is repaid. No Protective Advance by Agent shall be construed as a waiver by Agent, or any Lender of any Default, Event of Default or any of the rights or remedies of Agent or any Lender under any Loan Document.

Section 9 Agent.

9.1 Appointment; Authorization.

Each Lender hereby irrevocably appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent.

9.2 Delegation of Duties.

Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

9.3 Limited Liability.

None of Agent or any of its Affiliates, directors, officers, employees or agents shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement

or any other Loan Document or the transactions contemplated hereby (except to the extent resulting from its own gross negligence or willful misconduct as determined by a court of competent jurisdiction), or (b) be responsible in any manner to any Lender for any recital, statement, representation or warranty made by any Loan Party or Affiliate of any Loan Party, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any Lien or security interest therein), or for any failure of any Loan Party or any other party to any Loan Document to perform its Obligations hereunder or thereunder. Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or Affiliate of any Loan Party.

9.4 Reliance.

Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of Required Lenders (or all Lenders if expressly required hereunder) as it deems appropriate and, if it so requests, confirmation from Lenders of their obligation to indemnify Agent against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of Required Lenders (or all Lenders if expressly required hereunder) and such request and any action taken or failure to act pursuant thereto shall be binding upon each Lender.

9.5 Notice of Default.

Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Event of Default or Default and stating that such notice is a "notice of default". Agent will notify Lenders of its receipt of any such notice or any such default in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders. Agent shall take such action with respect to such Event of Default or Default as may be requested by Required Lenders in accordance with Section 8.2; *provided* that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default or Default as it shall deem advisable or in the best interest of Lenders.

9.6 Credit Decision.

Each Lender acknowledges that Agent has not made any representation or warranty to it, and that no act by Agent hereafter taken, including any review of the affairs of Borrower and the other Loan Parties, shall be deemed to constitute any representation or warranty by Agent to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of

Borrower, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except for notices, reports and other documents expressly herein required to be furnished to Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of any Loan Party which may come into the possession of Agent.

9.7 Indemnification.

Whether or not the transactions contemplated hereby are consummated, each Lender shall indemnify upon demand Agent and its Affiliates, directors, officers, employees and agents (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), based on such Lender's Pro Rata Term Loan Share, from and against any and all actions, causes of action, suits, losses, liabilities, damages and out-of-pocket expenses, including Legal Costs, except to the extent any thereof result from the applicable Person's own gross negligence or willful misconduct, as determined by a court of competent jurisdiction. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Legal Costs) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section 9.7 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or modification, release or discharge of, any or all of the Collateral Documents, termination of this Agreement and the resignation or replacement of Agent.

9.8 Agent Individually.

SWK and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any Loan Party and any Affiliate of any Loan Party as though SWK were not Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, SWK or its Affiliates may receive information regarding Loan Parties or their Affiliates (including information that may be subject to confidentiality obligations in favor of any such Loan Party or such Affiliate) and acknowledge that Agent shall be under no obligation to provide such information to them. With respect to their Loans (if any), SWK and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though SWK were not Agent, and the terms "Lender" and "Lenders" include SWK and its Affiliates, to the extent applicable, in their individual capacities.

9.9 Successor Agent.

Agent may resign as Agent at any time upon 30 days' prior notice to Lenders and Borrower (unless during the existence of an Event of Default such notice is waived by Required Lenders). If Agent resigns under this Agreement, Required Lenders shall, with (so long as no Event of Default exists) the consent of Borrower (which shall not be unreasonably withheld or delayed), appoint from among Lenders a successor agent for Lenders. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, on behalf of, and after consulting with Lenders and (so long as no Event of

Default exists) Borrower, a successor agent. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent, and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent becomes effective, the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Agent hereunder until such time, if any, as Required Lenders appoint a successor agent as provided for above; *provided* that in the case of any collateral security held by Agent for the benefit of Lenders under any of the Loan Documents, the retiring Agent shall continue so to hold such collateral security until such time as a successor Agent is appointed and the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit so long as retiring Agent shall continue to so hold such collateral security. Upon the acceptance of a successor's appointment as Agent hereunder, the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents in respect of the Collateral.

9.10 Collateral and Guarantee Matters.

Lenders irrevocably authorize Agent, at its option and in its discretion, (a) to release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement); or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by Required Lenders; (b) notwithstanding Section 10.1(a)(ii) hereof to release any party from its guaranty under the Guarantee and Collateral Agreement (i) when all Obligations have been Paid in Full or (ii) if such party was sold or is to be sold or disposed of as part of or in connection with any disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition being made in compliance with this Agreement); or (c) to subordinate its interest in any Collateral to any holder of a Lien on such Collateral which is permitted by Section 7.2(d) (it being understood that Agent may conclusively rely on a certificate from Borrower in determining whether the Debt secured by any such Lien is permitted by Section 7.1). Upon request by Agent at any time, Lenders will confirm in writing Agent's authority to release, or subordinate its interest in, particular types or items of Collateral pursuant to this Section 9.10.

Agent shall release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full, (ii) in respect of property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement) or (iii) subject to Section 10.1, if directed to do so in writing by Required Lenders.

In furtherance of the foregoing, Agent agrees to execute and deliver to Borrower, at Borrower's expense, such termination and release documentation as Borrower may reasonably request to evidence a Lien release that occurs pursuant to terms of this Section 9.10.

9.11 Intercreditor and Subordination Agreements.

Each Lender hereby irrevocably appoints, designates and authorizes Agent to enter into one or more intercreditor agreements and/or Subordination Agreements in relation to any other Debt of Borrower entered into in accordance with this Agreement or as otherwise approved by Required Lenders, on its behalf and to take such action on its behalf under the provisions of any such agreement (subject to the last sentence of this Section 9.11). Each Lender further agrees to be bound by the terms and conditions of any such intercreditor agreement and Subordination Agreement. Each Lender hereby authorizes Agent to issue blockages notices in connection with any such Debt of Borrower and such intercreditor agreement and Subordination Agreement, or any replacement intercreditor agreement and/or Subordination Agreement, in its discretion or, at the direction of Required Lenders.

9.12 Actions in Concert.

For the sake of clarity, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement, the Notes or any other Loan Document (including exercising any rights of set-off) without first obtaining the prior written consent of Agent and Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement, the Notes and the other Loan Documents shall be taken in concert and at the direction or with the consent of Agent or Required Lenders.

Section 10 Miscellaneous.

10.1 Waiver; Amendments.

(a) Except as otherwise expressly provided in this Agreement, no amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or any of the other Loan Documents shall in any event be effective unless the same shall be in writing and signed by Borrower (with respect to Loan Documents to which Borrower is a party), by Lenders having aggregate Pro Rata Term Loan Shares of not less than the aggregate Pro Rata Term Loan Shares expressly designated herein with respect thereto or, in the absence of such express designation herein, by Required Lenders, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however, that:*

(i) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders directly affected thereby, in addition to Required Lenders and Borrower, do any of the following: (A) increase any of the Commitments (*provided* that only the Lenders participating in any such increase of the Commitments shall be considered directly affected by such increase), (B) extend the date scheduled for payment of any principal of (except as otherwise expressly set forth below in clause (C)), or interest on, the Loans or any fees or other amounts payable hereunder or under the other Loan Documents, or (C) reduce the principal amount of any Loan, the amount or rate of interest thereon, or any fees or other amounts payable hereunder or under the other Loan Documents; and

(ii) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders in addition to Borrower (with respect to Loan Documents to which Borrower is a party), do any of the following: (A) release any material guaranty under the Guarantee and Collateral Agreement or release all or substantially all of the Collateral granted under the Collateral Documents, except as otherwise specifically provided in this Agreement or the other Loan Documents, (B) change the definition of Required Lenders, (C) change any provision of this Section 10.1, (D) amend the provisions of Section 2.10.2 or Section 2.10.4, or (E) reduce

the aggregate Pro Rata Term Loan Shares required to effect any amendment, modification, waiver or consent under the Loan Documents.

(b) No amendment, modification, waiver or consent shall, unless in writing and signed by Agent, in addition to Borrower and Required Lenders (or all Lenders directly affected thereby or all of the Lenders, as the case may be, in accordance with the provisions above), affect the rights, privileges, duties or obligations of Agent (including without limitation under the provisions of Section 9), under this Agreement or any other Loan Document.

(c) No delay on the part of Agent or any Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

10.2 Notices.

All notices hereunder shall be in writing (including via electronic mail) and shall be sent to the applicable party at such party's address set forth beneath its signature on the signature page to this Agreement or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by electronic mail transmission shall be deemed to have been given when sent if sent during regular business hours on a Business Day, otherwise, such deemed delivery will be effective as of the next Business Day; notices sent by mail shall be deemed to have been given five (5) Business Days after the date when sent by registered or certified mail, first class postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed to have been given when received. Borrower, Agent and Lenders each hereby acknowledge that, from time to time, Agent, Lenders and Borrower may deliver information and notices using electronic mail.

10.3 Computations.

Unless otherwise specifically provided herein, any accounting term used in this Agreement shall have the meaning customarily given such term in accordance with GAAP, and all financial computations hereunder shall be computed in accordance with GAAP consistently applied. The explicit qualification of terms or computations by the phrase "in accordance with GAAP" shall in no way be construed to limit the foregoing. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (Codification of Accounting Standards 825-10) to value any Debt or other liabilities of any Loan Party at "fair value", as defined therein.

10.4 Costs: Expenses.

Borrower agrees to pay on demand the reasonable, out-of-pocket costs and expenses of (a) Agent (including Legal Costs) in connection with (i) the preparation, execution, syndication and delivery (including perfection and protection of Collateral) of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith, (ii) the administration of the Loans and the Loan Documents, and (iii) any proposed or actual amendment, supplement or waiver to any Loan Document, and (b) Agent and Lenders (including Legal Costs) in connection with the collection of the Obligations and enforcement of this Agreement, the other Loan Documents or any such other documents. In addition, Borrower agrees to pay and to save Agent and Lenders harmless from all liability for, any fees of Borrower's auditors in connection with any reasonable exercise by Agent and Lenders of their rights pursuant to and to the extent provided in Section 6.2. All

Obligations provided for in this Section 10.4 shall survive repayment of the Loans, cancellation of the Notes, and termination of this Agreement.

10.5 Indemnification by Borrower.

In consideration of the execution and delivery of this Agreement by Agent and Lenders and the agreement to extend the Commitments provided hereunder, Borrower hereby agrees to indemnify, exonerate and hold Agent, each Lender and each of the officers, directors, employees, Affiliates and agents of Agent and each Lender (each a "Lender Party") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including Legal Costs (collectively, the "Indemnified Liabilities"), incurred by Lender Parties or any of them as a result of, or arising out of, or relating to any Loan Party or any of their respective officers, directors or agents, including, without limitation, (a) any tender offer, merger, amalgamation, purchase of equity interests, purchase of assets or other similar transaction financed or proposed to be financed in whole or in part, directly or indirectly, with the proceeds of any of the Loans, (b) the use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any Hazardous Substance at any property owned or leased by Borrower or any other Loan Party, (c) any violation of any applicable Environmental Laws with respect to conditions at any property owned or leased by any Loan Party or the operations conducted thereon, (d) the investigation, cleanup or remediation of offsite locations at which any Loan Party or their respective predecessors are alleged to have directly or indirectly disposed of Hazardous Substances, (e) the execution, delivery, performance or enforcement of this Agreement or any other Loan Document by any Lender Party, except to the extent any such Indemnified Liabilities result solely from the applicable Lender Party's own gross negligence or willful misconduct as finally determined by a court of competent jurisdiction in a non-appealable judgment, or (f) such Person's general operation of its business including all product liability out of or in connection with such Person's or any of its Affiliates or licensees manufacture use or sale of a Product or the provision of a Service. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. All Obligations provided for in this Section 10.5 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement. Notwithstanding the foregoing, this Section 10.5 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

10.6 Marshaling; Payments Set Aside.

Neither Agent nor any Lender shall be under any obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that Borrower makes a payment or payments to Agent or any Lender, or Agent or any Lender enforces its Liens or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent or any Lender in its discretion) to be repaid to a trustee, receiver, interim receiver, receiver and manager, or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (a) to the fullest extent permitted by applicable law, to the extent of such recovery, the obligation hereunder or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred and (b) each Lender severally agrees to pay to Agent upon demand its ratable share of the total amount so recovered from or repaid by Agent to the extent paid to such Lender.

10.7 Non-liability of Lenders.

The relationship between Borrower on the one hand and Lenders and Agent on the other hand shall be solely that of borrower and lender. Neither Agent nor any Lender shall have any fiduciary responsibility to Borrower. Neither Agent nor any Lender undertakes any responsibility to Borrower to review or inform Borrower of any matter in connection with any phase of Borrower's business or operations. To the fullest extent permitted under applicable law, execution of this Agreement by Borrower constitutes a full, complete and irrevocable release of any and all claims which Borrower may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. Neither Agent nor any Lender shall have any liability with respect to, and Borrower hereby, to the fullest extent permitted under applicable law, waives, releases and agrees not to sue for, any special, indirect, punitive or consequential damages or liabilities.

10.8 Assignments.

10.8.1 Assignments.

(a) Any Lender may at any time assign to one or more Persons (other than a Loan Party and their respective Affiliates) (any such Person, an "**Assignee**") all or any portion of such Lender's Loans and Commitments, with the prior written consent of Agent, and, so long as no Event of Default has occurred and is continuing, Borrower (which consents shall not be unreasonably withheld or delayed), provided, however, that no such consent(s) shall be required:

(i) from Borrower for an assignment by a Lender to another Lender, an Affiliate of a Lender, an Approved Fund of a Lender, or any other financial institution that invests in commercial loans in the ordinary course of its business, but such Lender will give written notice to Borrower of any such assignment;

(ii) from Agent for an assignment by a Lender to an Affiliate of a Lender or an Approved Fund of a Lender;

(iii) from Borrower or Agent for an assignment by SWK, as a Lender, to any Person for which SWK Advisors LLC acts as an investment advisor (or any similar type of representation or agency) pursuant to a written agreement, but SWK will give written notice to Borrower of any such assignment;

(iv) from Borrower or Agent for an assignment by a Lender of its Loans and its Note as collateral security to a Federal Reserve Bank or, as applicable, to such Lender's trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder); or

(v) from Borrower, Agent or any Lender for (A) the assignment of SWK's Loans and Commitments to a Permitted Assignee (as defined below) or (B) a collateral assignment by SWK of, and the grant by SWK of a security interest in, all of SWK's right, title and interest in, to and under each of the Loan Documents, including, without limitation, all of SWK's rights and interests in, to and under this Agreement, the Obligations and the Collateral (collectively, the "**Assigned Rights**"), to a Permitted Assignee, provided that no such collateral assignment shall release SWK from any of its obligations under any of the Loan Documents. In connection with any enforcement of or foreclosure upon its security interests in any of the Assigned Rights, a Permitted Assignee, upon notice to Borrower, SWK and the other Lenders, shall be entitled to substitute itself, or its designee, for SWK as a Lender under this Agreement. For purposes hereof,

the term "**Permitted Assignee**" shall mean any lender to or funding source of SWK or its Affiliate, together with its successors, assigns or designees (including, without limitation, any purchaser or other assignee of the Assigned Rights from such Person).

Effective immediately upon the replacement of SWK as a Lender under this Agreement by a Permitted Assignee in accordance with this clause (v), SWK shall automatically be deemed to have resigned as Agent pursuant to Section 9.9 of this Agreement (without the need for Agent giving advance written notice of such resignation as required pursuant to such Section 9.9), and Required Lenders shall appoint a successor Agent in accordance with Section 9.9 of this Agreement.

(b) From and after the date on which the conditions described above have been met, (i) such Assignee shall be deemed automatically to have become a party hereto and, to the extent that rights and obligations hereunder have been assigned to such Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder and (ii) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights (other than its indemnification rights) and obligations hereunder. Upon the request of the Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, Borrower shall execute and deliver to Agent for delivery to the Assignee (and, as applicable, the assigning Lender) a Note in the principal amount of the Assignee's Pro Rata Term Loan Share (and, as applicable, a Note in the principal amount of the Pro Rata Term Loan Share retained by the assigning Lender). Each such Note shall be dated the effective date of such assignment. Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower any prior Note held by it.

(c) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in the United States a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the Commitments of, and principal amount of the Loans owing to, such Lender pursuant to the terms hereof. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent.

(d) Notwithstanding the foregoing provisions of this Section 10.8.1 or any other provision of this Agreement, any Lender may at any time assign all or any portion of its Loans and its Note (i) as collateral security to a Federal Reserve Bank or, as applicable, to such Lender's trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder) and (ii) to (w) an Affiliate of such Lender which is at least fifty percent (50%) owned (directly or indirectly) by such Lender or by its direct or indirect parent company, (x) its direct or indirect parent company, (y) to one or more other Lenders or (z) to an Approved Fund.

10.9 Participations.

Any Lender may at any time sell to one or more Persons participating interests in its Loans, Commitments or other interests hereunder (any such Person, a "Participant"). In the event of a sale by a Lender of a participating interest to a Participant, (a) such Lender's obligations hereunder shall remain unchanged for all purposes, (b) Borrower and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder and (c) all amounts payable by Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. No Participant shall have any direct or indirect voting rights hereunder except with respect to any event described in Section 10.1 expressly requiring the unanimous vote of all Lenders or, as applicable, all affected Lenders. Each Lender agrees to incorporate the requirements of the preceding

sentence into each participation agreement which such Lender enters into with any Participant. Borrower agrees, to the fullest extent permitted by applicable law, that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided* that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 2.10.4. Borrower also agrees that each Participant shall be entitled to the benefits of Section 3 as if it were a Lender (*provided* that a Participant shall not be entitled to such benefits unless such Participant agrees, for the benefit of Borrower, to comply with the documentation requirements of Section 3.1(c) as if it were a Lender and complies with such requirements, and *provided, further*, that no Participant shall receive any greater compensation pursuant to Section 3 than would have been paid to the participating Lender if no participation had been sold). Any such Lender transferring a participation shall, as an agent for Borrower, maintain in the United States a register to record the names, address, and interest, principal and other amounts owing to, each Participant. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and the Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Participant hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such participation register shall be available for inspection by the Agent or Borrower, at any reasonable time upon reasonable prior written notice from Agent or Borrower.

10.10 Confidentiality.

Borrower, Agent and each Lender agree to use commercially reasonable efforts (equivalent to the efforts Borrower, Agent or such Lender applies to maintain the confidentiality of its own confidential information) to maintain as confidential all information (including, without limitation, any information provided by Borrower pursuant to Sections 6.1, 6.2 and 6.9) provided to them by any other party hereto and/or any other Loan Party, as applicable, except that Agent and each Lender may disclose such information (a) to Persons employed or engaged by Agent or such Lender or any of their Affiliates (including collateral managers of Lenders) in evaluating, approving, structuring or administering the Loans and the Commitments (*provided* that such Persons have been informed of the covenants contained in this Section 10.10); (b) to any assignee, funding source of Agent or any Lender, or participant or potential assignee or participant that has agreed to comply with the covenants contained in this Section 10.10 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any federal or state regulatory authority or examiner, or any insurance industry association, or as reasonably believed by Agent or such Lender to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of Agent's or such Lender's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which Agent or such Lender is a party; (f) to any nationally recognized rating agency or investor of a Lender that requires access to information about a Lender's investment portfolio in connection with ratings issued or investment decisions with respect to such Lender; (g) that ceases to be confidential through no fault of Agent or any Lender; (h) to a Person that is an investor or prospective investor in a Securitization that agrees that its access to information regarding Borrower and the Loans and Commitments is solely for purposes of evaluating an investment in such Securitization and who agrees to treat such information as confidential; or (i) to a Person that is a trustee, collateral manager, servicer, noteholder or secured party in a Securitization in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For purposes of this Section, "Securitization" means a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans or the Commitments. In each case described in clauses (c), (d) and (e) (as such disclosure in clause (e) pertains to litigation only), where the Agent or Lender, as applicable, is compelled to disclose a Loan Party's confidential information,

promptly after such disclosure the Agent or such Lender, as applicable, shall notify Borrower of such disclosure *provided, however, that neither the Agent nor any Lender shall be required to notify Borrower of any such disclosure (i) to any federal or state banking regulatory authority conducting an examination of the Agent or such Lender, or (ii) to the extent that it is legally prohibited from so notifying Borrower.* Notwithstanding the foregoing, Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.11 Captions.

Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

10.12 Nature of Remedies.

All Obligations of Borrower and rights of Agent and Lenders expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

10.13 Counterparts; Electronic Signatures.

This Agreement and the other Loan Documents may be executed in counterparts with the same effect as if all parties had executed the same document. All counterparts shall be construed together and shall constitute a single agreement. Further, the parties hereto consent and agree that this Agreement and the other Loan Documents may be signed and/or transmitted by e-mail of any .pdf file, jpeg file, or any other electronic or image file, or any "electronic signature" as defined under the U.S. Electronic Signatures in Global and National Commerce Act or the New York Electronic Signatures and Records Act, which includes any electronic signature provided using Orbit, Adobe Sign, DocuSign, or any other similar platform identified by the parties hereto and reasonably available at no undue burden or expense to the Agent), except to the extent the Agent requires otherwise. Any such electronic signatures shall be valid, effective and legally binding as if such electronic signatures were handwritten signatures and shall be deemed to have been duly and validly delivered for all purposes hereunder. No party hereto shall raise the use of e-mail or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of e-mail or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

10.14 Severability.

The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

10.15 Entire Agreement.

This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

10.16 Successors; Assigns.

This Agreement shall be binding upon Borrower, Lenders and Agent and their respective successors and assigns, and shall inure to the benefit of Borrower, Lenders and Agent and the successors and assigns of Lenders and Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Borrower may not assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of Agent and each Lender.

10.17 Governing Law.

THIS AGREEMENT AND EACH NOTE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE.

10.18 Forum Selection; Consent to Jurisdiction.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN NEW YORK; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HEREBY EXPRESSLY, VOLUNTARILY, AND IRREVOCABLY SUBMITS ITSELF EXCLUSIVELY TO PERSONAL JURISDICTION AND VENUE IN THE DISTRICT COURT OF DALLAS COUNTY, TEXAS AND IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE; SUCH COURTS SHALL BE THE EXCLUSIVE PROPER VENUE FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY HEREBY EXPRESSLY, VOLUNTARILY, AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH PARTY FURTHER EXPRESSLY, VOLUNTARILY, AND IRREVOCABLY CONSENTS TO SERVICE OF PROCESS RELATED TO ANY SUCH LITIGATION AS SET FORTH ABOVE BY FEDERAL EXPRESS OR REGISTERED/CERTIFIED MAIL SENT TO THE APPLICABLE PARTY AT such party's address set forth beneath its signature on the signature page to this Agreement OR AT SUCH OTHER ADDRESS AS SUCH PARTY MAY, BY WRITTEN NOTICE RECEIVED BY THE OTHER PARTIES, HAVE DESIGNATED AS ITS ADDRESS. THE PARTIES AGREE THAT THESE METHODS FOR SERVICE OF PROCESS ARE VALID FOR PURPOSES OF EFFECTING SERVICE OF PROCESS, AS THEY ARE EFFICIENT AND COST-EFFECTIVE ALTERNATIVES TO FORMAL SERVICE OF PROCESS (THE PARTIES MAY EFFECT SERVICE OF PROCESS IN ANY OTHER METHOD ALLOWED UNDER THE LAW IF THEY SO CHOOSE).

10.19 Waiver of Jury Trial.

EACH OF BORROWER, AGENT AND EACH LENDER, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, HEREBY EXPRESSLY, VOLUNTARILY, AND IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT

DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.20 Patriot Act.

Each Lender that is subject to the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), and Agent (for itself and not on behalf of any Lender), hereby notifies each Loan Party that, pursuant to the requirements of the Patriot Act, such Lender and Agent are required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or Agent, as applicable, to identify each Loan Party in accordance with the Patriot Act.

10.21 Independent Nature of Relationship.

Nothing herein contained shall constitute any Loan Party and SWK as a partnership, an association, a joint venture or any other kind of entity or legal form or constitute any party the agent of the other. No party shall hold itself out contrary to the terms of this Section 10.21 and no party shall become liable by any representation, act or omission of the other contrary to the provisions hereof. No Loan Party, Lender, nor SWK has any fiduciary or other special relationship with the other party hereto or any of its Affiliates. The Loan Parties and SWK agree that SWK is not involved in or responsible for the manufacture, marketing or sale of any Product or the provision of any Service.

[Remainder of page intentionally blank; signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

BORROWER:

JOURNEY MEDICAL CORPORATION,
a Delaware corporation

By: _____
Name: _____
Title: _____

Address:

9237 E. Via de Ventura Blvd.
Suite 105
Scottsdale, AZ 85258
Email: ***

With a copy to:

Cooley LLP
1299 Pennsylvania Ave NW
Suite 700
Washington, DC 20004
Attention: Mike Tollini
Email: mtollini@cooley.com

[JOURNEY] CREDIT AGREEMENT

AGENT AND LENDER:

SWK FUNDING LLC, a Delaware limited liability company, as Agent and a Lender

By: SWK Holdings Corporation, a Delaware corporation, its sole Manager

By: _____
Name: Joe D. Staggs
Title: Chief Executive Officer

Address:

SWK Funding LLC
5956 Sherry Lane, Suite 650
Dallas, Texas 75225
Email: notifications@swkhold.com

With a copy to:

Holland & Knight LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Attention: Ryan Magee
Email: Ryan.Magee@hklaw.com

[JOURNEY] CREDIT AGREEMENT

ANNEX I

(intentionally omitted)

[JOURNEY] CREDIT AGREEMENT

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO RULES 13A-14(A) AND 15D-14(A) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Claude Maraoui, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Journey Medical Corporation;
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.

/s/ Claude Maraoui

Claude Maraoui
President and Chief Executive Officer
(Principal Executive Officer)
November 12, 2024

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO RULES 13A-14(A) AND 15D-14(A) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Joseph Benesch certify that:

1. I have reviewed this quarterly report on Form 10-Q of Journey Medical Corporation;
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 principle;
 - (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.

/s/ Joseph Benesch
Joseph Benesch
Chief Financial Officer
(Principal Financial Officer)
November 12, 2024

**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**

I, Claude Maraoui, President and Chief Executive Officer of Journey Medical Corporation (the "Company"), in compliance with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, hereby certify that, to the best of my knowledge, the Company's quarterly report on Form 10-Q for the period ended September 30, 2024 (the "Report") filed with the Securities and Exchange Commission:

- Fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Claude Maraoui

Claude Maraoui
President and Chief Executive Officer
(Principal Executive Officer)
November 12, 2024

**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**

I, Joseph Benesch, Chief Financial Officer of Journey Medical Corporation (the "Company"), in compliance with 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, hereby certify that, to the best of my knowledge, the Company's quarterly report on Form 10-Q for the period ended September 30, 2024 (the "Report") filed with the Securities and Exchange Commission:

- Fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Joseph Benesch

Joseph Benesch
Chief Financial Officer
(Principal Financial Officer)
November 12, 2024
