

REFINITIV

# DELTA REPORT

## 10-Q

VRCA - VERRICA PHARMACEUTICALS I

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - SEPTEMBER 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS 5564

<span style="color: yellow;">■</span>	CHANGES	124
<span style="color: pink;">■</span>	DELETIONS	4917
<span style="color: green;">■</span>	ADDITIONS	523

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

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FORM 10-Q

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(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, March 31, 2023** **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: 001-38529

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**Verrica Pharmaceuticals Inc.**

(Exact Name of Registrant as Specified in its Charter)

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**Delaware**

**46-3137900**

(State or other jurisdiction of  
incorporation or organization)

(I.R.S. Employer

Identification No.)

**44 West Gay Street, Suite 400**

**19380**

**West Chester, PA**

(Address of principal executive offices)

(Zip Code)

**Registrant's telephone number, including area code: (484) 453-3300**

**N/A**

**(Former address of principal executive offices)**

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

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
Common Stock, \$0.0001 par value	VRCA	The Nasdaq Stock Market LLC

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

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

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

Large accelerated filer  Accelerated filer

Non-accelerated filer  Smaller reporting company

Emerging growth company

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

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

As of **November 3, 2023** **May 7, 2024**, the registrant had **42,064,553** **42,420,053** shares of common stock, \$0.0001 par value per share, outstanding.

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**VERRICA PHARMACEUTICALS INC.**  
**QUARTERLY REPORT ON FORM 10-Q**  
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## PART I. FINANCIAL INFORMATION

### Item 1. Unaudited Condensed Financial Statements

#### VERRICA PHARMACEUTICALS INC.

#### CONDENSED BALANCE SHEETS

(in thousands, except share and per share amounts)

(Unaudited) (unaudited)

	September 30,		December 31,	
	2023		2022	
<b>ASSETS</b>				
Current assets:				
Cash and cash equivalents	\$ 84,308		\$ 34,273	
Accounts receivable	3,946		—	
Collaboration revenue receivable	—		388	
Unbilled revenue	126		99	
Inventory	279		—	
Prepaid expenses and other current assets	3,066		4,355	
<b>Total current assets</b>	<b>91,725</b>		<b>39,115</b>	
Property and equipment, net	3,558		3,887	
Operating lease right-of-use asset	1,339		1,443	
Other non-current assets	526		276	
<b>Total assets</b>	<b>\$ 97,148</b>		<b>\$ 44,721</b>	
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>				
Current liabilities:				
Accounts payable	\$ 1,925		\$ 507	
Accrued expenses and other current liabilities	9,102		2,655	
Operating lease liability	316		297	
Finance lease liability	31		—	
<b>Total current liabilities</b>	<b>11,374</b>		<b>3,459</b>	
Operating lease liability	989		1,229	
Finance lease liability	81		—	
Long term debt	42,401		—	
<b>Total liabilities</b>	<b>54,845</b>		<b>4,688</b>	
<b>Commitments and Contingencies (Note 10)</b>				

Stockholders' equity:			
Preferred stock, \$0.0001 par value; 10,000,000 shares authorized; no shares issued and outstanding as of September 30, 2023 and December 31, 2022	—	—	—
Common stock, \$0.0001 par value; 200,000,000 authorized; 42,169,697 shares issued and 42,064,553 shares outstanding as of September 30, 2023 and 41,199,197 shares issued and 41,094,053 shares outstanding as of December 31, 2022	4	4	4
Treasury stock, at cost, 105,144 shares as of September 30, 2023 and December 31, 2022	—	—	—
Additional paid-in capital	248,133	203,482	
Accumulated deficit	(205,834)	(163,453)	
Total stockholders' equity	42,303	40,033	
<b>Total liabilities and stockholders' equity</b>	<b>\$ 97,148</b>	<b>\$ 44,721</b>	
	March 31,	December 31,	
	2024	2023	
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	\$ 48,939	\$ 69,547	
Accounts receivable	7,002	4,248	
Unbilled collaboration revenue	592	168	
Inventory	2,499	1,022	
Prepaid expenses and other current assets	2,344	2,545	
Total current assets	61,376	77,530	
Property and equipment, net	937	1,052	
Operating lease right-of-use asset	1,082	1,158	
Finance lease right-of-use asset	2,460	1,405	
Other non-current assets	452	452	
<b>Total assets</b>	<b>\$ 66,307</b>	<b>\$ 81,597</b>	
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>			
Current liabilities:			
Accounts payable	\$ 2,527	\$ 2,464	
Accrued expenses and other current liabilities	15,828	13,860	
Operating lease liability	331	324	
Finance lease liability	679	376	
Total current liabilities	19,365	17,024	
Operating lease liability	825	910	

Finance lease liability	1,761	1,026
Long term debt	42,848	42,874
<b>Total liabilities</b>	<b>64,799</b>	<b>61,834</b>
<b>Commitments and Contingencies (Note 6)</b>		
Stockholders' equity:		
Preferred stock, \$0.0001 par value; 10,000,000 shares authorized; no shares issued and outstanding as of March 31, 2024 and December 31, 2023	—	—
Common stock, \$0.0001 par value; 200,000,000 authorized; 42,525,197 shares issued and 42,420,053 shares outstanding as of March 31, 2024 and 42,518,697 shares issued and 42,413,553 shares outstanding as of December 31, 2023	4	4
Treasury stock, at cost, 105,144 shares as of March 31, 2024 and December 31, 2023	—	—
Additional paid-in capital	252,287	250,207
Subscription receivable	(4)	—
Accumulated deficit	(250,779)	(230,448)
<b>Total stockholders' equity</b>	<b>1,508</b>	<b>19,763</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 66,307</b>	<b>\$ 81,597</b>

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

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	VERRICA PHARMACEUTICALS INC.	
	CONDENSED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS	
	(in thousands, except share and per share amounts)	
	(Unaudited)	For the Three Months Ended
		March 31,
	2024	2023
<b>Revenue:</b>		
Product revenue, net	\$ 3,232	\$ —
Collaboration revenue	594	37
<b>Total revenue</b>	<b>3,826</b>	<b>37</b>

<b>Operating expenses:</b>			
Selling, general and administrative	16,339	4,319	
Research and development	4,948	2,739	
Cost of product revenue	546	—	
Cost of collaboration revenue	592	68	
Total operating expenses	22,425	7,126	
<b>Loss from operations</b>	(18,599)	(7,089)	
<b>Other (expense) income:</b>			
Interest income	598	500	
Interest expense	(2,319)	—	
Other expense	(11)	—	
Total other (expense) income, net	(1,732)	500	
<b>Net loss</b>	<b>\$ (20,331)</b>	<b>\$ (6,589)</b>	
Net loss per share, basic and diluted	\$ (0.44)	\$ (0.15)	
Weighted-average common shares outstanding, basic and diluted	46,483,669	43,023,379	

	For the Three Months Ended		For the Nine Months Ended	
	September 30,		September 30,	
	2023	2022	2023	2022
<b>Revenue:</b>				
Product revenue, net	\$ 2,792	\$ —	\$ 2,792	\$ —
Collaboration revenue	125	8,319	344	8,964
Total revenue	2,917	8,319	3,136	8,964
<b>Operating expenses:</b>				
Selling, general and administrative	20,054	3,925	30,310	14,216
Research and development	6,510	2,780	14,975	9,170
Cost of product revenue	145	—	145	—
Cost of collaboration revenue	125	166	329	663
Total operating expenses	26,834	6,871	45,759	24,049
<b>(Loss) income from operations</b>	<b>(23,917)</b>	<b>1,448</b>	<b>(42,623)</b>	<b>(15,085)</b>
<b>Other income (expense):</b>				
Interest income	822	148	1,948	190
Interest expense	(1,657)	(81)	(1,657)	(2,172)
Loss on extinguishment of debt	—	(1,437)	—	(1,437)

Other (expense) income	(50)	5	(49)	(51)
Total other (expense) income, net	(885)	(1,365)	242	(3,470)
<b>Net (loss) income</b>	<b>\$ (24,802)</b>	<b>\$ 83</b>	<b>\$ (42,381)</b>	<b>\$ (18,555)</b>
<b>Net (loss) income per share</b>				
Basic	\$ (0.54)	\$ 0.00	\$ (0.94)	\$ (0.58)
Diluted	\$ (0.54)	\$ 0.00	\$ (0.94)	\$ (0.58)
<b>Weighted average common shares outstanding</b>				
Basic	46,073,932	40,304,923	45,015,900	31,827,844
Diluted	46,073,932	40,321,639	45,015,900	31,827,844
Net (loss) income	\$ (24,802)	\$ 83	\$ (42,381)	\$ (18,555)
Other comprehensive gain:				
Unrealized gain on marketable securities	—	35	—	—
Comprehensive (loss) income	\$ (24,802)	\$ 118	\$ (42,381)	\$ (18,555)

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

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**VERRICA PHARMACEUTICALS INC.**  
**CONDENSED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in thousands, except share amounts)  
(Uaudited)

	Total								
	Common Stock		Additional		Subscription	Accumulated	Treasury Stock		Stockholders'
	Shares		Paid-in				Shares	Cost	Equity
	Issued	Amount	Capital	Receivable		Deficit			
January 1, 2024	42,518,697	\$ 4	\$ 250,207	\$ —	\$ (230,448)	\$ 105,144	\$ —	\$ 19,763	





June 30,	4							
2023	1,							
	9	2	(1	1				
	5	3	8	0	5			
	7,	6,	1,	5,	5,			
	1	4	0	1	4			
	9	2	3	4	0			
	7	4	8	2)	4	—	—	0
Stock-based		9,			9,			
compensation		6			6			
		6			6			
	—	—	3	—	—	—	—	3
Common								
stock		2,			2,			
warrants		0			0			
issued with		4			4			
debt	—	—	1	—	—	—	—	1
Vesting of		2						
restricted		1						
stock units		2,						
		5						
		0						
	0	—	—	—	—	—	—	—
Net loss		(2			(2			
		4,			4,			
		8			8			
		0			0			
	—	—	—	2)	—	—	—	2)
September	4							
30, 2023	2,							
	1	2	(2	1				
	6	4	0	0	4			
	9,	8,	5,	5,	2,			
	6	1	8	1	3			
	9	3	3	4	0			
	7	\$ 4	\$ 3	\$ 4)	4	\$—	\$—	\$ 3
	—	—	—	—	—	—	—	—

January 1,	2							
2022	7,							
	6	1	(1	1				
	2	7	3	0		3		
	4,	1,	8,	5,		2,		
	1	5	9	1		6		
	9	9	6	4		(2	0	
	7	\$ 3	\$ 7	\$ 6)	4	\$—	\$ 9)	\$ 5
					1,		1,	
					3		3	
Stock-based		1				1		
compensation	—	—	6	—	—	—	—	6
				(8		(8		
				,4		,4		
				7		7		
Net loss	—	—	—	0)	—	—	—	0)
Unrealized								
loss on								
marketable						(3	(3	
securities	—	—	—	—	—	—	—	3)
	—	—	—	—	—	—	—	3)
	2							
	7,							
	6	1	(1	1				
	2	7	4	0		2		
	4,	2,	7,	5,		5,		
	1	9	4	1		4		
March 31,	9	1	3	4		(6	1	
2022	7	3	3	6)	4	—	2)	8
Stock-based		1,				1,		
compensation		0				0		
		8				8		
	—	—	5	—	—	—	—	5

Net loss	(1	(1
	0,	0,
	1	1
	6	6
— — —	8)	— — — 8)
Unrealized		
loss on		
marketable		
securities	— — — — — — — (2	(2)
June 30,	2	
2022	7,	
	6 1 (1 1	
	2 7 5 0	1
	4, 3, 7, 5,	6,
	1 9 6 1	3
	9 9 0 4	(6 3
	7 3 8 4) 4 -	4) 3
Stock-based	1,	1,
compensation	4	4
	1	1
— —	3 — — — —	3
Issuance of	1	
common	3,	
stock, net of	5	
issuance	7 2	2
costs	5, 6,	6,
	0 9	9
	0 0	0
	0 1 0 — — — —	1
Net income	8	8
— — —	3 — — — —	3
Unrealized		
gain on		
marketable		3 3
securities	— — — — — — 5	5

September	4					
30, 2022	1,					
1	2	(1	1			
9	0	5	0	4		
9,	2,	7,	5,	4,		
1	3	5	1	7		
9	1	2	4	(2	6	
7	\$ 4	\$ 1	\$ 1)	4	\$—	\$ 9)
						\$ 5
	<u>  </u>					

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

Cash flows from operating activities	VERRICA PHARMACEUTICALS INC.			
	CONDENSED STATEMENTS OF CASH FLOWS			
	(in thousands)			
	(Unaudited)			
	For the Nine Months Ended September 30,		For the Three Months Ended March 31,	
	2023	2022	2024	2023
Net loss	(42,38	(18,55	\$ (20,331)	\$ (6,589)
	\$ 1)	\$ 5)		
Adjustments to reconcile net loss to net cash used in operating activities:				
Stock-based compensation	12,301	3,814	2,072	1,094
Amortization of premiums on marketable securities	—	97		
Depreciation expense	399	323	126	131
Noncash interest expense	338	384		
Loss on disposal of fixed assets	61	—		
Loss on extinguishment of debt	—	1,437		
Gain on operating lease termination	—	(6)		
Amortization in operating lease right-of-use asset	220	194		

Non cash interest expense	483	—
Amortization of operating lease right-of-use asset	76	71
Amortization of finance lease right-of-use asset	138	—
Changes in operating assets and liabilities:		
Prepaid expenses and other assets	1,007	264
Collaboration revenue receivable, billed and unbilled		(424)
Accounts payable	1,623	(708)
Accounts receivable	(3,946)	—
Unbilled receivable	361	(419)
Accrued expenses and other current liabilities	6,171	(327)
Operating lease liability	(224)	(194)
Net cash used in operating activities	(24,07	(13,69
	0)	6)
		(19,947)
		(4,590)
<b>Cash flows from investing activities</b>		
Sales and maturities of marketable securities	—	52,008
Purchases of marketable securities	—	(4,485)
Purchases of property and equipment	(135)	(236)
Net cash (used in) provided by investing activities	(135)	47,287
Net cash used in investing activities		—
<b>Cash flows from financing activities</b>		
Proceeds from exercise of stock options	7	—
Proceeds from issuance of debt, net of issuance costs	44,105	—
Payment of equity issuance costs	(173)	—
Repayment of debt		(43,75
	—	0)
Payment of debt issuance costs	—	(17)
Payment of debt amendment fees		(509)
Proceeds from issuance of common stock and pre-funded warrants, net of issuance costs		—
Equity issuance costs		—
Repayment of finance lease	—	(4)
Proceeds from issuance of common stock and pre-funded warrants, net of issuance costs	30,301	26,901
Net cash provided by (used in) financing activities		(16,87
	74,240	0)
Net increase in cash, cash equivalents and marketable securities	50,035	16,721

Net cash (used in) provided by financing activities			(661)		30,280
Net (decrease) increase in cash and cash equivalents			(20,608)		25,679
Cash and cash equivalents at the beginning of the period	34,273	15,752	69,547		34,273
Cash and cash equivalents at the end of the period	<b>\$ 84,308</b>	<b>\$ 32,473</b>	<b>\$ 48,939</b>		<b>\$ 59,952</b>
<b>Supplemental disclosures</b>					
Cash paid for interest			\$ 1,836	\$	—
<b>Supplemental disclosure of noncash investing and financing activities:</b>					
Property and equipment purchases in accounts payable or accrued expenses and other current liabilities at period end	\$ 93	\$ 291	\$ 11	\$	34
Change in unrealized loss on marketable securities	\$ —	\$ —			
Cash paid for interest	\$ 1,319	\$ 1,788			
Common stock warrants issued with debt	\$ 2,041	\$ —			
Right-of-use asset obtained in exchange for lease obligation	\$ 116	\$ 99	\$ 1,193	\$	—

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

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**VERRICA PHARMACEUTICALS INC.**  
**Notes to Condensed Financial Statements**  
**(Unaudited)**

**Note 1—Nature Organization and Description of Business Operations**

Verrica Pharmaceuticals Inc. (the "Company") was formed on July 3, 2013 and is incorporated in the State of Delaware. The Company is a dermatology therapeutics company developing and selling medications for skin diseases requiring medical intervention. On July 21, 2023, the U.S. Food and Drug Administration ("FDA") approved YCANTH (VP-102) topical solution for the treatment of molluscum contagiosum in adult and pediatric patients two years of age and older. The Company launched commercial operations in August 2023.

**Liquidity**

The Company has incurred substantial operating losses since inception and expects to continue to incur significant operating losses for the foreseeable future and may never become profitable. As of **September 30, 2023** **March 31, 2024**, the Company had an accumulated deficit of **\$205.8** **250.8** million. In February 2023, The Company believes its cash, and cash equivalents of \$48.9 million as of March 31, 2024 will be sufficient to support the Company's planned operations only into the first quarter of 2025. These factors cause substantial doubt to exist about the Company's ability to continue as a going concern within one year after the date these financial statements are issued. The Company's financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. The financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result should the Company closed an underwritten offering of be unable to continue as a going concern.

750,000 shares of The Company plans to secure additional capital in the future through equity or debt financings, partnerships, or other sources to carry out the Company's planned commercial and development activities. If the Company is unable to raise capital when needed or on attractive terms, the Company would be forced to delay, reduce or eliminate its common stock future commercialization efforts or research and pre-funded warrants to purchase 4,064,814 shares of common stock. The shares of common stock were sold at a price of \$6.75 per share and the pre-funded warrants were sold at a price of \$6.7499 per pre-funded warrant resulting in net proceeds of \$30.3 million after deducting underwriting discounts and commissions, and offering expenses of approximately \$2.2 million (see Note 8). development programs.

On July 26, 2023, the Company entered into a Credit Agreement which provides for up to \$125.0 million in debt under a Loan Facility (as defined in Note **7** **10**). The Company borrowed \$50.0 million under the Loan Facility on July 26, 2023, resulting in net proceeds of approximately \$44.1 million after payment of certain fees and transaction related expenses. In addition, subject to the Company's achievement of certain revenue targets, up to \$25.0 million will be made available on or prior to June 30, 2024, up to \$30.0 million will be made available on or prior to December 31, 2024, up to \$10.0 million will be made available on or prior to March 31, 2025, and up to \$10.0 million will be made available on or prior to June 30, 2025, in each case, subject to the Company's achievement of certain revenue targets. Amounts borrowed under the Loan Facility will mature on July 26, 2028.

In accordance with Accounting Standards Update, or ASU, No. 2014-15, *Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern*, the Company has evaluated whether there are certain conditions and events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the financial statements are issued. The Company believes its cash and cash equivalents of \$84.3 million as of September 30, 2023 will be sufficient to allow the Company to operate for a period greater than twelve months from the issuance date of these condensed financial statements and extend beyond the twelve months into the first quarter of 2025.

## Note 2—Significant Accounting Policies

### **Basis of Presentation**

The accompanying unaudited interim condensed financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") as determined by the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") for interim financial information. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, the

unaudited interim **condensed** financial statements reflect all adjustments, which include only normal recurring adjustments necessary for the fair statement of the balances and results for the periods presented. They may not include all of the information and footnotes required by GAAP for complete financial statements. Therefore, these financial statements should be read in conjunction with the Company's audited financial statements and notes thereto for the year ended **December 31, 2022** **December 31, 2023** included in its Form 10-K, filed with the Securities and Exchange Commission (the "SEC") on **March 6, 2023** **February 29, 2024**. The results of operations for any interim periods are not necessarily indicative of the results that may be expected for the entire fiscal year or any other interim period.

#### **Use of Estimates**

The preparation of 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 **revenues and expenses** during the reporting period. These estimates and assumptions are based on current facts, historical experience as well as other pertinent industry and regulatory authority information, **the** results of which form the basis for making judgments about the carrying values of assets and liabilities and the recording of **revenues and expenses** that are not readily apparent from other sources. 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.

#### **Reclassifications**

Certain prior period amounts have been reclassified to conform with current period presentation.

#### **Collateral Cash**

Cash and cash equivalents **at September 30, 2023** **as of March 31, 2024** includes a cash deposit of **\$360,000** **0.5 million** with Bank of America as required under the Commercial Credit Card Program with a balance equal to the outstanding credit limit on commercial credit cards.

#### **Fair Value of Financial Instruments and Credit Risk**

**At September 30, 2023** **As of March 31, 2024**, the Company's financial instruments included cash equivalents, accounts receivable, accounts payable, accrued expenses and notes payable. The carrying amount of cash equivalents, accounts payable **receivable** and accrued expenses **accounts payable** approximated fair value, given their short-term nature. The carrying value of the notes payable approximates fair value as the interest rate is reflective of current market rates on debt with similar terms and conditions.

Cash equivalents subject the Company to concentrations of credit risk. However, the Company invests its cash in accordance with a policy objective that seeks to ensure both liquidity and safety of principal. The policy limits investments to instruments issued by the U.S. government, certain SEC registered money market funds that invest only in U.S. government obligations and various other low-risk liquid investment options, and places restrictions on portfolio maturity terms.

Accounts receivable **trade** subjects the Company to concentrations of credit risk as all of the Company's revenue is from sales of a single product, YCANTH (VP-102), primarily to one pharmaceutical wholesale/distributor.

#### **Accounts Receivable **Trade****

Trade receivables, net of allowance for doubtful accounts **Accounts receivable**, related to YCANTH (VP-102) **sales**, which are recorded in net accounts receivable on the balance sheet, were approximately **was** \$3.9 **7.0** million as of September 30, 2023 at March 31, 2024. As of September 30, 2023 March 31, 2024, the Company had no allowance for doubtful accounts. An allowance for doubtful accounts is determined based on the Company's assessment of the creditworthiness and financial condition of its customers, aging of receivables, as well as the general economic environment. Any allowance would reduce the net receivables to the amount that is expected to be collected. Current payment terms for YCANTH (VP-102) are approximately **one-third upon 30 days, one-third upon 60 days and one-third upon 90 days** from the shipment date.

#### **Inventory**

The Company values inventory at the lower of cost or net realizable value. Inventory cost is determined using the specific identification method. The Company regularly reviews its inventory quantities and, when appropriate, records a provision for obsolete and excess inventory to derive the new cost basis, which takes into account the Company's sales forecast and corresponding expiry dates. The Company has not recognized a provision for obsolete and excess inventory as of September 30, 2023 March 31, 2024.

On July 21, 2023, the Company received FDA approval for YCANTH (VP-102) for the treatment of molluscum contagiosum and began capitalizing inventory purchases of saleable product from certain suppliers. Prior to FDA approval, all product purchased from such suppliers was included as a component of research and development expense, as the Company was unable to assert that the inventory had future economic benefit until YCANTH received FDA approval. Pursuant to the supply agreement (Note 10) 6, the Company purchased and included in research and development expenses approximately \$4.5 million of raw cantharidin and processed active pharmaceutical ingredient ("API"). The raw cantharidin and processed API is sufficient to produce approximately 14 **14.0** million finished drug product applicators to be used for commercially saleable product and other VP-102 product candidates. In addition, the Company purchased other components and services related to YCANTH for commercially saleable product and included approximately \$1.2 million in research and development expenses prior to FDA approval. As a result, cost of product revenue related to YCANTH will initially reflect a lower average per unit cost of materials over approximately the next nine months as previously expensed inventory is utilized for commercial production and sold to customers. If the Company were to have included those costs previously expensed as a component of cost of product revenue, the Company's cost of product revenue for the three and nine months ended September 30, 2023 March 31, 2024 would have been \$0.7 million including \$0.3 million.

#### **Debt Issuance Costs**

Debt issuance costs incurred in connection with the Loan Facility (Note 7) are amortized to interest expense over the term **million** of the financing arrangement using the effective-interest method. Debt issuance costs, net of related amortization

are deducted from the carrying value of the related debt. obsolete inventory costs.

### **Product Revenue, Net**

The Company recognizes revenue from sales of a single product, YCANTH (VP-102) (the "Product") in accordance with ASC Topic 606 – *Revenue from Contracts with Customers*. YCANTH (VP-102) became available for commercial sale and shipment to patients with a prescription in the United States in the three months ended September 30, 2023. third quarter of 2023. The Company sells the Product primarily to one customer, a pharmaceutical wholesaler/distributor (the "Customer") who in turn sells the Product directly to clinics, hospitals, and federal healthcare programs. Revenue is recognized as the Product is physically delivered to the Customer.

Gross product sales are reduced by corresponding gross-to-net ("GTN") estimates using the expected value method, resulting in the Company's reported "Product revenue, net" in the accompanying consolidated statements of operations. Product revenue, net

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reflects the amount the Company ultimately expects to realize in net cash proceeds, taking into account the current period gross sales and related cash receipts and the subsequent cash disbursements on these sales that the Company estimates for the various GTN categories discussed below. The GTN estimates are based upon information received from external sources, such as written or oral information obtained from our customers with respect to their period-end inventory levels and sales to end-users during the period, in combination with management's informed judgments. Due to the inherent uncertainty of these estimates, the actual amount of product returns,

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government chargebacks, prompt pay discounts, commercial rebates, Medicaid rebates, co-pay assistance and distribution, data, and group purchasing organizations ("GPO") administrative fees may be materially above or below the amount estimated. Variance between actual amounts and estimated amounts may result in prospective adjustments to reported net product revenue.

Each of the GTN estimate categories are discussed below:

*Product Returns Allowances:* The Customer is contractually permitted to return purchased Product in certain circumstances. The Company estimates expected returns based on the Company's review of similar products in the industry. As historical data for returns of the Product becomes available over time, the Company will utilize historical return rates of the Product in making its estimates. Returned Product is typically destroyed, since substantially all returns are due to expiry and cannot be resold.

**Government Chargebacks:** The Product is subject to pricing limits under certain federal government programs, including Medicare and the 340B drug pricing program. Qualifying entities (the "End-Users") purchase the Product from the Customer at their applicable qualifying discounted price. The chargeback amount the Company incurs represents the difference between the Company's contractual sales price to the Customer and the end-user's applicable discounted purchase price under the government program.

**Medicaid Rebates:** The Product is subject to state government-managed Medicaid programs, whereby rebates are issued to participating state governments. These rebates arise when a patient treated with the Product is covered under Medicaid, resulting in a discounted price for the Product under the applicable Medicaid program. The Medicaid rebate accrual calculations require the Company to project the magnitude of its sales, by state, that will be subject to these rebates.

**Patient Assistance:** The Company offers a voluntary co-pay patient assistance program intended to provide financial assistance to eligible patients with a prescription drug co-payment required by payors and coupon programs for cash payors. The calculation of the current liability for this assistance is based on an estimate of claims and the cost per claim that the Company expects to receive associated with YCANTH (VP-102) that has been recognized as revenue but remains in the distribution channel inventories at the end of each reporting period.

**Distribution, Data, and GPO Administrative Fees:** Distribution, data, and GPO administrative fees are paid to authorized wholesalers/distributors of the Company's products for various commercial services including contract administration, inventory management, delivery of end-user sales data, and product returns processing. These fees are based on a contractually-determined percentage of the Company's applicable sales.

#### **Cost of Product Revenue**

Cost of product revenue includes the cost of inventory sold, which includes direct manufacturing, production and packaging materials for YCANTH (VP-102) sales. Prior to FDA approval of YCANTH (VP-102) in July 2023, the Company expensed approximately \$0.1 million in costs associated with the manufacturing of YCANTH (VP-102) as a component of research and development expense. Therefore, these costs are not included in cost of product revenue.

#### **Advertising Expense**

Advertising expenses, comprised primarily of print and digital assets, social media and internet advertising as well as search engine marketing, are expensed as incurred and are included in selling, general, and administrative expenses. For the three and nine months ending September 30, 2023 ended March 31, 2024, advertising expenses were expense was approximately \$1.7 million and \$2.4 million, respectively.

#### **Net Income (Loss) Loss Per Share**

Basic net income (loss) Net loss per share of common stock is computed by dividing net income (loss) loss by the weighted average number of shares of common stock outstanding during each for the period including pre-funded warrants to purchase 4,064,814 shares of common stock that were issued in an underwritten offering in February 2023 (Note 8). The pre-funded warrants to purchase common stock are included in the calculation of basic and diluted net income (loss) loss per share as the exercise price of \$0.0001 per share is non-substantive and is virtually assured. Diluted net income (loss) loss per share excludes the potential impact of common stock includes the effect, if any, from the potential exercise or vesting options and unvested shares of securities, such as stock options, restricted stock units and warrants, which would result in the issuance of

incremental shares of common stock. However, potential common shares are excluded if because their effect is anti-dilutive. For diluted would be anti-dilutive due to the Company's net income (loss) per share in periods where loss. Since the Company has had a net loss the weighted average number of shares of common stock is the same for basic net loss per share due to the fact that when a net loss exists, dilutive securities are not included in the calculation as the impact is anti-dilutive. For the three months ended September 30, 2022, the Company was in a net income position and calculated the diluted net income per share by dividing the Company's net income by the dilutive weighted-average number of shares outstanding during the period, determined using the treasury stock method and the average stock price during the period. A reconciliation each of the

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numerators and denominators of the periods presented, basic and diluted net income (loss) per common share calculations are as follows (in thousands, except share and per share data):

	For the Three Months Ended		For the Nine Months Ended	
	September 30,		September 30,	
	2023	2022	2023	2022
Basic net (loss) income per common share calculation:				
Net (loss) income attributable to common stockholders	\$ (24,802)	\$ 83	\$ (42,381)	\$ (18,555)
Net (loss) income attributable to common stockholders - basic	(24,802)	83	(42,381)	(18,555)
Weighted average common shares outstanding - basic	46,073,932	40,304,923	45,015,900	31,827,844
Net (loss) income per share - basic	\$ (0.54)	\$ 0.00	\$ (0.94)	\$ (0.58)
Net (loss) income attributable to common stockholders				
Net (loss) income attributable to common stockholders	\$ (24,802)	\$ 83	\$ (42,381)	\$ (18,555)
Diluted net (loss) income	(24,802)	83	(42,381)	(18,555)
Stock options	—	16,716	—	—
Weighted average common shares outstanding - diluted	46,073,932	40,321,639	45,015,900	31,827,844
Net (loss) income per share - diluted	\$ (0.54)	\$ 0.00	\$ (0.94)	\$ (0.58)

the same.

The table below provides potential shares outstanding that were not included in the computation of basic and diluted net loss per share of common stock, as the inclusion of these securities would have been anti-dilutive:

As of September 30,	March 31,

	2023	2022	2024	2023
Shares issuable upon exercise of stock options	5,49	3,82		
	7,01	6,36		
	5	6	6,613,615	4,722,082
Non-vested shares under restricted stock grants	561,	425,		
	500	000	834,000	1,123,000
Shares issuable upon exercise of warrants pursuant to debt financing	518,			
	551	—	518,551	—
	6,57	4,25		
	7,06	1,36		
Total	6	6	7,966,166	5,845,082

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### **Recently Adopted Accounting Pronouncements**

In June 2022, the FASB issued Accounting Standards Update No. 2022-03, Fair Value Measurement of Equity Securities Subject to Contractual Sale Restrictions. This standard clarifies that a contractual restriction on the sale of an equity security is not considered part of the unit of account of the equity security and, therefore, is not considered in measuring fair value. This standard ~~becomes~~ became effective for the Company on January 1, 2024, ~~and is not expected to have a material impact on the Company's financial statements and related disclosures.~~

~~In June 2016, the FASB issued ASU 2016-13, Financial Instruments—Credit Losses, Measurement of Credit Losses on Financial Instruments (Topic 326). The standard amends the impairment model by requiring entities to use a forward-looking approach based on expected losses to estimate credit losses for most financial assets and certain other instruments that are not measured at fair value through net income. For available-for-sale debt securities, entities will be required to recognize an allowance for credit losses rather than a reduction in carrying value of the asset. Entities will no longer be permitted to consider the length of time that fair value has been less than amortized cost when evaluating when credit losses should be recognized. The Company adopted this guidance on January 1, 2023 and its adoption did not have an impact on the Company's financial statements and related disclosures.~~

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### **Note 3—Property and Equipment**

#### **Property and equipment, net consisted of (in thousands):**

	As of	As of
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	September 30,	December 31,	
	2023	2022	
Machinery and equipment	\$ 1,387	\$ 1,392	
Office equipment	326	301	
Office furniture and fixtures	303	303	
Leasehold improvements	54	54	
Construction in process	2,532	2,536	
	4,602	4,586	
Accumulated depreciation	(1,044)	(699)	
Total property and equipment, net	<u>\$ 3,558</u>	<u>\$ 3,887</u>	

The Company has recorded an asset classified as construction in process associated with the construction of a product assembly and packaging line which will be placed in service after commercial launch and additional testing.

#### Note 4 - Inventory note 3 —Inventory

Upon FDA approval of YCANTH (VP-102) for the treatment of molluscum contagiosum on July 21, 2023, the Company began capitalizing the purchases of saleable inventory of YCANTH (VP-102) from suppliers. Inventory consisted of the following (in thousands):

	September 30,	December 31,	
	2023	2022	
Raw materials	\$ 116	\$ —	
Work in process	—	—	
Finished goods	163	—	
Total inventory	<u>\$ 279</u>	<u>\$ —</u>	

  

	March 31,	December 31,	
	2024	2023	
Raw materials	\$ 1,150	\$ 420	
Work in process	668	487	
Finished goods	681	115	
Total inventory	<u>\$ 2,499</u>	<u>\$ 1,022</u>	

#### Note 4—Property and Equipment

Property and equipment, net consisted of (in thousands):

	March 31,	December 31,	
	2024	2023	

Machinery and equipment	\$ 1,554	\$ 1,543
Office equipment	326	326
Office furniture and fixtures	303	303
Leasehold improvements	54	54
	2,237	2,226
Accumulated depreciation	(1,300)	(1,174)
Total property and equipment, net	\$ 937	\$ 1,052

Depreciation expense for both of the three months ended March 31, 2024 and 2023 was \$0.1 million.

## Note 5—Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following (in thousands):

	As of		March 31,	December 31,
	September 30,	As of December 31,		
	2023	2022		
Gross to net reserves	\$ 3,126	\$ —	\$ 8,502	\$ 5,357
Clinical trials and drug development	2,127	974	3,517	2,767
Compensation and related costs	2,038	1,399	1,393	3,438
Professional fees	1,250	58	1,124	1,423
Commercial-related costs			878	538
Other current liabilities	282	—	321	244
Commercial-related costs	186	—		
Machinery and equipment	57	57	93	93
Construction in process	36	167		
Total accrued expenses and other current liabilities	\$ 9,102	\$ 2,655	\$ 15,828	\$ 13,860

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## Note 6—Leases Commitments and Contingencies

### Litigation

On June 6, 2022, plaintiff Kranthi Gorlamari ("Plaintiff") filed a putative class action complaint captioned Gorlamari v. Verrica Pharmaceuticals Inc., et al., in the U.S. District Court for the Eastern District of Pennsylvania against us and certain of our current and former officers and directors ("Defendants"). On January 12, 2023, the Plaintiff filed an amended complaint alleging that Defendants violated federal securities laws by, among other things, failing to disclose certain manufacturing deficiencies at the facility where our contract manufacturer produced bulk solution for the YCANTH (VP-102) drug device and that such deficiencies posed a risk to the prospects for regulatory approval of YCANTH (VP-102) for the treatment of molluscum. The amended complaint seeks unspecified compensatory damages and other relief on behalf of Plaintiff and all other persons and entities which purchased or otherwise acquired our securities between May 19, 2021 and May 24, 2022 (the "Putative Class Period").

On January 12, 2024, the Court granted in part and denied in part Defendants' motion to dismiss the amended complaint. The Court held that Plaintiff's claims relating to statements made in May and June 2021 were sufficiently pled, but dismissed Plaintiff's claims relating to all other statements made during the Putative Class Period. On January 26, 2024, Plaintiff filed a second amended complaint in an attempt to cure certain of the deficiencies identified in the January 12, 2024 ruling. Defendants' motion to dismiss the second amended complaint was fully briefed as of April 22, 2024, and is pending before the Court.

The Company leases office space is also involved in West Chester, Pennsylvania ordinary, routine legal proceedings that serves are not considered by management to be material. In the opinion of Company counsel and management, the ultimate liabilities resulting from such legal proceedings will not materially affect the financial position of the Company or its results of operations or cash flows.

#### **Supply Agreement and Purchase Order**

On July 16, 2018, the Company entered into a supply agreement with a supplier of crude cantharidin material. All executed purchase orders for crude cantharidin in the ordinary course of business are expected to be covered under the terms of the supply agreement. Pursuant to the supply agreement, the supplier has agreed that it will not supply cantharidin, any beetles or other raw material from which cantharidin is derived to any other customer in North America, subject to specified minimum annual purchase orders and forecasts by the Company. The supply agreement had an initial five-year term, and now renews for successive annual periods absent termination by either party in accordance with the terms of the supply agreement. Each party also has the right to terminate the supply agreement for other customary reasons such as material breach or bankruptcy.

In both 2023 and 2022, the Company's headquarters under an agreement classified as an operating lease. The initial term will expire on September 1, 2027. Base rent over Company executed respective purchase orders pursuant to which the initial term is approximately Company agreed to purchase \$2.40.7 million of crude cantharidin material and made prepayments of \$0.7 million in each year against the Company is also responsible for its share of the landlord's operating expense.

purchase orders. The Company leases office space in Scotch Plains, New Jersey under an agreement classified as an operating lease, which commenced on May 1, 2022 and expires on April 30, 2025. Base rent over received the initial term is approximately \$104,000.

The Company has entered into an automobile fleet lease program for its sales force. As of September 30, 2023 the majority of the vehicles had not yet been delivered. The term of the leases is 52 months and the ROU asset recognized shipment for the leases 2023 purchase during the three months ended March 31, 2024, which was reflected as a prepaid expense of vehicles delivered \$0.7 million on the balance sheet as of September 30, 2023 was \$0.1 million. December 31, 2023.

The components of lease expense are as follows (in thousands):

	For the Three Months Ended		For the Nine Months Ended September 30,	
	September 30,		September 30,	
	2023	2022	2023	2022
<b>Finance lease cost:</b>				
Amortization ROU assets	\$ 1	\$ 1	\$ 1	\$ 4
<b>Total finance lease costs</b>	<b>\$ 1</b>	<b>\$ 1</b>	<b>\$ 1</b>	<b>\$ 4</b>
<b>Operating lease:</b>				
Operating lease costs	\$ 93	\$ 95	\$ 278	\$ 272
Short-term lease costs	—	—	—	7
<b>Total operating lease expense</b>	<b>\$ 93</b>	<b>\$ 95</b>	<b>\$ 278</b>	<b>\$ 279</b>

Maturities of the Company's operating and finance leases, excluding short-term leases are as follows (in thousands):

	For the Nine Months Ended September 30, 2023		
	Operating	Finance	
2023 (remaining 3 months)	\$ 97	\$ 9	
2024	390	37	
2025	372	32	
2026	366	27	
2027	246	25	
Thereafter	—	2	
<b>Total lease payments</b>	<b>1,471</b>	<b>132</b>	
Less imputed interest	(166)	(20)	
<b>Lease liability</b>	<b>\$ 1,305</b>	<b>\$ 112</b>	

The table below presents the weighted average remaining lease term and discount rates for the Company's leases as of September 30, 2023:

	For the Nine Months Ended September 30, 2023	
	Operating	Finance
Weighted average remaining lease term	3.82	4.25
Weighted average discount rate	6.25 %	7.75 %

#### Note 7—Debt

On July 11, 2022, the Company voluntarily repaid its previous debt facility (the "Mezzanine Loan Agreement") in full of \$43.8 million, inclusive of principal amount of debt, the final payment fee, and accrued interest, and satisfied all of the Company's outstanding debt obligations. The Company did not incur any prepayment penalties in connection with the repayment of the debt. The prepayment was made in full using restricted cash of \$40.0 million, as well as cash on hand of \$3.8 million for the final payment fee. For the year ended December 31, 2022, the Company recognized a \$1.4 million loss on debt extinguishment which was made up entirely of non-cash unamortized debt issuance costs.

For the three and nine months ended September 30, 2022, the Company recognized interest expense related to the terminated facility of \$0.1 million and \$2.2 million, respectively of which \$0.1 million and \$1.6 million, respectively was interest on the term loan and \$0.0 million and \$0.6 million, respectively was non-cash interest expense related to the amortization of deferred debt issuance costs and accrual of the final payment fee.

On July 26, 2023 (the "Closing Date"), the Company entered into a Credit Agreement (the "Credit Agreement"), by and between the Company, as borrower, and OrbiMed Royalty & Credit Opportunities IV, LP, a Delaware limited partnership (the "Initial Lender"), as a lender, and each other lender that may from time to time become a party thereto (each, including the Initial Lender, and together with their affiliates, successors, transferees and assignees, the "Lenders"), and OrbiMed Royalty & Credit Opportunities IV, LP, as administrative agent for the Lenders (in such capacity, the "Administrative Agent"). The Credit Agreement provides for a five-year senior secured credit facility in an aggregate principal amount of up to \$125.0

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million (the "Loan Facility"), of which \$50.0 million was made available on the Closing Date ("Initial Commitment Amount"), up to \$25.0 million will be made available on or prior to June 30, 2024, up to \$30.0 million will be made available on or prior to December 31, 2024, up to \$10.0 million will be made available on or prior to March 31, 2025, and up to \$10.0 million will be made available on or prior to June 30, 2025, in each case, subject to the Company's achievement of certain revenue targets. Amounts borrowed under the Loan Facility will mature on July 26, 2028. On July 26, 2023, the Company closed on the Initial Commitment Amount, resulting in net proceeds to the Company of approximately \$44.1 million after payment of certain fees and transaction related expenses of \$5.9 million. During the term of the Loan Facility, interest payable in cash by the Company shall accrue on any outstanding balance due under the Loan Facility at a rate per annum equal to the higher of (x) the SOFR rate (which is the forward-looking term rate for a one-month tenor based on the secured overnight financing rate administered by the CME Group Benchmark Administration Limited) and (y) 4.00% plus, in either case, 8.00%. During an event of default, any outstanding amount under the Loan Facility will bear interest at a rate of 4.00% in excess of the otherwise applicable rate of interest. The Company paid or will pay certain fees with respect to the Loan Facility, including an upfront fee, an unused fee on the undrawn portion of the Loan Facility, an administration fee, a prepayment premium and an exit fee, as well as certain other fees and expenses of the Administrative Agent and the Lenders.

On the Closing Date, the Company also issued the Initial Lender warrants to purchase up to 518,551 shares of the Company's common stock, at an exercise price of \$6.0264 per share, which has a term of 10 years from the issuance date. The warrants were deemed to be classified as equity per the guidance ASC 815Derivatives and Hedging. The proceeds from the debt transaction were allocated among the two instruments based on their relative fair values. The relative fair value of the warrants was determined to be \$2.0 million and the fair value was determined to be \$2.4 million based on the black-scholes

valuation technique and the key assumptions used were as follows: (i) an expected term of 10 years, (ii) an expected volatility of 94.86%, (iii) a risk free rate of 3.86% and (iv) no estimated dividend yield.

The Loan Facility will be classified as non-current debt at issuance as the Company does not currently intend to repay amounts borrowed under the Loan Facility prior to the maturity date of July 26, 2028 and believes that the probability of any acceleration of the Loan Facility is not probable at September 30, 2023. The Company has incurred debt discount and issuance costs of \$10.4 million, that are classified as a contra-liability on the condensed balance sheet. The debt discount and issuance costs consists of \$5.9 million paid in cash during the three months ended September 30, 2023 and the final payment fee of \$2.5 million, classified as a long-term liability and the fair value of the warrants of \$2.0 million, classified as equity on the condensed balance sheet.

For the three and nine months ended September, 2023, the Company recognized interest expense related to the Credit Agreement of \$1.6 million, of which \$1.3 million was interest on the term loan and \$0.3 million was non-cash interest expense related to the amortization of deferred debt issuance costs and accrual of the final payment fee.

The following table summarizes the composition of debt as reflected on the balance sheet as of September 30, 2023 (in thousands):

Gross proceeds	\$	50,000
Accrued final payment fee		2,500
Unamortized debt discount and issuance costs		(10,099)
Total short-term debt, net	\$	42,401

## Note 8—Stockholders' Equity

### Common Stock

The Company had authorized 200,000,000 shares of common stock, \$0.0001 par value per share, as of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023. Each share of common stock is entitled to one vote. Common stock owners are entitled to dividends when funds are legally available and declared by the Board.

### Underwritten Public Offering

In February 2023, the Company closed an underwritten offering of 750,000 shares of its common stock and pre-funded warrants to purchase 4,064,814 shares of common stock. The shares of common stock were sold at a price of \$6.75 per share and the pre-funded warrants were sold at a price of \$6.7499 per pre-funded warrant, resulting in net proceeds of \$30.3 million after deducting underwriting discounts and commissions, and offering expense. The pre-funded warrants will not expire and are exercisable in cash or by means of a cashless exercise.

### Warrants

The following table summarizes the Company's outstanding warrants, as of September 30, 2023: which are exercisable for common stock:

	Number of warrants	Exercise Price	Expiration Date
Pre-funded warrants pursuant to common stock issuance	4,064,814	\$ 0.0001	No expiration
Warrants issued with OrbiMed debt facility	518,551	\$ 6.0264	7/25/2033

	March 31, 2024		
	Number of warrants	Exercise Price	Expiration Date
Pre-funded warrants issued pursuant to 2023 underwritten public offering	4,064,814	\$ 0.0001	No expiration
Warrants issued in connection with OrbiMed debt facility	518,551	\$ 6.0264	7/25/2033

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#### Note 8—Stock-Based Compensation

Stock-based compensation expense, which includes expense for both employees and non-employees, has been reported in the Company's condensed statements of operations for the three and nine months ended September 30, 2023 and 2022 as follows (in thousands):

	For the Three		For the Nine		For the Three Months Ended March 31,			
	Months Ended		Months Ended					
	September 30,		September 30,		2024		2023	
	2023	2022	2023	2022				
Selling, general and administrative	8,43	1,06	10,22	2,70		1,622		836
Research and development	1,22			1,10		450		258
Total stock-based compensation	9,66	1,41	12,30	3,81		2,072		1,094

#### Stock Options

The following table summarizes the Company's stock option activity for the **nine** **three** months ended **September 30, 2023** **March 31, 2024**:

	Number of shares	Weighted average			Aggregate intrinsic value
		Weighted average	remaining contractual	term (in years)	
		exercise price	term (in years)		
Outstanding as of December 31, 2022	3,932,779	\$ 8.99		7.8	\$ 3,952,803
Granted	1,578,836	6.66			
Exercised	(8,000)	0.90			
Forfeited and Expired	(6,600)	5.13			
Outstanding as of September 30, 2023	5,497,015	\$ 8.34		7.4	\$ 455,190
Options vested and exercisable as of September 30, 2023	2,898,680	\$ 9.12		6.1	\$ 245,112

	Number of shares	Weighted average			Aggregate intrinsic value
		Weighted average	remaining contractual	term (in years)	
		exercise price	term (in years)		
Outstanding as of December 31, 2023	5,565,615	\$ 8.25		7.2	\$ 4,143,150
Granted	1,079,300	4.99			
Exercised	(6,500)	1.24			4,755
Forfeited	(24,800)	5.24			
Expired	—	—			
Outstanding as of March 31, 2024	6,613,615	\$ 7.74		7.5	\$ 2,688,929
Options vested and exercisable as of March 31, 2024	3,438,271	\$ 9.01		5.9	\$ 620,420

As of **September 30, 2023** **March 31, 2024**, the total unrecognized compensation related to unvested stock option awards granted was **\$13.1** **\$14.7** million, which the Company expects to recognize over a **weighted average** **weighted-average** period of **2.7** **2.84** years.

Stock option compensation expense of \$1.5 million and \$1.1 million was recognized in the Company's statements of operations during the three months ended March 31, 2024 and 2023, respectively.

#### Restricted Stock Units

In November 2019 and August 2020 the Company granted 300,000 and 250,000 restricted stock units ("RSU" "RSUs"), respectively, to its executive officers, of which 125,000 were forfeited. **50****Half**% of the remaining RSUs vested upon receipt of regulatory approval of the Company's new drug application for YCANTH (VP-102) for the treatment of molluscum on July 21, 2023 (the "Approval Date") and the other **50****half**% will vest on the one year anniversary of the Approval Date **July 21, 2024**, subject to the holders' continuous service through each applicable date.

In March 2023, the Company granted 698,000 RSUs, 50% of which vested upon the first commercial sale of YCANTH (VP-102) on August 24, 2023 (the "First Sale Date") and 50% of which will vest on the one year anniversary of the First Sale Date August 24, 2024, subject to the holders' continuous service through each applicable date. Shares of common stock related to the 349,000 of RSUs which vested on the First Sale Date will not be issued until the Company's trading window opens.

The following is a summary of activity of the Company's RSUs for the nine months ended September 30, 2023:

	Number of Shares	Value	Weighted Average Grant Date Fair
Nonvested as of December 31, 2022	425,000	\$ 11.68	
Granted	698,000	7.58	
Forfeited	—	—	
Vested	(561,500)	9.13	
Nonvested as of September 30, 2023	<u>561,500</u>	<u>\$ 9.13</u>	

In March 2024, the Company granted 272,500 RSUs to executive officers. These restricted stock units vest 25% annually over four years subject to the holders' continuous service through each applicable date.

Compensation expense of \$8.20.6 million was recognized during in the Company's statements of operations for the three and nine months ended September 30, 2023 March 31, 2024 related to the vested RSUs based on the fair market value at the date of grant. As of September 30, 2023 March 31, 2024, the remaining unrecognized

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compensation expense related to the restricted stock units RSUs was \$2.12.2 million, which the Company expects to recognize over a weighted average service period of 0.51.6 years now that vesting of these awards is probable.

The following is a summary of changes in the status of non-vested RSUs for the three months ended March 31, 2024:

	Number of Shares	Value	Weighted Average Grant Date Fair
Nonvested as of December 31, 2023	561,500	\$ 9.13	
Granted	272,500	4.80	
Forfeited	—	—	
Vested	—	—	
Nonvested as of March 31, 2024	<u>834,000</u>	<u>\$ 7.72</u>	

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## Note 9—Related Party Transactions Leases

Prior to The Company leases 11,201 square feet of office space located in West Chester, Pennsylvania that serves as the completion Company's headquarters. The initial term expires on September 1, 2027. Base rent over the initial term is approximately \$2.4 million, and the Company is also responsible for its share of the landlord's operating expense.

The Company leases office space in Scotch Plains, New Jersey under an agreement classified as an operating lease, which commenced on May 1, 2022 and expires on April 30, 2025. Base rent over the initial public offering term is approximately \$104,000 per year.

The Company entered into a fleet program to provide vehicles for its sales force. The vehicles are leased for a term of 52 months and classified as finance leases. During the three months ended March 31, 2024, the Company recognized both a right-of-use asset and a lease liability of \$1.2 million related to these finance leases.

The components of lease expense are as follows (in thousands):

	For the Three Months Ended March 31,	
	2024	2023
Finance lease cost:		
Amortization ROU assets	\$ 139	\$ —
Interest on lease liabilities	44	—
Total finance lease costs	<u>\$ 183</u>	<u>\$ —</u>
Operating lease:		
Operating lease costs	\$ 94	\$ 86
Short-term lease costs	—	—
Total operating lease expense	<u>\$ 94</u>	<u>\$ 86</u>

Maturities of the Company's common stock in June 2018, operating and finance leases, excluding short-term leases, as of March 31, 2024 are as follows (in thousands):

	Operating	Finance
2024 (remaining 9 months)	\$ 293	\$ 648
2025	372	744
2026	366	631
2027	247	592
Thereafter	—	181
Total lease payments	1,278	2,796
Less imputed interest	(122)	(356)
Lease liability	<u>\$ 1,156</u>	<u>\$ 2,440</u>

The weighted average remaining lease term and discount rates for the Company was controlled by PBM VP Holdings, LLC ("PBM VP Holdings"), an affiliate Company's leases as of PBM Capital Group, LLC ("PBM"). Paul B. Manning, who is the Chairman and Chief Executive Officer of PBM and the current chairman of the Company's Board of Directors, and certain entities affiliated with Mr. Manning, continue to be the Company's largest stockholder on a collective basis. March 31, 2024 are as follows:

	Operating	Finance
Weighted average remaining lease term (years)	3.34	4.07
Weighted average discount rate	6.25 %	7.72 %

#### Note 10—Debt

On December 2, 2015 July 26, 2023 (the "Closing Date"), the Company entered into a Services Credit Agreement (the "SA" "Credit Agreement"), by and between the Company, as borrower, and OrbiMed Royalty & Credit Opportunities IV, LP, a Delaware limited partnership (the "Initial Lender"), as a lender, and each other lender that may from time to time become a party thereto (each, including the Initial Lender, and together with PBM. Pursuant their affiliates, successors, transferees and assignees, the "Lenders"), and OrbiMed Royalty & Credit Opportunities IV, LP, as administrative agent for the Lenders (in such capacity, the "Administrative Agent"). The Credit Agreement provides for a five-year senior secured credit facility in an aggregate principal amount of up to \$125.0 million (the "Loan Facility"). The Company borrowed \$50.0 million under the Credit Agreement on July 26, 2023, resulting in net proceeds of approximately \$44.1 million after payment of certain fees and transaction related expenses. In addition, subject to the terms Company's achievement of certain revenue targets, up to \$25.0 million will be made available on or prior to June 30, 2024, up to \$30.0 million will be made available on or prior to December 31, 2024, up to \$10.0 million will be made available on or prior to March 31, 2025, and up to \$10.0 million will be made available on or prior to June 30, 2025. Amounts borrowed under the Loan Facility will mature on July 26, 2028. During the term of the SA, Loan Facility, interest payable in cash by the Company shall accrue on any outstanding balance due under the Loan Facility at a rate per annum equal to the higher of (x) the SOFR rate (which is the forward-looking term rate for a one-month tenor based on the secured overnight financing rate administered by the CME Group Benchmark Administration Limited) and (y) 4.00% plus, in either case, 8.00%. During an event of default, any outstanding amount under the Loan Facility will bear interest at a rate of 4.00% in excess

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of the otherwise applicable rate of interest. The Company paid or will pay certain fees with respect to the Loan Facility, including an upfront fee, an unused fee on the undrawn portion of the Loan Facility, an administration fee, a prepayment premium and an exit fee, as well as certain other fees and expenses of the Administrative Agent and the Lenders.

The Credit Agreement contains customary events of default, including, but not limited to, nonpayment of principal, interest, fees or other amounts; material inaccuracy of a representation or warranty; failure to perform or observe covenants; cross-defaults with certain other indebtedness; bankruptcy and insolvency events; material monetary judgment defaults; impairment of any material definitive loan documentation; other material adverse effects; key permit and other regulatory events; key person events; and change of control. Upon the occurrence of an event of default (subject to notice and grace periods), additional interest of 4% per annum applies and obligations under the Credit Agreement could be accelerated. As of March 31, 2024, the Company is in compliance with all covenants.

On the Closing Date, the Company also issued the Initial Lender warrants to purchase up to 518,551 shares of the Company's common stock, at an exercise price of \$6.0264 per share, which had an initial term of twelve months 10 years (and from the issuance date. The warrants were deemed to be classified as equity per the guidance ASC 815 Derivatives and Hedging. The proceeds from the debt transaction were allocated among the two instruments based on their relative fair values. The relative fair value of the warrants was automatically renewable for successive monthly periods determined to be \$2.0 million and the fair value was determined to be \$2.4 million based on the Black-Scholes valuation technique and the key assumptions used were as follows: (i) a contracted term of 10 years, (ii) an expected volatility of 94.86%, PBM rendered advisory (iii) a risk free rate of 3.86% and consulting services (iv) no estimated dividend yield.

On each of December 20, 2023 and January 31, 2024, the Company entered into an amendment to the Company. Services provided Credit Agreement in order to extend a deadline for a specified regulatory milestone. For each amendment, the Company paid an amendment fee of \$250,000. The Company accounted for these amendments as modifications and the amendment fees were reflected in the debt discount and amortized over the life of the Credit Agreement using the effective interest method.

The Loan Facility is classified as non-current debt as the Company does not currently intend to repay amounts borrowed under the SA included certain business development, operations, technical, contract, accounting Loan Facility prior to the maturity date of July 26, 2028 and back office support services. In consideration for these services, believes that the probability of any acceleration of the Loan Facility is not probable at March 31, 2024. The Company was obligated to pay PBM a monthly management fee. On October 1, 2019, the SA was amended to reduce the monthly management fee to has incurred debt discount and issuance costs of \$5,000 10.4 million, that are netted against the carrying value of the Loan Facility. The debt discount and issuance costs consists of \$5.9 million paid in cash during the year ended December 31, 2023 and the final payment fee of \$2.5 million, classified as a result long-term liability and the fair value of a reduction in services provided by PBM. the warrants of \$2.0 million, classified as equity on the balance sheet.

For the three months ended September 30, 2023 and 2022, March 31, 2024, the Company recognized expenses under the SA interest expense of \$15,000 2.3 and \$20,000 respectively, million of which \$9,000 and \$12,000, respectively, were included in selling, general and administrative expenses and \$6,000 and \$8,000, respectively, were included in research and development expenses. For each of the nine months ended September 30, 2023 and 2022, the Company recognized expenses under the SA of \$45,000, of which \$27,000 were included in selling, general and administrative expenses and \$18,000 were included in research and development.

As of September 30, 2023, the Company had a \$5,000 outstanding payable due to PBM and its affiliates.

On September 8, 2022, the Company entered into a clinical service agreement with Clinical Enrollment LLC which is controlled by Bryan Manning, the son of Paul B. Manning, who is the current chairman of the Company's Board of Directors.

Paul B. Manning along with certain entities affiliated with Mr. Manning, are the Company's largest stockholder on a collective basis. Pursuant to the clinical service agreement, Clinical Enrollment LLC may provide recruiting support services for the Company's VP-315 clinical trial. No fees were due under the agreement until a minimum number of patients are enrolled in the clinical trial by the vendor. Compensation of \$30,000 was recognized during the year ended December 31, 2022 for the development and production fee of media, video, and web to support recruitment services. After meeting the minimum enrollments, compensation includes a \$15,000 fee per eligible patient enrolled in the trial. Compensation of \$0.1 million of expenses were incurred for the nine months ended September 30, 2023, all of which was classified as research and development expenses with no outstanding payables.

## **Note 10—Commitments and Contingencies**

### ***Litigation***

On June 6, 2022, plaintiff Kranthi Gorlamari ("Gorlamari") filed a putative class action complaint captioned Gorlamari v. Verrica Pharmaceuticals Inc., et al., in the U.S. District Court for the Eastern District of Pennsylvania against the Company and certain of its current and former officers and directors ("Defendants"). Gorlamari filed an amended complaint on January 12, 2023. The amended complaint alleges that Defendants violated federal securities laws by, among other things, failing to disclose certain manufacturing deficiencies at the facility where our contract manufacturer produced bulk solution for the VP-102 drug device and that such deficiencies posed a risk to the prospects for regulatory approval of VP-102 for the treatment of molluscum. The amended complaint seeks unspecified compensatory damages and other relief on behalf of Gorlamari and all other persons and entities which purchased or otherwise acquired our securities between May 19, 2021 and May 24, 2022. Briefing on Defendants' motion to dismiss the amended complaint was completed on May 23, 2023. The litigation is still in the early stages, and the Company intends to vigorously defend itself against these allegations.

The Company is also involved in ordinary, routine legal proceedings that are not considered by management to be material. In the opinion of Company counsel and management, the ultimate liabilities resulting from such legal proceedings will not materially affect the financial position of the Company or its results of operations or cash flows.

### ***Supply Agreement and Purchase Order***

On July 16, 2018, the Company entered into a supply agreement with a supplier of crude cantharidin material. All executed purchase orders for crude cantharidin in the ordinary course of business are expected to be covered under the terms of the supply agreement. Pursuant to the supply agreement, the supplier has agreed that it will not supply cantharidin, any beetles or other raw material from which cantharidin is derived to any other customer in North America, subject to specified minimum annual purchase orders and forecasts by the Company. The supply agreement had an initial five-year term, and now renews for successive annual periods absent termination by either party in accordance with the terms of the supply agreement. Each party also has the right to terminate the supply agreement for other customary reasons such as material breach or bankruptcy.

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During 2022 and 2021, the Company executed a purchase order pursuant to which the Company agreed to purchase \$0.7 million and \$0.8 million, respectively of crude cantharidin material and made prepayments of \$0.7 million and \$0.8 million in

each year against the purchase orders. As of September 30, 2023, the Company has received the shipments for the purchases during 2022 and 2021. The 2022 and 2021 executed purchase orders of crude cantharidin were received in June 2023 and April 2023, respectively. As of December 31, 2022, the balance sheet reflects prepaid expense of \$1.5 million. The Company agreed to purchase an additional \$0.7 million of crude cantharidin during the three months ended September 30, 2023, of which \$0.1 million was classified in prepaid expenses, interest on the condensed balance sheet term loan and \$0.5 million was non-cash interest expense related to the amortization of deferred debt issuance costs and accrual of the final payment fee.

The following table summarizes the composition of debt as of September 30, 2023, March 31, 2024 (in thousands):

Gross proceeds from Loan Facility	\$	50,000
Accrued final payment fee		2,500
Unamortized debt discount and issuance costs		(9,652)
Total long-term debt, net	\$	42,848

## Note 11—License and Collaboration Agreements

### *Torii Agreements*

On March 17, 2021, the Company entered into a collaboration and license agreement (the “Torii Agreement”) with Torii, pursuant to which the Company granted Torii an exclusive license to develop and commercialize the Company’s product candidates that contain a topical formulation of cantharidin for the treatment of molluscum contagiosum and common warts in Japan, including VP-102, YCANTH (VP-102). Additionally, the Company granted Torii a right of first negotiation with respect to additional indications for the licensed products and certain additional products for use in the licensed field, in each case in Japan.

Pursuant to the Torii Agreement, the Company received milestone payments from Torii in prior periods totaling \$0.5 million in December 2020 and \$11.5 million in April 2021. On July 25, 2022, Torii dosed the first patient in its Phase 3 trial of VP-102 (referred to as TO-208 in Japan) for molluscum contagiosum in Japan, triggering an \$8.0 million milestone payment. Additionally, the Company is entitled to receive from Torii an additional \$50 million in aggregate payments from Torii contingent on achievement of specified development, regulatory, and sales milestones, in addition to tiered transfer price payments for supply of product in the percentage range of the mid-30’s to the mid-40’s of net sales. The transfer payments shall be payable, on a product-by-product basis, beginning on the first commercial sale of such product and ending on the latest of (a) expiration of the last-to-expire valid claim contained in certain licensed patents in Japan that cover such product, (b) expiration of regulatory exclusivity for the first indication for such product in Japan, and, (c) (i) with respect to the first product, ten years after first commercial sale of such product,

and, (ii) with respect to any other product, the later of (x) ten years after first commercial sale of the first product and (y) five years after first commercial sale of such product.

The Torii Agreement expires on a product-by-product basis upon expiration of Torii's obligation under the agreement to make transfer price payments for such product. Torii has the right to terminate the agreement upon specified prior written notice to us. Additionally, either party may terminate the agreement in the event of an uncured material breach of the agreement by, or insolvency of, the other party. The Company may terminate the agreement in the event that Torii commences a legal action challenging the validity, enforceability or scope of any licensed patents.

On March 7, 2022, the Company executed a Clinical Supply Agreement with Torii, whereby the Company will supply product to Torii for use in clinical trials and other development activities. The Company recognized ~~billed and unbilled~~ collaboration revenue of \$0.1 ~~0.6~~ million and \$0.3 ~~37,000~~ million, respectively for the three months ended ~~September 30, 2023~~ ~~March 31, 2024~~ and ~~2022~~ and \$0.3 and \$1.0 million, respectively for the nine months ended September 30, 2023 and ~~2022, 2023~~ respectively related to supplies and development activity pursuant to this agreement. The costs of collaboration revenue consists of expenses incurred by the Company for manufacturing supply to support development and testing services pursuant to the Torii Clinical Supply Agreement.

#### **Lytix Agreement**

In August 2020, the Company entered into an exclusive license agreement with Lytix Biopharma AS ("Lytix") for the use of licensed technology, referred to as VP-315, to research, develop, manufacture, use, sell, have sold, offer for sale, import, and otherwise commercialize products for use in all malignant and pre-malignant dermatological indications, other than metastatic melanoma and metastatic merkel ~~Merkel~~ cell carcinoma (the "Lytix Agreement"). As part of the Lytix Agreement, the Company has paid Lytix a one-time up-front fee/milestone fees of \$0.3 ~~3.6~~ million in 2020. In addition, in May 2022 and February 2021, the Company paid Lytix a one-time \$1.0 million and \$2.3 million payment, respectively upon the achievement by Lytix of a regulatory milestone. The \$1.0 and \$2.3 million payments were recognized in research and development expense in the statement of operations for the nine months ended September 30, 2022 and for the year ended December 31, 2021, respectively. previous periods. The Company is also obligated to pay up to \$111.0 million contingent on achievement of specified development, regulatory, and sales milestones, as well as tiered royalties based on worldwide annual net sales ranging in the low double digits to the mid-teens, subject to certain customary reductions. The Company's obligation to pay royalties expires on a country-by-country and product-by-product basis on the later of the expiration or abandonment of the last to expire licensed patent covering LTX-315 VP-315 anywhere in the world and expiration of regulatory exclusivity for LTX-315 VP-315 in such country. Additionally, all upfront fees and ~~milestone based~~ ~~milestone-based~~ payments received by the Company from a sublicensee will be treated as net sales and will be subject to the royalty payment obligations under the Lytix Agreement, and all royalties received by the Company from a sublicensee shall be shared with Lytix at a rate that is initially 50% but decreases based on the stage of development of LTX-315 VP-315 at the time such sublicense is granted.

#### **Note 12 – Subsequent Event**

##### **Third Amendment to Credit Agreement**

On May 6, 2024, the Company entered into an amendment to the Credit Agreement pursuant to which the Lenders waived the going concern requirement under Section 7.1(b) of the Credit Agreement with respect to the financial statements for

the quarter ended March 31, 2024 (the “Third Amendment”). In connection with the Third Amendment, the Company paid an amendment fee of \$100,000.

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## **Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations**

*You should read the following discussion and analysis of our financial condition and results of operations in conjunction with (i) our unaudited interim **condensed** financial statements and the related notes thereto included elsewhere in this Quarterly Report on Form 10-Q and (ii) our audited financial statements and notes thereto and management’s discussion and analysis of financial condition and results of operations for the years ended December 31, 2021 December 31, 2022 and 2022 2023 included in our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, filed with the Securities and Exchange Commission (the “SEC”) on March 6, 2023 February 29, 2024. Our financial statements have been prepared in accordance with U.S. GAAP.*

*We own various U.S. federal trademark applications and unregistered trademarks, including our company name and YCANTH. All other trademarks or trade names referred to in this Quarterly Report on Form 10-Q are the property of their respective owners. Solely for convenience, the trademarks and trade names in this report are referred to without the symbols ® and ™, but such references should not be construed as an indication that their respective owners will not assert, to the fullest extent under applicable law, their rights thereto.*

### **Forward-Looking Statements**

*This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 (the “Exchange Act”), including, without limitation, statements regarding our expectations, beliefs, intentions or future strategies that are signified by the words “expect,” “anticipate,” “intend,” “believe,” “may,” “plan,” “seek” or similar language. All forward-looking statements included in this document are based on information available to us on the date hereof, and we assume no obligation to update any such forward-looking statements. Our business and financial performance are subject to substantial risks and uncertainties. Our actual results could differ materially from those discussed in these forward-looking statements. In evaluating our business, you should carefully consider the information set forth in this Quarterly Report under Part II - Item 1A “Risk Factors,” and in our other filings with the SEC.*

### **Overview**

We are a dermatology therapeutics company developing and selling medications for skin diseases requiring medical intervention. We are primarily focused on developing clinician administered therapies in areas of high unmet need. Our current product pipeline portfolio consists of one approved product with several potential follow-on indications, as well as two additional pipeline products. Our commercial product, YCANTH solution (VP102) (formerly referred to as VP-102), was approved by the U.S. Food and Drug Administration, or FDA, in July 2023 for the treatment of molluscum contagiosum in adult and pediatric patients two years of age and older, as well as three product candidates: (i) VP-102, older. YCANTH (VP-102) is a proprietary drug-device combination that contains a GMP-controlled formulation of cantharidin which is being developed cantharidin. We are also developing YCANTH (VP-102) for potential use in treating follow-on indications for the treatment of common warts and external genital warts and common warts, (ii) warts. Our two additional product candidates are: (i) VP-315 an oncolytic peptide-based injectable therapy for the potential treatment of dermatology oncologic conditions, including basal cell carcinoma, and (iii) (ii) VP-103, a second cantharidin based drug device combination for the potential treatment of plantar warts.

On July 21, 2023, the U.S. Food and Drug Administration, or FDA, approved YCANTH (VP-102) (cantharidin) 0.7% topical solution was the first product approved by the FDA for the treatment of molluscum contagiosum in adult and pediatric patients two years of age and older. There are currently no other products approved by We commercially launched YCANTH (VP-102) in August 2023 in the FDA, nor is there an established standard of care for this disease, resulting in significant undertreated populations. Molluscum and common warts are two of the largest unmet needs in dermatology. YCANTH is the first FDA-approved product United States for the treatment of molluscum and has the potential for its active pharmaceutical ingredient, or API, to be characterized as contagiosum. We have built a new chemical entity, or NCE, with the five years specialized sales organization consisting of non-patent regulatory exclusivity associated with that designation. Physicians obtain YCANTH in two primary ways, either through a "white bag" service with our specialty pharmacy partner or on a buy and bill basis through our distribution partner, FFF Enterprises. YCANTH is currently reimbursed under a miscellaneous J-code, which we expect will be replaced by an assigned permanent J-code by January 2024, which we expect will be published by April 2024. In addition, YCANTH has been granted a C-code which is used by hospitals and clinics on a temporary basis until our permanent J-code is assigned. To date, we have reached over 112 million covered lives 77 sales representatives in the United States focused on pediatric dermatologists, dermatologists, and select pediatricians. We also plan to advance YCANTH (VP-102) for common warts and external genital warts through positive insurance payor coverage decisions. a separate regulatory approval process. In the future, we also intend to pursue commercialization for YCANTH (VP-102) for the treatment of molluscum contagiosum, as well as YCANTH (VP-102) for common warts and genital warts if approved, in additional geographic regions, either alone or together with a strategic partner.

We are also believe VP-102 has developing YCANTH (VP-102) for the potential to qualify for pediatric exclusivity in treatment of common warts, which would provide for an additional six months of non-patent exclusivity. In addition, our granted patents and pending patent applications include claims drawn to our cantharidin formulations, applicator devices and related accessories, dosing regimens, methods of preparation including methods of synthesis, and methods of use.

warts. In June 2019, we announced positive topline results from our COVE-1 Phase 2 open label clinical trial of VP-102 YCANTH (VP-102) for the treatment of verruca vulgaris, or common warts. Based COVE-1 included two cohorts that evaluated the safety and efficacy of YCANTH (VP-102) in subjects with up to six warts. We held a Type C meeting with FDA on results clinical development plan for YCANTH (VP-102) common warts indication on November 6, 2023. The meeting resulted in gaining alignment on the design of our a pivotal Phase 2 trial we are evaluating 3 clinical development plan to evaluate YCANTH

(VP-102) for the treatment of common warts. We continue to evaluate the timing and design of a Phase 3 trial of VP-102 YCANTH (VP-102) for the treatment of common warts. We held a Type C meeting on November 6, 2023 on common warts, clinical trials and we plan to seek additional guidance from the FDA is expected to issue meeting minutes within 30 days in the second quarter of the meeting. this year.

In addition, we are also developing VP-102 YCANTH (VP-102) for the treatment of external genital warts. We initiated a Phase 2 clinical trial evaluating the optimal dose regimen, efficacy, safety and tolerability of VP-102 YCANTH (VP-102) in patients with external genital warts in June 2019.

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In November 2020, we announced positive topline results from our Phase 2 clinical trial of VP-102 YCANTH (VP-102) for the treatment of external genital warts. An end of Phase 2 meeting was held with the FDA in May 2021. Based on

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results of the Phase 2 trial, we are evaluating the timing and design of a Phase 3 trial of VP-102 YCANTH (VP-102) for the treatment of external genital warts.

We also intend to develop our product candidate, VP-315, an intratumorally injected, chemotherapeutic peptide for the treatment of dermatological oncology indications. VP-315 has been observed to activate the adaptive immune system by inducing lysis and immunogenic cell death through release of immuno-stimulants and a repertoire of tumor neoantigens. The FDA accepted our IND investigational new drug application in November 2021. In April 2022, we dosed the first patient in Part 1 of a 3-part three-part Phase 2, multicenter, open-label, dose-escalation proof-of-concept trial with a safety run-in designed to assess the safety, pharmacokinetics, and efficacy in subjects with biopsy proven basal cell carcinoma. In Part 1 of the trial, VP-315 demonstrated a favorable safety and tolerability profile with no reported serious adverse events. We initiated Part 2 of the trial in April 2023. In June 2023, the protocol was amended to remove Part 3 of the trial by expanding and to expand Part 2. The last patient in Part 2 which of the trial was dosed in December 2023 and we expect will expedite the conclusion of Phase 2. We expect to complete top-line results from this Phase 2 trial in the first half second quarter of 2024.

In addition, we are conducting have conducted necessary drug development activities for VP-103, our second cantharidin-based product candidate, and are evaluating when to initiate a Phase 2 clinical trial for the treatment of plantar warts.

On March 17, 2021, we entered into a collaboration and license agreement, or the Torii Agreement, with Torii Pharmaceutical Co., Ltd., or Torii, pursuant to which we granted Torii an exclusive license to develop and commercialize our product candidates that contain a topical formulation of cantharidin for the treatment of molluscum contagiosum and common warts in Japan, including VP-102. Additionally, we granted Torii a right of first negotiation with respect to additional indications for the licensed products and certain additional products for use in the licensed field, in each case in Japan. Pursuant to the Torii Agreement, we are entitled to receive an up-front payment from Torii of \$11.5 million. On July 25, 2022 Torii dosed the first

patient in its Phase 3 trial of VP-102 (referred to as TO-208 in Japan) for molluscum contagiosum in Japan, triggering an \$8.0 million milestone payment. Additionally, we are entitled to receive from Torii an additional \$50.0 million in aggregate payments contingent on achievement of specified development, regulatory, and sales milestones, in addition to tiered transfer price payments for supply of product in the percentage range of the mid-30s to the mid-40s of net sales.

On March 7, 2022, pursuant to the Torii Agreement, we entered into a Clinical Supply Agreement with Torii, whereby we are obligated to supply product to Torii for use in clinical trials and other development activities. We recognized billed and unbilled collaboration revenue of \$0.1 and \$0.3 million, respectively for the three months ended September 30, 2023 and 2022 and \$0.3 and \$1.0 million, for the nine months ended September 30, 2023 and 2022, respectively related to supplies and development activity pursuant to this agreement.

In August 2020, we entered into an exclusive license agreement with Lytix Biopharma AS, or Lytix, pursuant to which we obtained a worldwide, license for certain technology of Lytix to develop VP-315 for use in all malignant and pre-malignant dermatological indications, other than metastatic melanoma and metastatic Merkel cell carcinoma.

We have commercially launched YCANTH in August 2023 in the United States for the treatment of molluscum contagiosum. We have built a specialized sales organization in the United States focused on pediatric dermatologists, dermatologists, and select pediatricians. We also plan to advance VP-102 for common warts and external genital warts through a separate regulatory approval process. In the future, we also intend to pursue commercialization for YCANTH, as well as VP-102 for common warts and genital warts, in additional geographic regions, either alone or together with a strategic partner.

Since our inception in 2013, our operations have focused on developing VP-102, YCANTH (VP-102), organizing and staffing our company, business planning, raising capital, establishing our intellectual property portfolio and conducting clinical trials. We have funded our operations primarily through the sale of equity and equity-linked securities and through borrowings under loan agreements.

On July 26, 2023, we entered into a Credit Agreement with OrbiMed, (the "Initial Lender"), or the Initial Lender, and each other lender that may from time to time become a party thereto, (each, including or the Initial Lender, and together with their affiliates, successors, transferees and assignees, the "Lenders"). Lenders. The Credit Agreement provides for a five-year senior secured credit facility in an aggregate principal amount of up to \$125 million (the "Loan Facility") \$125.0 million, or the Loan Facility, of which we borrowed \$50.0 million on July 26, 2023, resulting in net proceeds to us of approximately \$44.1 million after payment of certain fees and transaction related expenses. In addition, subject to our achievement of certain revenue targets, up to \$25.0 million will be made available on or prior to June 30, 2024, up to \$30.0 million will be made available on or prior to December 31, 2024, up to \$10.0 million will be made available on or prior to March 31, 2025, and up to \$10.0 million will be made available on or prior to June 30, 2025, in each case, subject to our achievement of certain revenue targets. Amounts borrowed under the Loan Facility will mature on July 26, 2028. On As part of the Closing Date, Loan Facility, we also issued the Initial Lender a warrant to purchase up to 518,551 shares of our common stock, at an exercise price of \$6.0264 per share, which shall have a term of 10 years from the issuance date.

As In February 2023, we closed an underwritten offering of September 30, 2023, we had cash 750,000 shares of our common stock and cash equivalents pre-funded warrants to purchase 4,064,814 shares of \$84.3 million. We believe that our existing cash common stock. The shares of common stock were sold at a price of \$6.75 per share and cash equivalents as the pre-funded warrants were sold at a price of September 30, 2023 \$6.7499 per pre-funded warrant, resulting in total net proceeds

of \$30.3 million, will be sufficient to support our planned operations into the first quarter of 2025, after deducting underwriting discounts and commissions, and offering expenses.

Since inception, we have incurred significant operating losses. For the ~~nine~~ three months ended **September 30, 2023** ~~March 31, 2024~~ and **2022, 2023**, our net loss was ~~\$42.4 million~~ **\$20.3 million** and ~~\$18.6 million~~ **\$6.6 million**, respectively. As of **September 30, 2023** ~~March 31, 2024~~, we had an accumulated deficit of ~~\$205.8 million~~ **\$250.8 million**.

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We expect to continue to incur significant expenses and operating losses for the foreseeable future. We anticipate that our expenses will increase significantly in connection with our ongoing activities, as we:

- continue commercialization of **YCANTH; YCANTH (VP-102)** for the treatment of **molluscum contagiosum**;
- continue our ongoing clinical program evaluating VP-315 for the treatment of basal cell carcinoma and potentially additional dermatological oncology indications;
- initiate clinical trials evaluating VP-102 for the treatment of external genital warts;
- continue our ongoing clinical programs evaluating **VP-102 YCANTH (VP-102)** for the treatment of common warts and external genital warts, as well as initiate and complete additional clinical trials, as needed;
- initiate clinical trials evaluating VP-103 for the treatment of plantar warts;
- pursue regulatory approvals for **VP-102 YCANTH (VP-102)** for the treatment of common warts, external genital warts, or any other indications we may pursue for **VP-102, YCANTH (VP-102)**, as well as for VP-103 or VP-315;
- seek to discover and develop additional product candidates;
- further establish a commercialization infrastructure and scale up external manufacturing and distribution capabilities to commercialize **YCANTH (VP-102)** for the treatment of **molluscum contagiosum** and any other product candidates for which we may obtain regulatory approval, including **VP-102, YCANTH for external genital warts and common warts, VP-315 and VP-103**;
- seek to in-license or acquire additional product candidates for other dermatological conditions;
- adapt our regulatory compliance efforts to incorporate requirements applicable to marketed products;
- maintain, expand and protect our intellectual property portfolio;
- hire additional commercial, administrative, clinical, manufacturing and scientific personnel;

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- add operational, financial and management information systems and personnel, including personnel to support our product development and planned commercialization efforts; and
- incur additional legal, accounting and other expenses ~~in~~ while operating as a public company.

## Critical Accounting Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these financial statements requires us to make estimates, judgments and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities as of the dates of the balance sheets and the reported amounts of expenses during the reporting periods. In accordance with GAAP, we evaluate our estimates and judgments on an ongoing basis.

A summary of our significant accounting policies are disclosed in our Annual Report on Form 10-K for the fiscal year ended **December 31, 2022** **December 31, 2023**. However, we believe that the additional accounting policies disclosed in Note 2 to our **condensed** financial statement are important to understanding and evaluating our reported financial results.

## Components of Results of Operations

### Product Revenue, Net

We recognize revenue from sales of YCANTH (VP-102), or the Product, in accordance with ASC Topic 606 – *Revenue from Contracts with Customers*. YCANTH (VP-102) became available for commercial sale and shipment to **for the treatment of patients with by a prescription healthcare provider** in the United States in the **three months year ended September 30, 2023** **December 31, 2023**. We sell the Product primarily to **a one** pharmaceutical wholesaler/distributor, or the Customer who in turn sells the Product directly to clinics, hospitals, and federal healthcare programs. Revenue is recognized as the Product is physically delivered to the Customer.

Gross product sales are reduced by corresponding gross-to-net, or GTN, estimates using the expected value method, resulting in our reported "Product revenue, net" in the accompanying **consolidated** statements of operations. Product revenue, net reflects the amount we ultimately expect to realize in net cash proceeds, taking into account the current period gross sales and related cash receipts and the subsequent cash disbursements on these sales that we estimate for the various GTN **categories discussed below**. The GTN estimates are based upon information received from external sources, such as written or oral information obtained from our customers with respect to their period-end inventory levels and sales to end-users during the period, in combination with management's informed judgments. Due to the inherent uncertainty of these estimates, the actual amount of product returns, government chargebacks, prompt pay discounts, commercial rebates, Medicaid rebates, co-pay assistance and distribution, data, and group purchasing organizations, or

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GPOs, administrative fees may be materially above or below the amount estimated. Variance between actual amounts and estimated amounts may result in prospective adjustments to reported net product revenue.

**Each of the GTN estimate categories are discussed below:**

**Product Returns Allowances:** The Customer is contractually permitted to return purchased Product in certain circumstances. We estimate expected returns based on our review of similar products in the industry. As historical data for returns of the Product becomes available over time, we will utilize historical return rates of the Product in making our estimates. Returned Product is typically destroyed, since substantially all returns are due to expiry and cannot be resold.

**Government Chargebacks:** The Product is subject to pricing limits under certain federal government programs, including Medicare and the 340B drug pricing program. Qualifying entities, or the End-Users, purchase the Product from the Customer at their applicable qualifying discounted price. The chargeback amount we incur represents the difference between our contractual sales price to the Customer and the end-user's applicable discounted purchase price under the government program.

**Medicaid Rebates:** The Product is subject to state government-managed Medicaid programs, whereby rebates are issued to participating state governments. These rebates arise when a patient treated with the Product is covered under Medicaid, resulting in a discounted price for the Product under the applicable Medicaid program. The Medicaid rebate accrual calculations require us to project the magnitude of our sales, by state, that will be subject to these rebates.

**Patient Assistance:** We offer a voluntary co-pay patient assistance program intended to provide financial assistance to eligible patients with a prescription drug co-payment required by payors and coupon programs for cash payors. The calculation of the current liability for this assistance is based on an estimate of claims and the cost per claim that we expect to receive associated with YCANTH that has been recognized as revenue but remains in the distribution channel inventories at the end of each reporting period.

**Distribution, Data, and GPO Administrative Fees:** Distribution, data, and GPO administrative fees are paid to authorized wholesalers/distributors of our products for various commercial services including contract administration, inventory management, delivery of end-user sales data, and product returns processing. These fees are based on a contractually-determined percentage of our applicable sales.

## Collaboration Revenue

Collaboration revenue represents revenue from the Torii Agreement pursuant to which we granted Torii an exclusive license to develop and commercialize our product candidates that contain a topical formulation of cantharidin for the treatment of molluscum contagiosum and common warts in Japan, including VP-102, YCANTH (VP-102).

## Operating Expenses

### *Selling, General and Administrative Expenses*

Selling, general and administrative expenses consist principally of salaries and related costs for personnel in sales, executive and administrative functions, including stock-based compensation, travel expenses and recruiting expenses. Other selling, general and administrative expenses include cost of samples, sponsorships, consumer and health care professional marketing and advertising expense, insurance costs, and professional fees for audit, tax and legal services.

We anticipate that our selling, general and administrative expenses, including payroll and related expenses, will increase in the future as we continue to increase our headcount to support the expected growth in our business, expand our operations and organizational capabilities, and continue to commercialize YCANTH. YCANTH (VP-102). We also anticipate increased expenses associated with general operations, including costs related to audit, tax and legal services, director and officer insurance premiums, and investor relations costs.

### *Research and Development Expenses*

Research and development expenses consist of expenses incurred in connection with the discovery and development of YCANTH (VP-102) for the treatment of molluscum contagiosum, potential follow-on indications for VP-102 YCANTH (VP-102), including

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external genital warts and common warts, and our other product candidates. We expense research and development costs as incurred. These expenses include:

- expenses incurred under agreements with contract research organizations, or CROs, as well as investigative sites and consultants that conduct our clinical trials and preclinical studies;
- manufacturing and supply scale-up expenses and the cost of acquiring and manufacturing preclinical and clinical trial supply and commercial supply, including manufacturing validation batches;
- outsourced professional scientific development services;
- employee-related expenses, which include salaries, benefits and stock-based compensation;
- expenses relating to regulatory activities; and
- laboratory materials and supplies used to support our research activities.

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Research and development activities are central to our business model. Product candidates in later stages of clinical development generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size and duration of later-stage clinical trials. We expect our research and development expenses to increase over the next several years as we increase personnel costs, including stock-based compensation, initiate and conduct clinical trials of VP-102 YCANTH (VP-102) in patients with common warts, VP-102 YCANTH (VP-102) in patients with external genital warts, VP-315 for dermatological oncology indications, VP-103 in patients with plantar warts, and conduct other clinical trials and prepare regulatory filings for our product candidates.

The successful development of our product candidates is highly uncertain. At this time, we cannot reasonably estimate or know the nature, timing and costs of the efforts that will be necessary to complete the remainder of the development of, or when, if ever, material net cash inflows may commence from YCANTH (VP-102) or our other product candidates. This uncertainty is due to the numerous risks and uncertainties associated with the duration and cost of clinical trials, which vary significantly over the life of a project as a result of many factors, including:

- the number of clinical sites included in the trials;
- the length of time required to enroll suitable patients;
- the number of patients that ultimately participate in the trials;
- the number of doses patients receive;
- the duration of patient follow-up; and
- the results of our clinical trials.

Our expenditures are subject to additional uncertainties, including the manufacturing process for our product candidates, the terms and timing of regulatory approvals, and the expense of filing, prosecuting, defending and enforcing any patent claims or other intellectual property rights. We may never succeed in achieving regulatory approval for our product candidates. We may obtain unexpected results from our clinical trials. We may elect to discontinue, delay or modify clinical trials of our product candidates. A change in the outcome of any of these variables with respect to the development of a product candidate could mean a significant change in the costs and timing associated with the development of that product candidate. For example, if the FDA or other regulatory authorities were to require us to conduct clinical trials beyond those that we currently anticipate, or if we experience significant delays in enrollment in any of our clinical trials, we could be required to expend significant additional financial resources and time on the completion of clinical development.

#### *Cost of Product Revenue*

Cost of product revenue includes the cost of inventory sold, which includes direct manufacturing and supply chain costs. Prior to FDA approval, all product purchased from such suppliers was included as a component of research and development expense, as we were unable to assert that the inventory had future economic benefit until YCANTH (VP-102) received FDA approval. Pursuant to the supply agreement, we purchased and included in research and development expenses approximately \$4.5 million of raw cantharidin and processed API, active pharmaceutical ingredient ("API"). The raw cantharidin and processed API is sufficient to produce approximately 14 million finished drug product applicators to be used for commercially saleable product and other VP-102 product candidates. In addition, we purchased other components and services related to YCANTH (VP-102) for commercially saleable product and included approximately \$1.2 million in research and development expenses prior to FDA approval. As a result, cost of product revenue related to YCANTH (VP-102) will initially reflect a lower average per unit cost of materials over approximately the next nine months as previously expensed inventory is utilized for commercial production and sold to customers. If we included those costs previously expensed as a component of cost of product revenue, our cost of product revenue for the three and nine months ended September 30, 2023 March 31, 2024 would have been \$0.3 million \$0.7 million.

#### *Cost of Collaboration Revenue*

The costs of collaboration revenue consists of payments for manufacturing supply to support development and testing services pursuant to the Torii Clinical Supply Agreement.

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#### **Results of Operations for the Three Months Ended September 30, 2023 March 31, 2024 and 2022**

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2023

The following table summarizes our results of operations for the three months ended **September 30, 2023** **March 31, 2024** and **2022** (in thousands):

	For the Three Months Ended			For the Three Months Ended March 31,			
	September 30,		Change	2024		2023	Change
	2023	2022		2024	2023		
<b>Total revenue</b>							
Product revenue, net	\$ 2,792	\$ —	\$ 2,792	\$ 3,232	\$ —	\$ 3,232	
Collaboration revenue			(8,19)				
	125	8,319	4)	594	37	557	
Total revenue			(5,40)				
	2,917	8,319	2)	3,826	37	3,789	
<b>Operating expenses:</b>							
Selling, general and administrative			16,12				
	20,054	3,925	9	16,339	4,319	12,020	
Research and development			3,730				
	6,510	2,780		4,948	2,739	2,209	
Cost of product revenue			145				
	145	—	145	546	—	546	
Cost of collaboration revenue							
	125	166	(41)	592	68	524	
Total operating expenses			19,96				
	26,834	6,871	3	22,425	7,126	15,299	
<b>(Loss) income from operations</b>			(25,3)				
	(23,917)	1,448	65)				
<b>Loss from operations</b>				(18,599)		(7,089)	(11,510)
<b>Other income (expense):</b>							
Interest income			674				
	822	148	674	598	500	98	
Interest expense			(1,57)				
	(1,657)	(81)	6)	(2,319)	—	(2,319)	
Loss on extinguishment of debt			1,437				
	—	(1,437)	1,437				
Other (expense) income			(55)				
	(50)	5	(55)				
Total other expense, net			(902)				
	(885)	(1,365)	(902)				
<b>Net (loss) income</b>			(24,8)				
	\$ (24,802)	\$ 83	\$ 85)				
<b>Other expense</b>				(11)		—	(11)

Total other (expense)			
income, net		(1,732)	500
<b>Net loss</b>	<b>\$ (20,331)</b>	<b>\$ (6,589)</b>	<b>\$ (13,742)</b>

#### *Product Revenue, Net*

Product revenue, net was \$2.8 million \$3.2 million for the three months ended September 30, 2023 March 31, 2024 and relates to the initial delivery of YCANTH (VP-102) to FFF, our distribution partner. As YCANTH (VP-102), our first FDA approved product, became available for commercial sale and shipment to patients in the three months ended September 30, 2023, we did not recognize any product revenue prior to that point. August 2023.

#### *Collaboration Revenue*

Collaboration revenue was \$0.1 and \$8.3 million \$0.6 million for the three months ended March 31, 2024, respectively compared to \$37,000 for each the three months ended March 31, 2023. Both of the three months ended September 30, 2023 March 31, 2024 and 2022. Revenue for the three months ended September 30, 2023 is related to clinical 2023, collaboration revenue consisted of supplies and development activity provided to Torii pursuant to the Clinical Supply Agreement entered into on March 7, 2022. For the three months ended September 30, 2022, collaboration revenue was related to an \$8.0 million milestone payment and \$0.3 million related to clinical supplies and development activity provided to with Torii.

#### *Selling, General and Administrative Expenses*

Selling, general and administrative expenses were \$20.1 million \$16.3 million for the three months ended September 30, 2023 March 31, 2024, compared to \$3.9 million \$4.3 million for the three months ended September 30, 2022 March 31, 2023. The increase of \$16.1 million \$12.0 million was primarily a result of due to higher expenses related to commercial activities for YCANTH (VP-102), including increased marketing and sponsorship costs of \$3.7 million, increased compensation, recruiting fees, benefits and travel due to ramp-up of sales force in the three months ended September 30, 2023 of \$3.8 million as well as \$7.4 million related to vesting \$6.2 million, increased marketing and sponsorship costs of restricted stock units. \$2.3 million, other commercial activity of \$1.9 million, and increased legal costs of \$0.6 million.

#### *Research and Development Expenses*

Research and development expenses were \$6.5 million \$4.9 million for the three months ended September 30, 2023 March 31, 2024, compared to \$2.8 million \$2.7 million for the three months ended September 30, 2022 March 31, 2023. The increase of \$3.7 million \$2.2 million was primarily attributable related to an increase in additional clinical trial costs for VP-315 of \$1.4 million, \$1.5 million and increased chemistry, manufacturing and control, or CMC, headcount related costs of \$0.9 million related to pre-approval activity and increased stock compensation expense of \$0.8 million related to vesting of restricted stock units upon FDA approval and commercial launch of YCANTH. \$0.6 million.

The following table summarizes our research and development expense by product candidate or, for unallocated expenses, by type for the three months ended September 30, 2023 March 31, 2024 and 2022 2023. We did not incur any research and development expense for VP-103 during the three months ended September 30, 2023 March 31, 2024 or 2022. Unallocated expenses include compensation and other personnel related costs. Stock compensation expense included \$0.8 million related to vesting of restricted stock.

	For the Three Months Ended			Change	
	September 30,				
	2023	2022			
YCANTH and VP-102	\$ 898	\$ 929	\$ (31)		
VP-315	2,847	504	2,343		
Stock based compensation	1,225	349	876		
Other unallocated expenses	1,540	998	542		
Research and development expense	\$ 6,510	\$ 2,780	\$ 3,730		

#### *Interest Income*

Interest income was \$0.8 million for the three months ended September 30, 2023, compared to \$0.1 million for the three months ended September 30, 2022, primarily due to higher cash balance and increased interest rates.

#### *Interest Expense*

Interest expense of \$1.7 million for the three months ended September 30, 2023 consisted of interest expense pursuant to the OrbiMed Credit Agreement entered into on July 26, 2023 as noted in Note 7. Interest expense for the three months ended September 30, 2022 consisted of interest expense on the Mezzanine Loan Agreement as noted in Note 7 to our condensed financial statements. On July 11, 2022 we voluntarily repaid the Mezzanine Loan Agreement.

#### *Loss on Extinguishment of Debt*

For the three months ended September 30, 2022, we recognized a \$1.4 million loss on debt extinguishment which was made up entirely of non-cash unamortized debt issuance costs as a result of the voluntary repayment of the Mezzanine Loan Agreement on July 11, 2022.

#### **Results of Operations for the Nine Months Ended September 30, 2023 and 2022**

The following table summarizes our results of operations for the nine months ended September 30, 2023 and 2022 (in thousands):

	For the Nine Months Ended September 30,			Change
	2023	2022		
<b>Revenue:</b>				
Product revenue, net	\$ 2,792	\$ —	\$ 2,792	
Collaboration revenue	344	8,964	(8,620)	
Total revenue	3,136	8,964	(5,828)	
<b>Operating expenses:</b>				
Selling, general and administrative	30,310	14,216	16,094	

Research and development	14,975	9,170	5,805
Cost of product revenue	145	—	145
Cost of collaboration revenue	329	663	(334)
Total operating expenses	45,759	24,049	21,710
<b>Loss from operations</b>	<b>(42,623)</b>	<b>(15,085)</b>	<b>(27,538)</b>
<b>Other income (expense):</b>			
Interest income	1,948	190	1,758
Interest expense	(1,657)	(2,172)	515
Loss on extinguishment of debt	—	(1,437)	1,437
Other expense	(49)	(51)	2
Total other income (expense)	242	(3,470)	3,712
<b>Net loss</b>	<b>\$ (42,381)</b>	<b>\$ (18,555)</b>	<b>\$ (23,826)</b>

#### *Product Revenue, Net*

Product revenue, net was \$2.8 million for the nine months ended September 30, 2023. As YCANTH, our first FDA approved product, became available for commercial sale in the three months ended September 30, 2023, we did not recognize any product revenue in the three and nine months ended September 30, 2022.

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#### *Collaboration Revenue*

Collaboration revenue was \$0.3 million for the nine months ended September 30, 2023 compared to \$9.0 million for the nine months ended September 30, 2022. For the nine months ended September 30, 2023 and 2022 collaboration revenue included \$0.3 and \$1.0 million, respectively, related to clinical supplies and development activity provided to Torii pursuant to the Clinical Supply Agreement entered into on March 7, 2022. The nine month period ended September 30, 2022 also included license revenue related to an \$8.0 million milestone payment.

#### *Selling, General and Administrative Expenses*

Selling, general and administrative expenses were \$30.3 million for the nine months ended September 30, 2023 compared to \$14.2 million for the nine months ended September 30, 2022. The increase of \$16.1 million was primarily a result of higher expenses related to commercial activities for VP-102 including increased marketing and sponsorship costs of \$4.1 million, increased compensation, recruiting fees, benefits and travel due to ramp-up of sales force in the three months ended September 30, 2023 of \$2.5 million as well as \$7.4 million related to vesting restricted stock units and increased legal costs of \$0.7 million.

#### *Research and Development Expenses*

Research and development expenses were \$15.0 million for the nine months ended September 30, 2023, compared to \$9.2 million for the nine months ended September 30, 2022. The increase of \$5.8 million was primarily attributable to an increase of \$5.4 million in CMC and clinical costs related to our development of VP-102 for molluscum, common warts and

external genital warts and increased stock compensation expense of \$0.8 million related to vesting of restricted stock upon FDA approval and commercial launch partially offset by a payment made to Lytix upon the achievement of a regulatory milestone for VP-315 of \$1.0 million during the nine months ended September 30, 2022.

The following table summarizes our research and development expense by product candidate or, for unallocated expenses, by type for the nine months ended September 30, 2023 and 2022. We did not incur any research and development expense for VP-103 during the nine months ended September 30, 2023 or 2022. Unallocated expenses include compensation and other personnel related costs.

	For the Nine Months			For the Three Months Ended				Change	
	Ended September 30,		Change	March 31,					
	2023	2022		2024		2023			
YCANTH and VP-102			2,9						
	\$ 4,817	\$ 1,914	\$ 03						
YCANTH (VP-102)				\$ 579	\$ 805	\$ (226)			
VP-315			1,5						
	4,095	2,529	66	2,390	352	2,038			
Stock based compensation			97						
	2,078	1,106	2	450	258	192			
Other unallocated expenses			36						
	3,985	3,621	4	1,529	1,324	205			
Research and development expense	\$ 14,975	\$ 9,170	\$ 05	\$ 4,948	\$ 2,739	\$ 2,209			

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#### Cost of Product Revenue

Cost of product revenue of \$0.5 million for the three months ended March 31, 2024 consisted of product costs related to the sale of YCANTH (VP-102) and obsolete inventory write-off of \$0.3 million.

#### Cost of Collaboration Revenue

Cost of collaboration revenue was \$0.6 million for the three months ended March 31, 2024, compared to \$0.1 million for the three months ended March 31, 2023. The increase of \$0.5 million was primarily due to increased manufacturing supply

required to support development and testing services pursuant to the Torii Clinical Supply Agreement.

#### *Interest Income*

Interest income was \$1.9 million \$0.6 million for the nine three months ended September 30, 2023 March 31, 2024 compared to \$0.2 million \$0.5 million for the nine three months ended September 30, 2022 March 31, 2023 primarily due to higher cash balance and increased in higher interest rates.

#### *Interest Expense*

Interest expense of \$1.7 million \$2.3 million for the nine three months ended September 30, 2023 consisted of interest expense pursuant to the OrbiMed Credit Agreement entered into on July 26, 2023 as noted in Note 7 to our condensed financial statements. Interest expense for the nine months ended September 30, 2022, March 31, 2024 consisted of interest expense on the Mezzanine Loan OrbiMed Credit Agreement as noted described in Note 7 10 to our condensed financial statements. On July 11, 2022 we voluntarily repaid the Mezzanine Loan Agreement.

#### *Loss on Extinguishment of Debt*

For the nine months ended September 30, 2022, we recognized a \$1.4 million loss on debt extinguishment which was made up entirely of non-cash unamortized debt issuance costs as a result of the voluntary repayment of the Mezzanine Loan Agreement on July 11, 2022.

### **Liquidity and Capital Resources**

Since our inception, we have incurred net losses and negative cash flows from our operations. We have financed our operations since inception primarily through sales of our convertible preferred stock, the sale of our common stock, in our IPO, receiving aggregate gross proceeds of \$123.2 million and most recently, \$28.1 and \$26.9 million in net proceeds from the issuance of common stock in follow-on offerings in March 2021 and July 2022, respectively, debt and \$20.0 million from the Torii Agreement. In February 2023, we closed an underwritten offering of 750,000 shares of our common stock and pre-funded warrants to purchase 4,064,814 shares of common stock. The shares of common stock were sold at a price of \$6.75 per share and the pre-funded warrants were sold at

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a price of \$6.7499 per pre-funded warrant, resulting in total net proceeds of \$30.3 million, after deducting underwriting discounts and commissions and offering expenses.

As of September 30, 2023 March 31, 2024, we had cash and cash equivalents of \$84.3 million \$48.9 million. Cash in excess of immediate requirements is invested in accordance with our investment policy, primarily with a view to liquidity and capital preservation.

On March 10, 2020, we entered into a mezzanine loan and security agreement and a loan and security agreement, or the Loan Agreements, with Silicon Valley Bank. Upon entering into the Loan Agreements, we borrowed \$35.0 million in term loans, or the Term A Loan, from the Mezzanine Lenders. We entered into amendments to the Loan Agreements in October 2020 under which we borrowed an additional \$5.0 million in term loans, or the Term B1 Loan and together with the Term A Loan, the Loans, on March 1, 2021.

On July 11, 2022, we voluntarily repaid in full the debt outstanding under the Loan Agreements. Our prepayment amount was approximately \$43.8 million, inclusive of principal amount of debt, the final payment fee, and accrued interest, and satisfied all of our outstanding debt obligations under the Loan Agreements. We did not incur any prepayment penalties in connection with the repayment of the amounts payable under the Loan Agreements, which had a scheduled maturity of March 1, 2024. The prepayment was made in full using restricted cash of \$40.0 million, which was set aside as cash collateral in a March 2022 amendment to the Mezzanine Loan Agreement, as well as cash on hand.

On July 21, 2023, the FDA approved YCANTH (VP-102) topical solution for the treatment of molluscum contagiosum in adult and pediatric patients two years of age and older. Our first commercial sale of YCANTH (VP-102) occurred in August 2023 to FFF, our sole primary specialty pharmacy distributor.

On July 26, 2023, we entered into the Credit Agreement which provides for a \$125.0 million Loan Facility. We borrowed \$50.0 million on July 26, 2023, resulting in net proceeds to us of approximately \$44.1 million after payment of certain fees and transaction related expenses. In addition, subject to our achievement of certain revenue targets, up to \$25.0 million will be made available on or prior to June 30, 2024, up to \$30.0 million will be made available on or prior to December 31, 2024, up to \$10.0 million will be made available on or prior to March 31, 2025, and up to \$10.0 million will be made available on or prior to June 30, 2025, in each case, subject to our achievement of certain revenue targets. Amounts borrowed under the Loan Facility will mature on July 26, 2028.

During the term of the Loan Facility, interest payable in cash by us will accrue on any outstanding balance due under the Loan Facility at a rate per annum equal to the higher of (x) the SOFR rate (which is the forward-looking term rate for a one-month tenor based on the secured overnight financing rate administered by the CME Group Benchmark Administration Limited) and (y) 4.00% plus, in either case, 8.00%. During an event of default, any outstanding amount under the Loan Facility will bear interest at a rate of 4.00% in excess of the otherwise applicable rate of interest. We will pay certain fees with respect to the Loan Facility, including an upfront fee, an unused fee on the undrawn portion of the Loan Facility, an administration fee, a prepayment premium and an exit fee, as well as certain other fees and expenses of the Administrative Agent and the Lenders.

## Cash Flows

The following table summarizes our cash flows for the nine months ended September 30, 2023 March 31, 2024 and 2022 (in thousands):

	For the Nine Months Ended September 30,	
	2023	2022
Net cash used in operating activities	\$ (24,070)	\$ (13,696)
Net cash (used in) provided by investing activities	(135)	47,287
Net cash provided by (used in) financing activities	74,240	(16,870)
Net increase in cash and cash equivalents	\$ 50,035	\$ 16,721

  

	For the Three Months Ended March 31,	
	2024	2023

Net cash used in operating activities	\$ (19,947)	\$ (4,590)
Net cash used in investing activities	—	(11)
Net cash (used in) provided by financing activities	(661)	30,280
Net (decrease) increase in cash and cash equivalents	\$ (20,608)	\$ 25,679

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#### *Operating Activities*

During the **nine** **three** months ended **September 30, 2023** **March 31, 2024**, operating activities used **\$24.1 million** **\$19.9 million** of cash, primarily resulting from a net loss of **\$42.4 million** **\$20.3 million** partially offset by non-cash stock-based compensation of **\$12.3 million** **\$2.1 million**. Net cash provided used by changes in operating assets and liabilities consisted primarily of a decrease increases in accounts receivable of **\$2.8 million** and prepaid expenses and other assets of **\$1.0 million** and an increase in accounts payable and accrued expenses of **\$7.8 million** **\$1.3 million** partially offset by an increase in accounts receivable accrued expenses of **\$3.9 million** **\$1.7 million**.

During the **nine** **three** months ended **September 30, 2022** **March 31, 2023**, operating activities used **\$13.7 million** **\$4.6 million** of cash, primarily resulting from a net loss of **\$18.6 million** **\$6.6 million** partially offset by non-cash stock-based compensation of **\$3.8 million**, non-cash loss on extinguishment of debt of **\$1.4 million** and non-cash interest expense of **\$0.4 million** **\$1.1 million**. Net cash used by changes in operating assets and liabilities consisted primarily of a decrease in accounts payable and prepaid expenses of **\$1.3 million** partially offset by a decrease in accrued expenses of **\$1.0 million** **\$0.9 million**.

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#### *Investing Activities*

During the **nine** **three** months ended **September 30, 2023** **March 31, 2024**, no cash was used in investing activities.

During the **three** months ended **March 31, 2023**, net cash used in investing activities of **\$0.1 million** was primarily due to **\$11,000** for the purchase of **fixed assets**.

During the **nine** months ended **September 30, 2022**, net cash provided by investing activities of **\$47.3 million** was primarily due to sales **property** and **maturities of marketable securities of \$52.0 million** partially offset by purchases of marketable securities of **\$4.5 million**. **equipment**.

#### *Financing Activities*

During the **nine** **three** months ended **September 30, 2023** **March 31, 2024**, net cash used by financing activities of **\$0.7 million** was primarily due to **\$0.5 million** of debt amendment costs paid related to the **Orbimed Credit Agreement**.

During the three months ended March 31, 2023, net cash provided by financing activities of \$74.2 million \$30.3 million was primarily related due to net cash proceeds of \$44.1 million from the OrbiMed Credit Agreement and proceeds of \$30.3 million, net of issuance costs from the issuance of common stock and pre-funded warrants.

**During the nine months ended September 30, 2022, net cash used in financing activities of \$16.9 million was primarily related to repayment of outstanding debt of \$43.8 million partially offset by proceeds of \$26.9 million, net of issuance costs, from the issuance of common stock**

### **Funding Requirements**

Our first commercial sale of YCANTH (VP-102) occurred in August 2023 to FFF, our primary specialty pharmacy distributor. While we expect to generate revenue from the sale of YCANTH (VP-102), we expect our expenses to increase in connection with our ongoing activities, particularly as we initiate commercialization of YCANTH (VP-102) and continue the research and development of, continue or initiate clinical trials of, and seek marketing approval for, our product candidates. Following the approval of YCANTH (VP-102), for the treatment of molluscum contagiosum, we expect to incur significant commercialization expenses related to sales, marketing, manufacturing and distribution. Furthermore, we expect to incur additional costs associated with operating as a public company. We will need substantial additional financing to fund our operations. If we are unable to raise capital when needed or on attractive terms, we would be forced to delay, reduce or eliminate our research and development programs or future commercialization efforts.

We believe that our existing cash and cash equivalents of \$84.3 million as of September 30, 2023, March 31, 2024 will be sufficient to support our planned operations only into the first quarter of 2025. These factors cause substantial doubt to exist about the Company's ability to continue as a going concern within one year after the date these financial statements are issued. The Company's financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. The financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result should the Company be unable to continue as a going concern.

We have based this estimate on assumptions that may prove to be wrong, and we could exhaust our capital resources sooner than we expect. Our future capital requirements will depend on many factors, including:

- the level of sales achieved, and costs related to the commercialization of YCANTH; YCANTH (VP-102) for the treatment of molluscum contagiosum;
- the costs, timing and outcome of regulatory review of our product candidates;
- the scope, progress, results and costs of our clinical trials;
- the scope, prioritization and number of our research and development programs;
- the costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending intellectual property-related claims;
- our ability to maintain compliance with covenants under our loan agreements;
- the extent to which we acquire or in-license other product candidates and technologies;
- the impact on the timing of our clinical trials and our business;

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- the costs to scale up and secure manufacturing arrangements for commercial production of YCANTH (VP 102) for the treatment of molluscum contagiosum and any product candidate we successfully commercialize; and
- the costs of establishing or contracting for and maintaining sales and marketing capabilities for YCANTH (VP 102) for the treatment of molluscum contagiosum and if we obtain any product candidate that obtains regulatory approvals to market our product candidates. approval.

Identifying potential product candidates and conducting preclinical studies and clinical trials is a time-consuming, expensive and uncertain process that takes many years to complete, and we may never generate the necessary data or results required to obtain marketing approval and achieve product sales. In addition, YCANTH (VP-102), and our other product candidates, if approved, may not achieve commercial success. Our commercial revenues will be derived solely from sales of YCANTH (VP-102) in the near term. We may need to continue to rely on additional financing to achieve our business objectives. Adequate additional financing may not be available to us on acceptable terms, or at all.

Until such time, if ever, as we can generate substantial product revenues, we expect to finance our cash needs through a combination of equity offerings, debt financings, collaborations, strategic alliances and licensing arrangements. Our ability to raise additional capital may be adversely impacted by potential worsening global economic conditions and the disruptions to, and volatility in, the credit and financial markets in the United States and worldwide. To the extent that we raise additional capital through the sale of equity or convertible debt securities, ownership interests of existing stockholders may be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect our existing stockholders' rights. Debt financing, if available, may

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involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends.

If we raise funds through additional collaborations, strategic alliances or licensing arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs or product candidates or to grant licenses on terms that may not be favorable to us. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or future commercialization efforts or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

### **Contractual Obligations and Commitments**

As of September 30, 2023 March 31, 2024, there have been no material changes to our contractual obligations and commitments as previously disclosed discussed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 December 31, 2023.

### Item 3. Quantitative and Qualitative Disclosures About Market Risks

There have been no material changes to our quantitative and qualitative disclosures about market risk as previously disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 December 31, 2023.

### Item 4. Controls and Procedures

#### *Evaluation of Disclosure Controls and Procedures*

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report on Form 10-Q to ensure that the information required to be disclosed by us in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that information required to be disclosed in the reports we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosures. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost benefit relationship of possible controls and procedures. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of September 30, 2023 March 31, 2024.

#### *Changes in Internal Control over Financial Reporting*

There have been no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(b) and 15d-15(b) of the Exchange Act that occurred during the quarter ended September 30, 2023 March 31, 2024, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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## PART II. OTHER INFORMATION

### Item. 1 Legal Proceedings

On June 6, 2022, plaintiff Kranthi Gorlamari or Gorlamari, ("Plaintiff") filed a putative class action complaint captioned Gorlamari v. Verrica Pharmaceuticals Inc., et al., in the U.S. District Court for the Eastern District of Pennsylvania against us and certain of our current and former officers and directors ("Defendants"). Gorlamari On January 12, 2023, the Plaintiff filed an

amended complaint on January 12, 2023. The amended complaint alleges alleging that Defendants violated federal securities laws by, among other things, failing to disclose certain manufacturing deficiencies at the facility where our contract manufacturer produced bulk solution for the VP-102 YCANTH (VP-102) drug device and that such deficiencies posed a risk to the prospects for regulatory approval of VP-102 YCANTH (VP-102) for the treatment of molluscum. The amended complaint seeks unspecified compensatory damages and other relief on behalf of Gorlamari Plaintiff and all other persons and entities which purchased or otherwise acquired our securities between May 19, 2021 and May 24, 2022 (the "Putative Class Period"). Briefing on Defendants'

On January 12, 2024, the Court granted in part and denied in part Defendants' motion to dismiss the amended complaint. The Court held that Plaintiff's claims relating to statements made in May and June 2021 were sufficiently pled, but dismissed Plaintiff's claims relating to all other statements made during the Putative Class Period. On January 26, 2024, Plaintiff filed a second amended complaint in an attempt to cure certain of the deficiencies identified in the January 12, 2024 ruling. Defendants' motion to dismiss the second amended complaint was completed on May 23, 2023. The litigation fully briefed as of April 22, 2024, and is still in pending before the early stages, and we intend to vigorously defend itself against these allegations. Court.

We are involved in ordinary, routine legal proceedings that are not considered by management to be material. We believe the ultimate liabilities resulting from such legal proceedings will not materially affect our financial position or our results of operations or cash flows.

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#### Item 1A. Risk Factors

Our business is subject to risks and events that, if they occur, could adversely affect our financial condition and results of operations and the trading price of our securities. In addition to the other information set forth in this quarterly report on Form 10-Q, you should carefully consider the factors described in Part I, Item 1A. "Risk Factors" of our Annual Report on Form 10-K for the fiscal year ended December 31, 2022 December 31, 2023, filed with the Securities and Exchange Commission on March 6, 2023 February 29, 2024. Except as described set forth below, there have been no material changes to the risk factors described in that report.

**Product liability lawsuits against us could cause us to incur substantial liabilities and to limit commercialization of YCANTH and any products Our financial statements have been prepared assuming that we may develop.**

We face an inherent risk of product liability exposure related to the testing of our product candidates in human clinical trials and will face an even greater risk in connection with the commercialization of YCANTH. If we cannot successfully defend ourselves against claims that YCANTH or our product candidates caused injuries, we will incur substantial liabilities. For example, YCANTH, may cause local skin reactions, can cause life threatening or fatal toxicities if administered orally, can cause ocular toxicity if in contact with the eyes and is flammable. Regardless of merit or eventual outcome, liability claims may result in:

- decreased demand for YCANTH and any product candidates that we may develop;
- injury to our reputation and significant negative media attention;

- withdrawal of clinical trial participants;
- significant costs to defend the related litigation;
- substantial monetary awards paid to trial participants or patients;
- loss of revenue;
- reduced resources of our management to pursue our business strategy; and
- the inability to successfully commercialize YCANTH and any other products that we may develop.

We currently hold \$10 million in product liability insurance coverage in the aggregate, with continue as a per incident limit of \$10 million, which may not be adequate to cover all liabilities that we may incur. We may need to increase our insurance coverage. Insurance coverage is increasingly expensive. We may not be able to maintain insurance coverage at a reasonable cost or in an amount adequate to satisfy any liability that may arise.

**We may not be able to generate sufficient cash to service our indebtedness or borrow additional funds pursuant to our Loan Facility. going concern.**

We have entered into a Credit Agreement with OrbiMed, pursuant to which incurred recurring losses from operations since inception and we may borrow up to \$125.0 million. Our obligations under the Credit Agreement are secured by all or substantially all of believe our assets.

We are subject to a number of affirmative and restrictive covenants pursuant to the Credit Agreement, which limit or restrict our ability to (subject to certain qualifications and exceptions): create liens and encumbrances; incur additional indebtedness; merge, dissolve, liquidate or consolidate; make acquisitions, investments, advances or loans; dispose of or transfer assets; pay dividends or make other payments in respect of their capital stock; amend certain material documents; redeem or repurchase certain debt; engage in certain transactions with affiliates; and enter into certain restrictive agreements. In addition, we are required to maintain at least \$10 million of unrestricted existing cash and cash equivalents at all times. Our obligations under will be sufficient to support our planned operations only into the Credit Agreement are subject first quarter of 2025. These factors cause substantial doubt to acceleration upon the occurrence of an event of default (subject exist about our ability to notice and grace periods). We are currently in compliance with the Credit Agreement covenants. continue as a going concern. If we are unable to achieve certain milestones, generate obtain sufficient revenue funding, our business, prospects, financial condition and raise additional capital through a combination results of equity offerings, debt financings operations will be materially and license adversely affected, and collaboration agreement we will no longer be in compliance with these covenants. We may also enter into other debt agreements in the future which may contain similar or more restrictive terms.

Our ability to make scheduled monthly payments or to refinance our debt obligations depends on numerous factors, including the amount of our cash reserves and our actual and projected financial and operating performance. These amounts and our performance are subject to certain financial and business factors, as well as prevailing economic and competitive conditions, some of which may be beyond our control. We cannot assure you that we will maintain a level of cash reserves or cash flows from operating activities sufficient to permit us to pay the principal, premium, if any, and interest on our existing or future indebtedness. If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay capital expenditures, sell assets or operations, seek additional capital or restructure or refinance our indebtedness. We cannot assure you that we would be able to take any of these actions, or that these actions would permit us to meet our scheduled debt service obligations. Failure to comply with the conditions of the Credit Agreement could result in an

event of default, which could result in an acceleration of amounts due under the Credit Agreement. We may not have sufficient funds or may be unable to arrange for additional financing to

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repay our indebtedness or to make any accelerated payments, and OrbiMed could seek to enforce security interests in the collateral securing such indebtedness, which would harm our business.

In addition, the Credit Agreement provides up to \$25.0 million will be made available on or prior to June 30, 2024, up to \$30.0 million will be made available on or prior to December 31, 2024, up to \$10.0 million will be made available on or prior to March 31, 2025, and up to \$10.0 million will be made available on or prior to June 30, 2025, in each case, subject to certain revenue requirements. continue as a going concern. If we are unable to achieve continue as a going concern, we may have to liquidate our assets and may receive less than the revenue targets by the applicable dates, we would be unable to borrow additional funds pursuant to the Loan Facility, value at which could negatively impact those assets are carried on our financial statements, and it is likely that investors will lose all or a part of their investment. In addition, if there remains substantial doubt about our ability to fund our operations. continue as a going concern, investors or other financing sources may be unwilling to provide additional funding to us on commercially reasonable terms, or at all.

#### Item 5. Other Information

During the quarter ended March 31, 2024, none of our directors or officers (as defined in Rule 16a-1(f) under the Exchange Act) adopted, modified or terminated a “Rule 10b5-1 trading arrangement” or a “non-Rule 10b5-1 trading arrangement” (as each term is defined in Item 408 of Regulation S-K).

#### Item 6. Exhibits

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#### EXHIBIT INDEX

Exhibit	No.	Description
3.1 (1)		<u>Amended and Restated Certificate of Incorporation.</u>
3.2 (2)		<u>Amended and Restated Bylaws.</u>

10.1 <sup>^+ 10</sup>	<a href="#">Second Amendment to Credit Agreement, dated as of July 26, 2023 January 31, 2024, by and between Verrica Pharmaceuticals, Inc. the Registrant and Orbimed Royalty &amp; Credit Opportunities IV, LP LP.</a>
.1 (3) <sup>#</sup>	
10.2 <sup>^ 10.</sup>	<a href="#">Pledge Second Amended and Security Agreement, dated Restated Non-Employee Director Compensation Policy, adopted by the Board as of July 26, 2023, by and between Verrica Pharmaceuticals, Inc. and Orbimed Royalty &amp; Credit Opportunities IV, LP</a>
2 (4) <sup>+</sup>	
10.3	<a href="#">Warrant Certificate, dated as of July 26, 2023, by and between Verrica Pharmaceuticals, Inc. and Orbimed Royalty &amp; Credit Opportunities IV, LP February 27, 2024.</a>
31.1	<a href="#">Certification of Chief Executive Officer and President (Principal Executive Officer), pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).</a>
31.2	<a href="#">Certification of Chief Financial Officer (Principal Financial Officer), pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).</a>
32.1*	<a href="#">Certifications of Chief Executive Officer and President (Principal Executive Officer) and Chief Financial Officer (Principal Financial Officer), pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (furnished herewith).</a>
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

(1) Previously filed as Exhibit 3.3 to the Company's Registration Statement on Form S-1 (File No. 333-225104), filed with the Securities and Exchange Commission on May 22, 2018.

(2) Previously filed as Exhibit 3.4 to the Company's Registration Statement on Form S-1 (File No. 333-225104), filed with the Securities and Exchange Commission on May 22, 2018.

(3) Previously filed as Exhibit 10.28 to the Company's Annual Report on Form 10-K (File No. 001-38529), filed with the Securities and Exchange Commission on February 29, 2024.

(4) Previously filed as Exhibit 10.21 to the Company's Annual Report on Form 10-K (File No. 001-38529), filed with the Securities and Exchange Commission on February 29, 2024.

# Certain portions of this exhibit, indicated by asterisks, have been omitted pursuant to Item 601(b)(10) of Regulation S-K because they are not material and would likely cause competitive harm to the registrant if publicly disclosed.

+ Indicates management contract or compensatory plan.

\* These certifications are being furnished solely to accompany this quarterly report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and are not to be incorporated by reference into any filing of the registrant, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

<sup>^</sup> Portions of this exhibit (indicated by \*\*\*) have been omitted because the Registrant has determined that the information is both not material and is the type that the Registrant treats as private or confidential. 23

+ Pursuant to Item 601(a)(5) of Regulation S-K promulgated by the SEC, certain exhibits and schedules to this agreement have been omitted. The Company hereby agrees to furnish supplementally to the SEC, upon its request, any or all of such omitted exhibits or schedules.

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### Signatures

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

#### VERRICA PHARMACEUTICALS INC.

November 9, 2023 May 13, 2024

By: /s/ Ted White

Ted White

Chief Executive Officer and President  
(Principal Executive Officer)

By: /s/ P. Terence Kohler Jr.

P. Terence Kohler Jr.

Chief Financial Officer  
(Principal Financial Officer)

## EXHIBIT 10.1

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. OMISSIONS ARE DESIGNATED [\*\*\*].

## CREDIT AGREEMENT

dated as of July 26, 2023

among

VERRICA PHARMACEUTICALS INC.,

as the Borrower,

ORBIMED ROYALTY &amp; CREDIT OPPORTUNITIES IV, LP,

as the Initial Lender and Administrative Agent

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Exhibit I - Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

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## CREDIT AGREEMENT

THIS CREDIT AGREEMENT dated as of July 26, 2023 (as amended, supplemented or otherwise modified from time to time, this “Agreement”), is by and between VERRICA PHARMACEUTICALS INC., a Delaware corporation (the “Borrower”) and ORBIMED ROYALTY & CREDIT OPPORTUNITIES IV, LP, a Delaware limited partnership (the “Initial Lender”) and each other lender that may from time to time become a party hereto (each, including the Initial Lender, and together with their Affiliates, successors, transferees and assignees, the “Lenders”), and ORBIMED ROYALTY & CREDIT OPPORTUNITIES IV, LP, as administrative agent for the Lenders (in such capacity, the “Administrative Agent”). The Borrower, the Lenders and the Administrative Agent are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

### WITNESSETH:

WHEREAS, the Borrower has requested that the Lenders provide a senior term loan facility to the Borrower in an aggregate principal amount of \$125,000,000 (with \$50,000,000 available on the Closing Date, \$25,000,000 available on or prior to the First Delayed Draw Closing Date, \$15,000,000 available on or prior to the Second Delayed Draw Closing Date, \$15,000,000 available on or prior to the Third Delayed Draw Closing Date, \$10,000,000 available on or prior to the Fourth Delayed Draw Closing Date and \$10,000,000 available on or prior to the Fifth Delayed Draw Closing Date, subject to the terms and conditions set forth herein); and

WHEREAS, the Lenders are willing, on the terms and subject to the conditions hereinafter set forth, to extend the Commitment and make the Loans to the Borrower;

NOW, THEREFORE, the parties hereto agree as follows.

### ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.1 Defined Terms. The following terms (whether or not underscored) when used in this Agreement, including its preamble and recitals, shall, except where the context

otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

“Administration Fee” is defined in Section 3.11.

“Affiliate” of any Person means any other Person which, directly or indirectly, Controls, is Controlled by or is under common Control with such Person. “Control” (and its correlatives) by any Person means (a) the power of such Person, directly or indirectly, (i) to vote 10% or more of the Voting Securities (determined on a fully diluted basis) of another Person, or (ii) to direct or cause the direction of the management and policies of such other Person (whether by contract or otherwise), or (b) ownership by such Person of 10% or more of the Capital Securities of another Person.

“Agreement” is defined in the preamble.

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“Amortization Payment Date” is defined in Section 3.2.

“Applicable Margin” means 8.00%.

“Applicable Percentage” means, with respect to any Lender at any time, with respect to such Lender’s portion of the outstanding Loans at any time, the percentage of the outstanding principal amount of the Loans held by such Lender at such time. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.1 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee, and accepted by the Administrative Agent, in substantially the form of Exhibit K hereto or any other form approved by the Administrative Agent and such Lender in its reasonable discretion.

“Authorized Officer” means, relative to the Borrower or any of the Subsidiaries, those of its officers, general partners or managing members (as applicable) whose signatures and incumbency shall have been certified to the Administrative Agent and the Lenders pursuant to Section 5.2.

“Benefit Plan” means any employee benefit plan, as defined in section 3(3) of ERISA, that either: (i) is a “multiemployer plan,” as defined in section 3(37) of ERISA, (ii) is subject to section 412 of the Code, section 302 of ERISA or Title IV of ERISA, (iii) has assets that are invested in Capital Securities of the Borrower or any Subsidiaries or any of their respective ERISA Affiliates, (iv) provides welfare benefits to terminated employees, other than to the extent required by section 4980B(f) of the Code and the corresponding provisions of ERISA or similar law; (v) provides medical insurance, dental insurance, vision insurance, life insurance or long-term disability benefits and is not fully insured by a third-party insurance

company, or (vi) provides benefits to employees whose primary place of employment is outside the United States (other than a plan sponsored by a governmental entity to which the employer's only obligation is to make legally required contributions).

**"Bona Fide Lending Affiliate"** means any bona fide debt fund, investment vehicle, regulated banking entity, non-regulated lending entity or other similar entity (in each case, other than a Person that is explicitly excluded pursuant to clause (a) of the definition of "Disqualified Institution") that is primarily engaged in commercial loans and similar extensions of credit in the ordinary course of business.

**"Borrower"** is defined in the preamble.

**"Business Day"** means any day which is neither a Saturday or Sunday nor a legal holiday on which banks are authorized or required to be closed in New York, New York.

**"Capital Securities"** means, with respect to any Person, all shares of, interests or participations in, or other equivalents in respect of (in each case however designated, whether voting or non-voting), of such Person's capital stock, and any warrants, options or other rights

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entitling the holder thereof to purchase or acquire any such capital stock, in each case, whether now outstanding or issued after the Closing Date.

**"Capitalized Lease Liabilities"** means, with respect to any Person, all monetary obligations of such Person and its Subsidiaries under any leasing or similar arrangement which have been (or, in accordance with GAAP, should be) classified as finance leases, and for purposes of each Loan Document the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a premium or a penalty.

**"Cash Equivalent Investment"** means, at any time:

(a) any direct obligation of (or unconditionally guaranteed by) the United States (or any agency or political subdivision thereof, to the extent such obligations are supported by the full faith and credit of the United States) maturing not more than one year after such time;

(b) commercial paper maturing not more than one year from the date of issue, which is issued by a corporation (other than an Affiliate of the Borrower or any of its Subsidiaries) organized under the laws of any state of the United States or of the District of Columbia and rated A-1 or higher by S&P or P-1 or higher by Moody's; or

(c) any certificate of deposit, demand or time deposit or bankers' acceptance, maturing not more than 180 days after its date of issuance, which is issued by or placed with any bank or trust company organized under the laws of the United States (or any state thereof) and which has (x) a credit rating of A2 or higher from Moody's or A or higher from S&P and (y) a combined capital and surplus greater than \$[\*\*\*]; or

(d) investments in money market mutual funds at least 95% of the assets of which are comprised of securities of the types described in clauses (a) through (c) of this definition.

**"Casualty Event"** means the damage, destruction or condemnation, as the case may be, of property of the Borrower or any of its Subsidiaries.

**"cGCP"** means the then current Good Clinical Practices that establish the national and international ethical, regulatory and scientific quality standards for designing, conducting, recording and reporting clinical trials that are promulgated or endorsed for the United States by the FDA (including through ICH E6 and 21 CFR Parts 50, 54, 56, 312 and 812 and applicable guidance documents) and for outside the United States by comparable Governmental Authorities.

**"cGMP"** means the then current good manufacturing practices and regulatory requirements for or concerning manufacturing practices for pharmaceutical and biological products, medical devices, and combination products (and components thereof) that are promulgated or endorsed for the United States by the FDA (including through 21 CFR Parts 4, 210, 211, 610, 611 and 820) and for outside the United States by comparable Governmental Authorities.

**"Change in Control"** means and shall be deemed to have occurred if (i) any "person" or "group" (within the meaning of Rule 13d-5 of the Exchange Act) other than Paul B. Manning shall own, directly or indirectly, beneficially or of record, determined on a fully diluted basis, more than 40% of the Voting Securities of the Borrower; (ii) a majority of the seats (other than vacant seats) on the board of directors (or equivalent) of the Borrower shall at any time be occupied by persons who were neither (x) nominated by the board of directors of the Borrower nor (y) appointed by directors so nominated, (iii) the Borrower shall cease to own, directly or indirectly through other wholly-owned Subsidiaries, beneficially and of record, 100% of the issued and outstanding Capital Securities of the Subsidiaries, or (iv) Paul B. Manning shall own, directly or indirectly, beneficially or of record, determined on a fully diluted basis, less than 20% of the Voting Securities of the Borrower.

**"Change in Law"** means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty, (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any

Governmental Authority or (iii) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Closing Date" means the date of this Agreement.

"Closing Date Certificate" means a closing date certificate executed and delivered by an Authorized Officer of the Borrower in form and substance satisfactory to the Administrative Agent and Initial Lender.

"CMS" means the U.S. Centers for Medicare and Medicaid Services.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" has the meaning set forth in the Security Agreement.

"Commitment" means, as to each Lender, such Lender's obligation (if any) to make Loans hereunder.

"Commitment Amount" as to each Lender, means its obligation to make a portion of the Loans to the Borrower pursuant to Section 2.1, in the principal amount set forth opposite such Lender's name on Schedule 2.1. The aggregate principal amount of the Commitment Amount of all of the Lenders as in effect on the date hereof is \$125,000,000.

"Company Competitor" means any Person that is an operating company that competes with the business operations of the Borrower and its Subsidiaries.

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"Compliance Certificate" means a certificate duly completed and executed by an Authorized Officer of the Borrower, substantially in the form of Exhibit C hereto, together with such changes thereto as the Administrative Agent may from time to time reasonably request for the purpose of monitoring the Borrower's compliance with the financial covenant contained herein.

"Confidential Business Information" means trade secrets, confidential business information, know-how, inventions, manufacturing processes and techniques, financial, marketing and business data, pricing and cost information, business, finance and marketing plans, customer and prospective customer lists and

information, and supplier and prospective supplier lists and information, research and development information, data and other information included in or supporting Regulatory Authorizations in Borrower's or its Subsidiaries' possession, custody or control.

**"Confidential Information"** means any and all information or material (whether written or oral, or in electronic or other form) that, at any time before, on or after the Closing Date, has been or is provided or communicated to the Receiving Party by or on behalf of the Disclosing Party pursuant to this Agreement or in connection with the transactions contemplated hereby, and shall include the existence and terms of this Agreement.

**"Contingent Liability"** 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) the Indebtedness 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 Capital Securities of any other Person. The amount of any Person's obligation under any Contingent Liability shall (subject to any limitation set forth therein) be deemed to be the outstanding amount of the debt, obligation or other liability guaranteed thereby.

**"Control"** is defined within the definition of **"Affiliate"**.

**"Controlled Account"** is defined in **Section 7.13**.

**"Copyright Security Agreement"** means any Copyright Security Agreement executed and delivered to the Administrative Agent by the Borrower or any of the Guarantors in substantially the form of Exhibit C to the Security Agreement, as amended, supplemented, amended and restated or otherwise modified from time to time.

**"Copyrights"** means all copyrights, whether statutory or common law, and all exclusive and nonexclusive licenses from third parties or rights to use copyrights owned by such third parties, along with any and all (i) renewals, revisions, extensions, derivative works, enhancements, modifications, updates and new releases thereof, (ii) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof, (iii) rights to sue for past, present and future infringements thereof, and (iv) foreign copyrights and any other rights corresponding thereto throughout the world.

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**"Dashboard Report"** means a report duly completed by the Borrower substantially in the form of Exhibit L hereto.

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

**“Default”** means any Event of Default or any condition, occurrence or event which, after notice or lapse of time or both, would constitute an Event of Default.

**“Delayed Draw Closing Date”** means each of the “First Delayed Draw Closing Date”, “Second Delayed Draw Closing Date”, the “Third Delayed Draw Closing Date”, the “Fourth Delayed Draw Closing Date”, and the “Fifth Delayed Draw Closing Date”.

**“Delayed Draw Commitment Amount”** means each of the “First Delayed Draw Commitment Amount”, “Second Delayed Draw Commitment Amount”, the “Third Delayed Draw Commitment Amount”, the “Fourth Delayed Draw Commitment Amount”, and the “Fifth Delayed Draw Commitment Amount”.

**“Delayed Draw Loan”** means each of the “First Delayed Draw Loan”, “Second Delayed Draw Loan”, the “Third Delayed Draw Loan”, the “Fourth Delayed Draw Loan”, and the “Fifth Delayed Draw Loan”.

**“Designated Jurisdiction”** means any country or territory to the extent that such country or territory is the subject of any comprehensive Sanctions.

**“Disclosing Party”** means the Party disclosing Confidential Information.

**“Disposition”** (or similar words such as **“Dispose”**) means any sale, transfer, lease, license, contribution or other conveyance (including by way of merger) of, or the granting of options, warrants or other rights to, any of the Borrower’s or the Subsidiaries’ assets (including accounts receivable and Capital Securities of Subsidiaries, but excluding, for the avoidance of doubt, the issuance of Capital Securities of the Borrower, or sale of treasury Capital Securities of the Borrower, in each case by the Borrower) to any other Person (other than to the Borrower or any of its Subsidiaries) in a single transaction or series of transactions.

**“Disqualified Capital Securities”** shall mean any Capital Securities that, by their terms (or by the terms of any security or other Capital Securities into which they are convertible or for which they are exchangeable) or upon the happening of any event or condition, (a) mature or are mandatorily redeemable (other than solely for Qualified Capital Securities), pursuant to a sinking fund obligation or otherwise (except as a result of a Change in Control or asset sale so long as any rights of the holders thereof upon the occurrence of a Change in Control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitment), (b) are redeemable at the option of the holder thereof (other than solely for Qualified Capital Securities) (except as a result of a Change in Control or asset sale so long as any rights of the holders thereof upon

the occurrence of a Change in Control or asset sale event shall be subject to the prior repayment in full of the Loans and all

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other Obligations that are accrued and payable and the termination of the Commitment), in whole or in part, (c) provide for the scheduled payment of dividends in cash or (d) are or become convertible into or exchangeable for Indebtedness or any other Capital Securities that would constitute Disqualified Capital Securities, in each case, prior to the date that is one hundred and eighty-one (181) days after the Maturity Date; provided that if such Capital Securities are issued pursuant to a plan for the benefit of employees of the Borrower or any of its Subsidiaries, or by any such plan to such employees, such Capital Securities shall not constitute Disqualified Capital Securities solely because they may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Disqualified Institution” means, on any date, (a)(i) any Company Competitor or (ii) other Person (including any financial institution), in each case of (i) and (ii) identified as a Disqualified Institution on the list delivered to the Administrative Agent by the Borrower prior to the Closing Date, (b) any Company Competitor that is designated by the Borrower as a Disqualified Institution by prior notice to the Administrative Agent on or after the Closing Date and approved by the Lenders in their sole discretion acting reasonably (such designation will become effective five (5) Business Days after approval by the Lenders and will not apply retroactively to disqualify the transfer of, or agreement to transfer, an interest in the Commitments or Loans, as applicable, that was effective prior to the effective date of such supplement), and (c) any Disqualified Institution’s known Affiliates or Affiliates identified in writing to the Administrative Agent from time to time or otherwise readily identifiable as such by name. Notwithstanding the foregoing, in no event will a Bona Fide Lending Affiliate be a Disqualified Institution, unless such Bona Fide Lending Affiliate is explicitly identified under clause (a) of the definition of “Disqualified Institution” above. The Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of Confidential Information, to any Disqualified Institution, except to the extent resulting from the Administrative Agent’s own gross negligence or willful misconduct as determined by a final non-appealable judgment by a court of competent jurisdiction.

“Division/Series Transaction” means, with respect to any Person that is a limited liability company organized under the Laws of the State of Delaware, that any such Person (a) divides into two or more Persons (whether or not the original Person survives such division) or (b) creates, or reorganizes into, one or more series, in each case, as contemplated under the Laws of the State of Delaware.

“EMA” means the European Medicines Agency or any successor entity.

**Environmental Laws** means all federal, state, local or international laws, statutes, rules, regulations, codes, directives, treaties, requirements, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, natural resources, Hazardous Material or health and safety matters.

**Environmental Liability** means any liability, loss, claim, suit, action, investigation, proceeding, damage, commitment or obligation, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of or affecting

the Borrower or any Subsidiary directly or indirectly arising from, in connection with or based upon (i) any Environmental Law or Environmental Permit, (ii) the generation, use, handling, transportation, storage, treatment, recycling, presence, disposal, Release or threatened Release of, or exposure to, any Hazardous Materials, or (iii) any contract, agreement, penalty, order, decree, settlement, injunction or other arrangement (including operation of law) pursuant to which liability is assumed, entered into, inherited or imposed with respect to any of the foregoing.

**Environmental Permit** is defined in Section 6.7.

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

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

**Erroneous Payment** is defined in Section 11.10.

**Event of Default** is defined in Section 9.1.

**Exchange Act** means the Securities Exchange Act of 1934, as amended.

**Excluded Account** is defined in Section 7.13.

**Excluded Subsidiary** means any direct or indirect Subsidiary of the Borrower that is: (i) not organized under the laws of the United States, any state or commonwealth thereof, or the District of

Columbia (each, a "Foreign Subsidiary"), (ii) does not hold or maintain any right, title or interest in any Intellectual Property, (iii) is not a party to any Material Contract, (iv) does not, individually or together with all other Excluded Subsidiaries, have cash or cash equivalents exceeding \$[\*\*\*] in the aggregate at any time, and (v) as of the last day of the most recent Fiscal Quarter for which financial statements have been delivered pursuant to Section 7.1(b) or Section 7.1(c) (or, if prior to the date of the delivery of the first financial statements to be delivered pursuant to Section 7.1(b) or Section 7.1(c), the most recent financial statements referred to in Section 5.6), for the period of four consecutive Fiscal Quarters then ended, together with all other Excluded Subsidiaries, contributed less than [\*\*\*]% of (x) the consolidated total assets of the Borrower and its Subsidiaries at the end of such period and (y) the consolidated total revenue of the Borrower and its Subsidiaries for such period; *provided, however,* that no Subsidiary shall be an Excluded Subsidiary unless the Borrower in good faith after consulting with its tax advisors and subject to the Administrative Agent's consent (not to be unreasonably withheld, conditioned or delayed) determines that the burden or cost (including any adverse tax consequences to the Borrower, any of its Subsidiaries, which are not de minimis) of providing the Guarantee will outweigh the benefits to be obtained by the Lenders therefrom, including by taking into account an overall collateral package and the amount of the Obligations.

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**"Excluded Taxes"** means any of the following Taxes imposed on or with respect to the Administrative Agent or any Lender or required to be withheld or deducted from a payment to the Administrative Agent or any Lender: (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (x) imposed as a result of the Administrative Agent or such Lender being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivisions thereof) or (y) that are Other Connection Taxes, (ii) withholding Taxes imposed on amounts payable to or for the account of a Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which (1) such Lender acquires such interest in the Loan or Commitment or (2) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 4.3, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to a Lender's failure to comply with Section 4.3(e), and (iv) any withholding Taxes imposed under FATCA.

**"Exit Fee"** is defined in Section 3.8.

**"FATCA"** means Sections 1471 through 1474 of the Code, as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with),

any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such sections of the Code.

**"FDA"** means the U.S. Food and Drug Administration and any successor entity.

**"FD&C Act"** means the U.S. Federal Food, Drug, and Cosmetic Act (or any successor thereto), as amended from time to time, and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder.

**"Fifth Delayed Draw Closing Date"** means the date of the making of the Fifth Delayed Draw Loan hereunder, which in no event shall be later than June 30, 2025.

**"Fifth Delayed Draw Commitment Amount"** means \$10,000,000, subject to any reduction in accordance with Section 2.4.

**"Fifth Delayed Draw Commitment Termination Date"** means the earliest to occur of (i) the Fifth Delayed Draw Closing Date (immediately after the making of the Fifth Delayed Draw Loan on such date), (ii) June 30, 2025, (iii) December 31, 2024, if both the Second Delayed Draw Loan and the Third Delayed Draw Loan shall not both have been made prior to such date, and (iv) March 31, 2025, if the Fourth Delayed Draw Loan shall not have been made prior to such date.

**"Fifth Delayed Draw Loan"** means a term loan to the Borrower on the Fifth Delayed Draw Closing Date in an amount equal to (but not less than) the Fifth Delayed Draw Commitment Amount.

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**"First Delayed Draw Closing Date"** means the date of the making of the First Delayed Draw Loan hereunder, which in no event shall be later than June 30, 2024.

**"First Delayed Draw Commitment Amount"** means \$25,000,000, subject to any reduction in accordance with Section 2.4.

**"First Delayed Draw Commitment Termination Date"** means the earliest to occur of (i) the First Delayed Draw Closing Date (immediately after the making of the First Delayed Draw Loan on such date), (ii) June 30, 2024 and (iii) July 26, 2023, if the Initial Loan shall not have been made hereunder prior to such date.

**"First Delayed Draw Loan"** means a term loan to the Borrower on the First Delayed Draw Closing Date in an amount equal to (but not less than) the First Delayed Draw Commitment Amount.

**"Fiscal Quarter"** means a quarter ending on the last day of March, June, September or December.

**"Fiscal Year"** means any period of twelve consecutive calendar months ending on December 31; references to a Fiscal Year with a number corresponding to any calendar year (e.g., the "2022 Fiscal Year") refer to the Fiscal Year ending on December 31 of such calendar year.

**"Foreign Lender"** means a Lender that is not a U.S. Person.

**"Foreign Subsidiary"** is defined in the definition of "Excluded Subsidiary".

**"Fourth Delayed Draw Closing Date"** means the date of the making of the Fourth Delayed Draw Loan hereunder, which in no event shall be later than March 31, 2025.

**"Fourth Delayed Draw Commitment Amount"** means \$10,000,000, subject to any reduction in accordance with Section 2.4.

**"Fourth Delayed Draw Commitment Termination Date"** means the earliest to occur of (i) the Fourth Delayed Draw Closing Date (immediately after the making of the Fourth Delayed Draw Loan on such date), (ii) March 31, 2025, and (iii) December 31, 2024, if the Second Delayed Draw Loan and the Third Delayed Draw Loan shall not have both been made hereunder prior to such date.

**"Fourth Delayed Draw Loan"** means a term loan to the Borrower on the Fourth Delayed Draw Closing Date in an amount equal to (but not less than) the Fourth Delayed Draw Commitment Amount.

**"F.R.S. Board"** means the Board of Governors of the Federal Reserve System or any successor thereto.

**"GAAP"** means generally accepted accounting principles in the United States.

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**"Governmental Authority"** means any national, supranational, federal, state, county, provincial, local, municipal or other government or political subdivision thereof (including any Regulatory Agency), whether domestic or foreign, and any agency, authority, commission, ministry, instrumentality, regulatory body, court, tribunal, arbitrator, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to any such government.

**"Guarantee"** means a guarantee executed and delivered by an Authorized Officer of any Guarantor, substantially in the form of Exhibit D hereto, as amended, supplemented, amended and restated or otherwise modified from time to time.

**"Guarantors"** means, collectively, the Subsidiaries; provided that no Excluded Subsidiary shall be a Guarantor.

**"Hazardous Material"** means any material, substance, chemical, mixture or waste which is capable of damaging or causing harm to any living organism, the environment or natural resources, including all explosive, special, hazardous, polluting, toxic, industrial, dangerous, biohazardous, medical, infectious or radioactive substances, materials or wastes, noise, odor, electricity or heat, and including petroleum or petroleum products, byproducts or distillates, asbestos or asbestos-containing materials, urea formaldehyde, polychlorinated biphenyls, radon gas, ozone-depleting substances, greenhouse gases, and all other substances or wastes of any nature regulated pursuant to any Environmental Law or as to which any Governmental Authority requires investigation, reporting or remedial action.

**"HCPCS Code"** means a HCPCS code that reasonably describes the proprietary product such as a code descriptor that differentiates the product from compounded cantharidin.

**"Hedging Obligations"** means, with respect to any Person, all liabilities of such Person under currency exchange agreements, interest rate swap agreements, interest rate cap agreements and interest rate collar agreements, and all other agreements or arrangements designed to protect such Person against fluctuations in interest rates or currency exchange rates.

**"herein", "hereof", "hereto", "hereunder"** and similar terms contained in any Loan Document refer to such Loan Document as a whole and not to any particular Section, paragraph or provision of such Loan Document.

[\*\*\*]

**"including"** and **"include"** means including without limiting the generality of any description preceding such term, and, for purposes of each Loan Document, the parties hereto agree that the rule of ejusdem generis shall not be applicable to limit a general statement, which is followed by or referable to an enumeration of specific matters, to matters similar to the matters specifically mentioned.

**"Indebtedness"** of any Person means:

(a) all obligations of such Person for borrowed money or advances and all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

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(b) all obligations, contingent or otherwise, relative to the face amount of all letters of credit, whether or not drawn, and banker's acceptances issued for the account of such Person;

(c) all Capitalized Lease Liabilities of such Person and all obligations of such Person arising under Synthetic Leases;

(d) net Hedging Obligations of such Person;

(e) all obligations of such Person in respect of Disqualified Capital Securities;

(f) whether or not so included as liabilities in accordance with GAAP, all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business which are not overdue for a period of more than 90 days or, if overdue for more than 90 days, as to which a dispute exists and adequate reserves in conformity with GAAP have been established on the books of such Person), and indebtedness secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on property owned or being acquired by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; and

(g) all Contingent Liabilities of such Person in respect of any of the foregoing.

The Indebtedness of any Person shall include the Indebtedness of any other Person (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such Person, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Liabilities" is defined in Section 10.4.

"Indemnified Parties" is defined in Section 10.4.

"Infringement" and "Infringes" mean the infringement, misappropriation or other violation of know-how, trade secrets, confidential information, and/or any other Intellectual Property.

"Initial Commitment Amount" means \$50,000,000.

"Initial Loan" is defined in Section 2.1.

"Insolvency Event" is defined in Section 9.1(h)(iv).

"Intellectual Property" means all (i) Patents and all patent applications of any type, registrations and renewals, reissues, reexaminations and patent rights in any lawful form thereof; (ii) Trademarks and all applications, registrations and renewals thereof; (iii) Copyrights and other works of authorship (registered or unregistered), and all applications, registrations and renewals therefor; (iv) Product Agreements; (v) computer software, databases, data and documentation; (vi) Confidential Business Information, (vii) other intellectual property or similar proprietary rights;

(viii) copies and tangible embodiments of any of the foregoing (in whatever form or medium); and (ix) any and all improvements, developments, refinements, additions or subtractions to any of the foregoing.

**“Interest Period”** means, (a) initially, the period beginning on (and including) the date on which the Initial Loan is made hereunder pursuant to **Section 2.3** and ending on (and including) the last day of the month in which the Initial Loan was made, and (b) thereafter, the period beginning on (and including) the first day of each succeeding month and ending on the earlier of (and including) (x) the last day of such month and (y) the Maturity Date.

**“Investment”** means, relative to any Person, (i) any loan, advance or extension of credit made by such Person to any other Person, including the purchase by such Person of any bonds, notes, debentures or other debt securities of any other Person, (ii) Contingent Liabilities in favor of any other Person, and (iii) any Capital Securities held by such Person in any other Person. The amount of any Investment shall be the original principal or capital amount thereof less all returns of principal or equity thereon and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the fair market value of such property at the time of such Investment.

**“Investment Documents”** means, collectively, the Loan Documents and the Warrants.

**“IT Assets”** means the computers and other information technology infrastructure and assets used by the Borrower or any of the Subsidiaries.

**“Key Permits”** means all Permits relating to the Products, including all Regulatory Authorizations, which are material to the business of the Borrower and its Subsidiaries, taken as a whole.

**“knowledge”** of the Borrower means the knowledge of any officer of the Borrower or any Subsidiary, after due inquiry.

**“Laws”** means all applicable U.S. federal, state, local or foreign laws, Privacy Laws, statutes, ordinances, rules, regulations, guidances, judgments, orders, injunctions, decrees, arbitration awards and Key Permits issued by any Governmental Authority.

**“Lender”** means each Person identified as a “Lender” on the signature pages hereto and its successors and permitted assigns.

**“Licensed Intellectual Property”** means all Intellectual Property that is not Owned Intellectual Property, which is licensed to, or otherwise used or held for use, by the Borrower or any Subsidiary.

**Lien** means any security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge against or interest in property, or other priority or preferential arrangement of any kind or nature whatsoever, to secure payment of a debt or performance of an obligation.

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**Liquidity** means, at any time, an amount determined for the Borrower equal to the sum of unrestricted cash-on-hand and Cash Equivalent Investments of the Borrower, to the extent held in a Controlled Account located in the United States.

**Loan Documents** means, collectively, this Agreement, the Notes, the Security Agreement, each other agreement pursuant to which the Secured Parties are granted a Lien to secure the Obligations (including any mortgages entered into pursuant to Section 7.8), any Guarantee, and each other agreement, certificate, document or instrument delivered in connection with any Loan Document, whether or not specifically mentioned herein or therein.

**Loan Request** means a Loan request and certificate duly executed by an Authorized Officer of the Borrower substantially in the form of Exhibit B hereto.

**Loans** means the Initial Loans and the Delayed Draw Loans.

**Lytix License Agreement** means that certain Exclusive License Agreement, dated as of August 7, 2020, as amended, by and between Lytix Biopharma AS, a company incorporated in Norway, and the Borrower.

**Material Adverse Effect** means a material adverse effect on (i) the business, condition (financial or otherwise), operations, performance or properties of the Borrower or of the Borrower and the Subsidiaries taken as a whole, (ii) the rights and remedies of the Secured Parties under any Loan Document or (iii) the ability of the Borrower or any Subsidiary to perform its Obligations under any Loan Document.

**Material Agreements** means (i) each contract or agreement to which the Borrower or any Subsidiary is a party involving aggregate payments of more than \$[\*\*\*] in any Fiscal Year, whether such payments are being made by the Borrower or any Subsidiary to a non-Affiliated Person, or by a non-Affiliated Person to the Borrower or any Subsidiary; (ii) each contract or agreement to which the Borrower or any Subsidiary is a party involving an exclusive license of Intellectual Property, (iii) each supply chain and/or manufacturing contract or agreement to which the Borrower or any Subsidiary is a party, in each case, involving aggregate payments of more than \$[\*\*\*] in any Fiscal Year, and (iv) all other contracts or agreements, individually or in the aggregate, material to the business, operations, assets, conditions (financial or otherwise), performance or liabilities of the Borrower or any Subsidiary.

"Maturity Date" means July 26, 2028.

"Moody's" means Moody's Investors Service, Inc.

"Net Asset Sales Proceeds" means, with respect to a Disposition (other than Dispositions of inventory permitted by Section 8.8(i)) after the Closing Date by the Borrower or any Subsidiary to any Person of any assets of the Borrower or any Subsidiaries, the excess of gross cash proceeds received by the Borrower or any Subsidiary from such Disposition, other than proceeds that are, or will be, (a) reinvested within 180 days of receipt of such proceeds in similar assets of a kind that are then used or useful in the conduct of the business of Borrower or any Subsidiary, over (i) all reasonable and customary costs, fees and expenses (including, but not limited to, sales commissions and legal, accounting and investment banking fees and expenses), and including

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Taxes payable by the recipient of such proceeds, incurred in connection with such Disposition which have not been paid to Affiliates of the Borrower in connection therewith and (ii) if applicable, amounts required to be applied to the repayment of Indebtedness secured by a Lien permitted by clause (d) of Section 8.3 on the property which is the subject of such Disposition.

"Net Casualty Proceeds" means, with respect to any Casualty Event, the amount of any insurance proceeds or condemnation awards received by the Borrower or any of the Subsidiaries in connection with such Casualty Event, other than proceeds that are used to repair or replace the assets subject to such Casualty Event within 180 days of receipt of such proceeds with respect to such Casualty Event with like or similar assets of substantially equal or better value and utility, in excess of \$[\*\*\*], individually or in the aggregate through the Termination Date (in each case net of all reasonable and customary collection expenses thereof), but excluding any proceeds or awards required to be paid to a creditor (other than to the Administrative Agent or the Lenders) which holds a first priority Lien permitted by clause (d) of Section 8.3 on the property which is the subject of such Casualty Event.

"Net Revenue" means, with respect to any period and any Product, net product sales revenue of the Borrower and the Subsidiaries of such Product for such period, as determined in accordance with GAAP. Net Revenue shall be determined in a manner consistent with the methodologies, practices and procedures used in developing the Borrower's audited financial statements, but, in any event, shall not include any royalty payments, milestone payments, distribution income, service payments, license income and other similar forms of consideration received by the Borrower and the Subsidiaries.

"Non-Excluded Taxes" means (1) any Taxes, other than (a) Excluded Taxes, imposed on or with respect to any payment made by or on account of any Obligation and (2) to the extent not otherwise

described in clause (1), Other Taxes.

**Note** means a promissory note of the Borrower payable to a Lender, in the form of Exhibit A hereto (as such promissory note may be amended, endorsed or otherwise modified from time to time), evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the outstanding amount of the Loans, and also means all other promissory notes accepted from time to time in substitution therefor or renewal thereof.

**Obligations** means all obligations (monetary or otherwise, whether absolute or contingent, matured or unmatured) of the Borrower and each Subsidiary arising under or in connection with a Loan Document and the principal of and premium, if any, and interest (including interest accruing during the pendency of any proceeding of the type described in Section 9.1(h), whether or not allowed in such proceeding) on the Loans. For the avoidance of doubt, the “Obligations” shall not include any obligation arising pursuant to any warrants or any other equity instruments.

**OFAC** means the Office of Foreign Assets Control of the United States Department of the Treasury.

**Organic Document** means, relative to the Borrower or any Subsidiary, its certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation,

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limited liability agreement, operating agreement and all shareholder agreements, voting trusts and similar arrangements applicable to the Borrower’s or any Subsidiary’s Capital Securities.

**Other Administrative Proceeding** means any administrative proceeding relating to a dispute involving a patent office, trademark office, copyright office or other relevant intellectual property Governmental Authority which relates to validity, opposition, revocation, ownership or enforceability of the relevant Intellectual Property.

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

**“Other Taxes”** means any and all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise on account of any payment made or required to be made under any Loan Document or from the execution, delivery, registration, performance, perfection or enforcement of any Loan Document (excluding, for the avoidance of doubt, Taxes that are Other Connection Taxes and Taxes imposed with respect to an assignment by a Lender).

**“Owned Intellectual Property”** means all Intellectual Property that is owned or purported to be owned (solely or jointly with others) by the Borrower or any Subsidiary.

**“Party”** and **“Parties”** have the meanings set forth in the preamble hereto.

**“Patent”** means any patent, any type of patent application or invention disclosure, including all divisions, continuations, continuations in-part, provisionals, continued prosecution applications, substitutions, reissues, reexaminations, inter partes review, post-grant review by any Governmental Authority, renewals, extensions, adjustments, restorations, supplemental protection certificates and patent rights in any form and other additions in connection therewith, whether in or related to the United States or any foreign country or other jurisdiction.

**“Patent Security Agreement”** means any Patent Security Agreement executed and delivered to the Administrative Agent by the Borrower or any of the Subsidiaries in substantially the form of Exhibit A to the Security Agreement, as amended, supplemented, amended and restated or otherwise modified from time to time.

**“Payment Recipient”** is defined in Section 11.10.

**“Permits”** means all permits, licenses, registrations, certificates, orders, approvals, authorizations, consents, clearances, waivers, franchises, variances and similar rights issued by or obtained from any Governmental Authority or any other Person, including, without limitation, those relating to Environmental Laws and Regulatory Authorizations.

**“Permitted Acquisition”** means the purchase or other acquisition of all of the Capital Securities (other than qualifying directors’ shares) in, or all or substantially all of the property of,

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or all or substantially all of any business or division of, any Person (other than any joint venture owned by another Person that is purchased or acquired) that, upon the consummation thereof, will be wholly owned directly by the Borrower or one or more of its wholly owned Subsidiaries (including as a result of a merger or consolidation); provided that, with respect to each Permitted Acquisition:

(a) any such newly-created or acquired Subsidiary shall comply with the requirements of Section 7.8 and the Secured Parties shall have received (or shall receive in connection with the closing of such acquisition) a first priority perfected security interest, subject only to Liens permitted under Section 8.3, in the property (including, without limitation, equity interests) acquired with respect to the entity acquired;

(b) the lines of business of the Person to be (or the property of which is to be) so purchased or otherwise acquired shall be permitted pursuant to Section 8.1;

(c) in the case of a purchase or other acquisition of the Capital Securities of another Person, the board of directors (or other comparable governing body) of such other Person shall have duly approved such purchase or other acquisition;

(d) the total cash and non-cash consideration paid by or on behalf of the Borrower and its Subsidiaries for any such purchase or other acquisition, when aggregated with the consideration paid by or on behalf of the Borrower and its Subsidiaries for all other Permitted Acquisitions after the Closing Date shall not exceed the aggregate amount of \$[\*\*\*] in any Fiscal Year and an aggregate cumulative amount of \$[\*\*\*];

(e) immediately before and after giving effect to any such purchase or other acquisition, no Default or Event of Default, shall exist or result therefrom; and

(f) the Borrower shall have delivered to the Administrative Agent and the Lenders, at least 10 Business Days prior to the date on which any such purchase or other acquisition is to be consummated, a written notice describing such transaction, and thereafter, if requested by any Lender for any such transaction involving consideration in excess of \$[\*\*\*], (i) historical financial statements of or related to the Person or assets to be acquired, (ii) twelve month projections for such Person or assets to be acquired and for the Borrower after giving effect to such transaction, and (iii) material documentation and other information relating to such transaction and reasonably requested by any Lender.

“Permitted Subordinated Indebtedness” means Indebtedness incurred after the Closing Date by the Borrower or the Subsidiaries that is (i) subordinated to the Obligations and all other Indebtedness owing from the Borrower or the Subsidiaries to the Secured Parties pursuant to a written subordination agreement satisfactory to the Administrative Agent in its sole discretion and (ii) in an amount and on terms approved by the Administrative Agent in its sole discretion.

“Person” means any natural person, corporation, limited liability company, partnership, joint venture, association, trust or unincorporated organization, Governmental Authority or any other legal entity, whether acting in an individual, fiduciary or other capacity.

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**“Personal Data”** means any information in the Borrower or its Subsidiaries’ possession, custody, or control that is defined as personally identifiable information or personal data under applicable Privacy Law.

**“PHSA”** means the Public Health Service Act (or any successor thereto), as amended from time to time, and the rules, regulations, guidelines, guidance documents and compliance policy guides issued or promulgated thereunder.

**“Prime Rate”** means (a) the rate of interest last quoted by *The Wall Street Journal* as the “Prime Rate” in the U.S. or, if *The Wall Street Journal* ceases to quote such rate, the per annum interest rate published by the F.R.S. Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the F.R.S. Board (as determined by the Administrative Agent), minus (b) 1.00%; provided that if the Prime Rate shall be less than 4.00%, such rate shall be deemed to be 4.00% for the purposes of this Agreement.

**“Privacy Laws”** mean (a) each applicable Law governing the protection or processing of Personal Data, direct marketing, online behavioral advertising, commercial e-mails, text messages or telemarketing, or data localization; (b) applicable industry self-regulatory principles to the extent legally or contractually binding on the Borrower or its Subsidiaries that govern the protection or processing of Personal Data, direct marketing, online behavioral advertising, or commercial e-mails, text messages, or telemarketing; and (c) contractual obligations of the Borrower or its Subsidiaries governing the protection or processing of Personal Data, direct marketing, online behavioral advertising, commercial emails, text messages or telemarketing, or data localization.

**“Product”** means any current or future service or product (including software products and services) researched, designed, developed, manufactured, licensed, marketed, sold, performed, distributed or otherwise commercialized by the Borrower or any of its Affiliates, including any such product in development or which may be developed. For the avoidance of doubt, Product includes, but is not limited to Ycanth.

**“Product Agreement”** means each agreement, license, document, instrument, interest (equity or otherwise) or the like under which one or more parties grants or receives any right, title or interest with respect to any Product Development and Commercialization Activities in respect of one or more Products specified therein or to exclude third parties from engaging in, or otherwise restricting any right, title or interest as to any Product Development and Commercialization Activities with respect thereto, including each contract or agreement with suppliers (including human tissue supply agreements), manufacturers,

pharmaceutical companies, distributors, clinical research organizations, hospitals, group purchasing organizations, wholesalers, pharmacies or any other Person related to any such entity.

“Product Development and Commercialization Activities” means, with respect to any Product, any combination of research, development, manufacture, import, use, sale, importation, storage, labeling, marketing, promotion, supply, distribution, testing, packaging, purchasing or

other commercialization activities, receipt of payment in respect of any of the foregoing, or like activities the purpose of which is to commercially exploit such Product.

“Purchase Money Indebtedness” means Indebtedness (a) consisting of the deferred purchase price for equipment incurred in connection with the acquisition of such equipment, where the amount of such Indebtedness does not exceed the greater of (i) the cost of the equipment being financed and (ii) the fair market value of such equipment; and (b) incurred to finance such acquisition by the Borrower or a Subsidiary of such equipment; provided that such Indebtedness must be incurred prior to or contemporaneously with such acquisition.

“Qualified Capital Securities” means any Capital Securities that are not Disqualified Capital Securities.

“Receiving Party” means the Party receiving Confidential Information.

“Recipient” is defined in Section 10.14.

“Regulatory Agencies” means any Governmental Authority that is concerned with the use, control, safety, efficacy, reliability, manufacturing, testing, marketing, distribution, sale or other Product Development and Commercialization Activities relating to any Product of the Borrower or any of the Subsidiaries, including CMS, FDA, and all similar agencies in other jurisdictions, and includes Standard Bodies.

“Regulatory Authorizations” means any and all approvals, licenses, clearances, notifications, authorizations, orders, exemptions, registrations, listings, certifications, licenses and Permits granted by, submitted to or filed with any Regulatory Agencies or other Governmental Authority necessary for the testing, manufacture, development, distribution, use, storage, import, export, transport, promotion, marketing, sale or other commercialization of any Product in any country or jurisdiction, including without limitation registration and listing, Investigational New Drug Applications, Investigational Device Exemption applications, abbreviated investigational device exemptions as specified in FDA regulations in 21 CFR § 812.2(b), New Drug Applications, Biologics License Applications, Premarket Approval Applications, and

premarket notifications under section 510(k) of the FD&C Act. "Related Parties" means the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of the Borrower and the Subsidiaries.

"Release" means any releasing, disposing, discharging, injecting, spilling, leaking, leaching, pumping, pouring, dumping, depositing, emitting, escaping, emptying, seeping, dispersal, migrating or placing, including movement through, into or upon the environment or any natural or man-made structure.

"Repayment Premium" means a premium of

(a) [\*\*\*] percent ([\*\*\*]%) of the principal amount of any prepayment or repayment of the Borrower on the Initial Loan or any Delayed Draw Loan, as applicable, if such prepayment or repayment is made or required to be made (i) with respect to the Initial Loan, on or prior to the 12-month anniversary of the Closing Date and (ii) with

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respect to a Delayed Draw Loan, on or prior to the 12-month anniversary of the corresponding Delayed Draw Closing Date;

(b) [\*\*\*] percent ([\*\*\*]%) of the principal amount of any prepayment or repayment of the Borrower on the Initial Loan or any Delayed Draw Loan, as applicable, if such prepayment or repayment is not required to be made on or prior to, and is made or required to be made after, (i) with respect to the Initial Loan, the 12-month anniversary of the Closing Date, but on or prior to the 24-month anniversary of the Closing Date, and (ii) with respect to a Delayed Draw Loan, the 12-month anniversary of the corresponding Delayed Draw Closing Date, but on or prior to the 24-month anniversary of the corresponding Delayed Draw Closing Date;

(c) [\*\*\*] percent ([\*\*\*]%) of the principal amount of any prepayment or repayment of the Borrower on the Initial Loan or any Delayed Draw Loan, as applicable, if such prepayment or repayment is not required to be made on or prior to, and is made or required to be made after, (i) with respect to the Initial Loan, the 24-month anniversary of the Closing Date, but on or prior to the 36-month anniversary of the Closing Date and (ii) with respect to a Delayed Draw Loan, the 24-month anniversary of the corresponding Delayed Draw Closing Date, but on or prior to the 36-month anniversary of the corresponding Delayed Draw Closing Date; or

(d) [\*\*\*] percent ([\*\*\*]%) of the principal amount of any prepayment or repayment of the Borrower on the Initial Loan or any Delayed Draw Loan, as applicable, if such prepayment or repayment is not required to be made on or prior to, and is made or required to be made after, (i)

with respect to the Initial Loan, the 36-month anniversary of the Closing Date and (ii) with respect to a Delayed Draw Loan, the 36-month anniversary of the corresponding Delayed Draw Closing Date.

“Restricted Payment” means (i) the declaration or payment of any dividend (other than dividends payable solely in Capital Securities of the Borrower (other than Disqualified Capital Securities)) on, or the making of any payment or distribution on account of, or setting apart assets for a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of, any class of Capital Securities of the Borrower or any Subsidiary or any warrants, options or other right or obligation to purchase or acquire any such Capital Securities, whether now or hereafter outstanding, or (ii) the making of any other distribution in respect of such Capital Securities, in each case either directly or indirectly, whether in cash, property or obligations of the Borrower or any Subsidiary or otherwise.

“Revenue Shortfall Test Date” is defined in Section 3.2.

“Sanctions” means any international economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty’s Treasury or other relevant sanctions authority.

“S&P” means S&P Global Ratings, a S&P Financial Services LLC business, and any successor thereto.

“SEC” means the Securities and Exchange Commission.

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“Second Delayed Draw Closing Date” means the date of the making of the Second Delayed Draw Loan hereunder, which in no event shall be later than December 31, 2024.

“Second Delayed Draw Commitment Amount” means \$15,000,000, subject to any reduction in accordance with Section 2.4.

“Second Delayed Draw Commitment Termination Date” means the earliest to occur of (i) the Second Delayed Draw Closing Date (immediately after the making of the Second Delayed Draw Loan on such date), and (ii) December 31, 2024.

“Second Delayed Draw Loan” means a term loan to the Borrower on the Second Delayed Draw Closing Date in an amount equal to (but not less than) the Second Delayed Draw Commitment Amount.

“Secured Parties” means the Lenders and the Administrative Agent.

**"Security Agreement"** means the Pledge and Security Agreement executed and delivered by each of the parties thereto, substantially in the form of Exhibit E hereto, as amended, supplemented, amended and restated or otherwise modified from time to time.

**"SOFR Administrator"** means the CME Group Benchmark Administration limited, as administrator of the forward-looking term secured overnight financing rate (or a successor administrator).

**"SOFR Rate"** means the forward-looking term rate for a one-month tenor based on the secured overnight financing rate administered by the SOFR Administrator, on the day (such day, the **"SOFR Rate Determination Date"**) that is two (2) Business Days prior to the first day of any Interest Period, as such rate is published by the SOFR Administrator; provided that if as of 5:00 p.m. on any SOFR Rate Determination Date, the SOFR Rate has not been published by the SOFR Administrator, then the SOFR Rate will be the SOFR Rate as published by the SOFR Administrator on the first preceding Business Day for which such SOFR Rate was published by the SOFR Administrator so long as such first preceding Business Day is not more than three (3) Business Days prior to the SOFR Rate Determination Date.

**"Solvent"** means, with respect to any Person on a particular date, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (ii) the present fair saleable value of the assets 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, (iii) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond its ability to pay as such debts and liabilities mature, (iv) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which the property of such Person would constitute an unreasonably small capital and (v) such Person has not executed this Agreement or any other Loan Document, or made any transfer or incurred any Obligations hereunder or thereunder, with actual intent to hinder, delay or defraud either present or future creditors. The amount of Contingent Liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, can reasonably be expected to become an actual or matured liability.

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**"Standard Bodies"** means any of the organizations that create, sponsor or maintain safety, quality or other standards, including ISO, ANSI, CEN and SCC and the like.

**"Subsidiary"** means, with respect to any Person, any other Person of which more than 50% of the outstanding Voting Securities of such other Person (irrespective of whether at the time Capital Securities of any other class or classes of such other Person shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person.

Unless the context otherwise specifically requires, the term "Subsidiary" shall be a reference to a Subsidiary of Borrower.

**"Synthetic Lease"** means, as applied to any Person, any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) (i) that is not a finance lease in accordance with GAAP and (ii) in respect of which the lessee retains or obtains ownership of the property so leased for federal income tax purposes, other than any such lease under which that Person is the lessor.

**"Taxes"** means all income, stamp or other taxes, duties, levies, imposts, charges, assessments, fees, deductions, withholdings (including backup withholding) or other charges, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, and all interest, penalties or additions to tax with respect thereto.

**"Termination Date"** means the date on which all Obligations have been paid in full in cash and the Commitment shall have terminated.

**"Test Date"** is defined in Section 3.2.

**"Third Delayed Draw Closing Date"** means the date of the making of the Third Delayed Draw Loan hereunder, which in no event shall be later than December 31, 2024.

**"Third Delayed Draw Commitment Amount"** means \$15,000,000, subject to any reduction in accordance with Section 2.4.

**"Third Delayed Draw Commitment Termination Date"** means the earliest to occur of (i) the Third Delayed Draw Closing Date (immediately after the making of the Third Delayed Draw Loan on such date), and (ii) December 31, 2024.

**"Third Delayed Draw Loan"** means a term loan to the Borrower on the Third Delayed Draw Closing Date in an amount equal to (but not less than) the Third Delayed Draw Commitment Amount.

**"Third Party"** means any Person other than the Borrower or any of its Subsidiaries.

**"Torii License Agreement"** means that certain Collaboration and License Agreement, dated as of March 17, 2021, as amended, by and between Torii Pharmaceutical Co., Ltd., a company incorporated under the laws of Japan, and the Borrower.

**"Total Credit Exposure"** means, as to any Lender on any date, (i) the aggregate outstanding principal amount of the Loans of such Lender after giving effect to any borrowings and prepayments or repayments of any Loans occurring on such date, plus (ii) the unfunded amount of such Lender's Commitments that remains outstanding under this Agreement.

**"Trademark"** means any trademark, service mark, trade name, logo, symbol, trade dress, domain name, corporate name or other indicator of source or origin, and all applications, registrations and renewals therefor, together with all of the goodwill associated therewith.

**"Trademark Security Agreement"** means any Trademark Security Agreement executed and delivered to the Administrative Agent by the Borrower or any of the Subsidiaries substantially in the form of Exhibit B to any Security Agreement, as amended, supplemented, amended and restated or otherwise modified from time to time.

**"UCC"** means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that, if, with respect to any financing statement or by reason of any provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to any Secured Party pursuant to the applicable Loan Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than New York, then "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of each Loan Document and any financing statement relating to such perfection or effect of perfection or non-perfection.

**"Undrawn Fee"** is defined in [Section 3.2](#).

**"United States"** or **"U.S."** means the United States of America, its fifty states and the District of Columbia.

**"U.S. Person"** means a "United States person" as defined in Section 7701(a)(30) of the Code.

**"Upfront Fee"** is defined in [Section 3.9](#).

**"Voting Securities"** means, with respect to any Person, Capital Securities of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

**"Warrants"** means those certain warrants to purchase shares of the Borrower's common stock, issued to the Lenders on the Closing Date and substantially in the form of Exhibit F hereto.

**"wholly owned Subsidiary"** means any direct or indirect Subsidiaries of Borrower, all of the outstanding Capital Securities of which (other than any director's qualifying shares or investments by foreign nationals mandated by applicable laws) is owned directly or indirectly by Borrower.

**"Ycanth"** means a drug device combination containing natural or synthetic 0.7% cantharidin approved by the FDA pursuant to NDA No. 212905 as may be amended pursuant to future sNDA submissions for any additional indications.

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**"Ycanth Revenue Base"** means, with respect to any period, the Net Revenues for such period that are attributable to Ycanth.

**SECTION 1.2 Use of Defined Terms.** Unless otherwise defined or the context otherwise requires, terms for which meanings are provided in this Agreement shall have such meanings when used in each other Loan Document and the schedules attached hereto.

**SECTION 1.3 Cross-References.** Unless otherwise specified, references in a Loan Document to any Article or Section are references to such Article or Section of such Loan Document, and references in any Article, Section or definition to any clause are references to such clause of such Article, Section or definition.

**SECTION 1.4 Accounting and Financial Determinations.** Unless otherwise specified, all accounting terms used in each Loan Document shall be interpreted, and all accounting determinations and computations thereunder (including under Section 8.4 and the definitions used in such calculations) shall be made, in accordance with GAAP, as in effect from time to time; provided that, if either the Borrower or the Lenders request an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or the application thereof on the operation of such provision, regardless of whether any such notice is given before or after such change in GAAP or the application thereof, then such provision shall be interpreted on the basis of GAAP in effect and applied immediately before such change shall have become effective until such request shall have been withdrawn or such provision amended in accordance herewith. Unless otherwise expressly provided, all financial covenants and defined financial terms shall be computed on a consolidated basis for the Borrower and the Subsidiaries, in each case without duplication.

## **ARTICLE II**

### **COMMITMENT AND BORROWING PROCEDURES**

**SECTION 2.1 Commitment.** On the terms and subject to the conditions of this Agreement, each Lender severally agrees to make its portion of a term loan (the "Initial Loan") to the Borrower on the Closing Date in an amount equal to (but not less than) such Lender's Initial Commitment Amount. On the terms and subject to the conditions of this Agreement, each Lender severally agrees to make its portion of the Delayed Draw Loans, in each case on the

applicable Delayed Draw Closing Date and in an amount equal to (but not less than) such Lender's applicable Delayed Draw Commitment Amount. No amounts paid or prepaid with respect to the Loans may be reborrowed.

**SECTION 2.2 Borrowing Procedure.** The Borrower may irrevocably request that the Initial Loan be made by delivering to the Administrative Agent a Loan Request on or before 10:00 a.m. on a Business Day at least one Business Day prior to the proposed Closing Date. The Borrower may irrevocably request that a Delayed Draw Loan be made by delivering to the Administrative Agent a Loan Request on or before 10:00 a.m. on a Business Day at least 12 Business Days prior to the proposed corresponding Delayed Draw Closing Date.

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**SECTION 2.3 Funding.** After receipt of the Loan Request for the Initial Loan, the Administrative Agent shall promptly notify each Lender of the amount of such Lender's portion of the Initial Loan. Each Lender shall, on the Closing Date and subject to the terms and conditions hereof, make the requested proceeds of such Lender's portion of the Initial Loan available to or as instructed by the Administrative Agent. After receipt of the Loan Request for a Delayed Draw Loan, the Administrative Agent shall promptly notify each Lender of the amount of such Lender's portion of the Delayed Draw Loan. Each Lender shall, on the applicable Delayed Draw Closing Date and subject to the terms and conditions hereof, make the requested proceeds of such Lender's portion of such Delayed Draw Loan available to or as instructed by the Administrative Agent. Upon satisfaction or waiver of the applicable conditions set forth in Article V, the Administrative Agent shall make all funds so received available to the Borrower by wire transfer to the account the Borrower shall have specified in its Loan Request in an amount equal to (but not less than, unless the Administrative Agent has provided prior written consent) the Lenders' Commitment Amount. It is understood that (i) no Lender shall be responsible for any default by any other Lender in its obligation to make Loans hereunder and that each Lender severally but not jointly shall be obligated to make the Loans provided to be made by it hereunder, regardless of the failure of any other Lender to fulfill its commitments hereunder and (ii) failure by a Lender to perform any of its obligations under any of the Loan Documents shall not release any Person from performance of its obligation under any Loan Document.

**SECTION 2.4 Reduction of the Commitment Amounts.** The Initial Commitment Amount shall automatically and permanently be reduced to zero on the Closing Date (immediately after the making of the Initial Loan on such date). The First Delayed Draw Commitment Amount shall automatically and permanently be reduced to zero on the First Delayed Draw Commitment Termination Date. The Second Delayed Draw Commitment Amount shall automatically and

permanently be reduced to zero on the Second Delayed Draw Commitment Termination Date. The Third Delayed Draw Commitment Amount shall automatically and permanently be reduced to zero on the Third Delayed Draw Commitment Termination Date. The Fourth Delayed Draw Commitment Amount shall automatically and permanently be reduced to zero on the Fourth Delayed Draw Commitment Termination Date. The Fifth Delayed Draw Commitment Amount shall automatically and permanently be reduced to zero on the Fifth Delayed Draw Commitment Termination Date.

### ARTICLE III REPAYMENTS, PREPAYMENTS, INTEREST AND FEES

**SECTION 3.1 Repayments and Prepayments; Application.** The Borrower agrees that the Loans, and any fees or interest accrued or accruing thereon, shall be repaid and prepaid solely in U.S. dollars pursuant to the terms of this Article III.

**SECTION 3.2 Amortization; Repayments and Prepayments.** If, on the last day of any Fiscal Quarter set forth in the first column of the chart below (each such date, a “Test Date”), the Ycanth Revenue Base on a trailing 12-month basis does not equal or exceed the amount set forth in the second column of the chart below (in the

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corresponding row) (each such date, a “Revenue Shortfall Test Date”), then, beginning on the last day of the next full month immediately following the first Revenue Shortfall Test Date, the Borrower shall repay the outstanding principal amount of the Loans on the last day of each month (provided that if such day is not a Business Day, then such repayment shall be made on the next succeeding Business Day) (each such date, an “Amortization Payment Date”), in equal monthly installments calculated from and including the first Amortization Payment Date through the Maturity Date, together with the applicable Repayment Premium and the Exit Fee, unless sooner required to be repaid pursuant to the terms of this Agreement.

Test Dates	Ycanth Revenue Base for the 12-month period ending on such Test Date
June 30, 2024	\$[***]
September 30, 2024	\$[***]
December 31, 2024	\$[***]
March 31, 2025	\$[***]
June 30, 2025	\$[***]

September 30, 2025	\$[***]
December 31, 2025 and each Fiscal Quarter ending thereafter	\$[***]

The Borrower shall also repay in full the unpaid principal amount of the Loans on the Maturity Date; provided that at any time prior to the Maturity Date, payments and prepayments of the Loans shall also be made as set forth below:

- (a) The Borrower shall have the right, with at least three Business Days' notice to the Administrative Agent, at any time and from time to time to prepay any unpaid principal amount of the Loans, in whole or in part, together with the applicable Repayment Premium and the Exit Fee.
- (b) Within three Business Days of receipt by the Borrower or any Subsidiary of any (i) Net Casualty Proceeds or (ii) Net Asset Sales Proceeds, the Borrower shall notify the Administrative Agent and the Lenders thereof. If requested by the Lenders, the Borrower shall within three Business Days of such request make a mandatory prepayment of the Loans, in an amount equal to [\*\*\*]% of such proceeds (or such lesser amount as the Lenders may specify on the date of such request), together with the applicable Repayment Premium and the Exit Fee, to be applied as set forth in Section 3.3.
- (c) The Borrower shall repay the Loans in full immediately upon any acceleration of the Maturity Date thereof pursuant to Section 9.2 or Section 9.3, unless, pursuant to Section 9.3, only a portion of the Loans is so accelerated (in which case the portion so accelerated shall be so repaid), in each case together with the applicable Repayment Premium and the Exit Fee.

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**SECTION 3.3 Application.** Amounts repaid or prepaid in respect of the outstanding principal amount of the Loans pursuant to Section 3.2 shall be applied in the inverse order of maturity and pro rata to the Initial Loan, the First Delayed Draw Loan, the Second Delayed Draw Loan, Third Delayed Draw Loan, Fourth Delayed Draw Loan and Fifth Delayed Draw Loan.

#### **SECTION 3.4 Interest Rate.**

- (a) During each Interest Period, interest payable in cash by the Borrower shall accrue on the Loans during such Interest Period at a rate per annum equal to the higher of (x) the SOFR Rate for such Interest Period and (y) 4.00% plus, in either case, the Applicable Margin; and

(b) The interest rate shall be recalculated and, if necessary, adjusted for each Interest Period, in each case pursuant to the terms hereof.

**SECTION 3.5 Default Rate.** At all times commencing upon the date any Event of Default occurs, and continuing until such Event of Default is no longer continuing, the Applicable Margin shall be increased by 4.00% per annum.

**SECTION 3.6 Payment Dates.** Interest accrued on the Loans shall be payable in cash, without duplication:

- (a) on the Maturity Date therefor;
- (b) on the date of any payment or prepayment, in whole or in part, of principal outstanding on such Loan on the principal amount so paid or prepaid;
- (c) on the last day of each month; provided that if such day is not a Business Day, then such payment shall be made on the next succeeding Business Day; and
- (d) on that portion of the Loans that is accelerated pursuant to Section 9.2 or Section 9.3, immediately upon such acceleration.

Interest accrued on the Loans or other monetary Obligations after the date such amount is due and payable (whether on the Maturity Date, upon acceleration or otherwise) shall be payable upon demand.

**SECTION 3.7 Repayment Premium.** Any repayment or prepayment of principal of all or any portion of any Loans pursuant to Section 3.2, Section 9.2, Section 9.3 or otherwise, in each case, except for a repayment of Loans on the scheduled Maturity Date, shall be accompanied by the payment of the applicable Repayment Premium.

**SECTION 3.8 Exit Fee.** Upon the prepayment or repayment of principal of all or any portion of any Loans (or upon the date any such prepayment or repayment is required to be paid), whether on the Maturity Date, or pursuant to Section 3.2, Section 9.2, Section 9.3, or otherwise, the Borrower shall pay to the Administrative Agent for

the account of each Lender, in cash, on the date on which such prepayment or repayment is paid or required to be paid, as the case may be, in addition to the other Obligations (including the Repayment Premium, if any) so prepaid, repaid or required to be prepaid or repaid, a fee (the "Exit Fee") in an amount equal to five percent (5.00%) of the principal amount of the Loans prepaid, repaid or required to be prepaid or repaid, as the case may be, on such date.

**SECTION 3.9 Upfront Fee.** The Borrower agrees that on the Closing Date, the Borrower shall pay an upfront fee (the “Upfront Fee”) to the Initial Lender, for its own account, in an aggregate amount equal to two percent (2.0%) of the Commitment Amount. The Borrower agrees that the Upfront Fee shall be (i) paid in U.S. Dollars, (ii) fully earned upon the Closing Date, (iii) nonrefundable and (iv) in addition to, and not creditable against, any other fee, cost or expense payable under the Investment Documents.

**SECTION 3.10 Undrawn Fee.** The Borrower shall pay to the Administrative Agent for the account of each Lender, in cash, a fee (the “Undrawn Fee”) in an amount equal to (x) [\*\*\*]% per annum multiplied by, (y) the undrawn Delayed Draw Commitment Amounts, which Undrawn Fee shall be payable on the last day of each month (provided that if such day is not a Business Day, then such Undrawn Fee shall be made on the next succeeding Business Day), until the Fifth Delayed Draw Commitment Termination Date (and if the Fifth Delayed Draw Commitment Termination Date occurs on a date that is not the last day of a month, the amount of the fee for the corresponding month shall be a prorated amount for the portion of such month ending on the Fifth Delayed Draw Commitment Termination Date and shall be paid on such date). For purposes of this Section 3.10, the Undrawn Fee shall be calculated on a daily basis. The Undrawn Fee shall be fully earned and nonrefundable under any circumstances, and in addition to, and not creditable against, any other fee, cost or expense payable under the Investment Documents.

**SECTION 3.11 Administration Fee.** The Borrower will pay to the Administrative Agent for the account of each Lender a quarterly loan administration fee of \$10,000 (the “Administration Fee”) payable in advance, with the first payment due and payable upon the Closing Date prorated with respect to the Fiscal Quarter in which the Closing Date occurs and successive payments due and payable on the first day of each Fiscal Quarter; provided that if such day is not a Business Day, then such payment shall be made on the next succeeding Business Day. Upon payment thereof, the Administration Fee shall be fully earned and nonrefundable under any circumstances, and in addition to, and not creditable against, any other fee, cost or expense payable under the Investment Documents.

## ARTICLE IV

### SOFR RATE AND OTHER PROVISIONS

**SECTION 4.1 Increased Costs, Etc.** The Borrower agrees to reimburse the Lenders for any increase in the cost to the Lenders of, or any reduction in the amount of any sum receivable by the Lenders in respect of, the Lenders’ Commitments and the

making, continuation or maintaining of the Loans hereunder that may arise in connection with any Change in Law, except for such changes with respect to increased capital costs and Taxes which are governed by Section 4.2 and Section 4.3, respectively. The Administrative Agent shall notify the Borrower in writing of the occurrence of any such event, stating the reasons therefor and the additional amount required fully to compensate the Lenders for such increased cost or reduced amount. Such additional amounts shall be payable by the Borrower directly to the Administrative Agent for the accounts of the Lenders within five Business Days of its receipt of such notice, and such notice shall, in the absence of manifest error, be conclusive and binding on the Borrower.

**SECTION 4.2 Increased Capital Costs.** If any Change in Law affects or would affect the amount of capital required or expected to be maintained by any Lender or any Person controlling such Lender, and such Lender determines (in good faith but in its sole and absolute discretion) that the rate of return on its or such controlling Person's capital as a consequence of the Commitments or the Loans made by it hereunder is reduced to a level below that which such Lender or such controlling Person could have achieved but for the occurrence of any such circumstance, then upon notice from time to time by such Lender to the Borrower, the Borrower shall within five Business Days following receipt of such notice pay directly to the Administrative Agent for the account of such Lender additional amounts sufficient to compensate such Lender or such controlling Person for such reduction in rate of return. A statement of such Lender as to any such additional amount or amounts shall, in the absence of manifest error, be conclusive and binding on the Borrower. In determining such amount, such Lender may use any method of averaging and attribution that it (in its sole and absolute discretion) shall deem applicable.

**SECTION 4.3 Taxes.** Each of the Borrower, the Administrative Agent and each Lender covenants and agrees as follows with respect to Taxes.

(a) Any and all payments by the Borrower under each Loan Document shall be made without setoff, counterclaim or other defense, and free and clear of, and without deduction or withholding for or on account of, any Taxes, except as required by applicable Law. In the event that any Taxes are imposed and required under applicable Law (as determined in the good faith discretion of the Borrower) to be deducted or withheld from any payment required to be made by the Borrower or any of the Subsidiaries to or on behalf of the Lenders under any Loan Document, then:

(i) the Borrower shall withhold the full amount of such Taxes from such payment (as increased pursuant to clause (a)(ii)) and shall pay such amount to the Governmental Authority imposing such Taxes in accordance with applicable Law; and

(ii) if such Taxes are Non-Excluded Taxes, the sum payable by Borrower shall be increased as may be necessary so that such payment is made to a Lender after withholding or deduction for or on account of such Non-Excluded Taxes, in an amount that is not less than the amount such Lender would have received had no such deduction or withholding for Non-Excluded Taxes been made

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(including such withholding or deduction applicable to additional sums payable under this Section 4.03).

(b) In addition, the Borrower shall pay all Other Taxes imposed to the relevant Governmental Authority imposing such Other Taxes in accordance with applicable Law.

(c) As promptly as practicable after the payment of any Taxes required to be paid by the Borrower to any Governmental Authority under Section 4.3(a) or (b), and in any event within 45 days of any such payment being due, the Borrower shall furnish to the Administrative Agent a copy of an official receipt (or a certified copy thereof) evidencing the payment of such Taxes, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent. In addition, the Borrower shall indemnify any Lender for any incremental Taxes that may become payable by such Lender as a result of any failure of the Borrower to pay any Taxes when due to the appropriate Governmental Authority or to deliver to such Lender documentation evidencing the payment of Taxes.

(d) The Borrower shall indemnify each Lender for any Non-Excluded Taxes levied, imposed or assessed on (and whether or not paid directly by) such Lender whether or not such Non-Excluded Taxes are correctly or legally asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by such Lender shall be conclusive absent manifest error. With respect to indemnification for Non-Excluded Taxes actually paid by each Lender or the indemnification provided in the immediately preceding sentence, such indemnification shall be made within 30 days after the date such Lender makes written demand therefor. The Borrower acknowledges that any payment made to such Lender in respect of the indemnification obligations of the Borrower provided in this clause shall constitute a payment in respect of which the provisions of Section 4.3(a) and this Section 4.3(d) shall apply.

(e)

(i) 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 the Borrower and

the Administrative Agent at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative 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 the Borrower or the Administrative Agent shall deliver such other documentation prescribed by applicable Law as reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in

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Section 4.3(e)(ii)(1), (ii)(2), and (ii)(4)) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

Without limiting the generality of the foregoing:

- (1) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;
- (2) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:
  - (a) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S.

federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

- (b) executed copies of IRS Form W-8ECI (or successor form);
- (c) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a

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“controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms); or

(d) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY (or successor form), accompanied by IRS Form W-8ECI (or successor form), IRS Form W-8BEN or IRS Form W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate, substantially in the form of Exhibit H or Exhibit I, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit J on behalf of each such direct and indirect partner.

(3) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time

to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by such applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(4) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower or the Administrative Agent to comply with its obligations under

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FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment under FATCA. Solely for purposes of this clause (4), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or notify the Borrower and the Administrative Agent in writing of its legal inability to do so, in each case prior to the next applicable payment date.

(f) If any party to this Agreement determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 4.3 (including by the payment of additional amounts pursuant to this Section 4.3), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 4.3 with respect to the Taxes giving rise to such

refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 4.3(f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) if such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 4.3(f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 4.3(f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 4.3(f) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) The Lenders and the Borrower agree that the Initial Loan is part of investment units issued within the meaning of Section 1273(c)(2) of the Code, which also includes the Warrants. For all applicable income Tax purposes, the issue price of the investment units and the fair market value of the Warrants in connection with the Initial Loan of the Lenders shall be determined collectively by the Borrower and the Lenders, acting in good faith, at the time the Initial Loan is issued to the Borrower. The "issue price" for the interest in the Initial Loan of the Lenders issued pursuant to this Agreement (and any Note issued in connection therewith) shall equal (i) the issue price of the investment units (for the avoidance of doubt, adjusted for the payment of the Exit Fee and the Upfront Fee to the Lenders), minus (ii) the fair market value of the Warrants issued in connection with the Lenders' Initial Loan. The Lenders and the Borrower agree that the allocation determined pursuant to this Section 4.3(g) will be used for purposes of Section 1273(c)(2) of the Code. The Borrower and the Lenders agree to

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make any determinations under Treasury Regulations §1.1273-2(h)(2) consistent with the foregoing and to file all required tax returns consistently with the foregoing, as applicable, except as otherwise required by applicable Laws.

(h) Original Issue Discount. The Loans are deemed to be made with original issue discount for U.S. federal income tax purposes. Requests for information regarding the issue price, amount of original issue discount, issue date, and yield to maturity on the Loans shall be

directed to the Borrower care of the Chief Financial Officer at 44 West Gay Street, Suite 400, West Chester, PA 19380.

(i) For the avoidance of doubt, for purposes of this Section 4.3, the term "applicable Law" includes FATCA.

#### SECTION 4.4 Payments, Computations; Proceeds of Collateral, Etc.

(a) Unless otherwise expressly provided in a Loan Document, all payments by the Borrower pursuant to each Loan Document shall be made without setoff, deduction or counterclaim not later than 10:00 a.m. on the date due in same day or immediately available funds, marked for attention as indicated, or in such other manner or to such other account as the Administrative Agent may from time to time direct in writing. Funds received after 10:00 a.m. on any day shall be deemed to have been received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. All interest and fees shall be computed on the basis of the actual number of days occurring during the period for which such interest or fee is payable over a year comprised of 360 days. Payments due on other than a Business Day shall be made on the next succeeding Business Day and such extension of time shall be included in computing interest and fees in connection with that payment.

(b) All amounts received as a result of the exercise of remedies under the Loan Documents (including from the proceeds of collateral securing the Obligations) or under applicable Law shall be applied upon receipt to the Obligations as follows: (i) first, to the payment in full in cash of all interest (including interest accruing after the commencement of a proceeding in bankruptcy, insolvency or similar Law, whether or not permitted as a claim under such Law) and fees owing under the Loan Documents, and all costs and expenses owing to the Lenders pursuant to the terms of the Loan Documents, until paid in full in cash, (ii) second, after payment in full in cash of the amounts specified in clause (b)(i), to the payment of the principal amount of the Loans then outstanding, (iii) third, after payment in full in cash of the amounts specified in clauses (b)(i) and (b)(ii), to the payment of all other Obligations owing to the Lenders, and (iv) fourth, after payment in full in cash of the amounts specified in clauses (b)(i) through (b)(iii), and following the Termination Date, to the Borrower or any other Person lawfully entitled to receive such surplus.

(c) The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 10.4(b) are several and not joint. The failure of any Lender to make any Loan or to make any payment under Section 10.4(b) on any date required hereunder shall not relieve any other Lender of its corresponding obligation.

to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or to make its payment under Section 10.4(b).

(d) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(e) If any Lender shall, by exercising any right of setoff or otherwise, obtain payment in respect of any principal of or interest on its portion of any of the Loans, any Exit Fee, the Upfront Fee, any Undrawn Fee or any Repayment Premium in connection therewith resulting in such Lender's receiving payment of a proportion of the aggregate amount of the Loans and accrued interest thereon and any Exit Fee, the Upfront Fee, any Undrawn Fee or Repayment Premium in connection therewith greater than its Applicable Percentage thereof as provided herein, then such Lender shall (x) notify the Administrative Agent of such fact and (y) purchase (for cash at face value) participations in the portions of the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of, accrued interest on and any Exit Fee, the Upfront Fee, any Undrawn Fee or Repayment Premium in connection with their respective portions of the Loans and other amounts owing them; provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section 4.4(e) shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its portion of the Loans to any assignee or participant, other than an assignment to a Borrower or any Guarantor (as to which the provisions of this Section shall apply).

The Borrower, on behalf of itself and the Guarantors, hereby consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower or such Guarantor rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower or such Guarantor in the amount of such participation.

**SECTION 4.5 Setoff.** Each Lender shall, upon the occurrence and during the continuance of any Default described in clauses (i) through (iv) of Section 9.1(h) or, upon the occurrence and during the continuance of any Event of Default, have the right

to appropriate and apply to the payment of the Obligations owing to it (whether or not then due), and (as security for such Obligations) the Borrower hereby grants to each Lender a continuing security interest in, any and all balances, credits, deposits, accounts or moneys of the Borrower then or thereafter maintained with or on behalf of such Lender. Each Lender agrees promptly to notify the Borrower after any such appropriation and application made by such Lender; provided that, the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section 4.5 are in addition to other rights and remedies (including other rights of setoff under applicable Law or otherwise) which such Lender may have.

**SECTION 4.6 SOFR Rate Not Determinable.**

(a) If prior to the commencement of any Interest Period for a Loan, the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Lenders notify the Administrative Agent that they have determined, that adequate and reasonable means do not exist for ascertaining the SOFR Rate for such Interest Period, then the Administrative Agent shall give notice thereof to the Borrower as promptly as practicable and, until the Administrative Agent notifies (if applicable, upon the instruction of the Lenders) the Borrower that the circumstances giving rise to such notice no longer exist, (i) the Loans shall bear interest calculated pursuant to Section 3.4 but using the Prime Rate instead of the SOFR Rate and (ii) the continuation of any outstanding Loan or the extension of a new Loan hereunder shall be made with interest calculated pursuant to Section 3.4 but using the Prime Rate instead of the SOFR Rate.

(b) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Lenders notify the Administrative Agent that they have determined, that (i) the circumstances set forth in Section 4.6(a) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 4.6(a) have not arisen but the supervisor for the administrator of the SOFR Rate has made a public statement identifying a specific date after which the SOFR Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent (at the direction of the Lenders) shall establish an alternate rate of interest to that based on the SOFR Rate that gives due consideration to the then-prevailing market convention for determining a rate of interest for loans in the United States at such time, and the Lenders and the Borrower shall enter into an

amendment to this Agreement to reflect such alternate rate of interest and such other related changes as the Borrower and the Lenders may determine to be appropriate. Until an alternate rate of interest shall be determined in accordance with this Section 4.6(b) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 4.6(b), only to the extent the SOFR Rate for such Interest Period is not available or published at such time on a current basis), Section 4.6(a) shall be applicable.

## ARTICLE V

### CONDITIONS TO MAKING THE LOANS

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**SECTION 5.1 Credit Extensions.** The obligation of each Lender to make its portion of the Initial Loan shall be subject to, the execution and delivery of this Agreement by the parties hereto, the delivery of a Loan Request as requested pursuant to Section 2.2, and the satisfaction of each of the conditions precedent set forth below in this Article V (other than Sections 5.18 and 5.19). The obligation of each Lender to make its portion of the First Delayed Draw Loan shall be subject to the prior making of the Initial Loan, the delivery of a Loan Request as requested pursuant to Section 2.2, and the satisfaction of each of the conditions precedent set forth below in Sections 5.3, 5.8, 5.18(a), and 5.19. The obligation of each Lender to make its portion of the Second Delayed Draw Loan shall be subject to the prior making of the Initial Loan, the delivery of a Loan Request as requested pursuant to Section 2.2, and the satisfaction of each of the conditions precedent set forth below in Sections 5.3, 5.8, 5.18(b), and 5.19. The obligation of each Lender to make its portion of the Third Delayed Draw Loan shall be subject to the prior making of the Initial Loan and the Second Delayed Draw Loan, the delivery of a Loan Request as requested pursuant to Section 2.2, and the satisfaction of each of the conditions precedent set forth below in Sections 5.3, 5.8, 5.18(c), and 5.19. The obligation of each Lender to make its portion of the Fourth Delayed Draw Loan shall be subject to the prior making of the Initial Loan, the Second Delayed Draw Loan and the Third Delayed Draw Loan, the delivery of a Loan Request as requested pursuant to Section 2.2, and the satisfaction of each of the conditions precedent set forth below in Sections 5.3, 5.8, 5.18(d), and 5.19. The obligation of each Lender to make its portion of the Fifth Delayed Draw Loan shall be subject to the prior making of the Initial Loan, the Second Delayed Draw Loan, the Third Delayed Draw Loan and the Fourth Delayed Draw Loan, the delivery of a Loan Request as requested pursuant to Section 2.2, and the satisfaction of each of the conditions precedent set forth below in Sections 5.3, 5.8, 5.18(e), and 5.19.

**SECTION 5.2 Secretary's Certificate, Etc.** The Administrative Agent and each Lender shall have received from the Borrower and each Subsidiary party to an Investment Document, (i)

a copy of a good standing certificate, dated a date reasonably close to the Closing Date, for each such Person and (ii) a certificate, dated as of the Closing Date, duly executed and delivered by such Person's Secretary or Assistant Secretary, managing member or general partner, or other Authorized Officer, as applicable, as to:

- (a) resolutions of each such Person's board of directors (or other managing body, in the case of a Person other than a corporation) and any other corporate resolutions required by applicable Law or pursuant to such Person's Organic Documents, each of which shall be then in full force and effect, authorizing the execution, delivery and performance of each Investment Document to be executed by such Person and the transactions contemplated hereby and thereby;
- (b) the incumbency and signatures of those of its officers, managers, managing member or general partner, as applicable, authorized to act with respect to each Investment Document to be executed by such Person; and

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- (c) the full force and validity of each Organic Document of such Person and copies thereof;

upon which certificates the Administrative Agent and each Lender may conclusively rely until it shall have received a further certificate of the Secretary, Assistant Secretary, managing member or general partner, as applicable, of any such Person canceling or amending the prior certificate of such Person.

**SECTION 5.3 Closing Date Certificates.** The Administrative Agent and each Lender shall have received a Closing Date Certificate, dated as of the Closing Date or applicable Delayed Draw Closing Date, as the case may be, and duly executed and delivered by an Authorized Officer of the Borrower, in which certificate the Borrower shall agree and acknowledge that the statements made therein shall be deemed to be true and correct representations and warranties of the Borrower as of such date, and, at the time such certificate is delivered, such statements shall in fact be true and correct, and such statements shall include that (a) the representations and warranties set forth in each Investment Document shall, in each case, be true and correct as of the Closing Date, the applicable Delayed Draw Closing Date or any earlier date specified in such representations and warranties, as applicable, (b) no Default shall have then occurred and be continuing, or would result from the Loans to be advanced on the Closing Date or applicable Delayed Draw Closing Date, as the case may be, and (c) all of the conditions set forth in this Article V have been satisfied. All documents and agreements required to be appended to the Closing Date Certificate, if any, shall be in form and substance satisfactory to the Administrative

Agent and the Initial Lender, shall have been executed and delivered by the requisite parties, and shall be in full force and effect.

**SECTION 5.4 [Reserved].**

**SECTION 5.5 Delivery of Note.** Each Lender shall have received a Note duly executed and delivered by an Authorized Officer of the Borrower.

**SECTION 5.6 Financial Information, Etc.** The Administrative Agent and each Lender shall have received:

(a) audited consolidated financial statements of the Borrower and the Subsidiaries for each of the Fiscal Years ended December 31, 2020, December 31, 2021, and December 31, 2022.

(b) unaudited consolidated balance sheets of the Borrower and the Subsidiaries for the Fiscal Quarter ended March 31, 2023, together with the related consolidated statements of operations and comprehensive loss, stockholders' equity and cash flows for the three months then ended; and

(c) such other financial information as to the Borrower and the Subsidiaries and their respective businesses, assets and liabilities as the Administrative Agent may reasonably request.

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**SECTION 5.7 Compliance Certificate.** The Administrative Agent and the Lenders shall have received an initial Compliance Certificate on a pro forma basis as if the Initial Loan had been made as of March 31, 2023 and as to such items therein as the Administrative Agent or any Lender reasonably requests, dated the Closing Date, duly executed (and with all schedules thereto duly completed) and delivered by the chief financial or accounting Authorized Officer of the Borrower.

**SECTION 5.8 Solvency, Etc.** The Administrative Agent and the Lenders shall have received a solvency certificate duly executed and delivered by the chief financial or accounting Authorized Officer of the Borrower, dated as of the Closing Date or applicable Delayed Draw Closing Date, as the case may be, in form and substance satisfactory to the Administrative Agent and the Lenders.

**SECTION 5.9 FDA Approval.** The Administrative Agent and each Lender shall have received evidence satisfactory to the Administrative Agent and the Lenders (in their sole

discretion) that the FDA has granted approval for Ycanth for the treatment of molluscum contagiosum without any contingencies; provided that any changes that are made to the current draft label shall be satisfactory to the Lender in its sole discretion.

**SECTION 5.10 Security Agreements.** The Administrative Agent and the Lenders shall have received executed counterparts of the Security Agreement, dated as of the date hereof, duly executed and delivered by the Borrower and each Guarantor, together with:

(a) [reserved];

(b) financing statements suitable in form for naming the Borrower and each Guarantor as a debtor and the Administrative Agent as the secured party, or other similar instruments or documents to be filed under the UCC of all jurisdictions as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the security interests of the Secured Parties pursuant to the Security Agreement;

(c) UCC Form UCC-3 termination statements, if any, necessary to release all Liens and other rights of any Person (i) in any assets of the Borrower or any Subsidiary, or (ii) securing any of the Indebtedness identified in Schedule 8.2(b), together with such other UCC Form UCC-3 termination statements as the Administrative Agent and Lenders may reasonably request from the Borrower or any Subsidiary;

(d) landlord access agreements and bailee letters in form and substance satisfactory to the Administrative Agent and Lenders from each landlord to the Borrower or any Guarantor and each other Person that has possession of any Collateral in excess of \$[\*\*] at each individual location; and

(e) evidence that all deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts of the Borrower and each Guarantor are Controlled Accounts (other than Excluded Accounts).

**SECTION 5.11 Intellectual Property Security Agreements.** The Administrative Agent and the Lenders shall have received a Patent Security Agreement, a Copyright Security Agreement and a Trademark Security Agreement, as applicable, each dated as of the Closing Date, duly executed and delivered by the Borrower or any Guarantor that, pursuant to the Security Agreement, is required to provide such intellectual property security agreements to the Administrative Agent for the benefit of the Secured Parties.

**SECTION 5.12 Opinions of Counsel.** The Administrative Agent and the Lenders shall have received an opinion, dated the Closing Date and addressed to the Lender, from Cooley LLP, counsel to the Borrower and the Subsidiaries, in form and substance satisfactory to the Administrative Agent and the Lenders.

**SECTION 5.13 Insurance.** The Administrative Agent and the Lenders shall have received certified copies of the insurance policies (or binders in respect thereof), from one or more insurance companies satisfactory to the Administrative Agent, evidencing coverage required to be maintained pursuant to each Loan Document, with the Administrative Agent named as loss payee or additional insured, as applicable.

**SECTION 5.14 Closing Fees, Expenses, Etc.** The Administrative Agent and each Lender shall have received for its own account (i) all fees, costs and expenses due and payable pursuant to Section 10.3, (ii) the Upfront Fee and (iii) the initial Administration Fee as set forth in Section 3.11.

**SECTION 5.15 Anti-Terrorism Laws.** Each Lender and the Administrative Agent, as applicable, shall have received, as applicable, all documentation and other information required by bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the U.S.A. Patriot Act.

**SECTION 5.16 Satisfactory Legal Form.** All documents executed or submitted pursuant hereto by or on behalf of the Borrower or any Subsidiary shall be satisfactory in form and substance to the Administrative Agent and each Lender, and the Administrative Agent and each Lender shall have received all information, approvals, resolutions, opinions, documents or instruments as the Administrative Agent or any Lender may reasonably request.

**SECTION 5.17 Investment Documents.** The Administrative Agent and shall have received executed counterparts of this Agreement, the Warrants and the other Investment Documents, each properly executed by the Borrower and by an Authorized Officer of each other signing Guarantor and each other party to such Investment Documents.

**SECTION 5.18 Ycanth Revenue Base.**

(a) Solely as a condition to the First Delayed Draw Closing Date, the Administrative Agent shall be satisfied in its reasonable discretion that the Ycanth Revenue Base for the trailing 12-months ending on the last day of the month

immediately prior to the First Delayed Draw Closing Date was equal to or greater than \$[\*\*\*],

(b) Solely as a condition to the Second Delayed Draw Closing Date, the Administrative Agent shall be satisfied in its reasonable discretion that (i) provided that the Second Delayed Draw Closing Date is on or prior to September 30, 2024, the Ycanth Revenue Base for the trailing 12-months ending on the last day of the month immediately prior to the Second Delayed Draw Closing Date was equal to or greater than \$[\*\*\*], or (ii) provided that the Second Delayed Draw Closing Date is on or after October 1, 2024 but on or prior to December 31, 2024, the Ycanth Revenue Base for the trailing 12-months ending on the last day of the month immediately prior to the Second Delayed Draw Closing Date was equal to or greater than \$[\*\*\*].

(c) Solely as a condition to the Third Delayed Draw Closing Date, the Administrative Agent shall be satisfied in its reasonable discretion that the Ycanth Revenue Base for the trailing 12-months ending on the last day of the month immediately prior to the Third Delayed Draw Closing Date was equal to or greater than \$[\*\*\*].

(d) Solely as a condition to the Fourth Delayed Draw Closing Date, the Administrative Agent shall be satisfied in its reasonable discretion that the Ycanth Revenue Base for the trailing 12-months ending on the last day of the month immediately prior to the Fourth Delayed Draw Closing Date was equal to or greater than \$[\*\*\*].

(e) Solely as a condition to the Fifth Delayed Draw Closing Date, the Administrative Agent shall be satisfied in its reasonable discretion that the Ycanth Revenue Base for the trailing 12-months ending on the last day of the month immediately prior to the Fifth Delayed Draw Closing Date was equal to or greater than \$[\*\*\*].

**SECTION 5.19 Disclosure Schedules.** Immediately prior to each Delayed Draw Closing Date, the Borrower shall deliver to the Administrative Agent updates to Schedules 6.15(a), 6.16, 6.19 and 6.22, each such updated Schedule to be complete and accurate as of such Delayed Draw Closing Date.

**SECTION 5.20 Material Adverse Change.** From December 31, 2022 until the Closing Date or the applicable Delayed Draw Closing Date, no circumstance shall have occurred that could reasonably be expected to have a Material Adverse Effect.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

In order to induce the Administrative Agent and the Lenders to enter into this Agreement and to make the Loans hereunder, the Borrower represents and warrants to the Administrative Agent and the Lenders that:

**SECTION 6.1 Organization, Etc.** The Borrower and each Subsidiary (a) is validly organized and existing and in good standing under the laws of the jurisdiction of its incorporation or organization, is duly qualified to do business and is in good standing as a foreign entity in each jurisdiction where the nature of its business requires such qualification (unless the failure to so qualify as a foreign entity could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect), and (b) has full power and authority and holds all requisite governmental licenses, permits, clearances and other approvals required (i) to enter into and perform its obligations under each Investment Document to which it is a party, and (ii) to own and hold under lease its property and to conduct its business substantially as currently conducted by it in all material respects.

**SECTION 6.2 Due Authorization, Non-Contravention, Etc.** The execution, delivery and performance by the Borrower and each Subsidiary of each Investment Document executed or to be executed by it are in each case within such Person's corporate or organizational powers, have been duly authorized by all necessary corporate or organizational action, and do not:

(a) contravene (i) the Borrower's or any Subsidiary's Organic Documents, (ii) in any material respect, any court decree or order binding on or affecting the Borrower or any Subsidiary or (iii) in any material respect, any Law or governmental regulation binding on or affecting the Borrower or any Subsidiary; or

(b) result in (i) or require the creation or imposition of any Lien on the Borrower's or any Subsidiary's properties (except as permitted by this Agreement) or (ii) a material default under any material contract, agreement, or instrument binding on or affecting the Borrower or any Subsidiary.

**SECTION 6.3 Government Approval, Regulation, Etc.** No authorization, approval, clearance or other action by, and no notice to or filing with, any Governmental Authority or other Person (other than those that have been, or on the Closing Date will be, duly obtained or made and which are, or on the Closing Date will be, in full force and effect) is required for the due execution, delivery or performance by the Borrower or any Subsidiary of any Investment Document to which it is a party.

**SECTION 6.4 Validity, Etc.** Each Investment Document to which the Borrower or any Subsidiary is a party constitutes the legal, valid and binding obligations of such Person enforceable against such Person in accordance with its respective terms (except, in any case, as

such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity).

**SECTION 6.5 Financial Information.** The consolidated financial statements of the Borrower and the Subsidiaries furnished to the Administrative Agent and the Lenders pursuant to Sections 5.6 and 7.1 have been prepared in accordance with GAAP (except, with respect to unaudited financials, for the absence of footnotes and subject to normal year-end adjustments), consistently applied, and present fairly the consolidated

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financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended.

**SECTION 6.6 No Material Adverse Change.** Since December 31, 2022, there has been no event, change, circumstance, effect or other matter that has had a Material Adverse Effect.

**SECTION 6.7 Litigation, Labor Matters and Environmental Matters.**

(a) Except as described on Schedule 6.7(a), there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened, against or affecting the Borrower or any Subsidiary (i) as to which there is a reasonable likelihood of an adverse determination and that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in liabilities in excess of \$[\*\*\*] or (ii) that would reasonably be likely to adversely affect this Agreement or the transactions contemplated hereby

(b) There are no labor controversies pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any Subsidiary (i) that would reasonably be expected, individually or in the aggregate, to result in liabilities in excess of \$[\*\*\*] or (ii) that would reasonably be likely to adversely affect this Agreement or the transactions contemplated hereby.

(c) Neither the Borrower nor any Subsidiary (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any Permit under or in connection with any Environmental Law ("Environmental Permit"), (ii) is or has been subject to any Environmental Liability, (iii) has received notice of any Environmental Liability, or (iv) knows of any basis for any Environmental Liability, in each case of clauses (i) through (iv) above, which would reasonably be expected to result in liabilities to the Borrower and the Subsidiaries, taken as a whole, in excess of \$[\*\*\*].

**SECTION 6.8 Subsidiaries.** The Borrower has no Subsidiaries except those Subsidiaries which are identified in Schedule 6.8 (which Schedule also identifies the direct and indirect owners of the Capital Securities of such Subsidiaries) or which are permitted to have been organized or acquired after the Closing Date in accordance with Section 8.5 and Section 8.7.

**SECTION 6.9 Ownership of Properties.** The Borrower and each Subsidiary owns (i) in the case of owned real property, good and marketable fee title to, and (ii) in the case of owned personal property, good and valid title to, or, in the case of leased real or personal property, valid and enforceable leasehold interests (as the case may be) in, all of its properties and assets, tangible and intangible, of any nature whatsoever, free and clear in each case of all Liens or claims, except for Liens permitted pursuant to Section 8.3.

**SECTION 6.10 Taxes.** Each of the Borrower and each Subsidiary has filed (taking into account any valid extensions of time in which to file) all income and other material tax returns and reports required by Law to have been filed by it and has paid all

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material Taxes due and owing, except any such Taxes which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.

**SECTION 6.11 Benefit Plans, Etc.** None of the Borrower or any of the Subsidiaries or any of their respective ERISA Affiliates sponsors, maintains, contributes to, is required to contribute to, or has any actual or potential liability with respect to, any Benefit Plan. None of the Borrower or any of the Subsidiaries is a party to any collective bargaining agreement, and none of the employees of the Borrower or any of the Subsidiaries are subject to any collective bargaining agreement with respect to their employment with the Borrower, any of the Subsidiaries, or any of their respective ERISA Affiliates. Each "employee benefit plan" as defined in section 3(3) of ERISA that provides retirement benefits to employees of Borrower or its ERISA Affiliates is sponsored by the Borrower or any of their ERISA Affiliates, and, except to the extent such plan is described in section 4(b)(4) of ERISA, is intended to be tax qualified under section 401 of the Code has a determination letter or opinion letter from the Internal Revenue Service on which it remains entitled to rely, and no assets of any such plan are invested in Capital Securities of the Borrower. Each employee benefit plan, program or arrangement sponsored, maintained, contributed to or required to be contributed to by the Borrower or any Subsidiary has complied, in all material respects with its terms and applicable law.

**SECTION 6.12 Accuracy of Information.** None of the information heretofore or contemporaneously furnished in writing to the Administrative Agent or any Lender by or on behalf of the Borrower or any Subsidiary in connection with any Investment Document or any transaction contemplated hereby, taken as a whole, contains any material misstatement of a material fact, or omits to state any material fact necessary to make any information not misleading; provided that, with respect to projected financial information and other forward-looking information, (i) Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time, (ii) such information is not to be viewed as facts, is not a guarantee of financial performance, and is subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower and the Subsidiaries; (iii) no assurance can be given that any particular projections will be realized; and (iv) actual results during the periods covered thereby may differ from the results set forth in such information and such differences may be material.

**SECTION 6.13 Regulations U and X.** None of the Borrower or any Subsidiary is engaged in the business of extending credit for the purpose of buying or carrying margin stock, and no proceeds of the Loans will be used to purchase or carry margin stock or otherwise for a purpose which violates, or would be inconsistent with, F.R.S. Board Regulation U or Regulation X. Terms for which meanings are provided in F.R.S. Board Regulation U or Regulation X or any regulations substituted therefor, as from time to time in effect, are used in this Section with such meanings.

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**SECTION 6.14 Solvency.** The Borrower, individually, and the Borrower and its Subsidiaries taken as a whole, on a consolidated basis, both before and after giving effect to the Loans, are Solvent.

**SECTION 6.15 Intellectual Property.**

(a) Schedule 6.15(a) sets forth a complete and accurate list as of the Closing Date or applicable Delayed Draw Closing Date, as the case may be, of all (i) issued Patents and any Patent applications, (ii) registered and material unregistered Trademarks (including domain names) and any pending registrations for Trademarks, and (iii) any other registered Intellectual Property, in each case (i) through (iii), owned by, purportedly owned by or licensed to the Borrower or any of the Subsidiaries. For each item of Intellectual Property listed on Schedule 6.15(a), the Borrower has, where relevant, indicated (A) the countries in each case in which such item is registered, (B) the application numbers, (C) the registration or patent numbers, (D) with respect to the Patents, the expected expiration date of the issued Patents, (E) the owner of

such item of Intellectual Property and (F) with respect to Intellectual Property owned by any Third Party, the agreement pursuant to which that Intellectual Property is licensed to the Borrower or any Subsidiary.

(b) The Owned Intellectual Property and Licensed Intellectual Property together constitute all Intellectual Property necessary for the operation of the business of the Borrower and the Subsidiaries as currently conducted and as currently proposed to be conducted by the Borrower and the Subsidiaries.

(c) With respect to all Intellectual Property that is listed or required to be listed on Schedule 6.15(a):

(i) the Borrower or a Subsidiary owns or has a valid license or rights in any other form to all rights associated with such Intellectual Property free and clear of any and all Liens other than Liens permitted pursuant to Section 8.3 and all such Intellectual Property are in full force and effect, and have not expired, lapsed or been forfeited, cancelled or abandoned unless permitted hereunder;

(ii) each of the Borrower and the Subsidiaries, as applicable, has taken commercially reasonable actions to maintain and protect such Intellectual Property and there are no unpaid maintenance or renewal fees payable by the Borrower or any of the Subsidiaries that are currently overdue for any of such registered Intellectual Property;

(iii) there is no actual or threatened (in writing or, to the knowledge of Borrower, orally) proceeding challenging the ownership, validity or enforceability of any such Intellectual Property, none of the Borrower or any of the Subsidiaries is involved in any proceeding challenging the ownership, validity or enforceability of any Intellectual Property of any Person and none of the Intellectual Property is the subject of any Other Administrative Proceeding;

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(iv) to the knowledge of the Borrower, (A) all such Intellectual Property is valid, enforceable and subsisting and (B) no event has occurred, and nothing has been done or omitted to have been done, that would affect the validity or enforceability of such Intellectual Property; and

(v) each of the Borrower and each Subsidiary, as applicable, is the sole and exclusive owner of all right, title and interest in and to all such Intellectual Property that is owned by it.

(d) There are no claims pending or threatened in writing that have been brought by the Borrower or any Subsidiary against any Person alleging Infringement of any Owned Intellectual Property or Licensed Intellectual Property. To the knowledge of the Borrower, no Third Party is committing any act of Infringement of any Owned Intellectual Property or Licensed Intellectual Property.

(e) With respect to each license agreement listed on Schedule 6.15(a), such license agreement (i) is in full force and effect and is binding upon and enforceable against the Borrower and the Subsidiaries party thereto and all other parties thereto in accordance with its terms, (ii) has not been amended or otherwise modified, except as set forth on Schedule 6.15(a), and (iii) has not suffered a default or breach thereunder. None of the Borrower or any of the Subsidiaries has taken or omitted to take any action that would permit any other Person party to any such license agreement to have, and no such Person otherwise has, any defenses, counterclaims, termination rights or rights of setoff thereunder.

(f) None of the Borrower or any of the Subsidiaries has received written notice or, to the knowledge of the Borrower, any other communications from any Third Party alleging that the conduct of its business (including the development, manufacture, use, sale or other commercialization of any Product) Infringes any Intellectual Property of that Third Party and, to the knowledge of the Borrower, the conduct of its business and the business of the Subsidiaries (including the development, manufacture, use, sale or other commercialization of any Product) does not Infringe any Intellectual Property of any Third Party.

(g) The Borrower and the Subsidiaries have used commercially reasonable efforts and precautions to protect their (i) rights in, and with respect to, Confidential Business Information, and maintain the confidentiality of, their respective Owned Intellectual Property and (ii) respective commercially significant unregistered Intellectual Property.

#### **SECTION 6.16 Material Agreements.**

(a) Set forth on Schedule 6.16 is a complete and accurate list as of the Closing Date or the applicable Delayed Draw Closing Date, as the case may be, of all Material Agreements, in each case of the Borrower or any of the Subsidiaries, with an adequate description of the parties thereto, subject matter thereof and amendments and modifications thereto as of such dates. As of such dates, respectively, each such

Material Agreement (i) is in full force and effect and is the legal, valid and binding obligation of, and enforceable against, the Borrower and the Subsidiaries parties thereto and, to the

knowledge of the Borrower and its Subsidiaries, all other parties thereto in accordance with its terms, (ii) has not been amended or otherwise modified, except as set forth on Schedule 6.16, and (iii) has not suffered a default thereunder that remains uncured. As of such dates, (A) none of the Borrower or any of the Subsidiaries is in breach or in default under any Material Agreement, nor has any of the Borrower or any of the Subsidiaries taken any action that would permit any other Person party to any Material Agreement to enforce, and, to the knowledge of the Borrower, no such Person otherwise has the right to enforce, any defenses, counterclaims, termination rights or rights of setoff thereunder and (B) to the knowledge of the Borrower, no such other Person party to such Material Agreement is in breach or in default thereunder.

(b) The Borrower has provided to the Administrative Agent and the Lenders full, complete and correct copies of the Material Agreements (including all exhibits and schedules thereto).

**SECTION 6.17 Permits.** The Borrower and the Subsidiaries have all Permits, including Key Permits and Environmental Permits, necessary or required for the ownership, operation and conduct of their business and the testing and distribution of the Products. All such Permits are validly held and there are no defaults thereunder on the part of the Borrower or any Subsidiary, or, to the knowledge of the Borrower and its Subsidiaries, any other party thereto.

**SECTION 6.18 Regulatory Matters.**

(a) All Key Permits held by the Borrower and the Subsidiaries are (i) legally and beneficially owned exclusively by the Borrower or such Subsidiary, free and clear of all Liens other than Liens permitted pursuant to Section 8.3, and (ii) validly registered and on file with the applicable Governmental Authority, in compliance with all filing and maintenance requirements (including any fee requirements) thereof, and are in good standing, valid and enforceable with the applicable Governmental Authority. All required Regulatory Authorizations and other notices, registrations and listings, supplemental applications or notifications, reports (including reports of adverse experiences) and other filings required to be filed by the Borrower, the Subsidiaries or, to the knowledge of the Borrower, received from any of their respective suppliers with respect to the Products have been filed with Regulatory Agencies and all other applicable Governmental Authorities. None of the Borrower or any of the Subsidiaries has received any written notice that any Key Permits have been or are being revoked, withdrawn, suspended, limited or challenged.

(b) The business of the Borrower and the Subsidiaries comply with, and the Products were and/or are being designed, researched, developed, manufactured, tested, distributed, stored, packaged, labeled, and sold in compliance in all material respects with, (A) all applicable Laws, including, without limitation, all applicable requirements of the FD&C Act, the PHSA and

similar state Laws, and (B) all cGMPs, Regulatory Authorizations and other Key Permits. None of the Borrower and the Subsidiaries, nor,

to the knowledge of the Borrower, their respective suppliers, have received any inspection reports, warning letters, untitled letters or similar enforcement documents with respect to any Product or the business of the Borrower and the Subsidiaries, from any Governmental Authority that assert lack of compliance with any applicable Laws. None of the Borrower or any of the Subsidiaries has received any written notice of, or otherwise have knowledge of, any pending regulatory enforcement action, investigation or inquiry against the Borrower or any of the Subsidiaries, or any of their respective suppliers with respect to the Products, and, to the knowledge of the Borrower, there is no basis for any adverse regulatory action against the Borrower or any of the Subsidiaries or, to the knowledge of the Borrower, their respective suppliers, with respect to the Products. To the knowledge of Borrower (i) there have been no product recalls, safety alerts, withdrawals, clinical holds, marketing suspensions, removals or the like conducted, undertaken or issued by any Person, whether or not at the request, demand or order of any Governmental Authority or otherwise, with respect to any Product, (ii) no such product recalls, safety alerts, corrections, withdrawals, marketing suspensions, removals or the like have been requested, demanded or ordered by any Governmental Authority, and, (iii) there is no basis for the issuance of any such product recalls, safety alerts, corrections, withdrawals, marketing suspensions, removals or the like by any Person with respect to any Products. To the knowledge of Borrower, none of the Borrower or any of the Subsidiaries has received any written notice of, and does not otherwise have knowledge of, any criminal, injunctive, seizure, detention or civil penalty actions that have at any time been commenced or threatened in writing by any Governmental Authority with respect to or in connection with any Products, or any consent decrees (including plea agreements) which relate to any Products, and, to the knowledge of the Borrower, there is no basis for the commencement of any criminal injunctive, seizure, detention or civil penalty actions by any Governmental Authority relating to the Products or for the issuance of any consent decrees. None of the Borrower and the Subsidiaries nor, to the knowledge of the Borrower, any of their respective suppliers is employing or utilizing the services of any individual who has been debarred or temporarily suspended under any applicable Law.

(c) None of the Borrower or any of its Subsidiaries, or, to the knowledge of the Borrower, any of their respective suppliers, has received written notice or threat of commencement of action by any Governmental Authority to withdraw its approval of any Product, to enjoin production of the Products at any facility, or otherwise to seize any Product. No Product in the inventory of the Borrower or any of its Subsidiaries, or otherwise currently in commercial distribution is adulterated or misbranded. All labels and labeling (including package

inserts) and product information are in compliance with applicable FDA and other Governmental Authority requirements, and the Products are in compliance with all classification, registration, listing, marking, tracking, reporting, recordkeeping and audit requirements of the FDA and any other Governmental Authority. All advertising or other promotion of all Products by the Borrower or any of its Subsidiaries has been conducted in material compliance with FDA and other Governmental Authority requirements for advertising and promotion of pharmaceuticals.

(d) [Reserved].

(e) The Borrower has made available to the Lenders all adverse event reports and communications to or from FDA (if any) and other relevant Governmental Authorities of which it has or had a written copy, including inspection reports, warning letters, untitled letters, and material reports, studies and other correspondence, other than opinions of counsel that are attorney-client privileged, with respect to regulatory matters relating to the Borrower and the Subsidiaries, the conduct of their business, the operation of any manufacturing facilities owned or operated by the Borrower or any of the Subsidiaries, and the Products. The Borrower has made available to the Lenders all Key Permits and material correspondence submitted to or received from FDA, CMS or other Governmental Authority.

(f) All studies, tests and preclinical and clinical trials conducted relating to the Products by or, to the knowledge of the Borrower, on behalf of the Borrower or any of and the Subsidiaries and, to the knowledge of the Borrower, their respective licensees, licensors and third party services providers and consultants, have been conducted, and are currently being conducted, in full compliance with all applicable Laws, including, but not limited to, the FD&C Act, the PHSA, cGCPs and, to the extent required by FDA guidances and regulations, current good laboratory practices and all similar applicable Laws. All results of such studies, tests and trials, and all other material information related to such studies, tests and trials, have been made available to the Lenders. The summaries and descriptions of any of the foregoing provided to the Lenders are accurate in all material respects and contain no material omissions. None of the Borrower and the Subsidiaries, or, to the knowledge of the Borrower, any of their respective licensees, licensors or third party services providers or consultants, has received from the FDA or other applicable Governmental Authority any notices or correspondence requiring the termination, suspension, material modification or clinical hold of any studies, tests or clinical trials (in whole or in part) conducted by or on behalf of the Borrower and the Subsidiaries with respect to or in connection with the Products. No clinical trial conducted by or on behalf of the Borrower and the Subsidiaries with respect to any Product has used any clinical investigator who has been disqualified under FDA regulations. To the extent necessary by applicable Law, the Borrower and each Subsidiary, as applicable, has obtained all necessary

Regulatory Authorizations for the conduct of any clinical investigations conducted by or on behalf of the Borrower or such Subsidiary.

(g) There has been no material untrue statement of fact and no fraudulent statement made by the Borrower or any of the Subsidiaries, or, to the knowledge of the Borrower, any of their respective agents or representatives to the FDA, CMS, or any other Governmental Authority, and there has been no failure to disclose any material fact required to be disclosed to the FDA, any Regulatory Agency, or any other Governmental Authority.

(h) There is no arrangement relating to the Borrower or the Subsidiaries providing for any rebates, kickbacks or other forms of compensation that are unlawful to be paid to any Person in return for the referral of business or for the arrangement for

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recommendation of such referrals. All billings by the Borrower and the Subsidiaries for their services have been true and correct in all material respects and are in compliance in all material respects with all applicable Laws, including the Federal False Claims Act or any applicable state false claim or fraud law. None of the Borrower and the Subsidiaries has received any notice from the United States Department of Justice, any U.S. Attorney, any State Attorney General, or other similar Governmental Authority alleging any violation of the Federal Anti-kickback Statute, the Federal False Claims Act, the Foreign Corrupt Practices Act, any federal Laws, or similar state or foreign Laws. None of the Borrower and the Subsidiaries is aware of any conduct that reasonably could be interpreted as a violation of any such Laws.

(i) The transactions contemplated by the Investment Documents (or contemplated by the conditions to effectiveness of any Investment Document) will not impair the Borrower's or any of the Subsidiaries' ownership of or rights under (or the license or other right to use, as the case may be) any Key Permits relating to the Products.

(j) No right of the Borrower or any of the Subsidiaries to receive reimbursements pursuant to any government program or private program has ever been terminated or otherwise adversely affected as a result of any investigation or enforcement action, whether by any Governmental Authority or other Third Party, and none of the Borrower or any Subsidiary has been the subject of any inspection, investigation, or audit, by any Governmental Authority in connection with any alleged improper activity.

(k) None of the Borrower or any of the Subsidiaries, nor, to the Borrower's knowledge, any individual who is an officer, director, manager, employee, agent or managing agent of the Borrower or any of the Subsidiaries has been convicted of, charged with or, to the Borrower's

knowledge, investigated for any federal or state health program-related offense or any other offense related to healthcare or been excluded or suspended from participation in any such program; or, to the Borrower's knowledge, within the past five (5) years, has been convicted of, charged with or, to the Borrower's knowledge, investigated for a violation of Laws related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of an investigation or controlled substances, or has been subject to any judgment, stipulation, order or decree of, or criminal or civil fine or penalty imposed by, any Governmental Authority related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of an investigation or controlled substances. None of the Borrower or any of the Subsidiaries, nor, to the Borrower's knowledge, any individual who is an officer, director, employee, stockholder, agent or managing agent of the Borrower or any of the Subsidiaries has been convicted of any crime or engaged in any conduct that has resulted or would reasonably be expected to result in a debarment or exclusion under (i) 21 U.S.C. Section 335a, (ii) Section 1128 of the Social Security Act or (iii) any similar applicable Law. No debarment proceedings or investigations in respect of the business of the Borrower or any of the Subsidiaries are pending or, to the knowledge of the Borrower and its Subsidiaries, threatened against the Borrower, any of the Subsidiaries or any individual who is an

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officer, director, manager, employee, agent or managing agent of the Borrower or any of the Subsidiaries.

**SECTION 6.19 Transactions with Affiliates.** Except as set forth on Schedule 6.19, none of the Borrower or any Subsidiary has entered into, renewed, extended or been a party to, any transaction (including the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any of its Affiliates, excluding (i) reasonable director compensation consistent with past practice and (ii) transactions with Subsidiaries entered into in the ordinary course and otherwise permitted hereunder, in each case during the three-year period immediately prior to the Closing Date or the applicable Delayed Draw Closing Date, as the case may be.

**SECTION 6.20 Investment Company Act.** None of the Borrower or any Subsidiary is an "investment company" or is "controlled" by an "investment company," as such terms are defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

**SECTION 6.21 OFAC.** None of the Borrower, any Subsidiary or, to the knowledge of the Borrower, any Related Party (a) is currently the subject of any Sanctions, (b) is located, organized or residing in any Designated Jurisdiction, or (c) is or has been (within the previous

five years) engaged in any transaction with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Designated Jurisdiction. No Loan, nor the proceeds from any Loan, has been or will be used, directly or indirectly, to lend, contribute or provide to, or has been or will be otherwise made available to fund, any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including the Administrative Agent, any Lender and any of their respective Affiliates) of Sanctions.

**SECTION 6.22 Deposit and Disbursement Accounts.** Set forth on Schedule 6.22 is a complete and accurate list as of the Closing Date or applicable Delayed Draw Closing Date, as the case may be, of all banks and other financial institutions at which the Borrower or any Subsidiary maintains deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts, such Schedule correctly identifies the name, address and telephone number of each bank or financial institution, the name in which each such account is held, the type of each such account, and the complete account number for each such account, and each such account (other than Excluded Accounts) is a Controlled Account to the extent required pursuant to Section 7.13.

**SECTION 6.23 Customer and Trade Relations.** There exists no actual or, to the knowledge of the Borrower, threatened termination or cancellation of, or any material adverse modification or change in (a) the business relationship of the Borrower or any Subsidiary with any customer or group of customers whose purchases during the preceding 12 calendar months caused such customer or group of customers to be ranked among the ten largest customers of the Borrower or such Subsidiary, as applicable, or

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(b) the business relationship of the Borrower or any Subsidiary with any supplier material to its operations.

**SECTION 6.24 Data Privacy and Information Security.**

(a) The Borrower and its Subsidiaries maintain commercially reasonable data security policies, processes, and controls, and a reasonable privacy program that materially complies with the requirements of applicable Privacy Laws. None of the Borrower's or any Subsidiary's written, public-facing privacy statements or disclosures ("Privacy Policies") have been or are misleading or deceptive, and the contemplated transactions to be consummated hereunder as of the Closing Date will not violate any Privacy Policies or applicable Privacy Laws. There is not

currently pending and there has not been in the past five years any written action, proceeding, suit or claim against the Borrower or its Subsidiaries with respect to violations of applicable Privacy Laws, and, to the knowledge of the Borrower, neither the Borrower, any Subsidiary nor any Products have experienced any security incident in which an unauthorized party accessed or acquired Personal Data or Confidential Business Information that would require notification to another Person.

(b) The Borrower and its Subsidiaries have contractually obligated all sub-processors who process Personal Data on behalf of the Borrower or its Subsidiaries ("Data Processors") to contractual terms relating to the protection and use of Personal Data, including without limitation, where required by applicable Privacy Laws, obligations to (i) comply with applicable Privacy Laws, (ii) implement a reasonable information security program that includes reasonable administrative, technical, and physical safeguards designed to protect the applicable Personal Data, (iii) restrict processing of Personal Data to those personnel authorized or required under the servicing, outsourcing, processing, or similar arrangement, and (iv) certify or guarantee the return or adequate disposal or destruction of Personal Data.

(c) The IT Assets are sufficient and operate and perform as is necessary in all material respects to conduct the business of the Borrower and the Subsidiaries as currently conducted and as currently proposed to be conducted by the Borrower and the Subsidiaries. To the Borrower's knowledge, neither the IT Assets nor any Products contain any "virus," "spyware," "malware," "worm," "Trojan horse" (as such terms are commonly understood in the software industry), disabling codes or instructions, or other similar code or software routines or components that are designed or intended to delete, destroy, disable, interfere with, perform unauthorized modifications to, or provide unauthorized access to any data, files, software, system, network, or other device. The Borrower and its Subsidiaries have established, implemented and tested backup and disaster recovery policies, procedures and systems designed to reasonably maintain the operation of the business of the Borrower and the Subsidiaries as currently conducted and as currently proposed to be conducted by the Borrower and the Subsidiaries.

(d) The Borrower, its Subsidiaries, and any Data Processors have implemented and maintained commercially reasonable organizational, physical,

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administrative and technical measures designed to protect the operation, confidentiality, integrity, and security of all Confidential Business Information, IT Assets and Personal Data against material unauthorized access, acquisition, interruption, alteration, modification, or use.

(e) The Borrower and its Subsidiaries have taken or caused to be taken all reasonable precautions to ensure that all IT Assets (i) are free from any defect, bug, virus or programming, design or documentation error or corruption or other defect, and (ii) are fully functional and operate and run in a reasonable and efficient business manner. None of the IT Assets have malfunctioned or failed or have experienced any breakdowns or continued substandard performance in the past 24 months that has caused substantial disruption or substantial interruption in the Borrower's or any Subsidiary's use thereof or to the business of the Borrower and the Subsidiaries.

## ARTICLE VII

### AFFIRMATIVE COVENANTS

The Borrower covenants and agrees with the Administrative Agent and the Lenders that until the Termination Date has occurred, the Borrower will, and will cause the Subsidiaries to, perform or cause to be performed the obligations set forth below.

**SECTION 7.1 Financial Information, Reports, Notices, Etc.** The Borrower will furnish the Administrative Agent for further delivery to the Lenders copies of the following financial statements, reports, notices and information:

(a) as soon as available and in any event within 30 days after the end of each calendar month, beginning with the month ending July 31, 2023, in each case with supporting detail and certified as complete and correct by the chief financial or accounting Authorized Officer of the Borrower (subject to normal year-end audit adjustments), (i) unaudited reports of (x) the Net Revenue for each Product for such calendar month, for the year-to-date portion of such Fiscal Year and for the trailing 12-month period ending as of the last day of such calendar month, and including in comparative form the figures for the corresponding calendar month in, and the year-to-date portion of, and for the trailing 12-month period ending as of the last day of the corresponding calendar month in, the immediately preceding Fiscal Year and (y) the Liquidity of the Borrower at the end of such calendar month and at the end of the corresponding calendar month in the preceding Fiscal Year and (ii) a Dashboard Report with respect to such calendar month;

(b) as soon as available and in any event within 45 days after the end of each Fiscal Quarter of each Fiscal Year beginning with the Fiscal Quarter ending June 30, 2023, (i) an unaudited consolidated balance sheet of the Borrower and the Subsidiaries as of the end of such Fiscal Quarter and consolidated statements of operations and comprehensive loss, stockholders' equity and cash flows of the Borrower and the Subsidiaries for such Fiscal Quarter and for the period commencing at the end of the previous Fiscal Year and ending with the end of such Fiscal Quarter and (ii) the Net Revenue for each Product for such Fiscal Quarter, for the year-to-date portion of such

Fiscal Year and for the trailing 12-month period ending as of the last day of such Fiscal Quarter and including incomparative form the figures for the corresponding Fiscal Quarter in, the year to date portion of, and the trailing 12-month period ending as of the last day of the corresponding Fiscal Quarter in, the immediately preceding Fiscal Year, and including (in each case) in comparative form the figures for the corresponding Fiscal Quarter in, and the year to date portion of, the immediately preceding Fiscal Year, certified as complete and correct by the chief financial or accounting Authorized Officer of the Borrower, and, with respect to clause (i) above, as presenting fairly in all material respects the financial condition and results of such Fiscal Quarter of the Borrower and the Subsidiaries (subject to normal year-end audit adjustments and the absence of footnotes, but not subject to any qualification or statement which is of a "going concern" or similar nature);

(c) as soon as available and in any event within 90 days after the end of each Fiscal Year beginning with the Fiscal Year ended December 31, 2023, (i) a copy of the consolidated balance sheet of the Borrower and the Subsidiaries, and the related consolidated statements of operations and comprehensive loss, stockholders' equity and cash flows of the Borrower and the Subsidiaries for such Fiscal Year, setting forth in comparative form the figures for the immediately preceding Fiscal Year, audited [\*\*\*] by (i) a "Big Four" independent public accounting firm or (ii) any other independent public accountants acceptable to the Lenders, which shall include a statement that, in performing the examination necessary to deliver the audited financial statements of the Borrower and the Subsidiaries, no knowledge was obtained of any Event of Default and (ii) the Net Revenue for each Product for the Fiscal Quarter then ending and such Fiscal Year and including in comparative form the figures for the corresponding Fiscal Quarter in the immediately preceding Fiscal Year and the immediately preceding Fiscal Year;

(d) concurrently with the delivery of the financial information pursuant to clauses (a), (b) and (c), a Compliance Certificate, executed by the chief financial or accounting Authorized Officer of the Borrower, (i) showing compliance with the financial covenant set forth in Section 8.4 and stating that no Default has occurred and is continuing (or, if a Default has occurred, specifying the details of such Default and the action that the Borrower or any of the Subsidiaries has taken or proposes to take with respect thereto), (ii) stating that no Subsidiary has been formed or acquired since the delivery of the last Compliance Certificate (or, if a Subsidiary has been formed or acquired since the delivery of the last Compliance Certificate, a statement that such Subsidiary has complied with Section 7.8) and (iii) stating that no real property has been acquired by the Borrower or any of the Subsidiaries since the delivery of the last Compliance

Certificate (or, if any real property has been acquired since the delivery of the last Compliance Certificate, a statement that the Borrower has complied with Section 7.8 with respect to such real property);

(e) as soon as possible and in any event within three Business Days after the Borrower obtains knowledge of the occurrence of a Default, a statement of an Authorized Officer of the Borrower setting forth details of such Default and the action

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which the Borrower or any of the Subsidiaries has taken or proposes to take with respect thereto;

(f) as soon as possible and in any event within three Business Days after the Borrower obtains knowledge of (i) the occurrence of any material adverse development with respect to any litigation, action, proceeding or labor controversy described in Schedule 6.7(a) or (ii) the commencement of any litigation, action, proceeding or labor controversy of the type and materiality described in Section 6.7, notice thereof and, to the extent any Lender requests, copies of all documentation relating thereto;

(g) as soon as possible and in any event within three Business Days after the Borrower obtains knowledge of any return, recovery, dispute or claim related to Product or inventory that involves more than \$[\*\*\*].

(h) as soon as possible and in any event within three Business Days after the Borrower obtains knowledge of (i) any claim that the Borrower, any of the Subsidiaries or one of their ERISA Affiliates has actual or potential liability under a Benefit Plan in excess of \$[\*\*\*], (ii) any effort to unionize the employees of the Borrower or any Subsidiary, or (iii) non-routine correspondence with the Internal Revenue Service regarding the qualification of a retirement plan under Section 401(a) of the Code.

(i) promptly, and in any event within three Business Days, after the sending or filing thereof, copies of all reports, notices, prospectuses and registration statements which the Borrower or any of the Subsidiaries files with the SEC or any national securities exchange;

(j) promptly, and in any event within three Business Days, after the delivery thereof to the board of directors of the Borrower or any committees thereof, copies of all written notices and materials delivered to the board of directors of the Borrower or any committees thereof in connection with a meeting of such board or committee, or with any action to be taken by written consent, including drafts of any material resolutions or actions proposed to be adopted by

written consent and all minutes of any such meetings promptly following such meetings; provided that the Borrower may withhold any such information and materials to the extent: (i) access thereto would adversely affect the attorney-client privilege between the Borrower and its counsel; or (ii) the board of directors of the Borrower in the exercise of its fiduciary obligations and with the advice of counsel, determines in good faith that (A) it is in the best interest of the Borrower to do so because any Lender or any of its Affiliates has an interest in the subject matter under discussion, including, but not limited to, discussions pertaining to this Agreement or the other Investment Documents, or (B) doing so is necessary to discharge the directors' fiduciary duties. In the event the Borrower withholds any such information or materials, the Borrower shall provide to the Administrative Agent and the Lenders a general description, which shall be true and correct in all material respects, of such withheld information;

(k) promptly upon, and in any event within three Business Days of, receipt thereof, copies of all "management letters" (or equivalent) submitted to the Borrower

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or any of the Subsidiaries by the independent public accountants referred to in clause (c) in connection with each audit made by such accountants;

(l) promptly upon receipt thereof, copies of all subpoenas, requests for information and other notices regarding any active or potential investigation of, or claim or litigation against, the Borrower or any of the Subsidiaries by any Governmental Authority, and, except to the extent prohibited by Law, the results of any inspections of any manufacturing facilities of the Borrower or any of the Subsidiaries or any Third Party suppliers of the Borrower or any of the Subsidiaries by any Governmental Authority (including any Form FDA 483s);

(m) (i) within 45 days after the end of each Fiscal Quarter, a report listing (A) all Material Agreements entered into during such Fiscal Quarter, (B) all existing Material Agreements amended or terminated during such Fiscal Quarter, (C) all Permits, including all Regulatory Authorizations, issued to the Borrower or any of the Subsidiaries during such Fiscal Quarter and (D) all notices and registrations filed by the Borrower or any Subsidiary during such Fiscal Quarter in each jurisdiction in which the Borrower or any of the Subsidiaries are required to obtain any Permit or Regulatory Authorization or to file any notice or registration, in order to design, manufacture, store, label, sell, promote, import or distribute any Product; (ii) as soon as possible and in any event within three days, notice that any Key Permit or Regulatory Authorization has been terminated or amended in any manner that would reasonably be expected to have an adverse effect on the Borrower and/or its Subsidiaries, and (iii) as soon as possible, and in any event within three days after the Administrative Agent or any Lender so reasonably requests, copies of any Material Agreement, Key Permit, amendment or termination

instrument, Regulatory Authorization, notice or registration, in each case as are listed in the report described in the foregoing clause (i);

(n) as soon as available, but in any event not later than the last day of February of each calendar year, the Borrower's financial and business projections and budget for such year, with evidence of approval thereof by the Borrower's board of directors; and

(o) such other financial and other information as any Lender or the Administrative Agent may from time to time reasonably request (including information and reports in such detail as such Lender or the Administrative Agent may request with respect to the terms of and information provided pursuant to the Compliance Certificate).

Notwithstanding anything to the contrary, the Borrower may provide to the Administrative Agent and Lenders all notices and information required by Section 7.1 by publicly filing or furnishing such information to the SEC or otherwise making such information publicly available (e.g., a press release) and promptly notifying the Administrative Agent and Lenders where such information can be publicly accessed, in which event the Borrower shall be deemed to have satisfied its applicable notice obligations hereunder.

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Notwithstanding anything to the contrary (including herein or in any Loan Document), the Borrower hereby acknowledges that the Administrative Agent or a Lender may not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and the Administrative Agent or such Lender or its personnel may be engaged in investment and other market-related activities with respect to such Person's securities. The Borrower and the Administrative Agent and each Lender covenant and agree that, notwithstanding anything to the contrary (including herein or in any Loan Document), the Administrative Agent or any Lender may, by written notice to the Borrower, instruct the Borrower to only deliver (i) the notices specified above in Sections 7.1 to the extent such information has been made publicly available, and (ii) such other information that the Administrative Agent or such Lender may reasonably request from time to time.

**SECTION 7.2 Maintenance of Existence; Compliance with Contracts, Laws, Etc.** The Borrower and each Subsidiary will preserve and maintain its legal existence (except as otherwise permitted by Section 8.7), perform in all material respects its obligations under Material Agreements, in each case to which the Borrower or any of the Subsidiaries is a party, and comply in all material respects with all applicable Laws, rules, regulations and orders, including the payment (before the same become delinquent), of all material Taxes, imposed upon the

Borrower or any of the Subsidiaries or upon their property except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on the books of the Borrower or any of the Subsidiaries, as applicable.

**SECTION 7.3 Maintenance of Properties.** The Borrower and each Subsidiary will maintain, preserve, protect and keep its and their respective properties in good repair, working order and condition (ordinary wear and tear excepted), and make necessary repairs, renewals and replacements so that the business carried on by the Borrower or any of the Subsidiaries may be properly conducted at all times, unless the Borrower or any of the Subsidiaries determines in good faith that the continued maintenance of such property is no longer economically desirable, necessary or useful to the business of the Borrower or any of the Subsidiaries or the Disposition of such property is otherwise permitted by Section 8.7 or Section 8.8.

**SECTION 7.4 Insurance.** Each of the Borrower and each of the Subsidiaries will maintain:

(a) insurance on its property with financially sound and reputable insurance companies against business interruption, loss and damage in at least the amounts (and with only those deductibles) customarily maintained, and against such risks as are typically insured against in the same general area, by Persons of comparable size engaged in the same or similar business as the Borrower and the Subsidiaries; and

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(b) all worker's compensation, employer's liability insurance or similar insurance as may be required under the laws of any state or jurisdiction in which it may be engaged in business.

Without limiting the foregoing, all insurance policies required pursuant to this Section shall (i) name the Administrative Agent as mortgagee and lender loss payee (in the case of property/casualty insurance and business interruption insurance) and additional insured (in the case of liability insurance), as applicable, and provide that no cancellation or modification as to the amount or scope of coverage of the policies will be made without providing at least 30 days prior written notice thereof to the Administrative Agent and (ii) be in addition to any requirements to maintain specific types of insurance contained in the other Loan Documents.

**SECTION 7.5 Books and Records.** The Borrower and each of the Subsidiaries will keep books and records in accordance with GAAP which accurately reflect all of its business affairs and transactions and permit the Administrative Agent, any Lender or any of their respective

representatives, at reasonable times and intervals upon reasonable notice to the Borrower, to visit the Borrower's or any of the Subsidiaries' offices, to discuss the Borrower's or any of the Subsidiaries' financial or other matters with its officers and employees, and its independent public accountants (and the Borrower hereby authorizes such independent public accountant to discuss the Borrower's and any of the Subsidiaries' financial and other matters with the Administrative Agent, any Lender or their respective representatives whether or not any representative of the Borrower or any of the Subsidiaries is present) and to examine (and photocopy extracts from) any of its books and records. The Borrower shall pay any fees of such independent public accountant incurred in connection with the Administrative Agent's or any Lender's exercise of its rights pursuant to this Section.

**SECTION 7.6 Environmental Law Covenant.** Except as would not reasonably be expected to result in a Material Adverse Effect, each of the Borrower and each of the Subsidiaries will (i) use and operate all of its and their businesses, facilities and properties in material compliance with all Environmental Laws, and keep and maintain all Environmental Permits and remain in compliance therewith, and (ii) promptly notify the Administrative Agent of, and provide the Administrative Agent with copies of all material claims, complaints, notices or inquiries relating to, any actual or alleged non-compliance with any Environmental Laws or Environmental Permits or any actual or alleged Environmental Liabilities. The Borrower and each of the Subsidiaries will promptly resolve, remedy and mitigate any such non-compliance or Environmental Liabilities, and shall keep the Administrative Agent informed as to the progress of same.

**SECTION 7.7 Use of Proceeds.** The Borrower will use the proceeds of the Loan for general corporate purposes and to pay the fees and expenses associated with the transactions contemplated hereby.

**SECTION 7.8 Future Guarantors, Security, Etc.** The Borrower and each Subsidiary will execute any documents, financing statements, agreements and instruments, and take all further action that may be required under applicable law, or

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that the Administrative Agent or the Lenders may reasonably request, in order to effectuate the transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the validity and first priority (subject to Liens permitted by Section 8.3) of the Liens created or intended to be created by the Loan Documents. The Borrower will cause (a) any subsequently acquired or organized Subsidiary (other than an Excluded Subsidiary) to execute a Guarantee (substantially in the form of Exhibit D hereto) or, if a Guarantee has previously been

executed, a supplement (in form and substance satisfactory to the Administrative Agent) to such Guarantee and each other applicable Loan Document in favor of the Secured Parties, effective upon its acquisition or formation and take such other actions as may be reasonably required or requested for the Secured Parties to have a valid Lien with the priority intended to be created on, and security interest in, all of the assets of such Subsidiary, subject to no other Liens (other than Liens permitted by Section 8.3) and the limitations set forth below, and (b) all of the presently existing or thereafter arising issued and outstanding shares of Capital Securities of any Subsidiary to be pledged to the Secured Parties pursuant to one or more pledge agreements or other documents reasonably acceptable to the Secured Parties. The Borrower will promptly notify the Administrative Agent of any subsequently acquired ownership interest in real property and will provide the Administrative Agent with a description of such real property, the acquisition date thereof and the purchase price therefor. In addition, from time to time, each of the Borrower and each of the Subsidiaries (other than Excluded Subsidiaries) will, at its cost and expense, promptly secure the Obligations by pledging or creating, or causing to be pledged or created, perfected Liens with respect to such of its assets and properties as the Administrative Agent or the Lenders shall designate, it being agreed that it is the intent of the parties that the Obligations shall be secured by, among other things, substantially all the assets of the Borrower and the Subsidiaries that are not Excluded Subsidiaries (including real property and personal property acquired subsequent to the Closing Date). Such Liens will be created under the Loan Documents in form and substance reasonably satisfactory to the Administrative Agent and the Lenders, and the Borrower and each of the Subsidiaries (other than Excluded Subsidiaries) shall deliver or cause to be delivered to the Administrative Agent all such instruments and documents (including mortgages, legal opinions, title insurance policies and lien searches) as the Administrative Agent or the Lenders shall reasonably request to evidence compliance with this Section.

**SECTION 7.9 Obtaining of Permits, Etc.** With respect to Products, each of the Borrower and each of the Subsidiaries will obtain, maintain and preserve, and take all necessary action to timely renew all Permits and accreditations which are necessary in the proper conduct of its business.

**SECTION 7.10 Product Licenses.** The Borrower and each of the Subsidiaries shall maintain each Key Permit, including each Regulatory Authorization, from, or file any notice or registration in, each jurisdiction in which the Borrower or any of the Subsidiaries are required to obtain any Key Permit or Regulatory Authorization or to file any notice or registration, in order to design, manufacture, store, label, sell, promote, import or distribute the Products.

**SECTION 7.11 Maintenance of Regulatory Authorizations, Contracts, Intellectual Property, Etc.**

(a) With respect to the Products, each of the Borrower and each of the Subsidiaries will (i) maintain in full force and effect all Key Permits, contract rights, authorizations or other rights necessary for the operations of its business; (ii) notify the Administrative Agent, promptly after learning thereof, of any product recalls, safety alerts, corrections, manufacturing interruptions or suspensions, withdrawals, marketing suspensions, removals or the like conducted, to be undertaken or issued, by the Borrower, any of the Subsidiaries or their respective suppliers whether or not at the request, demand or order of any Governmental Authority or otherwise with respect to any Product or manufacturing facility owned or operated by the Borrower or any of the Subsidiaries, or any basis for undertaking or issuing any such action or item; (iii) design, manufacture, store, label, sell, promote, import and distribute all Products in compliance with cGMPs, the FD&C Act, the PHSA, the Controlled Substances Act, and other applicable Laws in all material respects; (iv) conduct all studies, tests and preclinical and clinical trials relating to the Products in accordance with all cGCPs, and other applicable Laws in all material respects; (v) use commercially reasonable efforts to cause its suppliers to operate all manufacturing facilities in compliance with cGMPs, the Controlled Substances Act, and all other applicable Laws in all material respects; (vi) maintain in full force and effect or pursue the prosecution of, as the case may be, and pay all costs and expenses relating to, all Owned Intellectual Property and all Material Agreements, except in the event that the Borrower determines in its reasonable commercial judgment not to do so; (vii) notify the Administrative Agent, promptly after learning thereof, of any Infringement or other violation by any Person of any Owned Intellectual Property and diligently pursue any such Infringement or other violation except in any specific circumstances where both (x) the Borrower or any of the Subsidiaries are able to demonstrate that it is not commercially reasonable to do so and (y) where not doing so does not materially adversely affect any Product; (viii) use commercially reasonable efforts to pursue and maintain in full force and effect legal protection for, and protect against Infringement with respect to, all Intellectual Property, including Patents, developed or controlled by the Borrower or any of the Subsidiaries, except in the event that the Borrower determines in its reasonable commercial judgment not to do so; (ix) notify the Administrative Agent, promptly after learning thereof, of any claim by any Person that the conduct of the Borrower's or any of the Subsidiaries' business (including the development, manufacture, use, sale or other commercialization of any Product) Infringes any Intellectual Property of that Person and use commercially reasonable efforts to resolve such claim, except where the Borrower determines in its reasonable commercial judgment not to do so; and (x) maintain a commercially reasonable information security program with organizational, physical, administrative and technical measures designed to protect the operation, confidentiality, integrity, and security of all Confidential Business Information, IT Assets and Personal Data against unauthorized access, acquisition, interruption, alteration, modification, or use.

(b) Each of the Borrower and its Subsidiaries will furnish to the Administrative Agent prompt written notice of the following, and, with respect to

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clauses (i) and (ii) below, copies of any material written notices from, or written responses to, any Governmental Authority:

(i) any notice that any Governmental Authority is limiting, suspending or revoking any Key Permit, changing the market classification or labeling of or otherwise restricting in any material respect the Products of the Borrower or any of its Subsidiaries, or considering any of the foregoing;

(ii) the Borrower or any of its Subsidiaries, or to the Borrower's knowledge any of its or their suppliers, becoming subject to any administrative or regulatory action, any Regulatory Agency inspection or any non-routine inspection by any other Person, receipt of inspectional observations (e.g., on FDA Form 483), warning letter, untitled letter, or notice of violation letter, or any Product of the Borrower or any of its Subsidiaries being seized, withdrawn, recalled, detained, or subject to a suspension of manufacturing or import alert, or the commencement of any proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, suspension, import detention or refusal, or seizure of any Product are pending or threatened against the Borrower or any of its Subsidiaries; or

(iii) copies of any written recommendation from any Governmental Authority or other regulatory body that the Borrower or any of its Subsidiaries, or, to Borrower's knowledge, any obligor to which the Borrower or any of its Subsidiaries provides services, should have its licensure, clearance(s), provider or supplier number, or accreditation suspended, revoked, or limited in any way, or any penalties or sanctions imposed.

(c) Each of the Borrower and its Subsidiaries will promptly notify the Administrative Agent as soon as possible and in any event within three Business Days of introducing any Product that is subject to regulation by the FDA, or any comparable foreign Governmental Authority, as a medical device other than the medical device constituent part of Ycanth.

**SECTION 7.12 Inbound Licenses.** The Borrower and each of the Subsidiaries will, promptly after entering into or becoming bound by any inbound license or agreement material to any Product or to the business of the Borrower and its Subsidiaries taken as a whole (other than over-the-counter or "open-source" software that is commercially available to the public or non-exclusive immaterial license entered into in the ordinary course of business): (i) provide written notice to the Administrative Agent of the material terms of such license or agreement with a

description of its anticipated and projected impact on the Borrower's and the Subsidiaries' business and financial condition; and (ii) take such commercially reasonable actions as the Administrative Agent or the Lenders may reasonably request to obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for the Secured Parties to be granted and perfect a valid security interest in such license or agreement and to fully exercise its rights under any of the Loan Documents in the event of a disposition

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or liquidation of the rights, assets or property that is the subject of such license or agreement.

**SECTION 7.13 Cash Management.** Each of the Borrower and each Guarantor will:

(a) (i) maintain a current and complete list of all accounts (of the type initially set forth on Schedule 6.22) (other than (i) accounts exclusively used for payroll, payroll taxes and other employee wage and benefit programs to or for the benefit of the Borrower's or a Guarantor's employees, which shall in no event hold in the aggregate more than the amount reasonably expected to meet such payroll expenses for the following calendar month, including bonuses and other payments to be paid within the following calendar month, (ii) accounts exclusively used to hold cash or Cash Equivalent Investments that serves as collateral or security permitted under Section 8.3(f) and (l) whereby the applicable secured party prohibits the creation of a Lien on such account in favor of the Secured Parties, (iii) accounts that secure obligations in respect of credit cards and similar obligations which are permitted under Section 8.3(m), and (iv) accounts located in a jurisdiction other than the United States with balances or assets which do not exceed \$[\*\*\*] in the aggregate at any one time (collectively, the "Excluded Accounts")) and promptly deliver any updates to such list to the Administrative Agent; (ii) execute and maintain an account control agreement for each such account (other than the Excluded Accounts), in form and substance reasonably acceptable to the Administrative Agent (each such account, a "Controlled Account"); and (iii) maintain each such account as a cash collateral account, with all cash, checks and other similar items of payment in such account securing payment of the Obligations (and in which the Borrower and the Guarantors shall have granted a Lien to the Secured Parties);

(b) deposit promptly after the date of receipt thereof in accordance with prudent business practices all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all accounts and other rights and interests into Controlled Accounts except to the extent permitted to be kept in Excluded Accounts; and

(c) at any time after the occurrence and during the continuance of an Event of Default, at the request of the Administrative Agent, promptly cause all payments constituting proceeds of accounts to be directed into lockbox accounts under agreements in form and substance satisfactory to the Lenders.

**SECTION 7.14 Lender Calls.** The chief executive officer and other members of senior management requested by the Lenders shall hold a meeting with the Lenders (to the extent requested by any Lender) in person or by teleconference, in either case as reasonably requested by the Lenders, within one month after the delivery by Borrower of its financial statements pursuant to Sections 7.1(b) and (c), to, at a minimum, discuss business operations and matters referenced in the board materials previously delivered to the Lenders pursuant to Section 7.1(j) and review financial statements, in each case with respect to the Borrower and its Subsidiaries.

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**SECTION 7.15 Post-Closing Deliverables.** Notwithstanding anything to the contrary herein or in the Loan Documents (it being understood that to the extent that the existence of any of the following post-closing obligations that is not overdue would otherwise cause any representation, warranty, covenant, default or event of default in this Agreement or any other Loan Document to be in breach, the Administrative Agent hereby waives such breach for the period from the Closing Date until the first date on which such condition is required to be fulfilled (giving effect to any extensions thereof) pursuant to this Section 7.15), the Borrower shall deliver or cause to be delivered the following items to the Administrative Agent no later than the dates set forth below (or such later date agreed to by the Administrative Agent in its sole discretion), and each such item shall be in form and substance reasonably satisfactory to the Administrative Agent:

- (a) No later than 90 days after the Closing Date, landlord access agreements and bailee letters described in Section 5.10(d);
- (b) No later than 60 days after the Closing Date, evidence that all deposit accounts, securities accounts or commodities accounts of the Borrower (other than Excluded Accounts) are Controlled Accounts; and
- (c) No later than 30 days after the Closing Date, the endorsements of the Borrower's insurance policies described in Section 7.4.

## ARTICLE VIII NEGATIVE COVENANTS

The Borrower covenants and agrees with the Administrative Agent and the Lenders that until the Termination Date has occurred, the Borrower and the Subsidiaries will perform or cause to be performed the obligations set forth below (in each case, subject to Section 7.15).

**SECTION 8.1 Business Activities.** None of the Borrower or any of the Subsidiaries will engage in any business activity except those business activities engaged or proposed to be engaged in on the date of this Agreement and activities reasonably incidental thereto.

**SECTION 8.2 Indebtedness.** None of the Borrower or any of the Subsidiaries will create, incur, assume or permit to exist any Indebtedness, other than:

- (a) Indebtedness in respect of the Obligations;
- (b) until the Closing Date, Indebtedness that is to be repaid in full as further identified in Schedule 8.2(b);
- (c) Indebtedness existing as of the Closing Date which is identified in Schedule 8.2(c), and refinancing of such Indebtedness in a principal amount not in excess of that which is outstanding on the Closing Date (as such amount has been reduced following the Closing Date);

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- (d) unsecured Indebtedness in respect of performance, surety or appeal bonds provided in the ordinary course of business in an aggregate amount at any time outstanding not to exceed \$[\*\*\*];
- (e) (i) Purchase Money Indebtedness and Capitalized Lease Liabilities in a principal amount not to exceed \$[\*\*\*] in the aggregate outstanding at any time and (ii) any Capitalized Lease Liabilities incurred in connection with the financing of motor vehicles in the ordinary course of the Borrower's business not to exceed \$[\*\*\*] at any time outstanding;
- (f) Permitted Subordinated Indebtedness;
- (g) Indebtedness of any Guarantor or the Borrower owing to the Borrower or any Guarantor;
- (h) letters of credit and banker's acceptances issued on behalf of the Borrower or any Subsidiary in the ordinary course of business;
- (i) Indebtedness incurred in connection with commercial credit cards incurred in the ordinary course of business with outstanding balances not to exceed \$[\*\*\*] in the aggregate at

any time;

(j) cash management obligations and other Indebtedness in respect of netting services, overdraft protections and similar arrangements and Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(k) customary indemnification obligations in favor of purchasers in connection with Dispositions permitted hereunder;

(l) Indebtedness of (i) any Excluded Subsidiaries owing to the Borrower or any Guarantor in an aggregate principal amount at any time outstanding not to exceed, when combined with outstanding Investments by the Borrower or any Guarantor in or to any Excluded Subsidiary pursuant to Section 8.5(h), in the aggregate, \$[\*\*\*] in any Fiscal Year or \$[\*\*\*] outstanding at any time, and (ii) any Excluded Subsidiary owing to any other Excluded Subsidiary; and

(m) other Indebtedness of the Borrower and the Subsidiaries in an aggregate amount at any time outstanding not to exceed \$[\*\*\*];

provided that, no Indebtedness otherwise permitted by clauses (c), (e), (f), (g) or (h) shall be assumed, created or otherwise incurred if a Default has occurred and is then continuing or would result therefrom.

**SECTION 8.3 Liens.** None of the Borrower or any of the Subsidiaries will create, incur, assume or permit to exist any Lien upon any of its property (including Capital Securities of any Person), revenues or assets, whether now owned or hereafter acquired, except:

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(a) Liens securing payment of the Obligations;

(b) until the Closing Date, Liens securing payment of Indebtedness of the type described in clause (b) of Section 8.2;

(c) Liens existing as of the Closing Date and disclosed in Schedule 8.3(c) securing Indebtedness described in clause (c) of Section 8.2, and refinancings of such Indebtedness; provided that, no such Lien shall encumber any additional property and the amount of Indebtedness secured by such Lien is not increased from that existing on the Closing Date (as such Indebtedness may have been permanently reduced subsequent to the Closing Date);

(d) Liens securing Indebtedness of the Borrower or the Subsidiaries permitted pursuant to Section 8.2(e) (provided that (i) such Liens shall be created substantially simultaneously with the acquisition of the assets financed with such Indebtedness and (ii) such Liens do not at any time encumber any property other than the property so financed);

(e) Liens in favor of carriers, warehousemen, mechanics, materialmen and landlords granted in the ordinary course of business for amounts not overdue or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(f) Liens incurred or deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory obligations, bids, leases or other similar obligations (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on surety and appeal bonds or performance bonds;

(g) judgment Liens in existence for less than 45 days after the entry thereof or with respect to which execution has been stayed or the payment of which is covered in full (subject to a customary deductible) by insurance maintained with responsible insurance companies and which do not otherwise result in an Event of Default under Section 9.1(f);

(h) easements, rights-of-way, zoning restrictions, minor defects or irregularities in title and other similar encumbrances not interfering in any material respect with the value or use of the property to which such Lien is attached;

(i) Liens for Taxes not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(j) licenses and/or sublicenses of Intellectual Property otherwise permitted under this Agreement or the other Loan Documents, and restrictions under licenses of Intellectual Property entered into in the ordinary course of business pursuant to which

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the Borrower or any Subsidiary is a licensee, including, for the avoidance of doubt, the Torii License Agreement and the Lytix License Agreement;

(k) banker's liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with the Borrower's or any Subsidiary's deposit accounts or securities accounts held at such institutions to secure solely payment of

fees and similar costs and expenses and provided such accounts are maintained in compliance with Section 7.13(a);

(l) Liens with respect to security deposits given by Borrower or any Subsidiary to secure real estate leases not exceeding \$[\*\*\*] outstanding at any time; and

(m) other Liens of the Borrower and the Subsidiaries in an aggregate amount at any time outstanding not to exceed \$[\*\*\*].

**SECTION 8.4 Minimum Liquidity.** The Liquidity of the Borrower and the Guarantors on a consolidated basis shall not at any time be less than \$10,000,000. The Borrower shall maintain an aggregate amount equal to the amount required under this Section 8.4, along with its other cash and Cash Equivalent Investments, in one or more Controlled Accounts as required pursuant to Section 7.13(a).

**SECTION 8.5 Investments.** None of the Borrower or any of the Subsidiaries will purchase, make, incur, assume or permit to exist any Investment in any other Person, except:

(a) Investments existing on the Closing Date and identified in Schedule 8.5(a);

(b) Cash Equivalent Investments;

(c) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(d) Investments consisting of any deferred portion of the sales price received by the Borrower or any of the Subsidiaries in connection with any Disposition permitted under Section 8.8;

(e) Investments constituting (i) accounts receivable arising, (ii) trade debt granted, or (iii) deposits made, in each case of clauses (i) through (iii) in connection with the purchase price of goods or services, in each case in the ordinary course of business;

(f) Permitted Acquisitions;

(g) Investments by the Borrower or any Guarantor in the Borrower or any Guarantor;

(h) cash Investments by the Borrower or any Guarantor in any Excluded Subsidiary to cover ordinary, necessary, current operating expenses in the ordinary course of business not

exceeding, in the aggregate, \$[\*\*\*] in any Fiscal Year or \$[\*\*\*] outstanding at any time;

(i) Investments consisting of travel advances and employee relocation loans and other employee loans and advanced in the ordinary course of business not to exceed \$[\*\*\*] outstanding at any time; and

(j) other Investments in an aggregate amount not to exceed \$[\*\*\*] over the term of this Agreement.

**SECTION 8.6 Restricted Payments, Etc.** None of the Borrower or any of the Subsidiaries will declare or make a Restricted Payment, or make any deposit for any Restricted Payment, other than Restricted Payments made by the Borrower or Subsidiaries to the Borrower or any Subsidiaries.

**SECTION 8.7 Consolidation, Merger; Permitted Acquisitions, Etc.** None of the Borrower or any of the Subsidiaries will (a) liquidate or dissolve, consolidate with, or merge into or with, any other Person, or (b) purchase or otherwise acquire all or substantially all of the assets of any Person (or any division, business unit, product or line of business thereof), including through an exclusive lease or license, other than, in the case of clause (b), to consummate a Permitted Acquisition; provided that, in the case of clauses (a) and (b), so long as no Event of Default has occurred and is continuing (or would occur), any Subsidiary may liquidate or dissolve voluntarily into, and may merge with and into, the Borrower or any Subsidiary; and provided further, in connection with any Permitted Acquisition, the Borrower or any Subsidiary of the Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it, so long as (i) the Person surviving such merger or consolidation with any Subsidiary shall be a direct or indirect wholly-owned Subsidiary of the Borrower and a Guarantor, (ii) subject to clause (iii) below, in the case of any such merger or consolidation to which any Guarantor is a party, the Guarantor is the surviving Person, and (iii) in the case of any such merger or consolidation to which the Borrower is a party, the Borrower is the surviving Person.

**SECTION 8.8 Permitted Dispositions.** None of the Borrower or any of the Subsidiaries will Dispose of any of its assets (including accounts receivable and Capital Securities of the Borrower or any Subsidiary) to any Person in one transaction or series of transactions unless such Disposition (i) is inventory or obsolete, damaged, worn out or surplus property Disposed of in the ordinary course of its business, (ii) is a license in the ordinary course of business for the use of Intellectual Property of the Borrower or its Subsidiaries that is on a non-exclusive basis, (iii) is a license for the use of Intellectual Property of the Borrower or its Subsidiaries for the purpose of developing (including conducting clinical trials), manufacturing or commercializing any Product in any jurisdiction other than the United States, or (iv) [reserved], (v) is permitted by

Section 8.7, (vi) consists of Liens permitted by Section 8.3, (vii) consists of Borrower's use or transfer of money or Cash Equivalent Investments in a manner that is not prohibited by

this Agreement or the Loan Documents, (viii) consists of transfers of assets by the Borrower or any Guarantor to the Borrower or any Guarantor and (ix) so long as no Event of Default has occurred and is continuing, consists of other Dispositions (other than Intellectual Property) not otherwise permitted by this Section 8.8 with a fair market value not to exceed \$[\*\*\*] in any Fiscal Year that are made at fair market value.

**SECTION 8.9 Modification of Certain Agreements.** None of the Borrower or any of the Subsidiaries will consent to any amendment, supplement, waiver or other modification of, or enter into any forbearance from exercising any rights with respect to, the terms or provisions contained in (a) any Organic Documents of the Borrower or any of the Subsidiaries, if the result would have an adverse effect on the rights or remedies of the Administrative Agent or the Lenders under this Agreement or any Investment Document or (b) any agreement governing any Permitted Subordinated Indebtedness, if the result would shorten the maturity date thereof or advance the date on which any cash payment is required to be made thereon or would otherwise change any terms thereof in a manner adverse to the Administrative Agent or the Lenders.

**SECTION 8.10 Transactions with Affiliates.** None of the Borrower or any of the Subsidiaries will enter into or cause or permit to exist any arrangement, transaction or contract (including for the purchase, lease or exchange of property or the rendering of services) with any of its Affiliates, unless such arrangement, transaction or contract (A) is on fair and reasonable terms no less favorable to the Borrower or any Subsidiary than it could obtain in an arm's-length transaction with a Person that is not one of its Affiliates or (B) is a transaction between the Borrower and any Guarantor, or a transaction between Guarantors.

**SECTION 8.11 Restrictive Agreements, Etc.** None of the Borrower or any of the Subsidiaries will enter into any agreement prohibiting (i) the creation or assumption of any Lien upon its properties, revenues or assets, whether now owned or hereafter acquired, other than customary restrictions on assignment imposed by any licensing or sublicensing agreement or other similar agreement, in each case entered into in the ordinary course of business, (ii) the ability of the Borrower or any of the Guarantors to amend or otherwise modify any Investment Document, or (iii) the ability of the Borrower or any Subsidiary to make any payments, directly or indirectly, to the Borrower, including by way of dividends, advances, repayments of loans, reimbursements of management and other intercompany charges, expenses and accruals or other returns on investments. The foregoing prohibitions shall not apply to restrictions contained

(x) in any Investment Document, (y) on Schedule 8.11, or (z) in the case of clause (i), in any agreement governing any Indebtedness permitted by clause (e) of Section 8.2 as to the assets financed with the proceeds of such Indebtedness.

**SECTION 8.12 Sale and Leaseback.** None of the Borrower or any of the Subsidiaries will directly or indirectly enter into any agreement or arrangement providing for the sale or transfer by it of any property (now owned or hereafter acquired) to a Person and the subsequent lease or rental of such property or other similar property from such Person.

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**SECTION 8.13 Product Agreements.** None of the Borrower or any of the Subsidiaries will enter into any amendment with respect to any existing Product Agreement or enter into any new Product Agreement that contains (a) any provision that permits any counterparty other than the Borrower or any of the Subsidiaries to terminate such Product Agreement for any reason related to the change of control of the Borrower, (b) any provision which restricts or penalizes a security interest in any Product Agreement, or (c) any other provision that has or is likely to adversely affect, in any material respect, any Secured Party's rights hereunder.

**SECTION 8.14 Change in Name, Location or Executive Office or Executive Management; Change in Fiscal Year.** None of the Borrower or any of the Subsidiaries will (i) change its legal name, (ii) change its jurisdiction of organization or legal structure, (iii) relocate its chief executive office, principal place of business or any office in which it maintains books or records relating to its business (including the establishment of any new office or facility) without 10 days' prior written notice to the Administrative Agent, (iv) change its federal taxpayer identification number or organizational number (or equivalent), in each case, without 10 days' prior written notice to the Administrative Agent, (v) terminate the employment of or replace its chief executive officer or chief financial officer without written notification to the Administrative Agent within 30 days thereafter, (vi) change its Fiscal Year or any of its Fiscal Quarters or (vii) enter into, or permit any of its Subsidiaries to enter into, any Division/Series Transaction (it being understood that none of the provisions in this Agreement nor any other Investment Document shall be deemed to permit any Division/Series Transaction).

**SECTION 8.15 Benefit Plans and Agreements.** None of the Borrower or any Subsidiary will (i) become the sponsor of, incur any responsibility to contribute to or otherwise incur actual or potential liability with respect to, any Benefit Plan, (ii) allow any "employee benefit plan" as defined in section 3(3) of ERISA that provides retirement benefits, is sponsored by the Borrower, any Subsidiary or any of their ERISA Affiliates, and is intended to be tax qualified under section 401 of the Code to cease to be tax qualified, (iii) allow the assets of any tax qualified retirement

plan to become invested in Capital Securities of the Borrower or any Subsidiary, or (iv) allow any employee benefit plan, program or arrangement sponsored, maintained, contributed to or required to be contributed to by the Borrower or any Subsidiary to fail to comply in all material respects with its terms and applicable law. None of the Borrower or any Subsidiary will enter into any employment, severance, change in control, independent contractor, or consulting agreements or grant any equity awards other than in the ordinary course of business.

## ARTICLE IX

### EVENTS OF DEFAULT

**SECTION 9.1 Listing of Events of Default.** Each of the following events or occurrences described in this Article IX shall constitute an "Event of Default".

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(a) Non-Payment of Obligations. The Borrower shall default in the payment or prepayment when due of (i) any principal of or interest on any Loan, or (ii) any fee described in Article III or any other monetary Obligation, and in the case of clause (ii) such default shall continue unremedied for a period of two Business Days after such amount was due.

(b) Breach of Warranty. Any representation or warranty made or deemed to be made by the Borrower or any of the Subsidiaries in any Investment Document (including any certificates delivered pursuant to Article V) is or shall be incorrect in any material respect when made or deemed to have been made.

(c) Non-Performance of Certain Covenants and Obligations. The Borrower or any Subsidiary shall default in the due performance or observance of any of its obligations under Section 7.1, Section 7.7, Section 7.8, Section 7.15 or Article VIII.

(d) Non-Performance of Other Covenants and Obligations. The Borrower or any Subsidiary shall default in the due performance and observance of any other covenant, obligation or agreement contained in any Investment Document executed by it, and such default shall continue unremedied for a period of 30 days after the earlier to occur of (i) notice thereof given to the Borrower by the Lenders or (ii) the date on which the Borrower or any Subsidiary has knowledge of such default.

(e) Default on Other Indebtedness. A default shall occur in the payment of any amount when due (subject to any applicable grace period), whether by acceleration or otherwise, of any principal or stated amount of, or interest or fees on, any Indebtedness of the Borrower or any of the Subsidiaries having a principal or stated amount, individually or in the aggregate, in excess

of \$[\*\*\*], or a default shall occur in the performance or observance of any obligation or condition with respect to such Indebtedness if the effect of such default is to accelerate the maturity of any such Indebtedness or such default shall continue unremedied for any applicable period of time sufficient to permit the holder or holders of such Indebtedness, or any trustee or agent for such holders, to cause or declare such Indebtedness to become due and payable or to require such Indebtedness to be prepaid, redeemed, purchased or defeased, or require an offer to purchase or defease such Indebtedness to be made, prior to its expressed maturity.

(f) Judgments. Any judgment or order for the payment of money individually or in the aggregate in excess of \$[\*\*\*] (exclusive of any amounts fully covered by insurance (less any applicable deductible) and as to which the insurer has acknowledged its responsibility to cover such judgment or order) shall be rendered against the Borrower or any of the Subsidiaries and such judgment shall not have been vacated or discharged or stayed or bonded pending appeal within 30 days after the entry thereof or enforcement proceedings shall have been commenced by any creditor upon such judgment or order.

(g) Change in Control. Any Change in Control shall occur.

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(h) Bankruptcy, Insolvency, Etc. The Borrower or (except as permitted pursuant to Section 8.7) any of the Subsidiaries shall:

(i) become insolvent or generally fail to pay, or admit in writing its inability or unwillingness generally to pay, debts as they become due;

(ii) apply for, consent to, or acquiesce in the appointment of a trustee, receiver, sequestrator or other custodian for any substantial part of the property of any thereof, or make a general assignment for the benefit of creditors;

(iii) in the absence of such application, consent or acquiescence in or permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for a substantial part of the property of any thereof, and such trustee, receiver, sequestrator or other custodian shall not be discharged within 60 days; provided that, the Borrower and each Subsidiary hereby expressly authorizes the Administrative Agent and the Lenders to appear in any court conducting any relevant proceeding during such 60-day period to preserve, protect and defend its rights under the Investment Documents;

(iv) permit or suffer to exist the commencement of any bankruptcy, insolvency, reorganization, debt arrangement, arrangement (including any plan of compromise or

arrangement or other corporate proceeding involving or affecting its creditors) or other case or proceeding under any bankruptcy or insolvency law or any dissolution, winding up or liquidation proceeding, in respect thereof (each, an "Insolvency Event"), and, if any such case or proceeding is not commenced by the Borrower or any Subsidiary, such case or proceeding shall be consented to or acquiesced in by the Borrower or such Subsidiary, as the case may be, or shall result in the entry of an order for relief or shall remain for 60 days undismissed; provided that the Borrower and each Subsidiary hereby expressly authorizes the Administrative Agent and the Lenders to appear in any court conducting any such case or proceeding during such 60-day period to preserve, protect and defend its rights under the Investment Documents; or

(v) take any action authorizing, or in furtherance of, any of the foregoing.

(i) Impairment of Security, Etc. Any Investment Document or any Lien granted under a Loan Document shall (except in accordance with its terms), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of the Borrower or any Subsidiary party thereto in any material respect; the Borrower, any Subsidiary or any other party shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability; or, except as permitted under any Loan Document, any Lien securing any Obligation shall, in whole or in part, cease to be a perfected first priority Lien (subject to Liens permitted under Section 8.3).

(j) Key Permit Events.

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(i) Any Key Permit or any of the Borrower's or any Subsidiary's material rights or interests thereunder is terminated or amended in any manner adverse to the Borrower or any Subsidiary in any material respect;

(ii) [\*\*\*]; or

(iii) [\*\*\*].

(k) Key Person Events. If any of the following individuals ceases to be employed full time by the Borrower and actively working in the identified position: (i) Ted White, as President and CEO, (ii) Terry Kohler, as Chief Financial Officer, or (ii) Joe Bonaccorso, as Chief Commercial Officer, unless, in each case, within 120 days after such individual ceases to be employed full time and actively working the Borrower hires a replacement for such individual reasonably acceptable to the Lenders.

(I) Material Adverse Change. Any circumstance occurs that could reasonably be expected to have a Material Adverse Effect.

(m) Regulatory Matters. If any of the following occurs: (i) the FDA, CMS, EMA or any other Governmental Authority (A) issues a letter or other written communication to Borrower asserting that any Product lacks a required Regulatory Authorization, which assertion is not withdrawn or otherwise resolved within 45 days after receipt of such letter or other written communication or (B) initiates enforcement action against, or issues a warning letter with respect to the Borrower or any of the Subsidiaries, or any of their Products or the manufacturing facilities therefor, that, in the case of either clause (A) or (B), causes the Borrower or such Subsidiary to discontinue or suspend marketing of or withdraw any Product, or causes a delay in the manufacture or offering of any Product, which discontinuance, withdrawal or delay could reasonably be expected to last for more than 45 days; (ii) a recall with respect to any Product which could reasonably be expected to result in liability to the Borrower and the Subsidiaries in excess of \$[\*\*\*] (exclusive of any amounts paid or covered by insurance or indemnity as to which the insurer or indemnifying party, as applicable, has been notified of the underlying claim and has not disputed or otherwise contested in writing such insurance coverage or indemnification obligation, as applicable, and exclusive of the value of such Product); or (iii) the Borrower or any of the Subsidiaries enters into a settlement agreement with the FDA, CMS, EMA or any other Governmental Authority with respect to any Product that results in aggregate liability as to any single or related series of transactions, incidents or conditions in excess of \$[\*\*\*] (exclusive of any amounts paid or covered by insurance or indemnity as to which the insurer or indemnifying party, as applicable, has been notified of the underlying claim and has not disputed or otherwise contested in writing such insurance coverage or indemnification obligation, as applicable, and exclusive of the value of such Product).

**SECTION 9.2 Action if Bankruptcy.** If any Event of Default described in clauses (i) through (iv) of Section 9.1(h) with respect to the Borrower shall occur, the Commitments (if not theretofore terminated) shall automatically terminate and the

outstanding principal amount of the Loans and all other Obligations shall automatically be and become immediately due and payable, without notice or demand to any Person.

**SECTION 9.3 Action if Other Event of Default.** If any Event of Default (other than any Event of Default described in clauses (i) through (iv) of Section 9.1(h)) shall occur for any reason, whether voluntary or involuntary, and be continuing, the Administrative Agent may, and shall at the direction of the Lenders, by notice to the Borrower declare all or any portion of the

outstanding principal amount of the Loans and other Obligations to be due and payable and/or the Commitments (if not theretofore terminated) to be terminated, whereupon the full unpaid amount of the Loans and other Obligations which shall be so declared due and payable shall be and become immediately due and payable, without further notice, demand or presentment, and the Commitments shall terminate.

**SECTION 9.4 Application of Funds.** After the exercise of remedies provided for in Section 9.3 (or after the Loans have automatically become immediately due and payable as set forth in Section 9.2), any amounts received by any Lender or the Administrative Agent on account of the Obligations shall be applied in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders) arising under the Loan Documents and amounts payable under Section 4.3, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and amounts payable under Sections 3.7, ratably among the Lenders in proportion to the respective amounts described in this clause Third held by them;

Fourth, to payment of that portion of the Obligations constituting accrued and unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by law.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

**SECTION 10.1 Waivers, Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any Subsidiary therefrom, shall be effective unless in writing and signed by the Lenders and the Borrower or the applicable Subsidiary, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**SECTION 10.2 Notices; Time.**

(a) All notices and other communications provided under any Loan Document shall be in writing or by email and addressed, delivered or transmitted, if to the Administrative Agent, Borrower or the Lenders, to the applicable Person at its address or email address set forth on Schedule 10.2 hereto, or at such other address or email address as may be designated by such party in a notice to the other parties. Any notice, if mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any notice, if transmitted by email, shall be deemed given upon the earlier of (i) confirmation of receipt by the recipient and (y) the opening of business on the next Business Day for the recipient. Unless otherwise indicated, all references to the time of a day in a Loan Document shall refer to New York City time.

(b) The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic loan notices) purportedly given by or on behalf of the Borrower or any Guarantor even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower and each Guarantor shall indemnify the Administrative Agent, each Lender and its Related Parties from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower and each Guarantor; provided that such indemnity shall not, as to any Person be available to the extent that such losses, costs, expenses or liabilities are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Person. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**SECTION 10.3 Payment of Costs and Expenses.** The Borrower agrees to pay on demand all reasonable and documented out-of-pocket expenses of the Administrative Agent and the Lenders, which shall be limited to the reasonable and documented out-of-pocket fees and expenses of one counsel to the Secured Parties taken as a whole in each applicable

jurisdiction, one special counsel if necessary and, in the case of an actual or potential conflict of interest, one additional counsel in each relevant jurisdiction to each group of similarly situated affected Secured Parties, in connection with:

- (a) reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or the Lenders, in the negotiation, preparation, execution and delivery of each Investment Document, including schedules and exhibits, and any amendments, waivers, consents, supplements or other modifications to any Investment Document as may from time to time hereafter be required, whether or not the transactions contemplated hereby are consummated;
- (b) the filing or recording of any Loan Document (including any financing statements) and all amendments, supplements, amendment and restatements and other modifications to any thereof, searches made following the Closing Date in jurisdictions where financing statements (or other documents evidencing Liens in favor of the Secured Parties) have been recorded and any and all other documents or instruments of further assurance required to be filed or recorded by the terms of any Loan Document;
- (c) the preparation and review of the form of any document or instrument relevant to any Investment Document; and
- (d) reasonable legal diligence, consulting and other advice in connection with the Borrower, the Subsidiaries and any of their Related Parties.

The Initial Lender shall apply the \$[\*\*\*] expense deposit that the Borrower furnished to the Initial Lender prior to the Closing Date to the fees and expenses that are payable or reimbursable in accordance with the foregoing sentence. The Borrower also agrees to reimburse the Administrative Agent and the Lenders upon demand for all out-of-pocket expenses (including attorneys' fees and legal expenses of counsel to the Administrative Agent and the Lenders) incurred by the Administrative Agent and each Lender in connection with (x) the negotiation of any restructuring or "work-out" with the Borrower, whether or not consummated, of any Obligations and (y) the enforcement of any Obligations.

#### SECTION 10.4 Indemnification; Expenses; and Damage Waiver.

- (a) In consideration of the execution and delivery of this Agreement by the Lenders and the Administrative Agent, the Borrower hereby indemnifies, agrees to defend, exonerates and holds each Lender and the Administrative Agent (and any sub-agent thereof) and each Related Party of any of the foregoing Persons (collectively, the "Indemnified Parties") free and harmless

from and against any and all actions, causes of action, suits, losses, costs, liabilities, obligations and damages, claims and expenses incurred in connection therewith (irrespective of whether any such Indemnified Party is a party to the action for which indemnification hereunder is sought), including reasonable and documented out-of-pocket attorneys' (but limited, in the case of such fees and expenses, to the reasonable and documented out-of-pocket fees and expenses of one counsel to all Indemnified Parties taken as a whole in each applicable jurisdiction, one special counsel if necessary and, in the case of an actual or potential conflict of interest, one additional counsel in each relevant jurisdiction to each group of similarly situated affected Indemnified Parties) and professionals' fees and disbursements (collectively, the "Indemnified Liabilities"), including, without

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limitation, Indemnified Liabilities arising out of or relating to (i) the entering into and performance of any Investment Document by any of the Indemnified Parties (including any action brought by or on behalf of the Borrower as the result of any determination by any Lender pursuant to Article V not to fund any Loan), and (ii) any Environmental Liability, except, in each case, to the extent such Indemnified Liabilities are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted (x) from any Indemnified Party's gross negligence or willful misconduct or (y) from any Indemnified Liabilities that do not involve an act or omission of the Borrower, the Subsidiaries or their Affiliates and such claims for Indemnified Liabilities are brought by an Indemnified Party against another Indemnified Party (except for claims brought against the Administrative Agent in such capacity). If and to the extent that the foregoing indemnification may be unenforceable for any reason, the Borrower agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. This Section 10.4(a) shall not apply with respect to Taxes other than any Taxes that represent Indemnified Liabilities arising from any non-Tax Claim.

(b) Reimbursement by Lenders. To the extent that the Borrower and the Guarantors for any reason fail to pay any amount required under subsection (a) of this Section 10.4 to be paid by them to the Administrative Agent (or any sub-agent thereof) or any of their respective partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit

Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentages (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); provided, further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), or against any of their respective partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives acting for the Administrative Agent (or any such sub-agent) in connection with such capacity.

(c) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, neither the Borrower nor any Subsidiary shall assert, and the Borrower and each Subsidiary hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnified Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Investment Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. Absent gross negligence, fraud, or willful misconduct by an Indemnified

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Party, no Indemnified Party referred to in Section 10.4(a) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Investment Documents or the transactions contemplated hereby or thereby.

(d) Payments. All amounts due under this Section 10.4 shall be payable not later than ten (10) Business Days after demand therefor.

**SECTION 10.5 Survival.** The obligations of the Borrower (and, with respect to Section 4.3, the Administrative Agent and the Lenders) under Section 4.1, Section 4.2, Section 4.3, Section 10.3 and Section 10.4, shall in each case survive any assignment by any Lender and the occurrence of the Termination Date. The representations and warranties made by the Borrower in each Investment Document shall survive the execution and delivery of such Investment Document. The agreements in this Section 10.5 and the indemnity provision of Section 10.4(b) shall survive the resignation or replacement of the Administrative Agent, any assignment by any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations. All representations and warranties made by the Borrower or any

Subsidiary hereunder and in any other Investment Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith, shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**SECTION 10.6 Severability.** Any provision of any Loan Document or the other Investment Documents which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of such Loan Document or other Investment Document affecting the validity or enforceability of such provision in any other jurisdiction.

**SECTION 10.7 Headings.** The various headings of each Loan Document and each other Investment Document are inserted for convenience only and shall not affect the meaning or interpretation of such Loan Document such Investment Document or any provisions thereof.

**SECTION 10.8 Execution in Counterparts, Effectiveness, Etc.** This Agreement may be executed by the parties hereto in several counterparts, each of which shall be an original and all of which shall constitute together but one and the same agreement. This Agreement shall become effective when counterparts hereof executed on behalf of the Borrower and the Lenders, shall have been received by the Administrative Agent. Delivery of an executed counterpart of a signature page to this Agreement by email (e.g.,

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“pdf” or “tiff”) or telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

**SECTION 10.9 Governing Law; Entire Agreement.** EACH INVESTMENT DOCUMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER INVESTMENT DOCUMENT CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK). The Investment Documents constitute the entire understanding among

the parties hereto with respect to the subject matter thereof and supersede any prior agreements, written or oral, with respect thereto.

#### SECTION 10.10 Successors and Assigns.

(a) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided that, for the avoidance of doubt, any Lender may, at all times, assign or transfer its rights or obligations hereunder to any of its Affiliates; provided further, that (i) the Borrower may not assign or transfer its rights or obligations hereunder without the consent of the Administrative Agent and each Lender and (ii) no Lender may assign or otherwise transfer any of its rights and obligations hereunder to any Person except (x) to any of its Affiliates or (y) in accordance with Section 10.10(b). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement. No assignment or transfer of any Commitment or Loan shall be effective until receipt and acceptance into the Register by the Administrative Agent of a fully executed Assignment and Assumption effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in Section 10.10(b). The date of such assignment shall be referred to herein as the “Assignment Effective Date.”

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans at the time owing to it); provided that with respect to any such assignment where the Assignee is not an Affiliate of such Lender, such assignment shall be subject to the following conditions:

(i) Assignment and Assumption. Assignments and assumptions of Loans and Commitments by Lenders shall be effected by manual execution and delivery to the Administrative Agent of an Assignment and Assumption. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date, subject to acceptance and recording thereof in the Register by the Administrative Agent pursuant to Section 10.10(c). In connection with all assignments there shall be delivered to the Borrower and the Administrative Agent such forms, certificates or other evidence, if any, with respect

to United States federal income tax withholding matters as the assignee under such Assignment and Assumption may be required to deliver pursuant to Section 4.3, together with payment to the Administrative Agent of a registration and processing fee of \$[\*\*\*], which may be waived or reduced at the sole discretion of the Administrative Agent.

(ii) Disqualified Institutions. Except if an Event of Default has occurred, no Lender may assign or transfer its rights or obligations hereunder to any Disqualified Institution.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.10(d), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 4.3, 10.3 and 10.4 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender.

(d) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's office in the United States a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The parties intend that any interest in or with respect to the Loans under this Agreement be treated as being issued and maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2), and 881(c)(2) of the Code and any United States Treasury Regulations thereunder (and any successor provisions), including without limitation under United States Treasury Regulations Section

5f.103-1(c) and Proposed Regulations Section 1.163-5 (and any successor provisions), and the provisions of this Agreement shall be construed in a manner that gives effect to such intent.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Administrative Agent. Any corporation or association into which the Administrative Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Administrative Agent is a party, will be and become the successor to the Administrative Agent under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

**SECTION 10.11 Other Transactions.** Nothing contained herein shall preclude any Lender or any of its Affiliates, from engaging in any transaction, in addition to those contemplated by the Investment Documents, with the Borrower or any of its Affiliates in which the Borrower or such Affiliate is not restricted hereby from engaging with any other Person.

**SECTION 10.12 Forum Selection and Consent to Jurisdiction.** ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, ANY INVESTMENT DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, ANY LENDER OR THE BORROWER IN CONNECTION HEREWITH OR THEREWITH SHALL BE BROUGHT AND MAINTAINED IN THE COURTS OF THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK IN THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED THAT, ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE ADMINISTRATIVE AGENT'S OR THE LENDERS' OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HERETO IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK AT THE ADDRESS FOR NOTICES SPECIFIED IN SECTION 10.2. EACH PARTY HERETO HEREBY EXPRESSLY AND

IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY 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. TO THE EXTENT THAT ANY PARTY HERETO HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, SUCH PARTY HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THE INVESTMENT DOCUMENTS.

**SECTION 10.13 Waiver of Jury Trial.** THE ADMINISTRATIVE AGENT, THE LENDERS AND THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, EACH INVESTMENT DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, ANY LENDER OR THE BORROWER IN CONNECTION THEREWITH. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER INVESTMENT DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OTHER PARTIES HERETO ENTERING INTO THE INVESTMENT DOCUMENTS.

**SECTION 10.14 Confidential Information.** Subject to the provisions of Section 10.15, at all times prior to the Termination Date, the Receiving Party shall keep confidential and shall not publish or otherwise disclose any Confidential Information furnished to it by the Disclosing Party, except to those of the Receiving Party's employees, advisors or consultants who have a need to know such information to assist such Party in the performance of such Party's obligations or in the exercise of such Party's rights hereunder and who are subject to reasonable obligations of confidentiality consistent with this Section 10.14 (collectively, "Recipients"). Notwithstanding anything to the contrary set forth herein, (a) any Lender may disclose this Agreement and the terms and conditions hereof and any information related hereto, to (i) its Affiliates, (ii) potential and actual assignees of any of such Lender's rights hereunder and (iii) potential and actual

investors in, or lenders to, such Lender (including, in each of the foregoing cases, such Person's employees, advisors or consultants); provided that in each case, unless an Event of Default has occurred and is continuing, each such Recipient shall be subject to reasonable obligations of confidentiality; and (b) upon receiving consent from the Lenders, which consent shall not be unreasonably withheld, delayed or conditioned, the Borrower may disclose this Agreement and the terms and conditions hereof and information related hereto, to potential or actual permitted acquirers or assignees, collaborators and other (sub)licensees, permitted subcontractors,

investment bankers, investors, lenders (including, in each of the foregoing cases, such Person's employees, advisors or consultants who have a need to receive and review such information); provided that in each case, each such Recipient shall be subject to reasonable obligations of confidentiality. In addition to the foregoing, the Receiving Party may disclose Confidential Information belonging to the Disclosing Party to the extent (and only to the extent) such disclosure is reasonably necessary in order to comply with applicable Laws (including any securities law or regulation or the rules of a securities exchange) and with judicial process, if in the reasonable opinion of the Receiving Party's counsel, such disclosure is necessary for such compliance, provided that the Receiving Party (x) will only disclose those portions of the Confidential Information that are necessary or required to be so disclosed, and (y) to the extent legally permissible, will notify the Disclosing Party of the Receiving Party's intent to make any disclosure pursuant thereto sufficiently prior to making such disclosure so as to allow the Disclosing Party time to take whatever action it may deem appropriate to protect the confidentiality of the information to be disclosed.

**SECTION 10.15 Exceptions to Confidentiality.** The Receiving Party's obligations set forth in this Agreement shall not extend to any Confidential Information of the Disclosing Party:

- (a) that is or hereafter becomes part of the public domain (other than as a result of a disclosure by the Receiving Party or its Recipients in violation of this Agreement);
- (b) that is received from a Third Party without restriction on disclosure and without, to the knowledge of the Receiving Party, breach of any agreement between such Third Party and the Disclosing Party;
- (c) that the Receiving Party can demonstrate by competent evidence was already in its possession without any limitation on disclosure prior to its receipt from the Disclosing Party;
- (d) that is generally made available to Third Parties by the Disclosing Party without restriction on disclosure; or

(e) that the Receiving Party can demonstrate by competent evidence was independently developed by the Receiving Party without use of or reference to the Confidential Information.

**SECTION 10.16 No Waiver; Cumulative Remedies; Enforcement.** No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document 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. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

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Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrower and the Guarantors or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 11.1 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 4.5 (subject to the terms of Section 4.4(e)), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to the Borrower or any Guarantor under any Debtor Relief Law or any proceedings arising out of or in connection with an Insolvency Event; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 11.1 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 4.4(e), any Lender may, with the consent of the Lenders, enforce any rights and remedies available to it and as authorized by the Lenders.

**SECTION 10.17 Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower or any Guarantor is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its sole discretion) to be repaid to a trustee, receiver, receiver, manager, monitor or any other party, in connection with any proceeding under any Debtor Relief Law, any proceedings arising out of or in connection with an

Insolvency Event or otherwise, then (a) to the extent of such recovery, the obligation 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 setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

**SECTION 10.18 Electronic Execution of Assignments and Certain Other Documents.** The words "execute," "execution," "signed," "signature" and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

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**ARTICLE XI**  
**ADMINISTRATIVE AGENT**

**SECTION 11.1 Appointment and Authority.**

(a) Each of the Lenders hereby irrevocably appoints Orbimed Royalty & Credit Opportunities IV, LP to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any Guarantor shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Borrower and the Guarantors to secure any of the Obligations, together with such powers and discretion as are incidental thereto. In this connection, the Administrative Agent, as "collateral agent" (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 11.5 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Agreement, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of Article X (including Section 10.4(b)), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents and this Article XI as if set forth in full herein with respect thereto.

(c) Each of the Lenders authorizes the Administrative Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Administrative Agent under or in connection with the Loan Documents together with any other incidental rights, powers, authorities and discretions.

**SECTION 11.2 Rights as a Lender.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business

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with the Borrower, any Guarantor or any Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**SECTION 11.3 Exculpatory Provisions.** The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action or to exercise any of the rights or powers vested in it by this Agreement at the request or direction of the Lenders, pursuant to the provisions of this Agreement, unless such Lenders shall have offered to the Administrative Agent security or indemnity (satisfactory to the Administrative Agent in its sole and absolute discretion) against the costs, expenses and liabilities which may be incurred by it in compliance with such request or direction, or that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Borrower and any of the Subsidiaries that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Lenders or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and non-appealable judgment. Subject to the proviso in Section 11.3(b), to the extent the Administrative Agent is permitted to take any discretionary action hereunder or under any Loan Document, it shall take such action if instructed in writing to do so by the Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary under the circumstances). The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given in writing to the Administrative Agent by the Borrower, or a Lender.

The Administrative Agent shall have the right to request instructions from the Lenders or, as required, each of the Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary under the

circumstances). If the Administrative Agent shall request instructions from the Lenders or each of the Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary under the circumstances), as the case

may be, with respect to any act or action (including the failure to act) in connection with this Agreement or any other Loan Document, the Administrative Agent shall be entitled to refrain from such act or taking such action unless and until the Administrative Agent shall have received instructions from the Lenders or such other number or percentage of the Lenders, as the case may be, and the Administrative Agent shall not incur any liability to any Person by reason of so refraining. The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall have no liability for any action taken, or errors in judgment made, in good faith by it or any of its officers, employees or agents, unless it shall have been negligent in ascertaining the pertinent facts. The permissive rights of the Administrative Agent to do things enumerated in this Agreement shall not be construed as a duty and, with respect to such permissive rights, the Administrative Agent shall not be answerable in respect thereof other than for its gross negligence or willful misconduct. Nothing in this Agreement shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder.

Neither the Administrative Agent nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Borrower or any Guarantor, or any of their directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Administrative Agent may assume performance by all such Persons of their respective obligations. The Administrative Agent shall have no enforcement or notification obligations relating to breaches of representations or warranties of any other Person.

The Administrative Agent shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

## SECTION 11.4 Reliance by the Administrative Agent.

(a) The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower or the Subsidiaries), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(b) Reliance by the Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic loan notices) purportedly given by or on behalf of the Borrower or any of the Guarantors even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower and the Guarantors shall indemnify the Administrative Agent, each Lender and their respective partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower or any Guarantor; provided that such indemnity shall not, as to any Person be available to the extent that such losses, costs, expenses or liabilities are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Person. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**SECTION 11.5 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their

respective partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives. The rights, benefits and privileges (including the exculpatory and indemnification provisions) of Article X and this Article XI shall apply to any such sub-agent and to the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable

judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by the Administrative Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Borrower, the Guarantors and the Lenders, (ii) any modification to such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be effective as against such sub-agent without its written consent thereto, and (iii) such sub-agent shall only have obligations to the Administrative Agent and not to the Borrower or any Guarantor, Lender or any other Person and none of the Borrower, the Guarantors, the Lenders or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such subagent.

**SECTION 11.6 Resignation or Removal of the Administrative Agent.** The Administrative Agent may resign as the Administrative Agent at any time by giving thirty (30) days advance notice thereof to the Lenders and the Borrower and, thereafter, the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. Upon any such resignation, the Lenders shall have the right to appoint a successor Administrative Agent. No less than thirty (30) days following the delivery of such written notice, the Lenders shall have the right with the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed; provided, that no consent of the Borrower shall be required if an Event of Default has occurred and is continuing) to appoint a successor Administrative Agent, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States, with whom the Lenders shall be dealing on an arm's length basis. Upon the acceptance of any appointment as the Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all rights, powers, privileges and duties of the retiring Administrative Agent. After any retiring Administrative Agent's resignation hereunder as the Administrative Agent or upon a removal of the Administrative Agent upon the written request of the

Lenders, the provisions of this Section 11.6 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent. If no successor has accepted appointment as the Administrative Agent by the date which is thirty (30) days following delivery of written notice of resignation or removal, the retiring Administrative Agent's resignation or removal shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Lenders appoint a successor agent as provided for above. For the avoidance of doubt, in no event shall any such successor Administrative Agent be a Disqualified Institution.

**SECTION 11.7 Non-Reliance on the Administrative Agent and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their respective partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their respective

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partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**SECTION 11.8 Administrative Agent May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower or any Guarantor, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 10.4) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, receiver-manager, monitor, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 10.4.

In addition, the Lenders hereby irrevocably authorize the Administrative Agent, based upon the written instruction of the Lenders, to (a) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Debtor Relief Laws, including under Section 363 of the Bankruptcy Code of the United States or any similar laws in any other jurisdictions to which the Borrower or any Guarantor is subject, or (b) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Lenders shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of the Administrative Agent to credit bid and purchase at such sale or other

disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of the Administrative Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Lenders whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Capital Securities of the acquisition vehicle or vehicles that are used to consummate such purchase). Except as provided above and otherwise expressly provided for herein or in the other Loan Documents, the Administrative Agent will not execute or deliver a release of any Lien on any Collateral. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release any such Liens on particular types or items of Collateral pursuant to, and in accordance with, this Section. Each Secured Party whose Obligations are credit bid under this Section shall be entitled to receive interests in the Collateral or any other asset acquired in connection with such credit bid (or in the Capital Securities of the acquisition vehicle or vehicles that are

used to consummate such acquisition) on a ratable basis in accordance with the percentage obtained by dividing (y) the amount of Obligations of such Secured Party that were credit bid in such credit bid by (z) the aggregate amount of all Obligations that were credit bid in such credit bid.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**SECTION 11.9 Collateral and Guarantee Matters.** The Lenders irrevocably authorize the Administrative Agent:

(a) to release any Lien on any Collateral granted to or held by the Administrative Agent under any Loan Document (i) upon the Termination Date, (ii) that is sold or otherwise disposed of to a Person that is not the Borrower or any Guarantor as part of or in connection with any sale or other Disposition permitted hereunder and under the other Loan Documents or any Casualty Event, (iii) owned by a Guarantor upon release of such Guarantor from its obligations under its Guarantee pursuant to Section 11.9(b) or (iv) as approved in accordance with Section 10.1; and

(b) to release any Guarantor from its obligations under the Guarantee (i) upon the Termination Date or (ii) if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guarantee, pursuant to this Section 11.9.

In the event that any Collateral shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Collateral, the Administrative Agent is hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or

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to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Administrative Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties or to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

The Administrative Agent shall have no obligation to give, execute, deliver, file, record, authorize or obtain any financing statements, notices, instruments, documents, agreements, consents or other papers as shall be necessary to (i) create, preserve, perfect or validate any security interest granted to the Administrative Agent pursuant to the Loan Documents or (ii) enable the Administrative Agent to exercise and enforce its rights under the Loan Documents with respect to any such pledge and security interest. The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by the Borrower or any Guarantor in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

#### SECTION 11.10 Erroneous Payments.

(a) If the Administrative Agent notifies a Lender, or any Person who has received funds on behalf of a Lender (any such Lender or other recipient, a "Payment Recipient"), that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 11.10 and held in trust for the benefit of the Administrative Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, or any Person who has received funds on behalf of a Lender, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

- (i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error or mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and
- (ii) such Lender shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 11.10(b)(ii).

(c) Each Lender hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d) [Reserved].

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Secured Party, to the rights and interests of such Lender or Secured Party, as the case may be) under the Loan Documents with

respect to such amount and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any Guarantor; provided that this Section 11.10 shall not be interpreted to increase

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(or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any Guarantor for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 11.10 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

[Signature Page Follows]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

VERRICA PHARMACEUTICALS INC.,  
as the Borrower

By: /s/ Terry Kohler

Name: Terry Kohler

Title: Chief Financial Officer

ORBIMED ROYALTY & CREDIT OPPORTUNITIES IV, LP,  
as the Administrative Agent and Initial Lender

By: OrbiMed ROF IV LLC,  
its General Partner

By OrbiMed Advisors LLC,  
its Managing Member

By: /s/ Matthew Rizzo  
Name: Matthew Rizzo  
Title: Member

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EXHIBIT 10.2

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. OMISSIONS ARE DESIGNATED [\*\*\*].

**PLEDGE AND SECURITY AGREEMENT**

This PLEDGE AND SECURITY AGREEMENT, dated as of July 26, 2023 (as amended, supplemented or otherwise modified from time to time, this "Security Agreement"), is made by VERRICA PHARMACEUTICALS INC., a Delaware corporation (the "Borrower", and together with any other entity that may become party hereto as provided herein, each a "Grantor" and, collectively, the "Grantors") in favor of ORBIMED ROYALTY & CREDIT OPPORTUNITIES IV, LP, a Delaware limited partnership (together with its successors, transferees and assignees, the "Administrative Agent"), as Administrative Agent for the Secured Parties (defined below).

**WITNESSETH :**

WHEREAS, pursuant to the Credit Agreement, dated as of July 26, 2023 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and between the Borrower, the Lenders party thereto and the Administrative Agent, the Lenders have extended a Commitment to make Loans to the Borrower;

WHEREAS, as a condition precedent to the making of the Initial Loan, and as an inducement for the Lenders to make the Loans, in each case under the Credit Agreement, each Grantor is required to execute and deliver this Security Agreement; and

WHEREAS, it is required under the terms of the Credit Agreement that the Grantors shall have granted, pledged and assigned the security interests and undertaken the obligations contemplated by this Security Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Grantor agrees, for the benefit of the Secured Parties, as follows:

## ARTICLE I DEFINITIONS

**SECTION 1.1. Certain Terms.** The following terms (whether or not underscored) when used in this Security Agreement, including its preamble and recitals, shall have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

“Administrative Agent” is defined in the preamble.

“Borrower” is defined in the preamble.

“Collateral” is defined in Section 2.1.

“Collateral Accounts” is defined in Section 4.3(b).

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“Computer Hardware and Software Collateral” means: (a) all of the Grantors’ computer and other electronic data processing hardware, integrated computer systems, central processing units, memory units, display terminals, printers, features, computer elements, card readers, tape drives, hard and soft disk drives, cables, electrical supply hardware, generators, power equalizers, accessories and all peripheral devices and other related computer hardware, including all operating system software, utilities and application programs in whatsoever form; (b) all software programs (including both source code, object code and all related applications and data files) designed for use on the computers and electronic data processing hardware described in clause (a) above; (c) all firmware associated therewith; (d) all documentation (including flow charts, logic diagrams, manuals, guides, specifications, training materials, charts and pseudo codes) with respect to such hardware, software and firmware described in the preceding clauses (a) through (c); and (e) all rights with respect to all of the foregoing, including copyrights, licenses, options, warranties, service contracts, program services, test rights, maintenance rights, support rights, improvement rights, renewal rights and indemnifications and any substitutions, replacements, improvements, error corrections, updates, additions or model conversions of any of the foregoing.

“Control Agreement” means an authenticated record in form and substance reasonably satisfactory to the Administrative Agent and the Lenders, that provides for the Administrative Agent to have “control” (as defined in the UCC) over certain Collateral.

**“Copyright Collateral”** means all Copyrights, including the copyrights referred to in Item A of Schedule V, and registrations and recordings thereof and all applications for registration thereof, whether pending or in preparation, all copyright licenses, including each copyright license referred to in Item B of Schedule V, the right to sue for past, present and future infringements of any of the foregoing, all rights corresponding thereto, all extensions and renewals of any thereof and all Proceeds of the foregoing, including licenses, royalties, income, payments, claims, damages and Proceeds of suit, which are owned or licensed by the Grantors.

**“Credit Agreement”** is defined in the first recital.

**“Distributions”** means all dividends paid on Capital Securities, liquidating dividends paid on Capital Securities, shares (or other designations) of Capital Securities resulting from (or in connection with the exercise of) stock splits, reclassifications, warrants, options, non-cash dividends, mergers, consolidations, and all other distributions (whether similar or dissimilar to the foregoing) on or with respect to any Capital Securities constituting Collateral.

**“Excluded Property”** is defined in Section 2.1.

**“Financing Statements”** is defined in Section 3.7(b).

**“General Intangibles”** means all “general intangibles” and all “payment intangibles,” each as defined in the UCC, and shall include all interest rate or currency protection or hedging arrangements, all tax refunds, all licenses, permits, concessions and authorizations and all Intellectual Property Collateral (in each case, regardless of whether characterized as general intangibles under the UCC).

**“Grantor”** and **“Grantors”** are defined in the preamble.

**“Intellectual Property Collateral”** means, collectively, the Computer Hardware and Software Collateral, the Copyright Collateral, the Patent Collateral, the Trademark Collateral, the Trade Secrets Collateral, Product Agreements and Regulatory Authorizations.

**“Intercompany Note”** means any promissory note evidencing loans made by any Grantor to any other Grantor.

**“Investment Property”** means, collectively, (a) all “investment property” as such term is defined in Section 9-102(a)(49) of the UCC and (b) whether or not constituting “investment property” as so defined, all Pledged Notes.

**“Lender”** is defined in the preamble.

**“Patent Collateral”** means:

(a) all of the Patents throughout the world, including all patent applications in preparation for filing and each patent and patent application referred to in Item A of Schedule III;

(b) all patent licenses, and other agreements providing any Grantor with the right to use any items of the type referred to in clauses (a) above, including each patent license referred to in Item B of Schedule III; and

(c) all Proceeds of, and rights associated with, the foregoing (including licenses, royalties income, payments, claims, damages and Proceeds of infringement suits) and the right to sue third parties for past, present or future infringements of any Patent or patent application and for breach or enforcement of any patent license.

“Permitted Liens” means all Liens permitted by Section 8.3 of the Credit Agreement.

“Pledged Notes” means all promissory notes listed on Item J of Schedule II (as such schedule may be amended or supplemented from time to time), all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor.

“Secured Parties” means, collectively, the Administrative Agent and the Lenders and “Secured Party” means any one of them.

“Securities Act” is defined in Section 6.2(a).

“Security Agreement” is defined in the preamble.

“Trade Secrets of a Person” means all of such Person’s common law and statutory trade secrets and all other confidential, proprietary or useful information, and all know-how obtained by or used in or contemplated at any time for use in the business of such Person.

“Trade Secrets Collateral” means all of the Grantors’ Trade Secrets, whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating or referring in any way to such Trade Secret, all Trade Secret

licenses, including each Trade Secret license referred to in Schedule VI, and including the right to sue for and to enjoin and to collect damages for the actual or threatened misappropriation of any Trade Secret and for the breach or enforcement of any such Trade Secret license.

“Trademark Collateral” means:

(a) (i) all of the Grantors’ Trademarks and all goodwill of the business associated therewith, now existing or hereafter adopted or acquired including those referred to in Item A of Schedule IV, whether currently in use or not, all registrations and recordings thereof and all

applications in connection therewith, whether pending or filed, including registrations, recordings and applications in the United States Patent and Trademark Office or in any office or agency of the United States of America, or any state thereof or any other country or political subdivision thereof or otherwise, and all common law rights relating to the foregoing, and (ii) the right to obtain all reissues, extensions or renewals of the foregoing;

(b) all Trademark licenses for the grant by or to any Grantors of any right to use any Trademark, including each Trademark license referred to in Item B of Schedule IV;

(c) the right to sue third parties for past, present and future infringements of any Trademark Collateral described in clause (a) and, to the extent applicable, clause (b); and

(d) all Proceeds of, and rights associated with, the foregoing, including any claim by any Grantor against third parties for past, present or future infringement or dilution of any Trademark, Trademark registration or Trademark license, or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark license and all rights corresponding thereto throughout the world.

**SECTION 1.2. Credit Agreement Definitions.** Unless otherwise defined herein or the context otherwise requires, terms used in this Security Agreement, including its preamble and recitals, have the meanings provided in the Credit Agreement.

**SECTION 1.3. UCC Definitions.** When used herein the terms "Account," "Certificated Securities," "Chattel Paper," "Commercial Tort Claim," "Commodity Account," "Commodity Contract," "Deposit Account," "Document," "Electronic Chattel Paper," "Equipment," "Goods," "Instrument," "Inventory," "Letter-of-Credit Rights," "Payment Intangibles," "Proceeds," "Promissory Notes," "Securities Account," "Security Entitlement," "Supporting Obligations" and "Uncertificated Securities" have the meaning provided in Article 8 or Article 9, as applicable, of the UCC. "Letters of Credit" has the meaning provided in Section 5-102 of the UCC.

## ARTICLE II

### SECURITY INTEREST

**SECTION 2.1. Grant of Security Interest.** Each Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in all of such Grantor's right, title and interest in and to the following property, whether now or hereafter existing, owned or acquired by such Grantor, and wherever located (collectively, the "Collateral");

(a) Accounts;

- (b) Chattel Paper;
- (c) Commercial Tort Claims, including those listed on Item I of Schedule II (as such schedule may be amended or supplemented from time to time);
- (d) Deposit Accounts;
- (e) Documents;
- (f) General Intangibles;
- (g) Goods (including Goods held on consignment with third parties);
- (h) Instruments;
- (i) Investment Property;
- (j) Letter-of-Credit Rights and Letters of Credit;
- (k) Supporting Obligations;
- (l) all books, records, writings, databases, information and other property relating to, used or useful in connection with, evidencing, embodying, incorporating or referring to, any of the foregoing in this Section 2.1;
- (m) all Proceeds of any of the foregoing and, to the extent not otherwise included, (i) all payments under insurance (whether or not the Administrative Agent is the loss payee thereof) in respect of Collateral and (ii) all tort claims; and
- (n) all other property and rights of every kind and description and interests therein.

Notwithstanding anything to the contrary, the term "Collateral" (and all relevant defined terms that are used in the definition of Collateral) shall not include the following (collectively, the "Excluded Property"):

- (i) any General Intangibles or other rights or interests, in each case arising under any contracts, instruments, leases, licenses, license agreement or other documents as to which the grant of a security interest would (A) constitute a violation of a valid and enforceable restriction in favor of a third party on such grant, unless and until any required consents shall have been obtained, or (B) give any other party to such contract, instrument, license or other document the right to terminate its obligations thereunder;
- (ii) Trademark applications filed in the United States Patent and Trademark Office on the basis of such Grantor's "intent to use" such trademark, unless and until acceptable evidence of use of the Trademark has been filed with the United

States Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. 1051, et seq.), to the extent that granting a Lien in such Trademark application prior to such filing would adversely affect the enforceability or validity of such Trademark application;

(iii) any asset, the granting of a security interest in which would be void or illegal under any applicable Law or pursuant thereto would result in, or permit the termination of, such asset; or

(iv) any asset subject to a Permitted Lien (other than Liens in favor of the Secured Parties) securing obligations permitted under the Credit Agreement to the extent that the grant of other Liens on such asset (A) would result in a breach or violation of, or constitute a default under, the agreement or instrument governing such Permitted Lien, (B) would result in the loss of use of such asset or (C) would permit the holder of such Permitted Lien to terminate the Grantor's use of such asset; and

(v) the Excluded Accounts;

provided that the property described in each of clauses (i), (iii) and (iv) above shall only be excluded from the term "Collateral" to the extent the conditions stated in such clauses are not rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC or any other applicable Law.

**SECTION 2.2. Security for Obligations.** This Security Agreement and the Collateral in which the Administrative Agent, for the benefit of the Secured Parties, is granted a security interest hereunder by the Grantors secure the payment and performance of all of the Obligations.

**SECTION 2.3. Grantors Remain Liable.** Anything herein to the contrary notwithstanding:

(a) the Grantors will remain liable under the contracts and agreements included in the Collateral to the extent set forth therein, and will perform all of their duties and obligations under such contracts and agreements to the same extent as if this Security Agreement had not been executed;

(b) the exercise by any Secured Party of any of its rights hereunder will not release any Grantor from any of its duties or obligations under any such contracts or agreements included in the Collateral; and

(c) the Secured Parties will not have any obligation or liability under any contracts or agreements included in the Collateral by reason of this Security Agreement, nor will the Secured Parties be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

**SECTION 2.4. Distributions on Capital Securities; Payments on Pledged Notes.** In the event that any (a) Distribution with respect to any Capital Securities or (b) payment with respect

to any Pledged Notes, in each case pledged hereunder, is permitted to be paid (in accordance with Section 8.6 of the Credit Agreement), such Distribution or payment may be paid directly to the applicable Grantor. If any Distribution or payment is made in contravention of Section 8.6 of the Credit Agreement, such Grantor shall hold the same segregated and in trust for the Administrative Agent for the benefit of the Secured Parties) until paid to the Administrative Agent in accordance with Section 4.1.5.

**SECTION 2.5. Security Interest Absolute, Etc.** This Security Agreement shall in all respects be a continuing, absolute, unconditional and irrevocable grant of security interest, and shall remain in full force and effect until the Termination Date. All rights of the Secured Parties and the security interests granted to the Administrative Agent (for the benefit of the Secured Parties) hereunder, and all obligations of the Grantors hereunder, shall, to the fullest extent permitted by applicable Law, in each case, be absolute, unconditional and irrevocable irrespective of:

(a) any lack of validity, legality or enforceability of any Loan Document (other than this Security Agreement);

(b) the failure of any Secured Party (i) to assert any claim or demand or to enforce any right or remedy against the Borrower or any of the Subsidiaries or any other Person (including any other Grantor) under the provisions of any Loan Document or otherwise, or (ii) to exercise any right or remedy against any other guarantor (including any other Grantor) of, or Collateral securing, any Obligations;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any part of the Obligations, or any other extension, compromise or renewal of any Obligations;

(d) any reduction, limitation, impairment or termination of any Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to (and each Grantor hereby waives, until payment of all Obligations, any right to or claim of) any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligations or otherwise;

(e) any amendment to, rescission, waiver, or other modification of, or any consent to or departure from, any of the terms of any Loan Document;

(f) any addition, exchange or release of any Collateral or of any Person that is (or will become) a Grantor (including the Grantors hereunder), or any surrender or non-perfection of any Collateral, or any amendment to or waiver or release or addition to, or consent to or departure from,

any other guaranty held by the Administrative Agent, for the benefit of the Secured Parties, securing any of the Obligations; or

(g) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of the Borrower or any of the Subsidiaries, any surety or any guarantor.

**SECTION 2.6. Postponement of Subrogation.** Each Grantor agrees that it will not exercise any rights against another Grantor which it may acquire by way of rights of subrogation under any Loan Document to which it is a party until following the Termination Date. No Grantor shall seek or be entitled to seek any contribution or reimbursement from the Borrower or any of the Subsidiaries, in respect of any payment made by such Grantor under any Loan Document or otherwise, until following the Termination Date. Any amount paid to any Grantor on account of any such subrogation rights prior to the Termination Date shall be held in trust for the benefit of the Secured Parties and shall immediately be paid and turned over to the Administrative Agent, for the benefit of the Secured Parties, in the exact form received by such Grantor (duly endorsed in favor of the Administrative Agent, if required), to be credited and applied against the Obligations, whether matured or unmatured, in accordance with Section 6.1(b); provided that, if such Grantor has made payment to the Administrative Agent of all or any part of the Obligations and the Termination Date has occurred, then at such Grantor's request, the Administrative Agent will, at the expense of such Grantor, execute and deliver to such Grantor appropriate documents (without recourse and without representation or warranty) necessary to evidence the transfer by subrogation to such Grantor of an interest in the Obligations resulting from such payment. In furtherance of the foregoing, at all times prior to the Termination Date, such Grantor shall refrain from taking any action or commencing any proceeding against the Borrower or any of the Subsidiaries (or their successors or assigns, whether in connection with a bankruptcy proceeding or otherwise) to recover any amounts in respect of payments made under this Security Agreement to the Administrative Agent or any other Secured Party.

## ARTICLE III REPRESENTATIONS AND WARRANTIES

In order to induce the Secured Parties to enter into the Credit Agreement and make the Loans thereunder, the Grantors represent and warrant to the Secured Parties as set forth below.

**SECTION 3.1. As to Capital Securities of the Subsidiaries, Investment Property.**

(a) With respect to any Subsidiary of any Grantor that is:

(i) a corporation, business trust, joint stock company or similar Person, all Capital Securities issued by such Subsidiary are duly authorized and validly issued, fully paid and non-assessable, and represented by a certificate or certificates; and

(ii) a partnership or limited liability company, no Capital Securities issued by such Subsidiary (A) is dealt in or traded on securities exchanges or in securities markets, (B) expressly provides that such Capital Securities is a security governed by Article 8 of the UCC or (C) is held in a Securities Account, except, with respect to this clause (a)(ii), Capital Securities (x) for which the Administrative Agent is the registered owner or (y) with respect to which the issuer has agreed in an authenticated record with such Grantor and the Administrative Agent to comply with any instructions of the Administrative Agent without the consent of such Grantor. Each Subsidiary party hereto that is an issuer of any Capital Securities pledged hereunder described in clause (y) above agrees that it will comply with the

instructions with respect to such Capital Securities originated by Administrative Agent without the consent of any other Grantor.

(b) Each Grantor has delivered to the Administrative Agent all Certificated Securities constituting Collateral held by such Grantor in a Subsidiary on the Closing Date (or the date such Grantor becomes a party to this Security Agreement, as applicable) to the Administrative Agent, together with duly executed undated blank stock powers, or other equivalent instruments of transfer acceptable to the Administrative Agent.

(c) With respect to Uncertificated Securities constituting Collateral owned by any Grantor in a Subsidiary on the Closing Date (or the date such Grantor becomes a party to this Security Agreement, as applicable), such Grantor has caused the issuer thereof either to (i) register the Administrative Agent as the registered owner of such security or (ii) agree in an authenticated record with such Grantor and the Administrative Agent that such issuer will comply with instructions with respect to such security originated by the Administrative Agent without further consent of such Grantor (which instructions the Administrative Agent agrees not to give unless an Event of Default is continuing). Each Subsidiary party hereto that is an issuer of any Uncertificated Securities pledged hereunder above agrees that it will comply with the instructions with respect to such Uncertificated Securities originated by Administrative Agent without the consent of any other Grantor (which instructions Administrative Agent hereby agrees not to give unless an Event of Default has occurred and is continuing).

(d) The percentage of the issued and outstanding Capital Securities of each Subsidiary pledged on the Closing Date (or the date such Grantor becomes a party to this Security Agreement, as applicable) by each Grantor hereunder is as set forth on Schedule I. All shares of such Capital Securities have been duly and validly issued and are fully paid and nonassessable.

(e) Each of the Intercompany Notes constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to the effects of

bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

**SECTION 3.2.**Grantor Name, Location, Etc. In each case as of the date hereof (or on the date such Grantor becomes a party this Security Agreement as applicable):

(a) (i) The jurisdiction in which each Grantor is located for purposes of Sections 9-301 and 9-307 of the UCC and (ii) the address of each Grantor's executive office and principal place of business is set forth in Item A of Schedule II.

(b) The Grantors do not have any trade names other than those set forth in Item C of Schedule II.

(c) During the twelve months preceding the date hereof (or preceding the date such Grantor becomes a party to this Security Agreement, as applicable), no Grantor has

been known by any legal name different from the one set forth on the signature page hereto, nor has such Grantor been the subject of any merger or other corporate reorganization, except as set forth in Item D of Schedule II.

(d) Each Grantor's federal taxpayer identification number (or foreign equivalent) is (and, during the twelve months preceding the date hereof (or preceding the date such Grantor becomes a party to this Security Agreement, as applicable), such Grantor has not had a federal taxpayer identification number (or equivalent) different from that) set forth in Item E of Schedule II.

(e) No Grantor is a party to any federal, state or local government contract except as set forth in Item F of Schedule II.

(f) No Grantor maintains any Deposit Accounts, Securities Accounts or Commodity Accounts with any Person, in each case, except as set forth on Item G of Schedule II.

(g) No Grantor is the beneficiary of any Letters of Credit, except as set forth on Item H of Schedule II.

(h) No Grantor has Commercial Tort Claims except as set forth on Item I of Schedule II.

(i) The name set forth on the signature page attached hereto (or the signature page of the supplement hereto by which such Grantor has become a party to this Security Agreement, as applicable) is the true and correct legal name (as defined in the UCC) of each Grantor.

**SECTION 3.3. Ownership, No Liens, Etc.** Each Grantor owns its Collateral free and clear of any Lien, except for (a) any security interest created by this Security Agreement and (b) Permitted Liens. No effective UCC financing statement or other filing similar in effect covering all or any part of the Collateral is on file in any recording office, except those filed in favor of the Administrative Agent relating to this Security Agreement, Permitted Liens or as to which a duly authorized termination statement relating to such UCC financing statement or other instrument has been delivered to the Administrative Agent on the Closing Date.

**SECTION 3.4. Possession of Inventory, Control, Etc.**

(a) Each Grantor has, and agrees that it will maintain, exclusive possession of its Documents, Instruments, Promissory Notes, Goods, Equipment and Inventory, other than (i) Equipment and Inventory that is in transit in the ordinary course of business, (ii) Equipment and Inventory that in the ordinary course of business is in the possession or control of a warehouseman, bailee Administrative Agent or other Person (other than a Person controlled by or under common control with such Grantor), it being understood that the Grantor shall, at the request of the Administrative Agent, undertake reasonable efforts to obtain authenticated a record signed by such Person acknowledging that it holds possession of such Collateral for the Administrative Agent's benefit and waives any Lien held by it against such Collateral, (iii) Inventory that is in the possession of a consignee in

the ordinary course of business and (iv) Instruments or Promissory Notes that have been delivered to the Administrative Agent pursuant to Section 3.5. In the case of Equipment or Inventory described in clause (ii) above, no lessor or warehouseman of any premises or warehouse upon or in which such Equipment or Inventory is located has (w) issued any warehouse receipt or other receipt in the nature of a warehouse receipt in respect of any such Equipment or Inventory, (x) issued any Document for any such Equipment or Inventory, (y) received notification of the Administrative Agent's interest (other than the security interest granted hereunder) in any such Equipment or Inventory or (z) any Lien on any such Equipment or Inventory, except for Permitted Liens under Section 8.3(e) of the Credit Agreement.

(b) Each Grantor is the sole entitlement holder of its Deposit Accounts and no other Person (other than the Administrative Agent pursuant to this Security Agreement or any other Person with respect to Permitted Liens) has control or possession of, or any other interest in, any of its Deposit Accounts or any other securities or property credited thereto, other than the Excluded Accounts.

**SECTION 3.5. Negotiable Documents, Instruments and Chattel Paper.** Each Grantor has delivered to the Administrative Agent possession of all originals of all Documents, Instruments, Promissory Notes, and tangible Chattel Paper (other than any Document, Instrument, Promissory Note or tangible Chattel

Paper not exceeding \$[\*\*] in principal amount individually or \$[\*\*] in the aggregate) owned or held by such Grantor on the Closing Date (or the date such Grantor becomes a party to this Security Agreement, as applicable).

**SECTION 3.6. Intellectual Property Collateral.** Except as disclosed on Schedules III through VI, with respect to any Intellectual Property Collateral:

(a) any Intellectual Property Collateral owned by any Grantor is valid, subsisting, unexpired and enforceable and has not been abandoned or adjudged invalid or unenforceable, in whole or in part;

(b) such Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to all Intellectual Property Collateral owned by such Grantor and to the knowledge of such Grantor, no claim has been made that the use of such Intellectual Property Collateral by such Grantor does or may, conflict with, infringe, misappropriate, dilute, misuse or otherwise violate in any material respect, any of the rights of any third party;

(c) such Grantor has made all necessary filings and recordations to protect its interest in any Intellectual Property Collateral owned by such Grantor, including but not limited to filings and recordation to the extent such filing or recordation is necessary for the conduct of the business substantially in the manner presently conducted, including recordations of all of its interests in the Patent Collateral and Trademark Collateral in the United States Patent and Trademark Office (or foreign equivalent), and its claims to the Copyright Collateral in the United States Copyright Office (or foreign equivalent), and, to the extent necessary, has used proper statutory notice in connection with its use of any material Patent, Trademark and Copyright in any of the Intellectual Property Collateral;

(d) such Grantor has taken all reasonable steps to safeguard its Trade Secrets and to its knowledge (A) none of the Trade Secrets of such Grantor has been used, divulged, disclosed or appropriated for the benefit of any other Person other than such Grantor; (B) to such Grantor's knowledge, no employee, independent contractor or Administrative Agent of such Grantor has misappropriated any Trade Secrets of any other Person in the course of performance of his or her duties as an employee, independent contractor or Administrative Agent of such Grantor; and (C) no employee, independent contractor or Administrative Agent of such Grantor is in default or breach of any material term of any employment agreement, non-disclosure agreement, assignment of inventions agreement or similar agreement or contract relating in any material way to the protection, ownership, development, use or transfer of such Grantor's Intellectual Property Collateral;

(e) to such Grantor's knowledge, no third party is infringing upon any Intellectual Property owned or used by such Grantor;

(f) no settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by such Grantor or to which such Grantor is bound that adversely affects its rights to own or use any Intellectual Property;

(g) such Grantor has not made a previous assignment, sale, transfer or agreement constituting a present or future assignment, sale or transfer of any Intellectual Property for purposes of granting a security interest or as Collateral that has not been terminated or released except as permitted under the Credit Agreement;

(h) such Grantor has executed and delivered to the Administrative Agent Intellectual Property Collateral security agreements for all material United States Copyrights, Patents and Trademarks owned by such Grantor, including all United States Copyrights, Patents and Trademarks on Schedule III through VI (as such schedules may be amended or supplemented from time to time by notice by such Grantor to the Administrative Agent);

(i) such Grantor uses commercially reasonable standards of quality in the manufacture, distribution and sale of all products sold and in the provision of all services rendered under or in connection with all Trademarks and has taken all commercially reasonable action necessary to ensure that all licensees of the Trademarks owned by such Grantor use such adequate standards of quality;

(j) the consummation of the transactions contemplated by the Credit Agreement and this Security Agreement will not result in the termination or material impairment of any of the Intellectual Property Collateral; and

(k) to such Grantor's knowledge, such Grantor owns or is entitled to use by license, lease or other agreement, all Patents, Trademarks, Trade Secrets, Copyrights, mask works, licenses, technology, know-how, processes and rights with respect to any of the foregoing as necessary to conduct the business and operations of such Grantor substantially in the manner presently conducted.

### SECTION 3.7. Validity, Etc.

(a) This Security Agreement creates a valid security interest in the Collateral securing the payment of the Obligations to the extent such security interest may be created pursuant to Article 9 of the UCC.

(b) As of the Closing Date (or the date such Grantor becomes a party to this Security Agreement, as applicable), each Grantor has filed or caused to be filed all UCC-1 financing statements in the filing office for each Grantor's jurisdiction of organization listed in Item A of Schedule II (collectively, the "Financing Statements") (or has delivered to the Administrative Agent

the Financing Statements suitable for timely and proper filing in such offices) and has taken all other actions necessary for the Administrative Agent to obtain control of the Collateral as provided in Sections 9-104, 9-105, 9-106 and 9-107 of the UCC, in each case to the extent required by this Security Agreement.

(c) Upon the filing of the Financing Statements with the appropriate agencies therefor the security interests created under this Security Agreement shall constitute a perfected security interest in the Collateral described on such Financing Statements in favor of the Administrative Agent to the extent that a security interest therein may be perfected by filing a financing statement pursuant to the relevant UCC, prior to all other Liens, except for Permitted Liens (in which case such security interest shall be second in priority of right only to the Permitted Liens until the obligations secured by such Permitted Liens have been satisfied).

**SECTION 3.8. Authorization, Approval, Etc.** Except as have been obtained or made and are in full force and effect, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or any other third party is required either:

(a) for the grant by the Grantors of the security interest granted hereby or for the execution, delivery and performance of this Security Agreement by the Grantors;

(b) for the perfection or maintenance of the security interests hereunder including the first priority nature of such security interest (except with respect to the filing of Financing Statements or, with respect to Intellectual Property Collateral, the recordation of any agreements with the United States Patent and Trademark Office or the United States Copyright Office or, with respect to foreign Intellectual Property Collateral and to the extent the Administrative Agent has requested that the Borrower take such action, the taking of appropriate action under applicable foreign Law and, with respect to after-acquired Intellectual Property Collateral, any subsequent filings in such applicable intellectual property offices) or the exercise by the Administrative Agent of its rights and remedies hereunder; or

(c) for the exercise by the Administrative Agent of the voting or other rights provided for in this Security Agreement, except (i) with respect to any securities issued by a Subsidiary of the Grantors, as may be required in connection with a disposition of such securities by Laws affecting the offering and sale of securities generally, the remedies in

respect of the Collateral pursuant to this Security Agreement and (ii) any "change of control" or similar filings required by state licensing agencies.

**SECTION 3.9. Best Interests.** It is in the best interests of each Grantor (other than the Borrower) to execute this Security Agreement inasmuch as such Grantor will, as a result of being an Affiliate of the Borrower, derive substantial direct and indirect benefits from the Loans made to the Borrower by the

Secured Parties pursuant to the Credit Agreement, and each Grantor agrees that the Secured Parties are relying on this representation in agreeing to make such Loans pursuant to the Credit Agreement to the Borrower.

## ARTICLE IV COVENANTS

Each Grantor covenants and agrees that, until the Termination Date, such Grantor will perform, comply with and be bound by the obligations set forth below.

### SECTION 4.1. As to Investment Property, Etc.

#### SECTION 4.1.1. Capital Securities of Subsidiaries. No Grantor will allow any of its Subsidiaries:

- (a) that is a corporation, business trust, joint stock company or similar Person, to issue Uncertificated Securities;
- (b) that is a partnership or limited liability company, to (i) issue Capital Securities that are to be dealt in or traded on securities exchanges or in securities markets, (ii) expressly provide in its Organic Documents that its Capital Securities are securities governed by Article 8 of the UCC, or (iii) place such Subsidiary's Capital Securities in a Securities Account; and
- (c) to issue Capital Securities in addition to or in substitution for the Capital Securities pledged hereunder, except to such Grantor (and such Capital Securities are immediately pledged and delivered to the Administrative Agent pursuant to the terms of this Security Agreement).

#### SECTION 4.1.2. Investment Property (other than Certificated Securities).

- (a) With respect to any Deposit Accounts, Securities Accounts, Commodity Accounts, Commodity Contracts or Security Entitlements constituting Investment Property owned or held by any Grantor, such Grantor will cause (except for Excluded Accounts) the intermediary maintaining such Investment Property to execute a Control Agreement relating to such Investment Property or other assets pursuant to which such intermediary agrees to comply with the Administrative Agent's instructions with respect to such Investment Property or other assets without further consent by such Grantor (it being understood that the Administrative Agent shall only deliver notice to such intermediary that it must comply with the Administrative Agent's instructions after and during the continuation of an Event of Default).
- (b) With respect to any Uncertificated Securities (other than Uncertificated Securities credited to a Securities Account) constituting Investment Property owned or held by any Grantor, such Grantor will cause the issuer of such securities that is not a party hereto to either (i) register

the Administrative Agent as the registered owner thereof on the books and records of the issuer or (ii) execute a Control Agreement relating to such Investment Property pursuant to which the issuer agrees to comply with the Administrative Agent's instructions with respect to such Uncertificated Securities without further consent by such Grantor.

**SECTION 4.1.3. Certificated Securities (Stock Powers)**. Each Grantor agrees that all Certificated Securities constituting Collateral, including the Capital Securities delivered by such Grantor pursuant to this Security Agreement, will be accompanied by duly executed undated blank stock powers, or other equivalent instruments of transfer reasonably acceptable to the Administrative Agent.

**SECTION 4.1.4. Continuous Pledge**. Each Grantor will (subject to the terms of the Credit Agreement) (a) deliver to the Administrative Agent all Investment Property and all Payment Intangibles to the extent that such Investment Property or Payment Intangibles are evidenced by a Document, Instrument, Promissory Note or Chattel Paper (other than any Document, Instrument, Promissory Note or Chattel Paper not exceeding \$[\*\*] in the principal amount individually or \$[\*\*] in aggregate), and (b) at all times keep pledged to the Administrative Agent pursuant hereto, on a first-priority, perfected basis, a security interest therein and in all interest and principal with respect to such Payment Intangibles, and all Proceeds and rights from time to time received by or distributable to such Grantor in respect of any of the foregoing Collateral. Each Grantor agrees that it will, promptly following receipt thereof, deliver to the Administrative Agent possession of all originals of negotiable Documents, Instruments, Promissory Notes and Chattel Paper that it acquires following the Closing Date (other than any Document, Instrument, Promissory Note or Chattel Paper not exceeding \$[\*\*] in the principal amount individually or \$[\*\*] in aggregate).

**SECTION 4.1.5. Voting Rights, Dividends, Etc.** Each Grantor agrees:

(a) upon receipt of notice of the occurrence and continuance of an Event of Default from the Administrative Agent and without any request therefor by the Administrative Agent, so long as such Event of Default shall continue, to deliver (properly endorsed where required hereby or requested by the Administrative Agent) to the Administrative Agent all dividends and Distributions with respect to Investment Property; all interest, principal, other cash payments on Payment Intangibles; and all Proceeds of the Collateral, in each case thereafter received by such Grantor, all of which shall be held by the Administrative Agent as additional Collateral, except for payments made in accordance with Section 8.6 of the Credit Agreement; and

(b) immediately upon the occurrence and during the continuance of an Event of Default and so long as the Administrative Agent has notified such Grantor of the Administrative Agent's intention to exercise its voting power under this clause (b).

- (i) with respect to Collateral consisting of general partner interests or limited liability company interests, to promptly modify its Organic Documents to admit the Administrative Agent as a general partner or member, as applicable;
- (ii) that the Administrative Agent may exercise (to the exclusion of such Grantor) the voting power and all other incidental rights of ownership with respect to any Investment Property constituting Collateral and such Grantor hereby grants the Administrative Agent an irrevocable proxy, exercisable under such circumstances, to vote such Investment Property; and
- (iii) to promptly deliver to the Administrative Agent such additional proxies and other documents as may be necessary to allow the Administrative Agent to exercise such voting power.

All dividends, Distributions, interest, principal, cash payments, Payment Intangibles and Proceeds that may at any time and from time to time be held by such Grantor, but which such Grantor is then obligated to deliver to the Administrative Agent, shall, until delivery to the Administrative Agent, be held by such Grantor separate and apart from its other property in trust for the Administrative Agent. The Administrative Agent agrees that unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given the notice referred to in clause (b) above, such Grantor will have the exclusive voting power with respect to any Investment Property constituting Collateral and the Administrative Agent will, upon the written request of such Grantor, promptly deliver such proxies and other documents, if any, as shall be reasonably requested by such Grantor which are necessary to allow such Grantor to exercise that voting power; provided that no vote shall be cast, or consent, waiver, or ratification given, or action taken by such Grantor that would impair any such Collateral or be inconsistent with or violate any provision of any Loan Document.

**SECTION 4.2. Change of Name, Etc.** No Grantor will change its name or place of incorporation or organization or federal taxpayer identification number except as otherwise permitted by the Credit Agreement.

**SECTION 4.3. As to Accounts.**

- (a) Each Grantor shall have the right to collect all Accounts so long as no Event of Default shall have occurred and be continuing.
- (b) Upon (i) the occurrence and continuance of an Event of Default and (ii) the delivery of notice by the Administrative Agent to each Grantor, all Proceeds of Collateral received by such Grantor shall be delivered in kind to the Administrative Agent for deposit in a Deposit Account of such Grantor maintained with the Administrative Agent or that otherwise is a Controlled Account (together with any other Deposit Accounts or Controlled Accounts pursuant to which any portion of

the Collateral is deposited with the Administrative Agent, the "Collateral Accounts"), and such Grantor shall not commingle any such Proceeds, and shall hold separate and apart from all other property, all such Proceeds in express trust for the benefit of the Administrative Agent until delivery thereof is made to the Administrative Agent.

(c) Following the delivery of notice pursuant to clause (b)(ii), the Administrative Agent shall have the right to apply any amount in the Collateral Accounts to the payment of any Obligations which are then due and payable in accordance with Section 4.4(b) of the Credit Agreement.

(d) With respect to each of the Collateral Accounts, it is hereby confirmed and agreed that (i) deposits in such Collateral Account are subject to a security interest as contemplated hereby, (ii) such Collateral Account shall be under the control of the Administrative Agent and (iii), following the delivery of notice pursuant to clause (b)(ii) above, the Administrative Agent shall have the sole right of withdrawal over such Collateral Account.

#### SECTION 4.4. As to Grantors' Use of Collateral.

(a) Subject to clause (b) below, each Grantor (i) may in the ordinary course of its business, at its own expense, sell, lease or furnish under contracts of service any of the Inventory normally held by such Grantor for such purpose, and use and consume, in the ordinary course of its business, any raw materials, work in process or materials normally held by such Grantor for such purpose, (ii) will, at its own expense, endeavor to collect, as and when due, all amounts due with respect to any of the Collateral, including the taking of such action with respect to such collection as the Administrative Agent may reasonably request following the occurrence of an Event of Default or, in the absence of such request, as such Grantor may deem advisable, (iii) may grant, in the ordinary course of business, to any party obligated on any of the Collateral, any rebate, refund or allowance to which such party may be lawfully entitled, and may accept, in connection therewith, the return of Goods, the sale or lease of which shall have given rise to such Collateral and (iv) may make Dispositions permitted under the Credit Agreement.

(b) At any time following the occurrence and during the continuance of an Event of Default, whether before or after the maturity of any of the Obligations, the Administrative Agent may (i) revoke any or all of the rights of each Grantor set forth in clause (a)(ii), (iii) or (iv) above, (ii) notify any parties obligated on any of the Collateral to make payment to the Administrative Agent of any amounts due or to become due thereunder and (iii) enforce collection of any of the Collateral by suit or otherwise and surrender, release, or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder or evidenced thereby.

(c) Upon the request of the Administrative Agent following the occurrence and during the continuance of an Event of Default, each Grantor will, at its own expense, notify any parties

obligated on any of the Collateral to make payment to the Administrative Agent of any amounts due or to become due thereunder.

(d) At any time following the occurrence and during the continuation of an Event of Default, the Administrative Agent may endorse, in the name of such Grantor, any item, howsoever received by the Administrative Agent, representing any payment on or other Proceeds of any of the Collateral.

**SECTION 4.5. As to Intellectual Property Collateral.** Each Grantor covenants and agrees to comply with the following provisions as such provisions relate to any Intellectual Property Collateral material to the operations or business of such Grantor:

(a) such Grantor will not (i) do or fail to perform any act whereby any of the Patent Collateral may lapse or become abandoned or dedicated to the public or unenforceable, (ii) permit any of its licensees to (A) fail to continue to use any of the Trademark Collateral in order to maintain all of the Trademark Collateral in full force free from any claim of abandonment for non-use, (B) fail to maintain the quality of products and services offered under all of the Trademark Collateral at a level substantially consistent with the quality of products and services offered under such Trademark as of the date hereof, (C) fail to employ all of the Trademark Collateral registered with any federal or state or foreign authority with an appropriate notice of such registration, (D) adopt or use any other Trademark which is confusingly similar or a colorable imitation of any of the Trademark Collateral, (E) use any of the Trademark Collateral registered with any federal, state or foreign authority except for the uses for which registration or application for registration of all the Trademark Collateral has been made or (F) do or permit any act or knowingly omit to do any act whereby any of the Trademark Collateral may become invalid or unenforceable, or (iii) do or permit any act or knowingly omit to do any act whereby any of the Copyright Collateral or any of the Trade Secrets Collateral may lapse or become invalid or unenforceable or placed in the public domain except upon expiration of the end of an unrenewable term of a registration thereof, unless, in the case of any of the foregoing requirements in clauses (i), (ii) and (iii), such Grantor reasonably and in good faith determines that either (x) such Intellectual Property Collateral is of negligible economic value to such Grantor or (y) the loss of such Intellectual Property Collateral would not be material to such Grantor;

(b) such Grantor shall promptly notify the Administrative Agent if it knows, or has reason to know, that any application or registration relating to any material item of the Intellectual Property Collateral may, in the Grantor's reasonable commercial judgment, become abandoned or dedicated to the public or placed in the public domain or invalid or unenforceable, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any foreign counterpart thereof or any court) regarding such Grantor's

ownership of any of the Intellectual Property Collateral, its right to register the same or to keep and maintain and enforce the same;

(c) in no event will such Grantor or any of its Administrative Agents, employees, designees or licensees file an application for the registration of any Intellectual Property Collateral with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, unless such Grantor promptly informs the Administrative Agent and, upon request of the Administrative Agent (subject to the terms of the Credit Agreement), executes and delivers all agreements, instruments and documents as the Administrative Agent may reasonably request to evidence the Administrative Agent's security interest in such Intellectual Property Collateral;

(d) such Grantor will take all reasonable and necessary steps, including in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof (subject to the terms of the Credit Agreement), to maintain and pursue any material application (and to obtain the relevant registration) filed with respect to, and to maintain any registration of, material Intellectual Property Collateral, including the filing of applications for renewal, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings and the payment of fees and taxes (except to the extent that dedication, abandonment or invalidation is permitted under the foregoing clauses (a) or (b) or such Grantor reasonably and in good faith determines that the failure to take any such step would not have a material adverse effect on the interests of the Administrative Agent in such Intellectual Property Collateral); and

(e) such Grantor will promptly (but no less than quarterly) execute and deliver to the Administrative Agent (as applicable) a Patent Security Agreement, Trademark Security Agreement and/or Copyright Security Agreement, as the case may be, in the forms of Exhibit A, Exhibit B and Exhibit C hereto, respectively, following its obtaining an interest in any Patent, Trademark or Copyright, and shall execute and deliver to the Administrative Agent any other document reasonably required to evidence the Administrative Agent's interest in any part of such item of Intellectual Property Collateral unless such Grantor shall determine in good faith (with the consent of the Administrative Agent) that any Intellectual Property Collateral is of negligible economic value to such Grantor.

#### SECTION 4.6. As to Letter-of-Credit Rights.

(a) Each Grantor, by granting a security interest in its Letter-of-Credit Rights to the Administrative Agent, intends to (and hereby does) collaterally assign to the Administrative Agent its rights (including its contingent rights) to the Proceeds of all Letter-of-Credit Rights of which it is or hereafter becomes a beneficiary or assignee.

(b) Upon the occurrence of an Event of Default, such Grantor will, promptly upon request by the Administrative Agent, (i) notify (and such Grantor hereby authorizes the Administrative Agent to notify) the issuer and each nominated Person with respect to each of the Letters of Credit of such Grantor that the Proceeds thereof have been assigned to the Administrative Agent hereunder and any payments due or to become due in respect thereof are to be made directly to the Administrative Agent and (ii) arrange for the Administrative Agent to become the transferee beneficiary of each such Letter of Credit.

**SECTION 4.7. As to Commercial Tort Claims.** Each Grantor covenants and agrees that, until the Termination Date, with respect to any Commercial Tort Claim with an amount in issue individually or in the aggregate in excess of \$[\*\*] hereafter arising, it shall promptly deliver to the Administrative Agent a supplement in form and substance reasonably satisfactory to the Administrative Agent, together with all supplements to schedules thereto, identifying such new Commercial Tort Claim.

**SECTION 4.8. Electronic Chattel Paper and Transferable Records.** If any Grantor at any time holds or acquires an interest in any Electronic Chattel Paper or any "transferable record,"

as that term is defined in Section 201 of the U.S. Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the U.S. Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, with a value in excess of \$[\*\*], such Grantor shall promptly notify the Administrative Agent thereof and, at the request of the Administrative Agent, shall take such action as the Administrative Agent may reasonably request to vest in the Administrative Agent control under Section 9-105 of the UCC of such Electronic Chattel Paper or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Administrative Agent agrees with such Grantor that the Administrative Agent will arrange, pursuant to procedures satisfactory to the Administrative Agent and so long as such procedures will not result in the Administrative Agent's loss of control, for the Grantor to make alterations to the Electronic Chattel Paper or transferable record permitted under Section 9-105 of the UCC or, as the case may be, Section 201 of the U.S. Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the U.S. Uniform Electronic Transactions Act for a party in control to allow without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Grantor with respect to such Electronic Chattel Paper or transferable record.

**SECTION 4.9. Landlord Access Agreements.** Each Grantor shall furnish to the Administrative Agent collateral access agreements, as applicable, as to locations where any books and records, or more than \$[\*\*] of other Collateral, is stored, in form and substance reasonably satisfactory to the Administrative Agent, from each landlord, bailee or other third party to such Grantor for each real property lease entered into by such Grantor after the date hereof.

**SECTION 4.10. Further Assurances, Etc.** Each Grantor agrees that, from time to time at its own expense, it will, subject to the terms of this Security Agreement, promptly execute and deliver all further instruments and documents, and take all further action that may be necessary or that the Administrative Agent may reasonably request, in order to perfect, preserve and protect any security interest granted or purported to be granted hereby or to enable the Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, such Grantor will:

- (a) from time to time upon the request of the Administrative Agent, promptly deliver to the Administrative Agent such stock powers, instruments and similar documents, reasonably satisfactory in form and substance to the Administrative Agent, with respect to such Collateral as the Administrative Agent may request and will, from time to time upon the request of the Administrative Agent, after the occurrence and during the continuance of any Event of Default, promptly transfer any securities constituting Collateral into the name of any nominee designated by the Administrative Agent; if any Collateral shall be evidenced by an Instrument, negotiable Document, Promissory Note or tangible Chattel Paper, deliver and pledge to the Administrative Agent hereunder such Instrument, negotiable Document, Promissory Note or tangible Chattel Paper (other than any Instruments, negotiable Documents, Promissory Notes or tangible Chattel Paper in principal amount less than \$[\*\*\*] individually or \$[\*\*\*] in the aggregate) duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to the Administrative Agent;
- (b) file (and such Grantor hereby authorizes the Administrative Agent to file) such Financing Statements or continuation statements, or amendments thereto, and such other instruments or notices (including any assignment of claim form under or pursuant to the federal assignment of claims statute, 31 U.S.C. § 3727, any successor or amended version thereof or any regulation promulgated under or pursuant to any version thereof), as may be necessary or that the Administrative Agent may reasonably request in order to perfect and preserve the security interests and other rights granted or purported to be granted to the Administrative Agent hereby;
- (c) at all times keep pledged to the Administrative Agent pursuant hereto, on a first-priority, perfected basis, all Investment Property constituting Collateral, all dividends and Distributions with respect thereto, and all interest and principal with respect to Promissory Notes constituting Collateral, and all Proceeds and rights from time to time received by or distributable to such Grantor in respect of any of the foregoing Collateral;
- (d) not take or omit to take any action the taking or the omission of which would result in any impairment or alteration of any obligation of the maker of any Payment Intangible or other Instrument constituting Collateral, except as provided in Section 4.4;

(e) not create any tangible Chattel Paper without placing a legend on such tangible Chattel Paper reasonably acceptable to the Administrative Agent indicating that the Administrative Agent has a security interest in such Chattel Paper (provided that so long as no Event of Default is continuing, Chattel Paper and records relating to such Collateral for amounts in each case less than \$[\*\*\*] need only be marked upon Administrative Agent's written request);

(f) furnish to the Administrative Agent, from time to time at the Administrative Agent's request, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Administrative Agent may reasonably request, all in reasonable detail (provided that so long as no Event of Default is continuing, Administrative Agent may not require such additional statements and schedules more than once per fiscal quarter); and

(g) do all things reasonably requested by the Administrative Agent in accordance with this Security Agreement in order to enable the Administrative Agent to have and maintain control over the Collateral consisting of Investment Property, Deposit Accounts (other than Excluded Accounts), Letter-of-Credit-Rights and Electronic Chattel Paper.

With respect to the foregoing and the grant of the security interest hereunder, each Grantor hereby authorizes the Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral. Each Grantor agrees that a carbon, photographic or other reproduction of this Security Agreement or any UCC financing statement covering the Collateral or any part thereof shall be sufficient as a UCC financing statement where permitted by Law. Each Grantor hereby authorizes the Administrative Agent to file financing statements describing as the collateral covered thereby "all of the debtor's personal property or assets" or words to that effect, notwithstanding that such wording may be broader in scope than the Collateral described in this Security Agreement. Notwithstanding

anything else herein, the Administrative Agent shall not be liable for the preparation, filing or maintenance of any UCC or other applicable financing statements or instruments, all of which shall be duties of the Grantors.

## ARTICLE V

### THE ADMINISTRATIVE AGENT

**SECTION 5.1. Administrative Agent Appointed Attorney-in-Fact.** Each Grantor hereby irrevocably designates and appoints the Administrative Agent, on behalf of the Secured Parties, as its attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time in the Administrative Agent's discretion, following the occurrence and during the continuance of an Event of Default, to take any action and to execute any instrument which the

Administrative Agent may deem reasonably necessary or advisable to accomplish the purposes of this Security Agreement, and:

- (a) to demand, collect, settle, compromise and adjust, and give discharges and releases concerning the Collateral, all as the Administrative Agent may deem reasonably appropriate;
- (b) to commence and prosecute any actions at any court for the purposes of collecting any of the Collateral and enforcing any other right in respect thereof;
- (c) to defend, settle or compromise any action brought in respect of the Collateral and, in connection therewith, give such discharge or release as the Administrative Agent may deem reasonably appropriate;
- (d) to pay or discharge taxes, liens, security interest or other encumbrances levied or placed on or threatened against the Collateral;
- (e) to direct any parties liable for any payment in connection with any of the Collateral to make payment of any and all monies due and to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct;
- (f) to receive payment of and receipt for any and all monies, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral;
- (g) to sign and endorse, any drafts, assignments, proxies, stock powers, verifications, notices and other documents relating to the Collateral;
- (h) to execute and deliver all assignments, conveyances, statements, financing statements, renewal financing statements, security and pledge agreements, affidavits, notices and other agreements, instruments and documents that the Administrative Agent may deem reasonably appropriate in order to perfect and maintain the security interests and liens granted in this Security Agreement and in order to fully consummate all of the transactions contemplated herein;
- (i) to exchange any of the Collateral or other property upon any merger, consolidation, reorganization, recapitalization or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Collateral with any committee, depository, transfer Administrative Agent, registrar or other designated agency upon such term as the Administrative Agent may deem reasonably appropriate;
- (j) to vote for a shareholder or member resolution, or to sign an instrument in writing, sanctioning the transfer of any or all of the Collateral into the name of the Administrative Agent (or its designee) or one or more of the Secured Parties or into the name of any transferee to whom the Collateral or any part thereof may be sold pursuant to Article VI hereof; and

(k) to perform the affirmative obligations of such Grantor hereunder.

Each Grantor hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this Section 5.1 is irrevocable and coupled with an interest.

**SECTION 5.2. Administrative Agent May Perform.** If any Grantor fails to perform any agreement contained herein, the Administrative Agent, on behalf of the Secured Parties may (but shall not be obligated to) itself perform, or cause performance of, such agreement, that the Administrative Agent deems necessary for the maintenance, preservation or protection of any of the Collateral or of its security interest therein to the extent provided for herein, and the expenses of the Administrative Agent incurred in connection therewith shall be payable by such Grantor pursuant to Section 10.3 of the Credit Agreement.

**SECTION 5.3. Administrative Agent Has No Duty.** The powers conferred on the Administrative Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty on it to exercise any such powers. Except for reasonable care of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Administrative Agent shall have no duty as to any Collateral or responsibility for:

(a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Investment Property, whether or not the Administrative Agent has or is deemed to have knowledge of such matters; or

(b) taking any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

**SECTION 5.4. Reasonable Care.** The Administrative Agent is required to exercise reasonable care in the custody and preservation of any of the Collateral in its possession; provided that the Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral, if it takes such action for that purpose as each Grantor reasonably requests in writing at times other than upon the occurrence and during the continuance of any Event of Default, but failure of the Administrative Agent to comply with any such request at any time shall not in itself be deemed a failure to exercise reasonable care.

**SECTION 5.5. Assignment by the Administrative Agent.** The Administrative Agent may from time to time assign its security interest in the Collateral and any portion thereof to a

successor Administrative Agent in accordance with the Credit Agreement, and the assignee shall be entitled to all of the rights and remedies of the Administrative Agent under this Security Agreement in relation thereto.

**SECTION 5.6.** The provisions of Article XI of the Credit Agreement, including the rights, privileges, protections, benefits, indemnities and immunities of the Administrative Agent are incorporated herein, *mutatis mutandis*, as if a part hereof, and shall also apply to the Administrative Agent acting under or in connection with this Security Agreement.

**SECTION 5.7.** Release of Collateral. The Administrative Agent, upon the direction of the Lenders, may release any of the Collateral from this Security Agreement or may substitute any of the Collateral for other Collateral without altering, varying or diminishing in any way the force, effect, Lien, pledge or security interest of this Security Agreement as so any Collateral not expressly released or substituted, and this Security Agreement shall continue as a first priority Lien (subject to Permitted Liens) on all Collateral not expressly released or substituted.

## ARTICLE VI REMEDIES

**SECTION 6.1.** Certain Remedies. If any Event of Default shall have occurred and be continuing:

- (a) The Administrative Agent may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of the Administrative Agent on default under the UCC (whether or not the UCC applies to the affected Collateral) and also may:
  - (i) take possession of any Collateral not already in its possession without demand and without legal process;
  - (ii) require each Grantor to, and each Grantor hereby agrees that it will, at its expense and upon request of the Administrative Agent forthwith, assemble all or part of the Collateral as directed by the Administrative Agent and make it available to the Administrative Agent at a place to be designated by the Administrative Agent that is reasonably convenient to both the Administrative Agent and such Grantor;
  - (iii) enter onto the property where any Collateral is located and take possession thereof without demand and without legal process; and
  - (iv) without notice except as specified below, lease, license, sell or otherwise dispose of the Collateral or any part thereof in one or more parcels at any public or private sale, at any of the Administrative Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Administrative Agent may deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale shall be required by Law, at least ten (10) days' prior notice to such Grantor of the time and place of any public sale or the time after which any private sale is

to be made shall constitute reasonable notification. The Administrative Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) All cash Proceeds received by the Administrative Agent in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral shall be applied by the Administrative Agent against all or any part of the Obligations as set forth in Section 4.4(b) of the Credit Agreement.

(c) The Administrative Agent may:

(i) transfer all or any part of the Collateral into the name of the Administrative Agent or its nominee, with or without disclosing that such Collateral is subject to the Lien hereunder;

(ii) notify the parties obligated on any of the Collateral to make payment to the Administrative Agent of any amount due or to become due thereunder;

(iii) withdraw, or cause or direct the withdrawal, of all funds with respect to any Collateral Account;

(iv) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto;

(v) endorse any checks, drafts, or other writings in any Grantor's name to allow collection of the Collateral;

(vi) take control of any Proceeds of the Collateral; and

(vii) execute (in the name, place and stead of any Grantor) endorsements, assignments, stock powers and other instruments of conveyance or transfer with respect to all or any of the Collateral.

**SECTION 6.2. Securities Laws.** If the Administrative Agent shall determine to exercise its right to sell all or any of the Collateral that are Capital Securities pursuant to Section 6.1(a)(iv), each Grantor agrees that upon request of the Administrative Agent, such Grantor will, at its own expense:

(a) execute and deliver, and cause (or, with respect to any issuer which is not a Subsidiary of such Grantor, use its best efforts to cause) each issuer of the Collateral contemplated to be sold and the directors and officers thereof to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts and things, as may be reasonably necessary or, in the opinion of the Administrative Agent, advisable

to register such Collateral under the provisions of the Securities Act of 1933, as from time to time amended, and the rules and regulations of the SEC thereunder (the "Securities Act"), and cause the registration statement relating thereto to become effective and to remain effective for such period as prospectuses are required by Law to be furnished, and to make all amendments and supplements thereto and to the related prospectus which, in the opinion of the Administrative Agent, are reasonably necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the SEC applicable thereto;

(b) use its best efforts to exempt the Collateral under the state securities or "Blue Sky" laws and to obtain all necessary governmental approvals for the sale of the Collateral, as reasonably requested by the Administrative Agent;

(c) cause (or, with respect to any issuer that is not a Subsidiary of such Grantor, use its best efforts to cause) each such issuer to make available to its security holders, as soon as practicable, an earnings statement that will satisfy the provisions of Section 11(a) of the Securities Act; and

(d) do or cause to be done all such other acts and things as may be necessary to make such sale of the Collateral or any part thereof valid and binding and in compliance with applicable law.

**SECTION 6.3. Compliance with Restrictions.** Each Grantor agrees that in any sale of any of the Collateral whenever an Event of Default shall have occurred and be continuing, the Administrative Agent is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to avoid any violation of applicable Law (including compliance with such procedures as may restrict the number of prospective bidders and purchasers, require that such prospective bidders and purchasers have certain qualifications, and restrict such prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of such Collateral), or in order to obtain any required approval of the sale or of the purchaser by any Governmental Authority or official, and such Grantor further agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Administrative Agent be liable nor accountable to such Grantor for any discount allowed by the reason of the fact that such Collateral is sold in compliance with any such limitation or restriction.

**SECTION 6.4. Protection of Collateral.** The Administrative Agent may from time to time, at its option, perform any act which any Grantor fails to perform after being requested in writing so to perform (it being understood that no such request need be made after the occurrence and during the continuance of an Event of Default) and the Administrative Agent may from time to time take any other action which the Administrative Agent deems necessary for the maintenance, preservation or protection of any of the Collateral or of its security interest therein.

## ARTICLE VII

### MISCELLANEOUS PROVISIONS

**SECTION 7.1. Loan Document.** This Security Agreement is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof, including Article X thereof.

**SECTION 7.2. Binding on Successors, Transferees and Assigns; Assignment.** This Security Agreement shall remain in full force and effect until the Termination Date has occurred, shall be binding upon the Grantors and their successors, permitted transferees and permitted assigns and shall inure to the benefit of and be enforceable by the Administrative Agent and the Secured Parties; provided that no Grantor may assign or transfer any of its rights or obligations hereunder without the prior consent of the Administrative Agent and the Lenders.

**SECTION 7.3. Amendments, Etc.** No amendment or modification to or waiver of any provision of this Security Agreement, nor consent to any departure by any Grantor from its obligations under this Security Agreement, shall in any event be effective unless the same shall be in writing and signed by the Administrative Agent and the Grantors and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**SECTION 7.4. Notices.** All notices and other communications provided for hereunder shall be delivered or made as provided in Section 10.2 of the Credit Agreement.

**SECTION 7.5. Release of Liens.** Upon (a) the sale of Collateral to Persons who are not the Borrower or any Subsidiary thereof in accordance with the Credit Agreement, (b) the occurrence of the Termination Date or (c) any Collateral becoming Excluded Property or an Excluded Account, the security interests granted herein in such Collateral shall automatically terminate with respect to (i) such Collateral (in the case of clause (a)) or (ii) all Collateral (in the case of clause (b)). Upon any such sale or termination, the Administrative Agent will, at the Grantors' sole expense, deliver to the Grantors, without any representations, warranties or recourse of any kind whatsoever, all such Collateral held by the Administrative Agent hereunder, and execute and deliver to the Grantors such documents as the Grantors shall reasonably request to evidence such termination.

**SECTION 7.6. Additional Grantors.** Upon the execution and delivery by any other Person of a supplement in the form of Annex I hereto, such Person shall become a "Grantor" hereunder with the same force and effect as if it were originally a party to this Security Agreement and named as a "Grantor" hereunder. The execution and delivery of such supplement shall not require the consent of any other Grantor hereunder, and the rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Security Agreement. Any schedules delivered by any additional Grantor pursuant to such supplement shall supplement the relevant schedules to this Security Agreement.

**SECTION 7.7. No Waiver; Remedies.** In addition to, and not in limitation of Section 2.5, no failure on the part of the Administrative Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any

right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by Law.

**SECTION 7.8. Severability.** Any provision of this Security Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Security Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

**SECTION 7.9. Governing Law, Entire Agreement, Etc.** THIS SECURITY AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY DOCUMENT CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK). This Security Agreement, along with the other Loan Documents, constitutes the entire understanding among the parties hereto with respect to the subject matter thereof and supersedes any prior agreements, written or oral, with respect thereto.

**SECTION 7.10. Counterparts.** This Security Agreement may be executed by the parties hereto in several counterparts, each of which shall be an original and all of which shall constitute together but one and the same agreement. This Security Agreement shall become effective when counterparts hereof executed on behalf of all of the signatories hereto, shall have been received by the Administrative Agent. Delivery of an executed counterpart of a signature page to this Security Agreement by email (e.g. "pdf" or "tiff") or telecopy shall be effective as delivery of a manually executed counterpart of this Security Agreement.

**SECTION 7.11. Forum Selection and Consent to Jurisdiction.** ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS SECURITY AGREEMENT, OR ANY

COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE LENDER OR ANY GRANTOR IN CONNECTION HEREWITH SHALL BE BROUGHT AND MAINTAINED IN THE COURTS OF THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK IN THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE LENDER'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH GRANTOR IRREVOCABLY APPOINTS THE BORROWER AS ITS AUTHORIZED ADMINISTRATIVE AGENT UPON WHICH PROCESS MAY BE SERVED IN ANY SUCH SUIT OR PROCEEDING, AND AGREES THAT SERVICE OF PROCESS UPON THE BORROWER, AND WRITTEN NOTICE OF SAID SERVICE TO SUCH GRANTOR, BY THE PERSON SERVING THE SAME TO THE ADDRESS PROVIDED IN SECTION 10.2 OF THE CREDIT AGREEMENT, SHALL CONSTITUTE EFFECTIVE SERVICE OF PROCESS UPON THE GRANTOR IN ANY SUCH SUIT OR PROCEEDING. EACH GRANTOR FURTHER

AGREES TO TAKE ANY AND ALL ACTION AS MAY BE NECESSARY TO MAINTAIN SUCH DESIGNATION AND APPOINTMENT OF THE BORROWER AS ITS ADMINISTRATIVE AGENT FOR SERVICE OF PROCESS IN FULL FORCE AND EFFECT UNTIL ALL OBLIGATIONS HAVE BEEN PAID IN FULL. THE LENDER, BY ACCEPTANCE OF THIS SECURITY AGREEMENT, AND EACH GRANTOR IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK AT THE ADDRESS FOR NOTICES SPECIFIED IN SECTION 10.2 OF THE CREDIT AGREEMENT. THE LENDER, BY ACCEPTANCE OF THIS SECURITY AGREEMENT, AND EACH GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY 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. TO THE EXTENT THAT THE LENDER, BY ACCEPTANCE OF THIS SECURITY AGREEMENT, OR ANY GRANTOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, THE LENDER BY, ACCEPTANCE OF THIS SECURITY AGREEMENT, AND SUCH GRANTOR, EACH ON ITS OWN BEHALF, HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS SECURITY AGREEMENT.

SECTION 7.12. Rights of Lenders. If the Administrative Agent has a right to take or omit to take any action hereunder, it shall exercise such right if instructed to do so by the Lenders. With respect to any discretion, consent, approval or similar such action to be made, taken, omitted to be taken or determined

by the Administrative Agent under this Security Agreement (each an "Administrative Agent Determination"), such Administrative Agent Determination shall be made by the Administrative Agent at the direction of the Lenders. If the Administrative Agent has resigned and no successor Administrative Agent has been appointed pursuant to the Credit Agreement, all rights of the Administrative Agent hereunder may be exercised by the Lenders.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has caused this Security Agreement to be duly executed and delivered by its Authorized Officer as of the date first above written.

**VERRICA PHARMACEUTICALS INC.**

By: /s/ Terry Kohler

Name: Terry Kohler

Title: Chief Financial Officer

**ORBIMED ROYALTY & CREDIT OPPORTUNITIES IV, LP**, as  
Administrative Agent

By: OrbiMed ROF IV LLC,  
its General Partner

By: OrbiMed Advisors LLC,  
its Managing Member

By: /s/ Matthew Rizzo

Name: Matthew Rizzo

Title: Member

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**Execution Version**

**Exhibit 10.3**

**WARRANT CERTIFICATE**

THIS WARRANT CERTIFICATE AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR QUALIFIED UNDER ANY STATE OR FOREIGN SECURITIES LAWS AND MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR ASSIGNED UNLESS (I) A REGISTRATION STATEMENT

COVERING THE OFFER AND SALE OF SUCH SECURITIES IS EFFECTIVE UNDER THE SECURITIES ACT AND IS QUALIFIED UNDER APPLICABLE STATE LAW OR (II) THE TRANSACTION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS UNDER THE SECURITIES ACT AND THE QUALIFICATION REQUIREMENTS UNDER APPLICABLE STATE LAW AND, IN EACH CASE, IF THE COMPANY REQUESTS, AN OPINION SATISFACTORY TO THE COMPANY TO SUCH EFFECT HAS BEEN RENDERED BY COUNSEL.

Warrant Shares Issuable: 518,551 Common Shares

Issue Date: July 26, 2023

FOR VALUE RECEIVED, VERRICA PHARMACEUTICALS INC., a Delaware corporation (the **“Company”**), hereby certifies that ORBIMED ROYALTY & CREDIT OPPORTUNITIES IV, LP, a Delaware limited partnership (the **“InitialHolder”** and, together with its successors and permitted transferees and assigns, a **“Holder”**) is entitled to purchase, at the per share Exercise Price, up to five hundred and eighteen thousand, five hundred and fifty one (518,551) fully paid and nonassessable Common Shares (as subject to adjustment hereunder, the **“WarrantShares”**), all subject to the terms, conditions and adjustments set forth below in this Warrant Certificate. Certain capitalized terms used herein are defined in **Section 1**.

This Warrant Certificate has been issued as a condition precedent to the making of loans under and pursuant to the Credit Agreement, dated as of July 26, 2023 (as amended or otherwise modified from time to time, the **“CreditAgreement”**), among the Company, as borrower, the lenders party thereto, and OrbiMed Royalty & Credit Opportunities IV, LP, as administrative agent for the lenders.

**Section 1. Definitions.** Capitalized terms used in this Warrant Certificate but not defined herein have the meanings ascribed thereto in the Credit Agreement as in effect on the date hereof. The following terms when used herein have the following meanings:

**“Aggregate Exercise Price”** means, with respect to any exercise of this Warrant Certificate for Warrant Shares, an amount equal to the product of (i) the number of Warrant Shares in respect of which this Warrant Certificate is then being exercised pursuant to **Section 3**, multiplied by (ii) the Exercise Price.

**“Bloomberg”** has the meaning set forth within the definition of “VWAP”.

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**“Cashless Exercise”** has the meaning set forth in **Section 3(b)**.

**“Charter”** means the Amended and Restated Certificate of Incorporation of the Company, as amended and restated as of June 19, 2018.

**“Common Shares”** means the Company’s common stock, par value \$0.0001 per share.

**“Common Shares Deemed Outstanding”** means, at any given time, the sum of (i) the number of Common Shares actually outstanding at such time, plus (ii) the number of Common Shares issuable upon exercise of Options actually outstanding at such time, plus (iii) the number of Common Shares issuable upon conversion or exchange of Convertible Securities actually outstanding at such time (treating as actually outstanding any Convertible Securities issuable upon exercise of Options actually outstanding at such time), in each case, regardless of whether the Options or Convertible Securities are actually exercisable at such time; provided that Common Shares Deemed Outstanding at any given time shall not include shares owned or held by or for the account of the Company or any of its wholly owned subsidiaries.

**“Company”** has the meaning set forth in the preamble.

**“Convertible Securities”** means any Capital Securities that, directly or indirectly, are convertible into or exchangeable for Common Shares, including shares of the Company’s preferred stock that may be issued from time to time.

**“Credit Agreement”** has the meaning set forth in the preamble.

**“Determination Date”** has the meaning set forth in the definition of “VWAP”.

**“Exercise Certificate”** has the meaning set forth in **Section 3(a)(i)**.

**“Exercise Date”** means, for any given exercise of this Warrant Certificate, whether in whole or in part, a Business Day on which the conditions to such exercise as set forth in **Section 3** shall have been satisfied at or prior to 5:00 p.m., New York City time, including, without limitation, the receipt by the Company of the Exercise Certificate.

**“Exercise Period”** means the period from (and including) the Issue Date to (and including) 5:00 p.m., New York City time, on the Expiration Date.

**“Exercise Price”** means \$6.0264, as adjusted from time to time pursuant to **Section 4**.

**“Expiration Date”** means July 26, 2033.

**“Fair Market Value”** means, if the Common Shares are traded on a Trading Market, (i) the VWAP of such Common Shares for such day (provided that if the Fair Market Value is being determined in connection with a Sale of the Company, such Fair Market Value shall be the greater of the amount determined pursuant to this clause (i) and the closing price on the Trading Market on the Trading Day immediately prior to the closing date of the Sale of the Company) or (ii) if there have been no sales of such Common Shares on any Trading Market on any such day, the average of the highest bid and lowest asked prices for such Common Shares on all applicable

Trading Markets at the end of such day; provided that if at any time the Common Shares are not listed, quoted or otherwise available for trading on any Trading Market (so that no Trading Date shall have occurred), or if VWAP cannot be calculated for the Common Shares for such day for any other reason, the **"Fair Market Value"** of such Common Shares shall be the fair market value per share of such Common Shares as determined jointly by the Company and the Holder; provided further, that, in the event the Company and Holder are unable to so mutually agree, Fair Market Value shall be determined pursuant to **Section 10(a)**.

**"Holder"** has the meaning set forth in the preamble.

**"Independent Advisor"** has the meaning set forth in **Section 10(a)**.

**"Initial Holder"** has the meaning set forth in the preamble.

**"Issue Date"** means the date designated as such on the first page of this Warrant Certificate.

**"Marketable Securities"** means equity securities meeting each of the following requirements: (i) the issuer thereof is subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, and is current in its filing of all required reports and other information under the Securities Act and the Exchange Act; (ii) such equity securities are traded on a Trading Market; and (iii) if delivered (or to be delivered) as payment or compensation to the Holder in connection with an automatic Cashless Exercise pursuant to **Section 3(c)**, following the closing of the related Sale of the Company, the Holder would not be restricted from publicly re-selling all of such equity securities delivered to it.

**"Nasdaq"** means The Nasdaq Stock Market LLC.

**"NYSE"** means the New York Stock Exchange.

**"Options"** means any warrants, options or similar rights to subscribe for or purchase Common Shares or Convertible Securities.

**"OTC Bulletin Board"** means the Financial Industry Regulatory Authority, Inc. OTC Bulletin Board.

**"Pre-emptive Rights"** has the meaning set forth in **Section 12**.

**"Registration Statement"** means, in connection with any public offering of securities, any registration statement required pursuant to the Securities Act that covers the offer and sales of any such securities, including any prospectus, amendments or supplements to such Registration Statement, including post-effective amendments and all exhibits and all materials incorporated by reference in such Registration Statement.

**"Rule 144"** means Rule 144 promulgated under the Securities Act.

**"Sale of the Company"** means a transaction pursuant to which (i) (x) any Person or group of Persons acting jointly or otherwise in concert (other than the Holder and any other parties to the Credit Agreement) acquires ownership, directly or indirectly, beneficially or of record, of Capital

Securities of the Borrower having more than fifty percent (50%) of the aggregate economic interests and/or voting power, determined on a fully diluted basis, (y) any Person or group of Persons acting jointly or otherwise in concert (other than the Holder and any other parties to the Credit Agreement) acquires, by contract or otherwise, the right to appoint or elect a majority of the Company's board of directors (the **"Board"**), or (z) all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, are sold, leased, exclusively licensed, transferred, conveyed or otherwise disposed of, and (ii) all Obligations (as defined in the Credit Agreement) outstanding under the Credit Agreement are to be paid in full in cash, whether pursuant to the terms of the transaction, pursuant to the terms of the Credit Agreement (including **Section 12** thereof) or otherwise.

**"SEC"** means the Securities and Exchange Commission or any successor thereto.

**"Share Distribution"** means any issuance or sale by the Company of any of its Common Shares, Options or Convertible Securities, other than in connection with a dividend or distribution to holders of its Common Shares of the type described in **Section 4(c)** below.

**"Share Reorganization"** has the meaning set forth in **Section 4(a)**.

**"Trading Day"** means, with respect to the Common Shares or any other Marketable Securities, a date on which the relevant Trading Market is open and conducting business.

**"Trading Market"** means, with respect to the Common Shares or any other Marketable Securities, the Nasdaq, the NYSE or the OTC Bulletin Board.

**"Unrestricted Conditions"** has the meaning set forth in **Section 11(a)(ii)**.

**"VWAP"** means, with respect to any Common Shares, as of any day of determination (a **Determination Date**), the volume weighted average sale price for the period of ten (10) consecutive Trading Days immediately preceding such Determination Date on the Trading Market for such Common Shares as reported by, or based upon data reported by, Bloomberg Financial Markets or an equivalent, reliable reporting service reasonably acceptable to the Holder and the Company (collectively, **"Bloomberg"**) or, if the volume weighted average sale price has not been reported for such security by Bloomberg for such ten (10) day period, then the simple average of the last closing trade prices of such security for such ten (10) day period, as reported by Bloomberg, or, if no last closing trade price is reported

for such security by Bloomberg, the simple average of the bid prices of any market makers for such security that are listed in the over the counter market by the Financial Industry Regulatory Authority, Inc. or on the OTC Bulletin Board (or any successor) or in the “pink sheets” (or any successor) by the OTC Markets Group, Inc. over such ten (10) day period; provided that if VWAP cannot be calculated for such security on such date in the manner provided above (including because the applicable security is not listed or publicly traded), the VWAP shall be the Fair Market Value as mutually determined by the Company and the Holder; provided further that, in the event the Company and Holder are unable to so mutually agree, Fair Market Value shall be determined pursuant to **Section 10(a)**.

**“Warrant Certificate”** means this Warrant Certificate and all subsequent warrant certificates issued upon division, combination or transfer of, or in substitution for, this Warrant Certificate.

**“Warrant Register”** has the meaning set forth in **Section 5**.

**“Warrant Shares”** has the meaning set forth in the preamble.

**Section 2.Terms of Warrant Certificate.** Subject to the terms and conditions hereof, from time to time during the Exercise Period, the Holder of this Warrant Certificate may exercise this Warrant Certificate for all or any part of the Warrant Shares purchasable hereunder (subject to adjustment as provided herein).

### **Section 3.Exercise of Warrant Certificate.**

**(a)Exercise Procedure.** This Warrant Certificate may be exercised from time to time on any Business Day during the Exercise Period, for all or any part of the unexercised Warrant Shares upon:

(i) delivery to the Company at its then registered office of a duly completed and executed Exercise Certificate in the form attached hereto as **Exhibit A** (each, an “**Exercise Certificate**”), which certificate will specify the number of Warrant Shares to be purchased and the Aggregate Exercise Price; and

(ii) simultaneously with the delivery of the Exercise Certificate, payment to the Company of the Aggregate Exercise Price in accordance with **Section 3(b)**.

**(b)Payment of the Aggregate Exercise Price.** Payment of the Aggregate Exercise Price shall be made, at the option of the Holder as set forth in the applicable Exercise Certificate, by any of the following methods:

(i) by wire transfer of immediately available funds to an account designated in writing by the Company, in the amount of such Aggregate Exercise Price;

(ii) by instructing the Company to withhold a number of Warrant Shares then issuable upon exercise of this Warrant Certificate with an aggregate Fair Market Value as of the Exercise Date

equal to such Aggregate Exercise Price; or

- (iii) any combination of the foregoing.

In the event of any withholding of Warrant Shares pursuant to **Section 3(b)(ii) or (iii)** (solely to the extent of such withholding, a "**Cashless Exercise**") where the number of shares whose value is equal to the Aggregate Exercise Price is not a whole number, the number of shares withheld by the Company shall be rounded up to the nearest whole share and the Company shall make a cash payment to the Holder (by delivery of a certified or official bank check or by wire transfer of immediately available funds) based on the incremental fraction of the share being so withheld by the Company in an amount equal to the product of (x) such incremental fraction of a share being so withheld multiplied by (y) the Fair Market Value per Warrant Share as of the Exercise Date.

**(c) Automatic Cashless Exercise.** To the extent this Warrant Certificate has not been exercised in full by the Holder prior to the earlier of (i) the occurrence of the Expiration Date, and (ii) the date on which a Sale of the Company is consummated pursuant to which the sole

consideration payable to the Company or its shareholders in respect of such sale transaction consists of cash, Marketable Securities or a combination thereof, any portion of this Warrant Certificate that remains unexercised on such date shall be deemed to have been exercised automatically pursuant to a Cashless Exercise, in whole (and not in part), on the Business Day immediately preceding such date; provided, that the automatic Cashless Exercise contemplated by this **Section 3(c)** shall not occur in the event that, as of the Business Day immediately preceding any such date described above, the per share Fair Market Value of a Warrant Share is less than the Exercise Price per Warrant Share.

To the extent permitted by Laws, for purposes of Rule 144, it is acknowledged and agreed that (i) the Warrant Shares issuable upon any exercise of this Warrant Certificate in any Cashless Exercise transaction shall be deemed to have been acquired on the Issue Date, and (ii) the holding period for any Warrant Shares issuable upon the exercise of this Warrant Certificate in any Cashless Exercise transaction shall be deemed to have commenced on the Issue Date; provided that the Company makes no representation or warranty regarding the commencement of the holding period of any Warrant Share.

**(d) Delivery of Stock Certificates.** With respect to any exercise of this Warrant Certificate by the Holder, upon receipt by the Company of an Exercise Certificate and delivery of the Aggregate Exercise Price, the Company shall, within five (5) Business Days, deliver in accordance with the terms hereof to or upon the order of the Holder that number of Warrant Shares for the portion of this Warrant Certificate so exercised on such date, together with cash in lieu of any fraction of a share to the extent the Company elects to do so pursuant to **Section 3(e)** below. If such Warrant Shares are issued in certificated form, the Company shall deliver a certificate or certificates, to the extent possible, representing the number of Warrant Shares as the Holder shall request in the Exercise Certificate. If such Warrant Shares are issued

in uncertificated form, the Company shall deliver upon request a confirmation evidencing the registration of such shares. Unless otherwise provided herein, upon any exercise hereof, this Warrant Certificate shall be deemed to have been exercised and such certificate or certificates of Warrant Shares shall be deemed to have been issued, and the Holder shall be deemed to have become a holder of record of such Warrant Shares for all purposes, as of the Exercise Date. Unless otherwise permitted by federal or state securities laws, rules or regulations, any share certificates issued pursuant to the exercise of this Warrant Certificate will bear a legend in substantially the form set out in **Section 11(a)(i)** below.

**(e) No Fractional Shares or Scrip.** No fractional or scrip representing fractional shares shall be issued upon the exercise of this Warrant Certificate. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Fair Market Value of one Warrant Share on the Exercise Date or round up to the next whole share.

**(f) Surrender of this Warrant Certificate; Delivery of New Warrant Certificate.**

(i) The Holder shall not be required to physically surrender this Warrant Certificate to the Company until this Warrant Certificate has been exercised in full by the Holder, in which case, the Holder shall, at the written request of the Company, surrender this Warrant Certificate to the

Company for cancellation within three (3) Business Days after the date the final Exercise Certificate is delivered to the Company. Partial exercises of this Warrant Certificate resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares issuable hereunder by an amount equal to the applicable number of Warrant Shares that have been issued hereunder as a result of previous exercises or withheld in connection with any Cashless Exercises. The Holder and the Company shall maintain records showing the number of Warrant Shares issued and purchased, the date of such issuances and purchases and the number of Warrant Shares withheld in connection with any Cashless Exercises. The Holder and any assignee, by acceptance of this Warrant Certificate, acknowledge and agree that, by reason of the provisions of this **Section 3(f)**, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be fewer than the amount stated on the face hereof.

(ii) Notwithstanding the foregoing, to the extent that there are unexpired and unexercised Warrant Shares remaining under the Warrant Certificate, the Holder may request that the Company (and the Company shall), at the time of issuance of any Warrant Shares in accordance with **Section 3(d)** and the surrender of this Warrant Certificate, deliver to the Holder a new Warrant Certificate evidencing the rights of the Holder to subscribe for the unexpired and unexercised Warrant Shares called for by this Warrant Certificate. Unless otherwise agreed upon by the Holder in its sole discretion, such new Warrant Certificate shall in all other respects be identical to this Warrant Certificate.

**(g) Valid Issuance of Warrant Certificate and Warrant Shares; Payment of Taxes.** With respect to the exercise of this Warrant Certificate, the Company hereby represents, warrants, covenants and agrees as follows:

(i) This Warrant Certificate is, and any Warrant Certificate issued in substitution for or replacement of this Warrant Certificate shall be, upon issuance, duly authorized.

(ii) All Warrant Shares issuable upon the exercise of this Warrant Certificate (or any substitute or replacement Warrant Certificate) shall be, upon issuance, and the Company shall take all such actions as may be necessary or appropriate in order that such Warrant Shares are, validly issued, fully paid and non-assessable, issued without violation of any preemptive or similar rights of any shareholder of the Company and free and clear of all liens and charges (other than liens or charges created by the Holder, or created with regard to income taxes or other taxes payable by the Holder incurred in connection with the exercise of the Warrant or taxes in respect of any transfer made by the Holder occurring contemporaneously therewith).

(iii) The Company shall take all such actions as may be necessary to (x) comply with **Section 3(i)** below and (y) ensure that all such Warrant Shares are issued without violation by the Company of any Laws or any requirements of any foreign or domestic securities exchange upon which Warrant Shares may be listed at the time of such exercise.

(iv) The Company shall exclusively bear and pay all expenses in connection with, and all governmental charges, taxes, fees, levies, withholdings and all other such payments, that may be imposed on or with respect to, the issuance of this Warrant Certificate, and the issuance or delivery of Warrant Shares pursuant to the terms of this Warrant Certificate and the Holder shall

not be affected by such payments, and the Company shall not be eligible to any indemnification for such payment from the Holder.

(v) The Company is a corporation duly organized and validly existing under the Laws of the State of Delaware and has the capacity and corporate power and authority to enter into this Warrant Certificate.

(vi) The Company has taken all action required to be taken to authorize the execution, delivery and performance of this Warrant Certificate.

(vii) This Warrant Certificate has been duly executed by the Company.

(viii) The obligations of the Company under this Warrant Certificate are legal, valid and binding obligations, enforceable against the Company in accordance with the terms hereof, except to the extent that enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles.

(ix) As of the Issue Date, the Company has complied with all obligations set forth in **Section 3(i)**, below.

**(h) Conditional Exercise.** Notwithstanding any other provision hereof, if an exercise of all or any portion of this Warrant Certificate is to be made in connection with a Sale of the Company, such exercise may, at the election of the Holder, be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the consummation of such transaction.

**(i) Reservation of Shares.** The Company shall at all times during the Exercise Period reserve and keep available out of its authorized but unissued Common Shares or (if applicable) other securities constituting Warrant Shares, solely for the purpose of issuance upon the exercise of this Warrant Certificate, the maximum number of Warrant Shares issuable upon the exercise of this Warrant Certificate. The Company shall not increase the par value of any Warrant Shares receivable upon the exercise of this Warrant Certificate above the Exercise Price then in effect, and shall take all such actions within its power as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant Certificate.

**(j) Rule 144 Compliance.** With a view to making available to the Holder the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a holder to sell securities of the Company to the public without registration or pursuant to a Registration Statement, the Company shall:

(i) use commercially reasonable efforts to make and keep adequate public information available, as required by clause (c) of Rule 144;

(ii) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange

Act (excluding, for avoidance of doubt, any prospectus or registration statement which the Company is under no obligation to file); and

(iii) furnish, or otherwise make available to the Holder so long as the Holder owns Warrant Shares, promptly upon request, a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and the Exchange Act, a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed or furnished by the Company as the Holder may reasonably request in connection with the sale of Common Shares without registration.

**(k) Ownership Cap.** The Company shall not knowingly effect the exercise of this Warrant Certificate, and the Initial Holder shall not have the right to exercise this Warrant Certificate to the extent that, after giving effect to such exercise, the Initial Holder (together with its Affiliates) would beneficially own in excess of 9.99% of the Common Shares of the Company immediately after giving effect to such

exercise. For purposes of the foregoing sentence, the aggregate number of Common Shares owned by the Initial Holder and its Affiliates shall include the number of Warrant Shares issuable upon exercise of this Warrant Certificate with respect to which the determination of such aggregate number is being made, but shall exclude Common Shares (if any) that would be issuable upon (i) exercise of the remaining, unexercised portion of this Warrant Certificate beneficially owned by the Initial Holder and its Affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other Capital Securities of the Company beneficially owned by the Initial Holder and its Affiliates (including, without limitation, any Convertible Securities) subject to a limitation on conversion or exercise analogous to the limitations contained herein. Except as set forth in the preceding sentence, for purposes of this **Section 3(k)**, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act. For purposes of this Warrant Certificate, in determining the number of outstanding Common Shares, the Initial Holder of this Warrant Certificate may rely on the number of such outstanding Capital Securities as reflected in the most recent of (i) the Company's Form 10-K, Form 10-Q or other public filing with the SEC, as the case may be, if available, (ii) a more recent public announcement by the Company, or (iii) any other notice by the Company or its transfer agent setting forth the number of outstanding Common Shares. In addition, upon the written request of the Initial Holder (but not more than once during any calendar quarter), the Company shall, within three (3) Business Days, confirm to the Initial Holder the number of its outstanding Common Shares. Furthermore, upon the written request of the Company (but not more than once during any calendar quarter), the Initial Holder shall promptly confirm to the Company its then current beneficial ownership with respect to the Company's Common Shares.

(I) Except as expressly provided herein with respect to cash payments in lieu of the issuance of fractional shares, and without regard to any exchange of consideration in connection with an automatic Cashless Exercise pursuant to **Section 3(c)** above or similar event, upon exercise of this Warrant Certificate the Holder shall not otherwise be entitled to receive cash or Warrant Shares that are registered under the Securities Act.

**Section 4. Adjustment to Number of Warrant Shares, Exercise Price, etc.** The number of Warrant Shares issuable upon exercise of this Warrant Certificate shall be subject to adjustment from time to time as provided in this **Section 4**.

(a) **Adjustment to Number of Warrant Shares Upon Reorganizations, Reclassifications, etc.** In the event of any changes in the outstanding Common Shares of the Company by reason of redemptions, recapitalizations, reclassifications, combinations or exchanges of shares, splits or reverse splits, separations, reorganizations, liquidations, substitutions, replacements or the like (any of the foregoing or combination thereof being a "**Share Reorganization**"), the number and class of Warrant Shares available upon exercise of this Warrant Certificate in the aggregate and the Exercise Price shall be correspondingly adjusted to give the Holder of this Warrant Certificate, on exercise for the same Aggregate Exercise Price, the total number, class, and kind of shares as the Holder would have owned had this Warrant Certificate been exercised prior to any such event and had the Holder continued to hold such Warrant Shares until

after the event requiring adjustment. The form of this Warrant Certificate need not be changed because of any adjustment in the number of Warrant Shares subject to this Warrant Certificate.

**(b) Adjustment to Exercise Price Upon a Share Distribution.** Subject to **clause (iii)** below, if the Company consummates or effects any Share Distribution for a price per Common Share less than the Exercise Price then in effect, then, effective upon such Share Distribution, the Exercise Price shall be reduced to a price determined by multiplying the Exercise Price then in effect by a fraction, the numerator of which shall be the sum of (A) the number of Common Shares Deemed Outstanding immediately prior to such Share Distribution multiplied by the Exercise Price then in effect, plus (B) the consideration, if any, received by the Company upon such Share Distribution, and the denominator of which shall be the product of (1) the total number of Common Shares Deemed Outstanding immediately after such Share Distribution multiplied by (2) the Exercise Price then in effect. For purposes of this **Section 4(b)**:

(i) In the event Options or Convertible Securities are included in any such Share Distribution, the price per Common Share deemed to have been issued or sold as a result of the sale or issuance of such Options or Convertible Securities, shall be equal to the price per Common Share for which Common Shares are issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities, as the case may be (determined by dividing (x) the aggregate amount, if any, received or receivable by the Company as consideration for the issuance, sale, distribution or grant of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration payable to the Company, if any, upon the exercise of all such Options or the conversion or exchange of such Convertible Securities (as the case may be), by (y) the total maximum number of Common Shares issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities).

(ii) The provisions of this **Section 4(b)** shall not in any event operate to increase the Exercise Price.

(iii) This **Section 4(b)** shall not apply to any of the following:

(A) Any issuance, sale or other distribution of Common Shares, Options or Convertible Securities pursuant to (i) any Share Reorganization, which shall instead be governed by **Section 4(a)** above, or (ii) any dividend or distribution to holders of Common Shares, which shall instead be governed by **Section 4(c)** below.

(B) The issuance of Common Shares upon exercise or conversion of any Option Convertible Securities included in the Common Shares Deemed Outstanding the Issue Date.

(C) The grant or issuance of Common Shares, Options or Convertible Securities

to members of the Board, officers, employees, consultants or other service providers of the Company pursuant to any employee incentive plan, employee share purchase plan or similar equity-based benefit plans approved by the Board; provided that the total number of securities issued under this sub-clause for a price per share less than the Exercise Price shall not constitute more than seven percent (7%) of the total number of Common Shares Deemed Outstanding at any time.

(D) The issuance or grant of Common Shares, Options or Convertible Securities in connection with Permitted Acquisitions by the Company, or in connection with other transactions or financings with material strategic partners, in each case approved by the Board; provided, that the total number of securities issued or granted under this sub-clause for a price per share less than the Exercise Price shall not constitute more than seven percent (7%) of the total number of Common Shares Deemed Outstanding at any time.

(c) **Adjustment to Number of Warrant Shares Upon Dividends, Distributions, etc.** If the Company declares or pays a dividend or distribution on its outstanding Common Shares payable in cash, Capital Securities or other property, the Holder shall be entitled to receive, at the time such dividend or distribution is paid, without additional cost to the Holder, the total number and kind of cash, Capital Securities or other property which the Holder would have received had the Holder owned the Warrant Shares of record as of the date such dividend or distribution was paid.

**(d) Certificate as to Adjustment.**

(i) As promptly as reasonably practicable following any change or adjustment of the type described above in this **Section 4**, but in any event not later than ten (10) Business Days thereafter, the Company shall furnish to the Holder a certificate of an Authorized Officer setting forth in reasonable detail such adjustment and the facts upon which it is based and certifying the calculation thereof.

(ii) As promptly as reasonably practicable following the receipt by the Company of a written request by the Holder, but in any event not later than ten (10) Business Days thereafter, the Company shall furnish to the Holder a certificate of an Authorized Officer certifying the number of Warrant Shares or the amount, if any, of other shares, securities or assets then issuable upon exercise of the Warrant Certificate.

(e) **Notices.** In the event that, at any time during the Exercise Period the Company shall take a record of the holders of its outstanding shares (or other Capital Securities at the time issuable upon exercise of this Warrant Certificate) for the purpose of:

(i) entitling or enabling such holders to receive any dividend or other distribution, to receive any right to subscribe for or purchase any shares of any class or any other securities, or to receive any other security;

(ii) (x) any capital reorganization of the Company, any reclassification of any outstanding securities, any consolidation or merger of the Company with or into another Person, or (y) a Sale of the Company; or

(iii) the voluntary or involuntary dissolution, liquidation or winding-up bankruptcy or similar event involving the Company;

then, and in each such case, the Company shall send or cause to be sent to the Holder at least ten (10) Business Days prior to the applicable record date or the applicable expected effective date, as the case may be, for the event, a written notice specifying, as the case may be, (A) the record date for such dividend, distribution or other right or action, and a description of such dividend, distribution or other right or action, or (B) the effective date on which such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up is proposed to take place, and the date, if any is to be fixed, as of which the books of the Company shall close or a record shall be taken with respect to which the holders of record of its shares (or such other Capital Securities at the time issuable upon exercise of the Warrant Certificate) shall be entitled to exchange their shares (or such other Capital Securities), for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Warrant Certificate and the Warrant Shares. The above notwithstanding, the Company shall not be required to provide the Holder with notice containing such information if the Company reasonably believes that it constitutes material non-public information, unless the Holder (i) confirms to the Company in writing that it consents to receive such information, and (ii) executes a customary market standstill or equivalent agreement pursuant to which the Holder will agree not to trade in the Company's shares or other Capital Securities while in possession of such material non-public information or until such information is no longer material or non-public.

**Section 5. Warrant Register.** The Company shall keep and properly maintain at its principal executive offices a register (the "**Warrant Register**") for the registration of this Warrant Certificate and any transfers thereof. The Company may deem and treat the Person in whose name this Warrant Certificate is registered on such register as the Holder thereof for all purposes, and the Company shall not be affected by any notice to the contrary, except any assignment, division, combination or other transfer of this Warrant Certificate effected in accordance with the provisions of this Warrant Certificate.

## **Section 6. [Reserved].**

**Section 7. Transfer of Warrant Certificate.** Subject to **Section 11** hereof, this Warrant Certificate and all rights hereunder are transferable, in whole or in part, by the Holder without

charge to the Holder, upon surrender of this Warrant Certificate to the Company at its then principal executive offices with a properly completed and duly executed Assignment in the form attached hereto as **Exhibit B**. Upon such compliance, surrender and delivery, the Company shall execute and deliver a new Warrant Certificate or Warrant Certificates in the name of the assignee or assignees and in the denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant Certificate evidencing the portion of this Warrant Certificate, if any, not so assigned, and this Warrant Certificate shall promptly be cancelled.

**Section 8. The Holder Not Deemed a Shareholder; Limitations on Liability.** Except as otherwise specifically provided herein (including in **4(c)** above and **Section 12** below), (i) prior to the Exercise Date, the Holder shall not be entitled to receive dividends, nor shall anything contained in this Warrant Certificate be construed to confer upon the Holder, as such, any of the rights of a shareholder of the Company or any right to receive dividends or subscription rights, and (ii) prior to the registration of the Holder in the share register of the Company with respect to the Warrant Shares to which the Holder is then entitled to receive upon the due exercise of this Warrant Certificate, the Holder shall not be entitled to vote, nor shall anything contained in this Warrant Certificate be construed to confer upon the Holder, as such, any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of shares, reclassification of shares, consolidation, merger, conveyance or otherwise) or receive notice of meetings. In addition, nothing contained in this Warrant Certificate shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant Certificate or otherwise) or as a shareholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this **Section 8**, the Company shall provide the Holder with copies of the same notices and other information given to all shareholders of the Company generally, contemporaneously with the giving thereof to such shareholders, unless such notice or information had been made publicly available on the SEC's EDGAR system website.

## **Section 9. Replacement on Loss; Division and Combination.**

**(a) Replacement of Warrant Certificate on Loss.** Subject to any further requirements in relation to the cancellation of this Warrant Certificate pursuant to applicable Law, upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant Certificate and upon delivery of an indemnity reasonably satisfactory to it (it being understood that a written indemnification agreement or affidavit of loss of the Holder shall be a sufficient indemnity) and, in case of mutilation, upon surrender of such Warrant Certificate for cancellation to the Company, the Company at its own expense shall execute and deliver to the Holder, in lieu hereof, a new Warrant Certificate of like tenor and exercisable for an equivalent number of Warrant Shares as this Warrant Certificate so lost, stolen, mutilated or destroyed; *provided* that, in the case of mutilation, no indemnity shall be required if this Warrant Certificate in identifiable form is surrendered to the Company for cancellation.

**(b) Division and Combination of Warrant Certificate.** Subject to compliance with the applicable provisions of this Warrant Certificate as to any transfer or other assignment which may be involved in such division or combination, this Warrant Certificate may be divided or, following any such division of this Warrant Certificate, subsequently combined with other Warrant Certificates, upon the surrender of this Warrant Certificate or Warrant Certificates to the Company at its then principal executive offices, together with a written notice specifying the names and

denominations in which new Warrant Certificates are to be issued, signed by each applicable Holder or its agents or attorneys. Subject to compliance with the applicable provisions of this Warrant Certificate as to any transfer or assignment which may be involved in such division or combination, the Company shall at its own expense execute and deliver a new Warrant Certificate or Warrant Certificates in exchange for this Warrant Certificate or Warrant Certificates so surrendered in accordance with such notice. Such new Warrant Certificate or Warrant Certificates shall be of like tenor to the surrendered Warrant Certificate or Warrant Certificates and shall be exercisable in the aggregate for an equivalent number of Warrant Shares as this Warrant Certificate or Warrant Certificates so surrendered in accordance with such notice.

**Section 10. Disputes; No Impairment, etc.** The parties hereto agree as follows:

**(a) Disputes.** In the event of any dispute which arises between the Holder and the Company (including the Board) with respect to the calculation or determination of Fair Market Value, VWAP, the adjusted Exercise Price, the number of Warrant Shares, other Capital Securities, cash or other property issuable upon exercise of this Warrant Certificate, the amount or type of consideration due to the Holder in connection with any event, transaction or other matter described in **Section 4** above or any other matter involving this Warrant Certificate or the Warrant Shares that is not resolved by the parties after good faith discussions and efforts to reach resolution, upon the request of the Holder the disputed issue(s) shall be submitted to a firm of independent investment bankers or public accountants of recognized national standing, which (i) shall be chosen by the Company and be reasonably satisfactory to the Holder and (ii) shall be completely independent of the Company (an "**Independent Advisor**"), for determination, and such determination by the Independent Advisor shall be binding upon the Company and the Holder with respect to this Warrant, any Warrant Shares issued in connection herewith or the matter in dispute, as the case may be, absent manifest error. Costs and expenses of the Independent Advisor shall be paid by the Company.

**(b) Equitable Equivalent.** In case any event shall occur as to which the provisions of **Section 10(a)** above are not strictly applicable but the failure to make any adjustment would not, in the reasonable, good faith opinion of the Holder, fairly protect the rights and benefits of the Holder represented by this Warrant Certificate in accordance with the essential intent and principles of **Section 10(a)**, then, in any such case, at the request of the Holder, the Company shall submit the matter and issues raised by the Holder to an Independent Advisor, which shall give its opinion upon the adjustment, if any, on a basis consistent with the essential intent and principles established in **Section 10(a)**, to the extent necessary to preserve,

without dilution, the rights and benefits represented by this Warrant Certificate. Upon receipt of such opinion, the Company will promptly mail a copy thereof to the Holder and shall make the adjustments described therein, if any. Costs and expenses of the Independent Advisor shall be shared 50/50 by the Company and the Holder.

**(c) No Avoidance.** The Company shall not, by way of amendment of any of its Charter or other Organic Documents or through any consolidation, merger, reorganization, transfer of assets, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant Certificate, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder against impairment as if the

Holder was a shareholder of the Company entitled to the benefit of fiduciary duties afforded to shareholders under Delaware law.

## Section 11. Compliance with the Securities Act.

### (a) Agreement to Comply with the Securities Act, etc.

**(i) Legend.** The Holder, by acceptance of this Warrant Certificate, agrees to comply in all respects with the provisions of this **Section 11** and the restrictive legend requirements set forth on the face of this Warrant Certificate and further agrees that it shall not offer, sell or otherwise dispose of this Warrant Certificate or any Warrant Shares to be issued upon exercise hereof except under circumstances that will not result in a violation of the Securities Act. Subject to **clause (ii)** below, this Warrant Certificate and all Warrant Shares issued upon exercise of this Warrant Certificate (unless registered under the Securities Act) shall be stamped or imprinted with a legend in substantially the following form:

"THIS WARRANT CERTIFICATE AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR QUALIFIED UNDER ANY STATE OR FOREIGN SECURITIES LAWS AND MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR ASSIGNED UNLESS (I) A REGISTRATION STATEMENT COVERING THE OFFER AND SALE OF SUCH SECURITIES IS EFFECTIVE UNDER THE SECURITIES ACT AND IS QUALIFIED UNDER APPLICABLE STATE LAW OR (II) THE TRANSACTION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS UNDER THE SECURITIES ACT AND THE QUALIFICATION REQUIREMENTS UNDER APPLICABLE STATE LAW AND, IN EACH CASE, IF THE COMPANY REQUESTS, AN

OPINION SATISFACTORY TO THE COMPANY TO SUCH EFFECT HAS  
BEEN RENDERED BY COUNSEL."

(ii) **Removal of Restrictive Legends.** Neither this Warrant Certificate nor any certificates evidencing Warrant Shares issuable or deliverable under or in connection with this Warrant Certificate shall contain any legend restricting the transfer thereof (including the legend set forth above in **clause (i)**) in any of the following circumstances: (A) following any sale of this Warrant Certificate or any Warrant Shares issued or delivered to the Holder under or in connection here with pursuant to Rule 144, (B) if this Warrant Certificate or Warrant Shares are eligible for sale under clause (b)(1) of Rule 144, or (C) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the SEC) (collectively, the "**Unrestricted Conditions**"). If the Unrestricted Conditions are met at the time of issuance of this Warrant Certificate or Warrant Shares, as the

case may be, to the reasonable satisfaction of Company's counsel, the Warrant Certificate or Warrant Shares, as the case may be, shall be issued free of all legends.

(iii) **Replacement Warrant Certificate.** The Company agrees that at such time as the Unrestricted Conditions have been satisfied it shall promptly (but in any event within ten (10) Business Days) following written request from the Holder issue a replacement Warrant Certificate or replacement Warrant Shares, as the case may be, free of all restrictive legends.

(iv) **Sale of Unlegended Shares.** The Holder agrees that the removal of the restrictive legend from this Warrant Certificate and any certificates representing securities as set forth in **Section 11(a)(ii)** above is predicated upon the Company's reliance that the Holder will sell this Warrant Certificate or any such securities pursuant to either an effective Registration Statement or otherwise pursuant to the requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if such securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein.

(b) **Representations of the Holder.** In connection with the issuance of this Warrant Certificate, the Holder represents, as of the Issue Date, to the Company by acceptance of this Warrant Certificate as follows:

(i) The Holder is an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act. The Holder is acquiring this Warrant Certificate and the Warrant Shares to be issued upon exercise hereof for investment for its own account and not with a view towards, or for resale in connection with, the public sale or distribution of this Warrant Certificate or the Warrant Shares, except pursuant to sales registered or exempted under the Securities Act.

(ii) The Holder understands and acknowledges that this Warrant Certificate and the Warrant Shares to be issued upon exercise hereof are "restricted securities" under the Securities Act inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that, under such Laws and applicable regulations, such securities may be resold without registration under the Securities Act only in certain limited circumstances. In addition, the Holder represents that it is familiar with Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

(iii) The Holder acknowledges that it can bear the economic and financial risk of its investment for an indefinite period and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in this Warrant Certificate and the Warrant Shares. The Holder has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant Certificate and the business, properties, prospects and financial condition of the Company.

**Section 12.Pre-Emptive Rights.** In addition to any adjustments pursuant to **Section 4** above, if at any time the Company grants, issues, offers or sells (i) any Common Shares or (ii) any options, convertible securities or rights to purchase shares, warrants, securities or other property, in each case pro rata to the record holders of Common Shares (the "**Pre-emptive Rights**"), then the Holder

shall be entitled to (but shall not be obligated to) acquire, upon the same terms applicable to such Pre-emptive Rights, the aggregate Pre-emptive Rights which the Holder would have acquired if the Holder had held the number of Warrant Shares acquirable upon complete exercise of this Warrant Certificate immediately before the date on which a record is taken for the grant, issuance or sale of such Pre-emptive Rights, or, if no such record is taken, the date as of which the record holders of Common Shares are to be determined for the grant, issue or sale of such Pre-emptive Rights.

**Section 13.Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, in each case provided that sender did not receive an automated failed delivery notification; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 13**).

If to the Company: Verrica Pharmaceuticals Inc.

Attention: Christopher Hayes

Email: chayes@verraca.com

with a copy to (which shall not qualify as notice to any party hereto):

Cooley LLP

Reston Town Center

11951 Freedom Dr

14<sup>th</sup> Floor

Reston, VA 20190

Attention: Mark Ballantyne

Email: mballantyne@cooley.com

If to the Holder:

OrbiMed Royalty & Credit Opportunities IV, LP

c/o OrbiMed Advisors LLC

601 Lexington Avenue, 54<sup>th</sup> Floor

New York, NY 10022

Attention: Matthew Rizzo; Mark Jolley; OrbiMed Credit Report

Email: RizzoM@OrbiMed.com; JolleyM@OrbiMed.com

ROSCreditops@orbimed.com

with a copy to (which shall not qualify as notice to any party hereto):

Covington & Burling LLP

The New York Times Building

620 Eighth Avenue

New York, NY 10018

Attention: Peter Schwartz

Email: pschwartz@cov.com

**Section 14. Cumulative Remedies.** Except to the extent expressly provided in **Section 7** to the contrary, the rights and remedies provided in this Warrant Certificate are cumulative and are not exclusive of, and are in addition to and not in substitution for, any other rights or remedies available at Law, in equity or otherwise.

**Section 15. Entire Agreement.** This Warrant Certificate constitutes the sole and entire agreement of the parties to this Warrant Certificate with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

**Section 16. Successor and Assigns.** This Warrant Certificate and the rights evidenced hereby shall be binding upon and shall inure to the benefit of the parties hereto and the successors of the Company and the successors and permitted assigns of the Holder. Such successor or permitted assign of the Holder shall be deemed to be the "Holder" for all purposes hereunder.

**Section 17.No Third-Party Beneficiaries.** This Warrant Certificate is for the sole benefit of the Company and the Holder and their respective successors and, in the case of the Holder, permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Warrant Certificate.

**Section 18. Headings.** The headings in this Warrant Certificate are for reference only and shall not affect the interpretation of this Warrant Certificate.

**Section 19. Amendment and Modification; Waiver.** Except as otherwise provided herein, this Warrant Certificate may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by the Company or the Holder of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Warrant Certificate shall operate or be construed 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.

**Section 20. Severability.** If any term or provision of this Warrant Certificate is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Warrant Certificate or invalidate or render unenforceable such term or provision in any other jurisdiction.

**Section 21. Governing Law.** This Warrant Certificate shall be governed by and construed in accordance with the internal Laws of the State of New York without effect to any choice or conflict of Law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

## **Section 22. Submission to Jurisdiction.**

(a) Any legal suit, action or proceeding arising out of or based on this Warrant Certificate or the transactions contemplated hereby may be instituted in the federal courts of the United States or the courts of the State of New York, in each case located in the city and county of New York. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by certified or registered mail to such party's address set forth in **Section 13** shall be effective service of process for any suit, action or other proceeding, and the parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding has been brought in an inconvenient forum.

(b) **Waiver of Trial by Jury.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS WARRANT CERTIFICATE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PERSON HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PERSON MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS WARRANT CERTIFICATE. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) SUCH PERSON UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PERSON MAKES THIS WAIVER VOLUNTARILY, AND (iv) SUCH PERSON HAS BEEN INDUCED TO ENTER INTO THIS WARRANT CERTIFICATE AND EACH ANCILLARY AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 23. Counterparts.** This Warrant Certificate may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Warrant Certificate delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Warrant Certificate.

**Section 24. No Strict Construction.** This Warrant Certificate shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has duly executed this Warrant Certificate on the Issue Date.

**VERRICA PHARMACEUTICALS INC.**

By /s/ Terry Kohler

Name: Terry Kohler

Title: Chief Financial Officer

[Signature Page to Warrant Certificate]

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Accepted and agreed,

**ORBIMED ROYALTY & CREDIT OPPORTUNITIES IV, LP**

By: OrbiMed ROF IV LLC,  
its General Partner

By OrbiMed Advisors LLC,

its Managing Member

By: /s/ Matthew Rizzo

Name: Matthew Rizzo

Title: Member

[Signature Page to Warrant Certificate]

**Exhibit A**

**to Warrant Certificate**

**FORM OF EXERCISE CERTIFICATE**

(To be signed only upon exercise of Warrant Certificate)

To: Verrica Pharmaceuticals Inc.

44 West Gay Street, Suite 400

West Chester, PA 19380

Attention: Chief Financial Officer

The undersigned, as holder of a right to purchase Warrant Shares (as defined in the Warrant Certificate) of Verrica Pharmaceuticals Inc., a Delaware corporation (the “**Company**”), pursuant to that certain Warrant Certificate of the Company, dated as of July 26, 2023 (the “**Warrant Certificate**”), a copy of which is attached to this Exercise Certificate, hereby irrevocably elects to exercise the purchase right represented by such Warrant Certificate for, and to purchase thereunder, [0] Warrant Shares of the Company and herewith makes payment with this Exercise Certificate of the Aggregate Exercise Price therefor by the following method:

The undersigned hereby elects to make payment of the Aggregate Exercise Price of [Dollars (\$)] for () Common Shares using the method described in **Section 3(b)(i)**.

The undersigned hereby elects to make payment of the Aggregate Exercise Price of [Dollars (\$)] for () Common Shares using the method described in **Section 3(b)(ii)**.

The undersigned hereby elects to make payment of the Aggregate Exercise Price of [Dollars (\$)] for () Common Shares using the method described in **Section 3(b)(iii)**.

Unless otherwise defined herein, capitalized terms have the meanings provided in the Warrant Certificate.

DATED: \_\_\_\_\_

[HOLDER]

By

Name:

Title:

**Exhibit A-1**

**FORM OF ASSIGNMENT**

[DATE OF ASSIGNMENT]

THE UNDERSIGNED, [NAME OF HOLDER], is the holder (in such capacity, the "**Holder**") of a warrant certificate issued by Verrica Pharmaceuticals Inc., a Delaware corporation (the "**Warrant Certificate**" and the "**Company**", respectively), entitling the Holder to purchase up to [] Warrant Shares (as defined in the Warrant Certificate). Unless otherwise defined, capitalized terms used herein have the meanings ascribed thereto in the Warrant Certificate.

FOR VALUE RECEIVED, the Holder hereby sells, assigns and transfers to [NAME OF ASSIGNEE] (the "**Assignee**") the right to acquire [all Warrant Shares entitled to be purchased upon exercise of the Warrant Certificate] [of the Warrant Shares entitled to be purchased upon exercise of the Warrant Certificate]. In furtherance of the foregoing assignment, the Holder hereby irrevocably instructs the Company to (i) memorialize such assignment on the Warrant Register as required pursuant to **Section 5** of the Warrant Certificate, and (ii) pursuant to **Section 7** of the Warrant Certificate, execute and deliver to the Assignee [and the Holder][a new Warrant Certificate][new Warrant Certificates] reflecting the foregoing assignment ([each] a "**Substitute Warrant Certificate**").

The Assignee acknowledges and agrees that its Substitute Warrant Certificate and the Warrant Shares to be issued upon exercise thereof are being acquired for investment and that the Assignee will not offer, sell or otherwise dispose of its Substitute Warrant Certificate or any Warrant Shares to be issued upon exercise or conversion thereof except under circumstances which will not result in a violation of the Securities Act or any applicable state securities laws. The Assignee represents and warrants for the benefit of the Company that the Assignee is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act.

To the extent required pursuant to **Section 11(a)** of the Warrant Certificate, the Assignee acknowledges and agrees that a restrictive legend shall be applied to the Assignee's Substitute Warrant and the Warrant Shares issuable upon exercise of such certificate substantially consistent with the legend set forth in **Section 11(a)(i)**.

[SIGNATURE PAGE FOLLOWS]

Exhibit B-1

IN WITNESS WHEREOF, the parties hereto agree as set forth above as of the date first written above.

[HOLDER]

By

Name:

Title:

Accepted and agreed,

[NAME OF ASSIGNEE]

By

Name:

Title:

Exhibit B-2

Exhibit 31.1

**VERRICA PHARMACEUTICALS INC.**  
**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER**  
**PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Ted White, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended **September 30, 2023** **March 31, 2024** of Verrica Pharmaceuticals Inc. (the "Registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons

performing the equivalent functions):

- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2023 May 13, 2024

/s/ Ted White

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Ted White

President and Chief Executive Officer  
(principal executive officer)

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**Exhibit 31.2**

**VERRICA PHARMACEUTICALS INC.**  
**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER**  
**PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, P. Terence Kohler Jr., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended September 30, 2023 March 31, 2024 of Verrica Pharmaceuticals Inc. (the "registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed

under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiary 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 the report based on such evaluation; and
- (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2023 May 13, 2024

/s/ P. Terence Kohler Jr.

P. Terence Kohler Jr.  
Chief Financial Officer  
(principal financial officer)

; D-WAVE

**Exhibit 32.1**

**VERRICA PHARMACEUTICALS INC.**

**PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER**  
**PURSUANT TO 18 U.S.C. SECTION 1350,**  
**AS ADOPTED PURSUANT TO**  
**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Ted White, President and Chief Executive Officer of Verrica Pharmaceuticals Inc. (the "Company"), and P. Terence Kohler Jr., Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Quarterly Report on Form 10-Q for the period ended **September 30, 2023** **March 31, 2024**, to which the Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

**IN WITNESS WHEREOF**, the undersigned have set their hands hereto as of the **9th** **13th** day of **November, 2023**, **May, 2024**.

---

/s/ Ted White

Ted White

President and Chief Executive Officer  
(principal executive officer)

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/s/ P. **Terence** **Terence** Kohler Jr.

P. Terence Kohler Jr.

Chief Financial Officer  
(principal financial officer)

\* This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

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